

**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

Prof Gabrielle Kaufmann-Kohler
Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
Marisa Planells-Valero

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Rostislav Pekař
Stephen Anway
Luka Misetic
Matej Pustay
David Seidl
Kateřina Bolinová
- Squire Patton Boggs
Nenad Stanković
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For the Respondent:

Senka Mihaj
Bojana Bilankov
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Milica Volarev
- Mihaj Ilic & Milanovic
Vladimir Djerić
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**Government of Canada
Representatives:**

Scott Little
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Party representatives:

William Rand
Erinn Broshko
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Party representatives:

Olivera Stanimirovic
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Hearing Location:

Peace Palace, The Hague

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01 Monday, 12th July 2021
02 (9.00 am)
03 THE PRESIDENT: Fine, I see everyone is ready to start.
04 I am pleased to open this hearing and welcome you all
05 here. It is always a pleasure to open a hearing but
06 this one particularly. We have had no, at least from my
07 part, no hearing with people in presence for a year and
08 a half now, so this is a great feeling.
09 At the same time, we all know that we have to be
10 careful, and you have received the PCA or the Peace
11 Palace protocol, a COVID protocol, please comply with
12 the rules.
13 There is no mask obligation in the Peace Palace, in
14 the sense that each institution needs to be deciding
15 what its practice will be. I would suggest that when
16 you move around here, or whenever even in the hearing
17 you are close to someone, close meaning closer than
18 1.5m, wear your masks but for the rest of the time in
19 the hearing we can dispense with it, at least those who
20 do not speak, and others must do it as they feel.
21 I also greet those who are in the other room. The
22 restrictions indeed require us to split the
23 participants, so I hope they get a good streaming, and
24 feel they are part of the hearing, even though they are
25 in a different room.

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01 In terms of participants, I am saying this for the
02 transcript, we have, of course, the Tribunal, who is
03 here in presence, with the Secretary, and we have the
04 Assistant who is participating remotely.
05 We also have the court reporter who participates
06 remotely but I see the transcript running, so this is
07 working well.
08 For the Claimants, can I ask the Claimants' counsel
09 to say who is here in this room and probably also in the
10 other one on your list?
11 MR PEKAR: Good morning, Mme President, good morning,
12 members of the Tribunal, good morning also to our
13 colleagues on the other side. Because of the distancing
14 rules, we could not do the traditional handshake, so
15 I hereby extend it virtually to everybody in the room.
16 It is a great pleasure to have a real in-person hearing,
17 indeed, Mme President.
18 Let me introduce the team on the Claimants' side
19 today. My name is Rostislav Pekar, I am partner with
20 Squire Patton Boggs. To my left we have Mr Stephen
21 Anyway, also partner with Squire Patton Boggs. To the
22 left, Mr Luca Misetic, also partner with our law firm.
23 And then Mr William Rand, one of the Claimants in this
24 arbitration.
25 In the second row, we have Mr Pustay from the Prague

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01 office of our law firm. To his left we have Mr Igor
02 Markicevic who is Director of Sembi. To his left
03 Mr Erinn Broshko who represents Rand Investments. To
04 his left, Mrs Li-Jeen Broshko who represents Mr Rand's
05 children. And then in the third row we have Ms Sara
06 Pendjer from the law firm Stankovic & Partners in
07 Belgrade. To her left, Mr David Seidl, from Squire
08 Patton Boggs. And to his left, Mr Nenad Stankovic, from
09 Stankovic & Partners.
10 In the remote hearing room we have our Serbian law
11 experts, Mr Miloš Milošević, Ms Bojana Tomic Brkušanić
12 and Mr Uglješa Grušić.
13 THE PRESIDENT: Thank you very much. Can I ask the
14 Respondent to do the same exercise? I give the floor to
15 you, Dr Djerić. I hope I pronounced it correctly.
16 DR DJERIC: Yes, you did. Thank you, Mme President. I am
17 also glad that we are here back to at least
18 a resemblance of a normal, I think everybody is happy to
19 be working not online but in person, and let me
20 introduce our team. My name is Vladimir Djerić. To my
21 right-hand side is Ms Senka Mihaj and Professor Petar
22 Djundić, who are the principal counsel, and then we have
23 Ms Milica Volarev at the end of the row, and then
24 starting from this side of the row, Ms Bojana Bilankov;
25 to her right-hand side, Mr Nemanja Galic; and then

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01 Ms Ivana Vukcevic and Ms Lena Petrovic, all attorneys.
02 And then last but certainly not the least are the
03 representatives of the State Attorney Office of the
04 Republic of Serbia, starting from the left-hand side,
05 Ms Olivera Stanimirovic, who is the State Public
06 Attorney, and then Mr Marinko Cobanin, and finally Ms
07 Ksenija Maksic.
08 So this is the Respondent team for today, and we
09 don't have anyone in the back room at the moment, thank
10 you.
11 THE PRESIDENT: Fine. So you know how we will proceed over
12 these coming days, the rules for the proceedings are set
13 out in Procedural Order No. 5, in part also in
14 Procedural Order No. 1. Today, we hear oral arguments,
15 three hours each maximum. We have already received the
16 Claimants' PowerPoint presentation, at least the hard
17 copy, we received them also from both sides on Saturday.
18 You also know the time allocation over the entire
19 hearing, which is 19 hours each. The Secretary will
20 keep the time and send an email every night to say where
21 we stand.
22 Before we go over to the oral arguments, is there
23 any question, or comment that should be raised?
24 MR PEKAR: No questions, Mme President.
25 THE PRESIDENT: No questions on the Claimants' side.

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01 Anything on the Respondent's side, Dr Djeric?
02 DR DJERIC: No questions at the moment, thank you.
03 THE PRESIDENT: Then I would like to give the floor to the
04 Claimants for their opening, please.
05 Claimants' Opening Statement
06 MR ANWAY: Thank you, Mme President and distinguished
07 members of the Tribunal. At the onset we'd like to
08 thank the Tribunal for the careful time and attention
09 that you've paid to this important matter.
10 Our presentation today will be divided into the
11 following sections which you see on slide 2. First,
12 a brief introduction. Second, the factual background of
13 the dispute. Third, the Tribunal has jurisdiction over
14 the entirety of our claims. Fourth, the actions of the
15 Privatization Agency are attributable to Serbia. Fifth,
16 Serbia violated its obligations under the relevant
17 Treaties. And finally the compensation to which
18 Claimants are entitled for their losses. With that I
19 turn to the introduction.
20 Members of the Tribunal, the basis of our claim is
21 simple and in particular I'd like to focus at the outset
22 on two undisputed facts which cut through all of the
23 parties' arguments and evidence. One relates to
24 liability, the other to damages.
25 First, liability. On 21st October 2015, the Serbian

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01 Privatization Agency took the entirety of BD Agro and
02 paid nothing for it. Its basis for doing so was an
03 alleged failure to remedy a purported breach that the
04 buyer had supposedly committed four years earlier, by
05 the pledging of certain land as collateral for a loan.
06 But critically important, and again all of this is
07 undisputed, the last instalment of the purchase price
08 for the BD Agro shares had already been paid to Serbia
09 years earlier. And therefore the restrictions on the
10 pledges of land no longer had any economic significance
11 to Serbia whatsoever.
12 Members of the Tribunal, I will show you that the
13 only reason there was any restriction on BD Agro
14 pledging its assets was to ensure that Serbia would be
15 fully paid the purchase price. And after full payment
16 was made the contract with the Privatization Agency was
17 fully performed and completed, and these provisions that
18 were allegedly breached no longer had any purpose or
19 application precisely because the purchase price had
20 already been paid to Serbia in full years earlier.
21 Serbia did not suffer and has never alleged that it
22 suffered any economic harm whatsoever from the pledge,
23 and yet despite no economic harm at all, Serbia took the
24 most severe action it possibly could. It took the
25 entirety of the company and paid nothing for it. These

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01 facts are undisputed.
02 We have shown that these acts by Serbia breached
03 a number of different provisions under the relevant
04 treaties but I want to focus on just one at the outset,
05 and that is the proportionality standard under public
06 international law. Even if all of the Respondent's
07 liability allegations were assumed to be true, even if
08 every single one of Respondent's Serbian law arguments
09 on liability were correct, the undisputed facts that
10 I just described still could not possibly survive the
11 proportionality test under public international law.
12 And we respectfully submit that you can decide
13 liability on that basis alone, on undisputed facts and
14 proportionality.
15 What about damages? Well, here too there is an
16 undisputed fact that is critically important, and that
17 undisputed fact, which you see on slide 7, is the
18 following: after taking over the company in 2015, the
19 Serbian Privatization Agency put its own management in
20 place at BD Agro, and that management, appointed by
21 Serbia, commissioned, relied on, and disclosed to third
22 parties a valuation of BD Agro's equity, assets minus
23 liabilities, and Serbia's appointed management's
24 commissioned valuation was that the investment was worth
25 €56.3 million. That's their number.

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01 Now, I want to be very clear. This valuation was
02 done after the breach, and we all know that under public
03 international law, the valuation snapshot should be
04 taken before, not after, the alleged breach.
05 The latest pre-breach valuation implied an equity
06 value of €71 million, as of December 31st 2014, which
07 was nine months before the termination, and our damages
08 expert, Mr Hern, now assesses the equity value as high
09 as €78.2 million.
10 But this undisputed fact is still terribly
11 important. Even if we took Serbia's own number, the
12 investment was worth €56.3 million after the alleged
13 breach, and we respectfully submit, members of the
14 Tribunal, that these two undisputed facts should drive
15 the outcome of this arbitration.
16 I turn now to the factual background [slide 9]. The
17 story of this case begins with the privatization process
18 in Serbia [slide 10]. In the early 2000s, now on
19 slide 11, Serbia decided to transform its economy and
20 created the Privatization Agency. Now, what was the
21 Privatization Agency, and what authority did it wield?
22 As this slide depicts, now on slide 11, the
23 Privatization Agency was subordinate to the Ministry of
24 Economy, and in 2001, the Serbian Parliament enacted two
25 different laws relating to privatization: first, the

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01 2001 Privatization Law, and second, the 2001 Law on the
02 Privatization Agency itself and I would like to walk you
03 through some of the key provisions of those Acts now.
04 First, now on slide 12, Article 2.1 of the
05 Privatization Law, now on your screen, provides that the
06 Privatization Agency's objective was to create, through
07 privatization, favourable conditions for Serbia's
08 "economic development and social stability".
09 This meant that the Privatization Agency had
10 a public purpose.
11 Next, on slide 13, Article 18 of the Law on the
12 Privatization Agency stated that the Ministry of Economy
13 was required to supervise the Privatization Agency, with
14 the latter reporting to the former at least twice
15 a year.
16 Moreover, Articles 12 and 15 of the same law, now on
17 slide 14, stated that the Privatization Agency's
18 director and its managing board members were all
19 appointed by or dismissed, as the case may be, by the
20 Government of Serbia.
21 Indeed, Article 62 of the 2001 Privatization Law,
22 now on slide 15, made clear again that the Ministry of
23 Economy was in charge of supervising and implementing
24 the privatization process. Indeed, Article 5 of the Law
25 on Privatization Agency stated that the initial funds

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01 for the establishment of the Privatization Agency were
02 provided from the State budget.
03 [Respondent's] own expert, Dr Radovic, confirms that
04 the Privatization Agency was required to transfer
05 proceeds of sales back to the State.
06 Now, the Agency itself, in fact, was sued in an ICC
07 arbitration, the award of which is depicted on slide 18,
08 and in the ICC arbitration, where the Privatization
09 Agency was a respondent, the Privatization Agency stated
10 in a brief, and we know this because you can see in the
11 very first line of this excerpt on the screen [18], it
12 says:
13 "... the Privatization Agency remarks, in the brief
14 of 2nd April 2007 ..."
15 So what follows is the Agency's position, and
16 I quote:
17 "... during execution of control of compliance with
18 investor's obligations, the Privatization Agency
19 performs its lawful duty -- not to act as a contract
20 party but as the holder of public powers."
21 That was the Agency's own position. For its part,
22 the Ministry of Economy has taken the same position. In
23 connection with the privatization at issue in this
24 arbitration, BD Agro, the Ministry stated that the
25 Agency is, and I quote from slide 19:

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01 "... holders of public authorities while performing
02 delegated state administrative tasks."
03 What have the courts said about the authority of the
04 Agency? Well, let's look both to domestic courts and
05 international courts. First, as to domestic courts, now
06 on slide 20. The Serbian courts have held that:
07 "The act of notification that the agreement on the
08 sale of capital is terminated is not an administrative
09 act, but an act by which the Privatization Agency uses
10 its legal power [and here's the key language] obtained
11 by the transfer of authority under the public law of the
12 state ..."
13 What about international courts? The European Court
14 of Human Rights has analysed the Serbian Privatization
15 Agency specifically on two occasions. First a decision
16 from 2008, which you'll see on slide 21, where it held
17 that the Privatization Agency in Serbia was "a State
18 body"; second, now on slide 22, a decision from 2013,
19 same conclusion, the Agency is a State body.
20 And finally to close the circle, Serbia law also
21 provided that when the Privatization Agency was
22 dissolved, the Ministry of Economy assumed its tasks and
23 its obligations, the same entity that performed these
24 tasks and assumed these obligations before the Law on
25 Privatization.

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01 Members of the Tribunal, why do I tell you all of
02 this at the outset? I do so because I'm about to turn
03 to the Agency's acts as it relates to Claimants and BD
04 Agro, and as you now have seen, the Privatization
05 Agency's acts which we're about to review are cloaked in
06 the exercise of public authority.
07 We turn now to the second section in the factual
08 background [slide 24]. On 29th September 2005, Mr Rand,
09 through Mr Obradovic, submits the winning bid for BD
10 Agro.
11 We are now on slide 25. In 2005, Serbia decided to
12 privatize BD Agro. BD Agro was Serbia's largest dairy
13 farm, but during the 1990s, it had fallen into
14 disrepair. By 2005, BD Agro was heavily underinvested,
15 its equipment was outdated, and its buildings needed to
16 be completely revamped. The farm's operating modes were
17 outdated and ineffective and BD Agro was in significant
18 debt, and I'll come back later to that debt that I just
19 referred to.
20 But let me be even more direct. As Mr Rand has
21 explained, this operation was entirely dilapidated. Six
22 inches of water on the floor of the kitchen; no heat in
23 the main office, despite extreme cold temperatures in
24 the winter; the cattle kept in spaces so small, they
25 could not move their entire lives and when let out could

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01 barely walk; employees who had no decent clothes and who
02 had not been paid literally for years.
03 The farm needed an investor to interject funds and
04 sound management into the project. Enter Mr Rand, who
05 is here with us today, a Canadian businessman who
06 resides in Vancouver.
07 Mr Rand learned about the opportunity to invest into
08 BD Agro from Mr Obradovic. Mr Obradovic is a dual
09 Serbian-Canadian national who resides in Serbia. You
10 will hear from him later this week. As Mr Obradovic
11 makes clear in his first witness statement, now on your
12 screen as slide 26, in May 2015, Mr Rand in fact flew to
13 Belgrade to inspect BD Agro's premises and he witnessed
14 what I just described to you in terms of how dilapidated
15 the operations were.
16 I would like to pause here. One of the key themes
17 of Serbia's defence is that they had no idea that
18 Mr Rand was behind this investment, that it was news to
19 them when we filed this arbitration.
20 Members of the Tribunal, I would like you to test
21 that assertion against the mountain of evidence that
22 I am about to show you.
23 First, the Government, indeed the Ministry of
24 Economy itself, directly wrote to Mr Rand personally
25 from the very beginning, and you can see that email on

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01 slide 27.
02 On this slide, you'll see that the Ministry of
03 Economy wrote directly to Mr Rand, you see there in the
04 To line, "Dear Bill", encouraging him to invest in the
05 farm by touting the potential for permanently increasing
06 value, you will see in particular point 4, and the
07 Ministry appropriately and correctly focuses on the
08 significant value increases that could be had in the
09 land.
10 And in fact, as shown on the next slide, Mr Rand
11 flew to Belgrade in May 2005. As Mr Rand explains in
12 his first witness statement, now on slide 28, he
13 personally met with several high-ranking Government
14 officials, including Minister Bubalo, you will see his
15 name circled here.
16 I would ask that you remember that name, Mr Bubalo,
17 we'll be seeing a lot more of him on the documents
18 throughout the case. He is one of the highest ranking
19 members of the Serbian Government at the time, he is the
20 Minister of Economy which I already told you is the body
21 directly responsible for supervising the Privatization
22 Agency, and Mr Rand had dinner with Mr Bubalo and his
23 wife on this trip.
24 In addition, Mr Rand met with the Minister of
25 Finance and the Minister of Agriculture, Forestry and

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01 Water Management on this trip.
02 Following the trip, Mr Rand personally wrote to
03 Minister Bubalo thanking him for meeting with him and
04 you see Mr Rand's email now up on your screen
05 [slide 29], and with the Government demonstrating its
06 support, Mr Rand agreed to participate in the
07 privatization.
08 You can see the discussions that took place before
09 Mr Rand decided to invest, they are directly between the
10 Minister of Economy himself and Mr Rand personally.
11 Now, as Mr Rand explains in his witness statement,
12 now on slide 30, the plan was that Mr Rand would become
13 the beneficial owner while Mr Obradovic would acquire
14 the shares only nominally, and the reason was simple.
15 Given that Mr Rand does not speak Serbian, and would not
16 be on the ground in Serbia on a day-to-day basis, it
17 made sense to allow Mr Obradovic to nominally own the
18 shares, even though he did not have any beneficial
19 rights to them.
20 And this was hardly a secret. Quite the opposite.
21 The beneficial ownership arrangement was openly
22 discussed with Serbian Government officials and not only
23 did they not object, they fully supported it. This is
24 attested to by both Mr Rand and Mr Obradovic in their
25 witness statements, excerpts of which are on slide 31.

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01 You will note that Mr Rand notes that this was
02 discussed on multiple occasions with Mr Bubalo, that
03 same Minister of Economy, and as both witnesses explain,
04 not only was Serbia aware of it, it fully supported the
05 beneficial ownership arrangement.
06 Now, given that Serbia's key defence appears to be
07 that Serbia didn't approve this ownership structure, and
08 indeed didn't know about it, the Tribunal may well ask,
09 where is Mr Bubalo to refute this evidence? Serbia has
10 decided not to make him a witness, so neither we nor
11 you, members of the Tribunal, will be able to ask him
12 any questions.
13 As you will soon see, members of the Tribunal, this
14 becomes a pattern with Serbia in this arbitration, where
15 key witnesses on the Serbian side have not been made
16 available as witnesses in this arbitration for us to
17 question.
18 The reality, and the contemporaneous documents will
19 show you this, is that Serbia was well aware of this
20 beneficial ownership arrangement from the outset and
21 indeed had been accustomed to it, had been accustomed to
22 beneficial ownership structures, as you can see from
23 slide 33. This is an invitation to participate in an
24 auction for another company, and this was before the BD
25 Agro privatization, and you can see that the

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01 Privatization Agency expressly contemplates beneficial
02 ownership structures.
03 In the same invitation, again for a different
04 company, before the BD Agro privatization, the Agency
05 expressly asks for the disclosure of beneficial
06 ownership structures, and you can see that from slide
07 34.
08 Nor was this an isolated case. On slide 35, you'll
09 see a bid for yet another company in Serbia, this too
10 before the BD Agro privatization, where the Agency again
11 requests disclosure of beneficial ownership structures.
12 But what about the BD Agro privatization? For the
13 BD Agro auction, in sharp contrast, the Privatization
14 Agency did not ask for the disclosure of beneficial
15 ownership. There simply was no requirement to disclose.
16 That's reflected not only in the invitation documents
17 themselves but also in Mr Obradovic's witness statement,
18 which is before you on slide 36.
19 But as I have described to you, and as you will soon
20 see further, despite being under no obligation to do so,
21 Claimants repeatedly disclosed Mr Rand's beneficial
22 ownership anyway.
23 On 19th September 2005, now on slide 37, to
24 formalise his arrangement with Mr Rand, Mr Obradovic
25 entered into the MDH agreement. MDH was a BVI company

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01 owned and controlled by Mr Rand.
02 Now, as shown on slide 38, if Mr Rand was successful
03 in the bid, the MDH agreement conferred upon MDH and
04 thus Mr Rand rights of a controlling shareholder: voting
05 rights, a call option on the BD Agro shares at a nominal
06 price, only €1,000.
07 So what happens? Mr Rand participates in the
08 auction, and he is not the only bidder, three others
09 attended, but Mr Rand submits the highest price,
10 approximately €5.5 million, to be paid in six
11 instalments over a five-year period. He won on price.
12 On 29th September 2005, the Ministry writes
13 a congratulatory email. To whom does he address his
14 email? Bill Rand. And he says, as you can see from
15 this slide [39]:
16 "... you all succeeded ..."
17 Let's just take a step back. This is written by the
18 Ministry of Economy, the same body that is charged with
19 supervising the Privatization Agency, to the person that
20 Serbia now says they had no idea was behind the
21 investment.
22 And he notes that the Ministry says it will
23 co-ordinate with George, that's Mr Obradovic. In other
24 words, the Ministry is congratulating the beneficial
25 owner, and says he'll work out the details with the

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01 nominal owner. That's exactly as you would expect in
02 a beneficial ownership structure.
03 Mr Robert Deane, our expert on British Columbia law,
04 which is the law that governs the MDH agreement, has
05 explained, as you see on slide 40, that through the MDH
06 agreement, MDH and thus Mr Rand acquired beneficial
07 ownership of the BD Agro shares, and that, members of
08 the Tribunal, takes us to the next section.
09 On 4th October 2005 [slide 41], the Privatization
10 and Pledge Agreements are signed.
11 After winning the bid, two different contracts are
12 signed with the Privatization Agency [slide 42]. The
13 first, which is on the left side of your screen, is the
14 Privatization Agreement. The second, on the right side
15 of your screen, is the Pledge Agreement, and let's
16 briefly review the key provisions of both in turn.
17 First, the Privatization Agreement. Mr Obradovic,
18 on behalf of Mr Rand, was to pay a purchase price of
19 approximately €5.5 million, payable in six instalments
20 over a five-year period, and invest an additional
21 €2 million into BD Agro.
22 Now, under the Pledge Agreement, the other document,
23 the one on the right side of the screen, the shares in
24 BD Agro were pledged to the Privatization Agency until
25 the full purchase price was paid. So if the full

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01 purchase price wasn't paid as agreed, then the Agency
02 could have foreclosed on the shares, but once the full
03 purchase price is paid, then these agreements are
04 fulfilled and completed.
05 Now let's review the key provisions of each
06 agreement. First, the Privatization Agreement, and
07 there are three key provisions I would like to review at
08 the outset.
09 The first is article 5.3.3 [slide 43], which states
10 that the buyer will not alienate or dispose of a certain
11 amount of fixed assets, and then it states "until
12 payment of the entire sale and purchase price".
13 The second, now on slide 44, is article 5.3.4, which
14 says:
15 "The Buyer will not encumber with pledge the fixed
16 assets ... except for the purpose of acquiring of the
17 funds to be used by the subject."
18 Now as you'll soon see, it becomes a matter of
19 common ground between the parties, at least before this
20 arbitration, that once payment of the entire price is
21 made, both of these restrictions cease to apply. That
22 became a matter of common ground between the parties
23 before this arbitration and I will show you the document
24 where the Agency took that position.
25 After the full purchase price, restrictions on

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01 disposing or pledging assets is no longer a concern for
02 the State. Under the Privatization Agreement, after
03 full payment is made, this is a privately-owned business
04 that has been paid for fully, free and clear.

05 Now, the third provision I wanted to review in the
06 Privatization Agreement is article 7. Article 7 sets
07 forth the provisions whose breaches can justify
08 termination of this contract, and it states that of the
09 two provisions we just reviewed, 5.3.3 and 5.3.4, only
10 a violation of 5.3.3 could result in termination of the
11 contract. Article 5.3.4 is not even mentioned.

12 And this becomes critically important later, so
13 I would ask that you bear it in mind. That's the
14 Privatization Agreement.

15 What about the second contract that was signed, the
16 Pledge Agreement? Under the Pledge Agreement, the BD
17 Agro shares would be pledged to the Privatization Agency
18 until the full purchase price was paid and article 2,
19 which is now on slide 46, states this explicitly, that
20 the pledge over the BD Agro shares is only valid:

21 "... until final payment of sale and purchase
22 price."

23 I would also note on slide 47 that article 3.1.2 of
24 the Privatization Agreement says the same thing.

25 So it's with this contractual framework in place

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01 that we now turn to the next section in the factual
02 background, which is that Mr Rand immediately starts to
03 manage BD Agro.

04 After the privatization, Mr Rand was appointed to
05 the BD Agro board, and immediately began to control
06 operations. On this slide [49] I cite 22 different
07 exhibits which show you just how intricately involved
08 Mr Rand was in the business. Constant contact with
09 managers and employees; receiving financial reports and
10 making decisions about the company's finances; regularly
11 visiting BD Agro to personally control its operations;
12 and routinely communicating with external consultants
13 and business partners.

14 Mr Rand was also involved in directly financing the
15 company's operations together with the Lundin family,
16 a family from Sweden, but which lived in Switzerland.

17 And here [slide 50] is just one of the many
18 documents where Mr Rand was transferring money to the
19 farm.

20 I have already showed you that the Serbian
21 Government was well aware of Mr Rand's involvement since
22 the very beginning, but to further underscore the point,
23 company representatives continued to openly and
24 transparently disclose Mr Rand's ownership in the farm.

25 For example, Mr Jovanovic, who was the CEO of BD

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01 Agro, and used to work for the Government, stated to
02 Serbian Government officials, OECD officials and other
03 business persons that Mr Rand's investment was, and
04 I quote from slide 51:

05 "... the biggest Canadian investment in Serbia so
06 far."

07 And Mr Rand immediately met his investment
08 obligations. Indeed, now on slide 52, on 10th October
09 2006, the Privatization Agency issued written
10 confirmation that all the required additional
11 investments in BD Agro had been made. And those
12 investments, members of the Tribunal, from Mr Rand
13 quickly transformed BD Agro into a state of the art
14 farm. Here are pictures of Mr Rand at the farm in the
15 years after he started managing the operation [slide
16 53]. Suffice it to say, no one was hiding Mr Rand's
17 involvement in the project; exactly the opposite. BD
18 Agro's CEO, Mr Jovanovic, continued to routinely
19 disclose Mr Rand's ownership to third parties.

20 In this email from October 2007, now slide 54,
21 Mr Jovanovic openly describes Mr Rand as "our major
22 shareholder ... in Canada".

23 By this time, BD Agro's success story had caught the
24 eye of the Serbian Government officials, and they
25 visited the farm in January 2007. As Mr Obradovic

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01 explains, now on slide 55, on 3rd January 2007 the Prime
02 Minister himself visits the farm, and he does so with
03 that familiar name, Mr Bubalo, the Minister of Economy,
04 as well as the Minister of Capital Investments. And on
05 the next slide, slide 56, you'll see a picture of that
06 visit, and although the Prime Minister is not in the
07 picture, Mr Bubalo, the Minister of Economy, is. He is
08 the individual immediately under the Canadian flag. The
09 person with his back to the camera is Mr Obradovic; and
10 the person immediately to the right of Mr Obradovic is
11 the Minister of Capital Investments. You'll also notice
12 the flags: from right to left, the Serbian flag, the
13 Canadian flag representing Mr Rand and his beneficial
14 ownership, and then Sweden and Switzerland, to represent
15 the Lundin family.

16 Let's fast forward a year. We're now in December
17 2007, and Mr Jovanovic was continuing to routinely
18 disclose Mr Rand's ownership to third parties. Here
19 again you see him describing Mr Rand as "our major
20 shareholder" [slide 57], and as shown on slide 58,
21 Mr Rand continued to send money to the operation.

22 As a result, BD Agro became a model example of how
23 privatization and foreign investment can significantly
24 benefit a host state.

25 In fact, Mr efforts earned the farm widespread

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01 praise. In one article that was published in 2010, now
02 on slide 59, media reports were describing the farm as
03 "the most modern cow farm not only in Serbia, but [all
04 of] Europe", and another report ranked it as one of the
05 most important suppliers of raw milk, not only in
06 Serbia, but in the entire Balkan region.
07 If we just pause here, members of the Tribunal,
08 contrast these contemporaneous reports with the utterly
09 dilapidated condition in which Mr Rand found the farm
10 when he first visited it before the auction. This
11 transformation didn't happen by accident, it happened
12 because of Mr Rand's investment.
13 And that takes us to section 5 [slide 61].
14 In February 2008, Mr Rand restructures his ownership
15 through Sembi.
16 Now on slide 62, by the end of 2007, the Lundin
17 family decided to exit the project, and requested
18 repayment of loaned funds. Mr Rand agreed to replace
19 the Lundins' funds with his own and he subsequently used
20 this opportunity to change the holding structure of BD
21 Agro shares to include his three children: Kathleen
22 Rand, Allison Rand and Robert Rand. He achieved this by
23 purchasing a Cyprus company called Sembi Investments
24 Limited to serve as the holding company for his
25 beneficial ownership in BD Agro.

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01 So on 22nd February 2008, Sembi and Mr Obradovic
02 concluded an agreement transferring the beneficial
03 ownership to Sembi, which you can see on your screen
04 [slide 63]. In effect, the Sembi agreement replaced the
05 MDH agreement.
06 Our Cyprus law expert explains, as you can see from
07 slide 64, that Sembi, through this agreement, acquired
08 all the equitable rights in the Privatization Agreement
09 and the BD Agro shares. In addition, as shown on slide
10 65, Sembi assumed all obligations against the
11 Privatization Agency and the Lundins.
12 From that moment on, whatever Mr Rand did Sembi did,
13 and so when you hear us describe Mr Rand and his actions
14 going forward, it's effectively synonymous with Sembi.
15 Sembi immediately recorded its beneficial ownership
16 in its financial statements, this is an important fact,
17 and it's found on slide 66. If we can go back to it for
18 a moment? You see that Sembi immediately recorded its
19 beneficial ownership in its financial statements.
20 Now moving to slide 67, Sembi also became actively
21 involved in BD Agro's management. There was a board of
22 directors at Sembi and you can see from this slide
23 minutes from meetings of that board of directors, where
24 the directors were immediately involved in BD Agro's
25 management.

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01 Moreover, Mr Rand was one of the Sembi board of
02 directors, which you can see from slide 68. And lest
03 there be any doubt, Mr Rand remained in full control at
04 all times. Here you can see witness statements from
05 Mr Markicevic, General Manager of BD Agro, board member
06 of BD Agro and Director of Sembi, and Mr Obradovic. And
07 in that regard, Mr Rand himself wrote letters to
08 business partners of Sembi, stating that all
09 instructions regarding the company should only be
10 accepted if given by him.
11 Further, as this slide [71] shows, Mr Rand continued
12 to be personally involved in all of BD Agro's affairs,
13 just as he was before. On this slide I cite 30 exhibits
14 demonstrating his continued involvement in all aspects
15 of the operation.
16 If that were not enough, Mr Rand and Mr Jovanovic
17 [slide 72] continued to routinely disclose Mr Rand's
18 ownership and control to BD Agro's business partners.
19 You can see that in three emails on this slide alone:
20 the two on the left, and the one in the upper right
21 which are authored by Mr Rand and in which he says,
22 effectively, "I own the farm"; and in the fourth email
23 in the bottom right, where the CEO of the company,
24 Mr Jovanovic, describes Mr Rand as "our owner".
25 Mr Markicevic also disclosed Mr Rand's ownership to

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01 BD Agro's creditors and some of those creditors were
02 Serbian Government agencies. You can see that from
03 slide 73.
04 As this contemporaneous document shows on slide 74,
05 Mr Markicevic described Mr Rand externally as "our owner
06 from Canada".
07 In fact, Mr Rand's involvement was so well-known
08 that the Canadian Embassy in Serbia began to communicate
09 with him with regard to the farm. This is an email from
10 the Canadian Ambassador to Serbia, John Morrison
11 [slide 75], and Ambassador Morrison writes to Mr Rand:
12 "Dear Bill ... you obviously have a winning team
13 ...things like this heighten enormously the respect that
14 Serbians have for Canadian investments generally."
15 As I have already showed you, now on slide 76,
16 Serbian and Canadian politicians and Government
17 officials were well aware as well. On this slide,
18 you'll see an email on the left from Mr Rand to Serbian
19 Government officials describing the business as "our
20 dairy operation"; you'll also see an article on the top
21 right, reporting that the Speaker of the House of
22 Commons in Canada visited the farm with a Parliamentary
23 Delegation, referring to it as "Europe's biggest dairy
24 farm", and note the bottom right email, where Ambassador
25 Morrison states that he enjoyed meeting "Bill's son"

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01 because Mr Rand could not attend that particular meeting
02 and his son went in his stead.

03 And lest there be any doubt, the Privatization
04 Agency was aware as well, as this slide [77] shows.

05 Members of the Tribunal, I will even show you an
06 email later sent directly to the Minister of Economy
07 himself that described Mr Rand as the majority owner,
08 but let's take things chronologically.

09 Here we are in 2010. Because of Mr Rand's
10 investment, the farm has now achieved accolades, not
11 only in Serbia but in Europe generally. It has garnered
12 the attention and indeed visits from the Serbian Prime
13 Minister himself, the Minister of Economy, the Canadian
14 Ambassador to Serbia, the Speaker of the House of
15 Commons, and numerous other Government officials.

16 To say that Mr Rand's ownership was a secret is, in
17 a word, absurd. BD Agro, with Mr Rand controlling the
18 company, had become a success story, as we sit here at
19 the beginning of 2011.

20 But then everything changes. For reasons we may
21 never know, everything changes in February 2011.
22 In February 2011, the Privatization Agency decided to
23 allege non-existent breaches of the Privatization
24 Agreement, and in particular, now on slide 79, on
25 25th February 2011 the Agency alleged that BD Agro

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01 violated articles 5.3.3 and 5.3.4 of the Privatization
02 Agreement.

03 Let's take each allegation in turn. First, 5.3.3.
04 You'll recall, now on slide 80, that 5.3.3 prohibited BD
05 Agro from alienating fixed assets worth more than 30% of
06 the total value of BD Agro's fixed assets shown on its
07 final pre-privatization balance sheet.

08 So how did BD Agro supposedly violate this
09 provision? Well, as you can see on slide 81, the
10 Ministry of Agriculture ordered BD Agro to slaughter the
11 portion of the herd that had been infected with
12 a particular disease. Incidentally, the cattle had that
13 disease when Mr Rand purchased the farm.

14 BD Agro followed this order. What happened when BD
15 Agro followed the order of the Ministry? The
16 Privatization Agency turned around and alleged
17 a violation of 5.3.3, saying that BD Agro had now
18 alienated more than 30% of its fixed assets by doing so
19 [slide 82].

20 To state the obvious, following a Government order
21 and then being told you are in violation of the
22 Privatization Agreement is remarkable.

23 Such a Government ordered slaughter obviously
24 constitutes, if anything, under the Privatization
25 Agreement, an event of force majeure, and in fact, the

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01 Privatization Agency later admitted that it was a force
02 majeure, and you'll hear that throughout this hearing.

03 Further, the slaughtered herd was fully replaced by
04 a superior breed that Mr Rand directly flew from Canada
05 at his own personal cost of €2 million to replace the
06 cattle that had to be slaughtered in accordance with the
07 Ministry's order.

08 And I would additionally note that the amount that
09 Mr Rand paid, the €2 million, out of his personal funds,
10 was in addition to the amount of approximately
11 €2 million as well from the Export Development Canada
12 and BD Agro itself had to pay more than €3 million to
13 replace this herd.

14 Perhaps most striking, however, is that even in
15 February 2011, the exact same month when this allegation
16 was made, the Privatization Agency admitted, in
17 a document I am about to show you, that it knew if you
18 accounted for the slaughtered herd, BD Agro was below
19 the 30% threshold and therefore not in violation of
20 5.3.3. Let me repeat that. The Privatization Agency
21 admitted the same month that it made this allegation
22 that it knew if you accounted for the slaughtered herd,
23 which BD Agro was ordered to do by the Ministry, it
24 would not have caused a violation of 5.3.3, and let me
25 show you that document now.

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01 This is on slide 83, where you can see that the
02 Privatization Agency confirms in its final report on
03 control that if the culling of the cows is not counted,
04 5.3.3 was not breached. They knew this the minute they
05 made the allegation.

06 Mira Kostic signed the report together with three
07 other representatives from the Privatization Agency.
08 And despite Ms Kostic's intimate involvement in the
09 facts of this case, you'll hear and see her name all
10 over the record, she too curiously has not been made
11 a witness in this arbitration, so again neither we nor
12 you, members of the Tribunal, will have the opportunity
13 to ask her any questions.

14 Yet despite admitting that if the slaughter of the
15 cattle was accounted for article 5.3.3 was not breached,
16 and knowing that, in February 2011 the Privatization
17 Agency continued to allege a breach of 5.3.3 for the
18 next four years and they continued to demand that BD
19 Agro provide an explanation showing there was no
20 violation. But they weren't asking for legal arguments,
21 they were asking for facts, for auditor reports, showing
22 that 5.3.3 wasn't violated. As I have just showed you,
23 they had all the facts, and they knew that if the
24 slaughtered cattle were accounted for, there was no
25 violation. They continued to make these demands knowing

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01 full well that BD Agro couldn't possibly comply with
02 them.
03 Indeed it was not until four years later, and this
04 is critically important, four years later, in the
05 termination notice itself, that Serbia dropped the 5.3.3
06 allegation, and I have on slide 87 an excerpt from
07 Serbia's brief in this case, where it confirms:
08 "... only the breach of ... 5.3.4 was the reason for
09 termination ..."
10 In other words, not 5.3.3. The first time they
11 dropped this allegation of 5.3.3 was in the termination
12 notice itself in 2015.
13 Why is it so important that Serbia dropped the 5.3.3
14 allegation, albeit only in the termination notice
15 itself? Why is that so important? Because remember
16 what I told you at the beginning regarding article 7 of
17 the termination agreement, which stated that of these
18 two provisions, only a violation of 5.3.3, not 5.3.4,
19 could result in termination, and the importance of this
20 point cannot be overstated. It is undisputed that on
21 the terms of article 7, the termination provision of the
22 Privatization Agreement, the only provision that Serbia
23 now says was breached is not a basis for termination.
24 What about the article 5.3.4 violation? Serbia
25 alleged wrongly that BD Agro had pledged certain plots

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01 of land to secure a loan in 2010 worth about
02 €2.2 million, and that violated article 5.3.4. Well,
03 this allegation was equally baseless. Even if one
04 accepts that 5.3.4 had applied to the actions of BD Agro
05 as opposed to the buyer -- that is the word that is used
06 in the agreement, that is Mr Obradovic -- even if one
07 overlooks that issue, article 5.3.4 only precluded BD
08 Agro from pledging its assets as a security for loans
09 taken by third parties; indeed, that provision clearly
10 states that BD Agro can pledge its assets [slide 90]
11 "... for the purpose of acquiring of the funds to be
12 used ..." by BD Agro.
13 It is undisputed that the funds acquired under this
14 2010 loan agreement were used by BD Agro. BD Agro used
15 the majority of these funds, the majority,
16 €1.23 million, approximately, for its primary business
17 activities. BD Agro used a minority of these funds,
18 roughly €670,000, to repay the debt that it had assumed
19 from a company called Crveni Signal, a company for which
20 Mr Rand was also the beneficial owner, which was BD
21 Agro's debt at that time. And BD Agro used the
22 remaining amount of the funds, approximately €300,000,
23 to provide a loan to Inex, another company beneficially
24 owned by Mr Rand, and consequently it is clear that BD
25 Agro used the majority of that money for its own primary

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01 farm business. Again, that's not in dispute.
02 So to that extent, the pledge corresponding to the
03 loan was perfectly valid under 5.3.4, and it's also
04 undisputed that the 2010 loan was repaid in 2012, and
05 that the lender, Agrobanka, a bank that was controlled
06 by Serbia at the time, was required to delete the
07 corresponding pledge when the 2010 loan had been paid
08 off. Agrobanka, however, then in control of the Serbian
09 Government, arbitrarily refused to release the pledge,
10 so even if Mr Rand had just decided to repay BD Agro's
11 receivables from Crveni Signal and Inex, there would
12 have been no effect on Agrobanka's refusal to release
13 the pledge that allegedly violated 5.3.4.
14 And members of the Tribunal, let me also say that
15 making loans, even for companies that are not financial
16 institutions, is common business practice. Take, for
17 example, law firms, the entities at least with which
18 I am most familiar. Large law firms often have related
19 entities. In my firm we have different LLPs that are
20 connected by a Swiss verein. That is how many large law
21 firms are organised: US LLPs, UK LLPs, AU LLPs, related
22 entities.
23 And large law firms frequently give loans between
24 their affiliated LLPs. They also sometimes give loans
25 to employees or partners, depending on their own

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01 specific personal economic circumstances, and they do
02 this despite the fact that their primary business isn't
03 lending money, it's the practice of law. There's
04 absolutely nothing improper with it, and nothing in
05 Serbian law that prohibited it.
06 In short, the loan to Inex, and the paying off the
07 debt of Crveni Signal, was not unusual, it was entirely
08 valid, and moreover, I would note that the BD Agro
09 relationship with Inex and Crveni Signal had been
10 extremely beneficial, not detrimental, to BD Agro. Why?
11 Because before Mr Rand took over BD Agro, Inex had
12 purchased the debt of BD Agro from BD Agro's creditors,
13 remember I told you I would come back to the point about
14 debt at the very beginning of my presentation today, and
15 this is that point.
16 Inex had purchased the debt from the creditors of BD
17 Agro, and after Mr Rand took over BD Agro, he caused
18 Inex to forgive the interest on that debt, worth
19 €1.7 million.
20 In other words, the Inex relationship with BD Agro
21 saved BD Agro €1.7 million. To put it simply, these
22 companies, their relationships between Inex, Crveni
23 Signal and BD Agro, did not hurt the farm; it
24 significantly helped it.
25 What about Crveni Signal? Crveni Signal, although

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01 it has received little attention in this case, under the
02 very same loan, the very same €2.2 million loan, put up
03 its own buildings as partial collateral. You can see
04 that on the next slide. This is a document, on slide
05 92, this is the report of the Privatization Agency
06 itself where it acknowledges that as part of this very
07 same loan, not only did BD Agro put up the pledge on
08 land that they say violated 5.3.4, but Crveni Signal had
09 put up its own collateral.

10 But in any event, these issues should be moot
11 because the loan for which this pledge was made was
12 later paid off in 2012, as Mr Obradovic explains here on
13 slide 93. And therefore, the bank never moved against
14 the pledged land. There never was any harm.

15 And note that a new loan was taken in 2012 to pay
16 off the 2010 loan, it's effectively refinancing. Who
17 was the entity that guaranteed the 2002 loan? Crveni
18 Signal. Showing again this caused no harm to BD Agro.

19 Indeed, the value of BD Agro is the same regardless
20 of whether the loans are secured by a pledge or not. In
21 short, this pledge not only was in compliance with the
22 Privatization Agreement, it was entirely irrelevant to
23 Serbia, and members of the Tribunal, let me emphasise
24 this, that's even before the purchase price was fully
25 paid. But it's to that topic that we now turn.

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01 To put the matter to rest once and for all, on
02 8th April 2011 [slide 95], Mr Rand pays the final
03 instalment of the purchase price, and under the
04 Privatization Agreement, and the Pledge Agreement, that
05 should have ended everything.

06 Before I start this section, members of the
07 Tribunal, I would ask that you flag slide 96. It's
08 incredibly important. On 25th February 2011, the
09 Privatization Agency expressly confirmed that
10 obligations under articles 5.3.3 and 5.3.4 were in
11 effect only until payment of the full purchase price.
12 This is a document where the Privatization Agency is
13 telling BD Agro how it understands these agreements, and
14 that these two provisions they say were violated ceased
15 to exist, ceased to apply upon the payment of the final
16 purchase price. An incredibly important admission.

17 I quote:

18 "The above stated obligations [that is 5.3.3 and
19 5.3.4] are in effect during the term of the agreement
20 (October 04, 2010) ..."

21 Just pause there, that's when the final payment
22 instalment was due originally but it was later extended
23 by a few months, which is why you then see the language
24 "which has been extended". In other words, the effect
25 of 5.3.3 and 5.3.4 are in effect only during the term of

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01 the agreement which is terminated when the final payment
02 is made.

03 So the question then arises: when was the final
04 purchase price made? And the answer, members of the
05 Tribunal, is a month and a half later, a month and
06 a half after the Agency alleged a breach in February
07 2011. In particular, now from Mr Rand's witness
08 statement on slide 97, the full purchase price was paid
09 "on 8th April 2011", and members of the Tribunal, this
10 is undisputed, you can see the Privatization Agency's
11 confirmation of this on slide 98, where it states that
12 the last instalment was made on 8th April 2011.

13 I have already showed you that the Ministry itself
14 has admitted that as of this final payment, 5.3.3 and
15 5.3.4 cease to apply, and therefore there couldn't
16 possibly be a breach of them [slide 99] but there's
17 another important effect of paying this final
18 instalment. It means that upon full payment, the
19 Privatization Agency was under a mandatory obligation to
20 release the pledge that it had on the BD Agro shares.
21 Remember I showed you that article 2 from the Pledge
22 Agreement at the outset.

23 Pause for a minute and consider what that means,
24 because I think this helps explain Serbia's conduct
25 later. If Serbia releases the pledge on these shares,

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01 it would lose the ability to seize the shares and
02 expropriate them later. Let me repeat that. If Serbia
03 complies with its obligation to release the pledge on
04 the BD Agro shares, in accordance with article 2 of the
05 Pledge Agreement, as it is required to do, then it would
06 have impeded its ability to later expropriate the
07 shares, and again, I think that is helpful to bear in
08 mind as we look at Serbia's conduct for the next several
09 years following this date.

10 And Serbia, on this issue, the release of the pledge
11 and their obligation to do so, on the BD Agro shares,
12 effectively admitted that as well in the same February
13 2011 report, and I direct your attention, members of the
14 Tribunal, to slide 99, where the Privatization Agency
15 states:

16 "... the contractual provision and the Share Pledge
17 Agreement stipulate a pledge in favor of the Agency [and
18 here is the key language] until payment of the complete
19 [share] purchase price ..."

20 Again, another terribly important admission. We
21 know why the Ministry took this position, because, as
22 you see on slide 100, and you have already seen this
23 provision, article 2 of the Pledge Agreement states this
24 explicitly, that Serbia's pledge on the shares lasts
25 only until "final payment of sale and purchase price",

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01 and as I have already shown you, article 3.1.2 of the
02 Privatization Agreement says the same thing.
03 Indeed, there are other legal norms that require the
04 release of the pledge on shares. For example, the
05 Privatization Agency had a rulebook on procedure for
06 control, which you see on slide 102. It states, now up
07 on your screen, when:
08 "... the purchase price for the entity being
09 privatised has been paid in full, [the Centre] shall
10 draft a decision removing the pledge from the
11 shares/shareholdings."
12 Couldn't be clearer. In addition, precisely because
13 these conditions no longer applied, 5.3.3 and 5.3.4, the
14 agreement could not be terminated. Our Serbian law
15 expert, Mr Milošević, confirms that, stating that upon
16 the payment of the purchase price, the Privatization
17 Agreement could no longer be terminated for breach of
18 article 5.3.4; and with equal force, the Serbian courts
19 have held that under these circumstances, the
20 Privatization Agreement could no longer be terminated.
21 To read that slide, now on slide 104:
22 "With expiration of control deadline for performance
23 of privatization agreement ... there is no room for
24 termination of performed agreement."
25 In short, upon the full payment, the Privatization

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01 Agreement and the Pledge Agreement were concluded and
02 they could not be terminated again thereafter. Upon
03 full payment, there is absolutely no reason whatsoever
04 for Serbia not to release the pledge of shares. And
05 upon full payment there is absolutely no harm whatsoever
06 to Serbia.
07 Incredibly, however, the Privatization Agency
08 refused to remove the pledge on the shares and blocked
09 any disposition of the shares later enabling it to
10 expropriate them [slide 106]. To understand the
11 mechanics of this, the Central Securities Depository and
12 the Clearing House would deregister the pledge on shares
13 only upon written confirmation issued by the
14 Privatization Agency, and the Claimants repeatedly
15 sought the pledge's release from the Agency, but the
16 Agency simply refused to do so.
17 To make matters even more untenable for Serbia's
18 position, as I already noted in June 2012, BD Agro
19 repaid the 2010 loans so not only had they fully paid
20 the purchase price under the Privatization Agreement,
21 they also fully paid off the loan that was secured by
22 the pledge that allegedly violated article 5.3.4.
23 So it was assured that no one would move against the
24 pledged land that allegedly violated 5.3.4. It was
25 assured that Serbia, BD Agro, none of them would suffer

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01 any harm as a result of this [slide 107].
02 With the Tribunal's indulgence, I also think it's
03 important, even though we're currently talking about the
04 facts, to pause here and note an important legal
05 principle under Serbian law, and that is even without
06 article 7, which as we already saw says that the
07 agreement cannot be terminated for a violation of
08 article 5.3.4, even without article 7, under Serbian law
09 an agreement can be terminated only for a violation of
10 an essential obligation, and only if such violation is
11 not minor. Two different requirements there: it has to
12 be an essential obligation, and non-minor [slide 108]
13 and this rule is laid down in Article 131 of the 1978
14 Serbian Law on Obligations.
15 What does it mean to be a non-essential violation?
16 As this slide shows, now slide 109, it is a violation
17 that:
18 "... does not endanger the achievement of the main
19 goal, the main purpose of the [contract] ..."
20 Members of the Tribunal, that is exactly the
21 situation we have here, even if you assumed a violation,
22 of which there was none.
23 Not even Serbia has ever contended that the secured
24 loan with a pledge on land endangered the achievement of
25 the Privatization Agreement. Indeed, I will repeat, the

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01 purchase price was fully paid, and the loan that the
02 pledge secured paid off.
03 As applied to this case, Claimants' Serbian law
04 expert confirms that article 5.3.4 is not an essential
05 obligation [110], and on the next slide [111] he
06 explains that in any case, even if it was an essential
07 obligation, and it wasn't, the alleged breach was only
08 minor.
09 So as we wrap up this section, you will have noted
10 that there are a number of independent alternative
11 reasons why Serbia's arguments fail under 5.3.4, and
12 I only focus more on 5.3.4 than 5.3.3 because that is
13 the only alleged breach Serbia maintains.
14 So on this slide [112] I enumerate them all, five
15 independent alternative reasons why their arguments
16 fail, and while I rarely read text slides I think it's
17 important to do so here.
18 1: there was no breach of article 5.3.4 at all,
19 because the entirety of the €2.2 million loan was used
20 by BD Agro.
21 2: even if that were wrong, and it's not,
22 article 5.3.4 was only in effect until full payment of
23 the purchase price, and full payment of the purchase
24 price was made four months after this pledge was made.
25 At that point, any alleged breach ceased to exist.

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01 But let's assume both of those arguments are wrong,
02 1 and 2.
03 3: article 7 explicitly enumerates the provisions
04 whose violation can be a basis for termination, and as
05 you have seen, article 5.3.4 is not even mentioned.
06 Let's assume that's wrong too, now we're four levels
07 deep. Even if all three of the first arguments are
08 incorrect, the alleged breach was minor under Serbian
09 law and non-essential, in terms of the obligation, and
10 therefore cannot be a basis for termination of
11 a contract under Serbian law.
12 But let's assume that too is wrong. Now we're five
13 levels deep. And I come back to that undisputed point
14 I made at the very beginning of my presentation today.
15 Even if everything else I told you was wrong, Serbia's
16 conduct violates the proportionality test, and other
17 standards under public international law, because Serbia
18 suffered absolutely no harm from the pledge and yet took
19 the most severe action it possibly could have, it took
20 the company and paid nothing for it.
21 If any one of these arguments are correct, and
22 I would respectfully submit they all are, but if even
23 one is, then Serbia's argument fails.
24 That takes us to the next section. The Ministry of
25 Economy confirms there is no justification for

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01 terminating the Privatization Agreement. We are now on
02 slide 114. This is one of the more important facts of
03 the case, members of the Tribunal. On 10th May 2012,
04 the Privatization Agency requested instructions from the
05 Ministry of Economy on how to resolve the matter.
06 The Claimants, Mr Obradovic, BD Agro, were totally
07 unaware of this at the time. In response, look what the
08 Ministry of Economy, the body that supervises the
09 Privatization Agency, says. It says that there is "no
10 economic justification to terminate the agreement", and
11 you can see the actual words from the actual document on
12 slide 115.
13 In this letter, the Ministry of Economy confirmed
14 that there was no economic justification to terminate
15 the agreement, and if you look to the reasoning for this
16 conclusion, it is exactly our position in this
17 arbitration.
18 Number one, "the buyer paid the entire amount of the
19 sale and purchase price".
20 Number two, the buyer "used the funds received from
21 disposal of the property to comply with the obligations
22 of the subject of privatization".
23 Number three, "the stated disposal of the property
24 did not threaten the continuity of business activities
25 of this company".

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01 We have also underlined a fourth point which I think
02 is important to stress. Look what the Ministry of
03 Economy says:
04 "... the buyer of the capital achieved the highest
05 possible level of organization ..."
06 This is the Ministry of Economy saying this. And
07 yet, in the face of that letter from the Ministry of
08 Economy which it sends to the Privatization Agency, in
09 the face of its superior body concluding otherwise, the
10 Privatization Agency would not give up on termination,
11 and the Agency sends a notice to BD Agro on 31st July
12 2012 saying that evidence is needed to be provided, that
13 there was no violation of the agreement within a certain
14 period of time. We'll start seeing some of these
15 notices coming in now. You will see 60 days is
16 mentioned here [slide 116].
17 On 8th November 2012 -- well, let me back up. You
18 may ask yourself at this stage, even though Mr Rand knew
19 the allegations were baseless, why didn't he simply
20 remedy them, rather than risking losing the full
21 investment? Well, recall that at this time, and indeed
22 until the termination notice in 2005, there were two
23 alleged violations given equal weight by the
24 Privatization Agency, they were pressing both, 5.3.3 and
25 5.3.4. Again it was only years later, the exact moment

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01 of the termination, when they removed the 5.3.3
02 allegation, so put yourself in Mr Rand's position.
03 The 5.3.3 allegation couldn't be cured. The Agency
04 knew all the facts, the slaughter of the herd. There
05 were no new facts to learn. These requests for audits
06 were a ruse. To put it bluntly, one cannot raise cows
07 from the dead. This was not curable.
08 Nor was the 5.3.4 allegation curable by a simple
09 payment. BD Agro paid off the 2010 loan, and the
10 financial institution that held the pledge, remember,
11 Agrobanka, then controlled by Serbia, still wouldn't
12 release the pledge on land, despite the fact that the
13 loan had been paid off in 2012. Even though the loan
14 had been paid off in 2012, Agrobanka, now controlled by
15 Serbia, would not release the pledge on the land.
16 So one hand from the Government wouldn't release the
17 pledge, even though required to do so; while the other
18 hand from the Government is demanding that BD Agro get
19 it released. In short, Government of Serbia had put
20 Mr Rand in an impossible position.
21 On 8th November 2012, the Privatization Agency sent
22 another notice to Mr Obradovic, this time giving him
23 another 30 days [slide 117] but again the Agency knew
24 the Claimants couldn't provide the requested
25 information. All the facts were known. Again, one

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01 can't raise cows from the dead.
02 Again, it was a ruse, but if that were not enough,
03 what happened next was truly extraordinary. Unbeknownst
04 to the Claimants, the Privatization Agency approached
05 its legal adviser, its outside law firm, Radovic &
06 Ratkovic, an external law firm that the Privatization
07 Agency had used regularly in the past. And they asked
08 for their independent external lawyer's opinion about
09 their positions on article 5.3.3 and 5.3.4. And that
10 law firm issued an opinion and its conclusions were
11 striking, and we are going to go through those findings
12 in detail in the next section.
13 On 11th June 2013 the Privatization Agency's law
14 firm issued its legal opinion and it confirmed there was
15 no legal justification for terminating.
16 You will recall, members of the Tribunal, the
17 Ministry of Economy had already concluded there was no
18 economic justification for terminating; now you have
19 a law firm saying there is no legal justification for
20 terminating.
21 In the legal opinion, the Privatization Agency
22 reached the following conclusions, and I would ask the
23 Tribunal to contrast these findings with Serbia's
24 position that you're going to hear later today
25 [slide 119]. First, the Privatization Agreement was

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01 "performed and fulfilled on April 8, 2011" and that "all
02 contractual and legal control authorities of the
03 Privatization Agency ended".
04 Second [slide 120]:
05 "... there is no legal possibility for extensive
06 interpretation of the reasons for termination of the
07 agreement."
08 You can also see at the end, in the law firm's own
09 emphasis, that's their underlining, the following
10 statement:
11 "According to the agreement itself, the Agency does
12 not have the right to terminate the agreement due to
13 violation of obligation referred to in Article 5.3.4,
14 because this is not stipulated as a reason for
15 termination."
16 Third, the Privatization Agency's legal adviser also
17 confirmed that any actions taken after 8th April 2011
18 [slide 121], ie the final payment, were irrelevant.
19 And fourth, the Agency could not "keep in force" the
20 agreement after all obligations had been fulfilled
21 [slide 122].
22 Members of the Tribunal, this evidence is damning.
23 It matches precisely the reasoning of the Ministry of
24 Economy, and it matches precisely our position in this
25 arbitration.

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01 But it runs squarely counter to and directly
02 undermines the position taken by Serbia in this
03 arbitration. You may ask, what did the Agency do with
04 this opinion when it received it? Well, we know the
05 answer to that question. As you can see from the next
06 slide [123] they were told to put it in a drawer and
07 forget the opinion ever existed, that is the testimony
08 of Mr Markicevic which you see on this slide and he
09 identifies the particular individual who told him that.
10 I want to be clear, he had not seen the opinion,
11 Mr Markicevic, at the time; he had been told that such
12 an opinion had been produced, but did not know the
13 contents of it. It was only much, much later that the
14 Claimants actually saw the contents of this legal
15 opinion.
16 In sum [slide 124] we have the Ministry of Economy
17 which supervises the Privatization Agency concluding
18 that there was "no economic justification to terminate
19 the agreement". We have the Privatization Agency's own
20 law firm issuing a legal opinion stating that there was
21 no legal justification for termination. But the
22 Privatization Agency decided to hide these conclusions
23 before the Claimants and proceeded to terminate anyway.
24 Matters were becoming dire, and it was now clear
25 that the Privatization Agency, having been told both by

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01 the Ministry of Economy and its own independent law firm
02 that its actions were illegal, had its own agenda. BD
03 Agro couldn't know what was incentivising them to act
04 this way.
05 Around this time, Mr Rand sought to have
06 Mr Obradovic concentrate more on Mr Rand's other Serbian
07 businesses, and sought to bring in a new nominal owner.
08 Although we don't have a slide on this point to save
09 time [slide 125] the result was that the Agency said
10 such an assignment was possible, but then refused to
11 ever grant it, and there is evidence in the record to
12 that effect.
13 I told you earlier that I would show you a document
14 sent to the Minister of Economy himself, where Mr Rand
15 was described as the majority owner, and I am going to
16 do that now. In December 2013, Mr Rand, given the dire
17 situation, sought help from the Ministry of Economy
18 through Milan Kostic, a member of the Serbian
19 Progressive Party. You see the letter on your screen,
20 and you see there that it's disclosed openly, he is the
21 majority owner of BD Agro.
22 On the next slide [126] I am going to show you the
23 email chain that sent that letter. So you see Mr Kostic
24 sends the email to the Minister's office, which you can
25 see on the far right side of the screen, and you can see

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01 the email address it is sent to uses the word "Kabinet"
02 in the address. That email address is for the office of
03 the Minister of Economy.
04 Then you can see, if you go to the bottom middle
05 part of the screen, the office of the Minister sends it
06 to the Minister's personal email address, that's the
07 middle excerpt on the screen. The Minister then sends
08 it to Vladimir Milenkovic, who was director at the
09 Serbian Investment and Export Promotion Agency, and
10 Mr Milenkovic then sends it to Goran Džafic, who was his
11 deputy, and requests in all caps "URGENT MEETING"
12 needed. Urgent meeting. And that urgent meeting took
13 place the next day. But before we talk about that
14 meeting, let me just remind you again, then, this is
15 a letter that openly was discussing Mr Rand being the
16 majority owner of BD Agro that was sent to the Minister
17 himself.
18 At this urgent meeting the next day, on
19 19th December 2013 [slide 127], BD Agro's
20 representatives Erinn Broshko, managing director of Rand
21 Investments, and Igor Markicevic, general manager of BD
22 Agro, director of BD Agro, director of Sembi, meet with
23 SIEPA, and Mr Broshko and Mr Markicevic explained BD
24 Agro's story, again that Mr Rand was the beneficial
25 owner, expressed concerns about these baseless

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01 allegations of violations that had been going on now for
02 years, and noted the request for the assignment from
03 Mr Obradovic, which had not been approved. And they
04 were told that SIEPA would get back to them to address
05 their concerns.
06 Unfortunately, however, no one from the Serbian
07 Government ever followed up with Mr Broshko or
08 Mr Markicevic.
09 On 23rd December 2013 [slide 130] the Minister of
10 Economy initiated a "procedure [for] supervision of the
11 work of the Privatization Agency", and I'll come back to
12 the significance of that in a moment.
13 Members of the Tribunal, I have one further section
14 to address before I'll ask your leave, Mme President, to
15 turn the floor over to Mr Misetic.
16 THE PRESIDENT: This may then also be a good time for
17 a break, because I see you are close to half of your
18 presentation.
19 MR ANWAY: Absolutely. So we will take the break then when
20 I conclude and hand it over to Mr Misetic?
21 THE PRESIDENT: That is what I meant, yes.
22 MR ANWAY: Thank you. My final topic is that on 7th April
23 2015, the Ministry of Economy reverses course. You will
24 recall that on 30th May 2012, so now almost three years
25 ago, the Ministry of Economy confirmed that there was no

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01 economic justification for terminating the Privatization
02 Agreement.
03 Here we are, three years later, and all of a sudden,
04 out of the blue, the Ministry changes its position
05 [slide 132]. We can only speculate why, but one thing
06 is for sure, there is a new Minister of Economy in
07 office. Indeed, during the ten years that Mr Rand held
08 this investment, before it was taken from him, the
09 Ministry of Economy's office was a revolving door, with
10 the Minister himself changing six times in ten years.
11 So what happens with this newest Minister? Well,
12 I had just showed you that the Ministry of Economy had
13 opened a supervision procedure to monitor what the
14 Agency was doing vis-à-vis BD Agro, and the new Minister
15 publishes its report on that procedure on 7th April
16 2015.
17 In that report, the Ministry of Economy states that
18 it completed its supervision procedure, and reverses
19 course, suddenly instructing the Privatization Agency to
20 require compliance, even though it had previously
21 concluded that BD Agro was already in full compliance,
22 and you see that on slide 132.
23 Members of the Tribunal, those conclude my remarks
24 for today, before I hand it over to Mr Misetic to
25 complete our section on the factual background, but

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01 I would leave you with the following: given the facts
02 that I have just described to you, what is Serbia's
03 case? It is the following: we are stripping you of your
04 investment in its entirety, which we ourselves valued
05 after we took it from you at €56 million, based on
06 a legal technicality, even though the Ministry of
07 Economy, the body that supervises us, said there's no
08 economic justification for it; and even though your own
09 external law firm told you there's no legal
10 justification for it. If there were clearer facts of
11 a breach of the proportionality principle under public
12 international law, it is difficult to imagine what they
13 could be.
14 Thank you, Mme President.
15 THE PRESIDENT: Should we take a 15-minute break now, and
16 then resume for the second part of the presentation.
17 Good. And remember the mask.
18 MR ANWAY: Thank you.
19 (10.33 am)
20 (A short break)
21 (10.50 am)
22 THE PRESIDENT: Are we ready to resume? Mr Misetic, you
23 have the floor.
24 MR MISETIC: Thank you, Mme President, members of the
25 Tribunal. It is an honour and pleasure to appear before

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01 you today on behalf of the Claimants in this case.
02 The first topic I will address in my presentation
03 concerns two meetings of the Commission for Control
04 which is the body that eventually rendered the decision
05 to terminate the Privatization Agreement.
06 The Commission for Control was comprised of five
07 members, three of whom were appointed by the Ministry of
08 Economy, and two by the Privatization Agency.
09 The meetings of the Commission for Control that I am
10 now going to discuss took place on 23rd April 2015, and
11 19th June 2015. The discussions that took place during
12 these two meetings were recorded in audio files produced
13 by Serbia during the document production phase in this
14 arbitration. As you will see and hear in a moment,
15 these recordings prove beyond any doubt that the
16 Privatization Agency was intentionally violating the law
17 and treating the Claimants in bad faith.
18 On slide 134, you will see the audio recordings
19 confirm that the Privatization Agency was fully aware
20 that the pledge on the Beneficially Owned Shares should
21 have been released by the Privatization Agency upon the
22 payment of the purchase price by the Claimants.
23 The Pledge Agreement was crystal clear. The
24 Privatization Agency was required to lift the pledge on
25 shares when Mr Obradovic paid the purchase price in

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01 full, which occurred on 8th April 2011.
02 This is a crucial point because, as the
03 Privatization Agency itself recognised on these audio
04 tapes, had the pledge been released, the buyer would
05 have been able to transfer the Beneficially Owned Shares
06 after which the Privatization Agency would no longer
07 have been able to expropriate the shares.
08 We will now play for you some relevant sections of
09 the recordings that address this point. The recordings
10 are in Serbian, but we have added English subtitles to
11 them, so that you are able to follow the discussion.
12 As you will now hear, the members of the
13 Privatization Agency were aware that the buyer had
14 a right to transfer his nominally owned shares in BD
15 Agro, as of 8th April 2011, but the Privatization Agency
16 nevertheless preferred to breach its obligations, to
17 breach the Pledge Agreement so that they could
18 expropriate his shares.
19 The first voice you will hear on the audio is that
20 of Julijana Vuckovic, a witness in this arbitration,
21 from whom you will hear later this week.
22 "The second issue is the buyer's request for
23 assignment of the agreement. On April 17th 2015 it
24 submitted to the Agency a request for issuance of the
25 decision on deletion of the pledge against shares

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01 established to the benefit of the Agency. It submitted
02 this request during the term of the agreement, and after
03 payment of the purchase price, with reference to the
04 provision of the agreement which prescribes that the
05 buyer and the Agency shall conclude a Share Pledge
06 Agreement, on grounds of which the buyer provides the
07 Agency with a confirmation of the shares which the
08 Agency retains until payment of the purchase price.
09 This request was also submitted in 2012. We did not act
10 upon this request. We did not reply to this request
11 because of the same reasons we are giving now in our, so
12 to say, letter to the Commission. Therein we say that
13 if the Commission was to render a decision on deletion
14 of the pledge against shares, excuse me, if the Agency
15 was to render a decision on deletion of pledge against
16 shares to the buyer registered to his benefit, it would
17 be free to dispose of them, which would be certain
18 bearing in mind the buyer's request for assignment of
19 the agreement. If this disposal of shares is permitted,
20 and the buyer is, I repeat, entitled to this in
21 accordance with the agreement, generally the Agency
22 would no longer be in a contractual relation with
23 someone and you would no longer be able to take measures
24 against the contracting party, when the legal ground had
25 generally ceased with it, and the buyer would be free to

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01 dispose of its shares.
02 "So, currently, we have an order from the ministry
03 to provide an additionally granted term and we have
04 made, in accordance with this, a proposal for that term,
05 actually we copied what was written in the report and we
06 asked ourselves what to do with the request for deletion
07 of the pledge. Simply, we brought this question in
08 front of you since the buyer submitted the request back
09 in 2012 and we had not issued this certificate, I mean
10 we are aware that it has this right in accordance with
11 the agreement, and we are aware that if this is
12 permitted the buyer can further alienate these shares.
13 "Female voice 2: In this context, will it have
14 problems, objective problems, with acting in accordance
15 with our orders? This is the first and the second is
16 now the relation between the agreement and the proposal
17 of a decision regarding these ... pledge against shares,
18 because, in accordance with the agreement, the pledge
19 should be deleted, practically, when it pays the
20 purchase price which it did pay. On the other hand we
21 have an uncertainty -- what will it do with the entire
22 property since it would then be free to dispose of its
23 shares. In that case there is no necessity in providing
24 this term or anything, because it will do as it wants.
25 So now only this ... can it fulfil these agreements if

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01 it has the possibility (inaudible), I mean these
02 obligations, in conjunction with this prohibition ...
03 this is just what ...
04 "Julijana Vuckovic: That is right, it violated one
05 of the provisions of the agreement, and the release of
06 the pledge is not tied to the fulfilment of contractual
07 obligations, rather it is tied only to the payment of
08 the purchase price, which was clearly done carelessly in
09 the agreement. Now, the new law rectifies this somewhat
10 and it prescribes that the certificate on deletion of
11 the pledge and fulfilment of contractual obligations is
12 issued once all obligations are fulfilled and not only
13 payment of the price. And that is it, and we are now
14 between a rock and a hard place because on the one hand
15 we have an obligation in accordance with the agreement,
16 and on the other hand the consequences of this is clear
17 to you.
18 "Female voice 4: And when did it pay the purchase
19 price, in 2013 ...?
20 "Julijana Vuckovic: No, the sixth instalment was
21 paid in April of 2012 ... 2011.
22 "Female voice 2: I don't know how we could, we could
23 not regulate this to cover both things.
24 "Female voice 3: If we consciously give it to him
25 now not even God could cleanse us.

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01 "Saša Novakovic: all right then, we can decide to
02 not give it to the buyer and then we are forcing him
03 into suing us. This is ... may the court rule."
04 Members of the Tribunal, what you just heard and
05 read proves that the Privatization Agency knew it was
06 contractually obligated to release the pledge but
07 decided not to do so, just so that the buyer would not
08 be able to transfer the Beneficially Owned Shares which
09 he was fully entitled to do.
10 The Privatization Agency also recognised that the
11 Claimants submitted an auditor report which proved that
12 there was no breach of Article 5.3.3, and you see that
13 quote on your screen [slide 135]:
14 "The buyer then submitted certain proofs, wherein
15 the auditor confirmed that it fulfilled, that is, acted
16 in accordance with item 5.3.3."
17 You have already heard about article 5.3.3 from
18 Mr Anway but I mention it again because, as I will show
19 you in a moment, even though the Privatization Agency
20 expressly recognised that it was in possession of proof
21 that this provision had not been breached, and you have
22 that excerpt on your screen, where this admission is
23 made, the Privatization Agency nevertheless continued to
24 request from the Claimants additional evidence of
25 compliance with article 5.3.3.

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01 We turn to slide 136. The participants at this
02 April 23rd 2015 meeting also acknowledged their
03 awareness that they were placing burdens on the buyer
04 which they knew the buyer could not meet. Yet they
05 decided to participate in the charade of giving him an
06 extension of time to comply with their requirements,
07 while simultaneously acknowledging privately that he
08 could not meet them, and while violating his rights to
09 transfer the shares before the Agency could expropriate
10 them. You see that quote on your screen:
11 "... since Julijana already said that there is no
12 chance they will fulfil all of these contractual
13 obligations."
14 Slide 137; the Privatization Agency also admitted
15 that it intentionally violated the law by not releasing
16 the pledge. It admitted that it committed this wilful
17 violation of law in order to be able to seize BD Agro
18 shares from the buyer before the buyer could obtain
19 legal protection from courts. Again, we will now play
20 a recording reflecting the Privatization Agency's
21 discussion on this point:
22 "Saša Novakovic: And the agreement on purchase of
23 capital, it stated that the buyer can dispose of the
24 shares, right? Freely?
25 "Female voice 2: That it can once it had paid the

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01 purchase price. Which it did. But if we were to decide
02 like this, at least in my opinion, I would not be
03 inclined to, although I have a problem with the
04 provision of the agreement such as it is, if we were now
05 to release this pledge he would be free to dispose of
06 the shares freely, but then it is a problem, so I would
07 rather advocate that we postpone deletion of pledge
08 until execution, that is until expiry of this deadline
09 until which it had not fulfilled its contractual
10 obligations we have ordered it to fulfil, that is, that
11 is not us, but the minister ordered it. And we will
12 confirm such decision (laugh). Now, I just don't know,
13 they can enter into certain dispute and we are in
14 violation of contractual ...
15 "Saša Novakovic: True.
16 "Julijana Vuckovic: Well, certainly.
17 "Female voice 4: Ninety days will pass in a bit and
18 the dispute will not even get scheduled in 90 days. So
19 we will resolve this before, I mean ... dear God knows.
20 "Female voice 2: Okay, we have 90 days, afterwards
21 we will see what we will do (laugh) ... Within 90 days
22 and proposal of these measures there is nothing new to
23 ... that's ordered to us in supervision ... and we can
24 never ..."
25 The audio recordings literally speak for themselves.

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01 They reflect an utter disregard for the Claimants'
02 rights. The participants in this meeting are recorded
03 acknowledging their decision to breach their obligations
04 to lift the pledge on shares, acknowledging their plan
05 to delay their final decision on the lifting of the
06 pledge on shares until after they can terminate the
07 agreement, and acknowledging that their actions will
08 likely lead to a cause of action filed by the buyer
09 against the Agency.

10 But the members of the Agency simply do not care,
11 because, they say, they will be able to terminate the
12 Privatization Agreement and expropriate the Claimants'
13 shares before the Claimants would have enough time to
14 get any court or tribunal to act.

15 Slide 138; the Privatization Agency also expressly
16 admitted at this same meeting that took place on
17 23rd April 2015 that the Privatization Agency was
18 subject to outside pressure, including pressure from
19 employees and trade unions. You see the quote on your
20 screen:

21 "We have mentioned daily communications we are
22 receiving from the employees and trade unions ..."

23 Slide 139; and from this slide you can see how the
24 outside pressure affected the decision-making of the
25 Agency. The discussion on the screen occurred after the

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01 participants acknowledged the buyer's right to have the
02 share pledge lifted and right to transfer the shares to
03 one of Mr Rand's other companies. It is because of that
04 outside pressure from the unions and employees that one
05 of the participants says:

06 "If we consciously give it to him now [meaning if we
07 allow him his right to transfer the shares] not even God
08 could cleanse us."

09 So Saša Novakovic of the Privatization Agency says:

10 "All right then, we can decide not to give it to the
11 buyer and then we are forcing him into suing us. This
12 is ... may the court rule."

13 In other words, we know we are breaching his rights,
14 and we know he will sue us, but let a court or tribunal
15 give it to him, and if the court or tribunal rules
16 against the Agency, that would be preferable to the
17 Agency itself complying with its obligations because
18 "not even God could cleanse us" if we comply with our
19 contractual relations and other obligations to release
20 the pledge, and are exposed to the wrath of outside
21 pressure groups.

22 On slide 140, as you can see on this slide, in the
23 middle of the discussion of how much time they would
24 give to the buyer to comply with the Agency's
25 requirements, the participants turned off the audio, in

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01 violation of Serbian law. Given all of the admissions
02 made on the audio, the Claimants are only left to wonder
03 what was discussed after the Privatization Agency turned
04 off the recording device in violation of applicable law.

05 Slide 141: one final point with respect to the April
06 23rd 2015 meeting. As you can see on this slide, the
07 Privatization Agency confirmed that it considered
08 instructions from the Ministry of Economy received in
09 April 2015 to be "orders", so you see on your screen
10 underlined in red, "We have an order from the ministry",
11 "as we were ordered to do in the supervision", "that's
12 ordered to us", "the order of the ministry should be
13 implemented as given", "the minister ordered it".

14 This is yet more evidence of the fact that the
15 Privatization Agency was clearly exercising public
16 authority when dealing with the Privatization Agreement,
17 but you will hear more on this point from Mr Pekar later
18 today.

19 Slide 142, I am now moving to the second audio
20 recorded meeting of the Commission which took place on
21 19th June 2015. As you can see on the screen, the
22 Privatization Agency again expressly recognised during
23 this meeting that there was no breach of article 5.3.3,
24 because the culling of cows which was the main reason of
25 the alleged breach represented force majeure. So you

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01 see a quote underlined on your screen:

02 "... it really is not logical to me for us to impose
03 obligations on anyone or terminate the agreement for
04 disposing of assets in excess, and in reality it was
05 force majeure."

06 Slide 143; despite the fact that the Privatization
07 Agency recognised that there was no breach of
08 article 5.3.3 and that the Claimants had already
09 submitted an auditor report proving force majeure, just
10 four days after this audio recorded meeting, the
11 Privatization Agency on 23rd June 2015 requested from
12 the buyer a new auditor report proving the buyer's
13 compliance with article 5.3.3. This request was
14 completely unnecessary, and indeed amounted to
15 harassment, because the Privatization Agency itself was
16 already in possession of all the evidence it needed to
17 conclude that there was no breach of article 5.3.3, as
18 is evident from the two audiotaped meetings of the
19 Agency. This is therefore yet more evidence of Serbia's
20 bad faith.

21 Where is Saša Novakovic? Saša Novakovic is the
22 Ombudsman you have read about in our pleadings. If we
23 can turn to slide 145, Saša Novakovic, the Ombudsman,
24 illegally intervened in the privatization process.

25 Slide 146; on 23rd June 2015, the same day on which

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01 the Privatization Agency requested that the buyer submit
02 a new auditor report, Mr Jankovic published
03 a recommendation that the Privatization Agreement should
04 be terminated.

05 Slide 147. The online statement published by the
06 Ombudsman expressly confirmed that in his investigation,
07 Mr Jankovic was not focused on the rights of employees
08 that he purported to protect, but rather was focused on
09 whether the buyer had fulfilled the terms of the
10 Privatization Agreement.

11 Slide 148. To be clear, the Ombudsman had no
12 jurisdiction whatsoever to investigate fulfilment of the
13 Privatization Agreement, as the Ombudsman is only
14 entitled to investigate potential breaches of human
15 rights. But Mr Jankovic was not deterred by the legal
16 limits to his jurisdiction. Instead he commenced an
17 investigation into the Privatization Agreement itself,
18 based on a complaint by a small number of BD Agro's
19 employees who were calling for the termination of the
20 Privatization Agreement.

21 I would like to pause here because it is important
22 to put this complaint into a proper context. Complaints
23 like this were very common in all post-Communist
24 countries. The reason for this fact is very simple: in
25 the vast majority of cases, the management of companies

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01 before and after privatization was very different.
02 State and socially owned companies were often managed in
03 a very inefficient manner, with very low labour
04 productivity and overemployment. After privatization,
05 new owners often implemented measures aimed at
06 increasing the efficiency of companies and their
07 employees. Even more importantly, and this was also the
08 case with BD Agro, new owners often put a stop to
09 various types of inappropriate behaviour that was
10 typical in state and socially owned companies, such as
11 misappropriation of assets.

12 Moreover, new owners promoted employees based on
13 merit rather than on seniority, as was the practice in
14 state and socially-owned enterprises.

15 Obviously not all employees liked these types of
16 changes and they took steps to achieve reversal of the
17 privatization process.

18 To sum up, the Ombudsman's intervention was
19 unlawful, the Ombudsman clearly expresses public
20 authority but did not have jurisdiction to investigate
21 the Privatization Agreement itself. He clearly did not
22 have authority to opine on interpretation of the
23 agreement, to determine whether any breaches had
24 occurred, let alone whether such breaches justified
25 termination of the Privatization Agreement; and the

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01 Ombudsman made his recommendations without hearing the
02 affected parties. Indeed, the Ombudsman recommended
03 termination without having even contacted the owners of
04 BD Agro to hear their views.

05 The Ombudsman, Mr Jankovic, had political ambitions,
06 which is in the record, and two years later finished
07 second in the race for President of Serbia, which may
08 explain some of his unusual actions in the present case.
09 But Mr Jankovic is not a witness in this arbitration.
10 We would have liked to have asked him some questions on
11 these topics but are unable to do so.

12 Slide 151. And what was the outcome of the
13 Ombudsman's unlawful intervention? As I will show you
14 in the next section, it resulted in the termination of
15 the Privatization Agreement and expropriation of the
16 Claimants' investment.

17 Slide 152. Before the termination, Mr Rand had one
18 more meeting with Serbian officials. Specifically,
19 Mr Rand met with Mr Ivica Kojic, the then Chief of Staff
20 to the Prime Minister of Serbia. As you can see on this
21 slide, Mr Rand testifies that Mr Kojic apologised for
22 the conduct of the Privatization Agency and the Ministry
23 of Economy, and promised that the Claimants' problems
24 would be resolved shortly. But Mr Kojic is also not
25 here to answer questions because Serbia has not offered

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01 him as a witness.

02 Slide 154. The situation, however, was indeed
03 resolved but not in a way that the Claimants expected or
04 were entitled.

05 On 18th September 2015, the Ombudsman wrote again to
06 the Privatization Agency and the Ministry of Economy to
07 stress that the Privatization Agreement should be
08 terminated. Just ten days later, the Privatization
09 Agency followed the Ombudsman's recommendation and
10 terminated the Privatization Agreement based on an
11 alleged violation of article 5.3.4 alone.

12 Members of the Tribunal, as you have seen on some of
13 our previous slides, up to this moment the Privatization
14 Agency repeatedly requested evidence of compliance with
15 a number of other provisions of the Privatization
16 Agreement, most importantly article 5.3.3.

17 As I have already explained, the Privatization
18 Agency did so even though it was well aware that these
19 provisions were fulfilled, but when it decided to
20 terminate the Privatization Agreement, the Privatization
21 Agency dropped all references to alleged violations of
22 article 5.3.3 and other provisions, and instead focused
23 only on an alleged breach of article 5.3.4.

24 As I will explain in a moment, this is a crucial
25 point because even if there were a breach of

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01 article 5.3.4, and there was none, a breach of
02 article 5.3.4 in 2010 did not and could not, under
03 article 7 of the Purchase Agreement, represent
04 a legitimate ground for termination of the Privatization
05 Agreement in 2015.
06 Slide 156. As you can see on this next slide, after
07 the Privatization Agency rendered the decision to
08 terminate the Privatization Agreement, it sent a notice
09 of termination to BD Agro. The Agency waited until this
10 notice of termination of the agreement to advise the
11 buyer that it no longer alleged a violation of
12 article 5.3.3 or any other provisions of the agreement
13 except article 5.3.4.
14 Importantly, the notice of termination expressly
15 stated that the Privatization Agency terminated the
16 Privatization Agreement in line with the report of the
17 Ministry of Economy.
18 This is yet more confirmation of the fact that the
19 Privatization Agency was clearly acting based on
20 instructions of the Ministry.
21 Slide 157; as I noted a moment ago, the
22 Privatization Agency terminated the Privatization
23 Agreement based solely on an alleged violation of
24 article 5.3.4 which did not represent a ground for
25 termination under the Privatization Agreement.

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01 Slide 158; what is Serbia's answer to the fact that
02 the Privatization Agreement did not allow for
03 termination based on a breach of article 5.3.4? It
04 argues that you should simply disregard the agreement
05 and instead look to the general provision on the Law on
06 Privatization regulating termination of the
07 Privatization Agreement. This approach, however, fails
08 for three different independent reasons.
09 Slide 159; first, the Privatization Agency could not
10 rely on Article 41a(1)(3) of the Privatization Law
11 because this provision only refers back to the
12 Privatization Agreement which does not state that
13 a violation of article 5.3.4 is a basis for termination.
14 Slide 160; in other words, Article 41a of the Law on
15 Privatization is only a general provision that must be
16 read in conjunction with the Privatization Agreement.
17 Not only did the Privatization Agreement not provide for
18 termination based on a breach of article 5.3.4 but
19 article 5.3.4 on its own terms applied only until
20 payment of the purchase price which took place in April
21 2011, four years before the termination of the
22 Privatization Agreement.
23 Slide 161. Second, even if you were to look at
24 Article 41a in isolation, there was no violation of this
25 provision. This is because even if there were

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01 a technical violation of article 5.3.4, it was
02 a violation for only four months, and was cured when the
03 buyer made the final payment in April 2011.
04 As you can see on this slide, Article 41a states
05 that a privatisation agreement can only be terminated if
06 a breach identified by the Privatization Agency is not
07 remedied within the additional period given to the buyer
08 by the Privatization Agency.
09 In other words, if the Privatization Agency
10 identified a breach of the Privatization Agreement, it
11 was first supposed to give the buyer an additional time
12 period to remedy the breach. Once that period expired,
13 the Privatization Agency was supposed to check whether
14 the breach still existed as of the end of the additional
15 period. In case the alleged breach was remedied or the
16 obligation under a privatization agreement ceased to
17 exist before the end of the additional period,
18 a privatization agreement could no longer be terminated.
19 Members of the Tribunal, this is exactly what
20 happened in the present case. All obligations under
21 article 5.3.4 ceased to exist in April 2011, when the
22 purchase price was paid in full. Thus, when the last
23 additional period given to Mr Obradovic expired in 2015,
24 article 5.3.4 no longer applied. This in turn means
25 that there could not have been any breach of this

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01 provision and there was no basis for termination of the
02 Privatization Agreement.
03 Slide 162; finally, even if Article 41a could be
04 applied in isolation, and even if there could have been
05 a breach of article 5.3.4 in 2015, and as I just
06 explained, this is not the case, a potential breach of
07 article 5.3.4 still would not represent a valid reason
08 for termination of the Privatization Agreement.
09 This is because article 5.3.4 did not represent an
10 essential term of the Privatization Agreement; on the
11 contrary, because article 5.3.4 would only have been
12 a minor breach of the Privatization Agreement.
13 As Mr Anway explained earlier today, under Serbian
14 law, article 5.3.4 is not an essential term of the
15 Privatization Agreement, and in any event, the alleged
16 breach was minor. An agreement can be terminated under
17 Serbian law only for a violation of an essential
18 obligation, and you can see confirmation of this from
19 the Claimants' Serbian law expert, Mr Milošević, in
20 front of you on the screen. He says:
21 "In my opinion, the obligation under Article 5.3.4
22 is not an essential obligation under the Privatization
23 Agreement."
24 Slide 163; to conclude, the Privatization Agency
25 could not rely on Article 41a(1)(3) of the Privatization

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01 Law because this Law only refers back to the
02 Privatization Agreement, which does not state that a
03 violation of article 5.3.4 is a basis for termination.
04 Second, even if Article 41a was to be applied in
05 isolation, there was no violation of this provision
06 because there could not have been a breach of
07 article 5.3.4 in 2015 when the last additional period
08 granted by the Privatization Agency had already expired.
09 Finally, even if Article 41a(1)(3) could have been
10 applied in isolation and even if there could have been a
11 breach of article 5.3.4 in 2015, a potential breach of
12 article 5.3.4 would still not represent a valid reason
13 for termination of the Privatization Agreement because
14 it was only a minor breach.
15 Slide 164; given all of the above, it is absolutely
16 clear that the Privatization Agency's requests for
17 remedies were unjustified, arbitrary and nonsensical,
18 and the termination of the Privatization Agreement was
19 completely disproportionate and done in bad faith.
20 Slide 166, please. On 21st October 2015, the
21 Privatization Agency rendered a decision on the transfer
22 of Beneficially Owned Shares to the Privatization
23 Agency, thus expropriating the Beneficially Owned
24 Shares. Needless to say, this conduct would not have
25 been possible in any commercial relationship. It was

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01 only possible because the Privatization Agency exercised
02 public authority.
03 Slide 167; this conclusion is further confirmed by
04 the fact that, as explained by expert witness Milošević,
05 the Central Securities Depository was obliged to
06 transfer the Beneficially Owned Shares to the
07 Privatization Agency upon its receipt of the decision on
08 transfer. Once again, this power does not arise merely
09 from a commercial relationship.
10 Slide 169. What was the outcome of all of this for
11 Serbia? It acquired a company which, based on the
12 valuation commissioned after Serbia took control of BD
13 Agro, had an equity value of €56.3 million and Serbia
14 acquired it without paying any compensation to the
15 Claimants whatsoever. BD Agro's employees all lost
16 their jobs, and the assets of the company were sold
17 under suspicious circumstances which we have outlined in
18 our correspondence to the Tribunal.
19 Slide 170; we would very much like to discuss these
20 facts with the Serbian officials responsible for this
21 outcome. However, as you can see on this slide, while
22 there are several names that you have heard repeatedly
23 today, you will not have an opportunity to speak to any
24 of these people.
25 For example, you cannot ask Mr Jankovic, the

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01 Ombudsman, why he felt authorised to recommend
02 termination of the Privatization Agreement;
03 You also cannot question Mr Kojic, the former Chief
04 of Staff of the Prime Minister and the current Chief of
05 Staff of the President of Serbia, who promised Mr Rand
06 that all problems would be resolved to his satisfaction;
07 you will not be able to ask Mr Kojic what changed
08 between his promise and the termination of the
09 Privatization Agreement that occurred only two weeks
10 later.
11 You also cannot speak to Mr Novakovic, a member of
12 the Commission that decided on the termination of the
13 Privatization Agreement, and who you could hear on the
14 audio recording we played earlier today saying it was
15 better for the Agency to breach its obligations and lose
16 in court or in arbitration than to comply with the
17 Agency's obligations under the Pledge Agreement.
18 And finally, we do not have Mr Bubalo, the Minister
19 of Economy at the time of the privatization, who could
20 testify about his knowledge of Mr Rand's beneficial
21 ownership.
22 We will leave it to the Tribunal to make its own
23 conclusions about why these people are not participating
24 in this arbitration.
25 Mme President, members of the Tribunal, that

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01 concludes our presentation of the facts of the dispute.
02 With your leave, Mme President, I would invite Mr Pekar
03 to address the Tribunal on jurisdiction, merits and
04 quantum.
05 MR PEKAR: Mme President, it is my honour to address you
06 today and all members of the Tribunal on behalf of the
07 Claimants.
08 My presentation, as foreshadowed by Mr Misetic, will
09 focus on the remaining four areas of our claim
10 [slide 171]. First I will discuss jurisdiction; then
11 attribution to Serbia; then violation of Serbia's
12 obligations under the Treaties; and finally quantum.
13 Tellingly, Serbia raised a number of objections to
14 jurisdiction over the present dispute [slide 172]. In
15 total we counted seven of them, some of them actually
16 include several grounds. I will not be addressing all
17 of them today, they were extensively addressed in our
18 Rejoinder on Jurisdiction, which is the latest party
19 submission on that issue, and I would kindly refer the
20 Tribunal to the details of our arguments which are laid
21 out in that submission.
22 The one objection I do wish to address in greater
23 detail at this hearing is the objection jurisdiction
24 *ratione materiae* under the two BITs, because that
25 objection relates to the question whether the two BITs

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01 protect Claimants' beneficial ownership over what we
02 call the Beneficially Owned Shares, this is a 75 and
03 something per cent shareholding in BD Agro which was
04 nominally owned by Mr Djura Obradovic.
05 The beginning of our analysis [slide 174] is
06 19th September 2005 when Mr Obradovic and MDH, a BVI
07 company owned by Mr Rand, entered into an agreement,
08 which we call the MDH Agreement, and under that
09 agreement, MDH and therefore its owner, Mr Rand,
10 acquired beneficial ownership over the Beneficially
11 Owned Shares, pro futuro, in the event that Mr Obradovic
12 is successful in the auction for privatization of BD
13 Agro, in which he was to participate as a nominal bidder
14 for the benefit of MDH and Mr Rand.
15 Mr Anway explained already to you that there is
16 ample evidence on the record that this structure was
17 known to the Serbian Ministry of Economy and the Serbian
18 Ministry of Economy, which supervises the privatization
19 process, expressed strictly no reservations with respect
20 to this structure.
21 The MDH Agreement does several things. It grants
22 a call option on the shares for the benefit of MDH, the
23 call option can be exercised for a nominal amount of
24 €1,000.
25 It obligates MDH to secure financing for the

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01 investment in BD Agro shares, and the subsequent
02 investment in the operations of BD Agro, if the shares
03 are acquired.
04 And then, very importantly, articles 4 and 5,
05 independently of the call option, create rights which
06 constitute the basis for MDH and Mr Rand's beneficial
07 ownership of the shares. So in article 4, we can read
08 that the shares in BD Agro shall be and remain at the
09 risk of the purchaser; and then in article 5 of that
10 agreement, we can read that MDH, and therefore Mr Rand,
11 will have ample rights to direct Mr Obradovic's exercise
12 of his shareholder rights in BD Agro, which include
13 matters such as the nomination of directors, for
14 example, at the shareholders' meetings of BD Agro.
15 The agreement does not have a governing law clause,
16 but the parties intended it to be governed by the laws
17 of British Columbia, which is evident from the person of
18 the drafter of the agreement, this is Mr Rand
19 [slide 175] who used to practise law in British Columbia
20 for, I believe, over 25 years, and who resides in
21 Vancouver, and even MDH, which is a BVI company, has
22 a place of business in Vancouver.
23 Most importantly, the parties or the representatives
24 of the parties to the MDH Agreement, that is Mr Rand for
25 MDH and Mr Obradovic for himself, agree even today that

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01 the laws of British Columbia are the laws which they had
02 in mind at the time, and they are, to the extent that
03 this actually is possible, willing to make that choice
04 of law even retrospectively today.
05 I will pause when addressing this point a little bit
06 because it is a recurrent feature of Serbia's arguments
07 in this arbitration that Serbia looks either at the MDH
08 Agreement or the Sembi agreement, which we will see in
09 a while, reads that agreement as if the agreement is the
10 beginning and end of the world, to determine then what
11 the rights and obligations of the respective parties of
12 that agreement were.
13 Here, I believe we must understand that these
14 agreements are important in this arbitration, but they
15 are not contested. These agreements merely document
16 a long-term co-operation, long-term relationship between
17 the parties which are represented by Mr Rand and
18 Mr Obradovic here, and while various corporate entities
19 were used for the documentation of that co-operation at
20 its different stages, one thing is important: Mr Rand
21 and Mr Obradovic always acted in perfect agreement.
22 Obviously, there were some difficult moments in that
23 co-operation; one of such difficult moments came in
24 2013, when Mr Rand decided to replace Mr Obradovic as
25 the manager of BD Agro, but as we know from the

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01 testimonies of both these gentlemen, even that difficult
02 decision did not change the fact that they were and
03 still are acting in agreement, and they were acting in
04 agreement even in the years 2013 to 2015, let's say,
05 when Mr Obradovic was still the nominal owner of BD
06 Agro, but no longer a manager or director of that
07 company.
08 Therefore if we hear arguments such as that article
09 2 of the MDH Agreement provides for a method of transfer
10 of the shares in BD Agro which just cannot be
11 effectuated and as a result -- and I now speak for
12 Serbia -- we believe that the agreement is invalid
13 because the parties did not agree on any alternative
14 method of transfer, et cetera, these arguments simply
15 are not valid. There is no indication on the record
16 that there was any disagreement as between Mr Rand and
17 Mr Obradovic, they were always acting in agreement, and
18 it was clear that if there is a difficulty of
19 a technical character, like this one, this will be
20 simply resolved by agreement on a different method of
21 transfer.
22 And this different method actually -- and now
23 I return to my slide 175 -- we have on the record the
24 expert report prepared by the Claimants' expert on
25 British Columbian law, Mr Deane, who confirms that MDH

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01 became the beneficial owner of the Beneficially Owned
02 Shares as soon as Mr Obradovic acquired them and
03 independently of the exercise of the call option.

04 And that entails also the fact that under British
05 Columbia law, MDH had the right to insist on the
06 transfer of nominal ownership at the time of MDH's
07 choice, and Mr Obradovic had an obligation to comply,
08 and the parties then would have simply sat down and
09 found a way how the transfer can be accomplished in
10 accordance with Serbian law and any other applicable
11 requirements.

12 The fact that that method of transfer was not
13 spelled out in the MDH Agreement has strictly no bearing
14 on the validity of the MDH Agreement and more broadly on
15 the fact that Mr Obradovic and Mr Rand co-operated and
16 that Mr Obradovic at all times recognised that he is
17 merely a nominal owner of the assets such as the
18 Beneficially Owned Shares in BD Agro.

19 I already foreshadowed the second document which is
20 important [slide 176] to document the existence of
21 beneficial ownership is the Sembi Agreement concluded on
22 22nd February 2008, which superseded the MDH Agreement,
23 and which brought into the picture one of the Claimants
24 in this arbitration, the Cyprus company Sembi.

25 The Sembi Agreement has a governing law clause which

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01 was again a requirement for the consent of the
02 Privatization Agency for the assignment of that
03 agreement. That again is something which required
04 further paperwork. The parties did not obviously intend
05 that the Sembi Agreement alone would effectuate such
06 assignment, they simply agreed to do the paperwork if
07 and when necessary. However, under Cyprus law, this was
08 sufficient to transfer the equitable interest in the
09 Privatization Agreement to Sembi.

10 And then the third category of assets were the
11 receivables that Mr Obradovic held against BD Agro on
12 the basis of shareholder loans that he had provided to
13 the company in prior years. Their, for the assignment
14 of such receivables no further paperwork was needed, and
15 therefore, Sembi became the owner of these receivables
16 as of the moment of signing the Sembi Agreement.

17 The Sembi Agreement, Serbia now says, violated
18 Article 41ž of the Law on Privatization because Serbia
19 says that article makes assignment of the Privatization
20 Agreement conditional upon consent of the Privatization
21 Agency [slide 179].

22 Here we must look at how assignment is defined under
23 Serbian law. The definition of assignment under Serbian
24 law is different from the definition of assignment under
25 Cyprus law, and obviously what Article 41ž of the Law on

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01 provides expressly for Cyprus law [slide 177]. We asked
02 our Cyprus law expert, Mr Georgiades, to review the
03 agreement, and he concludes that the Sembi Agreement is
04 perfectly valid and enforceable under Cyprus law.

05 Mr Georgiades also confirms that the Sembi Agreement
06 granted the Claimants beneficial ownership over the
07 Beneficially Owned Shares. What the Sembi Agreement did
08 actually is that it applied [slide 178] to three
09 categories of assets, and the transfers with respect to
10 these assets depended on whether, some further, as it is
11 put in the agreement, need to sign additional documents
12 was there or was not.

13 So the first category of assets covered by that
14 agreement were the shares in BD Agro; their transfer of
15 nominal ownership required additional paperwork. The
16 parties did not intend obviously for the Sembi Agreement
17 to transfer nominal ownership, they knew that this was
18 not sufficient to have such an agreement, and therefore
19 this was left for the future, and for execution of
20 further documents.

21 The Sembi Agreement, however, the effect of the
22 Sembi Agreement was that beneficial ownership in these
23 shared did transfer to Sembi, only beneficial, not
24 nominal.

25 With respect to the Privatization Agreement, there

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01 Privatization has in mind is the Serbian law definition
02 of assignment because that is a piece of Serbian
03 legislation, and under Serbian law, an assignment occurs
04 only at the moment when one contracting party is
05 replaced by a third party, which becomes bound by the
06 agreement.

07 This is not what the Sembi Agreement in itself
08 sought to achieve, and as a result, Mr Miloš Milošević,
09 our Serbian law expert and former Serbian judge,
10 concludes that the Sembi Agreement did not violate
11 Article 41ž.

12 The Sembi Agreement also did not violate Article 295
13 of the 2004 Law on Companies [slide 180] which restricts
14 the ability of directors to direct the shareholders in
15 the companies, where they are directors, to vote their
16 shares in a certain fashion, because this provision of
17 Serbian law does not apply to agreements between nominal
18 owners and companies owned by the beneficial owners. So
19 this is what I would call the substantive perspective of
20 that provision. From a purely formalistic perspective,
21 which however is probably what informed Serbia's
22 objection in the first place, Mr Rand is not a party to
23 that agreement, the agreement is between Sembi and
24 Mr Obradovic, and not directly between Mr Rand and
25 Mr Obradovic.

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01 We believe that the more important argument actually
02 is the substantive one, that the purpose of Article 295
03 is to avoid managers who are not owners from maintaining
04 their position indefinitely, by controlling the
05 shareholders; here we have actually the opposite
06 situation, we have Mr Rand as the beneficial owner who,
07 because of his beneficial ownership, later also became
08 director of BD Agro, and remained a director of BD Agro
09 until 2012.

10 The Sembi Agreement also did not violate Article 52
11 of the 2006 Securities Law because the transfer of
12 nominal ownership of the Beneficially Owned Shares could
13 have been effectuated in a number of methods which were
14 in full compliance with Serbian law. This is the
15 conclusion of our Serbian Securities Law expert, Ms
16 Tomic Brkušanić, who will be cross-examined later this
17 week, and who is very knowledgeable about these matters
18 because she is a former official of the Serbian
19 Securities Commission.

20 So this is about the facts and the two agreements
21 which are the most important for the assessment of
22 beneficial ownership. Now let me speak briefly about
23 the law [slide 182].

24 The protection of beneficial ownership is a general
25 principle of international law, we submit, and we cite

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01 ownership under international law does not depend on the
02 enforceability of protections granted to beneficial
03 owners against third parties under the domestic law of
04 the host state. This is the Iran-United States Claims
05 Tribunal decision to which I referred a second ago.

06 Serbia also argues that under Serbian law, the
07 Claimants' beneficial ownership would be labelled as
08 a right in personam rather than a right in rem
09 [slide 185] and somehow tries to deduce from that that
10 therefore it is not protected under the two BITs.

11 While we will look at the BITs in a moment, let me
12 state that the labelling of the Claimants' rights under
13 Serbian law does not matter for the purposes of public
14 international law analysis, but even if it did matter,
15 then it is quite clear that public international law
16 protects both rights in rem and rights in personam.

17 Here we are quoting for that proposition the
18 decision in Magyar Farming Company v Hungary which we do
19 not need to introduce further to this Tribunal.

20 So the conclusion is clear, public international law
21 in general protects beneficial ownership [slide 186],
22 and while Serbian law may not protect it in the same
23 fashion, Serbian law certainly does not prohibit
24 beneficial ownership.

25 In any event, the approach to beneficial ownership

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01 here on this slide to a scholarly article which was
02 published quite some time ago, in 1989, and which based
03 that statement mainly on the jurisprudence developed by
04 the Iran-United States Claims Tribunal which did
05 recognise claims by beneficial owners.

06 We obviously also have much more recent legal
07 authorities for the same proposition. Here on this
08 slide [183] you can see three investment arbitration
09 awards which speak about beneficial ownership.
10 I believe the most important one is the one at the left,
11 this is the Occi v Ecuador II case, the annulment, where
12 the annulment committee clearly stated:

13 "... neither the international law principles nor
14 the Committee's decision imply that investors holding
15 beneficial ownership are left unprotected from
16 interferences by host States. Such investors will enjoy
17 the protection granted under the treaties which benefit
18 their nationality."

19 And this is exactly what Sembi and the Canadian
20 Claimants are doing today.

21 Serbia tries to avoid that general principle of
22 protection of beneficial ownership under public
23 international law [slide 184] by arguing that beneficial
24 ownership is not protected under Serbian law. However,
25 that argument fails because the protection of beneficial

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01 under Serbian law simply does not matter because
02 Serbia's obligations under public international law and
03 specifically under the two BITs prevail over Serbian
04 law.

05 Now let's take a brief look at the bilateral
06 investment treaties. So first we have the Canada-Serbia
07 BIT [slide 187] which has an incredibly broad definition
08 of "covered investment" in Article 1. It states that
09 a covered investment is:

10 "... an investment ... owned or controlled, directly
11 or indirectly, by an investor ..."

12 This is one of the broadest definitions, if not the
13 broadest definition, of an investment under any
14 bilateral investment treaty.

15 On the following slide [188] we added a few
16 additional reasons, as if the broad scope of Article 1
17 was not enough.

18 Obviously it is not a surprise that a Canadian BIT
19 would be focusing on beneficial ownership because Canada
20 is a common law jurisdiction which routinely protects
21 beneficial ownership.

22 Then the second bullet point addresses the very
23 formalistic argument which was raised against us and
24 which is based on the fact that in some continental law
25 jurisdictions, one cannot be an owner of an in-person

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01 right, one can be a holder of that right. There is the
02 semantic dichotomy which luckily has no place under
03 public international law, but lest there be any doubt,
04 we looked at the French version of the Canada-Serbia BIT
05 which employs the term "détenu" instead of "owned",
06 therefore it should be clear that this dichotomy has no
07 place under the Canada-Serbia BIT and that Beneficially
08 Owned Shares constitute a covered investment under the
09 Canada-Serbia BIT.

10 And the Beneficially Owned Shares are a covered
11 investment also because of another completely
12 independent reason, and that is that they are -- well,
13 they were before they were expropriated, always
14 controlled by Mr Rand, a Canadian national.

15 And actually for the purposes of this jurisdictional
16 argument, it does not matter whether that control was de
17 facto or legal control [slide 190] because there is
18 ample investment arbitration jurisprudence which
19 confirms that both legal and de facto control satisfy
20 requirements such as those in Article 1 of the
21 Canada-Serbia BIT.

22 Even though the definition of control under domestic
23 law is irrelevant [slide 191], Ms Tomic Brkušanić
24 confirms that Mr Rand controlled BD Agro also within the
25 meaning of Serbian law

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01 And last but not least, what constitutes the
02 beneficial ownership obviously can be labelled
03 beneficial ownership, and we prefer that analytically
04 [slide 192] it is preferable to label it in this manner,
05 but the beneficial ownership stems from the rights
06 granted to Sembi under the Sembi Agreement.

07 If we took a slightly different perspective, we
08 would see that the Canadian Claimants also are indirect
09 beneficiaries of the rights granted to Sembi under the
10 Sembi Agreement. These rights then create what would be
11 called, using the language of the Canada-Serbia BIT, an
12 interest in an enterprise, the enterprise being BD Agro,
13 which entitled the owner to share in income or profits
14 of the enterprise. This is a type of covered investment
15 expressly provided for in Article 1(f) of the BIT.

16 Obviously, for an interest in an enterprise to
17 exist, it is irrelevant that Sembi never acquired
18 nominal ownership of the shares. The protection of an
19 interest in an enterprise is not contingent on the
20 acquisition of any ownership of shares, be it nominal or
21 beneficial, even though we could say that then the
22 interest overlaps with what we label as beneficial
23 ownership, so this is a bit of semantics only.

24 Then there is another type of interest which is also
25 protected under the Canadian-Serbian BIT, and this is an

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01 interest arising from the commitment of capital or other
02 resources in the territory of a party to economic
03 activity in that category, and that would be satisfied
04 as well.

05 Instead of doing the same rather long exercise under
06 the Cyprus BIT treaty [slide 194] let me just conclude
07 that obviously all of the arguments about public
08 international law and the irrelevance of labelling under
09 Serbian law also apply for the Cyprus-Serbia BIT, and
10 the text of that BIT, even though it is definitely
11 shorter than the Canada-Serbia BIT, provides for, we
12 submit, an equally broad definition of investment which
13 are defined as "any kind of assets ... in particular,
14 though not exclusively", therefore this is the typical
15 open list of investments which we see in, I would say,
16 older BITs.

17 And the assets which are mentioned there are "shares
18 ... claims to money or to any performance under contract
19 having economic value"; however, because the list is not
20 closed, if the Tribunal believes that the best
21 analytical approach to the rights that Sembi had is the
22 interest in an enterprise, which is used in the Canadian
23 BIT, nothing in the Cyprus BIT prevents the Tribunal
24 from taking the same analytical approach because it
25 states "any kind of assets ... in particular, though not

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01 exclusively".

02 Serbia argues that the Cyprus-Serbia BIT, because it
03 uses the word "invested", requires an active commitment
04 of capital [slide 195]. First of all, we believe that
05 the argument is moot on the facts because Sembi paid
06 €5.6 million for the Beneficially Owned Shares and this
07 is well documented in this case.

08 But we believe that Serbia actually is wrong also on
09 the law because, as the Tribunals in *Saluka v Czech*
10 *Republic* and *Mytilineos v Serbia* both explained, the
11 term "invested" is a simple link which does not require
12 any additional actions on the part of the investor. And
13 then we also believe that the cases *Standard Chartered*
14 *Bank v Venezuela* and *Alapli v Turkey* and I would say
15 generally Professor Park's interpretation of "of" are
16 not applicable in this case, simply because the
17 Cyprus-Serbia BIT does not have the "of" language.

18 Then Serbia also argues that the investment does not
19 meet the definition *ratione materiae* under the ICSID
20 Convention. Here I will be extremely brief; obviously,
21 even if the *Salini* test were to apply, it is satisfied,
22 and the second argument seems somehow to suggest that
23 the ICSID Convention does not allow claims by indirect
24 shareholders [slide 198] or claimants. That also
25 obviously has been disproved many, many years ago.

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01 That leads us to Claimants' objection against
02 jurisdiction *ratione voluntatis* and the most important
03 part of it is the one where it is stated in rather
04 strong terms [slide 200] that the investment violated
05 Serbian law.
06 We grouped the arguments raised by Serbia into four
07 categories. The first category are objections raised on
08 the alleged violation of a duty to disclose the
09 beneficial ownership, presumably during the
10 participation in the auction for BD Agro's shares; the
11 second category is the money siphoning objection; the
12 third category is what we call land machination
13 objection; and the fourth category is something I have
14 touched to some extent already, and that is the argument
15 that the MDH Agreement and the Sembi Agreement somehow
16 conflict with Serbian legislation on trading with
17 securities.
18 One very important thing I would like to mention at
19 the outset is that the first three categories of
20 objection was raised only in the Rejoinder, and not in
21 the Counter-Memorial, and as a result, they are
22 inadmissible. The ICSID Convention and the ICSID
23 Arbitration Rules are absolutely clear, objections to
24 jurisdiction must be raised within the time limit set
25 for the filing of the Counter-Memorial, and that time

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01 limit was not observed here [slide 201].
02 There is no excuse for Serbia having missed that
03 time limit because if we look at the points in time when
04 the alleged facts became known to Serbia, we see that it
05 is very, very long before the date of both the
06 Counter-Memorial and then the Rejoinder when they were
07 finally raised, therefore no excuse for the belated
08 raising of these objections.
09 Another important rule is that illegality may only
10 affect jurisdiction if it occurred when the investment
11 was made, and not then later on during the lifetime of
12 the investment.
13 And here, the siphoning and land machination
14 objections, so that would be objections 2 and 3 from my
15 list [slide 204] do not relate to the making of the
16 investment, they relate to something which happened
17 thereafter. In fact, they strongly obviously
18 misinterpret what happened thereafter, to put it very
19 mildly.
20 Another important rule is that only fundamental
21 violations of law [slide 205] necessary to the making of
22 an illegal investment will deprive a tribunal of its
23 jurisdiction, and this is through these lenses also that
24 we must look at the securities law objections.
25 As I already said [slide 206], the objection based

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01 on Article 52 of the Law on Securities is just baseless
02 because there were legal methods how to transfer the
03 shares from Mr Obradovic to Sembi or MDH.
04 There was also no violation of article 5.3.1 of the
05 Privatization Agreement through the conclusion of the
06 MDH Agreement, because what article 5.3.1 of the
07 Privatization Agreement prohibited was change in legal
08 title, change in nominal ownership. That did not happen
09 and therefore there was no alienation as it is defined
10 under Serbian law.
11 As I already said, I believe the Sembi Agreement did
12 not violate Article 41ž because it did not seek to
13 immediately assign the Privatization Agreement to Sembi
14 as assignment is defined under Serbian law.
15 The Sembi Agreement also did not trigger a takeover
16 bid obligation because it did not involve change of
17 control. Mr Rand had controlled the Beneficially Owned
18 Shares even before the Sembi Agreement and he continued
19 to control them after the Sembi Agreement.
20 Finally, the MDH Agreement and the Sembi Agreement
21 did not violate this prohibition of agreements between
22 directors and shareholders in a company for the reasons
23 I have already explained.
24 Therefore, what we call the Securities Law objection
25 is completely baseless. The siphoning objection, which

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01 got very significant traction in the Rejoinder
02 [slide 208], is untimely, but in any event it was done
03 without any real deep analysis of all of the accounts,
04 without any real deep analysis of all of the transfers.
05 We had Mr Hern then run his own analysis, and his
06 conclusion is quite clear. Serbia failed to demonstrate
07 any impropriety with respect to the money transfers
08 between BD Agro on the one hand and Mr Obradovic and/or
09 other Serbian companies beneficially owned by Mr Rand on
10 the other hand.
11 With respect to the land machination objection, all
12 of the transactions with BD Agro's land were legitimate,
13 and the land swap was declared invalid due to the
14 failure of the Ministry of Agriculture to obtain
15 internal approvals.
16 It is quite unbelievable actually that Mr Obradovic
17 had to spend some time in detention in connection with
18 the criminal investigation of a transaction whose
19 criminal character is in the fact that the Ministry of
20 Agriculture did not obtain internal approvals.
21 And then that leaves only the non-disclosure
22 objection, and that was actually addressed by Mr Anway,
23 who was explaining the requirements with respect to the
24 participation in the auction and the fact that Serbia
25 did not ask about beneficial ownership in the papers

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01 that needed to be filled in for the participation in the
02 auction, unlike in some other previous privatizations,
03 where they were interested in that information, and
04 presumably got it from the people participating.

05 So if we just have this summary slide [slide 209],
06 it shows that Serbia's illegality objections fail
07 because none of them fulfils all three hurdles. The
08 only one which was raised timely is the Securities
09 objection. The Securities objection is also one which
10 admittedly refers to the making of the investment, but
11 there is simply no violation of Serbian law there, let
12 alone a fundamental one.

13 I will just briefly address the argument that
14 somehow [slide 210] Mr Rand's claims with respect to the
15 indirect shareholding, the small shareholding that he
16 has even nominally indirectly through the Serbian
17 company MDH Serbia, are inadmissible because MDH Serbia
18 failed to file a timely waiver. I will just simply
19 point out the fact that MDH Serbia has substantially
20 complied with that obligation by filing that waiver at
21 a later stage, and the waiver was actually not required
22 in the first place because Mr Rand is raising a typical
23 indirect claim.

24 Then we have objections *ratione temporis*
25 [slide 212]. I will just skip through them. The fact

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01 that the Canadian-Serbian BIT entered into force on 27
02 April 2015 changes nothing because the important facts,
03 the termination of the contract and the expropriation of
04 the shares, happened in September and October 2015. The
05 failure to release the shares is a pre-existing breach
06 of contract which, however, continued even after the
07 entry into force of the BIT, and thus it is a typical
08 example of the continuing breach which falls within the
09 Tribunal's jurisdiction *ratione temporis* following the
10 entry into force of the Treaty, as here.

11 There was also an objection to jurisdiction based on
12 the fact that somehow the Claimants did not observe the
13 three-year time limit under Article 22 of the
14 Canada-Serbia BIT. That is incorrect, because that
15 three-year time limit [slide 214] requires not only
16 knowledge of a breach, but also knowledge of loss that
17 the investor has incurred. Obviously here the losses
18 have been incurred or were incurred actually only at the
19 moment when the shares were expropriated. And that is
20 within the three-year time period.

21 Equally briefly, there is an objection to
22 jurisdiction under the Cyprus BIT, which is based on
23 a distinction between "seat", which is the language used
24 in the Cyprus BIT, and "registered office". We now have
25 the Mera decision and also Professor Park's dissent in

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01 CEAC v Montenegro [slide 216] which confirm, both, that
02 "seat" under the Cyprus-Serbia BIT means "registered
03 office".

04 Some other tribunals interpreted the same words
05 differently [slide 217] but that was under different
06 treaties, most often which provided for tests like
07 effective management, real economic activities or real
08 seat, nothing of that applies here. And the majority in
09 CEAC v Montenegro actually, with all due respect, got it
10 wrong with respect to the Cyprus-Serbia BIT but it is
11 important to understand that they were doing so in very
12 extreme circumstances where there were simply no signs
13 of presence of the CEAC claimant at the place of its
14 registered office in Cyprus, and the CEAC claimant never
15 offered any evidence that the address was ever used for
16 any business purposes. That does not apply to Sembi and
17 it's not even alleged that it should.

18 And then there also is the test for holding
19 companies developed by the Tenaris tribunal and we
20 satisfy that test as well [slide 218]. Sembi is
21 a holding company which has limited but still some
22 activity in Cyprus, as demonstrated also by the minutes
23 of the meetings of directors.

24 In any event, Mr Georgiades confirms that under
25 Cyprus law [slide 219], seat is registered office,

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01 obviously that analysis should be done primarily under
02 the BIT and not Cyprus law but it's helpful to know that
03 there is no discrepancy.

04 And finally there was no abuse of process with
05 respect to the claims [slide 221] because the beneficial
06 ownership of the shares was recorded by Sembi in 2008,
07 therefore filing an arbitration claim, what was it, ten
08 years later obviously cannot be an abuse of process,
09 something made up just for the arbitration.

10 That concludes my submissions on jurisdiction and
11 I will just go really quickly through attribution,
12 because that hard work was already done by Mr Anway.

13 First of all [slide 223], Mr Anway mentioned two
14 decisions by the European Court of Human Rights which
15 found that the Privatization Agency is a state entity
16 that fits squarely into attribution under Article 4 of
17 the ILC Articles.

18 If that was not enough [slide 225], we also know
19 that the Privatization Agency is empowered by Serbian
20 law to exercise elements of governmental authority, and
21 as a result, the conduct of the Privatization Agency is
22 attributable to Serbia also under Article 5 of the ILC
23 Articles.

24 And again, even if that was not enough [slide 227]
25 then we also have Article 8 of the ILC Articles which

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01 covers conduct specifically directed by the state, and
02 you have seen that the conduct of the Privatization
03 Agency was specifically directed by the Ministry of
04 Economy.
05 In the interest of time, I will skip the section
06 regarding the merits of our claims, we have a very
07 distinguished Tribunal which does know public
08 international law, therefore we have no doubt that the
09 Tribunal will be able to review and assess the arguments
10 we have made.
11 I would just go directly to slide 240, which deals
12 with the distinction between commercial and sovereign
13 acts. The privatization process in Serbia was
14 a governmental process pursuing a sovereign goal of
15 economic development and social stability, and the
16 non-commercial goals of privatization were also
17 reflected in certain provisions of the Privatization
18 Agreement [slide 241].
19 We have investment arbitration decisions such as
20 *Awdi v Romania* which clearly state that privatization
21 agreements and their performance involve the exercise of
22 sovereign powers by the state party [slide 242]
23 precisely because of the broader goals of privatization
24 agreements which are also present in the Privatization
25 Agreement in question.

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01 *Bosca v Lithuania* confirms that acts adopted in
02 privatization agreements are governmental in nature
03 [slide 243].
04 In any event, as Mr Anway already said, the
05 Privatization Agency itself explained in an ICC
06 arbitration [slide 244] that it exercises sovereign
07 powers in performing privatization agreements.
08 Then there should be, just a reminder, there should
09 be no doubt that the acts of the Ombudsman [slide 245]
10 were clearly sovereign and not commercial acts. The
11 authority for it is, for example, *Vivendi v Argentina*,
12 another case we do not need to explain.
13 And then what is interesting is the holding of the
14 tribunal in *Caratube v Kazakhstan* [slide 246] which
15 confirms that a contract termination which was ignited,
16 and here I would say not only ignited but also fuelled,
17 to some extent, by recommendations issued by a state
18 body with no authority to do so, is a sovereign measure.
19 This is exactly what happened here. The Ombudsman was
20 not the only voice calling for the termination of the
21 agreement but he certainly was very vehement in pursuing
22 that goal.
23 And that leads me to the last part of my
24 submissions, which is quantum. The Claimants are
25 entitled to compensation for their losses, so let me

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01 first review the applicable legal standard. Obviously,
02 the principle that an expropriation or other treaty
03 breaches must be compensated is not disputed by Serbia
04 [slide 250].
05 I believe we should also have agreement on the fact
06 that the standard for compensation for expropriation
07 [slide 251] is full reparation requiring payment of fair
08 market value, and in cases of other breaches, if there
09 is some residual value of the investment, that needs to
10 be deducted from the value of the investment prior to
11 the breach.
12 Here, there actually will be some residual value, we
13 were very recently informed that the bankruptcy trustee
14 of BD Agro is willing to pay €89,000 approximately on
15 the €2.5 million loans that Mr Rand had provided to BD
16 Agro, and we will be formally amending our claims to
17 reflect that, obviously assuming that the amounts will
18 be paid as promised.
19 From the perspective of valuation in this case, it
20 is important to note that the fair market value is the
21 price a willing buyer would agree with a willing seller,
22 and here comes the important part, unaffected by any
23 compulsions and restrictions [slide 252]. Please
24 remember that when we discuss in a while the various
25 discounts that Serbia proposes be applied to the value

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01 of BD Agro's assets for alleged problems with
02 bankruptcy.
03 Now the second part of my submissions on quantum
04 look at the valuations presented by Claimants in this
05 case [slide 254], so Dr Hern, in his two reports,
06 estimated BD Agro's equity value between €53.3 million
07 and €81 million. This slide shows how he got to these
08 numbers. As you can see, the main value driver is the
09 value of the construction land that BD Agro owned in
10 zones A, B and C, some small part also elsewhere.
11 And then the second most important item is the
12 residual discounted cashflow value of the farm business
13 post tax. That leads Dr Hern to a certain total assets
14 value, set out at the end of the first table. Then he
15 subtracts total liabilities, 40 million, and that gives
16 him the total equity value I just mentioned.
17 These numbers, members of the Tribunal, will be
18 slightly adjusted in the presentation that Dr Hern will
19 give on, I believe, Tuesday next week.
20 As I will explain later, in an effort to bridge the
21 gap between the parties and having had the chance to
22 review the latest submission on quantum, to which he did
23 not have a chance to respond yet, he decided to slightly
24 adjust the size of the construction land in zones A, B
25 and C which results in a few million less of total

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01 equity value for the entire company.
02 But both before and after that adjustment,
03 Claimants' valuation is in line with three
04 contemporaneous valuations of BD Agro [slide 255] and
05 its assets which were carried out between December 2014
06 and February 2016.
07 According to these valuations, the equity value was
08 between €56 million and €71 million prior to the breach,
09 so prior to the breach, as of December 31st, that would
10 be the €71 million implied value, because that valuation
11 didn't go as far as to calculate the equity value, it
12 just calculated the value of the land; and then
13 €56 million after the breach.
14 Two of these valuations, the lower ones, were
15 expressly endorsed and relied upon by the Privatization
16 Agency at that time.
17 So the first valuation, the higher one [slide 256]
18 was prepared as of December 2013 by Mr Mrgud. We have
19 a real estate expert, Mr Grzesik, who actually confirms
20 that Mr Mrgud's valuation is correct, and Mr Grzesik
21 actually believes that the value would be even higher,
22 at €85 million. And you will hear from Mr Grzesik, and
23 why he believes this is the right value, I believe on
24 Monday next week.
25 Second, we have the two valuations which were

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01 endorsed by Serbia [slide 259], they were both prepared
02 by the company Confineks. The first one was contracted
03 in November 2015 by Mr Markicevic, and Confineks
04 concluded that BD Agro's equity value as of 31 December
05 2014 was €57.2 million.
06 Serbia accepted the valuation in a pre-pack
07 reorganisation plan submitted by the new
08 Serbia-appointed management of BD Agro in January 2016
09 and it was also approved by the General Assembly of BD
10 Agro's shareholders, where Serbia was the dominant
11 shareholder.
12 And then we had the third report [slide 263] and
13 second report by Confineks which valued the equity value
14 of BD Agro as of 31st December 2015. The value was
15 €56.3 million, so that's immediately after the breach.
16 That report was commissioned in January 2016 by the
17 management of BD Agro, fully appointed by the
18 Privatization Agency.
19 [Slide 264] Mr Knezevic, the representative of the
20 Privatization Agency in BD Agro, accepted the updated
21 valuation, and again, the shareholders of BD Agro,
22 meaning the Privatization Agency mainly, submitted it to
23 the Commercial Court in Belgrade, as their official
24 filing.
25 The Confineks valuation was also used for

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01 revaluation of assets in BD Agro's financial statements
02 [slide 266] which were accepted by BD Agro's General
03 Assembly, controlled by Serbia, and the bankruptcy
04 trustee nominated by the Agency for Licensing of
05 Bankruptcy Trustees.
06 Obviously, it would have had even criminal law
07 implications for the managers of BD Agro to, let's say,
08 not state the truth, or at least what they believed to
09 be the truth, in the financial statements of the
10 company, and in all these important documents that the
11 company was filing to the Serbian courts in connection
12 with the fact that at that time, after ten years of
13 disastrous management by the Privatization Agency, it
14 was on the verge of bankruptcy.
15 Why do we disagree with Serbia in this arbitration
16 about the value of BD Agro [slide 271]? There are six
17 main issues in dispute, we believe. The first one is
18 the size of construction land, so Dr Hern originally
19 stated it's 290 hectares, to which Ms Ilic responded by
20 conducting her own independent analysis and saying it's
21 279 hectares. In her second report, Ms Ilic was
22 instructed by Serbia to decrease that number to
23 169 hectares. We believe that this instruction should
24 be simply disregarded, and so does Dr Hern, who reviewed
25 Ms Ilic's arguments and came to the conclusion that

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01 actually the 279 hectares, the value that she set out in
02 her first report, should be used as the size of the
03 construction land. So the first issue now does not
04 exist as a contested issue, at least as between
05 Claimants and Ms Ilic's first report. We obviously
06 still disagree with the 169 figure provided -- or rather
07 I would say instructed by Serbia.
08 Another area of disagreement is the price per m2 of
09 construction land. Dr Hern sets a value of between €22
10 and €30 per m2, Mr Grzesik definitely supports the
11 higher band. Conversely, Ms Ilic is at €21 per m2, and
12 then the other four items of difference all relate to
13 discounts and we say very arbitrary discounts which are
14 taken by Serbia's experts.
15 First, Ms Ilic has a completely unexplained 30%
16 discount for the size of the land, and we will obviously
17 cross-examine her on that discount.
18 That figure is then taken without any critical
19 review by Mr Cowan, and he adds further discounts, so we
20 have a bankruptcy sale discount of 50% proposed by him,
21 which we believe is entirely inappropriate because BD
22 Agro was not in bankruptcy; and it is definitely
23 contrary actually to the definition of fair market value
24 which this Tribunal should use, under public
25 international law.

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01 Then he adds a further distress discount of 30%,
02 which is unacceptable for the same reasons, and at the
03 end he adds costs of bankruptcy, which again completely
04 ignores the fact that BD Agro was a going concern as of
05 the expropriation date, but also it states that
06 bankruptcy costs would be 20% of the company value,
07 while, as we have seen in recent correspondence, the
08 actual bankruptcy costs incurred so far, at a stage of
09 bankruptcy where Mr Rand is actually offered already
10 some payment on his receivables, are only €179,000. So
11 Mr Cowan has that I believe, if I remember well, 1400%
12 off.

13 I already explained that there will be a slight
14 adjustment of our claim due to the fact that Claimants
15 now accept the 279 hectares size of the construction
16 land, so that we did the calculation here, just for the
17 Tribunal to see that it does not have any dramatic
18 impact on the numbers [slide 273]. Dr Hern will then
19 provide a more detailed calculation when he is doing his
20 opening presentation. So the lower bound of the BD Agro
21 equity value is now €51.1 million and the upper bound is
22 €78.2 million.

23 Because we did not have an opportunity to respond to
24 Serbia's latest submissions on why the size of the
25 construction land in BD Agro should be only

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01 160-something hectares, rather than 279 [slide 274], we
02 have a few slides on this here, we do not believe it's
03 particularly important actually, because the reasons are
04 clearly bogus.

05 The reasons for the exclusion of the land have many
06 things to do with the background of the bankruptcy and
07 its sale, and the bankruptcy sale in Serbia, we
08 explained that already, we do not need to return to
09 this, so this plan actually shows you the land which was
10 excluded, this is the land in red, and the most
11 prominent cause for this exclusion [slide 275] is the
12 sham dispute with Buducnost Dobanovci, an entity that
13 nobody has ever heard of and which conveniently filed a
14 claim only before the valuation for the purposes of the
15 bankruptcy sale was to be done, it was then dismissed
16 but used as a pretext by the bankruptcy trustee for
17 excluding the land. We believe that such sham claims
18 have no place in an arbitration like this one.

19 We also explain the issue with the land swap
20 transaction. The land swap transaction is relatively
21 unimportant [slide 276] because it only relates to
22 agricultural land which is not a value driver, and in
23 any event, the land swap, even though it was
24 invalidated, our position is that this will ultimately
25 lead to compensation for the land to be paid by Serbia,

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01 therefore there is no need to deduct anything on that
02 account.

03 And on the following slides we also explain a few
04 other claims, third party claims to the land, which are
05 relatively minor, and we would ask the Tribunal to
06 review these slides simply to satisfy itself that our
07 and Ms Ilic's actually original 279-hectare size of the
08 construction land is entirely appropriate.

09 Then when it comes to the price per m2, I already
10 explained that Mr Grzesik, our real estate expert, fully
11 supports the upper bound of Dr Hern's valuation, at €30
12 per m2 and he will explain why when he is
13 cross-examined.

14 He also confirms that Dr Hern's valuation follows
15 a universally recognised valuation approach [slide 284]
16 and relies on extensive research.

17 Why does Ms Ilic have a completely different number?
18 Well, we say this is mainly because she very
19 conveniently disregards two comparable transactions with
20 construction land in Dobanovci. Dobanovci is the small
21 village at the suburbs of Belgrade where the farm is
22 located. And these two transactions have a median price
23 of €31 per m2 [slide 286] so this is even above the
24 figure provided by Dr Hern. This is because he believes
25 that some adjustment should be made to these

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01 transactions, but that is clear market evidence and we
02 haven't seen any compelling reason why this should be
03 disregarded as Ms Ilic does.

04 I already stated that the discounts that Ms Ilic and
05 Mr Cowan then propose are completely unjustified, so the
06 discount for size of land, there is really no
07 justification for it [slide 288].

08 Similarly, there is no justification for the
09 bankruptcy sale discount and distress discount, simply
10 because, if we look at BD Agro, as of October 2015 BD
11 Agro was not in bankruptcy. It was discussing about
12 a re-organisation plan, but it was still a going concern
13 at the time of expropriation [slide 290]. It was
14 declared bankrupt only 10 months thereafter, after, as
15 I said, disastrous management by the Privatization
16 Agency.

17 One of the disasters [slide 292] was that the
18 management appointed by Serbia completely ignored the
19 re-organisation plan which had already been approved by
20 BD Agro's creditors shortly before expropriation.

21 Finally, the bankruptcy costs. I already explained
22 [slide 294] that it is actually rather absurd for
23 Mr Cowan to count bankruptcy costs in millions knowing
24 that the actual bankruptcy costs of a bankruptcy which
25 is at the stage of distribution already were only

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01 €179,000.
02 So in conclusion on quantum [slide 295] this is the
03 comparison of what we have on the table, so first of
04 all, we have Claimants' slightly adjusted BD Agro equity
05 value, that's 100% equity value, between €51.1 million
06 and €78.2 million.
07 We have Mr Mrgud's valuation which implies an equity
08 value of €71 million as of 31st December 2014, so nine
09 months before the expropriation.
10 We then have the first Confineks valuation, as of
11 the same date, which states an equity value of
12 \$57.2 million.
13 Then we have the second Confineks valuation which is
14 for 31st December 2015, so right after the
15 expropriation, which is for €56.3 million.
16 And that is in, I would say, stark contrast with the
17 number provided by Mr Cowan which is between
18 €25.8 million negative to €13.8 million positive.
19 I believe, members of the Tribunal, that there
20 should be no doubt, absolutely no doubt that BD Agro was
21 a valuable business. The main value driver was the
22 construction land, which explains the liquidity problems
23 that BD Agro had at that time, but despite the liquidity
24 problems, this was a very, very valuable company, and
25 Serbia fully agreed with that assessment at that time.

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01 Members of the Tribunal, that concludes our
02 submissions on quantum, and the opening statement in
03 this arbitration.
04 THE PRESIDENT: I anticipated the last sentence, I should
05 not have, but congratulations for achieving in exactly
06 three hours, according to my count.
07 Do my co-arbitrators have questions for the
08 Claimants at this stage? I suppose we would rather hear
09 the Respondent, and see later today if we have
10 questions, and probably I think we will be eager to hear
11 the witnesses and experts, and at some later time have
12 questions for counsel, but if you have a question now,
13 you are of course free ask it.
14 PROFESSOR KOHEN: Mme President, I have two rather small
15 questions, but I am in your hands. If you prefer --
16 THE PRESIDENT: If it helps you to have them clarified now,
17 there is no reason not to ask them, it is just I am used
18 to just listening more and then also hearing the
19 Respondent, and then get to questions, but if you need
20 just clarifications, you are welcome to ask.
21 PROFESSOR KOHEN: Yes, just two quick points of
22 clarification. One concerns Article 131 of the 1978 Law
23 of Obligations, probably if it can be put on the screen,
24 it would be helpful. It is with regard to the existence
25 of an insignificant part of the obligation and the

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01 termination.
02 You mentioned, according to your position, that
03 there was no -- even if there were, assuming there was
04 no insignificant breach or obligation, here we have the
05 text:
06 "An agreement cannot be terminated due to
07 non-performance of an insignificant part of the
08 obligation."
09 Your argument was that even if there were, the
10 breach would have not been essential, and my point is,
11 so this distinction between what is an essential
12 obligation and what is insignificant or significant --
13 could it be that a breach of an obligation which is not
14 essential is nevertheless significant, or vice versa?
15 That is the first question.
16 MR PEKAR: Thank you, Professor Kohen. I believe that this
17 is a question that Dr Miloš Milošević would be eager to
18 answer. For our part, these are two different concepts,
19 an obligation is essential or non-essential.
20 I discussed that with Mr Milošević recently, it could
21 also be used as accessory, instead of non-essential.
22 That is one distinction. And our position is that
23 only breaches of essential obligations may lead to
24 termination. Breach of a non-essential obligation, even
25 if it's breached completely, once the obligation is

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01 non-essential, it cannot lead to termination at all.
02 Then in addition, there is Article 131, which
03 distinguishes between insignificant parts and limits the
04 ability of a party to terminate an agreement for breach
05 of an essential -- it's not stated here, but that would
06 follow from our previous argument, if it is breached
07 only insignificantly.
08 In this case, we submit both that that article 5.3.4
09 was not an essential obligation, therefore its violation
10 did not give rise to the right to terminate; and that
11 even if we accepted that this is not correct, and the
12 opposite is true, then, given the size and value of BD
13 Agro's land, the fact that there was a pledge on a small
14 part of it to secure a loan which was, in its totality,
15 €2 million approximately, but it is, I believe, accepted
16 by Serbia that more than €1 million, was used perfectly
17 legitimately, so there is €1 million where there is
18 a question mark, so even if Serbia was right that yes,
19 €1 million was not used as it was supposed to be used,
20 that the pledge is so small compared to the entirety of
21 the assets of BD Agro, and the value of the assets of BD
22 Agro, that it would be only an insignificant part of the
23 obligation not to pledge assets that would be breached,
24 and therefore, it was not possible to terminate the
25 Privatization Agreement also for this reason.

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01 PROFESSOR KOHEN: Thank you for this answer. My second
02 brief question concerned the release of the pledge.
03 According to the agreement, it should be done after the
04 payment of the last instalment, but it was mentioned
05 that according to a new law, this should be done after
06 all obligations are fulfilled. My question is: could
07 you tell us when this new law was enacted?
08 MR PEKAR: I believe that you are referring to the audio
09 recording which we had, I do not know for sure, and
10 again, Mr Milošević will be able to answer, there was
11 a major change in the law in 2014, so I believe that
12 this relates to 2014, but to be confirmed by
13 Mr Milošević.
14 One thing which is also important is that there was
15 a principle of non-retroactivity in the new law, so
16 basically the new legal provisions did not apply to
17 previous privatization agreements.
18 PROFESSOR KOHEN: Thank you very much. That is all my
19 questions, Mme President.
20 THE PRESIDENT: Neither do I have questions at this stage.
21 We can now take the lunch break, we have provided that
22 we would take an hour, so now it is 37, let's resume at
23 1.40, is that fine with everyone?
24 MR PEKAR: Yes, Mme President.
25 THE PRESIDENT: Have a good lunch, everyone.

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01 (12.37 pm)
02 (Adjourned until 1.40 pm)
03 (1.40 pm)
04 THE PRESIDENT: Good, I hope everyone had a good lunch, and
05 we are ready to continue, and we are ready to listen to
06 the Respondent's opening. To whom do I give the floor
07 first?
08 MS MIHAJ: To me, Mme President.
09 MR PEKAR: I am sorry to interrupt, I have one housekeeping
10 matter, apologies for that. First, I would like to
11 rectify what I told you this morning with respect to the
12 people who are in the remote room. I forgot about my
13 colleague, Ms Bolinová, who will be there today and also
14 all the other days, I apologise to her and to you for
15 that.
16 And also, when we came down for lunch we realised
17 that even though he was not invited to do so,
18 Mr Obradovic was in the room for the second part of our
19 presentation. We reminded him of the rule that
20 obviously he is not able to assist and we made sure that
21 he is not there, and the lawyers who are there for our
22 legal experts will make sure that he will not re-appear
23 in the room on his own, he understood the situation,
24 there was a misunderstanding on his part, we apologise
25 for that, we just want to be transparent about it. All

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01 he heard is the second part of our presentation, that he
02 had already known from our preparations in any event,
03 and we made sure that he is not there for obviously
04 Serbia's opening statement.
05 THE PRESIDENT: Yes, and until he is heard, because that is
06 the rule, right? He is sequestered. And I watched this
07 morning that we had Mr Markicevic here and Mr Broshko
08 and Mr Rand, of course, but no one else. But I am not
09 used either to having two rooms, and I have no screen
10 where I can see who is there.
11 That also reminds me, we may have representatives of
12 Canada who said they would attend, they will do so
13 during business hours in Toronto, so maybe they have
14 joined now, or will soon join. If so, of course we
15 acknowledge their presence and greet them.
16 You have heard this mishap of Mr Obradovic being in
17 the room during the second part of the Claimants'
18 opening, and you heard the apologies. Would you wish to
19 comment in any way?
20 MS MIHAJ: I think that all I can say now is that apparently
21 Claimants cannot control Mr Obradovic, so apologies
22 accepted.
23 THE PRESIDENT: That was it, no further points? Nothing on
24 your side that you wish to raise?
25 MS MIHAJ: Not at this moment, thank you.

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01 THE PRESIDENT: Good. Then please, you have the floor.
02 MS MIHAJ: Thank you, Mme President.
03 Respondent's Opening Statement
04 MS MIHAJ: Dear members of the Tribunal, the opening
05 statement of the Respondent will comprise of three
06 parts. First I will deal with some main factual issues,
07 then Professor Djundic will address the question of the
08 lack of jurisdiction in this case, and lastly, Dr Djerić
09 will address a few questions concerning the alleged
10 breaches of the applicable BITs as well as the amount of
11 damages requested.
12 The three questions that I will address are: who was
13 the owner of the shares in BD Agro, how Mr Obradovic
14 managed BD Agro, and what circumstances led to
15 termination of the Privatization Agreement?
16 When it comes to the question, who was the owner of
17 the shares [slide 6], we heard also today, during
18 Claimants' opening statement, that the investment in BD
19 Agro was all about Mr Rand, that Mr Obradovic was only
20 a vehicle whose purpose was to play the role of the
21 nominal owner of BD Agro, while the Lundin family were
22 nothing more than extremely generous billionaire friends
23 of Mr Rand, and that is the story that Claimants and
24 their witnesses are telling us.
25 However, as will be demonstrated during the

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01 Respondent's opening statement, this story simply does
02 not fit in with the documents that we have in the files,
03 and my intention is not to tell you what happened back
04 then between Mr Rand, Mr Obradovic and the Lundins
05 because I simply don't know, just like the Tribunal does
06 not, but what I think any reasonable person can conclude
07 from the documents that are presented in this case is
08 that Claimants' narrative, as well as the narrative of
09 their witnesses, is not truthful. There are too many
10 gaps between their allegations, and documentary
11 evidence.

12 So let us see what the written documents dating
13 years before this arbitration tell us.

14 According to the Privatization Agreement, the
15 investment in BD Agro alone amounted to €7.5 million.
16 That was the price and the investment according to the
17 Privatization Agreement, so in addition to BD Agro,
18 Mr Obradovic also privatised six other companies in
19 Serbia [slide 7].

20 According to Claimants, all of these companies were
21 beneficially owned by Mr Rand, while Mr Obradovic was
22 only a nominal owner, yet although we are talking about
23 an investment worth millions of euros, there is no
24 single paper in the files concerning the said
25 arrangement between Mr Rand and Mr Obradovic.

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01 So we should believe that Mr Rand simply gave
02 Mr Obradovic millions of euros and made him the owner of
03 the shares of seven Serbian companies, without any
04 agreement or document showing Mr Rand's beneficial
05 ownership and control over these companies.

06 What we do have in the file is the Share Purchase
07 Agreement from September 2008, referred to as MDH
08 Agreement, that is CE-15 [slide 8]. So what was the
09 purpose of the MDH Agreement? Again, I cannot tell you,
10 and simply we do not know, but I think that it is
11 obvious from the provision of that agreement that it was
12 not to confirm that MDH was the beneficial owner of BD
13 Agro's shares.

14 So let's look at the provision of the MDH Agreement.
15 As you can see, the MDH Agreement states, in two
16 different provisions, in point C and then again in point
17 3 of it, that the sole and beneficial owner of BD Agro
18 is or will become Mr Obradovic. And this agreement was
19 concluded before the Privatization Agreement.

20 So I would say that this document defeats the basic
21 pillar of Claimants' claim that before the
22 privatization:

23 "Mr Rand and Mr Obradovic agreed that Mr Obradovic
24 would submit the bid in the auction and, if successful,
25 would nominally acquire the Privatized Shares while

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01 Mr Rand would become the beneficial owner."

02 That was stated in Claimants' Memorial, paragraph 67
03 Let us turn back to the MDH Agreement [slide 9].

04 There is also a call option in point 2 of that
05 agreement, and the call option should have enabled MDH
06 to "become the registered and beneficial owner of the
07 Shares". So apparently without the call option, MDH
08 could not claim that it is the beneficial owner of the
09 shares, and of course, Claimants admit that in their
10 Reply in paragraph 67, that the said option was never
11 exercised, which means that the ownership over the
12 privatised shares remains in Mr Obradovic's hands.

13 Let us now turn and see what the financial
14 documentation that we have in the files reveals. So we
15 have Mr Obradovic, to whom Mr Lundin, Longdale Assets,
16 Mr Adolf Henrik Lundin and some oil company paid
17 €10.5 million [slide 10].

18 So according to documents in the file, these
19 payments were made for different purposes, including:
20 "real estate investment", and then "purchasing real
21 estate" in Serbia, and even three payments to
22 Mr Obradovic were referenced as "dividend".

23 Of course, no reference to payment for BD Agro was
24 ever made. And then again, there is no single agreement
25 on the record between Mr Obradovic and these financial

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01 donors which would show the legal basis and the motive
02 behind these €10.5 million payments.

03 Or in other words, there is no evidence that these
04 payments were made for investment in BD Agro. In fact,
05 it is unlikely that, for example, the payments referred
06 as "purchasing real estate in Serbia" or "dividends" had
07 anything to do with investment in BD Agro, or to put it
08 differently, all these payments were equally likely to
09 be made for BD Agro, as for any of the other six
10 privatised companies in Serbia or any other of
11 Mr Obradovic's investments in Serbia or elsewhere.

12 All these payments, as the documents reveal, were
13 made between January 2006 and February 2008 [slide 11]
14 and during that time, Mr Obradovic also made payments
15 for investments and the purchase price not only in BD
16 Agro but also in other privatised companies.

17 However, apparently the Lundins did not finance only
18 Mr Obradovic but they also financed MDH, to whom they
19 borrowed €3.3 million for "purchase firm and building"
20 and "market research" purposes and we simply do not know
21 how and where MDH spent these €3.3 million. There is no
22 trace of that, not a single document. So there is no
23 document on the record showing that these millions were
24 paid to Mr Obradovic, or invested in BD Agro. As
25 a matter of fact, there is no document that these

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01 €3.3 million were invested in Serbia at all. Of course
02 it is conceivable that this money found some informal
03 way of reaching Mr Obradovic but that would obviously
04 breach a lot of financial and criminal regulations in
05 a lot of different countries so I suppose that this did
06 not happen.
07 Other than the MDH Agreement, Claimants submitted
08 two agreements concluded in February 2008. These are
09 exhibits CE-028 and CE-029. According to Claimants,
10 these agreements were used by Mr Rand to restructure his
11 beneficial ownership. The first 2008 Agreement was
12 concluded between Mr Obradovic, the Lundin family, Mr
13 Rand and Sembi Investments. According to that
14 agreement, which I will refer as Lundin Agreement
15 [slide 14], it was Mr Obradovic and not Mr Rand who
16 borrowed €9 million from the Lundin family. It is
17 clearly stated in that agreement. Again, this agreement
18 shows that it was not Mr Rand, but Mr Obradovic, who
19 held the interest in the Privatization Agreement.
20 On the other hand, Sembi, according to the Lundins
21 Agreement, only wished "to acquire all the interest in
22 BD Agro from Mr Obradovic", so it is clear that Sembi
23 could not wish to acquire the interest in BD Agro from
24 Mr Obradovic if that interest, as Claimants suggest, was
25 already in the possession of Mr Rand or his affiliates,

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01 but it was not. It was in the possession of
02 Mr Obradovic, and that is why the Lundin family secured
03 their claims on Mr Obradovic's interest in the
04 Privatization Agreement.
05 Finally, what is also very, very important is that
06 Mr Obradovic remained fully liable for any payments to
07 Lundin family under this agreement [slide 15]. So
08 I have to say that it simply makes no sense that
09 Mr Obradovic would accept to remain jointly and
10 severally liable towards the Lundins for the €9 million
11 claim related to the company in which he does not have
12 any interest nor control.
13 Let me now turn to the second 2008 agreement. That
14 agreement was concluded between Mr Obradovic and Sembi
15 and I will refer to it as the Sembi Agreement. What we
16 see from the Sembi Agreement is in addition to
17 €9 million borrowed from the Lundins for the investment
18 in BD Agro [slide 16], Mr Obradovic also borrowed
19 another €4.8 million from some unidentified institutions
20 from Geneva, so according to Claimants' story, this
21 €4.8 million also came from the Lundins. However, the
22 problem with this is that there is simply no document to
23 prove this, not a single document. And in fact, when
24 you read the Sembi Agreement, you will notice that in
25 point C of the preamble, when it mentions the 9 million

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01 claim, it explicitly refers to the Lundin family. On
02 the other hand, in the next sentence, when it refers to
03 €4.8 million claim, it says "other institutions in
04 Geneva", so why would it be drafted like that if both
05 claims belonged to the Lundins?
06 And another question, why this debt of €4.8 million
07 would not be referred to in the Lundin Agreement
08 together with the €9 million claim?
09 When it comes to transfer of the interest in the
10 Privatization Agreement from Mr Obradovic to Sembi, in
11 point 4, the Sembi Agreement stated that it will be done
12 in consideration for Sembi, assuming the obligations
13 that are mentioned in points 1, 2 and 3 of that
14 agreement. So the first obligation was for Sembi to
15 assume all obligations of Mr Obradovic towards the
16 Lundin family [slide 18] amounting to €9 million as set
17 out in the Lundins Agreement.
18 The second obligation was for Sembi to either pay to
19 Mr Obradovic the amount of €4.8 million owed to some
20 institutions in Geneva, or to assume full responsibility
21 for the repayment of this debt.
22 Finally, the third obligation was for Sembi to pay
23 around €2 million due to Privatization Agency, and
24 Claimants contend that all of these obligations have
25 been fulfilled. They say that out of €13.8 million

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01 allegedly owed to the Lundins, Sembi paid €5.6 million,
02 and that the Lundins waived the remaining debt.
03 That is stated in the Memorial, in paragraphs 89 to
04 94. They also claim that Sembi paid the remaining part
05 of the purchase price to the Agency, amounting to just
06 over €2 million, and that is stated in Mr Obradovic's
07 third witness statement, in paragraphs 74 to 80.
08 However, and again, no documentary evidence in that
09 regard.
10 My intention is not to derive any legal conclusions
11 that arise out of lack of evidence that Sembi performed
12 its contractual obligations from the Sembi Agreement, my
13 intentions are simply to present to you the state of the
14 facts as it stands from the documentary evidence, which
15 is that Mr Obradovic allegedly transferred his interest
16 in BD Agro although remaining liable for multi-million
17 euro claims.
18 Let us now see the evidence concerning the payments
19 according to the Sembi Agreement.
20 So we have the Lundin Agreement that kept
21 Mr Obradovic jointly and severally liable for the
22 €9 million claim. Claimants say that €5.6 million was
23 repaid to the Lundins. To prove this, they delivered
24 the document that showed the following.
25 First, they show two payments from 2008 amounting to

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01 €3.6 million, these payments were made by reference to
02 the agreement from 22nd February 2008. One payment was
03 made to Mr Ian Lundin, while the second one was made to
04 a company named FBT Avocats. Then we have the third
05 payment that was made in 2010, it amounted to
06 €2 million, and it was made to a company named Tacil
07 Asset Corporation and it was designated as payment of
08 loan instalment. No reference to Lundin Agreement was
09 made. And we also have no documents showing any
10 connection between the said company and the Lundins.

11 As for the €4.8 million allegedly also owed to the
12 Lundins, let me remind you that under the Sembi
13 Agreement, Sembi agreed either to pay €4.8 million to
14 Mr Obradovic, or to assume this debt, and Claimants want
15 us to believe that this amount was assumed by Sembi
16 towards the Lundins. However, as I already said, there
17 is no documentary evidence that this was indeed the
18 claim of the Lundin family, and even more importantly,
19 there is no document that Sembi ever assumed this debt
20 towards anyone, or that it paid a cent to Mr Obradovic.

21 In other words, according to documentary evidence
22 that we have in our files, some unidentified
23 institutions in Geneva still hold €4.8 million claim
24 against Mr Obradovic.

25 Finally, €2 million owed to the Privatization Agency

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01 was paid by Mr Obradovic personally, and there is no
02 documentary evidence that Mr Obradovic received that
03 money from Sembi. What we have instead is the
04 explanation of Mr Obradovic in his third witness
05 statement in paragraphs 74 to 80 of what allegedly
06 happened with these payments to the Privatization
07 Agency. In simple terms, Mr Obradovic allegedly paid
08 a shareholder loan to BD Agro, then BD Agro returned
09 that loan to him, and then Mr Obradovic used this money
10 to pay the €2 million debt towards the Privatization
11 Agency. That is how allegedly Sembi settled this debt
12 to the Agency.

13 Again, we have no document concerning this agreement
14 between Mr Obradovic and Sembi, no agreement concerning
15 the payment of €2 million to the Privatization Agency.

16 To cut a long story short, out of €15.8 million in
17 total that Mr Obradovic should have been released from
18 by Sembi Agreement, we have documents showing that only
19 €5.6 million were paid to some Lundin and two other
20 companies. According to documentary evidence,
21 Mr Obradovic is thus still liable to Lundins for
22 €3.4 million, under the Lundin Agreement, and
23 €4.8 million to some institutions in Geneva, so I have
24 a question: is it really likely that Mr Obradovic would
25 transfer all his interest in BD Agro and still remain

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01 liable for these millions allegedly spent for the
02 privatization of that company? And I would say that the
03 answer is self-evident.

04 And that is in fact precisely why Claimants had to
05 resort to patching holes in their story by claiming that
06 for the remaining debt, and that is in total
07 €8.2 million, the Lundins "agreed to waive the
08 outstanding balance of the debt as a token of
09 appreciation of their long-standing successful business
10 relationship and friendship with Mr Rand", that is
11 stated in Claimants' Reply, paragraph 108.

12 I have to say that I cannot simply cannot buy that
13 in the 21st century, two experienced businessmen,
14 Mr Rand and Mr Lundin, agreed about the waiver of
15 €8.2 million debt without exchanging a single paper.
16 I think that would be not only illogical but that would
17 be in contradiction to both Sembi and Lundin Agreements
18 [slide 19]. As you will see, both of them explicitly
19 stipulate:

20 "Neither this Agreement nor any term hereof may be
21 amended, waived, discharged or terminated except by
22 written instrument signed by the parties hereto."

23 In other words, without a written instrument signed,
24 a waiver simply could not and did not happen, which
25 means the Lundins, as well as some institutions in

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01 Geneva, I would say, still hold their claims against
02 Mr Obradovic, who was that naive to nevertheless
03 transfer his interests in BD Agro to Sembi.

04 After we have seen all these documents, I think that
05 it is safe to say that we have an elephant in the room
06 this whole time, the Lundins. They are everywhere in
07 the papers, but they are nowhere to be seen in these
08 proceedings. They did not even appear to confirm that
09 they waived more than €8 million. When it comes to the
10 roles that Mr Obradovic, Mr Rand and the Lundins had in
11 relation to BD Agro, as you can see on the slide [20],
12 Mr Obradovic evidently held all crucial elements of an
13 actual owner. He concluded the Privatization Agreement,
14 he paid the price for the shares, he made non-refundable
15 investments under the agreement, and he was registered
16 as the owner.

17 On the other hand, Mr Rand, as well as the Lundins,
18 had some connection with BD Agro. So Mr Lukas Lundin
19 and Mr Rand were both members of the management board of
20 BD Agro; Mr Ian Lundin received financial reports of BD
21 Agro, while all of them discussed the operations of BD
22 Agro.

23 Claimants put a lot of emphasis on the Canadian flag
24 that was placed in front of BD Agro, they also mentioned
25 this today, so let's remind you that, for example,

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01 Mr Obradovic was both Serbian but also Canadian
02 national, but Claimants however remain silent on the
03 reasons why would Swedish and Swiss flags, which
04 represents the Lundins' nationalities, be also there if
05 that represents a proof of someone's beneficial
06 ownership over BD Agro. Or perhaps all these flags were
07 just marketing.
08 Let us now see what Mr Rand and Mr Obradovic
09 communicated to the relevant authorities even after the
10 Sembi Agreement was concluded up until the termination
11 of the Privatization Agreement concerning the question
12 of ownership.
13 So from 2013, Mr Rand wanted to transfer the
14 Privatization Agreement from Mr Obradovic to Coropi. In
15 2013 Mr Rand's attorney presented Mr Rand to the Agency
16 [slide 21] as the potential investor:
17 "... interested to take over the Privatization
18 Agreement of that company from the current majority
19 shareholder."
20 In one of the letters to the Ministry, from
21 September 2014, for example, Mr Rand himself explicitly
22 said [slide 22] that he made a request to the
23 Privatization Agency:
24 "... to an allow the transfer to [him] or a company
25 owned by [him] of Mr Obradovic's ownership in BD Agro

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01 ..."
02 And these letters sent to the Agency and the
03 Ministry were therefore clear about who was the owner of
04 the shares: Mr Obradovic. And this is probably why
05 Mr Rand wrote to the Ministry [slide 23] that he is:
06 "... reluctant to invest further time and money if
07 there is doubt about whether ownership can be
08 transferred ..."
09 First of all, if there was indeed a difference
10 between nominal and beneficial owners of the shares, why
11 Mr Rand was not specific and referred to the transfer of
12 nominal ownership of the shares? Second, had Mr Rand
13 really exercised full ownership and full control over BD
14 Agro's shares, then why suddenly, from 2013,
15 registration of his nominal ownership became that
16 important to him that it even prevented Mr Rand from
17 investing in his own company?
18 The fact of the matter is that whenever Mr Rand,
19 Mr Broshko or even BD Agro's manager, Mr Markicevic,
20 sent a letter concerning the transfer of the
21 Privatization Agreement to Coropi, they never, and
22 I repeat, never mentioned that Mr Rand actually already
23 considered himself as the beneficial owner.
24 And you have plenty of their letters. They are
25 designated as CE-037, 038, 113, 319, 325, 328, 329, 334

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01 and 707. So please read all these letters. Not a word
02 about Mr Rand's beneficial ownership.
03 And another question: if Sembi was already the
04 beneficial owner of shares, why wouldn't they mention
05 that in the nine letters they have sent?
06 And yet another question: why would not Sembi, the
07 alleged beneficial owner of the shares at that time, be
08 the company interested in the transfer of nominal
09 ownership instead of Coropi?
10 In the period 2014 to 2015, Mr Rand, as well as
11 Mr Markicevic [slide 24], wrote to the Agency and the
12 Ministry of Economy only that since the summer of 2013,
13 Mr Rand supported BD Agro financially in the amount of
14 about half a million euros.
15 We also have in the files a letter that was sent in
16 2015 [slide 25] by Mr Rand to Mr Markicevic who was the
17 CEO of BD Agro, and this is what Mr Rand wrote to
18 Mr Markicevic. He said:
19 "In any case, any chosen model of co-operation would
20 have to provide us with adequate security for our
21 investment while enabling BD Agro to duly settle its
22 financial obligations towards creditors under the
23 adopted prepacked plan of re-organisation."
24 This quotation, as well as this letter in general,
25 simply does not sound like the letter that the owner

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01 would send to its company. Why would someone who is
02 already a beneficial owner, allegedly covered by the
03 Sembi Agreement, talk about possible model of
04 co-operation, and why would it require adequate security
05 for the investment in his own company? It simply makes
06 no sense.
07 Finally, and I would say most importantly, the man
08 who concluded the Privatization Agreement and was
09 registered as the owner of the shares never, and
10 I repeat, never stated that he was not the actual owner
11 [slide 26]. Not a single document in the case file.
12 The first time Mr Obradovic said that was in this
13 arbitration when he appeared as the witness on
14 Claimants' side. What Mr Obradovic claimed, even in
15 September 2015, just before the termination of the
16 Privatization Agreement, is that he personally is
17 a foreign investor, a Canadian citizen, whose investment
18 is protected by the Canada-Serbia BIT, and although
19 mentioned in this letter, you will see that Mr Rand was
20 not designated as the owner of the shares but rather as
21 a potential investor who expressed his willingness and
22 interest in providing the necessary financial support
23 for the recovery of BD Agro [slide 27].
24 Let me now say something about control of BD Agro.
25 So Claimants put a lot of effort in showing how Mr Rand

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01 was the one who managed BD Agro, and made all relevant
02 decisions, and they have submitted plenty of emails
03 exchanged between Mr Rand and the employees of BD Agro
04 discussing certain matters regarding the business and
05 finance of BD Agro. However, I do not see any weight in
06 these mails.

07 As you can see from CE-072 and CE-255, Mr Rand was
08 a member of the board of directors, and he was also
09 indirect minority shareholder of BD Agro, and this
10 explains his involvement in BD Agro's affairs.

11 Moreover, the details of the business and financial
12 affairs of BD Agro were also shared and discussed with
13 the Lundins as well, and you can see that from CE-584,
14 CE-585 and CE-586.

15 However, what is crucial when it comes to management
16 and control of BD Agro is the fact that you will not
17 find a single paper showing that Mr Rand ever instructed
18 Mr Obradovic when it comes to the management of BD Agro.
19 We do not have any document showing that Mr Rand ever
20 issued any orders or instructions to Mr Obradovic, to
21 the man who he allegedly controlled.

22 On the other hand, even when accused of various
23 criminal acts connected with his involvement and control
24 of BD Agro, Mr Obradovic never mentioned that any of his
25 actions were the consequences of the instructions of

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01 Mr Rand, who was alleged owner according to Claimants.

02 You can see on the slides quotations from documents
03 originating from the criminal proceedings [slides 29 and
04 30].

05 In addition to Mr Obradovic's silence on Mr Rand's
06 alleged involvement, it is also worth noting that during
07 a whole decade of criminal investigations regarding the
08 management of BD Agro, which were conducted by many
09 different public prosecutors and police authorities,
10 there was still no trace of any link between Mr Rand and
11 decisions that influenced BD Agro's management in
12 multi-million euro matters.

13 Even the person who allegedly knew all about
14 Mr Rand's beneficial ownership, and that is Mr Ljubiša
15 Jovanovic, the CEO of BD Agro between 2005 and 2013, was
16 very explicit in his testimony before the prosecutor
17 [slide 31] about who was the owner and had the full
18 control over BD Agro. So Mr Jovanovic said:

19 "Djura Obradovic was an initiator, he was the owner
20 who was permanent and who dealt with key issues, some
21 other acquisitions and relationships with banks, all
22 that should be done by a majority owner."

23 Let us now see how deeply Claimants' story is
24 undermined by lack of documentary evidence. As you will
25 see from the files [slide 32] there is no contract for

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01 the initial payment of €10.5 million from the Lundins
02 and other companies to Mr Obradovic. There is no
03 contract nor any other documents concerning payment of
04 €4.8 million to Mr Obradovic by some institutions in
05 Geneva. There is no contract for the payment of
06 €3.3 million from the Lundins to MDH. There is no
07 contract for the payment of €3.6 million that Mr Rand
08 paid to Sembi, nor a contract for the payment of
09 €2 million from Mr Rand's company, Indonesian
10 Developments, to Sembi. There is no contract proving
11 that Sembi assumed €4.8 million from institutions in
12 Geneva. There is no contract for waiving €8.2 million
13 by Lundins.

14 So in total, as you can see, there are 12 companies
15 and individuals from several different countries that
16 exchange millions of euros without a written contract.

17 What was the role of each of these men and
18 companies? Who was the investor, who was the beneficial
19 owner, who owed money to whom, remains unclear.

20 And why it remains unclear, well simply because
21 Claimants are hiding the documents that most certainly
22 exist between these gentlemen and their companies, and
23 I think that the consequence of this lack of documents
24 is the Tribunal's inability to determine what was the
25 actual arrangement between Mr Rand, Mr Obradovic and the

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01 Lundins.

02 Before I finish this part of my presentation, let me
03 say something that concerns payments made to
04 Mr Obradovic in 2006 and 2007 that I did not mention
05 earlier.

06 In paragraph 14 of Mr Azrac's witness statement
07 [slide 33] you will see that Mr Adolf Lundin passed away
08 in September 2006, and this is not a mistake, it can be
09 easily checked on Wikipedia. You will also see from
10 Exhibit CE-405 and CE-406 that Mr Adolf Lundin has made
11 a total of €1 million payments to Mr Obradovic in
12 December 2006 and April 2007, months after his death.

13 Beside the fact that we have millions of euros worth
14 of payments involving at least 12 different companies
15 and individuals unsupported with any underlying
16 documentation, besides payments of dividends represented
17 as investments in BD Agro, and payments made to MDH
18 treated as payments to BD Agro with no supporting
19 documents, and in addition to that that we have
20 multi-million debts forgiven without any written trace,
21 it appears that we also have payments ordered by a dead
22 person. So if that does not ring the bell, then
23 I really don't know what does.

24 What I am going to briefly reflect upon now is how
25 Mr Obradovic managed or better to say mismanaged BD Agro

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01 [slide 34]. Mr Obradovic was heading BD Agro for
02 approximately ten years, and in those ten years,
03 a number of suspicious activities occurred in BD Agro,
04 and as explained in Respondent's Rejoinder, various
05 criminal complaints have been submitted and many
06 criminal proceedings have been initiated. A lot of
07 money went in and out of BD Agro as well, but to be
08 specific, a lot more money went out of BD Agro than it
09 went in.

10 To start with, Mr Obradovic gave a significant
11 amount of shareholder loans to BD Agro, and this in turn
12 enabled him to make a significant amount of payments
13 from BD Agro's accounts to himself, and he abused this
14 relationship substantially and repeatedly, and that is
15 explained in Respondent's Rejoinder in section I. F-2
16 and 4.

17 So what Mr Obradovic wants the Tribunal to believe
18 now is that he had no record of payments and repayments
19 of the multi-million shareholder loans [slide 35]. He
20 was also allegedly unable to obtain his own bank account
21 statements to prove these payments. We of course saw no
22 contract for these multi-million shareholder loans, and
23 Mr Rand, who apparently provided all the money paid by
24 Mr Obradovic as shareholder loans, also submitted no
25 record in that regard.

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01 This in itself says a lot and I would say it is
02 sufficient to raise serious suspicions of Mr Obradovic
03 and Claimants' unlawful behaviour.

04 Having that in mind, the only thing that Respondent
05 could have examined are the bank account statements of
06 BD Agro. These bank accounts indisputably prove that
07 the groundless outflow of the funds from BD Agro to
08 Mr Obradovic was at least half a million euros, and that
09 much is confirmed by Claimants' financial expert,
10 Dr Hern [slide 36] in his third report, in
11 paragraph 127. And I say at least half a million since
12 Dr Hern's results have been substantially manipulated
13 and reduced by Claimants' instructions, specifically
14 Claimants provided detailed instructions to their expert
15 on how to analyse the transactions, telling him what he
16 should consider as loans and what he should not consider
17 as loans, what key words he should use, what accounts
18 should he look at, how should he interpret transaction
19 codes, and so on, you can see that from Dr Hern's third
20 report [slide 37], paragraphs 123 to 126.

21 But the story does not end there. The actual amount
22 of the extracted money from BD Agro was even higher when
23 one includes loan activities not conducted through bank
24 accounts, specifically there is one known shareholder
25 loan repayment [slide 38] that was made in the form of

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01 assignment of land instead of a bank account repayment,
02 and this occurred in the period 2006/2007.

03 What happened is that Mr Obradovic thought that
04 instead of BD Agro repaying him some €400,000, it can
05 assign to him the land which Mr Obradovic resold just
06 four months after for over €1.4 million, and then again,
07 it only took three additional months for the new buyer
08 to resell the same land for €3.3 million. You can see
09 that from RE-145, RE-426 and RE-488.

10 What Claimants do, they ask the Tribunal to believe
11 that Mr Obradovic had no clue that the land in question
12 was much more valuable than the nominal set price,
13 although he managed to resell it for three times more
14 money in a matter of months.

15 Faced with an obvious case of asset extraction,
16 Claimants had to come up with some way to magically turn
17 a minus into a plus, so they said let's look at the
18 broader picture, let's include things that have nothing
19 to do with the shareholder loans, let's look at BD
20 Agro's transactions with the associated companies of
21 Mr Obradovic, and of course, let's look at Mr Rand's
22 receivables against BD Agro.

23 This is of course completely misplaced approach,
24 because the question was whether BD Agro returned to
25 Mr Obradovic more shareholder loans than it received

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01 from him, and even Dr Hern's bank transaction analysis
02 shows that it did. And what happened between BD Agro
03 and associated companies of Mr Obradovic and Mr Rand
04 simply cannot repair that result. These companies could
05 not give shareholder loans to BD Agro nor collect the
06 repayment instead of Mr Obradovic.

07 In any event, even if these transactions are taken
08 into account, they will not help Claimants to prove that
09 Mr Obradovic did not mismanage BD Agro. So as you can
10 see even from Dr Hern's calculation [slide 39],
11 associated companies to Mr Obradovic owe to BD Agro
12 RSD 5 million.

13 This analysis is, however, incomplete, as Dr Hern
14 was instructed to consider only some selected
15 transactions between these companies and BD Agro. In
16 any event, the analysis of Dr Hern is also redundant;
17 why? Because we have undisputed analytic cards of BD
18 Agro in the files that show that associated companies
19 still owe to BD Agro almost €800,000 plus interest. So
20 Inex did not save BD Agro as Claimants say, Inex owes
21 money to BD Agro, among other companies of Mr Obradovic.

22 To cut a long story short, these are the numbers
23 that cannot be disputed. First, Dr Hern had confirmed
24 that the bank accounts of BD Agro show that it repaid
25 RSD 88 million of shareholder loans more than it

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01 received [slide 40] and although the exchange rate
02 substantially changed over the years, I think that it
03 safely can be said that this amounts to close to
04 €1 million.
05 Second, the land that was assigned to Mr Obradovic
06 in order to set his €400,000 claim was resold by
07 Mr Obradovic within four months for €1.4 million and
08 then again resold for €3.3 million.
09 Third, the associated companies of Mr Obradovic
10 still remain debtors towards BD Agro for around €800,000
11 plus interest, and let me just say that this debt will
12 never be collected, as all of these companies have been
13 financially destroyed by Mr Obradovic. So BD Agro would
14 never collect that debt.
15 Therefore, even with all of their instructions and
16 stories, Claimants were obviously unable to fill out the
17 gap created by Mr Obradovic's mismanagement, they are
18 unable to prove that the money was not siphoned from BD
19 Agro, and that is as obvious as it can be. Claimants'
20 alleged investment is thus entirely tainted by
21 fraudulent conduct and as such does not deserve any
22 protection under the Treaty.
23 I will now turn to the question of the termination
24 of the Privatization Agreement. On the files, we have
25 plenty of documents concerning this topic dating from

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01 before the initiation of this arbitration, and I would
02 like to ask you that we focus on them instead on
03 subsequent witness statements, expert reports and legal
04 interpretations provided by the parties in this
05 arbitration.
06 Before I go into details, let me just briefly remind
07 you about the essential facts behind the termination of
08 the Privatization Agreement. What happened in December
09 2010 is that BD Agro indebted itself with Agrobanka loan
10 of RSD 221 million, and at the same time pledged its
11 real estate as security for this debt [slide 42]. Very
12 important, in the files we have evidence that this
13 pledge was still in place as of 13th March 2019.
14 At the same time, the large part of that money was
15 used for the benefit of other two companies, and they
16 are Inex and Crveni Signal, which are, according to
17 Claimants, also owned by Mr Rand. As Exhibits RE-1 and
18 RE-190 show, they never repaid these loans to BD Agro.
19 And the third very important fact. Already at the
20 beginning of 2011 the Agency determined that this
21 represented a breach of the Privatization Agreement, and
22 then the Agency sent a notice to Mr Obradovic and
23 requested the pledges to be deleted or Inex and Crveni
24 Signal to return the money to BD Agro, or the Agency
25 said it will terminate the Privatization Agreement. And

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01 the Agency kept saying the same in the next four years.
02 The Agency always communicated the same to Mr Obradovic.
03 So what should have been done in order to avoid
04 termination? If we adopt Claimants' narrative of
05 beneficial ownership, Mr Rand's companies should have
06 simply returned the money to his allegedly owned third
07 company, BD Agro; in other words, Mr Rand took some
08 money from BD Agro, and gave that money to his other
09 companies, and the Agency requested that he returns this
10 money. So Mr Rand did not need to give that money out
11 to the Privatization Agency, but just to move this money
12 from his right hand to his left hand. But he refused to
13 do so, and that is why the termination happened.
14 I will now deal in more detail with the questions
15 of, first, whether the parties considered the above
16 explained situation to be a breach of article 5.3.4 of
17 the Privatization Agreement that could lead to
18 termination of the Privatization Agreement, and second,
19 whether Mr Obradovic had any reason to believe the
20 termination will not happen even if he does not remedy
21 the breach.
22 In the case files we have different opinions of
23 legal experts concerning the question whether breach
24 occurred or not and whether the Agency had a right to
25 terminate the agreement or not. But what I think is

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01 very important is how the parties to the Privatization
02 Agreement understood article 5.3.4 at the time before
03 termination.
04 So let us start with the Agency. I think that the
05 most useful document, and I think that my colleagues
06 agree, is the transcript from the meeting of the
07 Commission of the Centre of Control of the Privatization
08 Agency, held on 23rd April 2015, that is CE-768. In
09 that document, you can find what was the Agency's legal
10 point of view, and what was its motivation.
11 This document reveals that members of the Commission
12 discussed various issues concerning termination of the
13 Privatization Agreement. And Claimants argue, and they
14 did it even today, that this discussion benefits their
15 case, and I respectfully disagree.
16 I would rather say that the lack of discussion could
17 be considered as bad faith when deciding of such
18 important issues as termination of multi-million
19 Privatization Agreement. Had there been any bad faith,
20 as Claimants contend, the Commission would have nothing
21 to discuss. It would not take into account different
22 opinions and options. It would not take into account
23 different interpretation of statutory and contractual
24 provisions. However, the Commission did just the
25 opposite, and had a detailed discussion of various

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01 factual and legal issues relevant in this regard.
02 In any event, whether the legal opinion and point of
03 view of the Agency and its Commission in particular was
04 correct or not could have, and I would say should have,
05 been addressed before the Serbian courts. In this
06 proceeding, however, I would say that it is crucial to
07 determine whether such understanding of article 5.3.4,
08 and the consequences of its breach, were arbitrary and
09 whether they were invented in the case of BD Agro, or
10 not.
11 And the answer is more than evident from the case
12 files, absolutely not [slide 43]. In the files, we have
13 a number of exhibits showing that the Agency acted
14 exactly the same in other cases. It has either
15 requested the breach of article 5.3.4 to be remedied
16 under the threat of termination, or it indeed terminated
17 other privatization agreements when this breach was not
18 remedied, and you will find this evidence under the
19 exhibit numbers RE-97, RE-363, RE-364, RE-369 and
20 RE-564.
21 In fact, which is also important, some of these
22 examples of Agency's practice concern previous breaches
23 of that same provision in the case of BD Agro; while
24 there are also examples of other privatizations where
25 Mr Obradovic participated as the buyer.

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01 In all of the cases, Mr Obradovic acted as requested
02 by the Agency and remedied the breach of article 5.3.4,
03 and this, of course, confirms that when it comes to the
04 breach of article 5.3.4, Mr Obradovic had the same
05 understanding as the Agency. He very well knew what he
06 had to do, and he did it, although after some delay.
07 Not so, however, in our case. In our case, there
08 are also letters of Mr Obradovic and BD Agro that
09 confirm the understanding that giving out the loans to
10 Inex and Crveni Signal from RSD 221 million loan
11 constituted a breach of the Privatization Agreement.
12 And during the whole period from 2011 to 2015,
13 Mr Obradovic communicated to the Agency about financial
14 conditions of Inex and Crveni Signal.
15 And Mr Obradovic even requested additional periods
16 during which the breach could be remedied [slide 45].
17 Mr Obradovic did not refuse to comply with the Agency's
18 request when it comes to the breach of article 5.3.4, as
19 he did with respect to, for example, the breach of
20 article 5.3.3.
21 In one of those letters sent by Mr Obradovic, in
22 July 2015, just before termination occurred,
23 Mr Obradovic explicitly noted that the auditors
24 determined that:
25 "... the buyer fulfilled all contractual obligations

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01 ... except in relation to lending to third parties
02 namely Inex ... and Crveni Signal ..."
03 And that was dated in July 2015. What is also
04 important is that all these letters of Mr Obradovic came
05 after the purchase price was already paid, meaning that
06 Mr Obradovic knew that the full payment of the price did
07 not release him from the obligation to remedy the breach
08 of the Privatization Agreement that had occurred before
09 the price was paid, that is very important.
10 And this of course again [slide 46] was in line with
11 the practice of the Agency in other privatizations. So
12 what the Agency did? It just kept with its practice.
13 As you will also notice from Mr Obradovic and BD
14 Agro's letters exchanged with the Agency, they never
15 questioned whether the breach of article 5.3.4
16 represented a ground for termination of the agreement,
17 although this particular breach was not explicitly
18 listed in the agreement as a reason for termination.
19 It was undisputed that the reason for termination
20 was in Article 41 of the Law on Privatization which
21 applied regardless of and together with the reasons
22 listed in the agreement.
23 And of course this stance cannot be even questioned
24 [slide 47] because both the Supreme Court, as well as
25 the Constitutional Court of Serbia, confirmed that it is

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01 indeed the correct stance. Needless to say, the Agency
02 again followed this practice in many other
03 privatizations.
04 When it comes to the question of whether
05 Mr Obradovic had any reason to believe that termination
06 would not happen if he did not remedy the breach, the
07 answer is clear, not.
08 As you can see from the seven letters of the Agency
09 [slide 48] that were sent during the four-year period,
10 the Agency always communicated the same to Mr Obradovic,
11 that the agreement will be terminated under Article 41a
12 of the Law on Privatization if the buyer fails to remedy
13 the breach of article 5.3.4. This was repeated in seven
14 letters of the Agency.
15 It is interesting how Claimants now insist that the
16 breach of article 5.3.4 was minor, and non-essential
17 [slide 49]. Claimants try to downplay the breach by
18 taking the amount for which the pledge was established
19 over BD Agro's land and comparing it to the inflated
20 value of BD Agro's assets.
21 However, such comparison is completely inapposite.
22 The money that Inex and Crveni Signal took from BD Agro
23 first amounted to around RSD 100 million which was
24 almost €1 million at the time. The debt was later
25 slightly reduced and remains today at RSD 70 million, so

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01 therefore the debt is worth more than one instalment of
02 the purchase price for BD Agro.

03 Claimants do not dispute the fact that the
04 Privatization Agency could have terminated the
05 Privatization Agreement due to non-payment of only one
06 instalment, which was less than this debt of Inex and
07 Crveni Signal.

08 Therefore, it is contradictory to say that the
09 breach of article 5.3.4 was insignificant. So the main
10 question here is why Mr Obradovic did not remedy the
11 breach, why Mr Rand, who claims to be the owner of BD
12 Agro, Inex and Crveni Signal, did not return to BD Agro
13 what he previously borrowed to his other companies and
14 kept the Privatization Agreement in place.

15 Instead of remedying the breach, Claimants and
16 Mr Obradovic [slide 50] repeatedly mislead both the
17 Agency but this Tribunal as well that the loan was
18 repaid to Agrobanka and that the pledge was deleted.

19 As you can see from documentary evidence, as opposed
20 to Claimants' story [slide 52], neither was the loan
21 repaid nor was the pledge deleted, nor did Inex and
22 Crveni Signal repay the money they borrowed to BD Agro.
23 And this all was in detail explained in our Rejoinder in
24 paragraphs 126 to 132.

25 I will conclude this part of the opening statement

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01 by repeating the obvious. First, Mr Obradovic knew that
02 spending part of the RSD 221 million loan for the
03 benefit of his other companies represented the breach of
04 the Privatization Agreement. He corrected the same
05 breach in the past, in the BD Agro privatization but
06 also in other privatizations.

07 Second, Mr Obradovic knew that the Privatization
08 Agreement will be terminated if he did not remedy that
09 breach. The Agency always, and I repeat, always
10 communicated that to Mr Obradovic: remedy the breach or
11 the Privatization Agreement will be terminated.

12 But Mr Obradovic did not remedy the breach, over
13 four years. The Agency gave him four years to remedy
14 the breach, and still he did not. So I would say that
15 the only possible but also expected outcome was
16 termination of the Privatization Agreement.

17 It seems that I am out of time, so I will only say
18 a few words about deletion of pledge and assignment of
19 the Privatization Agreement to Coropi and my colleagues
20 will later also address these issues.

21 First, I would like to remind the Tribunal that
22 retaining the pledge on the shares after the full
23 payment of the purchase price was as well fully in line
24 with the Agency's practice in other privatizations. So
25 the Agency again followed its practice.

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01 Second, when it comes to the request for assignment
02 to Coropi that was made on 1 August 2013, it should be
03 recalled that up until the termination of the
04 Privatization Agreement, this request was never
05 complete. And we explain that in our Rejoinder in
06 section I. E-5. The Agency simply never received all
07 the required documentation, meaning that this request
08 could not have been even approved at any point.

09 With this, I conclude my part [slide 54] of the
10 Respondent's opening presentation, and Professor Djundic
11 will take over but maybe it is the right time for the
12 break.

13 THE PRESIDENT: Yes, are we about in the middle of your
14 presentation, in terms of time not completed?

15 MS MIHAJ: Well, not in the middle.

16 THE PRESIDENT: So maybe we carry on a little bit, because
17 it is better to have a shorter second part than
18 a shorter first part.

19 PROFESSOR DJUNDIC: Members of the Tribunal, Mme President,
20 my esteemed colleagues opposite, just one issue which is
21 a housekeeping issue --

22 THE PRESIDENT: Excuse me, can we just move the screen
23 there, because I don't see you, and I like seeing people
24 who speak to me.

25 PROFESSOR DJUNDIC: As I was saying, an issue which is

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01 rather a timekeeping issue, I was wondering if I could
02 know how much time exactly do we have left.

03 THE PRESIDENT: Yes, the Secretary can tell you that.

04 MS PLANELLS-VALERO: You have one hour and 46 minutes left.

05 PROFESSOR DJUNDIC: Thank you, I apologise.

06 As Ms Mihaj said, my name is Petar Djundic and
07 I will give an opening statement on behalf of the
08 Respondent on certain issues of jurisdiction.

09 The facts presented here by Ms Mihaj prompted many
10 questions of jurisdictional character and I would say
11 unsurprisingly.

12 There is, of course, no need to take the Tribunal
13 through every aspect of jurisdictional objections
14 submitted by Respondent. There is certainly not enough
15 time to do so.

16 Instead, today I will focus on the issues of
17 jurisdiction *ratione materiae*, *ratione personae*, *ratione*
18 *voluntatis* and *ratione temporis* under the Treaties.
19 I will conclude my presentation, if the time allows me,
20 by briefly explaining why the Claimants' claims
21 represent an abuse of the ICSID mechanism.

22 Starting with the jurisdiction *ratione materiae*, the
23 main issue and the most important question here is what
24 does it mean to own a share, stock or other form of
25 equity participation in an enterprise under the

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01 Canada-Serbia BIT; or shares, bonds and other forms of
02 securities under the Cyprus-Serbia BIT? So who was the
03 owner of stock in BD Agro at the time of the alleged
04 breach?
05 Claimants obviously believe that this question
06 should be answered with reference to international law.
07 Respondent disagrees. We believe that it is Serbian law
08 that must answer the question of who acquired ownership
09 in shares in a Serbian joint stock company.
10 Our written submission contained a detailed
11 explanation on why the Share Purchase Agreement or MDH
12 Agreement, as Claimants call it, and the Sembi
13 Agreement, could not result in ownership of
14 Mr Obradovic's shares being transferred to any of the
15 Claimants.
16 In sum, the ownership of shares in a joint stock
17 company was and still is acquired through the
18 registration in the Central Securities Registry.
19 I think it is important to note that the registration
20 has never been only a way to obtain publicity but a mode
21 of acquisition of shares as well.
22 The Law on Companies relevant at the time gave
23 a list of rights belonging to shareholders, and it also
24 specified that it was prohibited save from certain
25 exceptions to transfer those rights by way of concluding

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01 contracts.
02 In turn, the 2002 and 2006 Securities Law envisaged
03 that the rights that belonged to shareholders are
04 transferred by registration of a new owner in the
05 Central Security Registry.
06 There are also several restrictions, some contained
07 in the Privatization Agreement, and some statutory in
08 character, that prevented Claimants from concluding
09 contracts such as the MDH and the Sembi Agreement.
10 Claimants' response to this has remained the same
11 throughout the whole arbitration, and it is that Serbian
12 law bears no relevance. Since their right is protected
13 and stems from international law, the right of
14 beneficial ownership and forms the notion of beneficial
15 ownership, no restriction of Serbian law applies to
16 them.
17 Members of the Tribunal, this is the way in which
18 Claimants created the perfect land for themselves,
19 a land where anything goes. As long as they invoke
20 beneficial ownership in shares, and opt for the
21 application of British Columbia or Cyprus law for their
22 contracts with Mr Obradovic, no rule of Serbian law can
23 touch them.
24 From that point on, it is indeed smooth sailing for
25 Claimants, but the fact is that no such land exists.

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01 For example, Claimants assert that Serbian law
02 allows for the beneficial ownership of shares in joint
03 stock companies, but at the same time leave the matter
04 of its acquisition and transfer entirely unregulated.
05 This is, of course, impossible; no national legal system
06 could exist in such a way.
07 Claimants, to put it simply, offer the Tribunal an
08 interpretation of treaties by which any regulations and
09 restrictions imposed by a contracting party when it
10 comes to the acquisition of equity in companies are
11 effectively irrelevant. This is plainly wrong.
12 Article 1 of the Cyprus-Serbia BIT speaks about
13 assets invested in the territory of a contracting party
14 in accordance with its rules and regulations.
15 Article 18(2)(a) of the Canada-Serbia BIT, for example,
16 declares that the BIT does not prevent parties from
17 adopting or maintaining prudential measures for
18 protection of financial market participants. Those
19 provisions would be meaningless if any restriction or
20 prohibition could be somehow circumvented by invocation
21 of beneficial ownership in securities.
22 That is the first problem with the Claimants' case
23 on jurisdiction. The other major problem relates to the
24 fact that respective contracts were actually unable to
25 create beneficial ownership of Claimants in

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01 Mr Obradovic's shares.
02 This applies to the MDH Agreement which was long
03 gone at the time that could be relevant for the
04 jurisdictional inquiry, but far more importantly, to the
05 Sembi Agreement.
06 The most significant problem with the Sembi
07 Agreement [slide 57] is the fact that it is in clear
08 contradiction with the imperative rule of Serbian law on
09 privatization, and this is, as you know, Article 41ž
10 contained in Claimants' Exhibit CE-220.
11 Under the relevant provision, the assignment of the
12 Privatization Agreement or agreement on sale of the
13 capital was possible only with prior authorisation of
14 the Agency. There is no dispute that no such
15 authorisation was ever issued or even requested when it
16 comes to the Sembi Agreement in February 2008.
17 Claimants of course once again argue that this
18 prohibition affects only the transfer of nominal title
19 in the agreement and not the beneficial ownership in BD
20 Agro's shares. This was done in Reply, in
21 paragraph 118.
22 Claimants also ask the Tribunal to simply disregard
23 the prohibition from Article 41ž. Claimants entirely
24 ignore the purpose of the provision, and the fact that
25 such interpretation would leave it without any effect

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01 whatsoever.
02 Article 41ž does not allow for partial assignment,
03 it does not allow for beneficial assignment, it
04 prohibits all unauthorised assignments of privatization
05 agreements, period.
06 The Claimants' silver bullet for all of their
07 problems is, of course, article 9 of the Sembi Agreement
08 and that is the designation of the law of Cyprus as
09 applicable, but the fact that Mr Obradovic and Sembi
10 agreed on application of the Cyprus law to their
11 contract does not change anything. Otherwise, two
12 private parties, and I emphasise this, two private
13 individuals, or a company and a private individual,
14 could always find a way around any prohibition in the
15 host state law by simply agreeing to the application of
16 whichever law suits them the best.
17 As we have heard many times during this arbitration,
18 during these proceedings, the Cypriot law allows for the
19 assignment in equity even when the original contract
20 prohibits assignment.
21 Now, this could be relevant only and only if the law
22 of Cyprus would be applicable to the issue of
23 assignability.
24 The problem again is that even under the Cypriot
25 choice of law rules, the law applicable to the

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01 assignability of the agreement is Serbian law.
02 What is more, the rule about possible equitable
03 assignment under Cyprus law comes with an important
04 exception: this is that no assignment under equity is
05 possible if the identity of the assignor was or is of
06 importance to the debtor.
07 We believe it is undisputed that the debtor from the
08 Privatization Agreement, that is the Agency, could have
09 concluded the agreement only with the winner of the
10 public auction back in 2005.
11 This, coupled with the fact that unauthorised
12 assignment was explicitly prohibited by the Law on
13 Privatization, surely demonstrates that the identity of
14 the other contracting party was of crucial importance to
15 the Agency.
16 Even if we will disregard completely the mandatory
17 rule of Serbian law, and even if we would accept that
18 the transfer of beneficial ownership in BD Agro was
19 possible separately from the nominal position of
20 a contracting party, there is one issue that still
21 remains [slide 58]: the wording of the Sembi Agreement
22 does not support the Claimants' interpretation. You
23 have now article 4 of the Sembi Agreement on the slide.
24 According to Claimants, this tiny article, this
25 short article, article 4 of the Sembi Agreement,

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01 essentially contains at least two agreements, one by
02 which Mr Obradovic agrees to transfer his beneficial
03 ownership in BD Agro to Sembi immediately after the
04 conclusion of the contract; and the other that merely
05 contemplates a future possible assignment, and that
06 would be the second sentence of article 4.
07 The problem is that the Sembi Agreement does not say
08 one word about separate transfer of beneficial ownership
09 in BD Agro. There is no designation of Mr Obradovic as
10 trustee. There is no his obligation to follow Sembi's
11 instruction in operating BD Agro's business, or to
12 continue holding shares in Sembi's interest.
13 Members of the Tribunal, there is one more issue
14 that warrants the Tribunal's attention. The Agency was
15 completely unaware of the Sembi Agreement. There are
16 tens of thousands of pages of documents created during
17 the relationship between the Agency and Mr Obradovic
18 concerning BD Agro, but not one mention of the Sembi
19 Agreement.
20 So the Serbian Privatization Agency concludes
21 a contract with a Serbian citizen, it communicates with
22 him for ten years, it warns him to live up to his
23 contractual obligations, it negotiates possible
24 assignment with a potential Canadian investor, finally
25 terminates the contract with notice directed at

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01 Mr Obradovic, only to subsequently find out that the
02 potential Canadian investor was the true owner of BD
03 Agro from the onset.
04 Now, all of this effectively boils down to the
05 Agency being in contractual relationship with Claimants
06 without ever being aware of that.
07 Article 2 of the Canada-Serbia BIT [slide 59]
08 applies to measures adopted by a party relating to an
09 investor of the other party and the covered investment.
10 Respondent's position, our argument is that there is
11 no legally significant connection between the
12 termination of the Privatization Agreement and Claimants
13 as deemed necessary by the Methanex tribunal. An
14 agreement, the Sembi Agreement, which was obviously
15 created in breach of imperative rule of Serbian law,
16 certainly cannot create a legally significant
17 connection.
18 Under Article 2 of the BIT, it is not enough that
19 the termination of the contract with Mr Obradovic simply
20 affects Claimants' rights under the Sembi Agreement. In
21 its essence, and when it's stripped of false semantics
22 and sophism, the Claimants' argument is that Sembi
23 suffered loss due to the Agency's unlawful termination
24 of the Privatization Agreement. This is basically the
25 claim.

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01 Sembi's shareholders suffered loss as a result of
02 Sembi's loss, and hypothetically speaking, even
03 creditors of Sembi's shareholders also suffered loss due
04 to the loss inflicted on shareholders. This does not
05 mean that the termination of the Privatization Agreement
06 relates to them all.

07 As a matter of common sense, a state cannot be held
08 responsible for all possible consequences of its acts.
09 This was precisely the reasoning of the Methanex
10 tribunal in interpreting the NAFTA provision
11 corresponding to Article 2 of the BIT [slide 60]:

12 "The possible consequences of human conduct are
13 infinite", but the law sets the limits on
14 responsibility.

15 The Methanex tribunal uses an example of a situation
16 in which, in traditional legal context, a legally
17 significant connection is missing:

18 "... the contract-breaker is not generally liable
19 for all the consequences of its breach even towards the
20 innocent party, still less to persons not privy to that
21 contract."

22 Members of the Tribunal, this is the example that
23 perfectly captures the essence of the dispute at hand.

24 According to the Claimants, the Agency has always
25 known that Claimants were the true owners of BD Agro.

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01 reputable Canadian investor willing to financially
02 support BD Agro of course once the assignment of the
03 agreement was allowed.

04 So according to Claimants, they were negotiating
05 potential assignment with the Agency, putting pressure
06 on the Agency to authorise it, while at the same time
07 both parties were aware that the assignment already
08 happened, and that the Claimants are the true owners of
09 BD Agro's capital.

10 The argument does not fly, especially in the light
11 of evidence presented here.

12 With regard to the issue of control under the
13 Canada-Serbia BIT, we submit that the alleged control of
14 Mr Rand over Mr Obradovic's shares or over BD Agro is
15 ultimately always a question of law. There must be
16 legal ground establishing control, there must be a valid
17 contract that can establish control under the relevant
18 rules of corporate law. Otherwise if the notion of
19 control would be interpreted as suggested by Claimants
20 as de facto or informal control, there is no way to
21 objectively establish which person or entity controlled
22 the decision-making process of Mr Obradovic.

23 For example, it is perfectly conceivable that the
24 ultimate de facto owner or controller of BD Agro was not
25 Mr Rand but some member of the Lundin family, and

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01 Looking at the documents in the record, however, the
02 story simply does not add up.

03 This is perfectly clear from the entire affair about
04 the failed attempt to assign the agreement to Coropi in
05 2013. The sequence of the events is as follows:
06 [slide 61] in 2008, Mr Obradovic supposedly assigns all
07 his rights, title and interest in and of the
08 Privatization Agreement. He never notifies the Agency
09 about the assignment, and continues to communicate with
10 the Agency for several years.

11 In 2013, as BD Agro reaches the brink of financial
12 collapse, a potential Canadian investor makes an initial
13 contact with the Agency, offering, through his attorney,
14 to invest in BD Agro and to take over the Privatization
15 Agreement. This is an email from Mr Jakovljevic to the
16 Agency, and this email was also shown before by my
17 colleague, Ms Mihaj.

18 In November 2014, Mr Markicevic, acting as general
19 director of BD Agro, sends a letter to the Agency, again
20 referring to Mr Rand as an investor who expressed
21 serious interest in taking over the majority
22 shareholding in BD Agro and supporting the consolidation
23 of the company.

24 Finally, in September 2015 [slide 62], Mr Obradovic
25 sends a letter to the Agency again mentioning the

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01 I believe that it is self-evident that the Serbia-Canada
02 BIT is not meant to protect Swiss or Swedish investors
03 in Serbia.

04 In any event, members of the Tribunal, whatever the
05 true meaning of control should be, the Treaty cannot be
06 interpreted in a way to protect control over an
07 enterprise acquired in breach of Respondent's laws, and
08 here I remind you of Professor Radovic's conclusion in
09 her second report, paragraphs 90 to 92, and
10 paragraph 97, that voting agreements concluded between
11 Mr Rand's companies and Mr Obradovic during Mr Rand's
12 tenure as a member of BD Agro's board of directors are
13 null and void ex lege.

14 Nevertheless, should the Tribunal decide that the
15 unqualified de facto control is all that is required
16 under Article 1 of the Canada-Serbia BIT, there is
17 another important point here, that is that finding of de
18 facto control needs to satisfy an evidentiary threshold
19 which is exceptionally high.

20 In the words of the Thunderbird tribunal, it must be
21 established beyond any reasonable doubt. Now this is
22 indeed a high threshold.

23 As Ms Mihaj already explained, if we exclude
24 testimonies of Mr Obradovic and Mr Rand, there is no
25 single evidence, no piece of paper, no email that would

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01 contain any instruction of Mr Rand directed to
02 Mr Obradovic concerning the business of BD Agro.
03 This is very peculiar, bearing in mind the statement
04 made by the two gentlemen, that Mr Obradovic always
05 followed every instruction of Mr Rand. Were all those
06 instructions verbal, over a period of ten years? This
07 is highly unlikely.
08 Another troubling issue here is the flow of money
09 from BD Agro to Mr Obradovic. To control an investment
10 means, among other things, to receive the economic
11 return of the investment, so what happened with those
12 returns in case of BD Agro?
13 A large amount of money was transferred from BD
14 Agro's accounts to Mr Obradovic directly. Has any of
15 that money ever reached Mr Rand? Has Sembi ever
16 received any dividends from BD Agro? There is no
17 evidence on the record for that.
18 What is certain is that some money from BD Agro was
19 transferred to other companies that were bought in
20 privatization by Mr Obradovic. Claimants of course
21 allege again that those companies, and those are Crveni
22 Signal, PIK Pester, Inex and Obnova, also belong to
23 Mr Rand.
24 The fact is however that shares bought by
25 Mr Obradovic in this process were transferred to

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01 a Cypriot limited liability company called Kalemegdan
02 Investments Ltd. And Kalemegdan Investments, as you
03 see, in turn is owned by Mr Obradovic and Mr Obradovic
04 alone.
05 Let me now turn to the *ratione voluntatis* objection.
06 Respondents' *ratione voluntatis* objection --
07 THE PRESIDENT: Sorry for interrupting you but would this be
08 a good place to have the break?
09 PROFESSOR DJUNDIC: It is fine with me.
10 THE PRESIDENT: Good, let's take 15 minutes then, and resume
11 then.
12 (3.26 pm)
13 (A short break)
14 (3.45 pm)
15 THE PRESIDENT: We are ready, I think, to resume. Before,
16 Professor Djundic, you start, we were thinking about how
17 to make sure who attends in the other room, and maybe
18 the easiest way is that we rely on the parties, that you
19 check who is there on both sides, and then we simply
20 rely on you, because right now we see the room but of
21 course tomorrow, if we have a remote witness, we will
22 use that screen, and it may also be a little
23 distracting, I don't know whether you like it or not.
24 And the only people who cannot be there are really fact
25 witnesses who are not parties and who have not yet

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01 testified.
02 Can we leave it like this and we rely on counsel to
03 make sure there is no one there who is not authorised?
04 MR PEKAR: Yes, Mme President.
05 DR DJERIC: We also agree.
06 THE PRESIDENT: Fine, then we can continue with the
07 Respondent's opening argument. Professor Djundic, you
08 have the floor.
09 PROFESSOR DJUNDIC: Thank you, Mme President. Respondent's
10 *ratione voluntatis* objection concerns two main issues.
11 The first one is the issue of the illegality of
12 Claimants' investment, the second one is dealing with
13 the lack of jurisdiction for the claim with regard to
14 loss allegedly suffered by MDH Serbia.
15 In terms of illegality of Claimants' investment, if
16 Claimants' assertions are taken as true, acquisition of
17 BD Agro's capital specifically by way of the Sembi
18 Agreement was done in breach of the 2006 Securities Law,
19 the 2001 Law on Privatisation and the 2006 Takeover Law.
20 All of the provisions of Serbian law were mandatory in
21 their nature.
22 The essence of Respondent's argument is simple:
23 should the Tribunal find the Claimants acquired property
24 rights based on British Columbia or Cyprus law, those
25 rights would be obtained in breach of mandatory

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01 provisions of Serbian law.
02 There is, of course, no room for choice of law
03 analysis here, the only relevant law is the host state
04 law.
05 In addition to that, in our submissions we have
06 already explained how fraudulent behaviour of
07 Mr Obradovic allowed Claimants to obtain BD Agro and to
08 squeeze out its capital to the detriment of minority
09 shareholders and the company itself.
10 One example of such behaviour was misrepresentation
11 at the public auction that led to the conclusion of the
12 Privatization Agreement. Claimants misrepresented the
13 true role of Mr Obradovic during the acquisition of BD
14 Agro.
15 Again, if what Claimants argue is true, that Mr Rand
16 entered the bidding process through Mr Obradovic, this
17 is the way in which he obtained undue advantage over
18 other participants at the auction, and we have heard
19 today that there were three other participants at the
20 auction.
21 Only Serbian natural persons were at the time
22 allowed to pay the purchase price for capital in
23 instalments. This incentive was not offered even to
24 Serbian legal persons, and this is evident from the 2009
25 Decree on Sale of Capital by Public Auction, Article 31,

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01 Respondent's Exhibit RE-217; and the 2005 Decree,
02 Article 39, Respondent's Exhibit RE-218.
03 Claimants argue that Mr Rand was under no obligation
04 to reveal his role to the Agency before the auction
05 since the Agency did not require this. This cannot
06 stand. Naturally, the Agency did not ask Mr Obradovic
07 to reveal his beneficial owner, since natural persons
08 cannot have beneficial owners. I believe that Claimants
09 are in agreement with this statement as well.
10 What the Agency did ask from every participant in
11 the auction was to submit a proper authorisation in case
12 a participant was to attend the auction as
13 a representative of another person. Mr Obradovic of
14 course confirmed that he was acting in his own name.
15 Let me remind you here [slide 65] that Mr Deane,
16 Claimants' legal expert on British Columbia law, stated
17 that the effect of the MDH Agreement was to create
18 a principal-agent relationship between MDH and
19 Mr Obradovic, this is the Deane report, paragraph 101,
20 so if Mr Obradovic really acted on behalf of Mr Rand
21 during the auction, this was a fraud.
22 Claimants assert that the illegality objection was
23 made belatedly and implied that it was made in bad
24 faith. Respondent respectfully submits that the
25 Tribunal should take this objection into account.

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01 Three points are important here. First, the
02 legality objection was not belated, it was presented in
03 the Respondent's Counter-Memorial in accordance with
04 Article 41(1) of the ICSID Arbitration Rules. It was
05 further developed in the Respondent's Rejoinder. Most
06 importantly, Respondent's arguments from the Rejoinder
07 were all based on the issues and facts that had been
08 discussed previously by the parties themselves.
09 This is, for example, the case with the issue of the
10 alleged disclosure of Mr Rand's beneficial ownership to
11 the Agency, discussed in Memorial paragraph 304, and
12 Counter-Memorial paragraphs 252 to 275, or with the
13 fraudulent behaviour of Mr Obradovic in repayment of the
14 shareholder loans. This was discussed in
15 Counter-Memorial, paragraphs 183 and 184 and Reply,
16 paragraphs 144 to 153.
17 Second, even if the legality objection was to be
18 deemed belated or even had it never been made, the
19 Tribunal would still have an authority to examine on its
20 own motion any issue of fact in the jurisdiction of
21 ICSID or its own competence.
22 If there is ever a reason to do so, it is when there
23 is a claim that the investment was obtained through
24 fraudulent behaviour. This is the issue of
25 international public policy, and since the legality

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01 requirement impacts the Tribunal's jurisdiction, the
02 Tribunal should consider to have a duty to assess the
03 issue ex officio independently from the assessment of
04 facts or even legal qualification of those facts offered
05 by the parties.
06 The final point with regard to admissibility of the
07 Respondent's illegality objection. The Tribunal should
08 consider the fact that Claimants did have an opportunity
09 to respond to all of the arguments contained in
10 Respondent's Rejoinder.
11 In terms of timing of the legality's assessment,
12 Respondent accepts that the jurisdictional inquiry into
13 illegality of the investments should cover the time of
14 making the investment. What it does not accept is
15 Claimants' argument that the acquisition of BD Agro was
16 a one-time deal that was finalised on the day the
17 Privatization Agreement was concluded.
18 Under the agreement, acquisition of the entire
19 bundle of property rights for the buyer was conditioned
20 upon payment of the purchase price in full, and this is
21 evident from article 2.1, which you can also see on the
22 slide [66].
23 In other words, ownership of BD Agro's capital was
24 not fully acquired until the payment of the purchase
25 price in full. This is why the illegality analysis in

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01 terms of jurisdiction must include the entire time
02 period up until 8th April 2011.
03 As for the second part of the *ratione voluntatis*
04 objection, Claimants in this arbitration, and in
05 particular Mr Rand, should not be allowed to claim
06 damages for harm allegedly suffered by MDH Serbia under
07 Article 21(1) of the Canada-Serbia BIT [slide 67].
08 This provision allows an investor to claim damages
09 for loss or damage incurred by the investor directly.
10 In this case, MDH Serbia is a Serbian limited liability
11 company [slide 68] seated in Belgrade owned by Mr Rand.
12 In turn, MDH Serbia itself owned 3.9% of shares in BD
13 Agro that were allegedly expropriated by Respondent. It
14 follows that the damage supposedly inflicted by
15 Respondent was incurred by MDH Serbia, while damage
16 suffered by Mr Rand was of a reflective nature,
17 a decrease of value of his shareholding in a local
18 company.
19 In such a case, the investor must follow the avenue
20 established by the BIT [slide 67], a claim on behalf of
21 the local enterprise in accordance with paragraph 2 of
22 Article 21.
23 The very same position was adopted by the NAFTA
24 Tribunal in *Bilcon v Canada* in January 2019. Of course
25 NAFTA contains two provisions with the exact same

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01 wording as paragraphs 1 and 2 of Article 21 of the BIT.
02 The persuasive reasoning and eloquent reasoning,
03 I would say, of the Bilcon tribunal was already
04 reproduced in the Respondent's Rejoinder. I will not
05 repeat it here, I have only two short points.
06 First, the Tribunal should consider the fact that
07 the Bilcon tribunal finally endorsed the interpretation
08 that has been consistently argued by the Government of
09 Canada for decades in the NAFTA context, and that is
10 that an investor cannot sue in its own name for loss
11 suffered by his enterprise.
12 So the practice of the other state party of the BIT,
13 which is the Government of Canada, of course, concerning
14 this particular issue, is completely in accordance with
15 the interpretation offered here by the Republic of
16 Serbia.
17 The second point is that the issue is not merely of
18 academic importance. If damages owed to the local
19 enterprise are paid to the shareholder and not to the
20 enterprise itself, creditors of the enterprise could not
21 satisfy their claims against the amount of damages.
22 In this case, MDH Serbia owes almost RSD 9 million
23 to BD Agro alone, as you can see, not counting any other
24 potential creditors of MDH Serbia [slide 69].
25 In terms of *ratione personae* objection, Respondent

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01 submits that Sembi cannot be deemed as investor under
02 Article 1(3)(b) of the Cyprus-Serbia BIT [slide 70].
03 Evidently in order to qualify as an investor of
04 a contracting party, a legal entity needs to be both
05 incorporated according to the laws and regulations of
06 the party and to have its seat in the territory of the
07 same party.
08 Claimants argue that the term "seat" should be
09 interpreted by reference to the law of Cyprus and that
10 under such law, "seat" means "registered office", but
11 they are wrong on both accounts. The notion of seat
12 must be given an order and a meaning under international
13 law and in the light of object and purpose of the BIT.
14 There are several important points here but I will
15 try to concentrate in the interests of time on only one
16 of those points. Interpretation of the BIT in this
17 regard is governed exclusively by international law.
18 Reference to municipal law is possible only when
19 permitted by the BIT. This is the case when a treaty
20 contains an express *renvoi* to municipal law of a party.
21 Article 1(3)(b) contains indeed *renvoi* to municipal
22 law of contracting party but only with regard to the
23 criterion of incorporation. There is no reference to
24 municipal law when it comes to the second criterion, the
25 criterion of seat.

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01 The only argument that Claimants offer is that the
02 term "seat" must be interpreted according to the law of
03 Cyprus because, according to them, there is no
04 established uniform definition of "seat" in
05 international law. But the lack of uniform definition
06 in international law is, of course, no reason for the
07 Tribunal to abstain from its duty to interpret the
08 Treaty.
09 Now, Sembi does not have a seat in Cyprus, because
10 Cyprus is not the place of its effective management.
11 Claimants argue that Sembi meets the *Tenaris* test
12 for holding companies but the fact is that Sembi is much
13 more than a holding company. According to its articles
14 of association, and this is Claimants' exhibit CE-866,
15 Sembi is registered for more than 40 other activities,
16 unlike in *Tenaris*, where the company was prohibited by
17 its articles of association in engaging in any other
18 commercial or industrial activity.
19 Sembi does not engage in any of those 40 or more
20 activities in Cyprus. A testament to its inactivity is
21 the fact that it has even failed to submit mandatory
22 annual returns under the Cypriot Law on Companies since
23 2011.
24 Second, the place of annual shareholders' meetings
25 was considered an important criterion for determining

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01 the place of effective management in *Tenaris*. There is
02 no evidence that shareholders' meetings of Sembi was
03 ever held in Cyprus, not even once.
04 Sembi does not own or rent any property in Cyprus.
05 Accounting and other technical services are provided to
06 Sembi by HLB, a company providing similar services to
07 other clients as well.
08 Sembi does not have any employees in Cyprus. Two
09 out of four of Sembi's directors were simply provided
10 again by HLB.
11 Critically, there is no dispute that the heart and
12 soul of Sembi has always been Mr Rand. Virtually all
13 business decisions of Sembi, according to Claimants,
14 were made by its ultimate owner who resides in Canada.
15 There is no evidence that Mr Rand ever attended any
16 board of directors or shareholders' meetings in person
17 or even that he has ever set foot in Sembi's office in
18 Cyprus. This is quite different from circumstances in
19 *Tenaris*, where Venezuela was unable "to point to any
20 consistent act of management of *Tenaris* itself" taking
21 place out of Luxembourg.
22 All of the acts of management of Sembi are taken
23 outside Cyprus. As a result, Sembi has no seat in
24 Cyprus and it is not an investor under the BIT.
25 With regard to the *ratione temporis* objection, as

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01 for temporal jurisdiction of the Tribunal, Respondent
02 maintains that the Tribunal lacks jurisdiction *ratione*
03 *temporis* under the Canada-Serbia BIT for reasons
04 explained in previous submissions.
05 At this point, I would like to address specifically
06 the issue of the alleged failure to delete the pledge on
07 Mr Obradovic's shares in BD Agro.
08 This is quite obviously a claim which falls out of
09 the Tribunal's jurisdiction *ratione temporis*. Of
10 course, Respondent does not dispute that the breach of
11 an international obligation can have a continuous
12 character under the Articles of State Responsibility.
13 The problem here is that the retention of pledge was not
14 a continuous breach of an international obligation for
15 two main reasons.
16 First, it was not the breach of an international
17 obligation. Refusal to delete pledge is a typical
18 contractual breach. The breach of a contract by a state
19 is not alone and of itself a breach of international
20 law. This is not, as Claimants would have it, an issue
21 of attribution. Whether or not the breach of a contract
22 can be attributed to a state has nothing to do with the
23 question of whether the obligation is an international
24 obligation.
25 This is the issue that comes under the scope of

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01 Article 3 of the Articles of State Responsibility and
02 the commentary of Article 3 is clear [slide 72]:
03 "... an act of a State cannot be characterised as
04 internationally wrongful unless it constitutes a breach
05 of an international obligation ..."
06 A simple breach of contract cannot just magically
07 evolve into a breach of international obligation once
08 a treaty comes into force, unless it is so provided by
09 the treaty itself.
10 Claimants argue that it can, and they point to *SGS v*
11 *Philippines* award, but this only serves to illustrate
12 the Respondent's point. There, the *Swiss-Philippines*
13 *BIT* contained an umbrella clause which was interpreted
14 to serve the exact purpose, to transform the continuous
15 breach of a contract into a breach of the treaty once
16 the treaty became applicable.
17 Members of the Tribunal, as you are aware, there is
18 no umbrella clause in the *Canada-Serbia BIT*.
19 The second point, and I will talk about this point
20 really shortly, is that the Agency's refusal to release
21 the pledge was not a continuous act [slide 73]. The
22 argument is that not every omission of refusal to act is
23 of continuous nature. A refusal to act can also be
24 definitive and placed at a certain point in time. This
25 is the position that was of course mentioned by the

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01 international tribunals on several different occasions.
02 Let me conclude by briefing explaining why the
03 Claimants' claims represent the abuse of process. There
04 is no doubt that Mr Rand was involved in BD Agro's
05 business, he was one of the company's creditors, and at
06 a certain point a member of its management. But he
07 never became the majority owner of BD Agro.
08 Since mid-2013, Mr Rand actively attempts to take
09 over BD Agro from Mr Obradovic. This is evident from
10 numerous documents created by Mr Obradovic, by BD Agro's
11 management, and Mr Rand himself, and presented earlier
12 by my colleague, Ms Mihaj.
13 In all of these documents, Mr Rand was introduced to
14 the Agency and the Ministry as a reputable Canadian
15 investor ready to financially assist BD Agro, and
16 acquire BD Agro's shares from Mr Obradovic.
17 Throughout this time, that is between 2013 and 2015,
18 representatives of Mr Rand were negotiating with the
19 Agency about transfer of the agreement from Mr Obradovic
20 to one of Mr Rand's companies, *Coropi Holdings*. The
21 agreement was terminated in October 2015 and the
22 authorisation for the transfer was never obtained.
23 In 2015, there is a domestic dispute arising from
24 the contract concluded between a Serbian citizen,
25 Mr Obradovic, and the Serbian Privatization Agency.

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01 In February 2018, the same dispute becomes
02 international. The very same persons and entities that
03 once attempted to obtain the Agency authorisation to
04 take over the agreement and shares in BD Agro are now
05 claiming that the authorisation is irrelevant, and that
06 they were the owners of BD Agro all along.
07 Members of the Tribunal, this proceedings is
08 effectively used as an attempt of Claimants to collect
09 what is presumably owed to them by Mr Obradovic based on
10 their previous dealings.
11 Mr Obradovic is included in this effort, and he is
12 investing his witness statements, witness statements
13 which are contradicted by material evidence on the
14 record at every step of the way.
15 This is the effort aimed at manipulating the ICSID
16 mechanism and as such should not be rewarded. On the
17 contrary, the Tribunal should dismiss claims submitted
18 in bad faith.
19 This concludes this part of Respondent's opening,
20 I thank you for your attention and I leave you in the
21 hands of Dr Djerić.
22 THE PRESIDENT: Thank you.
23 DR DJERIC: Thank you, Mme President. I will conclude our
24 presentation, and I am sorry that I have to keep you for
25 another hour at the end of this long day but please bear

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01 with me. I hope not to bore you.
02 I will deal with the merits and compensation, but
03 I will not deal with various breaches and why there were
04 no breaches alleged, because that has been amply
05 discussed in our written submissions. I will deal with
06 two issues related to merits, one is attribution,
07 another is the nature of the acts alleged or the nature
08 of the measures, and then I will move on to
09 compensation.
10 First, as regards the attribution, generally
11 speaking, Claimants' attribution case [slide 77] is
12 built on two assumptions. One is that Respondent,
13 specifically the Ministry of Economy, controlled the
14 Privatization Agency; another assumption is that
15 privatization is a process of implementation of a public
16 purpose and the public policy, and as such is
17 a governmental process, which essentially makes all the
18 conduct of the Privatization Agency governmental in
19 nature. I submit to you that neither of these
20 assumptions is accurate.
21 Let me begin by underlining several points about the
22 legal position of the Privatization Agency [slide 78]
23 that are relevant for the question of control, and for
24 various forms of attribution.
25 First, as you know, the Privatization Agency had

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01 a separate juridical personality from Respondent, and
02 this is not a formality, as Claimants will try to
03 present it. This creates a presumption that there is no
04 attribution of the Agency's conduct to Serbia, and I can
05 refer you to many authorities on this point, but here
06 I will refer you to the ILC Commentary.
07 Second, the Privatization Agency had managerial
08 independence from Respondent [slide 79], and Claimants
09 on this point argue that the governing board and the
10 director of the Agency were appointed by the Government,
11 which is true, but is not conclusive in the context of
12 attribution. For example, in *Almås v Poland*, the
13 tribunal ruled that there was no attribution of the
14 conduct of the Polish institution which managed the
15 state agricultural land, although its management was
16 appointed by the government.
17 In this context, I would also like you to note
18 [slide 80] that Claimants have completely failed to
19 address the testimony of Mr Cvetkovic, a former director
20 of the Agency, who testifies that he was completely
21 independent in taking his decisions.
22 Third, the Agency was financially independent. The
23 Claimants of course disagree [slide 81] and they argue
24 that the money proceeds from the selling of
25 socially-owned companies were not retained by the Agency

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01 but transferred to the State budget. This is again
02 true, but irrelevant, in light of the fact that the
03 Agency had its own budget, it was financed from its own
04 revenues, and very importantly, it decided about the
05 disposal of its budget by itself.
06 I will now, having set this context of the
07 attribution issues, move to the specific rules of
08 attribution.
09 In the context of article 4, Claimants argue that
10 Agency was a de facto organ of Respondent but they fail
11 to provide any evidence that would even remotely begin
12 to fulfil the international standard for de facto organs
13 which you know very well is the standard of complete
14 dependence, which was formulated, so to say, in this
15 very building by the International Court of Justice.
16 I mentioned the Law on Privatization Agency provides
17 for managerial and financial independence of the Agency
18 [slide 83] and Mr Cvetkovic, the director of the Agency
19 at the time, testifies that this indeed was the case.
20 Further, the lack of independence, let alone
21 complete dependence, the lack of complete dependence in
22 any case, is vividly illustrated by the example of the
23 Agency's insistence on seeking Mr Obradovic's compliance
24 with the Privatization Agreement, which was accompanied
25 by a threat of termination [slide 84], despite of and

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01 contrary to the Ministry of Economy's position that
02 there was no economic justification to terminate the
03 agreement. That was mentioned today, for example, by
04 Claimants.
05 Is it possible to imagine that an entity completely
06 dependent on the Ministry would in this way ignore the
07 Ministry's express position?
08 Second, Claimants also failed to demonstrate
09 attribution under Article 8 of the ILC Articles
10 [slide 85]. Now I will just recall that the applicable
11 standard requires that instructions, direction and
12 control must be exercised not only generally but with
13 regard to specific conduct, a specific situation. So
14 all Claimants' talk about alleged general control
15 through appointments, finances and similar is not only
16 inaccurate, it is also insufficient for attribution
17 under Article 8.
18 We have to look at the specific conduct and see
19 whether instructions, directions and control were given
20 related to this specific conduct. And this also does
21 not obtain in the present case.
22 Specifically, there are two actions of the
23 Privatization Agency that Claimants argue were performed
24 under Respondent's instructions, direction and control,
25 that is their Reply at paragraph 986. One is refusal to

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01 release the pledge over the shares, and another is
02 termination of the Privatization Agreement.
03 I will discuss these two by starting with Claimants'
04 argument that concerns both these actions. According to
05 Claimants, since the Commission for Control within the
06 Privatization Agency decided on both these actions, and
07 since the majority of the members of the Commission for
08 Control, especially the majority of the members who
09 actually made the actual decisions, comprised members
10 coming from the Ministries, Claimants say it is clear
11 that the Agency acted under the government control and
12 direction.
13 Specifically, they state that the decision to
14 terminate was made by three members of the Commission
15 and two were coming from the Ministry and one member was
16 coming from the Agency, so for them, there is
17 instruction, direction and control.
18 Let me first note here that the parties agree that
19 the Commission was a body within the Privatization
20 Agency [slide 88]. Second, it is also clear that the
21 Commission adopted these decisions as a body. These
22 were not decisions of its members in their individual
23 capacity, these were decisions of the Commission itself.
24 The Commission as a body within the Privatization Agency
25 is clearly different from its individual members, and

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01 different from the Ministries from where the members are
02 coming. So we submit that the Commission has its own
03 will, distinct from the will of its members, and this is
04 not something new in international law, there are many
05 authorities that discuss this distinction, and I can
06 point you to the RLA-134, that is the Institut de Droit
07 International, there is also commentary of the ILC
08 Commission, et cetera. Claimants completely ignore this
09 distinction.
10 Claimants' argument is also absurd. Following their
11 logic, had two members from the Privatization Agency sat
12 on the Commission, indeed the majority who adopted the
13 decision, and if there were only one member coming from
14 the Ministry, and that could well be, there would be no
15 attribution. So the attribution changes according to
16 the composition of the members who are actually present
17 at the session and deciding. This is contradictory, and
18 this is obviously absurd.
19 Coming to the notice of termination of the
20 Privatization Agreement [slide 89], which is one of the
21 crucial points in the case, and in the context of
22 attribution, Claimants say obviously that it came as
23 a result of the instructions from the Ministry and from
24 the Ombudsman.
25 I invite you here to consider the substance of the

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01 communications from the Ministry and the Ombudsman, and
02 I submit that one immediately sees that these
03 communications do not reveal that either of these bodies
04 or organs instructed or directed the Agency to terminate
05 the Privatization Agreement. Rather, both of them
06 asked, invited the Agency to make a decision about the
07 Privatization Agreement, and if you look at the text of
08 the relevant documents [slide 90] you see that as far as
09 the Ministry is concerned it, one, stated that the
10 Agency should grant an additional time limit to
11 Mr Obradovic to provide evidence that he complied with
12 the Privatization Agreement. This is the only specific
13 statement from the Ministry to the Agency. And two, the
14 Ministry stated that if Mr Obradovic failed to provide
15 such evidence, the Agency was to "undertake the measures
16 within its legal [powers]", so there was no mention
17 specifically of termination.
18 It is also important that there was a mention of
19 "the measures" which clearly shows that there was
20 a range of measures that the Agency could take, none of
21 which was singled out or mandated by the Ministry. The
22 decision was up to the Agency. As far as the Ombudsman
23 is concerned, he also did not direct the Agency to
24 terminate the Privatization Agreement [slide 91], it
25 rather stated that it should "take necessary measures to

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01 determine for itself whether all conditions stipulated
02 by the Law on Privatization for termination have been
03 fulfilled."
04 You will also remember that the Ombudsman could only
05 recommend what an entity should do. His recommendations
06 were and are not binding.
07 So I think it's clear from these communications that
08 the Ministry of Economy or the Ombudsman did not
09 instruct, direct or control any specific conduct, they
10 did not tell the Privatization Agency what its decision
11 or conduct should be. This was up to the Agency, which
12 had a choice to make. One, either to terminate the
13 Privatization Agreement, which it actually did; or two,
14 to set yet another deadline for compliance; or three, to
15 issue a certificate that the buyer complied with the
16 agreement. So there were three possible outcomes.
17 The Privatization Agency eventually decided to
18 terminate the Privatization Agreement, but this was done
19 following careful deliberations in the Commission for
20 Control and my colleague, Ms Mihaj, has mentioned that
21 already.
22 I would just invite you to read these deliberations,
23 the transcript is on file, and not to rely on
24 Claimants', I would venture to say, manipulation of the
25 snippets from these stenographic notes, and we have

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01 exposed their method in the Rejoinder, at paragraphs 146
02 to 155. I will say nothing more about the deliberations
03 of the Commission.

04 Now I will move to the question of exercise of
05 governmental powers, which is the second source where
06 Claimants seek support for their attribution case.

07 Claimants generally argue [slide 92] that all
08 conduct of the Privatization Agency during the
09 privatization is attributable to Serbia, because
10 privatization serves a social purpose, while the Agency
11 implements and enforces this social purpose through its
12 role in the process of privatization, which constitutes
13 a sovereign activity. You can see their whole case in
14 the Reply at paragraph 912.

15 In this way, Claimants actually assume that the
16 social purpose of the privatization, and the role of the
17 Agency in implementing this social purpose, make the
18 Agency a governmental organ in the sense of Article 4 of
19 the ILC Articles.

20 What Claimants forget is that privatization is by no
21 means exclusively a governmental process. It has also
22 important commercial and private law elements, and in
23 particular it has these elements as regards sales
24 agreements, in our case the Privatization Agreement.

25 So this means that the Privatization Agency may well

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01 participate in various ways in privatization, both as an
02 entity entrusted with certain governmental powers but
03 also in private commercial capacity, and this is
04 particularly so with regard to privatization agreements,
05 and so we have to look in each specific case in what way
06 the Agency participates, and what is the nature of its
07 actions.

08 I would just ask here a question, which is related
09 to Claimants' argument that since privatization is
10 a governmental process, everything done within the
11 privatization is governmental, which is based on the
12 public policy nature of the privatization.

13 Now, why would the public policy nature of a process
14 turn that process necessarily into a governmental
15 process?

16 We know from international law that many
17 non-governmental entities could exercise governmental
18 powers, and then we have attribution under Article 5,
19 but there are certain rules under Article 5, and when
20 they act under Article 5, we know that these same
21 entities can also act in a commercial manner in other
22 matters, and in that case, conduct is not attributed to
23 the state.

24 I submit that Claimants' approach which draws
25 attribution from the public purpose or character of an

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01 activity would widen the scope of attribution beyond any
02 limits. The result would be that any implementation of
03 a public policy by separate entities or separate
04 companies, for example in the process of privatization,
05 on the process of healthcare, in the process of
06 education, would entail attribution of their conduct to
07 the state, and as you well remember, in the Jan de Nul
08 award, it was underlined that what matters is not the
09 public purpose or character of an activity, but the use
10 of governmental authority in the specific case and
11 I submit that this undermines all Claimants' argument.

12 In fact, Claimants' argument would dispose with the
13 existing customary international rules of attribution.
14 It would do away with the standard of de facto organs;
15 it would do away with the presumption that separate
16 juridical entities, there is a presumption that there is
17 no attribution of their conduct to the state; and it
18 will obviously make Article 5 of the ILC Articles
19 completely redundant, and would do so by stating that
20 generally all acts of an entity must be considered
21 governmental just because it participates in a process
22 that implements a public purpose.

23 Now I will make a small, so to say, excursion and
24 will mention the cases of the European Court of Human
25 Rights on which Claimants rely, and these are two cases

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01 in which the Privatization Agency was characterised
02 "itself a State body" [slide 93]. I submit to you, if
03 you look at the cases, you will see that this was said
04 in passing, it was said without any meaningful analysis
05 of the relationship between the Government and the
06 Privatization Agency, and there was not even a reference
07 to Article 4 or Article 5 or whatever.

08 I must also say or remind you that the European
09 Court of Human Rights was unfortunately heavily
10 criticised for its interpretation of international law
11 rules on attribution, and this, I have to say with
12 regret, commands certain caution in this context.

13 This criticism continues, I have just recently read
14 an article in the last issue of the American Journal of
15 International Law, also dealing with a very interesting
16 case against Azerbaijan and Hungary, and heavily
17 criticising the European Court of Human Rights and its
18 application of the rules on attribution.

19 Back to the field of investment law, as you have
20 heard today, Claimants' approach is based on *Awdi v*
21 *Romania* [slide 94] but I submit to you that a careful
22 reading of this case, and consideration of its facts,
23 clearly mandates that the conclusions reached by the
24 *Awdi* tribunal remain limited to that case.

25 The other tribunal in the award just stated that the

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01 Romanian privatization agency was a state organ, it
02 never provided a detailed discussion of the position of
03 the Romanian privatisation agency vis-a-vis the Romanian
04 state, and this is the first red light where one
05 considers transposing its conclusions.
06 If one digs further, and we did that in our
07 Rejoinder, in order to learn about the actual
08 relationship between the Romanian privatization agency
09 and the Romanian state, it quickly becomes clear why the
10 Awdi tribunal just stated that the Romanian
11 privatization agency was a state organ, because
12 according to Romanian law, this agency was
13 "a specialised institution of central public
14 administration, with legal personality [but]
15 subordinated to the Government and co-ordinated by the
16 Minister of Economy."
17 This is completely different from the position of
18 the Serbian Privatization Agency, and this is why the
19 Awdi conclusions are inapposite in the present case.
20 Further, in Awdi, the commitment of the Romanian
21 privatization agency and the breach thereof related to
22 a sovereign act. The commitment in the case was to have
23 enacted a piece of legislation that would grant
24 Claimants land for some kiosks in Romania and the breach
25 of this commitment was in the Romanian privatization

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01 agency's failure to procure enactment of a new
02 legislation dealing with kiosks because the initial
03 legislation was annulled by the Romanian Constitutional
04 Court, so there was a commitment to do something, to
05 have another legislation enacted, and the enactment was
06 clearly a sovereign act. And nothing of the sort exists
07 in the present case, neither the commitment to exercise
08 sovereign powers, nor a breach thereof.
09 The conduct in the present case was purely
10 commercial: termination of the contract, refusal to
11 release the pledge, and alleged failure to consent to
12 the assignment of the Privatization Agreement.
13 On their part [slide 95] Claimants argue that these
14 three types of specific conduct constituted exercise of
15 governmental power, and this brings me obviously to
16 their claim that there is attribution under Article 5 of
17 the ILC Articles because there was exercise of
18 governmental powers in these cases.
19 But here again, they argue that everything the
20 Privatization Agency does in the privatization process
21 is governmental in nature, as I have just mentioned and
22 discussed, so their argument in the context of Article 5
23 is also based on their general approach that
24 privatization is a governmental process.
25 The reason why Claimants base their Article 5

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01 argument on this general assumption is because, I submit
02 to you, they have difficulties to show that any of these
03 acts -- termination, refusal to release the pledge and
04 refusal to assign the Privatization Agreement -- that
05 any of these acts were actually performed on the basis
06 of any governmental authority conferred by the Agency
07 [slide 96] so they cannot find that authority and
08 instead they rely on the general governmental nature of
09 the privatization process, and this is obviously not how
10 Article 5 works.
11 Article 5, as we all know, requires that the power
12 to exercise governmental authority must exist in
13 relation to specific conduct, in each instance of
14 a specific conduct [slide 97], and in the present case,
15 all conduct complained of was commercial conduct and not
16 an exercise of governmental authority.
17 This obviously brings me to the nature of the acts
18 complained, and at this very point, analysis of
19 attribution under Article 5 to a certain extent overlaps
20 with the issue of whether a violation of investors'
21 rights was performed in a sovereign capacity, that is in
22 the exercise of governmental powers, and not as an
23 action as a contracting party.
24 As is well-known and underlined by many tribunals,
25 including the one in the Suez case, but unfortunately

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01 still disputed by Claimants, there is no treaty
02 violation if the conduct in question was performed in
03 a commercial capacity, that is if an entity performing
04 it did so as a contracting party, and from this
05 perspective obviously, even if there were attribution
06 under Articles 4 and 8 of the ILC Articles, there would
07 be no violation of investors' rights, unless the measure
08 was taken in the exercise of governmental powers.
09 The test for distinguishing exercise of governmental
10 powers from other commercial conduct of an entity
11 [slide 98] is whether "any private contract partner
12 could have acted in a similar manner", that is from Jan
13 de Nul, or whether the conduct in question was "conduct
14 which any contract party could adopt", that's the Duke
15 award.
16 If we consider the specific acts of the
17 Privatization Agency that Claimants complain of, it
18 becomes clear that these are acts which can be performed
19 by any party to a contract seeking to ensure performance
20 of the other side. Seeking to ensure compliance with
21 the contract.
22 Starting with the Agency's refusal to release the
23 pledge over the privatised shares [slide 99], it is
24 rather common and well-known that one party may withhold
25 its performance until there is performance from another

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01 party, and precisely in order to exact such performance,
02 and I believe the principle which can be formulated in
03 Latin originates from Roman law.
04 So any commercial party would do that what the
05 Privatization Agency did, and by the way, as my
06 colleague Ms Mihaj said, the Privatization Agency did
07 exactly the same thing in other cases.
08 The same goes for the refusal to consent to
09 assignment of the Privatization Agreement. This was
10 today highlighted as something improper, and we were
11 listening to the recording and steno notes of the
12 session, but this, as was said in the steno notes, was
13 a way to enable the Agency to continue to seek
14 performance from Mr Obradovic, to remedy violation of
15 article 5.3.4, and this was the performance that it
16 could not seek from the party to whom the contract would
17 have been assigned [slide 100], and this is also
18 a conduct not out of the ordinary for a private
19 contracting party.
20 Coming again to the termination [slide 101], I would
21 remind you, the termination of the Privatization
22 Agreement did not come as a result of some decree or
23 a sovereign act, it was effected through the notice of
24 the Agency acting as a commercial party to the
25 Privatization Agreement, and as the ultimate remedy

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01 against the buyer's years-long non-performance of his
02 obligations under the contract.
03 According to constant court practice in Serbia,
04 a notice of termination of the privatization agreement
05 is "a unilateral declaration of will of one contracting
06 party to the other contracting party", you see the
07 excerpt on the screen, but there are other cases where
08 this was confirmed.
09 Claimants tried to escape this inevitable conclusion
10 by arguing that the notice of termination was actually
11 an administrative act, an exercise of governmental
12 power. However, this theory is proposed solely by their
13 expert, Mr Milošević, and no one else. It goes against
14 settled Serbian court practice, and it is also plainly
15 wrong as a matter of legal analysis, as has been
16 demonstrated by Professor Radovic.
17 Finally, let me say that involvement of the Ministry
18 of Economy, when it considered the privatization of the
19 BD Agro in the supervision procedure [slide 102] and
20 made certain statements to the Privatization Agency,
21 also does not change the fact that the termination of
22 the agreement was a commercial act. You will recall
23 that the tribunal in the Suez case, and there was also
24 reference to Bayindir, said:
25 "The mere fact that there is some government

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01 involvement in the events that lead to termination of
02 a contract does not necessarily mean that such
03 termination is the result of an exercise of sovereign
04 powers."
05 That is RLA-116, at paragraph 153. I have already
06 discussed the substance of the Ministry's conclusion,
07 and the text of it shows that it did not direct any
08 specific course of action as regards the termination,
09 and the same conclusion is reached if one considers the
10 text of the Ombudsman's recommendation. The decision to
11 terminate was a commercial one, and was the Agency's own
12 decision [slide 103].
13 So I can conclude that there is clearly no
14 attribution on the basis of Article 5 of the ILC
15 Articles, because that was exercise of commercial
16 powers, not exercise of governmental powers; and for the
17 same reason, the conduct complained of could not lead to
18 treaty violations because it was a commercial conduct.
19 To the extent Claimants complain about the exercise
20 of governmental powers through the Ombudsman's
21 recommendations, I would just say that these
22 recommendations were not even addressed to them. It did
23 not affect them directly, but only through their alleged
24 influence on the Privatization Agency.
25 But as in other cases, for example Tulip v Turkey,

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01 RLA-117, non-binding recommendation of a state body do
02 not in that case, and in our case, did not have any
03 particular influence, in our case did not have any
04 particular influence on the Privatization Agency, and
05 moreover were not an improper exercise of powers.
06 It should be recalled here that the Ombudsman's
07 recommendations and involvement were not even considered
08 or mentioned at the meeting of the Commission for
09 Control in the Privatization Agency, when they were
10 discussing termination of the Privatization Agreement.
11 Today, I would just also like to say that today,
12 Claimants again invoke the Caratube case, and never
13 actually respond to a very simple point that we made in
14 our submissions, for example, in the Rejoinder at
15 paragraph 1749, and the point is as follows: in
16 Caratube, the public prosecutor intervened, recommended
17 and then the Ministry completely changed its position.
18 In our case, there was no change of the position, the
19 Agency was for years threatening termination and the
20 termination was obviously coming, and Mr Obradovic knew
21 it was coming, and eventually it came.
22 The second topic that I will discuss now is the
23 topic of quantum [slide 104] and I will discuss two
24 points.
25 One point [slide 105] is that BD Agro was an ailing

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01 company for years, and not a robust company that was
02 presented today in Claimants' opening statement.
03 This is important for two reasons. One is for the
04 choice of valuation method, and another is the question
05 of causality, of which we have heard nothing about today
06 and I will address that in some detail.
07 The second point is that Claimants overvalue BD
08 Agro's land by inflating prices of the land and by
09 including in their valuation land that is not BD Agro's,
10 and that is going to be the second point I address.
11 Starting with the first point, BD Agro's lack of
12 profitability. You will remember, but no one has told
13 you today, that the company was insolvent for many years
14 before the alleged measures. Its performance was caused
15 by generally two reasons. One was, I would say,
16 criminal mismanagement by Mr Obradovic [slide 106],
17 which has been in detail explained in our written
18 submissions; and the second reason was that BD Agro's
19 business plans simply proved not to be realistic, and
20 its business operation never proved to be viable.
21 The abysmal business performance of BD Agro over the
22 years have been summarised by Mr Cowan in his first
23 report, in the graphs you can see on the following slide
24 [107], you follow the red line, that is the net result,
25 and if you follow that, you see that BD Agro was

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01 loss-making in all years except in 2008, and if you look
02 at the revenue side, that is above the line, yellow and
03 blue, blue is the revenue from BD Agro's core activity,
04 that is agriculture, and orange is indicating other
05 income, which is primarily revenue from the sale of
06 land, if you look at their proportion, you will see that
07 orange represents a significant part, sometimes even the
08 majority of the company's income, so this means that
09 a significant part of BD Agro's revenue came from
10 selling land, and not from its business operations.
11 But even selling of the family silver could not
12 change the company's disastrous performance, as it was
13 making losses for seven consecutive years before the
14 alleged measures. This can also be seen if you look at
15 BD Agro's EBITDA from 2006 to 2014. In each of these
16 years EBITDA was negative, so in other words, even if we
17 take back interest, taxes, depreciations to BD Agro's
18 net income, the company was still constantly making
19 losses.
20 This is what Mr Anway called "a model example of how
21 privatization can benefit the state".
22 The extent to which BD Agro's management, led by
23 Mr Obradovic, underperformed is also evident if one
24 compares BD Agro's business plans from 2006 with the
25 actual performance of the company until 2011, so you

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01 will see that the planned targets were almost uniformly
02 underperformed, and this was so despite the fact that
03 milk prices, which is the main business revenue for BD
04 Agro, that the milk prices were much higher than
05 envisaged in the business plan. So Mr Cowan remarks
06 [slide 109]:
07 "Despite this price effect, because volumes produced
08 were so much lower than planned, actual revenue in 2011
09 was about 34% lower than in the 2006 Business Plan."
10 That is his first report, paragraph 4.19. You
11 should also note that BD Agro's bank accounts were
12 blocked by creditors for unpaid debts in the amount of
13 approximately €7 million [slide 110], continuously from
14 March 2013 until the valuation date, that is
15 21st October 2015, and beyond.
16 In other words, BD Agro was continuously insolvent
17 during the period of two and a half years before the
18 valuation date. Again, this is what Mr Anway calls
19 model example.
20 Under Serbian Law on bankruptcy, this fact by itself
21 constitutes a reason for bankruptcy, this is called
22 permanent insolvency under the law [slide 111] and
23 exists if a company cannot pay its dues for 45 days
24 after due date, or if a company permanently stopped
25 making payments for at least 30 days, and here we are

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01 talking of two and a half years.
02 At the same time, BD Agro's liabilities were
03 enormous. According to Dr Hern, they were €43 million;
04 according to Mr Cowan, €61 million.
05 I can also add that the company was late with
06 payment of salaries and was years behind in payments of
07 the social insurance and health insurance, which is
08 a mandatory obligation under Serbian law, and you can
09 see that, for example, in the Ombudsman's opinion,
10 that's noted in CE-42, pages 9 and 11.
11 Claimants have not seriously challenged the
12 substance of Mr Cowan's review of BD Agro's business
13 performance [slide 113]. Obviously these numbers are
14 correct and can hardly be disputed. What Claimants say
15 is that all this is irrelevant because BD Agro's
16 business performance was already reflected in
17 contemporaneous valuations of the company, but is it
18 really irrelevant? Is lack of profitability really
19 irrelevant? I submit to you it is not, it is very
20 relevant. The lack of past profitability and the lack
21 of perspective of profitability indicates that BD Agro
22 was not a going concern, and this is what BD Agro's
23 auditors, their own auditors said already in 2013, when
24 they refused to provide a statement on the business
25 continuity principle.

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01 So this must be taken into account when choosing an
02 appropriate valuation method, and obviously we submit to
03 you that this cannot then be a DCF method.

04 I will not deal any longer with that because this is
05 analysed in great detail by Mr Cowan. What I would like
06 to elaborate a little bit more is another important
07 aspect of quantum, and that is causality and the impact
08 on causation of the fact that BD Agro was a failed
09 company on the verge of bankruptcy [slide 114]. As you
10 know, a causal link must exist between an alleged treaty
11 breach and the injury suffered by claimants, for which
12 they seek compensation. This causal link must be proven
13 by claimants.

14 As you also know, the standard of proof of causality
15 in international law is a demanding one, and we submit
16 that Claimants have failed to meet this standard, and
17 have not proven causality between the breaches and the
18 injury they allege.

19 The arbitral tribunal in Bilcon v Canada has
20 provided a useful summary of international standards
21 relating to causality, and the summary shows that
22 different tribunals may have used different formulations
23 of the standard, but all have agreed that the standard
24 is very high. The formulations of the standard were as
25 follows. For example, that the alleged injury must "in

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01 all probability" have been caused by the breach, that is
02 in Chorzów; or that a "sufficient degree of certainty"
03 is required that absent the breach, the injury would
04 have been avoided, that is the Genocide case from the
05 ICJ; or even that the state's conduct "necessarily" led
06 the investor to act in ways that harmed its
07 profitability, that is the Nordzucker case.

08 The Bilcon tribunal also noted something that is
09 important for this case. It noted that while the facts
10 of the Genocide case were obviously markedly different
11 from the Bilcon case, the ICJ and the Bilcon tribunal
12 were facing the same issue, the situation of factual
13 uncertainty where in the view of one of the parties the
14 same injury would have occurred in the absence of
15 unlawful conduct, and I submit to you the same issue
16 arises in the present case as well.

17 The Bilcon tribunal formulated its causality test
18 combining the test used by the PCIJ in Chorzów and the
19 ICJ in Genocide and it is on the screen [slide 115].
20 What is interesting is how the Bilcon tribunal applied
21 this test. The question of liability, as you know, had
22 already been determined in the award on liability in
23 that case [slide 116] which found that Canada violated
24 the investors' rights under NAFTA because it did not
25 assess the environmental impact of their project to open

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01 a quarry in Nova Scotia. It did not assess the
02 environmental impact in a fair and non-arbitrary manner.

03 So that was the breach, but turning to the question
04 whether the project would have been approved as a result
05 of a proper treaty-compliant process, the tribunal
06 analysed various other junctures of administrative
07 approval process, and then concluded that it cannot be
08 said that this outcome alleged by claimants, that is the
09 approval of the project and starting of the business,
10 would have occurred "in all probability", or again "with
11 a sufficient degree of certainty" and this is how the
12 Bilcon tribunal applied the PCIJ and the ICJ
13 formulations.

14 What the Bilcon tribunal did was to analyse, step by
15 step, the approval process for the quarry, and found
16 that it was not at all certain that claimant would have
17 been granted a licence even absent the NAFTA breach at
18 one stage of the process, and the question asked by the
19 tribunal was whether a NAFTA-compliant process could
20 have "reasonably concluded" or "reasonably recommended"
21 outcomes that would have in any case resulted in denial
22 of approval for the claimant's project?

23 In other words, even a reasonable possibility of
24 a different outcome was sufficient for the Bilcon
25 tribunal to conclude that there was no causality.

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01 Turning to our case, Claimants argue that there is
02 causality between the measures and the alleged loss of
03 profits that BD Agro would have made in the future,
04 because "was it not for Serbia's unlawful actions, BD
05 Agro would have implemented the prepack re-organisation
06 plan and continued its operations." [slide 117].

07 However, it is not at all certain that BD Agro would
08 have continued its operations absent Respondent's
09 measures. Or, to put it in accordance with a slightly
10 different standard, it cannot be said that BD Agro would
11 have continued its operations "in all probability",
12 absent Respondent's measures.

13 Indeed, we submit to you that the bankruptcy of BD
14 Agro appears to have been quite certain, considering in
15 particular two factors: one factor I just discussed, and
16 that is BD Agro's permanent lack of profitability, and
17 its continuous past failure to achieve business plans;
18 the second factor was insistence of its major secured
19 creditor, Banca Intesa, that BD Agro must go into
20 bankruptcy.

21 The original prepack re-organisation plan
22 [slide 118] was prepared on the basis of the evaluation
23 of the company at €20 million for the company's land and
24 buildings, and out of that approximately €17.5 million
25 was the land and buildings encumbered with mortgages.

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01 And Banca Intesa had a first-class mortgage on the real
02 estate, valued at approximately €15 million, so most of
03 the encumbered land and buildings were under Intesa's
04 mortgages.

05 This is the Adventis valuation report which
06 Claimants have omitted to mention today, put it into
07 their small list, in the table of valuations, as they
08 did also with the JLL valuation.

09 Banca Intesa, as a major secured creditor, should
10 have had a majority of votes in the class of secured
11 creditors, that is the creditors that would be able to
12 collect most of their receivables from the mortgaged
13 property, and at the same time, another bank, Nova
14 Agrobanka, should have had minority of votes in this
15 class.

16 What BD Agro did, what BD Agro's management did, was
17 to contest Intesa's receivables without any
18 justification, although the bank had a first class
19 mortgage. The idea apparently was to exclude
20 Banca Intesa from the first class of creditors, because
21 it was for bankruptcy and against re-organisation, and
22 naturally, Intesa objected to the prepack
23 re-organisation plan.

24 Its objections to the prepack re-organisation plan
25 clearly reveal its strong intention to seek bankruptcy

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01 of BD Agro, which it considered to be the only
02 possibility to satisfy creditors of BD Agro, and you can
03 see part of the text and the strong words on the screen.

04 It also initiated bankruptcy proceedings itself.
05 Later on, these proceedings would be discontinued once
06 the amended prepack re-organisation plan was adopted by
07 the Commercial Court, and this adoption of the amended
08 prepack re-organisation plan came with a new valuation
09 of BD Agro, that was a valuation by Mr Mrgud, the
10 valuation of the land was by Mr Mrgud, and the land was
11 suddenly valued at €87 million.

12 Now, with such valuation of the land, BD Agro could
13 afford to have Intesa among the secured creditors,
14 because much more of Nova Agrobanka, another bank, much
15 more of their receivables could also be collected and
16 you will remember that Nova Agrobanka was for
17 re-organisation, but Nova Agrobanka had a second class
18 mortgage on most of the same land where Intesa had the
19 first class mortgage.

20 Then again, Intesa raised a challenge and
21 successfully challenged these manoeuvres on appeal, and
22 it should be also noted that there were other creditors
23 that appealed the court decision that adopted the
24 amended prepack re-organisation plan. And the decision
25 was eventually vacated on appeal and returned to the

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01 lower court.

02 Given Intesa's continuous and unwavering insistence
03 on BD Agro's bankruptcy, and its opposition to
04 a reorganisation, it is clear that no prepack
05 re-organisation plan would eventually be implemented in
06 any case, with or without termination of the
07 Privatization Agreement, with or without assignment of
08 Privatization Agreement.

09 In other words, BD Agro would in all likelihood go
10 into bankruptcy. At the same time, it is beyond
11 dispute, I would say, if you read their financial
12 statement, it is beyond dispute that the company was not
13 profitable during Claimants' involvement. It did not
14 make any profit for years, it was insolvent continually
15 for two and a half years, it was declared not to be
16 a going concern as well [slide 121].

17 Going back to the Bilcon award, you will remember
18 that the Bilcon tribunal analysed causality by looking
19 at whether the outcome suggested by Claimants, that is
20 granting approval and starting of the business
21 [slide 122], would have occurred even absent the NAFTA
22 breach. The tribunal asked itself whether other stages
23 of a NAFTA-compliant approval process would have
24 reasonably reached outcomes that would have resulted in
25 the denial of approval. If there was a reasonable

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01 possibility that the approval would have been denied
02 even absent a breach, there was no causality between the
03 breach and the injury.

04 In the circumstances of our case, this question and
05 the relevant standard can be formulated as follows:
06 whether, absent the measures alleged, there was
07 a reasonable possibility that BD Agro would in any case
08 end in bankruptcy and I think that the answer is
09 self-evident. Banca Intesa was a major first class
10 creditor, it had a decisive vote in its class of
11 creditors, it insisted on bankruptcy, the company's
12 performance was disastrous, all this shows that
13 bankruptcy was a likely outcome and not merely
14 a possibility. So we submit that there is no causality.

15 The second theme that I would discuss, with
16 a reminder of the time that I have, is quantum and how
17 Claimants inflated the value of BD Agro's land and
18 especially of its land. One way to inflate the value of
19 BD Agro was to evaluate it as a profit-making company
20 and to apply the DCF method in its valuation.

21 Another way [slide 123] was to inflate the value of
22 its assets, particularly its land, and Claimants and
23 Dr Hern do so in two ways. One is to inflate the price
24 of the land; another is to include in the valuation the
25 land that is contested or not even owned by the company,

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01 and today we see that they were forced to some extent to
02 modify their valuation and their position which land is
03 actually owned by BD Agro.

04 The inflated price of the land has been exposed in
05 two reports of our expert, Ms Ilic, and she showed that
06 Claimants' valuation of the land was not in accordance
07 with international standards [slide 124]. There are two
08 main problems with their valuation of the land. First
09 is they rely on third party estimates, but never
10 actually critically assess these third party estimates.
11 They pick and choose, they find one or two which suit
12 them, as they did today, and they say, "Well, this is
13 the price".

14 Second is they rely on the assessments by the tax
15 administration which was given for the purpose of
16 determining the tax on the transfer of property, and
17 this assessment by the tax administration is conducted
18 under completely different rules which are stipulated by
19 the Serbian tax law and not under and pursuant to
20 international valuation standards for property, and
21 there are many differences between the two. This is
22 also exposed by our expert, Ms Ilic.

23 What is a further way to raise or inflate the amount
24 of damages [slide 126] is to include the land that was
25 actually not BD Agro's ownership or the ownership of the

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01 land was disputed [slide 127]. And this is very
02 important because in this way, Claimants added between
03 €24 million and €38 million to their valuation, and you
04 have that in our demonstrative exhibit. According to
05 our expert, the value of this land would be €80 million,
06 the land whose ownership is disputed.

07 Now, how important this is to Claimants you can see
08 from their repeated attempts to re-argue this point
09 which have been refused by the Tribunal.

10 Now, what I would like to here say, and I conclude
11 with this, Claimants cannot pretend to be surprised by
12 the issue of ownership of BD Agro's land [slide 128],
13 and the fact that the land is contested. They knew
14 about it for a long time, and you can see that from the
15 following evidence. One is that full list of the
16 contested land which was prepared by the bankruptcy
17 trustee in 2018, that is before these proceedings,
18 actually excluded some land because its ownership was
19 contested. Mr Rand, as one of BD Agro's bankruptcy
20 creditors, must have been aware of the list. Indeed,
21 Mr Rand or Claimants through Mr Broshko must have known
22 about the land also because Mr Broshko acquired the
23 bankruptcy sale documentation which clearly flagged this
24 information.

25 Moreover, going back to 2014, and BD Agro's prepack

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01 re-organisation plan, which was prepared by the
02 management controlled by Claimants, the plan provided
03 a list of land for sale and then in this context
04 mentioned court proceedings and contentious issues over
05 property rights. So Claimants were aware of problems at
06 least in 2014 already and the land plots in question
07 were listed for sale in the 2014 prepack re-organisation
08 plan with this qualification [slide 131] and they are
09 with few exceptions also included in the list of land
10 excluded later on from sale by the bankruptcy trustee.
11 So Claimants cannot simply now pretend that they did not
12 know about the contested land, but nevertheless, what
13 they did is to instruct Dr Hern to evaluate all land
14 that is inscribed in the name of BD Agro regardless of
15 its contested status or outright fact that it does not
16 belong to the company.

17 At the very end, I am finishing with that, I will
18 briefly turn to the issue of Serbian taxes relevant for
19 calculation of damages, specifically Serbian capital
20 gains tax [slide 132]. We have a dispute whether this
21 tax is applicable to a hypothetical sale of BD Agro.

22 In our submissions, we promised that we will provide
23 a calculation of the amount of taxes, so we do that in
24 our demonstrative Exhibit RDE-2 and we provide the
25 applicable capital gains tax at the valuation date

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01 according to different valuations of experts.

02 For the sake of simplicity, given that various
03 measures have been alleged, we chose 21st October 2015,
04 which is also the valuation date, and we calculate the
05 capital gains tax that Mr Obradovic would have had to
06 pay upon the transfer of the shares, and this tax
07 calculation will also be included later on into
08 Mr Cowan's overall calculation.

09 Let me also explain and apologise that we originally
10 submitted Exhibit RDE-2 with an additional table which
11 should not be there, we just made a corrected exhibit,
12 and we put one footnote, that's a footnote to the index
13 of retail prices, but that does not make the calculation
14 any different.

15 With this, I conclude, thank you for your kind
16 attention at this late hour, and for your patience after
17 a long day, and we conclude our submission with that.
18 Afterwards, Mme President, we will have a question about
19 technicality about examination of witnesses, but we can
20 return to that afterwards. Thank you.

21 THE PRESIDENT: Thank you, and congratulations as well
22 because you are exactly in time. It is not that late
23 actually, it has just turned very dark for a summer
24 afternoon.

25 Are there any questions for Respondent? Yes, good,

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01 so please go ahead.

02 MR VASANI: I also actually have a question for Claimants
03 too, I didn't before the break, but having checked
04 something, I do.

05 For Respondent, I think Ms Mihaj this is for you: if
06 I could turn you to your slide 42, and these are
07 questions of clarification at this stage, what I had
08 understood you to be saying in relation to curing the
09 breach, do I understand Respondent's position to be that
10 the breach could have been cured had these two companies
11 returned those sums? Is it as simple as that, or am
12 I simplifying it too much?

13 MS MIHAJ: Yes, of course, it is as simple as that.

14 MR VASANI: Thank you for that clarification. The second
15 question I have is this: assume with me now that the
16 privatization process would be finished, let's say this
17 transaction never took place, and therefore the pledge
18 would be removed, and the company would be private. Is
19 it Respondent's position that had BD Agro then done
20 these transactions, let's say the week after the
21 privatization process was finished, that would not have
22 been a breach of Serbian law or anything else; in other
23 words, at that point it would have been entitled to do
24 as it wished?

25 MS MIHAJ: As I am aware, it would not breach any of the

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01 indeed it was the only violation the tribunal found
02 under the treaty.

03 I might also note that in that case, the tribunal
04 had found that the terms in the contract between the
05 investor and the state had in fact been breached by the
06 foreign investor, that is to say the contract that was
07 at issue there effectively required the foreign investor
08 to give certain notice of a transfer of rights under
09 a contract to the government, the government had to
10 approve it, and if it did not do so, the government had
11 the right to declare caducidad, effectively to take the
12 investment in its entirety. What I argued to the
13 tribunal, which they accepted, was the contract says if
14 the investor does A, the state can do B. If they
15 transfer rights without obtaining government approval,
16 then the government is entitled to declare caducidad and
17 take the investment in full. And nevertheless, despite
18 the fact that the tribunal found the investor had agreed
19 to that, and breached the provision, they still held
20 that it was disproportional for the state to do what the
21 foreign investor had authorised it to do under that
22 contract, and I give you that background because we
23 don't have that situation here at all.

24 Here we have a situation where we are not dealing
25 with anything like that. In other words, the

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01 Serbian laws.

02 MR VASANI: Thank you.

03 For Claimants, you talked today about
04 proportionality, and the reason I didn't ask the
05 question is I went back to look at your pleadings, and
06 I saw discussion of proportionality in relation to
07 Serbian law, the Serbian constitution and how that may
08 play in relation to the application of Serbian law to
09 this particular dispute.

10 I saw, I think, passing reference to proportionality
11 in the international law section. My question is this:
12 are you arguing proportionality also as a question of
13 international law; and if so, under which treaty
14 standard?

15 MR ANWAY: I think the direct answer to your question is all
16 treaty standards. I had the fortune or misfortune of
17 being involved in the key case that established the
18 proportionality principle which was the Occidental v
19 Ecuador case, I participated as counsel to Ecuador both
20 in the underlying arbitration and in the subsequent
21 proceeding where they were attempting to annul it.

22 The award was in fact very significantly partially
23 annulled but you will recall that the tribunal there did
24 apply a proportionality standard under public
25 international law to conclude there was a violation, and

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01 proportionality principle is far easier to apply in this
02 context, but that obviously is the lead case, and the
03 tribunal found that proportionality principle applied as
04 a matter of both domestic law, in the Ecuadorian
05 constitution itself, which I think has some parallels to
06 your question, but also as a matter of public
07 international law and all the treaty standards.

08 Mr Pekar, I don't know if you have anything to add
09 to that?

10 MR VASANI: Then two follow-up questions: is that case on
11 the record?

12 MR ANWAY: It is, and in fact it was cited today, I think,
13 in our opening statement, it may have been the annulment
14 piece of it. The annulment piece of it dealt with
15 a different issue. All three members of the tribunal,
16 including the dissenting member of the tribunal, agreed
17 with that proportionality principle.

18 MR VASANI: Just to understand your position in terms of how
19 it applies to this treaty, you say it applies to all the
20 treaty standards, so I guess I am not quite
21 understanding which treaty standard of this BIT you're
22 saying is breached by any proportionality principle.

23 MR PEKAR: Our position is that the requirement of
24 proportionality is the general principle of public
25 international law; therefore it influences all standards

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01 under the treaty.
02 MR VASANI: Thank you. Since there were fulsome answers,
03 I am happy, with Mme President's permission, if
04 Respondent wishes to say anything to my question on
05 proportionality, to open the floor. Or you may wish to
06 reserve your responses.
07 DR DJERIC: I would just like to note what you have noted as
08 well, that this argument of proportionality under public
09 international law has not been developed in Claimants'
10 submission, this is something new and this is something
11 certainly we are going to respond but there is a certain
12 element of surprise, I would say, to which probably we
13 will come back.
14 THE PRESIDENT: There will certainly be opportunities to
15 come back, absolutely.
16 PROFESSOR KOHEN: Thank you, Mme President. I have
17 a question for Respondent with regard to attribution,
18 I suppose that Dr Djerić will answer. So the creation
19 of the Privatization Agency was with the purpose to sell
20 the so-called socially-owned property. If I understand
21 well the situation in the former Yugoslavia, after the
22 end of the so-called socialist regime, this
23 socially-owned property became state property, am
24 I right? Is that okay?
25 DR DJERIC: Not exactly. If I may, it depends -- I am not

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01 sure what was the solution in other states of the former
02 Yugoslavia, because socially-owned property is an
03 institution or a legal concept from the Socialist
04 Yugoslavia, so each state of the former Yugoslavia dealt
05 with it separately, obviously. In Serbia,
06 socially-owned property was not transformed into state
07 property and then sold, it was sold as socially-owned
08 property, at least in the case of BD Agro. I will have
09 to look at it, there are some cases or there are some
10 variants whereby the state property or the public
11 property was sold, that's a different matter, but here
12 we are talking about the socially-owned property which
13 was never transformed into state property, and in that
14 sense, the Privatization Agency, legally or formally
15 speaking, did not sell the property on behalf of the
16 state, because it was not state property, it was
17 socially-owned property.
18 PROFESSOR KOHEN: In that case, who was the owner of this
19 socially-owned property in the intermediate period, so
20 to speak?
21 DR DJERIC: It is a difficult question. We will have to
22 look into it. I think it changed over time, so it was
23 usually -- I mean, administered by various entities, but
24 we will have to look into what was the exact model of
25 administering this property, or who was actually doing

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01 the management. What I can say now is that the
02 management of the socially-owned property had to
03 initiate privatization in a certain period of time, that
04 was under the law; if they didn't, then the
05 Privatization Agency would press the button and initiate
06 the process. But we can provide you with the exact
07 answer as regards the relevant times I think later on.
08 PROFESSOR KOHEN: If I understood you well, the
09 Privatization Agency is not an organ of the state,
10 either de jure or de facto, it was created by the state,
11 but do you consider that the relationship between the
12 Privatization Agency and BD Agro is just a pure
13 contractual relationship, private relationship?
14 DR DJERIC: The short answer is yes, but at least from the
15 moment the Privatization Agreement was signed onwards,
16 the relationship was a private relationship, and I think
17 that Professor Radović is also supporting that position,
18 arguing for that position. So this is different from
19 the role of the Agency in the auction and selling of BD
20 Agro, that is pre-contract activity. From the moment
21 when the contract was signed we submit that it was
22 a commercial relationship on the basis of the contract,
23 and to some extent regulated by the framework of the law
24 on privatization.
25 PROFESSOR KOHEN: With regard to privatization, you

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01 mentioned the example of Romania. Do you have in mind
02 what was the situation with the Treuhand in Germany? If
03 you don't, this is the reason why --
04 DR DJERIC: I will have to get back to you on that, thank
05 you.
06 THE PRESIDENT: Any further questions? Maybe I should ask
07 one question from Claimants, following the Respondent's
08 opening. Do I understand correctly that you claim
09 damages as a result of the termination and the transfer
10 of capital and not the other violations? Or do
11 I misunderstand that? You don't need to answer now if
12 you don't want to do it now and you want to check.
13 Related to this, and this is the causation
14 discussion that brings this question, you have not
15 spoken of causation today, and I'm not certain you have
16 addressed it in your written submissions in answer to
17 your opponent's arguments, but maybe I don't remember
18 well right now.
19 MR PEKAR: With respect to this, we did not label it
20 causation as an independent part of our submissions, but
21 it is embedded in our submissions on quantum.
22 If you remember this morning, I mentioned several
23 times that the bankruptcy over BD Agro was opened only
24 in August 2016, which was ten months after the
25 termination and let's say takeover by the Privatization

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01 Agency, and I believe in our submissions we also explain
02 the status of the re-organisation plan, its approval and
03 how the termination of the contract and again the
04 takeover by the Privatization Agency prevented BD Agro
05 from complying with the very formal requirements which
06 were there to be complied with for the re-organisation
07 plan to be approved after it was remanded by the
08 appellate court.
09 THE PRESIDENT: So this is your causation argumentation, do
10 I understand that correctly?
11 MR PEKAR: Yes, we understand that the causation argument is
12 all centred on the allegation that BD Agro would have
13 ended in bankruptcy nonetheless, and our position is BD
14 Agro was not in bankruptcy at the time of expropriation,
15 and it eventually ended up in bankruptcy but only ten
16 months later because of intervening causes.
17 THE PRESIDENT: Thank you. Now, tomorrow, we will hear the
18 first witnesses, and the first one will be Mr Rand, and
19 then we follow up with Mr Azrac, and in the afternoon,
20 in principle, we will have Mr Obradovic, and then
21 Mr Jennings, is that the plan?
22 MR PEKAR: That's correct, Mme President.
23 THE PRESIDENT: Fine, any remarks? I think you had
24 a question about the witness examinations?
25 DR DJERIC: That was us.

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01 THE PRESIDENT: Oh, that was you, sorry.
02 DR DJERIC: The question is the following: we understand and
03 it transpires from, I believe, Procedural Order No. 11,
04 that one paper copy of the cross-examination bundle
05 should be given to the witness, and we also plan to
06 examine the witness by giving a paper bundle to the
07 witness, the rest of us will have the electronic bundle.
08 However, what we hear from our colleagues who were
09 at the set-up is that for some reason we are not allowed
10 to approach the witness, in other words, no one will be
11 allowed to be near the witness to show them through the
12 bundle, and to help them with the bundle.
13 This is a question of logistics. That person could
14 have a mask and perform that function, which is
15 incidental but might help the speed of
16 cross-examination.
17 THE PRESIDENT: Are you going to project on the screen the
18 document on which questions are asked?
19 DR DJERIC: Yes.
20 THE PRESIDENT: And the witness will have a screen that is
21 down there, where he or she could read?
22 DR DJERIC: Yes.
23 THE PRESIDENT: Then in addition maybe the witness wants to
24 check in the paper copy going back and forth. That can
25 be done, I would submit, by someone sitting next to the

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01 witness from the team and helping if necessary, just to
02 save time. And wearing a mask, please, then.
03 What we could also do is bring the table a little
04 bit closer because with these curtains, this room is
05 rather dark, right? It is always dark but now it is
06 even darker. What we can also do is when we hear
07 witnesses remotely maybe we can pull the screen closer,
08 not too close, because the cross-examiner must have
09 a good view, but that there is still some room for
10 moving it closer.
11 Is that a way of doing it?
12 DR DJERIC: Perfect, thank you.
13 THE PRESIDENT: Is that fine with the Claimants as well?
14 MR PEKAR: Yes, it is fine with us.
15 MR ANWAY: Mme President if I could just address another
16 issue. Arbitrator Vasani had asked whether the
17 Occidental award was in the record. It is CLA-75, and
18 the annulment decision is CLA-5. I just wanted to put
19 that on the record.
20 THE PRESIDENT: Thank you. Anything else you wish to raise
21 before we adjourn for the day?
22 MR PEKAR: Nothing, Mme President.
23 THE PRESIDENT: No, then I wish everyone -- sorry,
24 I understood you --
25 DR DJERIC: We don't have anything, thank you.

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01 THE PRESIDENT: -- were saying no with your head, but
02 I should have given you the floor. Fine, then I wish
03 everyone a nice evening, well, a busy one I suppose, but
04 we'll see each other tomorrow at 9.00 to hear Mr Rand.
05 Goodbye, everyone.
06 (5.28 pm)
07 (The hearing adjourned until 9.00 am the following day)

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\$57 117:12

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

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Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
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For the Claimants:

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Hearing Location:

Peace Palace, The Hague

PAGE 1 (09:00)

01 Tuesday, 13th July 2021
02 (9.00 am)
03 MR WILLIAM RAND (called)
04 THE PRESIDENT: You confirm that you are William Rand?
05 THE WITNESS: Yes, I am.
06 THE PRESIDENT: You are a 100% shareholder of Rand
07 Investment?
08 THE WITNESS: That's right.
09 THE PRESIDENT: Of Sembi as well?
10 THE WITNESS: Indirectly, yes.
11 THE PRESIDENT: And you have interests about which we debate
12 here in BD Agro?
13 THE WITNESS: That's correct.
14 THE PRESIDENT: You have provided us with a number of
15 written statements, three actually. The first one was
16 dated 5th February 2018?
17 THE WITNESS: Yes.
18 THE PRESIDENT: The second one, 3rd October 2019, and the
19 last one, 5th March 2020.
20 THE WITNESS: That's correct.
21 THE PRESIDENT: Do you have them there?
22 THE WITNESS: Yes, I do.
23 THE PRESIDENT: In unannotated copies?
24 THE WITNESS: They were just here, I assume they're
25 unannotated, I haven't looked through them.

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01 THE PRESIDENT: That's fine. If you need to check them, you
02 can of course do so. You are heard as a witness in
03 this --
04 DR DJERIC: Mr President, there is still no transcript, I am
05 sorry to interrupt you, at least at our laptop. Do you
06 have it?
07 THE PRESIDENT: We have it. Sometimes you have to click on
08 the green arrow in the right-hand column. Do the
09 Claimants get the transcript? Yes.
10 DR DJERIC: Sorry, now it is running.
11 THE PRESIDENT: Good, excellent. Has everyone got the
12 transcript? No, not yet. (Pause). So now let me speak
13 and everybody can check whether you get it on the
14 transcript.
15 Good, then we can again start, but we will not
16 repeat what was already on the transcript, and maybe
17 tomorrow morning we can do these checks before we start,
18 so we save time.
19 I was about to say that you are heard as a witness,
20 you are a party in these proceedings, of course, but you
21 are heard as a witness, and as a witness you are under
22 a duty to tell us the truth. There is a witness
23 declaration sheet on your table? Yes, I see you have
24 it.
25 THE WITNESS: Yes, I do.

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01 THE PRESIDENT: Could you please read this aloud into the
02 record?
03 THE WITNESS: I am William Rand and I solemnly declare that
04 upon my honour and conscience, I shall speak the truth,
05 the whole truth and nothing but the truth.
06 THE PRESIDENT: Thank you. We will first have a few direct
07 questions from your counsel, and then we go over to
08 Serbia's counsel for cross-examination.
09 Direct examination by MR PEKAR
10 Q. Thank you, Mme President. Mr Rand, have you had
11 a chance to review your witness statements recently?
12 A. Yes, I have.
13 Q. Is there anything you would like to change?
14 A. No.
15 Q. Mr Rand, could you please describe to the Tribunal the
16 conditions of the farm that you witnessed before the
17 privatization of BD Agro?
18 A. When I first went out to the farm, prior to the auction,
19 the farm was in a very decrepit state. I was shocked by
20 first of all the way the animals were treated, because
21 they were yoked and kept in one spot their whole life,
22 standing on concrete. They were milked there, fed there
23 and when we finally re-organised it and they could walk,
24 some of them were not able to walk, their hooves were
25 totally broken.

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01 The kitchen, where all the people that worked there
02 were given lunch, the kitchen had about six or seven
03 inches of water, the people in the kitchen all were
04 wearing rubber boots because of the water. The food was
05 something that was terrible, the workers were all --
06 they were never given any clothes, gloves, overalls,
07 boots, so they were dressed very, very poorly in what
08 later in the year, when the cold came, was absolutely
09 terrible conditions. It was very sad.
10 The office building had no heat, despite the fact
11 that it gets very cold in the winter and it snows so
12 people were coming to work in the winter in overcoats.
13 This I didn't of course -- in September, earlier in the
14 summer, when I first went there, it wasn't cold but
15 I was told at that time that in the winter, they all had
16 to wear gloves and overcoats and boots in the office,
17 because there was no heat whatsoever.
18 Q. Could you please describe the conditions of the farm in
19 the years after the privatization?
20 A. Well, first of all there was 26 large barns, the farm
21 was originally a model farm built by Tito and there were
22 26 brick building barns which were -- the first item on
23 the agenda was to redo the barns so the cows could move
24 around. Then I redid the kitchen, tore it all apart and
25 built a brand-new kitchen. We built locker rooms,

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01 change rooms, showers for the workers, provided them
02 with gloves, boots, overalls so they could work properly
03 in comfortable clothing.
04 I built what was at the time one of the most modern
05 milking parlours in Europe, it was built by a German
06 company, it could milk 300 cows in an hour, with a staff
07 of six or seven people, every cow's production was
08 monitored, the quality of each cow's milk was monitored,
09 it was done, I thought, extremely well.
10 Q. Could you explain to the Tribunal your understanding of
11 who owned the BD shares before they were seized in 2015?
12 A. Just before they were seized in 2015, they were
13 beneficially owned by myself and Sembi.
14 Q. To your knowledge, what was the Government's
15 understanding of that ownership at the time?
16 A. The Government understood from day one that I was the
17 beneficial owner.
18 Q. We heard yesterday Serbia's counsel say that
19 Mr Obradovic remained liable on a €9 million liability
20 from the Lundins after the Sembi Agreement, do you
21 recall that?
22 A. Yes.
23 Q. What was your understanding of Mr Obradovic's liability
24 after the Sembi Agreement?
25 A. I think it was very clear in the first two paragraphs of

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01 that agreement that Mr Obradovic was going to be held
02 harmless and all the obligations were going to be
03 assumed by Sembi.
04 Q. What was your understanding of Mr Obradovic's liability
05 on the additional €4.8 million that were owed to --
06 A. That obligation was also assumed by Sembi and George
07 knew that I was indirectly the beneficial owner of
08 Sembi, and he was totally comfortable that I would make
09 sure he was not obligated in any way whatsoever.
10 Q. We heard yesterday Serbia's counsel say, and for the
11 record it is on page 141 of the transcript we received
12 yesterday, lines 18-20:
13 "We do not have any document showing that Mr Rand
14 ever issued any orders or instructions to Mr Obradovic,
15 to the man who he allegedly controlled."
16 Do you recall that?
17 A. Yes.
18 Q. How did you convey your instructions regarding BD Agro
19 to Mr Obradovic?
20 A. I talked to Mr Obradovic at least once, sometimes two or
21 three times a week, to discuss the affairs at the farm.
22 Q. Do you recall sending any instructions in writing?
23 A. I don't recall specifically, but I know from time to
24 time there was the odd message in writing, but generally
25 it was by telephone.

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01 MR PEKAR: Mme President, we would like to put to the
02 witness document CE-428.
03 A. I have got it.
04 Q. Mr Rand, does this document refresh your memory?
05 A. Yes.
06 Q. Could you please describe the document to us?
07 A. It's an email I sent to Mr Obradovic as President, BD
08 Agro, and to Ljuba Jovanovic and to Igor Markicevic. It
09 had instructions as to certain things I wanted done.
10 Q. Thank you. Mr Rand, you stated that it was sent to
11 Mr Obradovic. Could you please explain to us which of
12 the email addresses belongs to Mr Obradovic?
13 A. President@bdagro.com.
14 MR PEKAR: Thank you, Mme President. We do not have any
15 further questions.
16 THE PRESIDENT: Thank you. Can I turn to counsel for
17 Respondent, please?
18 MS MIHAJ: Yes, Mme President, thank you.
19 Cross-examination by MS MIHAJ
20 Q. Good morning, Mr Rand.
21 A. Good morning.
22 Q. I am glad to meet you after all these years. Let me
23 start with your second witness statement, and that is
24 paragraph 77. In paragraph 77 of your second witness
25 statement, you will see it on the screen, you said that

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01 you remained in contact with Mr Bubalo also after
02 privatization of BD Agro. Do you recall saying that?
03 A. What's the date of this?
04 Q. That is your second witness statement.
05 A. This is from my witness statement, okay.
06 Q. In October, yes. Do you recall saying that?
07 A. Just give me a second to read it here. (Pause). Okay,
08 I have read the highlighted part.
09 Q. Please tell me, have you maybe asked Mr Bubalo to appear
10 as Claimants' witness in this arbitration?
11 A. No.
12 Q. Thank you. Have you maybe reached out to Mr Jankovic,
13 the former Ombudsman of Republic of Serbia, and
14 suggested him to appear as the witness in this
15 arbitration?
16 A. I have never met Mr Jankovic, I don't know him at all.
17 Q. So the question was, have you approached him?
18 A. No.
19 Q. Thank you. What about the Lundins, your good friends?
20 A. Yes.
21 Q. Have you asked the Lundins to appear as the witness in
22 this arbitration?
23 A. No, I haven't.
24 Q. Thank you.
25 A. I could explain that.

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01 Q. Thank you, that was my question, I would like to --
02 THE PRESIDENT: Maybe for the Tribunal's benefit, you could
03 explain. I had questions on the Lundins in any event
04 later, so while we are at it, you may explain why you
05 didn't ask.
06 A. Adolf Lundin is deceased, and Lukas Lundin is very ill
07 with a brain tumour. That's Lukas Lundin.
08 THE PRESIDENT: There are two brothers, no?
09 A. Yes, Ian Lundin, but he was never really involved too
10 much. Lukas Lundin was the main driver of the Lundin
11 business after his father -- after Adolf died.
12 THE PRESIDENT: Thank you.
13 MS MIHAJ: Back then in 2005, when you said you were
14 investing in BDA, did you maybe obtain any legal advice
15 from a Serbian lawyer on the Serbian law related to
16 ownership of shares in joint stock companies, and
17 whether Serbian law recognised beneficial ownership?
18 A. No, I didn't consult a Belgrade lawyer at all, no.
19 Q. Thank you.
20 A. At that time.
21 Q. Thank you. Please tell me, when were you informed that
22 the Agency is claiming that the Privatization Agreement
23 is breached and that it will terminate it, if the breach
24 was not remedied? Was it immediately after Mr Obradovic
25 received Agency's notice of breach from February 2011?

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01 A. I would say from February -- well, after the final
02 payment was made, there were continuous efforts to try
03 and get the Agency to approve the release of the pledge,
04 and it was like a bureaucratic nightmare trying to get
05 anyone to make a decision to release the pledge, and
06 I was getting increasingly concerned as year after year
07 went by that --
08 Q. Thank you.
09 A. Whether they were ever intending to do it or not, I had
10 no idea.
11 Q. Thank you, Mr Rand, but my question was when
12 Mr Obradovic informed you that the Agency is claiming
13 that the Privatization Agreement was breached, and that
14 it will be terminated in case the breach is not
15 remedied. Was that already in February 2011, when the
16 Agency have sent its first notice on breach, or was it
17 after February and when exactly?
18 A. I would say it would be after February. I think
19 initially I thought once these original concerns were
20 expressed by the Agency, that we would be able to
21 overcome any objections they had, and they would go
22 along with the releasing of the pledge.
23 Q. But could you please tell me more specifically when
24 Mr Obradovic informed you. Was it in March 2011, May
25 2011?

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01 A. I can't really say.
02 Q. September 2011, or in 2012?
03 A. You know, I was talking to Mr Obradovic every week, so
04 I can't be sure exactly. It came up in conversation
05 continuously as to the Agency not being prepared to
06 release the pledge, so it would have been week after
07 week, month after month, year after year, that --
08 Q. Yes, I understand that, but my question was, when was
09 the first time? I understand that you --
10 A. I don't recall exactly.
11 Q. You don't recall, thank you. When you finally did find
12 out about the notice of the Agency and that the Agency
13 is claiming that the agreement is breached, and that it
14 will be terminated in case the breach is not remedied,
15 would you please tell me, did you ask for legal opinion
16 of a Serbian lawyer concerning the issue of a breach?
17 A. I do not recall hiring a Serbian lawyer to examine that.
18 Q. Thank you. Mr Rand, after the public auction of BD
19 Agro, would you please tell me, when was the first time
20 when you visited Serbia after the auction? The auction
21 of BD Agro was in September 2005, and my question was,
22 when was the first time that you visited the auction
23 after September 2005?
24 A. I can't be sure. I'm not sure.
25 Q. Are we talking about the months after the auction, the

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01 weeks after the auction, did you visit Serbia and BD
02 Agro in 2005 at all?
03 A. I believe I did, but I would have to go through my
04 travel records to give you a more exact schedule.
05 Q. Do you maybe recall how many times during the 10-year
06 period from 2005 until 2015 have you visited Serbia?
07 A. I was there several times. Because I was going there
08 quite often, I bought an apartment there, because
09 I didn't like staying in hotels all the time, and
10 I would usually go there for a week at a time, so
11 I bought an apartment to stay in.
12 Q. But you cannot tell us how frequently was that?
13 A. No.
14 Q. Thank you. Mr Rand, tell me please, have the Lundins
15 ever received any dividends from BD Agro business?
16 A. No, nor have I.
17 Q. What was the interest of Lundin family in financing BD
18 Agro's acquisition?
19 A. Well, when I first told them about visiting the farm and
20 looking at it and reviewing it, they expressed an
21 interest in maybe participating in some way, and after
22 discussions, they agreed to put up the initial money,
23 and they would have an option to back in at some stage
24 if they were so inclined.
25 Q. Would you please explain to us in more details that

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01 option that you have just mentioned that the Lundins
02 had, to back in at some stage?
03 A. Yes.
04 Q. Would you please explain a little bit more about the
05 option?
06 A. Well, they were going to put up the initial money, and
07 then we would see how it goes. I will say it was left
08 fairly casual, they would have an option to back in at
09 some stage, we didn't have a time limit or the amount of
10 money, because we didn't have any idea what sort of
11 investment it was going to take to clear up the farm, so
12 it was, I will say, left quite loose, because we had
13 done dozens and dozens of agreements together, we knew
14 each other extremely well, we didn't need to spell
15 everything out in detail.
16 Q. Did you maybe have any written agreement with Lundins
17 concerning this arrangement that you describe to us?
18 A. Any recent agreements?
19 Q. Any written agreement, with Lundins, concerning the
20 arrangement that you described.
21 A. No, the only agreement we had was the one I drafted up
22 when they decided to leave. When they decided they
23 wanted to exit and they wanted their money back, then
24 I drew up the agreement myself, without consulting
25 a Serbian or any other lawyer, and I drew it up myself,

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01 and it sets out that I would repay them the money
02 through Sembi.
03 Q. Thank you, Mr Rand. Was there any profit ever
04 distributed to you from the operations of BD Agro?
05 A. No.
06 Q. How much --
07 A. The money only went one way! Out, never back in.
08 Q. How much did you pay to Mr Obradovic for a decade of his
09 involvement in BD Agro?
10 A. For a decade of his involvement?
11 Q. Yes, from 2005 until 2015, I would say.
12 A. Well, I had no formal salary arrangement with
13 Mr Obradovic. As you know, there was five or six other
14 companies that I bought at the instructions or the
15 suggestion or the recommendation of Mr Obradovic. From
16 time to time, when one of those transactions closed,
17 I would pay him some money. When he wanted to buy a new
18 apartment, I gave him €80,000. I had agreed to pay for
19 his daughter's education, she was going to the Manhattan
20 School of Music in New York, so I paid for her fees and
21 living accommodation. But I had no formal salary
22 arrangement with Mr Obradovic.
23 Q. But you just mentioned that you did pay something, and
24 some kind of compensation --
25 A. Yes.

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01 Q. Some kind of money, to Mr Obradovic, you just said that.
02 A. Yes.
03 Q. My question is: what was the exact amount of, let's say,
04 total payments made to Mr Obradovic in that period?
05 A. I don't have that number.
06 Q. How did you transfer that money to Mr Obradovic?
07 A. It was a bank transfer.
08 Q. Bank transfers?
09 A. Bank transfer, yes.
10 Q. So you have the record of bank transfer, of bank
11 transactions, I suppose that you have records of --
12 A. Yes, I have got an accountant that works for me
13 full-time and I am sure he has all the records, he has
14 been with me 20 years, so he would have all the records
15 of all the transfers of all the money I have sent to
16 anybody ever.
17 Q. Thank you, but -- well, I think that it is a little bit
18 strange, you were talking about that you were giving
19 some money to Mr Obradovic in your witness statements,
20 the same as you said today, but you did not deliver any
21 bank statements to prove that, so it is very strange,
22 because Respondent raised that question in all of its
23 submissions.
24 A. Nobody asked me to provide a complete list of all the
25 money that was wired from Canada to Mr Obradovic, so if

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01 someone asked me, I probably could provide it, if I had
02 a couple of weeks, three weeks to put it together.
03 Q. Let me go to the first witness statement, paragraph 40.
04 As you will see in paragraph 40 of your first witness
05 statement, you say -- and you provide 30 pages of bank
06 account statements, and these are exhibits --
07 A. Sorry, 30 pages of?
08 Q. Of exhibits, yes, you will see, you refer to them in
09 your witness statement. Please go down. You will see
10 footnote 20, that is your witness statement.
11 So in your witness statement, you said -- and
12 provided 30 pages of bank account statements in CE-63
13 and CE-69 -- that in the period from April 2013 to
14 January 2015, which is less than two years, Rand
15 Investments paid more than €100,000 to Mr David Wood for
16 consulting services related to BD Agro.
17 A. Yes.
18 Q. So you have paid to Mr Wood --
19 A. Yes.
20 Q. -- who provided consultancy services, more than
21 €100,000, and provided 30 pages of bank account
22 statements, but you didn't find it necessary to provide
23 the proof that you made any payments to Mr Obradovic.
24 Nobody asked you to provide these statements as well?
25 A. Nobody asked me to.

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01 Q. Nobody asked you to provide these bank statements as
02 well?
03 A. I guess the legal team felt it was important to provide
04 those documents.
05 Q. Thank you. This is also in your first witness
06 statement, and that is paragraph 17. You say:
07 "For his efforts, I promised to pay Mr Obradovic
08 undetermined success fees to the extent that BD Agro was
09 realizing profits from the investment."
10 Are you saying here in your witness statement that
11 Mr Obradovic accepted to work for you in relation to BD
12 Agro without knowing whether at all, when and how much
13 of the success fee he would receive?
14 A. That's correct.
15 Q. Was BD Agro ever making profits?
16 A. No.
17 Q. So Mr Obradovic never received any success fee?
18 A. He received no success fee, that's correct.
19 Q. Thank you. Could we now please turn to the
20 Exhibit RE-145? You will see it on the screen as well.
21 That is an assignment agreement concluded between
22 Mr Obradovic and BD Agro on 14th February 2007.
23 According to that document, instead of returning
24 €400,000 of shareholder loan to Mr Obradovic in cash, BD
25 Agro transferred to him some 4 hectares of its land. So

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01 my question is whether you directed Mr Obradovic to
02 conclude this agreement, and assign that land to
03 himself?
04 A. I certainly didn't instruct him to do it, but I was
05 advised of it.
06 Q. Thank you. Will you now please go to Exhibit RE-488?
07 That is agreement on sale of the land concluded between
08 Mr Obradovic and the company named Calpro Project, and
09 it was concluded on 21st June 2007. This agreement
10 regulated the sale of the same land that was assigned to
11 Mr Obradovic by BD Agro just four months before, and
12 this land previously assigned to Mr Obradovic was now
13 sold for €1.4 million. Did you direct Mr Obradovic to
14 conclude this agreement?
15 A. No.
16 Q. Did you maybe receive any money from the sale of this
17 land?
18 A. Me? No.
19 Q. In your letters to Serbian authorities in the period
20 2014/2015, you recall that you have sent some letters to
21 Serbian authorities? I think that the microphone is
22 off. Would you please repeat your answer, because of
23 the transcript?
24 A. Sorry, what was the question again?
25 Q. I said: you remember that in the period 2014/2015, you

PAGE 19 (09:34)

01 have sent some letters to Serbian authorities?
02 A. Yes, that's correct.
03 Q. You have stated repeatedly in these letters that since
04 the summer of 2013, you have financially supported BD
05 Agro and that this amounted to approximately half
06 a million euros, do you recall that?
07 A. Yes.
08 Q. Thank you.
09 THE PRESIDENT: Excuse me, what is this document?
10 MS MIHAJ: I am sorry, these are CE-37 and CE-38. This one
11 is CE-38, I think.
12 What do these major amounts relate to, these half
13 a million euros that you invested from 2013 in BD Agro?
14 A. Well, at this stage, because I was getting nervous about
15 whether or not the Government was going to eventually
16 transfer the nominal ownership to me, I was paying just
17 what I needed to, to keep the company going along. In
18 2012, there had been a very serious drought which
19 basically reduced our crops by about 80%, and the price
20 of feed went up dramatically, because we had a couple of
21 thousand cows that had to be fed, we had to buy feed
22 every few days, et cetera, to feed the animals, and so
23 one thing you have to do when you have a farm is at
24 least feed the animals, so I had to provide funds to
25 keep the farm going.

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01 Q. How did you provide the funds to BD Agro for the feed?
02 A. I would suspect that I wired them to Mr Obradovic.
03 Q. To Mr Obradovic?
04 A. Maybe by 2013 he had left, I'm not sure, and if it
05 wasn't, it would have gone directly to BD Agro.
06 Q. I am asking that because we have no trace of these
07 payments in the documents of our case.
08 A. Okay, well as I said, nobody asked me to provide all the
09 transfer documents, so I didn't.
10 Q. Thank you. Mr Rand, could we now please go to
11 Exhibit CE-582? That is an excerpt from your diary.
12 What you wrote is a very detailed explanation of what
13 happened before BD Agro's auction and how Mr Bubalo
14 helped.
15 A. What is the date on this? I am not sure.
16 Q. That is the document that you provided.
17 A. Okay.
18 Q. I suppose that your diary is generally written with that
19 much detail and that this was not just a convenient
20 exception?
21 A. No, I keep a diary of my main events every day usually.
22 I get lazy sometimes and skip sometime.
23 Q. In CE-582, you wrote about the auction for BD Agro that
24 took place at the end of September 2005, so could you
25 please tell us, when did you write that text in your

PAGE 21 (09:38)

01 diary? You just said that you write it each day, or
02 with some delay. Maybe can you recall, when was this
03 document --
04 A. I am not sure. If I had my diary I could tell you, but
05 I don't have it in front of me. I am just seeing one
06 page of it, so I'm not sure. It would have had a date
07 at the top of that --
08 THE PRESIDENT: Excuse me, can we scroll up, or is this the
09 top of the --
10 MS MIHAJ: Yes, that is the top. We do not have a date.
11 A. Does it have a date at the top?
12 Q. No.
13 THE PRESIDENT: How was the paper copy, it is the same? And
14 how is it described in the index of documents? I see
15 it, but how is it described in the index? It would be
16 fair to the witness to tell him how it's been presented.
17 MS MIHAJ: In the list of exhibits you mean? Yes, let us
18 see now, just a second. It was described as an excerpt
19 from Mr Rand's diary, no date.
20 THE PRESIDENT: So that is the best we have, Mr Rand. But
21 you recognise your diary?
22 A. Yes, that's my writing, for sure. I get criticised for
23 not having good writing.
24 MS MIHAJ: Would you say that you have written this
25 particular text in your diary soon after the event that

PAGE 22 (09:40)

01 you described, when it was fresh in your memory, or did
02 you write it months after?
03 A. No, it would have been close to the time. It would have
04 been that day, the day after, maybe two days later,
05 depending how busy I was.
06 Q. Thank you. So you will see that among other things, you
07 say in that document that Minister Bubalo -- I quote,
08 but please check, this is your handwriting, so you will
09 see whether my quote is correct. Among other things,
10 you say that Minister Bubalo:
11 "... is a good friend of Ljuba (who was his
12 deputy) ..."
13 Is that a correct quote?
14 A. Yes.
15 Q. So having in mind that Mr Jovanovic left his deputy
16 position and joined BD Agro only in December 2005?
17 A. That's correct.
18 Q. Is that correct?
19 A. It was in December, I think, yes.
20 Q. I don't understand, you have past tense when you mention
21 the position of Mr Jovanovic --
22 THE PRESIDENT: Excuse me, Ljuba is Jovanovic?
23 A. Yes.
24 MS MIHAJ: That's right. So it seems that in September
25 2005 -- yes, in September 2005, because you said that

PAGE 23 (09:42)

01 you wrote that that day, or maybe the day after, it
02 supposes that in September you said Mr Jovanovic, Ljuba,
03 "who was his deputy", was the deputy of the Minister
04 Bubalo, but the matter of fact is that in September
05 2005, Mr Jovanovic was still deputy of Minister Bubalo.
06 A. I don't think it meant to represent the past tense.
07 Q. Okay, thank you. I suppose that you also have detailed
08 notes in your diary concerning the relations and
09 arrangements with Mr Obradovic and the Lundins, is that
10 correct?
11 A. I don't know how detailed my notes would be, but
12 probably I had some notes, I'm not sure. Sometimes
13 I would have a lot of conversations that I didn't bother
14 writing down, I more often wrote about my golf scores
15 and stuff like that.
16 Q. Isn't it strange that you have notes concerning some
17 issues of BD Agro auction and that you did not make --
18 or that you do not remember that you made notes
19 concerning the multi-million arrangement with
20 Mr Obradovic and Mr Lundin?
21 A. Maybe I probably did have notes, or maybe I did have
22 notes, I just -- I don't recall. I wasn't asked to and
23 I didn't review my diaries from the period from 2005 to
24 2015.
25 Q. Tell me, Mr Rand, do you remember after the Lundins'

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01 Agreement was concluded on 22nd February 2008, Lundins
02 had no interest in BD Agro after that agreement was
03 concluded, is that --
04 A. That's correct, other than the agreement provided that
05 they would have -- if I sold it within five years, that
06 they would have a 25% interest in any profit that
07 generated, and the five years was a year and a half or
08 two years after I was supposed to have the pledge
09 released, so I would be in a position then to sell the
10 farm. As it turned out, the pledge was never released,
11 and so the farm could not be sold, so they never
12 received anything as a result of that provision.
13 Q. After they, as you said, waived the rest of the claim
14 that they have against you personally, Sembi and
15 Mr Obradovic, and that was, as I understood, in 2010, is
16 that correct, was that when Lundins waived the claim?
17 A. It was a little earlier than that, I believe, wasn't it?
18 Q. Well, what is your recollection?
19 A. If I could see the dates of the agreements with the
20 Lundins?
21 Q. I would like to hear your recollection. Was it in 2010
22 or earlier, or after?
23 MR PEKAR: Mme President, I object to this question.
24 THE PRESIDENT: I think if you don't know an answer,
25 Mr Rand, you simply say so. You don't remember the

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01 date.
02 A. I don't remember the exact date. I thought it was
03 a bit -- if you say it's 2010, I wouldn't argue with
04 you, but I thought it was earlier than that. I thought
05 it was -- okay, maybe it was 2010. It's very easy to
06 confirm, I can just check with the --
07 MR PEKAR: Mme President, I object again to this line of
08 questioning.
09 MS MIHAJ: I accept your answer.
10 MR PEKAR: Counsel knows perfectly well when these
11 agreements were signed, they are on the record. The
12 witness said he did not remember, now it's fair to show
13 him the document.
14 THE PRESIDENT: We have on the record that Mr Rand does not
15 remember the date, and now we can ask him if you want to
16 pursue this line.
17 MS MIHAJ: Thank you.
18 So after they waived their claim, did they also
19 waive this possibility from the Lundin Agreement that
20 you just mentioned, to collect some profit if BD Agro is
21 sold?
22 A. I don't understand the question. We signed an
23 agreement, and that agreement provided that if it was
24 sold in the future, they would get some, so they didn't
25 waive that at all, it just expired when the five years

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01 was up.
02 Q. Thank you. What about the other six companies that were
03 also privatised in Serbia? You are mentioning these
04 companies in your witness statement as well.
05 A. Yes, I did.
06 Q. Were privatizations of these other six companies also
07 financed by the Lundins?
08 A. No.
09 Q. Then who financed these other privatizations?
10 A. I did.
11 Q. How did you secure financing for these other
12 privatizations?
13 A. From my own funds.
14 Q. How much money have you provided to Mr Obradovic for
15 these other companies?
16 A. Over the years -- I mean, I am still providing funds for
17 some of these companies. In fact, one company, we have
18 just submitted an architectural plan to build a retail
19 space and a four-storey apartment building, so I'm still
20 spending money on a regular basis to develop some of
21 these other properties.
22 Q. What is the amount of the money that you provided for
23 financing the privatization of these other six
24 companies?
25 A. I don't have an exact total of that number, but it's

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01 well in excess of a million euros, I don't know quite
02 how many -- how much money, but it was a substantial
03 amount of money over the years. As I said, I'm still --
04 Mr Markicevic and Mr Broshko are still being paid by me
05 to look after a lot of the operations here -- or in
06 Belgrade. So it's an ongoing total.
07 Q. I suppose that these payments are also done through bank
08 accounts of Mr Obradovic?
09 A. No. Well, some of the payments that relate directly to
10 the properties would have been sent to Mr Obradovic,
11 because a couple of the companies were bought from
12 people that had done the privatization, and we bought it
13 from those people. Unlike BD Agro, they allowed the
14 transfer of the asset.
15 Q. Do you maybe have the record of these payments?
16 A. I certainly have the records of the payments, but
17 I don't have them with me.
18 Q. Thank you. Could you now go, please, to CE-028? That
19 is the Lundin Agreement. In point 1 of that agreement,
20 we have the exact deadlines for payments of the
21 instalments, you see that?
22 A. Yes, I drafted the agreement.
23 Q. In point 2, it is prescribed that the monthly interest
24 rate of 1% will be charged in case of delayed payment,
25 is that correct?

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01 A. Yes.
02 Q. Do you remember, were the payments to the Lundins
03 performed in the manner which is predicted in point 1 of
04 this agreement?
05 A. No, not exactly. They weren't paid exactly in
06 accordance with that, no.
07 Q. According to point 2 of the Lundin Agreement, there was
08 accrued interest due to late payments, and can you
09 please tell us what was the amount of that interest?
10 A. I have no idea. In truth, I don't think we ever worked
11 out any calculation about interest charged.
12 Q. Thank you. Could we now go, please, to CE-029? There
13 you will see in point 2 --
14 THE PRESIDENT: Can you just for the record identify what
15 CE-029 is?
16 MS MIHAJ: That is the Sembi Agreement. What was the
17 applicable rate to the amount of €4.8 million owed to
18 other institutions in Geneva, which is mentioned in
19 point 2 of this agreement? Can you tell me that?
20 A. Yes, there is no interest rate set out.
21 Q. But it is stated that there is interest.
22 A. It may state that there is interest, but it doesn't
23 stipulate the amount of interest so I would assume it
24 would be the same interest rate as was provided in the
25 previous agreement which was signed on the same date

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01 with the Lundins and Sembi, so I presume it would be the
02 same interest, but you're right, it's not dealt with,
03 and in drafting it I probably should have included
04 a reference to either the previous agreement or to
05 a specific rate, but I didn't.
06 Q. Mr Rand, I understood that you assumed this debt, so are
07 you saying that you actually assumed a debt without
08 knowing the interest rate applicable on that debt?
09 A. Well, Mr Obradovic's position in this was somewhat
10 irrelevant. My agreement was with the Lundins. The
11 payments were going to be made to the Lundins, and the
12 agreements with the Lundins would be made pursuant to
13 the other agreement you referred to.
14 MS MIHAJ: Thank you, Mr Rand.
15 Mme President, if I may have three minutes to
16 consult with my colleagues? Of course that can be
17 counted as Respondent's time, I have no problem with
18 that.
19 THE PRESIDENT: That is fine, but I think this is not the
20 break, it is just a short consultation, because it is
21 a little early to have a break, frankly.
22 MS MIHAJ: I understand, that is why it is on us.
23 THE PRESIDENT: And we don't want to disrupt, so it is on
24 you, yes. (Pause).
25 THE WITNESS: Can I stand up and stretch? (Pause).

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01 THE PRESIDENT: Are you ready?
02 MS MIHAJ: Yes, I am, thank you for your patience.
03 THE PRESIDENT: Please continue.
04 MS MIHAJ: Mr Rand, would you please tell me, were you
05 director at Lundin Petroleum together with Mr Bildt, the
06 former Prime Minister of Sweden, in early --
07 A. Sorry, what was the question again?
08 Q. Were you a director at Lundin Petroleum together with
09 Mr Bildt, the former Prime Minister of Sweden?
10 A. Yes, I was.
11 Q. In what period?
12 A. I can't remember exactly but I know we all went together
13 to Libya, when we were drilling wells in Libya, I went
14 with Carl Bildt and some of the other directors. That
15 would have been -- I am not sure. I could guess, but it
16 would just be a guess.
17 Q. Could we please go to Exhibit RE-297, and that is
18 a newspaper article written by a Swedish newspaper in
19 2011, and it is titled:
20 "Lundin may have led Bildt to the heart of
21 darkness."
22 This article relates to the suspected war crimes of
23 the Lundin Petroleum in Sudan and Ethiopia involvement.
24 A. That's correct.
25 Q. And Mr Bildt's involvement in all of that. Have you

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01 ever been interrogated by the Swedish authorities or
02 some other authorities regarding the suspected crimes
03 related to Lundin's operation?
04 A. No, not at all.
05 Q. Thank you. Tell me, Mr Rand, does MDH have any
06 outstanding debts towards BD Agro?
07 A. I don't believe so, although one entity, whether it was
08 MDH or Sembi or myself, was owed I think just over
09 €2 million by BD Agro at the time it was seized by the
10 Government.
11 PROFESSOR KOHEN: Sorry, Mme President, may I just ask for
12 clarification? When you refer to MDH, as I understood,
13 there were two involved here. Which one are you talking
14 about?
15 MS MIHAJ: The Serbian company MDH.
16 A. Yes, that's what I understood too.
17 PROFESSOR KOHEN: Thank you.
18 MS MIHAJ: Mr Rand, I actually have no questions. Thank you
19 very much for your time.
20 A. Thank you very much.
21 THE PRESIDENT: Thanks. Any questions in re-direct?
22 MR PEKAR: Yes, we do have questions on re-direct.
23 Re-direct examination by MR PEKAR
24 Q. Mr Rand, my first question relates to the questions you
25 got about what happened when the Lundins left the

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01 project. Do you recall receiving questions on that
02 topic?
03 A. Yes.
04 Q. Serbia's counsel was suggesting to you that that
05 happened in 2010, do you recall that?
06 A. Yes, but I think it was 2008.
07 Q. Yes, precisely, you wanted to be shown some agreements
08 which did not happen. Let me put a document in front of
09 you, this will be CE-028.
10 A. Yes, I have seen that before.
11 Q. Could we please scroll up to the first page of the
12 document? Is that the document you had in mind, when
13 answering Serbia's questions about what happened when
14 the Lundins left?
15 A. Yes, that's right.
16 Q. What is the date of the document?
17 A. February 22nd 2008.
18 Q. You had mentioned a provision that would allow the
19 Lundins to earn some profit if you sold the shares
20 within five years, do you recall that?
21 A. Yes.
22 Q. Is that provision in this agreement?
23 A. Yes, it is, somewhere. Yes, there it is.
24 Q. Just for the record, could you identify the provision?
25 We need to have it on the transcript, so you have to

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01 say --
02 A. It's paragraph 4.
03 Q. Thank you, this is just a technicality. You were also
04 asked questions about the Lundin family.
05 A. Yes.
06 Q. Can you explain your relationship with the Lundins?
07 A. I had a very close personal relationship with all of the
08 family. I started acting for Adolf Lundin in the
09 mid-70s, we travelled all over the world together,
10 looking at different projects. When Lukas came of age,
11 I travelled a lot of the world with Lukas, going down to
12 different countries to negotiate contracts. I am now
13 actually dealing with Lukas' sons too, who live in
14 Vancouver. We holidayed extensively with Adolf Lundin
15 and Eva, along with a good friend of ours, Mr Rudi
16 Mueller, who was senior officer at UBS, he ran all of
17 UBS's operations outside of Switzerland, from the
18 Broadgate complex in London, and we vacationed together
19 for five or six years. And then when Adolf died, my
20 wife and I continued to vacation with Rudi Mueller and
21 his wife, and Eva Lundin and her sister, Olga
22 Wallenberg. In addition to travelling on business with
23 Lukas a lot, we holidayed together, we skied together in
24 Zermatt and Whistler and Japan, and I visited his home
25 in Mustique, and he visited my farm in Italy, and he had

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01 a very large boat, the third or fourth largest yacht in
02 the world and we often travelled to and holidayed on his
03 yacht, with my wife.
04 Q. Why would the Lundins have forgiven the amounts that you
05 owed to them under this agreement?
06 A. I travelled to the Congo with Adolf Lundin several weeks
07 at a time over two years. We ended up acquiring a large
08 deposit there called the Tenke Fungurume deposit, which
09 subsequently our interest in it was sold for
10 1.2 billion.
11 I travelled extensively with Lukas down to Argentina
12 to acquire two projects there. We acquired the Bajo de
13 la Alumbrera mine which became a large copper gold mine
14 and also the Veladero mine which was a gold mine, and we
15 sold the Bajo de la Alumbrera asset for US\$510 million,
16 and we sold the Veladero deposit for, I think, about
17 \$300 million.
18 I also was in Mauritania with a company called Red
19 Back which developed a gold mine in Mauritania and that
20 was sold to Kinross for \$7 billion.
21 The Lundins owned and I was on the board and
22 I incorporated the company as a lawyer, but I was on the
23 board of Lundin Mining for over 30 years, it's got
24 a market cap now of about 8 billion Canadian dollars,
25 and again I was on the board of Lundin Oil, which became

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01 Lundin Petroleum, which is now Lundin Energy and I was
02 on the board of those successive companies for over 30
03 years, and it's got a market cap now of about \$9 billion
04 or \$10 billion and the Lundins own over 30% of that
05 company, so the Lundins had substantial assets, let's
06 just put it that way. That's all public information,
07 I'm not telling you anything that's not public
08 information.
09 THE PRESIDENT: Can I just clarify something? You mentioned
10 the sale of the gold mine in Mauritania. What was the
11 amount of that sale?
12 A. That was 7 billion. It was bought by Kinross Gold,
13 which was a Toronto-based gold mining company.
14 MR PEKAR: Mr Rand, you were also asked questions about an
15 extract from your diary, and you were asked questions
16 about the date when that part of your diary was written,
17 do you recall that?
18 A. Yes.
19 Q. Could we please put the diary on screen?
20 THE PRESIDENT: CE-582.
21 MR PEKAR: You were focusing on -- can you read it, or would
22 you need to zoom in more?
23 A. I can read it now.
24 Q. You were directed to the first, I would say, five lines
25 of that entry; could you maybe read out loud for us the

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01 following lines? For example, you may start with,
02 I don't know, line 5, for example.
03 A. "Very influential", start there?
04 "... is a good friend of Ljuba (who was his deputy)
05 and, being in charge of privatization, was very helpful
06 in our acquisition of the big farm."
07 Q. Please go on.
08 A. "The bureaucrat in charge of handling the privatization
09 had proposed postponing the auction date."
10 Q. Could we please scroll down? Thank you.
11 A. "The Israeli group who were planning on bidding for the
12 farm complained that we had gained an unfair advantage
13 by spending €1.5 million to buy up a lot of the
14 outstanding debt of the farm. This would enable us to
15 claim about €3 million from a new buyer of the farm. We
16 had told the Minister (Bubalo) and the Privatization
17 Agency that we were buying the debt, it was completely
18 legal, the farm management was happy because they
19 weren't being harassed as much by creditors etc. Bubalo
20 had phoned the Agency and told them not to postpone it
21 so it went ahead as planned and the Israelis did not bid
22 (although an Australian group did and forced up the
23 bidding by about €1 million)."
24 Q. Based on that, was that written after or before the
25 acquisition of BD Agro?

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01 A. Well, it must have been after because it forced up the
02 bidding by about €1 million, so it had to be after, yes.
03 Q. Thank you. You were also asked questions about the
04 Privatization Agency's allegations of breaches of the
05 Privatization Agreement, and alleged warnings that the
06 Privatization Agreement will be terminated if the
07 breaches were not remedied, do you recall that?
08 A. Yes.
09 Q. Sir, were you ever informed that the alleged breaches of
10 the Privatization Agreement could have been cured simply
11 by having Crveni Signal and Inex return certain funds to
12 BD Agro?
13 A. No.
14 Q. What would you have done if you had received such
15 information?
16 A. I probably would have made the payment.
17 MR PEKAR: Thank you. No further questions.
18 THE PRESIDENT: Thank you. We have provided that the
19 Tribunal may allow, in quotation marks, re-cross. For
20 the sake of time, I think we should be not too generous
21 on this allowance. I say this in general, because it
22 will apply as we go along. Since we have provided it,
23 I will of course allow it; if you really need it, let's
24 put it that way. So if it's just to expand or add
25 things that we have heard, it's not needed. It would be

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01 needed if there is a clarification that must be given on
02 something that you consider relevant.
03 MS MIHAJ: I have exactly the question concerning
04 clarification.
05 THE PRESIDENT: Good, on something that is relevant.
06 MS MIHAJ: I think it is.
07 Further cross-examination by MS MIHAJ
08 Q. My colleague said that I asked Mr Rand when did Lundins
09 exit the project, and that I did not show the document,
10 but as the transcript shows, my question was when the
11 Lundins waived their claims against Mr Rand,
12 Mr Obradovic and Sembi, and that is page 24, line 17 of
13 the transcript.
14 THE PRESIDENT: We understood that the waiver necessarily
15 comes after 22nd February 2008 when the agreement is
16 concluded.
17 MS MIHAJ: And my question is, because now I understand that
18 Mr Rand has not understood my question, so I would like
19 to repeat that question, does Mr Rand maybe remember
20 when the Lundins waived their claims against you,
21 Mr Obradovic and Sembi? Do you have a recollection when
22 that happened?
23 A. You mean when the final arrangement was completed with
24 the Lundins, where I paid them so much and they waived
25 the balance? That would have been a couple of years

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01 later, I would expect, yes.
02 Q. But you don't remember the exact year?
03 A. No, I don't.
04 Q. Thank you. And another one question, only one. Do you
05 maybe remember when was the first time that you met
06 Mr Ljuba Jovanovic?
07 A. It would have been that summer.
08 THE PRESIDENT: I'm afraid that doesn't really arise from
09 re-direct.
10 MS MIHAJ: It is from the document that is on the screen,
11 that is the diary.
12 THE PRESIDENT: Yes, we have seen that document and I have
13 noted that actually it must be a document after the
14 auction, because it speaks of the Israeli group not
15 having bid, and that makes sense with the fact that it
16 says that Mr Jovanovic was "very helpful in our
17 acquisition of the big farm", so necessarily it must be
18 after the acquisition. Is there something to be added
19 to this? Because there was no question specifically on
20 Mr Jovanovic in this context.
21 MS MIHAJ: No, I think that the question is when this
22 document was prepared, this is something we are
23 discussing, and my question is going in that direction.
24 THE PRESIDENT: What we do know now is that this document
25 was prepared after the acquisition, after the auction,

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01 and we have understood, and Mr Rand you will correct me
02 if that is not what you have said, that you do not
03 remember exactly when it was these notes were taken, but
04 obviously after the acquisition.
05 MS MIHAJ: But that was not the question whether it was
06 after the auction, but whether it was before or after
07 December 2005. That is the question which is relevant
08 for this document.
09 THE PRESIDENT: And Mr Rand has answered that he doesn't
10 remember. Or do I misunderstand what you have stated?
11 A. No, that's correct. I mean, if I was at home and had my
12 diary, I could tell you the exact date I wrote it, but
13 I don't have the balance of it, so I don't know.
14 MS MIHAJ: Thank you. No further questions.
15 THE PRESIDENT: Good. Do my colleagues have questions for
16 Mr Rand? Would you like to start?
17 Questions from the TRIBUNAL
18 MR VASANI: Good morning, Mr Rand. My first question is in
19 relation to the other investments that you have in which
20 Mr Obradovic is involved. As I had understood your
21 witness statements, those are in the same form that the
22 Claimants claim in this arbitration, which is legal
23 ownership by Mr Obradovic, and beneficial ownership by
24 you and/or your family and companies.
25 My question is this: with regard to those other

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01 companies, those other investments, were they also
02 channelled through MDH and Sembi, or were there other
03 trusts or companies involved?
04 A. No, there were no other -- well, there was a company
05 called Coropi which was a Cypriot-based company that
06 held the interests in those other companies.
07 MR VASANI: So in which case, in those other companies, how
08 is it that he is the nominal legal owner and you are the
09 beneficial owner?
10 A. Most of them I think I was both the nominal -- or Coropi
11 was both the nominal and the beneficial shareholder.
12 There may have been one or two where he still remained
13 the nominal shareholder, but I think most of them were
14 bought by people who had taken them private previously,
15 and those would have been bought nominally and
16 beneficially by Coropi.
17 MR VASANI: At least with regard to MDH and Sembi, they only
18 have the trust arrangement, what you say is a trust
19 arrangement for BD Agro and Mr Obradovic?
20 A. I believe so. I don't know, I can't exactly recall
21 whether at the beginning there might have been an
22 interest that Marine Drive Holdings or Sembi had, but
23 I know latterly they were all in Coropi.
24 MR VASANI: You were asked a question about what I'm going
25 to call the land transaction, which is Mr Obradovic's

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01 sale of the lands.
02 A. Yes.
03 MR VASANI: You had answered that it was not done according
04 to your instructions, but you learned of it later.
05 A. Yes, that's correct.
06 MR VASANI: What was your reaction to that?
07 A. I would say I was not particularly happy, that's fair to
08 say.
09 MR VASANI: Could you elaborate on --
10 A. Well, George had an explanation as to why it was done,
11 and that things had changed, you know, the Government
12 had indicated it was more likely that they were going to
13 put a road through so the land would be more valuable,
14 that's why it went up in value, et cetera. Yes.
15 MR VASANI: Then we have what I call in my own notes the
16 transaction for the breach, which is the movement of
17 funds from BD Agro to CS and Inex.
18 A. Yes.
19 MR VASANI: Was that transaction done according to your
20 instruction?
21 A. No, I don't believe so, but I did know about it, at
22 least after the fact. And you know, I would have been
23 talking to George on a pretty regular basis, so I would
24 have known about it shortly after it was done, I would
25 expect. I don't recall exactly, to tell you the truth.

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01 MR VASANI: What was your reaction to that transaction?
02 A. Well, I know that as far as Inex goes, some money was
03 paid to Inex, Inex paid most of it back, but Inex had
04 forgiven €1.7 million of interest loans to BD Agro, so
05 if BD Agro did a small favour to Inex, it would not be
06 something that would be -- I would consider improper,
07 simply because Inex had written off €1.7 million in
08 interest that it could have claimed from BD Agro.
09 MR VASANI: Thank you. Counsel for Claimants anticipated
10 one question I had, which was in relation to cure.
11 I think you were in the room yesterday when counsel for
12 Respondent indicated that the cure for the alleged
13 breach would have been return of the funds from Inex and
14 CS back to BD Agro, and I think your answer to counsel
15 for Claimants' question was, had your understanding been
16 that that was the cure, you would have done it. In
17 which case, my question is this: what was your
18 understanding of the cure, what the Government was
19 asking BD Agro to do in order to cure the alleged
20 breach?
21 A. I don't think there was any cure. There was no way
22 I could satisfy their allegations about the violation of
23 5.3.3. 5.3.4 probably could have been resolved, but
24 5.3.3 couldn't be fixed.
25 MR VASANI: But do you have a specific recollection of your

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01 understanding of 5.3.4?
02 A. Yes, I have an understanding of it, but at that stage my
03 view was the Government was not going to do anything to
04 assist in the process, despite my meetings with senior
05 Government officials that said they would solve
06 everything, and everything would be solved to my
07 satisfaction, nothing ever happened.
08 MR VASANI: My final questions: could you have in front of
09 you, please, CE-028? If you prefer a paper copy?
10 This is the agreement as between Mr Obradovic, the
11 Lundin family and you, and Sembi. My question was on
12 the €9 million, do you see that, in 1?
13 A. Yes.
14 MR VASANI: Is that the total amount that the Lundins had
15 put into the transaction?
16 A. No, there was a bit more that came -- there were some
17 other entities that were controlled by the Lundins that
18 put in an amount that took it up to, I think, 13.8,
19 something like that.
20 MR VASANI: Did that include any interest, or was that
21 principal only?
22 A. That was principal only.
23 MR VASANI: Going back then to the original informal
24 arrangements you had with the Lundins in relation to
25 their investment, do you remember that? You said you

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01 had an informal unwritten arrangement with the Lundins
02 in relation to their investment into BD Agro.
03 A. Yes, I had discussions, lots of discussions, and they
04 visited the farm, Lukas and Ian Lundin visited the farm
05 and we talked about the arrangement and the money they
06 were going to put up, but it was -- I know some people
07 may not understand it, but it was left unwritten at that
08 stage.
09 MR VASANI: Was Mr Obradovic part of those discussions?
10 A. No.
11 MR VASANI: Thank you, sir. I have no more questions.
12 THE PRESIDENT: Thank you.
13 PROFESSOR KOHEN: Good morning, Mr Rand. I also have some
14 questions. First of all, do you consider yourself the
15 beneficial owner of BD Agro from the beginning of the
16 privatization?
17 A. Yes, from the very beginning, before the privatization
18 auction, there was an agreement with George between MDH
19 and myself, and MDH and myself became the beneficial
20 owners as soon as the auction took place.
21 PROFESSOR KOHEN: That was the MDH British Virgin Islands?
22 A. Yes, that's correct.
23 PROFESSOR KOHEN: Concluded with Mr Obradovic?
24 A. Yes.
25 PROFESSOR KOHEN: But if I understand well, MDH British

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01 Virgin Islands was a company in which you have 75% of
02 the capital, and 25 was for one of your associates?
03 This is what I remember from --
04 A. No, I think it was -- I had half, and a company that
05 I had with my business partner, Brian Edgar, owned half,
06 so I owned, in effect, half directly and half through
07 a company I shared with Mr Edgar, and then
08 I subsequently bought Mr Edgar out of Rand Edgar
09 Investment Corp and then I owned it 100%.
10 PROFESSOR KOHEN: But at the time of the agreement between
11 MDH and Mr Obradovic, so the capital of MDH was owned
12 between you and your associate, am I correct?
13 A. Yes. As I explained, as I said, I owned in effect 75%,
14 and my partner, Mr Edgar, owned 25%, through the
15 companies, yes.
16 PROFESSOR KOHEN: So one can consider that the beneficial
17 owner of BD Agro in that case would be rather MDH
18 British Virgin Islands and not yourself?
19 A. Well, yes, I suppose that's right, although I controlled
20 MDH completely, and my partner had no input into
21 decisions with respect to it.
22 PROFESSOR KOHEN: This agreement, MDH-Obradovic, was subject
23 to British Columbia law, is that correct?
24 A. That's correct.
25 PROFESSOR KOHEN: May I ask you why you decide to involve

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01 this company from the British Virgin Islands?
02 A. To tell you the truth, I have no idea. I was getting
03 tax advice from tax advisers in Vancouver, and it was
04 suggested to me that this would be a good way to start
05 the transaction, and so I did.
06 PROFESSOR KOHEN: You have different companies so
07 established in different parts of the world?
08 A. Sorry, say that again?
09 PROFESSOR KOHEN: Do you have different companies
10 established in different parts of the world like this?
11 A. I wouldn't say in different parts of the world, but
12 certainly I have a number of companies in Canada and the
13 United States, and in Serbia, of course, yes.
14 PROFESSOR KOHEN: With regard to Sembi, was there any reason
15 to establish it in Cyprus?
16 A. Sorry, I don't quite understand.
17 PROFESSOR KOHEN: Sembi.
18 A. Yes.
19 PROFESSOR KOHEN: It was established in Cyprus.
20 A. Yes.
21 PROFESSOR KOHEN: Was there any particular reason for
22 Cyprus?
23 A. Again, it would have been based on tax advice that
24 I got.
25 PROFESSOR KOHEN: Thank you. Did you propose Mr Jovanovic

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01 to become the CEO of BD Agro and consequently to leave
02 the Ministry of Economy, or it was the other way around,
03 that is to say Mr Jovanovic proposed you to have some
04 involvement in BD Agro?
05 A. You know, after the privatization, I had a number of
06 dinners and lunches and discussions, somewhere along the
07 line it must have come up that he was interested in
08 maybe leaving the Ministry, and I originally had
09 intended to hire someone in Canada to come and help
10 manage the farm, but then I sort of thought that
11 I didn't know anyone that spoke Serbian in Canada, and
12 it probably should be someone that could communicate
13 better with the people that work there, it would be
14 a little difficult, I think, to have a non-Serb speaking
15 person trying to manage at the time 600 or 700
16 employees, and I did not know -- I did not have an
17 extensive list of contacts in Belgrade, and when Ljuba
18 indicated he might be available, it seemed like a good
19 idea at the time.
20 PROFESSOR KOHEN: Thank you, Mr Rand. I don't have any more
21 questions, Mme President.
22 THE PRESIDENT: Thank you.
23 You have been asked many questions about your
24 relationship with the Lundins, and I understand that
25 they put up, and I think you confirmed this, maybe the

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01 figures were not completely precise, but from the record
02 I understand they put up funds for €13.8 million. Then
03 at some point after Adolf Lundin passed away, they
04 decide they want to exit, and that was part of their
05 options. So you enter into the contract that we have
06 seen, which is CE-028, if I am not mistaken, in February
07 2008, and you agree to repay €9 million, and according
08 to the record, you repaid €5.6 million, and then they
09 waived the rest. That is, they waived in total, if
10 I understand it correctly, but you can confirm it to us,
11 €8.2 million.
12 Now I understand that in percentage-wise this may be
13 a small amount compared to their wealth but at the same
14 time it is a significant amount compared to what we're
15 discussing here.
16 How come they waived this money?
17 A. I think for a couple of reasons. One, because I know
18 that they felt that they were going to get maybe 25% of
19 the profit if it was sold profitable, and it looked at
20 that time like the land was going to be worth quite
21 a bit of money, so we would have a couple of years after
22 the privatization was over to sell, and they would get
23 rewarded for it.
24 Also that I owed them a certain amount of money and
25 it was probably better if I put the money into the farm

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01 to keep it and expand it and keep it running, rather
02 than simply pay it to them, and whether I could do both
03 at the same time, maybe I could have, but it would have
04 required liquidation of some of my real estate, or
05 something like that.
06 So I think we talked about it over a period of time,
07 and they agreed to do it, so.
08 THE PRESIDENT: What is striking when I look at the way you
09 conduct your business -- you are an experienced
10 businessman, you are also a lawyer by training and by
11 many years of practice -- is the informality in which
12 you deal for instance with the Lundins, for instance
13 with Mr Obradovic. You said in a response to counsel
14 about the Lundins, "We had it very loose", and it is the
15 looseness -- it is unusual, let's put it that way,
16 especially for someone who is a lawyer by education. Is
17 this the way you always do business?
18 A. I wouldn't say always do business but I have had
19 a number of partners in various businesses, whether it's
20 my real estate business or fund management business or
21 other businesses, medical business that I am involved
22 in, and a lot of it has been done by a handshake. Some
23 people may say you should have everything documented,
24 but I have had very good partners over the years, and
25 I have trusted a lot of people, and to tell you the

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01 truth, I have never been -- no one has ever taken
02 advantage of me because it was loose or anything, I have
03 had very good luck with all the partners I have had, and
04 a lot of the things we have done have been more casual,
05 maybe more casual than most people would do it, but as
06 I said, it's worked for me.
07 THE PRESIDENT: Let me see what other questions I had.
08 In one of your answers, it was in connection with
09 the release of the pledge over the shares, you said it
10 was a bureaucratic nightmare. Can you expand on this?
11 A. Well, I would meet with the Minister of Economy, it
12 started off with Mr Bubalo, and then a year later there
13 would be another Minister of Economy, and then a couple
14 of years later there would be another one, and then
15 another one, and then another one, and you never could
16 go back to the same person and say, look, we had
17 a meeting and you agreed to do this and that and why
18 didn't you do it, it was always new person. There was,
19 I think, six different Ministers of Economy between 2005
20 and 2015, 2016, 2017, and it was very difficult to have
21 any continuity of who you were going to deal with. The
22 head of the Privatization Agency kept changing. So yes,
23 it was a bit of a nightmare, to tell you the truth.
24 THE PRESIDENT: In your second witness statement, paragraph
25 84, if someone who is in control can show it to you, you

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01 speak about the changes in the management of BD Agro
02 that you did in 2013, and you decided that Mr Obradovic
03 would no longer be involved. And I was asking myself
04 why you did this. Were you not satisfied with his
05 performance? But if you were not, why would you ask him
06 to deal with your other investments? Can you explain
07 this to me?
08 A. Yes, I think the other investments were pretty simple,
09 they were basically businesses that were either one
10 business on a plot of land, but basically it was a lot
11 of looking after real estate, so it was quite simple.
12 BD Agro, on the other hand, was quite a complex business
13 between the various problems with cattle, as far as the
14 leukosis and the bluetongue disease and all those
15 issues, and then the drought, it was just more than --
16 and it was time to get better professional management in
17 there, and get George away from BD Agro.
18 THE PRESIDENT: In paragraph 94 of the same witness
19 statement, which is the second one, you say, "I had no
20 doubt that the Serbian officials knew that I was the
21 beneficial owner" and that Mr Obradovic only had nominal
22 ownership. You confirmed this again now orally earlier
23 on.
24 On what basis do you say this?
25 A. Sorry?

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01 THE PRESIDENT: On what basis are you convinced that they
02 knew? Because they say the contrary now.
03 A. Because it was -- everyone who enquired about the farm
04 knew I was the beneficial owner. Everyone at the
05 Canadian Embassy, they would have large receptions and
06 I would be introduced as the owner of the farm, they
07 didn't say "he is the beneficial owner", they just said,
08 "Mr Rand is the owner of the farm". Every meeting I had
09 with any government officials, I was there as -- they
10 understood that I was the owner, that's why they were
11 talking to me. They weren't asking George Obradovic any
12 questions about anything, it was me they dealt with and
13 I had a number of meetings with Ministers and the
14 Canadian Ambassador, and I was always introduced as the
15 owner.
16 THE PRESIDENT: In your third witness statement,
17 paragraph 11, you speak of the reasons for the
18 arrangements of splitting nominal and beneficial
19 ownership. You say this was a matter of flexibility and
20 convenience, because then Mr Obradovic was Serbian,
21 spoke Serbian, could deal with matters and therefore it
22 was more efficient.
23 But I was not sure about these reasons. Why could
24 matters not with dealt with by management or a local
25 member of the board of directors, or some

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01 representative? Actually, when Mr Obradovic was asked
02 to focus on your other investments and not on BD Agro
03 any more, you then asked Mr Broshko and Mr Markicevic to
04 take over, if I understand it correctly, the role of
05 Mr Obradovic.
06 A. Yes.
07 THE PRESIDENT: They were not nominal owners either, and
08 I understand that they could perform the tasks as well.
09 A. Yes, they could, but Mr Markicevic was Serbian, he lived
10 in Belgrade, it was easy for him to manage it, and
11 Mr Broshko moved to Belgrade for six months to help
12 manage it, which I was not prepared to do, so it was
13 easy for them, and easy for me to understand that they
14 would be able to manage it. Erinn would fly over on
15 short notice if anything came up, and I had a lot of
16 faith in Mr Markicevic. It was going to work quite
17 well. But originally I didn't know -- as I said,
18 I didn't know a lot of people in Belgrade, and I didn't
19 have anyone at that time like Mr Broshko who could go
20 over on a moment's notice, which I couldn't always do.
21 THE PRESIDENT: So it worked quite well with this new
22 set-up, and it would not have worked in your assessment
23 initially because you didn't know the people, you had no
24 people you knew from which you could draw -- in whom you
25 had the same confidence, or why? I still don't

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01 understand exactly. Because you are confirming that the
02 new system worked. So why would this new system not
03 have worked in the past?
04 A. I suppose it could have, but it was suggested to me at
05 the time that some of the documentation that would be
06 required if I was the principal, I would have to be
07 there for every time a bank account was opened. Powers
08 of attorney were complicated, they didn't really like
09 powers of attorney, and there was always an issue with
10 it, and this was explained to me by not only
11 Mr Obradovic but Mr Jovanovic also, that it's fine if
12 you're a big company and you can have a full-time team
13 of people there to handle all this, including CEOs
14 et cetera, but I was not set up that way, so I was not
15 prepared to go flying back and forth every month or
16 every two weeks because there was an administrative
17 issue. And as I said, everybody seemed quite
18 comfortable that this was a simple, easy way to handle
19 the matter, so I went along with that suggestion, and it
20 worked out quite well actually.
21 THE PRESIDENT: Fine. I have no further questions. Do
22 counsel have any questions that arise directly, any
23 clarification requests that arise directly from the
24 Tribunal's questions?
25 MS MIHAJ: No, thank you.

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01 MR PEKAR: No questions.
02 THE PRESIDENT: Fine, that completes your examination,
03 Mr Rand, thank you very much for your explanations.
04 THE WITNESS: Thank you very much, Mme President.
05 THE PRESIDENT: We can now take a break, should we take
06 15 minutes? It is 46, so we can resume on the hour.
07 MR PEKAR: May I just have a housekeeping question?
08 I believe we are slightly ahead of the schedule, which
09 is always a good thing. First of all, I wanted to ask
10 if we should tell Mr Markicevic, who is our fourth
11 witness, and he was scheduled for tomorrow, whether he
12 should be ready, or you don't anticipate that it would
13 be his turn, okay.
14 Then Mme President, we have Mr Aksel Azrac still
15 somewhere on the way. We will need to confirm whether
16 he has landed in Rotterdam Airport as he was scheduled
17 to, we will use the break for that, and obviously we
18 will inform you as soon as possible.
19 THE PRESIDENT: Then we will take it from there. If he is
20 available, then we just go forward; if not, it would be
21 nice, could we then have Mr Obradovic.
22 MR PEKAR: Definitely we can have Mr Obradovic.
23 THE PRESIDENT: Because it would not be good to lose time
24 now.
25 MS MIHAJ: Yes, Mme President, but as we already noted

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01 actually in the email communication that we had prior to
02 the hearing, it was very important for us that we know
03 in advance the way the witnesses will be examined, the
04 first witness, second, the third and so on. So as we
05 understood, Mr Azrac would be examined as the second
06 witness and we have no problem waiting for Mr Azrac to
07 appear.
08 THE PRESIDENT: But we have a problem waiting. I can
09 understand that you are not ready to cross Mr Markicevic
10 who is for tomorrow. I have more difficulty
11 understanding why you cannot switch witnesses within the
12 same day. But maybe that will not arise, so let's not
13 deal with things that are hypothetical, and we take the
14 break now, and hopefully by then Mr Azrac has arrived.
15 Is that fine?
16 THE WITNESS: Could I just make one comment. Mr Aksel
17 Azrac, it is his birthday and he was with a large group
18 of friends in Greece, and this is the worst day of all
19 the time for him to have to come here.
20 THE PRESIDENT: So we will thank him appropriately.
21 THE WITNESS: So he is taking a helicopter to Athens and
22 then a plane to get here, so he is working hard.
23 THE PRESIDENT: Thank you. Let's have a break then.
24 (10.49 am)
25 (A short break)

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01 (11.07 am)
02 THE PRESIDENT: Are we ready to start?
03 MR PEKAR: Yes, I will just explain who you have in front of
04 you. This is Mr Obradovic, not Mr Aksel Azrac, as we
05 discussed --
06 THE PRESIDENT: Yes, I recognise Mr Obradovic from the
07 pictures, absolutely.
08 MR PEKAR: I just wanted to explain that the reason why
09 Mr Azrac is not here is not that it would have been
10 planned this way but unfortunately his flight that he
11 was supposed to take this morning was cancelled and only
12 yesterday, so this is why we had to re-arrange his
13 travel, that is why he took a helicopter from the small
14 place where he is, which was originally supposed to
15 allow his private plane to take off at 8.00 am Greek
16 time, which would have allowed him to be here, but then
17 they postponed the opening hours and he had to go to
18 Athens, and from Athens to Rotterdam. So we very much
19 apologise for that inconvenience also to our colleagues
20 opposite. We made Mr Obradovic available for
21 cross-examination.
22 THE PRESIDENT: Is this fine with Respondent?
23 MS MIHAJ: Yes, except I do not understand when Mr Azrac
24 will be able to appear.
25 THE PRESIDENT: That is my next question. Do you have an

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01 indication of when he will be here?
02 MR PEKAR: He is supposed to be on the way. When we tried
03 to call him, his phone was not answering which suggests
04 that he might be still -- he has landed in Rotterdam and
05 he should be here within 20 minutes.
06 THE PRESIDENT: Fine, so should we start with Mr Obradovic?
07 Because I understand Mr Azrac needs to leave again
08 relatively soon, or not? It would be nicer not to have
09 to stop the examination, to suspend the examination of
10 Mr Obradovic, but we can also envisage that. How does
11 it look for Mr Azrac?
12 MR PEKAR: Mr Azrac would like to leave earlier, but
13 obviously he will be here as long as the Tribunal needs
14 him, and he accepts the inconvenience to his personal
15 plans which that may cause.
16 THE PRESIDENT: So he could be here in the course of the
17 afternoon, until the end of the afternoon, 4.00 pm or
18 5.00 pm?
19 MR PEKAR: Yes. On the other hand, I do not know how long
20 the cross-examinations are scheduled to take, so perhaps
21 an indication might help us plan.
22 THE PRESIDENT: Do you have an indication of that?
23 MS MIHAJ: Definitely not longer than an hour.
24 THE PRESIDENT: Fine, then I think we should be able to
25 carry through with Mr Obradovic to the end of his

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01 examination and then take Mr Azrac.
02 MR PEKAR: But this one hour, that is Mr Aksel Azrac's
03 cross-examination or Mr Obradovic's?
04 MS MIHAJ: Mr Aksel Azrac's cross-examination.
05 MR PEKAR: We need the sum of the two.
06 THE PRESIDENT: I thought the estimate was for Mr Obradovic.
07 It is longer?
08 MS MIHAJ: That of course depends but I think between an
09 hour and two hours, I cannot precise it.
10 PROFESSOR KOHEN: Mme President, I think it would be
11 convenient to have Mr Obradovic's statement without any
12 kind of interruption. Not to have the beginning now and
13 then the lunchtime break, and then continuing. If it
14 would be possible to have Mr Obradovic's examination
15 just without interruption, I think it would be better.
16 THE PRESIDENT: I think we will have to live with
17 interruptions until we get to the end of this hearing,
18 because it will be difficult not to have breaks within
19 some of the examinations. Otherwise we will have to
20 wait or so. Let's not talk too long and just get going,
21 and then --
22 MR PEKAR: Mme President, alternatively we also propose to
23 wait now 20 or 25 minutes for Mr Azrac and take that
24 from our time.
25 THE PRESIDENT: That's very generous, maybe you will regret

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01 it later, but these things can happen.
02 MS MIHAJ: We can split the time.
03 THE PRESIDENT: Do you want to wait for Mr Azrac?
04 MS MIHAJ: Definitely, and we can split the time with the
05 Claimants.
06 THE PRESIDENT: That is great co-operation.
07 MR PEKAR: Thank you. Our apologies for leaving the
08 Tribunal unemployed for 20 minutes.
09 THE PRESIDENT: We don't know what to do, so we are getting
10 very nervous. So we take a break now, and as soon as
11 Mr Azrac is here, please come and tell us in our
12 break-out room.
13 MR PEKAR: Yes, we shall.
14 MS MIHAJ: Thank you.
15 THE PRESIDENT: Mr Obradovic, I apologise for having you
16 wait here, and having to listen to all these discussions
17 about organisation, and you still have to wait until we
18 have finished with Mr Azrac, thank you.
19 (11.12 am)
20 (A short break)
21 (12.05 pm)
22 MR AKSEL AZRAC (called)
23 THE PRESIDENT: Good morning, sir. We understand it was
24 a difficult trip, so we are very grateful for you to be
25 here. We also understand that it is your birthday, so

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01 happy birthday.
02 THE WITNESS: Thank you very much, and sorry to be late at
03 this meeting, thank you. Thank you for your
04 understanding.
05 THE PRESIDENT: We are pleased that you are here. For the
06 record, can you please confirm that you are Aksel Azrac?
07 THE WITNESS: I confirm I am Aksel Azrac.
08 THE PRESIDENT: You are Partner and Head of the Multi-Family
09 Office at 1875 Finance in Geneva?
10 THE WITNESS: I confirm.
11 THE PRESIDENT: You have provided us with one witness
12 statement, I mean, a written witness statement, that was
13 dated 16th January 2019, do you have it there?
14 THE WITNESS: I have it in front of me. Exactly, 2018.
15 THE PRESIDENT: Fine. You know that you are heard as
16 a witness; as a witness, you are under a duty to tell us
17 the truth. Can you please confirm that this is what you
18 will do by reading the witness declaration that you have
19 in front of you, please?
20 THE WITNESS: Thank you. I solemnly declare upon my honour
21 and conscience that I shall speak the truth, the whole
22 truth and nothing but the truth.
23 THE PRESIDENT: Thank you. So you will first be asked some
24 questions by Claimants' counsel, and then we will go
25 over to Serbia's counsel.

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01 THE WITNESS: Thank you.
02 Direct examination by MR PEKAR
03 Q. Thank you, Mme President. Mr Azrac, did you have
04 a chance to review your witness statement recently?
05 A. Yes, I reviewed it.
06 Q. Would you like to change anything in your witness
07 statement?
08 A. No, nothing to change, thank you.
09 Q. Mr Azrac, could you please describe for the Tribunal the
10 relationship between Mr William Rand and the Lundin
11 family?
12 A. Yes, of course. I know Mr Rand because I work with the
13 Lundin family. Mr Rand has been advisers, lawyers and
14 board members for the different companies of the Lundin
15 Group during 40 years, and he becomes also very good
16 friends of the Lundin family during the years.
17 MR PEKAR: Thank you. I have no further questions.
18 THE PRESIDENT: Thank you. Can I turn to Respondent,
19 Ms Mihaj?
20 MS MIHAJ: Thank you, Mme President.
21 Cross-examination by MS MIHAJ
22 Q. Good afternoon, Mr Azrac, and thank you for coming today
23 and of course happy birthday.
24 A. Thank you very much.
25 Q. I will try not to keep you too long. Can we see

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01 paragraph 12 of your witness statement, and there you
02 said that the Lundins decided to provide the financing
03 for Mr Rand.
04 A. Yes.
05 Q. Just a second, we have a technical problem, we opened
06 the document but it is not on the screen. (Pause).
07 THE PRESIDENT: Is the question about the witness statement?
08 MS MIHAJ: Yes, it is. Maybe we can proceed.
09 THE PRESIDENT: Maybe we can proceed, it will become
10 relevant when you project other documents, but for now,
11 maybe we can go ahead and in the meantime they can fix
12 it.
13 MS MIHAJ: Yes, thank you.
14 So you said that the Lundins decided to provide the
15 financing for Mr Rand, and my question is: who exactly
16 told you this?
17 A. I am in touch with Mr Adolf Lundin at the time, so it is
18 Adolf Lundin who informed me.
19 Q. Did Mr Adolf Lundin give you exact details on the amount
20 that should be paid, the timing of the payment?
21 A. It was a discussion between Mr Rand and Mr Lundin, so
22 they just told me that they would like to provide
23 financing.
24 Q. Do I understand correctly that at the time, you did not
25 know how much money in total would be paid to

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01 Mr Obradovic?
02 A. At my remembering they didn't told me the number, but
03 again it's something in 2005, so maybe they give me the
04 number, but I don't remember that.
05 Q. Thank you. We can move on to the next paragraph,
06 paragraph 13 of your witness statement. There you said
07 that the Lundins informed you that they would have the
08 option to convert their advances into equity, or to be
09 repaid their funds. Can you please tell us when did the
10 Lundins inform you of this exactly?
11 A. They informed me over the time, I cannot tell you the
12 exact day or year where it happened.
13 Q. Thank you. What did the Lundins tell you, Mr Adolf
14 Lundin, what did he say, who should repay the funds?
15 Should it be Mr Obradovic or Mr Rand?
16 A. Definitely Mr Rand, they don't know Mr Obradovic, so
17 definitely Mr Rand. For them, the contact was Bill Rand
18 and they invested because they believe in Bill Rand.
19 Q. Thank you. Can we now see, please, Exhibit CE-028? Are
20 you aware of that document?
21 A. Let me just look at it, please. Yes.
22 Q. You are aware of it, okay. So can we go to point B? It
23 says that it was Mr Obradovic who borrowed €9 million
24 from the Lundin family. So my question is if it was
25 Mr Obradovic who borrowed, then how Mr Rand should have

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01 repaid that debt?
02 A. For the Lundins, the partner in this business was
03 Mr Rand. The way that he structured the deal, it's
04 another discussion, but for them, the partner in
05 business was Mr Bill Rand, so after the way that he
06 structured the deal, the way that he did the different
07 agreement, they trust Mr Rand, and this is the way it
08 worked for them.
09 Q. Are you saying that it was like that from 2005, already
10 from 2005 and 2006, when the payments were first made to
11 Mr Obradovic and MDH, it was always just Mr Rand?
12 A. Yes. For me, the instruction that I received from the
13 Lundin family should pay following the discussion with
14 Mr Rand.
15 Q. Thank you, Mr Azrac. Do you maybe remember how many
16 payments were performed to Mr Obradovic for BD Agro? If
17 you remember. If you don't remember --
18 A. Unfortunately I don't remember.
19 Q. Do you maybe remember who gave you the instructions
20 concerning the exact payments at the time, it was
21 several payments, who gave you the exact instructions
22 for each payment, do you remember maybe?
23 A. The instruction has to come from the beneficial owner of
24 the account, so the Lundin family, so they gave me
25 instructions for the different payments and the amounts.

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01 Q. Could you be more precise when you say Lundin family?
02 Who would that be? So who gave you the instructions for
03 the payment that you performed to Mr Obradovic?
04 A. Mr Adolf Lundin, Mr Ian Lundin, Mr Lukas Lundin, they
05 gave me the instructions over the years.
06 Q. Thank you. How did you receive these instructions?
07 A. We received them signed at our office.
08 Q. On the paper?
09 A. On the paper or instruction that we after have to sign
10 the client.
11 Q. Do you keep the record of these instructions, do you
12 have those instructions?
13 A. The bank must keep some of the records.
14 Q. Thank you. In these instructions, was it stated what is
15 the purpose of these payments, or was it only a general
16 description?
17 A. I cannot answer this question, 15/16 years ago, but if
18 you look at the payments I am sure you can see the
19 labels, if they are there.
20 Q. Thank you, Mr Azrac. Do you maybe know, did the Lundins
21 ever secure the funds borrowed to Mr Obradovic?
22 A. Can you be more precise on your question?
23 Q. When they borrowed the money to Mr Obradovic, did they
24 secure that loan in any way?
25 THE PRESIDENT: When they lent the money, you meant?

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01 MS MIHAJ: Lended, yes, I am sorry.
02 A. Again, the discussion was between the Lundins and Bill
03 Rand so they have the discussion amongst themselves, and
04 the way that they have to do the deal.
05 Q. So you are not aware of whether there is security --
06 A. No.
07 Q. No problem, thank you. In paragraph 13 of your witness
08 statement, you said that you have transferred
09 approximately €13.8 million to Mr Obradovic and MDH. So
10 since you effected these transfers, can you tell us
11 whether you need to have some supporting documentation
12 in making payments from Switzerland, I suppose, to
13 Serbia?
14 A. We explained that the Lundin family, as they are doing,
15 was taking a participation in the farm, to the bank, or
16 lending money to the bank, we have to explain to the --
17 as they did in the past with other investments in
18 agribusiness.
19 Q. Yes, I understand but my question was whether you need
20 to have some supporting documentation when making the
21 payments.
22 A. I can't remember if we gave to the bank explanation
23 exactly where the money was going.
24 Q. My question is not whether you explained something or
25 not, but whether you have supporting documents

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01 confirming the purpose of the multi-million payments.
02 A. For sure we give to the bank but I can't remember what
03 we gave to the bank as a document.
04 Q. Thank you. Then in paragraph 16 of your witness
05 statement, you said:
06 "After a period of time, Mr Rand repaid to the
07 Lundins €5.6 million out of the €13.8 million owing. In
08 the fall of 2010, the Lundins agreed to waive the
09 balance outstanding and the matter was settled."
10 Is that the correct quotation?
11 So when you say the Lundins agreed, to whom do you
12 refer in particular?
13 A. Mr Ian Lundin and Lukas Lundin, as Mr Adolf Lundin
14 passed away in 2006.
15 Q. Who in particular informed you about the waiver, do you
16 remember, was it Ian or Mr Lukas Lundin?
17 A. I cannot answer this question precisely.
18 Q. Do you maybe remember whether both of the Lundins
19 confirmed about the waiver, or you don't remember that?
20 A. It's definitely a common decision that they took, but
21 who informed me, this is another subject.
22 Q. Thank you. How were you informed about the waiver, in
23 which way, by telephone, mail, some other way?
24 A. Definitely telephone, this is the way that we operate.
25 We talk very often over the phone.

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01 Q. Thank you. Tell me please, what was the precise balance
02 outstanding that the Lundins said they want to waive?
03 A. I cannot answer precisely this question. I can imagine
04 that it was the difference between the payment and the
05 amount that we didn't receive.
06 Q. So they didn't precisely say, "We want to waive that
07 much"?
08 A. I don't remember precisely, I cannot answer your
09 question.
10 Q. Thank you. Do you maybe know, did any tax obligation
11 arise for Lundin due to that waiver?
12 A. No tax obligation at all, it's a loss.
13 Q. Did they have any tax benefits from the waiver?
14 A. No.
15 Q. Do you maybe know whether Mr Rand had any tax liability
16 arising?
17 A. I cannot answer this question.
18 Q. Can we go now to paragraph 14 of Mr Azrac's witness
19 statement?
20 You stated that after the death of Mr Adolf Lundin
21 in 2006, his sons decided to reduce their exposure to
22 the increasing business risk in Eastern European
23 countries, is that correct?
24 A. Yes, correct.
25 Q. One of these businesses was BD Agro?

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01 A. Yes, correct.
02 Q. As I understood from your previous answers and your
03 witness statement, out of €13.8 million investment
04 Lundins waived at least €8 million because they received
05 €5.6 million, which is a loss of 60%, I would say,
06 something like that. So please tell me, how did the
07 Lundins mitigate the risk by waiving their interests and
08 their claims?
09 A. It's a discussion between Mr Rand and the two Lundins,
10 but we lost more money in Russia than 60%, in Black
11 Earth Farming, and this is a public company that you can
12 go and check how many the shareholders lost.
13 Q. Was it also due to the waiver of the claim?
14 A. Sorry?
15 Q. Was it also due to the waiver of the claim that the
16 Lundins had in that project, or some other reason?
17 A. It's a public company, you can go and have all the
18 information on Black Earth Farming and you will see it's
19 more than 60% that all the shareholders lost.
20 Q. Yes, I understand, but my question is whether that loss
21 which is more than 60% was also because the Lundin
22 family waived some claim related to that project, or was
23 it some other reason for that loss?
24 A. As the other shareholders, they didn't manage to make
25 Black Earth Farming working, and they lost a lot of

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01 money. You can follow the share price on the stock
02 market.
03 Q. Thank you. Now we can go to paragraph 17 of Mr Azrac's
04 witness statement.
05 There you said that neither you nor the Lundin
06 family has had any involvement or financial interest in
07 BD Agro project since the Lundins agreed to waive the
08 balance outstanding, is that correct?
09 A. Yes.
10 Q. They waived the balance outstanding in the fall of 2010,
11 that is something you also confirm in your witness
12 statement.
13 A. Yes.
14 Q. So my question is: how do you know that the Lundin
15 family had no involvement or financial interest in BD
16 Agro after 2010? How do you know that?
17 A. As a responsible of the Multi-Family Office, we have to
18 follow the investment that we have, and they told me
19 that they waived and they don't have any investment in
20 BD Agro any more, so we moved this from our list of
21 investments.
22 Q. Thank you, Mr Azrac. I have one more question. Can we
23 go now to CE-029? That would be point C of that
24 agreement. There you see that Mr Obradovic owes
25 €4.8 million to some institutions in Geneva. Would you

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01 please tell us, who are these institutions in Geneva?
02 THE PRESIDENT: Can we just show to Mr Azrac what this
03 agreement is?
04 MS MIHAJ: Yes, of course.
05 THE PRESIDENT: Do you know this agreement? (Pause). If
06 you don't know or you don't remember, that's an answer
07 too.
08 A. I don't remember.
09 THE PRESIDENT: But that doesn't mean you cannot answer the
10 question. If you can, can you please repeat it?
11 MS MIHAJ: Yes, could you please tell us who are
12 institutions in Geneva from whom Mr Obradovic has
13 borrowed €4.8 million? Could you tell us who are
14 institutions in Geneva? Of course, if you cannot tell
15 us, that's perfectly fine.
16 A. They are accounts close to the Lundin family, were
17 controlled by the Lundin family.
18 Q. Can you please specify which institutions we are talking
19 about?
20 A. I cannot remember every investment that had been done at
21 that time, but they are definitely accounts close to the
22 Lundin family.
23 Q. I am not sure that I understand when you say "but they
24 are definitely accounts close to the Lundin family",
25 when you say accounts, what do you mean? I am not sure

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01 that I understand that. Here we have institutions, and
02 here you have mentioned the accounts.
03 A. There are people investing, co-investing with the Lundin
04 family, or the Lundin family's accounts, some of them.
05 I cannot give you the exact details today, 15 years
06 later, or 14 years later.
07 MS MIHAJ: Thank you, Mr Azrac, I have no further questions.
08 THE PRESIDENT: Thank you. Any questions in re-direct?
09 MR PEKAR: No questions, Mme President.
10 THE PRESIDENT: Fine. Do my colleagues have questions for
11 Mr Azrac? Yes, please.
12 Questions from the TRIBUNAL
13 PROFESSOR KOHEN: Thank you, Mme President. Bonjour,
14 Mr Azrac, and happy birthday also.
15 A. Thank you.
16 PROFESSOR KOHEN: I would like to ask you in relation to
17 your statement, paragraph 13, maybe it can be put on the
18 screen, you said that you effected transfers of
19 approximately €13.8 million to Mr Obradovic and Marine
20 Drive Holdings, these were obviously bank transfers?
21 A. Yes.
22 PROFESSOR KOHEN: Do you remember whether these bank
23 transfers were sent to Serbian accounts?
24 A. From where they were sent, or which bank in Serbia they
25 have been sent? From which bank they have been sent, or

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01 in which bank they went? Just so I understand your
02 question.
03 PROFESSOR KOHEN: The transfers you made were sent to bank
04 accounts?
05 A. Mm.
06 PROFESSOR KOHEN: Do you remember if these bank accounts
07 were located in Serbia?
08 A. I don't remember precisely, so no.
09 PROFESSOR KOHEN: But you remember that they were sent to
10 Mr Obradovic and MDH, but you don't remember --
11 A. I am sure we can find it in the files.
12 PROFESSOR KOHEN: Thank you. No further questions.
13 THE PRESIDENT: I have just one question which is just
14 a clarification about CE-029, recital C, that we
15 discussed before, this €4.8 million loan that went to
16 Mr Obradovic from other institutions in Geneva,
17 represented by 1875 Finance. That 1875 Finance is the
18 Lundins' bank or financial institution?
19 A. No, 1875 Finance, Mme President, is an independent asset
20 manager, regulated by FINMA, and so we -- the bank
21 accounts are with different banks, and we send the
22 instruction to the banks to pay on behalf of the
23 clients, when we have the instructions. It's not
24 a bank.
25 THE PRESIDENT: It's not a bank, it's a corporation

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01 certainly, it's an asset manager?
02 A. Exactly.
03 THE PRESIDENT: When you speak of the client, you speak of
04 the Lundins or one of their companies?
05 A. One of the clients of the company.
06 THE PRESIDENT: You spoke of accounts, right, close to or
07 controlled by the Lundins but here it says
08 "institutions". To me an institution is a different
09 thing than an account.
10 A. Sorry, maybe I have not been precise. I should say
11 "accounts in Geneva are represented by 1875 Finance", or
12 companies.
13 THE PRESIDENT: No, but the contract that you see says
14 "institutions", right? The last line of recital C.
15 A. We don't --
16 THE PRESIDENT: Which are here presented like lenders,
17 right:
18 "Mr Obradovic has borrowed ... €4.8 million ... from
19 ... institutions ..."
20 So these are lenders. I am not sure what the answer
21 was to this question, the question was who are these
22 institutions.
23 A. I think you should take it as the lenders or bank
24 accounts, it is not another company that we go to see
25 and tell them, it's people having bank accounts who paid

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01 the €4.8 million.
02 THE PRESIDENT: Thank you, so it's bank accounts in other
03 banks?
04 A. Exactly, it can be in other banks, if there is --
05 THE PRESIDENT: So it's accounts close or controlled by the
06 Lundins that are in other banks, or other financial
07 institutions?
08 A. Yes.
09 MR VASANI: May I follow up? I had thought differently. So
10 these institutions are not clients of yours?
11 A. I cannot remember exactly who invested the €4.8 million,
12 but they can be clients of us, or it can be people with
13 whom we are working, so I cannot remember who invested.
14 THE PRESIDENT: I have no further questions, no questions,
15 no additional questions, so that ends your examination,
16 Mr Azrac, and now you can go and celebrate your
17 birthday.
18 THE WITNESS: Thank you very much.
19 THE PRESIDENT: Thank you for your help. So now we would
20 take the lunch break, is that the plan, and resume at
21 13.35, is that fine?
22 MR PEKAR: Fine with us.
23 THE PRESIDENT: Good. Have a good lunch, everyone.
24 (12.37 pm)
25 (Adjourned until 1.35 pm)

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01 (1.35 pm)
02 MR DJURA OBRADOVIC (called)
03 THE PRESIDENT: Are we ready to go? Is Mr Obradovic also
04 ready? Good afternoon again. That is fine, and you can
05 leave [the microphone] on so you don't have to think
06 about it.
07 For the record, can you please confirm to us that
08 you are Djura Obradovic, and if I don't pronounce your
09 name correctly, you will forgive me.
10 THE WITNESS: I can't hear you quite well, ma'am.
11 THE PRESIDENT: You cannot hear me well? Let me take the
12 microphone closer. Is it now better?
13 THE WITNESS: That is better, yes.
14 THE PRESIDENT: Okay, good. So thank you for being with us
15 and having waited all this time. For the record, can
16 you please confirm that you are Djura Obradovic?
17 THE WITNESS: Yes, I am.
18 THE PRESIDENT: Did I pronounce your first name right?
19 Maybe Mr Obradovic could use the headphones, if that
20 makes it easier. If it is just me, it is not a problem,
21 but if it is difficult with counsel.
22 Is it better now?
23 THE WITNESS: Now it is much better.
24 THE PRESIDENT: Good, so we solved this. I was asking how
25 you pronounce your first name.

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01 THE WITNESS: My first name is Djura, D-j-u-r-a.
02 THE PRESIDENT: I can read it, but I didn't know how to
03 pronounce it. You are currently retired, is that right?
04 THE WITNESS: Semi-retired.
05 THE PRESIDENT: Your activities, in the time you are not
06 retired, what are they?
07 THE WITNESS: In agriculture, different kind of investments,
08 agriculture mainly.
09 THE PRESIDENT: Thank you. You have provided us with three
10 written statements, I suppose they should be on the
11 table.
12 THE WITNESS: Yes, I have them here.
13 THE PRESIDENT: The first one was from 20th September 2017,
14 the second one from 3rd October 2019, and the third one
15 from 5th March 2020.
16 THE WITNESS: That's right.
17 THE PRESIDENT: You are heard as a witness, as a witness you
18 are under a duty to tell us the truth. Can you please
19 confirm that this is your intent by reading the witness
20 declaration? There should be a sheet on the table, that
21 is it, yes. Can you read this aloud into the record,
22 please?
23 THE WITNESS: I solemnly declare upon my honour and
24 conscience that I shall speak the truth, the whole truth
25 and nothing but the truth.

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01 THE PRESIDENT: Thank you. So now you know how we proceed,
02 I will first give the floor to Claimants' counsel for
03 their introductory questions, and then we will proceed
04 with the questions from Respondent's counsel. Mr Pekar?
05 MR PEKAR: Thank you, Mme President.
06 Direct examination by MR PEKAR
07 Q. Good afternoon, Mr Obradovic.
08 A. Good afternoon.
09 Q. Mr Obradovic, can you please tell us your understanding
10 of who owned BD Agro directly after the privatization of
11 the company?
12 A. Right after the privatization of the company, Marine
13 Drive Holdings and Mr Rand as the beneficial owner, and
14 me as the nominal owner.
15 Q. Can you please tell us your understanding of who owned
16 BD Agro after the Sembi Agreement was signed?
17 A. After the Sembi Agreement, Sembi and Mr Rand owned as
18 the beneficial owners and I stayed as the nominal owner.
19 Q. What, if any, was your liability to the Lundins after
20 you entered into the Sembi Agreement?
21 A. After the Sembi Agreement, Sembi took all the liability
22 over and if you take article 2 you will see that I will
23 be kept harmless.
24 Q. What was your liability, Mr Obradovic?
25 A. My liability was over Lundins, but with this agreement

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01 Sembi took all this liability on itself. If you look at
02 article 1 and article 2, you can see.
03 MR PEKAR: Thank you. No further questions.
04 THE PRESIDENT: Ms Mihaj, please.
05 MS MIHAJ: Thank you, Mme President.
06 Cross-examination by MS MIHAJ
07 Q. Good afternoon, Mr Obradovic.
08 A. Good afternoon.
09 Q. My name is Senka Mihaj, I am counsel for the Respondent,
10 and I will ask you a few questions today.
11 A. Okay.
12 Q. Can you please go to your third witness statement,
13 paragraph 10? As I understood, you are saying that from
14 2012, all of Mr Rand's companies in Serbia are owned by
15 Kalemegdan Investments from Cyprus, is that correct?
16 A. That is correct. I think it -- that is as much as
17 I know.
18 Q. Are you the owner of that company, Kalemegdan
19 Investments?
20 A. No, I am not.
21 Q. Would you please explain who is?
22 A. Mr Rand is, or one of the companies that through Sembi
23 and other companies that he owns. I have no knowledge
24 of that.
25 Q. Are you maybe the nominal owner of Kalamegdan

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01 Investments in Cyprus?
02 A. I am not any more even the nominal owner. At one time
03 I was, but I am not. I was one of the directors.
04 Q. Until when were you the nominal owner?
05 A. I think 2005 to 2013. I am not quite sure.
06 Q. Do you know who is now the nominal owner of Kalamegdan
07 Investments?
08 A. I may assume, but I am not sure, Mr Rand is still the
09 one that owns all those companies.
10 Q. Would you please tell me, do you have maybe any debt
11 towards any of Claimants in this arbitration?
12 A. No, I don't.
13 Q. Can you please go to CE-664? That is Sembi's financial
14 statements for 2017. On page 14 of that document, you
15 will see that it is stated that Sembi has certain
16 receivables in the amount of €2.7 million.
17 A. I think that's a dividend (?).
18 Q. Are these receivables against you?
19 A. No, these were receivables -- are Sembi's money, not
20 mine. Because that money was money that was when Inex
21 financed, we had the €4.8 million from Lundins, and then
22 we paid and those €2.2 million have been used to pay the
23 instalments to the Government. That is not my money,
24 it's Sembi's money.
25 Q. But it says that it is Sembi's receivable, so I assume

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01 that it is Sembi's receivable of €2.7 million against
02 someone, and my question is whether, in Sembi's
03 financial statement for 2017, it was recorded --
04 A. I couldn't know that. I haven't been in Sembi since
05 2012.
06 Q. Let me rephrase my question, Mr Obradovic. Do you
07 recall whether in 2017 you owed to Sembi €2.7 million?
08 A. No, I don't, but I don't know what is the 2017, because
09 I wasn't in any way associated with Sembi in 2017.
10 Q. Mr Obradovic, can we go back to my question?
11 A. I can go back to your question, sure.
12 Q. Can you tell me, in 2017 did you owe €2.7 million to
13 Sembi, yes or no?
14 A. No.
15 Q. Would you please tell us, during co-operation with
16 Mr Rand, beside BD Agro, as I understood what Mr Rand is
17 saying, is that you also privatised six other companies
18 in Serbia?
19 A. That is true.
20 Q. And these are Uvac Gazela, Beotrans, Crveni Signal,
21 Inex, PIK Pester and Obnova?
22 A. That's right.
23 Q. You were the buyer of those companies as well, you
24 concluded the privatization agreements with them?
25 A. Yes.

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01 Q. Please tell me, is it correct that the accounts of Inex
02 are blocked from 2012?
03 A. I am not sure, I wasn't there after 2012.
04 Q. Can we please go to Exhibit RE-303. We can see that the
05 accounts are blocked from 2012.
06 A. Okay.
07 Q. Do you maybe recall, and is it correct, that the
08 accounts of PIK Pester are blocked from 2013?
09 A. Yes, I am aware.
10 Q. Thank you. How about Crveni Signal, is it correct that
11 the accounts of that company are blocked from 2018?
12 A. I haven't been there.
13 Q. Can you go to RE-302?
14 A. Yes.
15 Q. What is the case with Obnova? Do you maybe remember and
16 is it correct that the accounts of that company are
17 blocked from 2008?
18 A. I am aware of that, but it is blocked because one of the
19 government companies took the money from the Obnova, and
20 that puts Obnova in the red.
21 Q. What about Uvac Gazela and Beotrans, are these companies
22 erased from the Companies Register due to poor financial
23 state, is that correct?
24 A. Can you repeat, please?
25 Q. Uvac Gazela and Beotrans, are these companies erased

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01 from the Companies Register due to poor financial state
02 of these companies?
03 A. For Uvac -- I can't answer for the Beotrans, I wasn't
04 there, but Uvac, on the place of Uvac was today's build
05 -- the Government build Beograd na vodi, so a huge
06 construction site, we were all chased out of there.
07 Q. Thank you. Can we go to Mr Obradovic's second witness
08 statement, paragraph 7? There you said that the fees
09 for providing your services to Mr Rand were dependent on
10 the profitability of the privatised companies, is that
11 correct?
12 A. Can you repeat?
13 Q. In paragraph 7 of your second witness statement, you
14 said that the fees for providing your services to
15 Mr Rand were dependent on the profitability of the
16 privatised companies, is that correct?
17 A. That's correct.
18 Q. Have you ever received any fee for providing services to
19 Mr Rand in relation to any of mentioned six companies?
20 A. No.
21 Q. In your third witness statement, in paragraph 8, you
22 said that:
23 "From time to time, Mr Rand would also provide to me
24 funds for my personal expenses, especially larger ones,
25 such as when I bought an apartment in Belgrade and

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01 needed funds for my daughter's living expenses and
02 tuition fees for her studies at Manhattan School of
03 Music."
04 A. That's correct.
05 Q. Could you please tell us, what was the amount of these
06 let's say donations of Mr Rand?
07 A. They were not donations, but Mr Rand did pay me -- lend
08 me \$80,000 when I was short for the purchase of my
09 apartment, and when the need arises he paid the tuition
10 fee for my daughter, that was about 23,000 per semester.
11 Q. How many semesters there were?
12 A. There were about -- he paid for several, I am not sure.
13 Not for all the semesters.
14 Q. Do you keep the record of the payments that Mr Rand made
15 towards you?
16 A. Not really. I am friends with Mr Rand for the last 30
17 years, and Mr Rand is an honourable man, I don't need to
18 keep record.
19 Q. Were any of these payments made to your bank account?
20 A. \$80,000 were made in my bank account. For the school,
21 Mr Rand direct would pay to the school.
22 Q. Have you maybe shared these bank account statements with
23 Claimants? Have you maybe shared the bank accounts
24 which prove the payments that were made by Mr Rand to
25 you, do you share those statements with the Claimants?

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01 A. No, I didn't ask for proof of anything from Mr Rand. As
02 I said, Mr Rand is an honourable man, if he says it is
03 done, it's done. I didn't have a need to ask for
04 anything else. That was enough for me.
05 Q. Thank you. Mr Obradovic, could you please tell me what
06 is the current registered address of Sembi Investment in
07 Cyprus?
08 A. I don't know.
09 Q. Can we please go to Exhibit CE-417? That is the excerpt
10 from the Cyprus Company Register for Sembi, and on
11 page 2 of that document, we see that the last registered
12 address of Sembi is number 2 Corner of -- I am not sure
13 if I can pronounce this correctly, but I will try, so
14 number 2 Corner of Prodromos Street & Zinonos Kitieos,
15 Palaceview House, 2064 Nicosia, Cyprus, is that correct?
16 A. I looked at the document, that is a question for
17 Mr Rand. I have no knowledge of this, neither do I need
18 to have a knowledge of this. I haven't been part of
19 Sembi since 2013. It is a question for Mr Rand.
20 Q. Yes, but as you will see from the financial statements,
21 that is the registered address from April 2010.
22 A. If that's stated, that's a question for Mr Rand. I was
23 not participating in that matter, Mr Rand was.
24 Q. No problem, we will move on. Can we also see
25 Exhibit CE-420? I would like to ask you something about

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01 financial statements of Sembi, for the year 2008. In
02 your second witness statement, in paragraph 46, you have
03 mentioned these statements, do you maybe recall that?
04 A. Can you show me that, please?
05 Q. Yes, we will show you. This is paragraph 46 and you
06 said that these financial statements of Sembi for 2008
07 were filed in 2009, is that correct?
08 A. It says here that they were:
09 "In accordance with Cyprus accounting rules, Sembi
10 recorded its beneficial ownership ..."
11 And I was the nominal owner.
12 Q. Yes, I understand that, but you testified that Sembi's
13 financial statements for 2008 were filed in 2009, is
14 that correct?
15 A. Yes, I have.
16 Q. Did you maybe know when the fee for filing the financial
17 statements was paid?
18 A. No, I don't know that.
19 Q. How do you know that they were filed in 2009?
20 A. I assume. I don't know.
21 Q. Thank you. Can we go to the third page of CE-420? That
22 is marked as page number 1 in this PDF document. You
23 will see that the registered office of Sembi was stated.
24 Would you please read us what is stated as registered
25 office of Sembi?

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01 A. Corner of -- some two Greek names.
02 Q. Let me help you. It is stated that the registered
03 office of Sembi is Corner of Prodromos Street &
04 Zinonos Kitieos, Palaceview House, 2064 Nicosia, Cyprus.
05 Is that correct?
06 A. I don't know.
07 Q. Is it correct that it is stated in this document that is
08 in front of you as the registered office of Sembi?
09 A. It says here, but I don't know. It says here, and
10 I assume that it says, but I don't know.
11 Q. Can we now go back to Exhibit CE-417 and see what was
12 the registered address of Sembi before April 2010. Or
13 to be specific, at the time the 2008 Sembi financial
14 statements were filed according to your witness
15 statement.
16 A. This is a question for Mr Rand. I only run agriculture.
17 This is a question for Mr Rand.
18 THE PRESIDENT: I think Mr Obradovic doesn't know the
19 address of Sembi, and he said so several times.
20 MS MIHAJ: Yes, I am fully aware, I do not have any problem
21 with Mr Obradovic not knowing the address of Sembi, but
22 he testified in his written statement that the financial
23 statements of Sembi for 2008 were filed in 2009.
24 THE PRESIDENT: But then he corrected himself --
25 MS MIHAJ: That he doesn't remember.

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01 THE PRESIDENT: -- and said that was an assumption.
02 MS MIHAJ: So we can move on, thank you.
03 Mr Obradovic, after you were informed that the
04 Agency is claiming that the Privatization Agreement is
05 breached, and that it will terminate the agreement if
06 the breach was not remedied, did you maybe ask for
07 a legal opinion of a Serbian lawyer concerning the issue
08 of a breach?
09 A. No, I have not. There was no breach.
10 Q. Again, in your third witness statement, in paragraph 17,
11 you have stated that in 2005, Mr Rand instructed you to
12 buy BD Agro's debt worth €1.4 million, and you said that
13 these purchases were financed by the money that Mr Rand
14 secured from the Lundin family.
15 A. That's correct.
16 Q. Please, would you just confirm, are you referring to the
17 debt acquired by Inex in 2005?
18 A. Correct.
19 Q. Thank you. So you are actually saying that Mr Rand, as
20 the beneficial owner of Inex, acquired this debt, is
21 that what you are saying?
22 A. Mr Rand and his company Sembi are beneficial owners of
23 all the companies that we purchased in Serbia.
24 Q. Yes, I understand, so I am asking you, is it then
25 correct that you are saying that Mr Rand as the

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01 beneficial owner of Inex acquired this debt towards BD
02 Agro?
03 A. You may say.
04 Q. Before the Privatization Agreement for BD Agro was
05 concluded, have you acquired any debt of BD Agro before
06 privatization?
07 A. All the debt we acquired a couple of months before
08 privatization.
09 Q. Have you personally acquired any debt of BD Agro?
10 A. No, I have not. All the debt was acquired by Inex.
11 Q. I would now like to turn you to the MDH Agreement, and
12 that is Exhibit CE-015. Could you please read to us
13 paragraph C of the preamble? You will see that it says
14 here that it was you who acquired certain debt of BD
15 Agro at the time, and not Mr Rand or someone else.
16 A. We have according to Mr Rand's instructions, he is the
17 beneficial owner, I am just the nominal owner. I am
18 sorry if I haven't spoken good.
19 THE PRESIDENT: It is clear. So the seller is you, and
20 that's defined above, absolutely.
21 MS MIHAJ: Thank you, Mr Obradovic. Regarding shareholder
22 loans, I have noticed in your second witness statement,
23 in paragraph 50, that you approached Vojvodjanska banka
24 and Unicreditbank Serbia and both banks informed you
25 that due to lapse of time and changes to their software,

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01 they could not retrieve the requested information, is
02 that correct?
03 A. We only wanted to see all the funds that did come
04 directly through Serbia from accounts, whether Lundins
05 or their bank or Mr Rand.
06 Q. Could you please tell us, how did you request this
07 information from the bank? Did you write to the bank?
08 A. I went to the bank.
09 Q. Personally?
10 A. Personally, I went in the National Bank of Serbia to get
11 it and they couldn't even give it to me.
12 Q. So in other words, you have no record or document
13 showing that you approached these banks?
14 A. I approached with every statement or every transfer of
15 the money that did come to be collected, I think there
16 into documentation that Mr Rand's lawyer is presenting
17 to you.
18 Q. Thank you. Is it correct that in 2012, you transferred
19 around 50% of the shares in PIK Pester to Kalemegdan
20 Investments while you remained the owner of 27% of the
21 shares?
22 A. Because Mr Rand thought that maybe that would be
23 a proper way to do business.
24 Q. Thank you. Mr Obradovic, in your first witness
25 statement, in paragraph 26, you have stated that in the

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01 first half of 2013, Mr Rand and you agreed that due to
02 important managerial changes in BD Agro, you will focus
03 your oversight efforts on other Serbian companies,
04 meaning other than BD Agro, is that a correct
05 understanding?
06 A. Meaning the companies that I operate Mr Rand would put
07 a new management, and companies that were out of
08 Belgrade I would manage, that is how I mean.
09 Q. So since 2013, you did not manage nor oversee the
10 operations of BD Agro?
11 A. No.
12 Q. I also understand from paragraph 91 of your second
13 witness statement that since 2013 you did not undertake
14 any actions concerning BD Agro without previous
15 instructions from Mr Rand, is that correct?
16 A. That's correct.
17 Q. And you also did not have any beneficial interest in BD
18 Agro as nominal owner of the shares, is that correct?
19 A. None whatsoever.
20 Q. So you are actually saying from 2013 you had no
21 connections with BD Agro at all, except as being nominal
22 owner acting on behalf of Mr Rand?
23 A. Mr Rand decided how it should be.
24 Q. Were you familiar with the business of BD Agro at that
25 time after 2013, what is going on?

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01 A. No, I am not.
02 Q. Thank you. Mr Obradovic, have you ever taken any money
03 in cash from BD Agro?
04 A. No.
05 Q. By that I mean from its Treasury, or cash register,
06 something that is not viewable to bank account
07 statements?
08 A. I have never, never.
09 Q. Never?
10 A. No.
11 Q. Are you sure, Mr Obradovic?
12 A. If you consider if I did have to go in some business
13 trip for Mr Rand, then we would all take 1,000 or 2,000,
14 but I never took cash out of the books and that has been
15 ever, I am sure.
16 Q. Are you now saying that you did took some cash but not
17 for your own needs, but for Mr Rand's needs?
18 A. You have to buy gasoline, you have to pay for hotel. If
19 I go for business for BD Agro, of course BD Agro
20 would -- and if you take at that time 90% of all the
21 hotels and anything wouldn't take any credit card.
22 Q. Do you maybe know what was the amount of that money that
23 you took in cash from BD Agro?
24 A. For all the years?
25 Q. Yes.

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01 A. A thousand or two.
02 Q. Do you have record of these?
03 A. I assume that there is a record, when they give you the
04 money from the company, they keep a record, you can't
05 just take it.
06 Q. Thank you.
07 PROFESSOR KOHEN: Excuse me, just one clarification. Could
08 you tell us which kind of currency are you talking
09 about?
10 A. Just the company car (?), the company owned the car.
11 PROFESSOR KOHEN: I mean the currency, where are you talking
12 about, when you say one thousand or two, which currency
13 are you talking about? Euros or?
14 A. In euros, €1,000 maybe. I am not sure that I ever took,
15 but I assume that some time maybe I have, but I would --
16 I can't categorically state no, but I would say no.
17 PROFESSOR KOHEN: Thanks.
18 MS MIHAJ: Mr Obradovic, I have just one more question
19 concerning Sembi's receivable of €2.7 million that we
20 discussed a few minutes earlier. Would you please tell
21 me, did you sign any paper in February 2019 that
22 confirms that you owe to Sembi €2.7 million?
23 A. Not that I can recall.
24 Q. But I assume that you would recall if you have signed
25 a document that you owe to Sembi €2.7 million?

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01 A. If Mr Rand had a document, handed it to me to sign it,
02 I sign it, but those €2.7 million, those are the money
03 that Inex lent to BD Agro, I assume, then collected
04 that -- paid it back to me and I to Sembi, that was not
05 my money, that was Sembi's money. So the way
06 transactions were going, when Inex were paying the debt
07 of BD Agro, that money has to be paid. When one company
08 borrows another company money, I assume they have to pay
09 the money back, they can't keep it.
10 Q. Did BD Agro repay all this money to Inex or not?
11 A. Finally did, but Mr Rand was very generous, Mr Rand
12 didn't allow Inex to charge interest, which is
13 €1.7 million. Didn't allow Inex to charge the
14 difference in the currency, because when they lend them
15 €1.4 million -- no, let me finish, ma'am.
16 Q. Of course, please.
17 A. That was one amount of money. When BD Agro paid that
18 back, that was quite a different amount of money.
19 Q. Just for clarification, one more question regarding this
20 topic, and I will finish in that regard. So is your
21 answer that you did not sign the paper in 2019 that you
22 owe €2.7 million to Sembi, or is it your answer that you
23 do not remember?
24 A. I don't remember.
25 Q. Thank you. Now, I have a question about the breach of

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01 article 5.3.4 determined by the Agency in January 2011.
02 As you recall, the Agency determined that the breach of
03 this article occurred because BD Agro loaned money from
04 Agrobanka loan, and then pledged its property as
05 security for the loan, and then gave part of the money
06 from that loan for the benefit of Crveni Signal and
07 Inex. So please tell me, I have a question in that
08 regard, please tell me, were you aware that this breach
09 could have been remedied if Inex and Crveni Signal
10 returned the money to BD Agro?
11 A. Inex and Crveni Signal helped BD Agro from beginning
12 a lot, and this was just an agreement between a company
13 with the same ownership. All those other companies have
14 been paid. But I disagree with you that there is the
15 breach. There is no breach, but the Government invented
16 the breach, but there was no breach.
17 Q. Can we please look at the letter, that is the letter
18 that you signed, it is from 19th July 2012, it is RE-21.
19 Would you please read the first paragraph of that
20 letter? Take your time and read it. It is the second
21 and third paragraph, and point 1 specifically in that
22 document.
23 THE PRESIDENT: Can we just see the top of the document?
24 Thank you.
25 A. What would be your question?

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01 MR PEKAR: Mme President, could maybe the witness be also
02 directed to the Serbian original of this document?
03 MS MIHAJ: Yes of course.
04 A. I mean, it doesn't matter, I can answer in English.
05 Even in Serbian, that is --
06 Q. I have a question with regard to that document that you
07 have just read. Here you said actually that Crveni
08 Signal and Inex will sell a part of their property in
09 order to return to BD Agro the given loan.
10 A. No, Crveni Signal guaranteed with their assets, which
11 was ten times more than the loan, if comes to the
12 problem with, but there was no reason why not to repay
13 loan in regular way.
14 Q. Okay, but can we please read together the last sentence
15 in the second paragraph of this document? Let me read
16 it. It says:
17 "Since part of the property ..."
18 I will read it out loud.
19 A. Second paragraph --
20 Q. If I may, I will read it out loud for the transcript.
21 It says:
22 "Since part of the property of Crveni Signal is in
23 the sales procedure, the claim of BD Agro will be
24 settled from it for the given loan."
25 A. I don't know what you are reading, but it is not this.

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01 THE PRESIDENT: The last sentence of paragraph 1.
02 A. You said paragraph 2, I'm sorry.
03 MS MIHAJ: So the last sentence I will repeat, for your
04 convenience, and the last sentence of paragraph two of
05 RE-21 says:
06 "Since part of the property of Crveni Signal is in
07 the sales procedure, the claim of BD Agro will be
08 settled from it for the given loan."
09 And then in the next paragraph, and I will also read
10 it, it says:
11 "The debt of Inex to BD Agro has not changed ..."
12 And it is stated then that it amounts to some more
13 than RSD 18 million. Then it is stated:
14 "Within the period of a year, Inex was 336 days
15 blocked, which prevented the settlement of obligation
16 based on the received loan. And also with Inex, selling
17 of a part of property out of which amount the obligation
18 to BD Agro will be returned is under way."
19 And then on the next page of RE-021, which is the
20 letter that you signed and you will see the last
21 paragraph, and here you requested:
22 "... an additional period during which the
23 contractual obligations may be realised ..."
24 A. I think Agrobanka was paid, just didn't give -- what's
25 it called, when you pay a bank loan and they give you

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01 the -- what is the English word for it, if anybody
02 knows?
03 THE PRESIDENT: A release?
04 A. Release, yes. That loan was paid.
05 THE PRESIDENT: Maybe just let Mr Obradovic say what he
06 wanted.
07 A. Those loans from Agrobanka, some of them for 300,000, as
08 I recall, were paid back to the bank, the bank just
09 never did give a release under, but it's been a long
10 time and I haven't been down there since 2013, so it's
11 eight years.
12 MS MIHAJ: Thank you, Mme President, and thank you,
13 Mr Obradovic, I have no further questions.
14 A. Thank you.
15 THE PRESIDENT: Thank you. Any questions in re-direct?
16 MR PEKAR: No questions, Mme President.
17 THE PRESIDENT: No questions. Do my colleagues have
18 questions for Mr Obradovic? Yes, please.
19 Questions from the TRIBUNAL
20 MR VASANI: Good afternoon, Mr Obradovic.
21 A. Good afternoon.
22 MR VASANI: I am trying to get my head around -- to put it
23 colloquially, what was in it for you, because you're the
24 nominal owner.
25 A. Okay.

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01 MR VASANI: But I understood you didn't receive a salary
02 from the company; that's correct?
03 A. That's correct.
04 MR VASANI: And you didn't receive any separate salary from
05 Mr Rand of any kind?
06 A. No, but when I needed the help in any kind of financial
07 dealings, Mr Rand would help me as a friend.
08 MR VASANI: How do you pay your day-to-day expenses? Do you
09 have personal wealth or do you have another job that we
10 don't know of? How would you pay your monthly bills?
11 A. I do have some money.
12 MR VASANI: Then what -- explain, please, what's the point
13 of you being the nominal owner? What do you have to
14 gain?
15 A. I have to gain it, if Mr Rand's companies were
16 successful, at the end of the road, I would sit with
17 Mr Rand and would be compensated better with more if
18 Mr Rand offers than if I was asking. So I have trusted
19 Mr Rand as an honourable man, I have got no problem
20 working for Mr Rand for another 20 years without any
21 kind of contract.
22 MR VASANI: I see, so it's the promise of future success
23 together?
24 A. If there is success, I will be compensated. As I said,
25 I rather take Mr Rand's word than most people's

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01 contracts.
02 MR VASANI: In your second witness statement at
03 paragraph 19, you say that you only did things with
04 Mr Rand's instruction.
05 A. Most of the time.
06 MR VASANI: Yes, and I do want to come on to the at least
07 two occasions when you didn't, or at least I understand
08 that you didn't. The first was the land assignment in
09 2007, do you recall that?
10 A. Yes, I do, but.
11 MR VASANI: So my first question is: did you get any
12 instruction from Mr Rand to do that transaction?
13 A. No, I did not. That was proper for me to decide.
14 MR VASANI: Can you explain why you did that transaction
15 without Mr Rand's instruction?
16 A. I didn't think. I had a lot of leeway from Mr Rand that
17 I could make some decision on my own, I didn't have to
18 ask him for everything.
19 THE PRESIDENT: I think he said, if I may, that he would not
20 do anything for BD Agro without express instructions
21 from 2013 on. But you will correct me if
22 I misunderstood you.
23 A. What things I was doing.
24 MR VASANI: Thank you for that. Okay, then let me ask
25 a foundational question because it's important for my

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01 understanding.
02 A. Go ahead.
03 MR VASANI: During the time period up to 2013, on what
04 matters would you take instructions from Mr Rand, and on
05 what type of matters would you feel you don't need
06 instructions from Mr Rand?
07 A. For expansion of BD Agro, or some major purchases for
08 somebody else, I would have to have agreement or
09 approval from Mr Rand. But it was internal thing inside
10 the company whether to have this or have that, if we
11 have an internal problem, then I didn't think I need to
12 get approval from Mr Rand because Mr Rand didn't know
13 what we were doing most of the time. Mr Rand has a lot
14 of other interests, and BD Agro was one of the smaller
15 ones, so I didn't think that I should occupy all his
16 time just reporting.
17 MR VASANI: The payments to Inex and Crveni Signal, the 700
18 and the 300, did you take instructions from Mr Rand on
19 that transaction?
20 A. No, I didn't. I have not. I did that on my own.
21 MR VASANI: My final question, sir, if I may: what was your
22 understanding as to why it would be easier for you to be
23 the nominal owner as opposed to Mr Rand himself?
24 A. Mr Rand lives in Vancouver, in Canada, about 13 hours'
25 flight from here. I am here. Second, I think I know

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01 agriculture better than Mr Rand and I should have been
02 the nominal owner, but Mr Rand, it is his money, and he
03 have a right to decide whatever he wants to do, and
04 I will just follow his instructions.
05 MR VASANI: Yes, but there was a question, you would not
06 have been privy to this question by Mme President to
07 Mr Rand, which is why could he have not been the nominal
08 owner and then made you general manager or a CEO of the
09 board, why did you actually have to take ownership?
10 A. Because there is always hundreds and hundreds of papers
11 that you've got to sign every month, Mr Rand would have
12 to be flying to Serbia every week to sign the papers and
13 go back and sign the papers, go back and forth. By now
14 he would be dead if he were flying that much.
15 MR VASANI: Thank you.
16 A. You're welcome.
17 PROFESSOR KOHEN: Thank you, Mme President. Good afternoon,
18 Mr Obradovic.
19 A. Good afternoon.
20 PROFESSOR KOHEN: I also have some questions for you. You
21 were director of Sembi?
22 A. Yes, I have.
23 PROFESSOR KOHEN: Do you have any other nationality than
24 Canadian --
25 A. Yes, I am Canadian national.

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01 PROFESSOR KOHEN: Canadian and Serbian?
02 A. Canadian citizen, yes.
03 PROFESSOR KOHEN: Only?
04 A. Both.
05 PROFESSOR KOHEN: May I ask the parties to put on the screen
06 CE-417? If you can go to this page [3 of the PDF], here
07 you appear, you see Djura Obradovic, country of
08 nationality, Seychelles.
09 A. Seychelles?
10 PROFESSOR KOHEN: Yes, what does it mean?
11 A. I have never been to the Seychelles. I would like to,
12 but I haven't been.
13 PROFESSOR KOHEN: Neither do I. So probably the parties may
14 have some explanation later on?
15 A. That's a mistake, because I don't think that Pop Loukina
16 is in the Seychelles.
17 PROFESSOR KOHEN: I wanted to know whether maybe you have
18 the pleasure --
19 A. But I would like to go.
20 MR VASANI: Serbia is likely one above Seychelles.
21 PROFESSOR KOHEN: When there is a public auction, so the
22 members of the Government are supposed not to be
23 involved with the bidders in order to favour one bidder
24 against the other, so you had contacts with the Minister
25 of Economy, Mr Bubalo, and with Mr Jovanovic, yes?

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01 A. Correct.
02 PROFESSOR KOHEN: Did you believe that they were acting in
03 the right manner?
04 A. In a public auction, you will be able -- if you are
05 friends with God, he can't help you, because the people
06 lift the hand. Who lifts the hand last, he wins.
07 Mr Rand never allowed me to participate in the purchase
08 of the companies through the tenders, because that would
09 be an envelope (?), and raises the question of honesty.
10 Mr Rand never allowed me to buy even some companies that
11 were extremely attractive, he just said that's not
12 proper, and that was not proper, and I had to follow
13 instructions.
14 PROFESSOR KOHEN: You know that the privatization law of
15 Serbia required bidders having Serbian nationality,
16 I know, but the fact of appear to be -- you say that you
17 were the nominal owner, so appeared as nominal, one
18 could even say a figurehead or something like that,
19 didn't you feel that there would be some problems with
20 the law?
21 A. I believe that there is no problem with that, all the
22 countries needs a good investor. Mr Rand is an
23 extremely good investor and it doesn't matter how, but
24 this was a business decision, that this is a better way
25 to go.

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01 PROFESSOR KOHEN: Did you have to explain before any Serbian
02 authority, Tax Authority, for instance, the origin of
03 the money you used to face the privatization of BD Agro
04 or the other companies?
05 A. No, it is all the money that comes in, I don't have to
06 explain it, and I don't have to pay tax on that, but the
07 National Bank, you know, keeps a record of what comes in
08 and what comes out.
09 PROFESSOR KOHEN: Did you personally receive money from the
10 Lundin family?
11 A. Yes, I have.
12 PROFESSOR KOHEN: The money you received was transferred to
13 your personal bank account or to BD Agro bank?
14 A. No, in my personal account. When I received that money
15 we still didn't own -- first money, we still didn't own
16 BD Agro.
17 PROFESSOR KOHEN: When you were the nominal owner, but at
18 the same time you performed work?
19 A. Yes.
20 PROFESSOR KOHEN: Coming back to the question put by my
21 co-arbitrator, so you were the president of BD Agro?
22 A. That's right.
23 PROFESSOR KOHEN: You considered that it was not necessary
24 to have a salary as a president, so you relied on the
25 money that Mr Rand would send you?

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01 A. No, I didn't think that -- even though Mr Rand offered,
02 I didn't think that I want to work for a salary.
03 I worked for Mr Rand because I know him for 30 years, as
04 I said, he is an extremely honourable man. My financial
05 chart would be much, much better if I worked without
06 a salary, helped Mr Rand, and Mr Rand at the end of the
07 road, because I know him to be quite generous, and
08 I will be paid according to what I have done.
09 PROFESSOR KOHEN: I think these are all my questions, Mme
10 President.
11 THE PRESIDENT: Thank you. Mr Obradovic, could we please go
12 back -- no, first take your second witness statement,
13 paragraph 87, you discuss this letter that you wrote on
14 23rd July 2012 that is mentioned in paragraph 86 to the
15 Privatization Agency. Maybe we could also show this
16 letter, it's RE-21, we have already looked at it
17 earlier. At the end of the letter you request an
18 additional time period to comply with the contractual
19 obligation, do you see this?
20 A. Yes, I can see.
21 THE PRESIDENT: Maybe you keep the letter and then you open
22 your second witness statement that you have in paper
23 copy, and you go to page 24 of the second statement.
24 A. Can I just read it?
25 THE PRESIDENT: You can also be shown it. Remember this

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01 last sentence of the letter, yes. You say that even
02 though you requested an additional time period in the
03 letter to perform your contractual obligation, you say
04 there in paragraph 87:
05 "... this was in no way recognition of any breach of
06 the Privatization Agreement. We simply wanted to
07 continue our discussions, hoping that the Privatization
08 Agency would eventually recognise that there had been no
09 breach and that the Privatization Agreement was in any
10 event fulfilled upon the payment of the [last
11 instalment]."
12 When reading this, I was asking myself, why do you
13 not say to the Privatization Agency, "There is no
14 breach", or why do you not say, "Well, I recognise there
15 is a breach and I will remedy it"?
16 A. I -- sorry, ma'am.
17 THE PRESIDENT: Should I start again?
18 A. There was no breach, and I said all along that there was
19 no breach, and that I will not do anything. I even had
20 an argument, that I would not do anything, because they
21 are paid in full, and that was Agency who was claiming
22 it is a breach, it is not a breach, and I am sure that
23 the lawyers of Mr Rand would prove that.
24 THE PRESIDENT: But if your position is that there is no
25 breach, why do you ask for additional time to remedy the

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01 breach?
02 A. It is probably -- or the suggestion of the lawyers that
03 we had in Serbia at that time, somebody thought that
04 would be smart, but I am strongly, strongly against
05 admitting ever that there was a breach. There was no
06 breach. If you are paid in full, there is no breach.
07 THE PRESIDENT: I understand that this is the interpretation
08 that the Claimants give and that's your opinion;
09 however, that doesn't match or is not in line with what
10 you say in the letter because if I ask for additional
11 time to perform a contractual obligation, does that not
12 imply that it is not performed so far?
13 A. I don't even remember this, to tell you the truth, but
14 99 times, when they bring me something to sign, it's
15 mostly -- you sign it, sign it, sign it. But I would
16 never -- from day one, I was explicitly saying that
17 there is no breach, and I will never admit the breach,
18 wherever it is, Mr Rand is there to make a final
19 decision. But the way I am concerned, there was no
20 breach at all. For the letter, I don't know what
21 happened there. I didn't know, I think I read it now
22 for the first time.
23 THE PRESIDENT: I understand you think there is no breach.
24 What I don't understand is why you then write, "Please
25 give me more time to cure the breach".

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01 A. I mean, it's -- I don't think that I ever wrote a letter
02 to the Agency even that I see it is signed by me, but
03 I simply cannot explain this, but I would, from day one,
04 I would never ever consider doing anything because there
05 is no breach.
06 THE PRESIDENT: So who would write the letters that you
07 signed?
08 A. We got a legal office inside the BD Agro, probably
09 everybody thought that they are contributing.
10 THE PRESIDENT: But this is somewhat critical, because you
11 have had a notice of termination, of possible
12 termination, or a warning of termination, so your
13 relationship with the Privatization Agency is a delicate
14 matter, would you not review the letter then?
15 A. Mr Rand bought several companies in Serbia, none of them
16 ever had any scrutiny as BD Agro. But BD Agro for some
17 reason was treated the way it was treated. I am sorry
18 that happened to that, but there is no breach, and I did
19 not ask -- I had meetings with them, I always said there
20 is no breach. I don't remember this.
21 THE PRESIDENT: Do you have other examples from your
22 experience of investments in Serbia where the
23 Privatization Agency after a while just dropped its
24 claim of a breach? Abandoned its claim of a breach?
25 A. I don't know.

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01 THE PRESIDENT: You have no examples?
02 A. I don't have no examples, no.
03 THE PRESIDENT: (Pause). You will have to bear with me,
04 I am just checking what other questions I have. Can you
05 go to your second witness statement, page 12,
06 paragraph 36? That is where we have the picture and
07 I understand that we are seeing Minister Bubalo and you
08 are turning the back to the camera, is that right?
09 A. There are several more government officials, one to the
10 left of Mr Bubalo, Minister Velimir Ilic, and then back
11 of me, but there is the President of the country
12 Vojislav Koštunica.
13 THE PRESIDENT: Why is there a Swiss and a Swedish flag when
14 I understand that must be a reference to the Lundins but
15 the Lundins were not shareholders, they were just
16 lenders?
17 A. That was at the beginning, when we have Mr Rand and
18 Sembi made agreement with the Lundins in 2008, this was
19 before 2008, so we kept the Swedish flag, the Swiss flag
20 and Canadian flag, the way the investors worked. The
21 beneficial owners actually worked.
22 THE PRESIDENT: (Pause). I just have to check whether my
23 questions have been answered. In paragraph 68 of your
24 second witness statement, there you speak about the loan
25 from Agrobanka, that is the loan of 2010 for about

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01 €2 million. No, strike this question. I think it has
02 been covered.
03 Then I have no further questions for you,
04 Mr Obradovic.
05 A. Thank you for your patience with me. I am just a little
06 bit deaf.
07 THE PRESIDENT: Thanks to you for your help. And that
08 concludes your examination.
09 What time is it now? We may take a break, and then
10 we will hear Mr Jennings, Mr Jennings, I understand, is
11 in video conference, is he ready? We are a little
12 earlier than what we thought.
13 MR PEKAR: Mme President, we were mentioning that during the
14 pre-hearing conference, he is in California, so right
15 now --
16 THE PRESIDENT: So that is nine hours.
17 MR PEKAR: It is 5.45 am his time in the morning.
18 THE PRESIDENT: That is early. When does he get up?
19 MR PEKAR: We actually had the understanding that he would
20 check in around 7.00 am his time. If you remember, we
21 originally had a schedule which had him relatively late
22 in the evening.
23 THE PRESIDENT: So that would be 4.00, right?
24 MR PEKAR: We sent him an email asking him to check in
25 earlier if he wakes up earlier. Now Mr Rand offers to

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01 even wake him up.
02 THE PRESIDENT: It is not a very nice wake-up call! Because
03 otherwise we have to wait for an hour and 15 minutes,
04 that is quite a lot of time that we could use better
05 tonight preparing for tomorrow and doing other things.
06 MS MIHAJ: If I may suggest something, maybe we can examine
07 Mr Jennings tomorrow.
08 THE PRESIDENT: It all depends whether he is available,
09 because ...
10 Let's take a break in any event of ten minutes now,
11 and then we see where we are, and of course one question
12 would be whether -- well, if he can answer the question,
13 then he is awake and he can also join the conference
14 call, good.
15 (2.47 pm)
16 (A short break)
17 (3.02 pm)
18 (Off the record discussion)
19 THE PRESIDENT: Now we go on the record again.
20 We understand that Mr Jennings has not been reached
21 so far, and that is quite understandable. What we would
22 suggest is that we hear him either tomorrow or in case
23 he is not available tomorrow, one of the next days, late
24 afternoon, so we are not all stuck here -- I mean, we
25 are, of course, available but then it is not a very

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01 efficient use of everybody's time if we all wait here.
02 Would that be acceptable?
03 MR PEKAR: This is acceptable, Mme President. We will
04 contact him probably in one hour when he wakes up, we
05 will clarify if he is available tomorrow, and we will
06 send an email communication to the Tribunal and opposing
07 counsel confirming his availability tomorrow. If not,
08 we will indicate on which alternative dates he would be
09 available.
10 THE PRESIDENT: Thursday we also have three witnesses. The
11 next days are somewhat busier, some are not.
12 In general, you have seen that we have been
13 progressing faster than anticipated, which of course is
14 good news, but at the same time it disrupts the schedule
15 a little bit, so I am not saying you should be longer,
16 but maybe think about making sure that your witnesses
17 could be switched from one day to the other, you will
18 remember that PO11 says that they should be available
19 half a day before and half a day after their scheduled
20 time, so if we could just make sure this is really
21 effectively applied, then it gives us a little bit more
22 flexibility.
23 Are there any other points that need to be raised at
24 this point?
25 MR PEKAR: No, Mme President.

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01 PROFESSOR KOHEN: Mme President, just I was thinking about
02 the possibility to offer Mr Jennings the possibility if
03 he goes to bed late, we could have his testimony at 9.00
04 in the morning here. That could be a possibility.
05 (Off the record discussion)
06 THE PRESIDENT: So strike all what we said before, and we
07 will hear him now, and then we have done this, so that's
08 even better.
09 MR PEKAR: Mme President, we were just able to speak with
10 Mr Jennings, he literally just woke up and is asking
11 whether he could have 20 minutes to get ready for the
12 cross-examination, so that means that he would be ready
13 to start at half past.
14 (3.12 pm)
15 (A short break)
16 (3.33 pm)
17 MR ROBERT JENNINGS (called)
18 THE PRESIDENT: I understand we rushed you a little this
19 morning, so we apologise for that and we thank you for
20 being available.
21 For the record, can you please confirm that you are
22 Robert Jennings?
23 THE WITNESS: I am Robert Jennings.
24 THE PRESIDENT: Could you tell us what your position or
25 activity is?

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01 THE WITNESS: With respect to this case, or in life?
02 THE PRESIDENT: In life.
03 THE WITNESS: I am retired.
04 THE PRESIDENT: But don't say everything.
05 THE WITNESS: I am essentially retired. I make investments,
06 private equity investments.
07 THE PRESIDENT: Fine. With respect to this case you are the
08 trustee of the Ahola Trust, is that right?
09 THE WITNESS: I am.
10 THE PRESIDENT: You have provided us one written statement
11 that is dated 3rd October 2019, is that right?
12 THE WITNESS: Yes, I have that in front of me.
13 THE PRESIDENT: You have it in paper copy with you?
14 THE WITNESS: I do.
15 THE PRESIDENT: And that is an unannotated copy?
16 THE WITNESS: There are no notes on it, no.
17 THE PRESIDENT: You are alone in the room from which you
18 testify?
19 THE WITNESS: I am.
20 THE PRESIDENT: You have no communication channels other
21 than the video conference platform on which we
22 communicate now?
23 THE WITNESS: I have my phone, but it's turned upside down
24 and the ringer is turned off.
25 THE PRESIDENT: Yes, your phone should be in flight mode,

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01 and you have no other information sources as well like
02 notes, like an open laptop or tablet or the like?
03 THE WITNESS: No, I am not looking at anything other than
04 the computer I am talking to you on.
05 THE PRESIDENT: Good, thank you. The documents on which you
06 will be asked questions will be shown on the screen, so
07 if you need to look at the context, you will just tell
08 us to scroll up or scroll down.
09 THE WITNESS: Okay.
10 THE PRESIDENT: You are heard as a witness; as a witness,
11 you are under a duty to tell us the truth. Can you
12 please confirm that this is what you will do? I don't
13 know whether you have received the witness declaration,
14 or whether someone can share it, and share the screen?
15 THE WITNESS: I do have the witness declaration. I solemnly
16 declare upon my honour and conscience that I shall speak
17 the truth, the whole truth and nothing but the truth.
18 THE PRESIDENT: Thank you, so I will first turn to
19 Claimants' counsel for their introductory questions.
20 Direct examination by MR PEKAR
21 Q. Good morning, Mr Jennings. This is Rostislav Pekar
22 speaking.
23 A. Good morning.
24 Q. Mr Jennings, did you have an opportunity to review the
25 witness statement that you submitted in this

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01 arbitration?
02 A. Yes.
03 Q. Do you wish to change anything?
04 A. No.
05 MR PEKAR: Thank you. No further questions.
06 THE PRESIDENT: Thank you. Then let's go to the
07 Respondent's counsel. To whom do I give the floor?
08 Dr Djerić?
09 DR DJERIC: Thank you very much, Mme President. Let me just
10 make sure that Mr Pekar got our witness bundle by email.
11 MR PEKAR: Yes, the email has been sent to Mr Jennings so
12 I think you may ask him if he has received it.
13 Mr Jennings, have you received an email from
14 Mr Pustay attaching copies of several documents?
15 A. Was that this morning?
16 Q. Yes, this morning.
17 A. Let me check. Just now, yes. Would you like me to --
18 THE PRESIDENT: I suppose that is the way it is supposed to
19 work. Obviously he has a laptop open with an email
20 open -- he has access to his emails, which is not
21 exactly what we had agreed, right? But Mr Jennings,
22 please don't look at your emails or anything else on the
23 screen except for the documents that we will be asking
24 you to open or however you want to share it with
25 Mr Jennings. Is that clear, Mr Jennings?

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01 A. Yes.
02 THE PRESIDENT: Thank you.
03 Cross-examination by DR DJERIC
04 DR DJERIC: Thank you, Mme President.
05 Good morning, Mr Jennings, thank you for joining us
06 at this early hour for you. My name is Vladimir Djerić
07 and I am counsel for Respondent. I would kindly ask you
08 to open Exhibit CE-008 which should be attached to this
09 email we talked about just now.
10 A. Yes, I have it open.
11 Q. Can you confirm that is the trust indenture of the Ahola
12 Trust?
13 A. It appears to be, yes. It looks like a copy of it.
14 Q. Could you tell us whether this document was or has ever
15 been amended?
16 A. I don't believe it has. Do you want me to go through
17 the entire document here?
18 Q. Well, I would like you to tell us whether, since the
19 document was signed, whether it was changed, amended in
20 any way?
21 A. I don't believe it has been.
22 Q. Thank you. Mr Jennings, we understand, and you can
23 confirm, that you have been appointed as a trustee of
24 the Ahola Family Trust by Mr Axel Ahola as the settlor,
25 is that correct?

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01 A. Yes.
02 Q. If you turn to article 1.2 of the indenture, you will
03 see that it says that the settlor has settled upon you
04 as the trustee the property listed in schedule A
05 attached to the indenture, is that correct?
06 A. Just bear with me one second, it's just loading here.
07 Yes.
08 Q. Could you then point us to schedule A in that document
09 that you see, that is in front of you?
10 A. Sorry, it is just taking a while here to load.
11 THE PRESIDENT: What is the question?
12 DR DJERIC: I just wanted Mr Jennings to tell us whether he
13 sees annex A in the exhibit that he was sent, because
14 the exhibit itself refers to annex A.
15 A. It does not appear to be attached to this copy.
16 Q. To your knowledge --
17 MR PEKAR: Dr Djeriç, this is an exhibit which was corrected
18 later on and I believe that you sent the earlier
19 uncorrected version of this exhibit. What we have on
20 the record is now called "CE-008 corrected".
21 DR DJERIC: Let me check, sorry. (Pause).
22 Okay, let's move on then. Mr Jennings, the
23 indenture of the Ahola Trust mentions a function of
24 a "protector" of the Trust, and my question to you is:
25 who was the protector of Ahola Trust in 2015 and before?

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01 A. I don't believe a protector was appointed.
02 Q. Could you please go to article 2.1(e) of the Trust
03 indenture? If you can read it for yourself.
04 A. Just bear with me, it's very slow, it must be a large
05 document. (Pause). Which page is this on? Maybe
06 that's faster.
07 Q. Let me strike this question, let me move on. Could you
08 tell us who are the members of the specified class under
09 the Trust indenture, are they Mr Rand's children?
10 A. Yes, the three children.
11 Q. Is there a reference to Mr William Rand in this
12 document, in the Trust indenture? Is he mentioned?
13 A. Would you like me to read the document now to see?
14 Q. Well, I assume that you are familiar with the document.
15 A. Well, Mr Rand is not a beneficiary, if that is your
16 question.
17 Q. Thank you. In your witness statement, you say that your
18 appointment as a trustee was conditioned upon a Control
19 Agreement that you have with Mr Rand, and that this
20 Control Agreement prescribed that you will seek and
21 follow instructions from him in all matters involving
22 the Trust, is that correct?
23 A. I believe it is. What section is that of the --
24 Q. It is paragraph 7. Sorry, I didn't refer you --
25 A. 7. Yes, I would not change anything in paragraph 7.

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01 Q. Mr Jennings, do you have a copy of the Control
02 Agreement, are you in possession of the Control
03 Agreement that you allegedly concluded with Mr Rand?
04 A. The Control Agreement was verbal.
05 Q. Thank you. Can you also tell us in what capacity did
06 Mr Rand conclude that agreement with you?
07 A. I am sorry, I don't understand the question.
08 Q. Well, what does he have to do with the Ahola Trust? He
09 is not mentioned anywhere in the indenture, as you just
10 confirmed, and you say you have a verbal Control
11 Agreement with Mr Rand, so my question is: what is
12 Mr Rand's role here? Why would you conclude an
13 agreement with him?
14 A. Well, at the time the Trust was originated back in 1995
15 or 1996, give or take, Mr Rand's children were infants,
16 he was their father, he was the son-in-law of the
17 settlor of the Trust and the Trust document was used --
18 it's a flexible instrument for the administration of
19 family wealth, and Mr Rand was clearly the person who
20 was organising the Trust, and it's standard, normal for
21 someone like Mr Rand to have an agreement with the
22 trustee.
23 Q. Is this Control Agreement still in force between you and
24 Mr Rand?
25 A. Yes, of course.

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01 Q. How old are Mr Rand's children now, would you remind us?
02 A. They would be in their 30s. I think his son is just
03 nearly 30, and his daughters are over that.
04 DR DJERIC: Mr Jennings, thank you for your time. We
05 conclude our examination of this witness.
06 THE PRESIDENT: Thank you. Any questions in re-direct,
07 Mr Pekar?
08 MR PEKAR: Yes, just one question.
09 Re-direct examination by MR PEKAR
10 Q. Mr Jennings, do you recall answering a question from
11 Dr Djeriç regarding the appointment of a protector for
12 the Ahola Family Trust?
13 A. Yes, a few minutes ago, yes.
14 Q. What are the consequences, if any, of the Ahola Family
15 Trust not having a protector?
16 A. My understanding is it's not a legal requirement in
17 Guernsey or Bermuda to have a protector appointed, it's
18 a convenience to the trust, but if a protector is not
19 appointed, it really doesn't have many consequences.
20 MR PEKAR: Thank you. No further questions.
21 THE PRESIDENT: Thank you. Do my colleagues have questions
22 for Mr Jennings?
23 Questions from the TRIBUNAL
24 THE PRESIDENT: Mr Jennings, I had the same questions that
25 you were asked by Respondent's counsel about Mr Rand's

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01 role. You are the trustee, you were appointed by the
02 settlor. The trust deed or indenture provides for the
03 possibility of a protector, but none was appointed. So
04 I thought, when I read your witness statement, that
05 maybe Mr Rand was the protector, because I understood
06 his role to be similar to the role of a protector, but
07 you tell us that was not what it is, you had an oral
08 agreement of control.

09 You explained this by saying that his children were
10 minors at the time of establishment of the Trust. I'm
11 not sure about this, because if that were the reason for
12 the Control Agreement, then it would have ceased when
13 they reached adulthood, but in any event, I am not sure
14 the beneficiaries can give instructions to the trustee,
15 at least not in my very basic understanding of what
16 a trust is, and I am, of course, a civil lawyer, and we
17 are somewhat limited in understanding what a trust is.

18 Having said that, can you explain to us somewhat
19 better what Mr Rand's role is in respect of this Trust?

20 A. Perhaps I should clarify that my earlier comment that
21 Mr Rand's children were minors at the time, or infants
22 at the time, was not the reason for the Control
23 Agreement, that is just giving you some context of
24 a normal procedure for somebody like Mr Rand. Indeed,
25 when a trust is set up, as I said, it's a flexible

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01 instrument, obviously it's historically an English
02 structure, but when a trust is set up it's for the
03 administration of family wealth, in this case Mr Rand's
04 wealth, and in setting up a trust in Canada, my
05 understanding from Canadian tax law is that to comply
06 with those laws, the settlor of the trust would be
07 non-Canadian, in this case Mr Ahola was a resident of
08 Finland; the beneficiaries were Canadian, were and
09 I believe are Canadian residents. So in the context of
10 complying with Canadian tax laws, with the family
11 circumstances of Mr Rand, that is how the trust was set
12 up.

13 So Mr Rand's role was the organiser of all the
14 events, he contacted me; I would imagine, I don't know,
15 but I imagine he spoke to his father-in-law. The trust
16 didn't just appear, it was organised by somebody;
17 clearly Mr Rand was the organiser of the trust.

18 THE PRESIDENT: You said the trust was set up to administer
19 Mr Rand's -- maybe you used a different word, but you
20 referred to Mr Rand's wealth and that made me a little
21 unsure. I had thought it was Mr Ahola's wealth that he
22 would have set in this trust for the benefit of his
23 grandchildren, or do I misunderstand the structure?

24 A. That could be one of the consequences, if Mr Ahola had
25 contributed assets to the trust as well, but it's quite

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01 often the case in my experience that Mr Ahola, the
02 resident of Finland, would contribute a nominal amount;
03 I believe, from my memory, I don't have it in front of
04 me, but I believe that the property that was settled on
05 the trust was a single gold wafer which would have not
06 much value, so that sets the trust up, and then after
07 the trust has been set up, it's available to make
08 investments, receive assets.

09 If Mr Ahola had wanted to contribute assets, he
10 could have done that. Other people could do it, Mr Rand
11 could do it, in this case, the assets that the Trust
12 has, the shares of the Cyprus companies, were purchased
13 with Mr Rand's help and organisation.

14 THE PRESIDENT: Thank you. I think that answers my
15 questions, there are no questions that follow up from
16 the Tribunal's questions with respect from the parties,
17 so this would end your examination, Mr Jennings, we made
18 you get up very early, and we again apologise for this,
19 but it was good for us that we could hear you now, and
20 that closes your examination, and we thank you for your
21 assistance. You can either stay with us or you can
22 leave the Zoom meeting, as you wish.

23 THE WITNESS: Thank you.

24 THE PRESIDENT: There is one thing, we need to think about
25 how we do the Zoom examinations. I think we are all

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01 very used to fully virtual hearings, we are also very
02 used to fully physical hearings, and that is a mix,
03 right?

04 So the difficulty I see here is in the consultation
05 of the documents, and that could be done if one of the
06 counsel who is here is also in the Zoom meeting and can
07 share screen, because then you don't have to wait for
08 the witness to look for documents. Would that be
09 acceptable? I mean, we don't have many Zoom
10 examinations, we have two more, which may be longer than
11 this one. So it would save time and make it also easier
12 for the witness. If the witness has to scroll through
13 these documents, it may make it more difficult.

14 MR PEKAR: This is fine with us. We will be doing the two
15 cross-examinations remotely. This is as usual in fully
16 virtual hearings.

17 THE PRESIDENT: Yes, exactly.

18 DR DJERIC: It is fine with us, thank you.

19 THE PRESIDENT: Fine, then that ends our day, and we are
20 tomorrow scheduled to hear Mr Markicevic, Mr Broshko and
21 Mrs Radovic, is that the plan?

22 MR PEKAR: Yes, that is the plan, I just would like to make
23 sure -- because today we were much more efficient than
24 we originally thought, so if there is likelihood that it
25 would be on us to then continue with the

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01 cross-examination of the following witness, so whether
02 the witness would be ready, and whether you think it's
03 likely, given your estimated length of cross-examination
04 of Mr Markicevic and Mr Broshko, that we would have the
05 time for the cross-examination of Serbia's second
06 witness.
07 THE PRESIDENT: Which would be Ms Vuckovic.
08 MS MIHAJ: Yes, that's right.
09 THE PRESIDENT: Would she be ready tomorrow afternoon in
10 case we progress well?
11 MS MIHAJ: Yes, we will arrange that she is ready, no
12 problem.
13 THE PRESIDENT: And you will be ready to cross-examine her
14 as well?
15 MR PEKAR: Thank you, I am now speaking for an absent member
16 of our team, but we will be ready.
17 THE PRESIDENT: Fine. Is there anything else we need to
18 raise before we close for the day?
19 MR PEKAR: That is okay.
20 THE PRESIDENT: Anything on your side?
21 MS MIHAJ: No, thank you.
22 THE PRESIDENT: Good, then I wish everyone a good end of the
23 afternoon and good evening and see you tomorrow.
24 (4.00 pm)
25 (The hearing adjourned until 9.00 am the following day)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

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Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
Marisa Planells-Valero

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Luka Misetic
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William Rand
Erinn Broshko
Li-Jeen Broshko
Igor Markicevic

Party representatives:

Olivera Stanimirovic
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Interpreters:

Milena Maric
Sanja Rasovic
Vesna Bulatovic

Hearing Location:

Peace Palace, The Hague

PAGE 1 (09:00)

01 Wednesday, 14th July 2021
02 (9.00 am)
03 THE PRESIDENT: Good morning to everyone. We have just
04 heard the bell ringing so it's our signal that it's the
05 time to start. I hope everybody is fine. It is not the
06 case unfortunately of Mr Vasani, who is not feeling well
07 today. Slightly unwell, he said.
08 In normal times, this would be no problem, right?
09 He would just sit there. Now we want to be cautious,
10 because we don't want to take any risks, so he is going
11 to take a test in the course of the morning. If the
12 test is negative, he will be here in the afternoon. If
13 the test is positive, then we have to take it from
14 there.
15 But for this morning, the suggestion is that he
16 connects on Zoom, he is already connected, and if the
17 parties want to make sure that he is there all the time,
18 you could connect into Zoom and just see that he is
19 there. Does that work? And of course if he has
20 questions for witnesses, we will show him on the Zoom
21 screen. Is that acceptable? It is a little
22 unfortunate, but these are the types of things that can
23 happen, and it's good that we have the Zoom set-up, so
24 we can continue. Is it fine with the Claimants?
25 MR PEKAR: Yes, it is, Mme President.

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01 THE PRESIDENT: Thank you. Is it fine with the Respondent
02 as well?
03 MS MIHAJ: Yes, no problem.
04 THE PRESIDENT: Good, fine. Anything else in terms of
05 organisation that we need to address before we start?
06 It doesn't seem to be the case on either side. Yes,
07 I am checking that the transcript is running.
08 MR IGOR MARKICEVIC (called)
09 THE PRESIDENT: Good morning, Mr Markicevic. I am told that
10 the interpreters are here, and I also see them and
11 I welcome them, they will not interpret for now, but
12 they will interpret, I think, for the last witness this
13 afternoon.
14 Fine, Mr Markicevic, to you now. You are Igor
15 Markicevic?
16 THE WITNESS: Yes.
17 THE PRESIDENT: You are an adviser to the Rand family since
18 2012, is that right?
19 THE WITNESS: Correct.
20 THE PRESIDENT: You have provided us with four written
21 statements: 5th February 2018, 16th January 2019,
22 3rd October 2019 and 5th March 2020.
23 THE WITNESS: Yes.
24 THE PRESIDENT: And you have them all there, I see?
25 THE WITNESS: Yes, I have them.

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01 THE PRESIDENT: Absolutely. You are heard as a witness, you
02 have been here with us before, so you know that I will
03 now ask you to read the witness declaration, please.
04 THE WITNESS: I solemnly declare upon my honour and
05 conscience that I shall speak the truth, the whole truth
06 and nothing but the truth.
07 THE PRESIDENT: Thank you. So I will first turn to
08 Claimants' counsel.
09 Direct examination by MR PEKAR
10 Q. Thank you, Mme President. Good morning, Mr Markicevic.
11 A. Good morning.
12 Q. Did you have a chance to review your witness statements
13 recently?
14 A. Yes.
15 Q. Is there anything you would like to change?
16 A. No.
17 Q. Could you please tell the Tribunal what happened in
18 Belgrade yesterday?
19 A. Yes. Yesterday, around half past eleven am, in
20 Belgrade, police showed up in front of my door, my
21 apartment, and since I am away, my father, who is 71
22 years old, he is spending a few days in the apartment,
23 and he opened the door. The police told him that they
24 are looking for a Canadian citizen named Mr Erinn
25 Broshko, and my father said that he didn't know who

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01 Erinn Broshko was, and then police said that they had
02 Mr Broshko registered on that address, and my father
03 said he didn't know anything about that, and then they
04 wrote down my father's name and the data from his ID
05 card, and then they left. They didn't leave him with
06 any notice or any document or explained why they came.
07 THE PRESIDENT: Fine, well we will take note of this. Thank
08 you.
09 MR PEKAR: Mr Markicevic, could you describe other
10 encounters you had with Serbian law enforcement in
11 connection with BD Agro?
12 A. Yes, as I explained in details in my witness statement,
13 contacts with Serbian police started in June 2019, when
14 police officers showed up in the office in Belgrade
15 where I work, and I was not in the office at the moment,
16 and they talked to my colleague who was there, and they
17 asked for my mobile number, then they called me and
18 insisted that I meet them in the police station.
19 We had several meetings at which they requested
20 certain documents of Crveni Signal, but they didn't want
21 to be specific about which documents they are
22 requesting. We had some back and forth communication,
23 I engaged a Serbian criminal lawyer to advise me in that
24 matter, he advised me that I should always have
25 a written notice and request from the police with

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01 respect to documents.
02 They even threatened me that they will file criminal
03 charges against me for obstruction of justice because
04 I am not giving them what they are verbally requesting
05 from me.
06 At the end of the day, we had a meeting with lawyers
07 and police and they gave in writing their request for
08 the documents, I provided the documents immediately
09 after that.
10 On all our meetings, they always raised questions,
11 issues on the matters that are discussed in this
12 arbitration, so they asked about who was the owner of BD
13 Agro, who bought BD Agro, how it was funded, et cetera.
14 So it's various matters discussed here.
15 And I have to say that before this arbitration
16 started, I was never even charged with a parking ticket,
17 so all my experience in life with police is during this
18 arbitration.
19 Q. Mr Markicevic, what was your understanding of the
20 ownership of BD Agro at the time when you were at the
21 company?
22 A. My understanding always was that Mr Obradovic is the
23 nominal owner and Mr Rand and his children are
24 beneficial owners through Sembi investment.
25 Q. Mr Markicevic, are you a director of Sembi?

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01 A. Yes, I am.
02 Q. Mr Markicevic, are Sembi's financial statements audited?
03 A. Yes, the financial statements of Sembi are audited every
04 year.
05 Q. Mr Markicevic, do you know whether Sembi's financial
06 statements for the year ending 31st December 2008 were
07 also audited?
08 A. This was before my time, but I reviewed, I am in
09 possession of copies of most of Sembi's documentation,
10 so I reviewed the 2008 financial reports and they are
11 audited, yes.
12 Q. Sir, we will now distribute one document to you, it is
13 document CE-420. The printed copy is shortened, we
14 wanted to save some trees. (Handed).
15 Sir, is this document the financial statements of
16 Sembi for 2008?
17 A. Yes.
18 Q. Could you please tell the Tribunal the date of the audit
19 report?
20 A. The audit report is dated 10th December 2009, by HLB.
21 Q. Do you know, sir, when Sembi changed its registered
22 office to the current address?
23 A. Sembi has a decision on change of the office dated
24 1st November 2009, but the Cypriot administration, the
25 register, in the corporate register, official corporate

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01 register in April 2010. The decision was from
02 1st November 2009.
03 Q. Mr Markicevic, does Mr Obradovic owe Sembi approximately
04 €2.7 million?
05 A. Yes.
06 Q. Did he confirm this in writing in 2019?
07 A. Yes, I was involved -- accountants from Cyprus prepared
08 the financial reports but I was reviewing them, and they
09 were audited, and auditors requested a written statement
10 of outstanding amounts with all creditors and debtors
11 including Mr Obradovic who signed the statement that he
12 owes this amount to Sembi.
13 Q. Mr Markicevic, is it your understanding that BD Agro
14 would have become profitable if the pre-pack
15 reorganisation plan had been pursued in 2015 and the
16 following years?
17 A. Yes, this is based on the business plan that was very
18 carefully made by people who were involved in BD Agro
19 and outside consultants, and I have to say also that the
20 majority of creditors supported it, but I don't mean
21 only a majority in terms of volume of the receivables,
22 but also it's 53 or 54 companies from agricultural
23 business who were BD Agro's creditors who voted for the
24 plan, so these were all BD Agro's suppliers, buyers of
25 raw milk, producers of different chemicals, seed and

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01 inputs for crops production for dairy farm, these were
02 companies that BD Agro dealt with on a daily basis for
03 years and I think that they knew very well what was BD
04 Agro's potential, and they reviewed our plan and they
05 believed obviously in it, because they voted in favour
06 of the plan.
07 I also have to say that I noticed on the opening
08 statements, Serbia's opening statement on Monday,
09 comparison with past results and profitability of the
10 farm and I have to say, as economist, that this is, from
11 my point of view, incomparable, because the biggest
12 point, the whole reason for having a large
13 industrial-scale dairy farm is economy of scale, and BD
14 Agro never in the past passed the threshold of maybe
15 25/30% of capacity utilisation, and the pre-pack
16 business plan envisaged investment and increased the
17 size of the herd and capacity utilisation which was
18 90/100% so that's where the economy of scale hits and
19 I don't think it's even possible to assess future
20 potential of the company based on past results, with --
21 to say BD Agro had perfect set-up, equipment,
22 facilities, for to operate as industrial size, but they
23 didn't have enough cows, so that was the whole idea. So
24 this is why I am certain that pre-pack would be
25 successful and that BD Agro would be a very profitable

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01 company.
02 Q. Mr Markicevic, were you ever told by the Privatization
03 Agency that resolving the Privatization Agency's
04 allegations of breach of the Privatization Agreement was
05 as simple as to make Crveni Signal and Inex return
06 certain amounts to BD Agro?
07 A. No. The first time that I heard this theory that the
08 only thing that we needed to do is to have Crveni Signal
09 and Inex return their loans was this Monday, on Serbia's
10 opening statement. So to state the obvious, I wished
11 that was the case, because then, in that case, it would
12 be easy for Mr Rand, even without engaging any funds, to
13 settle that matter, because Mr Rand was owed by BD Agro
14 over €2 million at the time so it would have been easy
15 for him to assume, for example, Crveni Signal's and
16 Inex's debt and to settle that with his own receivable
17 against BD Agro, but that was not the case. The
18 Privatization Agency, in all their notices, all our
19 meetings, they always claimed various breaches including
20 5.3.3, 5.2.1, and a list of another five or six
21 additional breaches which sometimes we found hard to
22 understand what was the request that they were making.
23 MR PEKAR: Thank you, that concludes my direct examination.
24 THE PRESIDENT: Thank you. Can I now turn to Serbia's
25 counsel, Ms Mihaj?

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01 MS MIHAJ: Yes, of course, thank you, Mme President.
02 Cross-examination by MS MIHAJ
03 Q. Good morning, Mr Markicevic, my name is Senka Mihaj,
04 I am one of the counsel for the Respondent and I will
05 ask you a few questions today.
06 Speaking of criminal proceedings, would you please
07 tell us how many criminal proceedings have been opened
08 against you until today?
09 A. Against me, I am aware of one, if I remember correctly.
10 Q. One. Do you know how many criminal charges were filed
11 against you?
12 A. I know that BD Agro and management that was appointed
13 after I left filed several baseless criminal charges
14 against me, but I never, police or anyone ever followed
15 up with me on that.
16 Q. Were there any criminal charges filed against you before
17 this arbitration started in relation to BD Agro?
18 A. Not that I know of, no.
19 Q. You are not aware of a criminal charge filed in 2014 and
20 in 2016 that relates to BD Agro?
21 A. No.
22 Q. Can we please see -- we do not have it in the bundle
23 because we did not know that this will show up, but we
24 will of course have it in the records, these are
25 Exhibits RE-260 and RE-669. So my point is only to show

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01 that there is a criminal charge against you, filed in
02 November 2014.
03 THE PRESIDENT: It is a complaint, right? It's not
04 a charge, technically. It is a complaint filed.
05 MS MIHAJ: Yes, it is a Krivicna Prijava which in Serbian
06 means criminal charge.
07 MR PEKAR: That is not correct.
08 THE PRESIDENT: To me a charge just is -- someone files
09 a complaint, there is an investigation by the relevant
10 authorities, and the relevant authorities consider that
11 there is sufficient ground to proceed, and they file
12 a charge.
13 MS MIHAJ: Yes, you are correct.
14 THE PRESIDENT: And it goes to court. So it is a complaint,
15 yes, thank you.
16 MS MIHAJ: Can we go to another exhibit?
17 A. Can I just ask, because I saw something in the document,
18 if I am allowed to just --
19 THE PRESIDENT: Of course.
20 A. If you can scroll down to the end of the document,
21 because I notice that it was not signed at all, so it
22 says "Workers left to thieves", so I have never seen
23 this before and this seems to be unsigned, anonymous
24 document. I just wanted to point that out.
25 MS MIHAJ: I think it says somewhere that it is received by

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01 the Prosecutor? "Admission seal", so we have receipt.
02 Can we go now to RE-669? That is also criminal
03 complaint from 2016 against Mr Markicevic, that relates
04 to BD Agro in 2016. Tell me, these criminal complaints,
05 criminal charges that are filed against you, do they all
06 relate to BD Agro or not?
07 MR PEKAR: Mme President, I must object.
08 THE PRESIDENT: Yes?
09 MR PEKAR: We have seen two criminal complaints, and I think
10 you have explained to Ms Mihaj that the proper English
11 term for this document is criminal complaints, she
12 should not be referring to criminal charges.
13 THE PRESIDENT: I am sorry, I didn't pay attention, and
14 I heard -- I didn't hear charge --
15 MS MIHAJ: And complaint.
16 THE PRESIDENT: I think we agreed that the first one is an
17 anonymous complaint that was received by whatever the
18 authority is, and here we see one that is not anonymous,
19 because there is a name below, and that is also
20 a complaint and was also received. Do I understand this
21 correctly, Mr Markicevic?
22 A. I saw just a quick scroll through the document, I don't
23 have it in front of me but I notice that it is signed by
24 the general manager of BD Agro, after I left BD Agro, as
25 I said earlier.

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01 THE PRESIDENT: Yes, thank you.
02 A. It is a complaint.
03 THE PRESIDENT: You were aware of these complaints?
04 A. No. I was never contacted by Serbian authorities about
05 these complaints.
06 THE PRESIDENT: Thank you. Ms Mihaj, you may continue.
07 MS MIHAJ: Thank you. Are there any other criminal
08 complaints against you that do not relate to BD Agro?
09 A. There is one, yes, as I mentioned, there is one and the
10 only one where I was contacted by Serbian authorities.
11 Q. Would you please tell us something about that complaint?
12 What was it related to?
13 A. Yes. So it is a complaint. Crveni Signal is another
14 company owned by Mr Rand in Belgrade. Crveni Signal has
15 a backyard, and in that backyard there is a gate that is
16 used by Crveni Signal and several other residents which
17 use the same backyard, and Crveni Signal installed
18 a ramp which controls who gets in and out, because we
19 had problems, people who don't live there, they use the
20 backyard.
21 One of the neighbours who lives in the same backyard
22 is a truck driver, and he has a truck, a big one, with
23 a container, a 25th container, and one morning he broke
24 the gate and parked his truck in the middle of the
25 backyard, and I talked to the other neighbours, if they

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01 saw anything, how it happened, et cetera, and one of the
02 neighbours told me that he saw the truck driver broke
03 the gate, and then I talked to a lawyer who represented
04 Crveni Signal at the time and the lawyer advised me to
05 file criminal charges and compensation of damages for
06 the gate.
07 THE PRESIDENT: A criminal complaint?
08 A. Yes, because that was the basis --
09 THE PRESIDENT: No, not a criminal charge, you were filing
10 a criminal complaint.
11 A. Not that uncommonplace in Serbia, to file criminal
12 complaints against people. The lawyer who wrote the
13 criminal complaint then turned sides and defended the
14 truck driver against Crveni Signal. The neighbour who
15 told me that he saw the driver breaking the gate, he
16 changed his testimony in front of the court. We have
17 security cameras recording where the truck driver was
18 chasing the witness with a metal bar around the yard and
19 we filed this with the police, which I believe was the
20 reason why he changed his testimony.
21 In any event, Crveni Signal lost that case against
22 the neighbour, and the neighbour and the lawyer who
23 wrote the criminal charge against the neighbour wrote
24 criminal charges against me for false testimony, so
25 that's the only criminal proceeding against me ongoing

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01 in Serbia, and I was invited once by the public
02 prosecutor, I gave my statement on that, and provided
03 video footage and other documents with respect to that.
04 THE PRESIDENT: Thank you.
05 MS MIHAJ: Thank you, Mr Markicevic. Mr Markicevic, you are
06 a director at Coropi since 2013, is that correct?
07 A. Yes.
08 Q. You are also director at Sembi since 2013, is that
09 correct?
10 A. Yes.
11 Q. You are also director at Kalemegdan Investment from
12 Cyprus, is that correct?
13 A. Yes.
14 Q. Since when you are a director at Kalemegdan Cyprus?
15 A. Kalemegdan Cyprus, also June, I think, 2013.
16 Q. And you are also director at Kalemegdan Investment from
17 Serbia, is that correct?
18 A. I am currently a director of Kalemegdan Serbia since,
19 I think, 2018. I don't remember exactly the date.
20 Q. Thank you. You are also director at Crveni Signal from
21 Belgrade?
22 A. Yes.
23 Q. Since when?
24 A. Since September, I think, 2012.
25 Q. Are you also director at company Obnova from Belgrade?

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01 A. Yes, also from around September 2012.
02 Q. Mr Markicevic, would you please tell us, was your
03 average monthly income last year about €250?
04 MR PEKAR: Objection.
05 A. Excuse me, can you repeat the question?
06 MR PEKAR: Objection, Mme President.
07 THE PRESIDENT: Yes, I was checking the question. The
08 question was, can you tell us your monthly average
09 income last year, and then what was the figure?
10 MS MIHAJ: My question was, was your average monthly income
11 last year about €250? That was the question.
12 THE PRESIDENT: I understand there is an objection; is this
13 a question you wish to answer or not?
14 A. I don't mind answering.
15 THE PRESIDENT: You don't mind? Is there a reason for the
16 objection?
17 MR VASANI: Mme President, I think maybe if Ms Mihaj could
18 explain the relevance then perhaps we could assess the
19 objection.
20 THE PRESIDENT: What is the relevance of the question?
21 MS MIHAJ: Mme President, Mr Markicevic has confirmed that
22 he is director at several companies that, according to
23 Claimants, all relate to Mr Rand, and as we saw during
24 testimony that we heard yesterday, it is a big question
25 how much associates of Mr Rand, and whether they

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01 received any compensation, what was the amount of that
02 compensation et cetera, and we think that could be of
03 relevance for the stories, for the Claimants' claim in
04 these proceedings and the truthfulness of their claims, so
05 we would like to see whether Mr Markicevic knows what
06 are his incomes, and what is the amount of his incomes.
07 As you may remember, for example, Mr Obradovic was
08 unable to tell the exact amount, so I hope Mr Markicevic
09 could tell us.
10 THE PRESIDENT: Yes. You want to reply to this?
11 MR PEKAR: I simply want to say that I maintain the
12 objection, and unlike the compensation of Mr Obradovic,
13 the compensation of Mr Markicevic was never an issue in
14 this arbitration at the written stage.
15 A. If I can add, I said that on second thought, I realise
16 that this is streamed, as I understand, or will be
17 publicly videoed, so I'm not very comfortable talking
18 about this publicly, because of people seeing this
19 later, my personal income. If you want me to answer,
20 I would answer but I would rather not.
21 THE PRESIDENT: Yes. Do my colleagues have specific
22 questions to the parties to better understand the
23 question and the objection?
24 MR VASANI: Yes, perhaps we could hear Ms Mihaj because
25 I tend to agree with Claimants' counsel that there was

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01 relevance with regard to Mr Obradovic's compensation in
02 terms of nominal owner and beneficial owner; I don't
03 quite yet see how that same relevance applies to
04 Mr Markicevic, and I apologise, Ms Mihaj, perhaps just
05 one more time on the connection.
06 MS MIHAJ: First of all, I think that there is also
07 relevance for the credibility of the witness but as well
08 for the credibility of the Claimants' story in this
09 case. They are saying that this witness manages several
10 companies of Mr Rand, and that he actually runs a lot of
11 his --
12 THE PRESIDENT: Being a director to me is not the same thing
13 like being a manager, right? A director sits on
14 a board, maybe a non-executive director, and has a few
15 meetings a year, so it is a different -- we should not
16 mix this, right?
17 MS MIHAJ: I tend to agree with you but having in mind the
18 evidence that we have in the files, and of course also
19 the witness statements of Mr Markicevic, I would say
20 that he did manage these companies, that he was
21 acquainted with their businesses, and was
22 general manager, and I think that the question of his
23 compensation should not be a problem to be in the files.
24 I fully agree that we can exclude that part from the
25 transcripts and the video that would be published, of

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01 course I have no problem with that, but I think that it
02 would be fair that we finally hear the amount paid to
03 Mr Rand's associates, who are all involved in all of
04 these privatizations, not only BD Agro but other
05 companies that are mentioned by Claimants themselves.
06 THE PRESIDENT: The Tribunal needs to rule then on this
07 objection. Maybe we just go to the break-out room, and
08 we make sure that we establish from there the connection
09 to the Zoom, is this possible? You will take your
10 computer, yes, fine.
11 (9.30 am)
12 (A short break)
13 (9.47 am)
14 THE PRESIDENT: Thanks for waiting. I just have to check
15 one thing in the record, so if you still bear with us?
16 (Pause).
17 Thank you all for waiting, and we have set up
18 a special break-out room with Mr Vasani to make sure
19 that we can deliberate.
20 We would say the following: Mr Markicevic, you can
21 choose to answer or not to answer this question.
22 If you decide to answer, we will treat it as
23 confidential. We have an order of transparency and
24 confidentiality, which is Procedural Order No. 5, and
25 that specifically provides that during a hearing,

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01 information can be treated as confidential; that means
02 that we will -- the Tribunal will decide whether to
03 exclude the information in question from the broadcast,
04 so that we would exclude it from the broadcast, and
05 whether the relevant portion of the transcript shall be
06 marked "confidential", that is also what we would do.
07 So what will be published will not contain this
08 information, and we will also advise Canada that is not
09 online now, but that can access the transcript later on
10 during the day, that there are portions that are
11 confidential.
12 Is this an acceptable way forward?
13 MR PEKAR: Yes, Mme President.
14 MS MIHAJ: Yes, absolutely, thank you.
15 THE PRESIDENT: Fine, and Mr Markicevic, now it is up to you
16 to tell us whether you want to answer or not.
17 A. Thank you, Mme President. I would say that I can
18 confirm that I have employment agreement with Crveni
19 Signal but I would rather not answer on the amounts of
20 my salary, if that is okay with the Tribunal.
21 THE PRESIDENT: So you have an employment agreement with
22 Crveni Signal?
23 A. Only with Crveni Signal, yes.
24 THE PRESIDENT: You have no other agreements in terms of
25 employment?

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01 A. With other companies mentioned, I don't have.
02 THE PRESIDENT: With the other companies, you have
03 remuneration from the other companies as director, for
04 instance?
05 A. No, I don't.
06 THE PRESIDENT: And your adviser role is compensated by this
07 Crveni Signal employment agreement?
08 A. I have a company that I own, called Avento, I am
09 co-owner with my wife in that company, and that company
10 invoices Mr Rand for my services.
11 THE PRESIDENT: For services.
12 A. So I would rather not mention the amount, if that's
13 acceptable for the Tribunal, but that's the company that
14 charges for services.
15 THE PRESIDENT: Thank you. I think that answers it as much
16 as can be answered.
17 MS MIHAJ: Yes. Thank you, Mr Markicevic.
18 I would now like that we go to your fourth witness
19 statement, and that is paragraph 31. Can we see what
20 you said in this paragraph? I will tell my
21 understanding and then you can read the paragraph and
22 correct me if I am wrong.
23 You said that Kalemegdan Cyprus is direct majority
24 owner of Inex, Crveni Signal, PIK Pester and Obnova.
25 You also said that the nominal owner of Kalemegdan

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01 Cyprus is Mr Obradovic, and that Mr Rand advised you
02 that the beneficial owner of Kalemegdan Cyprus is
03 Coropi, because it can obtain transfer of shares in
04 Kalemegdan Cyprus from Mr Obradovic at the time of its
05 choosing.
06 Finally, you said that Coropi is therefore
07 beneficial owner of Inex, Crveni Signal, PIK Pester and
08 Obnova. Is that a correct understanding of what you
09 said?
10 A. Yes.
11 Q. Since you confirm that you are director of Coropi, has
12 Mr Rand ever provided you with an agreement that
13 establishes such beneficial ownership of the company
14 that you manage?
15 A. Yes.
16 Q. So you have been provided with a written agreement of
17 Coropi's beneficial ownership over the company that you
18 mentioned in paragraph 31 of your fourth witness
19 statement?
20 A. Yes.
21 Q. Thank you. Mr Markicevic, since Coropi is, according to
22 you, beneficial owner of Inex, Crveni Signal, PIK Pester
23 and Obnova, has Coropi registered its beneficial
24 ownership in its financial statements?
25 A. I would only have to rely on my memory, but I would say

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01 probably yes, but I would have to check with the
02 financial statements, because I am not able to give an
03 exact answer on this part, but I believe so, yes.
04 Q. Mr Markicevic, aren't you a person who signs those
05 financial statements, since you are a director of
06 Coropi?
07 A. Yes, but as I said, I don't have it in front of me and
08 I am not -- my answer is yes, most probably yes, but
09 I would have to check with the financial statements to
10 confirm that. The financial statements are prepared by
11 the accountants in Cyprus and they are also audited, as
12 well as Sembi's financial statements, so I believe yes,
13 they reflect the ownership.
14 Q. Okay, thank you. You have mentioned that decision about
15 the registered address of Sembi, or to be precise, the
16 change of registered address of Sembi was rendered some
17 time in November, if I remember, 2009. Would you please
18 tell us who renders the decision of change of the
19 address of Sembi?
20 A. The directors of Sembi.
21 Q. But do we agree that in any event, the registered office
22 of Sembi at the time when you say 2008 financial
23 statements of Sembi was prepared were still not the
24 address that is registered in April 2010?
25 A. So financial reports, to my understanding, were filed in

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01 December 2009, so this was after the change of the seat,
02 after the decision on change of the seat, so this is
03 why, in this period between the decision and the
04 registration in the Corporate Registry, they state
05 different addresses but I believe that the accountants
06 and auditors in Cyprus took the position that change of
07 ownership is as of the date of the decision.
08 Q. Change of ownership?
09 A. Sorry, change of address.
10 Q. So this is what you know or what you believe?
11 A. Well, this is what the documents say, so the decision is
12 as of 1st November and the financial reports are filed
13 in December and they state the address which was -- the
14 new address from the decision from November 2009.
15 Q. As I know, we do not have that decision on the change of
16 Sembi's address from November 2009.
17 A. As I said earlier, I am in possession of a copy of that
18 decision, and I understand it was not raised before
19 here, so I would be happy to provide it to the Tribunal
20 if needed, but it was -- I was not asked by the counsel
21 to provide it, because it was not discussed until this
22 moment.
23 Q. Do you maybe remember when this decision on change of
24 address was filed to the relevant Companies Register?
25 A. As I said, this was before I was engaged, so I have

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01 a copy of the decision but I don't know the details when
02 it was filed, so I see that date in the Corporate
03 Registry is April 2010, and the date on the decision is
04 1st November 2009, but I don't know when and how it was
05 filed. I was not there at the time.
06 Q. Thank you, Mr Markicevic. Mr Markicevic, in your
07 witness statements, you testify about a great number of
08 meetings and interactions with the Privatization Agency,
09 the Ministry of Economy, regarding BD Agro. Did you
10 maybe keep any record or minutes of these meetings?
11 A. I had some notes in my notebook, but not minutes, in the
12 sense of proper minutes for the meetings.
13 Q. You haven't provided any of these notes together with
14 your witness statements?
15 A. No, these were written notes in my notebook which were
16 my reminder what was said at the time.
17 Q. Mr Markicevic, during the two years that your request
18 for assignment of the Privatization Agreement from
19 Mr Obradovic to Coropi was active before the
20 Privatization Agency, have you ever visited the website
21 of the Privatization Agency and consulted the applicable
22 rulebook that prescribed the conditions for assignment
23 of privatization agreements?
24 A. No, I believe that what the Agency told us was required
25 for the assignment was sufficient. I didn't find it

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01 necessary to go to their website, and be informed there,
02 because we had meetings, and the correspondence with the
03 Agency, and I took that this is their position.
04 Q. If I remember correctly, you said that the list of
05 documents -- that you received the list of the documents
06 from the Agency?
07 A. Yes.
08 Q. You stated that you have -- the list stated that you
09 have to submit official certificates from competent
10 national authorities confirming that no criminal
11 proceedings were pending, and that no previous
12 convictions exist against the controlling shareholder of
13 the company to which the agreement should be assigned,
14 is that correct?
15 A. Can you refer me to --
16 Q. Yes, of course. The third witness statement of
17 Mr Markicevic, paragraph 94.
18 A. I see it, yes.
19 Q. But you never provided these official certificates, just
20 a simple personal statement from Mr Jennings that he has
21 no pending criminal proceedings nor convictions, is that
22 correct?
23 A. This is correct, but this was a very common practice
24 with the Privatization Agency and the reason is that if
25 you look at paragraph 93 above, that the request was

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01 specifically to provide -- so:
02 "Has never been convicted for any criminal offenses,
03 including those listed in Article 12 of the
04 Privatization Law ...", et cetera.
05 So in practice, and I have done some privatizations
06 before I met Mr Rand, and got involved in BD Agro,
07 foreign countries would never issue a certificate
08 referring to Article 12 of the Serbian Law of
09 Privatization, so that was a general problem with
10 foreign investors providing such a certificate, and it
11 was common practice, and I would say probably 100%
12 practice, for the Privatization Agency to sign
13 authorised and apostilled affidavits from foreign
14 persons that they comply with this requirement. And
15 this is what was provided to the Agency.
16 Q. But the problem with this statement that you gave is
17 that you never mentioned the particular privatization
18 agreement that was transferred in the way you said
19 without showing official certificate concerning criminal
20 proceedings and convictions.
21 A. I am not sure I understand the question.
22 Q. You never pointed to a particular privatization
23 agreement that was assigned without official certificate
24 concerning criminal proceedings or convictions. You
25 just said that it is practice of the Agency.

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01 A. Yes.
02 Q. As I am aware, it is not the practice of the Agency, so
03 I would expect that if you said that in your witness
04 statement, you also mention to which privatization
05 agreement you refer when you said it was a practice.
06 But you didn't do that.
07 A. I did not provide, yes, in my witness statement, what
08 you say.
09 Q. In your second witness statement, you also testified
10 about the reorganisation of BD Agro, and that would be
11 somewhere from paragraph 188, for example, and I think
12 that it would be convenient that we remind the Tribunal
13 and ourselves about what you said in that respect in
14 your witness statement.
15 In paragraph 188, you say:
16 "On 30th September 2015, the Commercial Court of
17 Appeal quashed the court approval of the pre-pack
18 reorganization plan and returned the case to the first
19 instance court to repeat the procedure."
20 Then in your third witness statement, paragraph 112,
21 you say:
22 "On 22nd October 2015, BD Agro received a notice
23 from the first instance court ordering it 'to act in
24 accordance with the orders from the decision of the
25 Commercial Appellate Court'. The deadline set by the

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01 court was 15 days."
02 You further say, in paragraph 120 and 121:
03 "On 26th October 2015, [you] sent a letter to the
04 Privatization Agency, explaining that the Commercial
05 Court had ordered BD Agro to act in accordance with
06 instructions from the Commercial Appellate Court and set
07 a 15 days deadline."
08 Finally you conclude:
09 "The Privatization Agency never responded to my
10 letter, and the 15 days deadline for BD Agro's
11 compliance with the court order expired."
12 Which was the reason for the first instance court to
13 reject the amended pre-pack reorganisation plan.
14 In the letter from 26th October 2015, and that is
15 CE-360, you requested that that would be -- I think the
16 last paragraph -- instructions from the Agency in that
17 respect, is that correct?
18 A. Just give me a moment, please. Where is the Serbian
19 original? (Pause). But can you please repeat the
20 question, because you went through two witness
21 statements and one document and I lost track of it.
22 Q. I just wanted you to confirm that in this letter from
23 26th October 2015, you requested instructions from the
24 Agency.
25 A. Yes.

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01 Q. Tell me please, have you contacted the Agency after you
02 sent this letter on 26th October? Did you urge that
03 they respond to your letter? We saw no documents in
04 that regard in the files.
05 A. No.
06 Q. Thank you. Have you maybe requested from the court to
07 postpone the 15-day deadline left by the court?
08 A. Soon after this date, the Agency appointed
09 a privatization trustee, Ms Knezevic, so my
10 communication was with her and she was on a daily basis
11 in the Agency. So I told her and she had a copy of this
12 letter and I informed her and I believed that the Agency
13 was informed through her about what was going on with
14 the pre-pack reorganisation plan and our deadlines with
15 the court. I was urging her to talk to the Agency, to
16 get a response, but we never got back from them.
17 Q. And until when you were director of BD Agro, what was
18 the date when you left?
19 A. I resigned in November 2015, I think it was,
20 5th November.
21 Q. So you were still the director at the time in October,
22 is that correct?
23 A. Yes, but I resigned -- I was director for another
24 30 days which was legal requirement to give notice.
25 Q. So I repeat my question, you were a director, you were

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01 aware of the 15-day deadline?
02 A. Yes.
03 Q. You have sent the letter to the Agency, the Agency did
04 not respond, you are still a director, and my question
05 is whether you addressed the court to request the
06 postponement of the 15-day deadline or you did not?
07 A. I don't remember if we asked the court for additional
08 deadline.
09 Q. I am sorry?
10 A. I don't remember if we wrote to court for the additional
11 deadline.
12 Q. Can we go to witness statement -- so the second witness
13 statement, paragraph 192, and you will see in that
14 paragraph you actually confirmed that it was not
15 a problem to ask the court for an extension of this time
16 limit and receive such extension, so I think that this
17 statement of yours shows that you were aware that it was
18 possible to request delay of that deadline, as well as
19 that you did not do that.
20 A. I don't see that it says I did not do that, it says that
21 that would not resolve the problem that the Agency
22 didn't respond to the request.
23 Q. It says that it would have been resolved by simply
24 asking for an extension of this time limit.
25 A. So the paragraph says about a but-for scenario in which

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01 we got -- when the pre-pack first instance decision was
02 quashed, if we got the chance to do it again, and I can
03 speak, if you allow, about the reasons -- how
04 I understand the reasons why it was quashed, it was
05 technicalities that we were able to overcome, and what
06 I am saying here in this paragraph is that if we were in
07 position to proceed and to continue pursuing the
08 pre-pack reorganisation plan, we would be able to get
09 additional deadline from the court, that we would be
10 able to make new financial statements which was required
11 in the court decision, so to move the cut-off date for
12 the pre-pack reorganisation plan forward, to make some
13 amendments to the plan, to acquire a new audit report,
14 et cetera.
15 So I am saying that that would be possible to do,
16 and that my expectation was because the creditors
17 already supported the pre-pack plan, that I don't have
18 any reason to think that they would not have done it
19 again because nothing changed in the meantime, and what
20 I am saying here, that I believe we would be able to
21 have been able to get from the court additional deadline
22 to do all these required changes, and to put the plan
23 again in front of the creditors and the court for
24 voting, so this is not with respect to my request to the
25 Agency to get instructions from them, this part of my

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01 witness statement speaks about why I believe that the
02 pre-pack -- if the termination didn't happen, and if we
03 remained on the same course, that the pre-pack would be
04 approved again.
05 Q. In your third witness statement, in paragraph 111, you
06 say:
07 "... on 1st October 2015, we received notice from
08 the Privatization Agency that the Privatization
09 Agreement had been terminated."
10 So having in mind that the privatization was
11 terminated, is it correct to assume that you were
12 actually no longer interested in BD Agro's
13 reorganisation, and that this was the reason why you
14 stayed passive and did not urge the Agency to respond,
15 did not request the 15-day deadline to be extended, is
16 that maybe the reason?
17 A. No, that is not the reason.
18 Q. Thank you. Can we please go back to your fourth witness
19 statement, in paragraph 32? You say that on
20 23rd January 2019, Kalemegdan Serbia registered
21 Mr Obradovic as the real owner, and I suppose that you
22 approved or signed or co-signed this request for
23 registration of Mr Obradovic as the real owner?
24 A. No, this was before --
25 Q. You didn't?

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01 A. No, so the registration was done before I was appointed
02 as director of Kalemegdan, so this is before my
03 appointment. The previous director and more
04 specifically accountant made this registration and --
05 when this was brought to my attention, so I reviewed the
06 Article of the Law, which is paragraph 34 of my witness
07 statement. My understanding was that both Mr Obradovic
08 and Mr Rand should be registered.
09 Q. We will come on that question later, but please let us
10 now stay here: did you co-sign, sign or approve that,
11 and you said no, and I have a follow-up question.
12 A. The registration was before I was appointed as director
13 of Kalemegdan.
14 Q. Thank you. Could we please go now to Exhibit CE-805?
15 That is the Companies Register decision which registered
16 you as the director of Serbian Kalemegdan Investment on
17 1st July 2019. It says that you -- you see "To be
18 deleted", so it means that you were already the
19 statutory representative of Serbian Kalemegdan
20 Investment, and the previous director, Lidija Cebovic
21 Milenkovic, who had represented the company only with
22 your co-signature, is that correct?
23 A. Correct.
24 Q. So it seems that Ms Milenkovic could not file any
25 registration without your co-signature approval?

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01 A. Registration was done, as I said, by the accountant, so
02 registration is done on the website of the Business
03 Registers Agency, so they have application where the
04 accountant put the name in the section for the
05 beneficial ownership. At that time, Ms Cebovic
06 Milenkovic was director and she didn't -- so her
07 limitation of power was to sign documents, to sign
08 contracts, to sign bank transfer orders, et cetera, so
09 she needed my signature for that, but this was something
10 that is done online, on the website of the Business
11 Registers Agency and they didn't -- both accountant and
12 Ms Cebovic Milenkovic didn't consult with me on the
13 registration.
14 Q. But is it correct that this registration which is filed
15 electronically, as you said, as I know it is correct, it
16 is true, but it is also true that it should be signed by
17 electronic signature?
18 A. Yes, and it can only be and only signed by the
19 electronic signature of the director of the company.
20 Q. Who is limited with your co-signature?
21 A. Yes, so only electronic signature by director of the
22 company which is a question which we often deal with
23 with the Business Registers Agency, because I cannot,
24 for example, authorise accountants to file anything, so
25 I always had to go as a director, so no one else, even

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01 if you have several directors, there is one who is
02 authorised and his ID card with electronic signature has
03 to be used, so this had to be Ms Cebovic Milenkovic's
04 electronic signature.
05 Q. But you also were the representative of the company, and
06 you did not need any co-signature?
07 A. With the Business Registers Agency --
08 Q. "Representation: sole" it says for you.
09 A. As I said, with the Business Registers Agency, on the
10 website, all applications can be done only with the
11 director's electronic signature, no authorised
12 representatives, no lawyers with power of attorney, no
13 accounting or audit firms, it has to be only the
14 director's electronic signature. This is often
15 a logistical issue, for example, when you have
16 a foreigner who is a director of a Serbian company, you
17 have to bring them to Serbia physically, to bring their
18 electronic signature to sign documents, so this is often
19 a nightmare. This is why I know that this is exactly
20 and the only way it can work, for any registration.
21 Q. Mr Markicevic, are you saying that powers of
22 representation of Ms Milenkovic was limited by your
23 co-signature except when the registration of the real
24 owner is in question?
25 A. I don't know if that's the only case, but with respect

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01 to registration on the website of the Business Registers
02 Agency, it could only have been director's electronic
03 signature, and I am sure this can be checked with the
04 Business Registers Agency.
05 Q. Mr Markicevic, do you know that concealing the actual
06 owner of a company is a criminal offence according to
07 Article 13 of the Law on Central Registry of Real
08 Owners, are you aware of that?
09 A. I am not a lawyer, I don't know the Articles of that
10 Law, but I believe this registration was not incorrect.
11 This is what I tried to explain earlier, when I was
12 interrupted. I don't know if I can --
13 THE PRESIDENT: Yes, you can.
14 A. I understand that this Article which regulates the
15 obligation to register the beneficial owner would
16 include both, basically, both Mr Obradovic and Mr Rand
17 because Article 3(1) says -- just give me a second,
18 please:
19 "Individual which directly or indirectly holds 25%
20 or more shares, stake voting rights or other rights,
21 based on which he/she participates in managing ...",
22 et cetera.
23 So Mr Obradovic held directly 25%. And 3(2) says:
24 "Individual who directly or indirectly holds
25 prevailing influence on business activities and decision

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01 making process."
02 So I believe that Mr Rand would fall under this
03 decision. So my understanding was when I analysed to my
04 ability, I am not a lawyer, of this matter was that both
05 Mr Rand and Mr Obradovic should be registered but this
06 is not possible technically on the website of the
07 Business Registers Agency, it is impossible to register
08 more than one person, so it can be two persons who share
09 ownership, 50/50, but you can't register two in chain of
10 ownership multiple persons who fall under these
11 definitions.
12 And then I sent letter to the Ministry of Economy,
13 and letter to Business Registers Agency, and asked for
14 clarification, since logistically and technically it was
15 not possible to do what the regulation requires us to
16 do, and I got response which I interpreted that Mr Rand
17 should be registered and that's when I basically deleted
18 Mr Obradovic's name and registered Mr Rand's name.
19 MS MIHAJ: Mr Markicevic, was Lidija Milenkovic aware that
20 Mr Rand was beneficial owner of Serbian Kalemegdan
21 Investments?
22 A. I believe she was, but this is a question for her.
23 I believe she was aware of it.
24 Q. So actually you are saying that Ms Lidija Milenkovic
25 committed a criminal offence by concealing the actual

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01 owner of a company?
02 A. No, I am not saying that.
03 Q. Let us go back to paragraph 34 of your fourth witness
04 statement that you just mentioned.
05 You quote Article 3(3)(1) of the Law on Real Owners,
06 and you said that Kalemegdan Serbia had to register
07 Mr Obradovic in paragraph 35, you say:
08 "... Kalemegdan Serbia had to register Mr Obradovic
09 under Article 3(3)(1) simply because of his nominal
10 ownership of Kalemegdan Cyprus."
11 Is that correct?
12 A. Yes, that was my understanding.
13 Q. But according to the provision that you quote of the Law
14 on Central Registry of Real Owners, it says:
15 "Beneficial Owners of the Registered subject shall
16 be:
17 "(1) Individual which directly or indirectly holds
18 25% or more shares, stake voting rights or other rights,
19 based on which he/she participates in managing of the
20 Registered subject, and/or participates in the capital
21 of the Registered subject with 25% or more shares."
22 So according to this provision, the real owner is
23 the individual who directly or indirectly holds 25 or
24 more shares, one, based on which he participates in
25 managing of registered subject; or two, based on which

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01 he participates in the capital of the registered subject
02 with 25 or more shares.
03 So having in mind the options from this article, and
04 these are two options, I don't understand, why did you
05 register Mr Obradovic as the real owner? According to
06 your opinion, based on his indirect holding of shares,
07 did he participate in managing of Kalemegdan Serbia or
08 did Mr Obradovic, based on his indirect holding of
09 shares, participate in the capital of Kalemegdan Serbia?
10 Did he participate in managing or in capital of
11 Kalemegdan Serbia? When I say he, I mean Mr Obradovic.
12 A. Mr Obradovic does not and did not, since I was involved,
13 participate in managing Kalemegdan, and as I explained
14 in my witness statement -- I am not a lawyer, so this is
15 now, I think, going into a legal discussion, but my
16 understanding of this article is that the fact that he
17 is registered as a nominal owner of Kalemegdan Cyprus,
18 this falls under this 3(3)(1) definition. So this first
19 part related to the holding of 25% or more shares. So
20 my understanding was that. But again, you asked if
21 I registered. I didn't register Mr Obradovic, so
22 I should point out once again that he was registered
23 before I was appointed and then I made the change in
24 registration after I was appointed, and then after
25 I reviewed this and had correspondence with the Business

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01 Registers Agency and the Ministry to clarify the issue.
02 Q. But before you did register Mr Rand as the real owner,
03 you tried to register both Mr Obradovic and Mr Rand as
04 the real owners of 100% of shares, is that correct?
05 A. Yes, that is correct and it was not possible in the
06 application to the Business Registers Agency.
07 Q. Is it possible at all that two persons holds beneficial
08 ownership over 100% of shares?
09 A. I believe also this is a legal question, but if the
10 Tribunal wants me to --
11 THE PRESIDENT: No, I think you have explained what you did,
12 and it is indeed a legal question, so we can leave it
13 there.
14 MS MIHAJ: Just to be clear, you try to register both
15 Mr Obradovic and Mr Rand as the beneficial owners only
16 after Respondent pointed out in its Rejoinder that
17 Mr Obradovic is the registered beneficial owner of
18 Kalemegdan Serbia, is that correct?
19 A. Correct, because the previous registration, honestly it
20 skipped my attention until that point, I was not even
21 aware of it.
22 Q. Thank you, Mr Markicevic. Can we go back to the second
23 witness statement? In paragraph 143, you say that
24 in March 2015, Mr Stajic, and that is BD Agro's
25 temporary bankruptcy trustee at that time, and

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01 Mr Kostic, informed you that:
02 "... the Privatization Agency had sent a letter to
03 the Ministry of Economy stating that according to the
04 Privatization Agency, the privatization of BD Agro had
05 been finalized because the purchase price was paid and
06 the obligatory investment was made."
07 So in the files we have plenty of documents sent by
08 the Privatization Agency to the Ministry as well, but
09 none of them is stating what are you saying here. Did
10 you maybe try to get a copy of that letter from the
11 gentleman that you mentioned in this statement?
12 A. Yes, so I would point out that Mr Stajic, who was the
13 temporary bankruptcy trustee at the time in BD Agro, his
14 brother was a board member of the Privatization Agency,
15 and I got this information from him. I asked him if he
16 can acquire a copy of that letter, but I did not get it
17 from him, so I have never seen a copy of the letter,
18 this is why I stated here that this is what was told to
19 me by Mr Stajic but also by Mr Kostic through different
20 persons, the chairman of the Agency, so I got the same
21 information from two different sides, and I believed it
22 was what happened, but I can't confirm that the letter
23 actually exists.
24 Q. In your second witness statement, you also speak about
25 alleged unlawful termination of the Privatization

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01 Agreement, and that is paragraph 167. In that
02 paragraph, you quote the part of the Agency decision
03 from June 2015. Can you see that, please?
04 A. Yes, but I am looking at the hard copy.
05 Q. Yes, of course, no problem, take your time.
06 A. Okay.
07 Q. As I understand, you contend that the pledge referred to
08 in this quotation, can we go down, please, was
09 subsequently deleted, is that correct?
10 A. This is a quote from the auditor.
11 Q. So this pledge:
12 "Pledges given as security for third-party
13 liabilities have not been deleted, however, these
14 obligations have been settled and conditions have been
15 met to delete the pledge on this basis."
16 My understanding is that you claim that this pledge
17 was deleted in September, I would say, 2015.
18 A. It is talking about various pledges, one was deleted on
19 the date when -- around the date which you said but
20 there were other pledges that remained, but underlying
21 loans were settled long before that, and the auditor
22 found that, as he said, obligations have been settled
23 and conditions have been met to delete the pledge on
24 this basis, and the only reason why the pledges still
25 existed is because Nova Agrobanka, which was

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01 government-controlled bank at the time, would not issue.
02 So for deletion of the pledge in the cadaster, the
03 cadaster requires notice from the creditor that the debt
04 has been settled, and that they agree with the deletion
05 of the pledge, and Nova Agrobanka refused to issue such
06 notice, even though the loan was settled a long time
07 ago.
08 Q. Yes, I understand, and actually, you wrote that -- this
09 quotation is from your letter you sent to the Agency in
10 July 2015, and then we have the exhibits, I will show
11 you of course, you have sent to the Agency, and that is
12 Exhibit CE-357, the decision -- we do not have it in the
13 bundle but we of course have it on file, CE-357. You
14 have delivered to the Agency the decision of the
15 Geodetic Authority Office from 7 September 2015 and
16 enclosed -- can we now go to CE-087? That is the
17 document that was enclosed to this letter that we just
18 saw, and that is decision of the Republic Geodetic
19 Authority, is that correct?
20 A. What is the question? This is the decision of the
21 Republic Geodetic Authority?
22 Q. Yes, that you delivered to the Agency in September 2015.
23 A. Yes.
24 Q. You have delivered these documents to show that the
25 pledge was deleted, and you are referring to the pledge

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01 that we just saw that you mentioned in your witness
02 statement, is my understanding correct?
03 A. You are referring to my witness statement, this is
04 a quote from the auditor report.
05 Q. Yes, of course. So the auditor said -- I fully agree
06 with you, the auditor said that:
07 "Pledges given as security for third-party
08 liabilities have not been deleted, however, these
09 obligations have been settled and conditions have been
10 met to delete the pledge on this basis."
11 And then you said in paragraph 168:
12 "In fact, the only reason why these pledges had not
13 been already deleted was that we were still waiting for
14 a confirmation from the creditor, Nova Agrobanka,
15 necessary for deletion of the pledges."
16 And eventually, that confirmation arrived and you
17 addressed the cadaster and you got the decision that we
18 see as CE-087. I am just checking if my understanding
19 is correct.
20 A. Yes, and this is decision on deletion on one of the
21 pledges, so there were various pledges, and as auditor
22 noted, pledges given as security for third party
23 liabilities have not been deleted, so it's plural,
24 however these --
25 Q. But these are also decisions.

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01 A. However -- sorry. However, these obligations have been
02 settled and conditions have been met to delete the
03 pledge on this basis, so the auditor's report is dated,
04 I believe, January 2015, so before this deletion, so at
05 the time the auditor concluded that he referred to all
06 the pledges that were allegedly problematic for
07 Privatization Agency, and he said the pledges are there
08 but the conditions are met for deletion.
09 In the meanwhile, Agrobanka issues this one deletion
10 notice, but for RSD 221 million or €2.2 million loan,
11 Agrobanka never issued a deletion notice to allow us to
12 delete the pledge.
13 Q. Can you go back to CE-087 and see what pledge was
14 deleted? So we can see from this document that what was
15 deleted is the pledge that was registered on the pledge
16 statement verified on 7th June 2010, and then it says:
17 "... for the purpose of securing ... claims of the
18 creditor towards Crveni Signal ... on the basis of the
19 agreement ... of June 2, 2010 in the amount of
20 RSD 65 million ..."
21 So this is the pledge that was erased.
22 A. Correct.
23 Q. Can we now see what pledge secured RSD 221 million loan
24 that BD Agro took from Agrobanka and then gave the part
25 of it to Crveni Signal and Inex, and that is RE-9? That

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01 is a decision from 14th January 2011, and this is
02 a decision of the court reached according to the pledge
03 statement of 28th December 2010. And then next
04 paragraph at the end:
05 "... in order to secure monetary claim of the
06 creditor towards the debtor under the Agreement on
07 Short-Term Loan ... of 22nd December 2010 ... in the
08 amount of RSD 221 million ..."
09 As we can see from RE-45, this pledge was still in
10 place in 2019, so the pledge that secured the
11 RSD 221 million loan given by Agrobanka to BD Agro, from
12 which BD Agro loaned some money to Inex and Crveni
13 Signal, was never deleted. Can we say that, based on
14 the documents we saw? We can say that, can we?
15 A. I didn't understand that was the question, I thought it
16 was your comment. Yes, that is what the document says,
17 as of March 2019.
18 Q. Do you know, have Crveni Signal and Inex returned the
19 money to BD Agro, the money that they received from BD
20 Agro and that was loaned from BD Agro by Agrobanka?
21 A. Partially yes. So when I was appointed in BD Agro in
22 2013, it was already -- so it happened before that as
23 Inex returned, so it was RSD 30 million loan and Inex
24 returned, I believe, RSD 12 million out of that amount,
25 and Crveni Signal's loan was RSD 70 million, Crveni

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01 Signal also before I was appointed in BD Agro returned,
02 I believe, RSD 5 million or so. And also recently, in
03 2018, Crveni Signal repaid BD Agro's loan to Agrobanka
04 in the amount of around €200,000 and this is what we got
05 recently from the bankruptcy trustee of BD Agro, that he
06 is setting off that amount, €200,000, with BD Agro's
07 receivable from Crveni Signal.
08 So I notice -- I think it is important to point out
09 on the opening statement of Serbia on Monday that the
10 amounts mentioned there are incorrect, because they are
11 starting amounts, initial amounts, initial loans, and it
12 was said that this was never repaid, so I would disagree
13 with that. So roughly it depends on the exchange rate,
14 how we translate it from dinars to euros, it's about
15 half of that amount that was stated in the opening
16 statement. Considering this latest change, just to
17 explain, Crveni Signal guaranteed for BD Agro's loan
18 from 2012 of €9.5 million, and in 2018, Crveni Signal
19 paid to Agrobanka based on that guarantee around
20 €200,000, and then it had receivable based on that
21 towards BD Agro, and we got, I think, a few weeks ago,
22 a notice from BD Agro --
23 PROFESSOR DJUNDIC: Mme President, I must ask if
24 Mr Markicevic is answering any particular question now.
25 THE PRESIDENT: No, but it is interesting to the Tribunal to

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01 get his information.
02 Do I understand correctly that what you state in
03 conclusion is that 50% of the loans have been repaid and
04 50% are still outstanding?
05 A. Roughly depending on the exchange rate.
06 THE PRESIDENT: And that's rough, because --
07 A. Very rough, depending on the exchange rate over years.
08 And I apologise, but I understood that the question was
09 if Crveni Signal has ever repaid those loans, and
10 I believe that this is the answer.
11 MS MIHAJ: If I understand, the answer is no, they haven't.
12 They still owe --
13 A. The answer is yes, the loans were partially repaid.
14 Q. Do you know what are the exact amounts owed to BD Agro
15 at this date?
16 A. As I said, roughly around €400,000, depending on
17 exchange rate, owed by Crveni Signal, and around
18 €150/160,000 owed by Inex.
19 Q. MDH Serbia was in the ownership of Mr Rand, is that
20 correct?
21 A. Excuse me, can you repeat?
22 Q. MDH Serbia was in the ownership of Mr Rand, is that
23 correct?
24 A. Correct, and still is.
25 Q. And also MDH held minority shares in BD Agro, is that

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01 correct?
02 A. Correct.
03 Q. And Mr Markicevic, have you ever represented MDH at the
04 shareholder meetings of BD Agro?
05 A. Yes, I believe it was once, at the end of 2012 or
06 beginning of 2013.
07 Q. Were you a director of MDH at that time or not?
08 A. No.
09 MS MIHAJ: Thank you.
10 Mme President, my colleague, Professor Djundic, will
11 ask a few questions now, if that is okay.
12 PROFESSOR DJUNDIC: Just a short one.
13 THE PRESIDENT: Yes, it is okay. We have not discussed
14 whether there could be two cross-examiners for the same
15 witness, but I don't see a difficulty. Is there
16 a difficulty on the Claimants' side?
17 MR PEKAR: No, we do not have a difficulty with a few
18 questions being asked.
19 THE PRESIDENT: Thank you.
20 Cross-examination by PROFESSOR DJUNDIC
21 Q. Only one. Mr Markicevic, I am sorry that I have to
22 speak to you this way, you are not seeing me right now.
23 You explained that, roughly speaking, Crveni Signal
24 returned around €200,000 to BD Agro but that was in
25 2018, right?

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01 A. Crveni Signal paid to Agrobanka for BD Agro's debt in
02 2018, and this year, a few weeks ago, we received
03 a notice, so Crveni Signal reported this receivable in
04 BD Agro's bankruptcy procedure, and we received a notice
05 a few weeks ago from the bankruptcy trustee of BD Agro
06 that his intention or decision, I don't remember exactly
07 the document, is to set off these two amounts, and the
08 remaining amount owed by Crveni Signal is, in euros,
09 around €400,000.
10 Q. So this was almost three years after the termination of
11 the Privatization Agreement and three years after you
12 have left BD Agro, right, this set-off that you are
13 speaking about?
14 A. I left BD Agro, so it's five or six years.
15 PROFESSOR DJUNDIC: Thank you. That is all, Mme President,
16 thank you.
17 MS MIHAJ: Mme President, we have no further questions.
18 Thank you, Mr Markicevic.
19 THE PRESIDENT: Thank you. Questions in re-direct?
20 MR PEKAR: I have only one topic.
21 Re-direct examination by MR PEKAR
22 Q. Mr Markicevic, you were asked a few questions about your
23 actions with respect to the pre-pack reorganisation plan
24 after the termination of the Privatization Agreement, do
25 you recall that?

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01 A. Yes.
02 Q. You were shown a letter where you were seeking
03 instructions from the Privatization Agency, do you
04 recall that?
05 A. Yes.
06 Q. Can you please tell the Tribunal why you were seeking
07 instructions from the Privatization Agency?
08 A. Yes, so I was at the time that the Privatization
09 Agreement was terminated -- I was aware of the Article
10 of the relevant Law which said that I am limited in
11 making decisions, certain decisions after the
12 termination of the Privatization Agreement, that
13 I cannot do certain things without approval from the
14 Privatization Agency, and these included actions in
15 pre-pack procedures, bankruptcy procedures, and
16 I believe that pre-pack reorganisation plan had measures
17 envisaged in the plan which were grasped by these
18 limitations from the law, and my understanding was that
19 I was not allowed to proceed pursuing that adoption of
20 the pre-pack because it would, once adopted, become
21 a binding document for the company, and I was not in
22 a position to proceed with that without approval from
23 the Agency.
24 Also there was one maybe even more significant
25 matter because after the termination of the

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01 Privatization Agreement, Mr Rand was no longer willing
02 to provide financing for the most important part of the
03 pre-pack reorganisation plan, which was his investment
04 in increase of the size of the herd, so we could not
05 possibly proceed with pursuing the pre-pack in front of
06 the creditors and the courts saying there will be
07 investment, while there was no actually expected
08 investment at that moment. So I would not proceed with
09 that in any event, especially having in mind that
10 I already resigned, so I am in this termination notice,
11 and to pursue a document which would be binding for the
12 company for the next ten years, I just thought it would
13 be very problematic if I pursued that.
14 MR PEKAR: Thank you. No further questions.
15 THE PRESIDENT: Thank you. Do my colleagues have questions?
16 Can we make sure that we show Mr Vasani on the screen?
17 Questions from the TRIBUNAL
18 MR VASANI: Thank you, Mme President.
19 I have just a couple of short questions,
20 Mr Markicevic. Looking at your first witness statement,
21 at paragraph 10, it says there that you and Mr Broshko:
22 "... frequently discussed its performance and we
23 were concerned that its level of milk production was too
24 low."
25 What other issues did you identify at the time?

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01 Because it couldn't only be that milk production was too
02 low.
03 A. I can point out several major issues which were
04 addressed in the pre-pack reorganisation plan. So as
05 you mentioned, first, one was the low level of
06 production which we addressed, for example, and as
07 illustration, when we engaged a professional dairy farm
08 manager we managed just through change in diet and
09 protocols on the farm, average production within one
10 year went up 70% or more, and we were really amazed how
11 that was achieved in such a short time. But also there
12 is an issue of €40 million or so of debt which was
13 mostly with banks and interest rates were not very
14 favourable for BD Agro, so that needed to be addressed,
15 which we did through the pre-pack reorganisation plan.
16 There was also issue which was ongoing for a long
17 time in BD Agro, and this is that BD Agro had way more
18 employees than was required for this kind of operation,
19 and this was also addressed in the reorganisation plan.
20 As illustration, we had over €2 million in salaries and
21 contributions and taxes while a farm like that, with 100
22 employees or less, would probably not need to spend more
23 than €1 million or €800,000, what was in the plan for
24 employee costs.
25 So these were three major issues, there were some

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01 others as well that were addressed in the pre-pack
02 reorganisation plan.
03 MR VASANI: Thank you. As I understand, the price of milk
04 is the single biggest driver of revenue, and therefore
05 profit. First of all, do you agree with that?
06 A. Well, the price of milk but also prices of the inputs
07 used in the agricultural production, but most
08 importantly, as I have mentioned at the beginning of my
09 testimony, was economy of scale, which is the whole
10 point of having a farm of this size, because once you
11 get to that point, that you have high level of capacity
12 utilisation, then profitability is significantly higher
13 than -- as opposed to small farms with 50 or 200 cows.
14 MR VASANI: How sensitive was your reorganisation plan to
15 milk prices?
16 A. We took a very conservative approach, with all
17 assumptions. So with milk prices, so we made sure that
18 all prices -- our outputs and inputs, we had buffers, so
19 to say, not to be too sensitive to changes. Our prices
20 that we charged in reality to the milk buyers were
21 higher than what we projected in the pre-pack
22 reorganisation plan. We did the same with the input
23 prices, seed, chemicals, feed for the animals, so we
24 always took conservative approach and made sure that
25 there is a buffer that would not make us vulnerable to

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01 changes in the market.
02 MR VASANI: Thank you, Mme President, those are my
03 questions.
04 PROFESSOR KOHEN: Thank you, Mme President.
05 Good morning, Mr Markicevic. I have two very, very
06 general questions. The first one is: how do you
07 evaluate the financial management of BD Agro before your
08 arrival at the company?
09 A. Well, as I just said in my previous answer, so the fact
10 that BD Agro had around €40 million of debt, and that
11 some of it, most of it was towards the banks, and the
12 interest rates were not very favourable for BD Agro, it
13 could have been managed, I would say, in a better way,
14 but everything -- all consequences of management,
15 I would say, are reflected in the level of liabilities,
16 so that's obvious from the financial statements.
17 PROFESSOR KOHEN: Thank you. May I ask you, why do you
18 believe that the Privatization Agency acted in the
19 manner it acted?
20 A. That's a very hard question, and I would rather not
21 speculate, if you allow me, but I don't know. We at all
22 times, until the last moment until we received the
23 notice of termination, which was really a shock to all
24 of us, at all times we believed that the Privatization
25 Agency will accept our arguments, that the obligations

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01 from the Privatization Agreement were fulfilled, and we
02 believed that the auditor's reports and everything that
03 we showed them will be acceptable for them as proof that
04 everything was in accordance with the agreement.
05 And I also would like to point out that I called
06 them personally to come to the farm, to give them
07 office, to give them sandwiches and drinks, and to stay
08 there as long as they need, to come to the conclusions,
09 and that we are transparent, but they never wanted to
10 accept that invitation.
11 PROFESSOR KOHEN: Thank you. No further questions, Mme
12 President.
13 THE PRESIDENT: Thank you.
14 Mr Markicevic, you say in various places, especially
15 your witness statement 2, paragraph 187, that the
16 termination came as an utter shock. Maybe we can show
17 this --
18 A. Excuse me, is it the second witness statement?
19 THE PRESIDENT: It is the second, yes. Do you read it?
20 I was asking myself why was this a shock, because
21 there had been a number of notices that warned of the
22 possibility of termination. Now, I read, of course,
23 what comes before this paragraph about the meetings in
24 particular with Mr Kojic who gave you some information
25 that you considered positive but still, I was a little

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01 surprised by the fact that you say this came as a shock.
02 Was there not a whole evolution that seemed to be quite
03 difficult, and the relationship with the Agency was
04 difficult?
05 A. With enough experience with Serbian administration, so
06 we were aware, of course, I was aware of these notices,
07 but I always thought they were so baseless, that this is
08 the typical Serbian administration issue, some
09 bureaucrat just needs to make a decision, and to move
10 on, and all representations made to us by high level
11 officials from the Ministry and the Agency were that
12 this is just -- this is going to be fine, we apologise
13 for the actions of the Privatization Agency, and
14 statements like that.
15 Just from the reading of their requests, and from
16 the auditor's report, and all the facts that were
17 available to me, and that we delivered to Agency,
18 I really believed that it's just matter of bureaucratic
19 reluctance to make a decision and move on, and
20 I believed that they will come to their senses and
21 accept auditor's reports and all evidence that we
22 provided to them, to prove that we are right.
23 THE PRESIDENT: Yes, but you also, at least in one letter --
24 yes, it is CE-046, 2nd July 2015, you seem to say that
25 there is some unfulfilled -- we can show it, of course,

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01 so you know what I refer to. I think it is on the
02 second page. It says somewhere:
03 "... the buyer fulfilled all contractual obligations
04 as of the date of payment of the last instalment of the
05 purchase price ... except in relation to lending to
06 third parties ..."
07 And then we have mentioned Inex and Crveni Signal.
08 You admit that there are part of the obligations
09 that are not met, so is it not reasonable that -- or not
10 unreasonable that the Privatization Agency insists on
11 compliance?
12 A. So that language, it was scrolled down, but that
13 language, I was referring to what the auditor said in
14 their report. The Agency, in their notices, made
15 certain requests; we gave those requests to the auditor,
16 this is, I believe, referring to Prva revizija audit
17 report.
18 THE PRESIDENT: But do I understand correctly that this is
19 an audit that you provide to the Agency?
20 A. Yes, I am providing this to Agency, and referring to --
21 so I am referring to Auditor and Prva revizija audit
22 reports, in which it is clearly and unequivocally stated
23 that the buyer -- so it is stated in their reports that
24 the buyer fulfilled, et cetera, in relation. So
25 everything after -- it's all referring to what the

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01 auditors say, and this is what -- the wording is from
02 the Prva revizija report. And we believed at the
03 time -- so the auditor determined the facts, so the fact
04 was, and it was not disputed, that there were loans to
05 Crveni Signal and Inex. So there was that amount owed,
06 but we thought the auditor is not legal expert, so we
07 didn't refer to this as his legal conclusion, so we
08 didn't dispute with the Agency that there are
09 outstanding loans, and the auditor certainly is not in
10 a position to give legal -- or the Agency did not
11 request for the auditor to give legal interpretation of
12 those existing loans, but just to determine if they are
13 there or not.
14 THE PRESIDENT: But then, once you write this, why do you
15 not say, "The auditors say this but for legal reasons
16 this is irrelevant", or something like that?
17 A. I think we have now -- there is a letter, I think, to
18 the Agency, where we say the loans were never prohibited
19 by the Privatization Agreement.
20 THE PRESIDENT: We will have to check this.
21 A. I believe maybe if I get the chance just to review the
22 document that it is the same letter.
23 THE PRESIDENT: Do you have a paper copy there maybe --
24 because that would be easier, so Mr Markicevic can go
25 through it, and is not depending on someone else

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01 scrolling down.
02 I was expecting someone to give you a paper copy!
03 We have no paper copies any more, I am sorry about it.
04 I didn't find it in this letter, but we can check the
05 record.
06 A. It is either in that one or the one that was signed by
07 Mr Obradovic that was sent to the Agency, so in one of
08 the letters at a later stage in 2015, it says there is
09 no stipulation in the Privatization Agreement -- I am
10 paraphrasing now -- which prohibits loans to third
11 parties, so that was said to the Agency.
12 THE PRESIDENT: We will double-check this. There are also
13 explanations about the Ombudsman intervention in your
14 witness statement, and if I look for instance more
15 specifically to witness statement number 2, page 37,
16 paragraph 160, you say that you are:
17 "... shocked that the Ombudsman was publicly taking
18 a very hostile position against BD Agro, and clearly
19 pushed for termination of the Privatization Agreement."
20 When I read the recommendation of the Ombudsman, he
21 doesn't say there is a need to terminate or there is
22 a recommendation to terminate the Privatization
23 Agreement. Why do you view it that way?
24 A. I think it's important to read the entire correspondence
25 between the Ombudsman and the Agency, and the Ministry,

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01 so he refers to them, they respond to him, what they
02 did, they gave us additional notice, and then he says he
03 is not satisfied with that, and then after they
04 terminate the agreement, they report to him that they
05 terminated the agreement, and then he says that this
06 satisfies his recommendations.
07 So I am paraphrasing, so it's important to see the
08 entire correspondence between them.
09 THE PRESIDENT: Thank you. Still in your second witness
10 statement, paragraph 17, you speak there about the fact
11 that the Privatization Agency did not release the pledge
12 over the shares of BD Agro, and you considered this to
13 be merely an issue of administrative inefficiency, and
14 it would be quickly resolved. On what basis did you
15 think so?
16 A. As I said earlier, on some experience with Serbian
17 administration, so sometimes -- and this is early stage
18 of my involvement, I reviewed the notices from the
19 Agency, I reviewed the auditor's reports at the time
20 which seemed to me to show that everything is covered
21 and confirmed that was okay, what the Privatization
22 Agency alleged, and I believe that this is -- especially
23 reading the pledge agreement, which was -- I am not
24 a lawyer, but seemed pretty simple and clear to me, and
25 I saw the confirmation from the Agency that instalments

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01 were made, and the pledge was still there, so that
02 certainly seemed to me as some kind of bureaucratic
03 problem.
04 THE PRESIDENT: Obstacle, yes. Your opinion changed later
05 on? Because that was your early involvement.
06 A. Yes, my opinion then changed, but all the time during
07 our conversations and meetings with the Agency, of
08 course we expected that they will -- and we hoped that
09 they will, in the shortest possible time, accept the
10 argument that everything was completed.
11 THE PRESIDENT: If I go, still in your second witness
12 statement, to paragraph 36, there you speak of where you
13 were looking to increase profitability, and one thing
14 was co-operation with milk processing companies, because
15 you want to increase the revenues from the sale of milk.
16 You say that your efforts there -- and you mentioned
17 different companies with which you take up discussions,
18 and then you say that your efforts were not successful,
19 and you say:
20 "All of the companies we approached were unwilling
21 to enter into cooperation with BD Agro until transfer of
22 the Beneficially Owned Shares into the nominal ownership
23 of Mr Rand."
24 Then you speak of this Italian company, La Bovarina,
25 that apparently seems to have the same type of concern.

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01 Why would these companies care about the structure of
02 the ownership, who is beneficial, who is nominal owner?
03 A. So shares were registered in Mr Obradovic's name, so
04 Central Securities Depository, because BD Agro was a
05 public company, shares are registered and publicly
06 available information on the website.
07 THE PRESIDENT: This as clear, yes.
08 A. When one looks at the website and sees Mr Obradovic's
09 name, there is red letters below stating that the shares
10 are pledged, and just to say basic due diligence,
11 everyone who came to talk to us, we felt that it is fair
12 to say that who is the beneficial owner, what is the
13 situation, they see, in the Central Securities
14 Depository, when they see the shares are pledged, they
15 asked this question and we would explain to them what
16 the situation was and our expectation is that it would
17 be resolved soon, and to our benefit, but we couldn't
18 give any guarantees for that, and you can see from the
19 documents and from my witness statement, so we had
20 discussions with them that went over a certain period of
21 time with expectation that all that will be resolved.
22 But for example this La Bovarina, this is family
23 company, so they were going to basically move the entire
24 factory from Italy, to disassemble there and move it to
25 BD Agro, and put their processing facilities in BD Agro

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01 and they saw this as a risky --
02 THE PRESIDENT: Kind of a red flag?
03 A. A red flag, something that, okay, we are negotiating, we
04 are -- almost all details of the deal have been
05 negotiated, but to execute it, realise it, it was too --
06 THE PRESIDENT: So it is more the pledge of the shares that
07 raised concerns?
08 A. Raised flags, yes.
09 THE PRESIDENT: -- of possible issues of solvency?
10 A. Yes, and also most of them met Mr Rand in person, and
11 these are -- especially when we mention La Bovarina,
12 a small family company, so it is their preference to
13 have good personal relationship with the owner, and this
14 seemed important to them.
15 THE PRESIDENT: Thank you. In paragraph 93 of your second
16 witness statement, this appears in different other
17 places, also with other witnesses, it is the account of
18 this meeting on 15th December 2014, where you,
19 Mr Broshko, the lawyer met with representatives of the
20 Privatization Agency and the Ministry of Economy, and
21 when you get there, Mr Obradovic is already in the
22 meeting room. Why was he there?
23 A. I believe it was by mistake.
24 THE PRESIDENT: Whose mistake?
25 A. After he left, we talked to people from the Agency and

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01 the Ministry who were there, so no one knew -- someone
02 from the Agency, I believe, called him, but I don't know
03 exactly who, and when we came, Mr Broshko explained, as
04 I say in my witness statement, that there is no reason
05 for Mr Obradovic to be at the meeting, because he
06 doesn't represent Mr Rand or BD Agro, and that we are
07 discussing the transfer of ownership and the pledge, and
08 they asked him to leave and he left, but I cannot answer
09 to the question who asked him, who invited him, because
10 they never told us.
11 THE PRESIDENT: When you say that he has to leave, whatever
12 the reason is, do they not say, "But he is the owner,
13 can the owner not -- he is the main shareholder, why can
14 he not be here?"
15 A. They did not ask. So Mr Broshko explained to Ms Galic,
16 who is the assistant to Mr Stevanovic, who is the State
17 Secretary, and so we were in the hallway in front of the
18 meeting room and he explained to her, repeated again who
19 is beneficial owner and that George -- Mr Obradovic has
20 no business doing there, and they didn't complain, she
21 went to Mr Stevanovic and they asked Mr Obradovic to
22 leave and he left, so there was no discussion about it.
23 THE PRESIDENT: Then you mention in paragraph 104 of the
24 same second witness statement, you speak of another
25 meeting with the Privatization Agency and the Ministry,

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01 I think it is the one on 16th January 2015, as can be
02 seen from paragraph 101.
03 There you mentioned that one of the representatives
04 of the Privatization Agency stated that BD Agro should
05 indeed be forced into bankruptcy and you were shocked.
06 It's actually the third time that you are shocked in
07 this witness statement.
08 Can you explain this, was this part of the
09 discussion, does this come out of the blue, what were
10 the reactions, what did other representatives say, what
11 did you say, what did you think?
12 A. The discussion was about transfer of ownership and
13 pledge and also about pre-pack, so we were explaining
14 them -- we were pressing the schedule to say in front of
15 the court and trying to get their decision to proceed
16 with the pre-pack, and in the middle of the discussion
17 so we were offering solutions, they were coming back
18 with unreasonable requests back, and then I think it was
19 Mr Dokleštic, the lawyer, who said, "You are saying no
20 to everything we propose, so what is your proposal, how
21 do we deal with this?", and then she said "It should go
22 to bankruptcy".
23 Is it really possible? That we have pre-pack, we
24 have 50 companies lined up to vote for the pre-pack, and
25 the company can survive, Mr Rand wants to invest money

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01 in BD Agro, and you say you want to push it to
02 bankruptcy. And this is where I commented, because it
03 was very often that in front of Privatization Agency
04 they have protests of the workers from the privatised
05 companies, and this is where I said, "Do we want another
06 few hundred people in front of the building?", and she
07 said, "It's not a big deal for us, we have that every
08 day".
09 THE PRESIDENT: What was her role at the Privatization
10 Agency?
11 A. She was at most of the meetings but I don't remember
12 exactly --
13 THE PRESIDENT: What her title was?
14 A. Yes, Ms Julijana Vuckovic was the most active in
15 speaking to us but Ms Kostic was at most of the meetings
16 present.
17 THE PRESIDENT: Did you think this was her personal opinion,
18 this was the expression of the view of the Agency? How
19 did you understand this?
20 A. No one from the Agency said that they agreed or
21 disagreed with this, so at that point we were in
22 discussion with her, but it's not that they said they
23 all stand by this point that it should go to bankruptcy,
24 so I cannot say if she was saying this in her personal
25 capacity, but she was there representing the

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01 Privatization Agency.
02 THE PRESIDENT: Was Ms Vuckovic in this meeting? She is not
03 listed at least in your -- well, you don't identify the
04 representatives. You may not remember.
05 A. I don't remember, but she was in most of the meetings,
06 so it's ...
07 THE PRESIDENT: Let me see whether there are still questions
08 that I have not asked. No, I think I have covered what
09 I needed to ask.
10 If there are no other follow-up questions from
11 anyone, is there one?
12 MR PEKAR: Mme President, if you recall, there was
13 a discussion about the letter where BD Agro disputed the
14 legal obligations under 5.3.4.
15 THE PRESIDENT: That is the letter of 2nd July?
16 MR PEKAR: And Mr Markicevic said that maybe it was stated
17 in another letter.
18 Further re-direct examination by MR PEKAR
19 Q. So could we please show to Mr Markicevic document CE-048
20 corrected? Could you please show the first page?
21 THE PRESIDENT: This is a letter of 10th September 2015.
22 MR PEKAR: Yes, and then if you could scroll down to page 3,
23 towards the middle of the page, the paragraph starts "In
24 addition ...". And actually even the preceding
25 paragraphs.

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01 Q. Is that what you had in mind, Mr Markicevic?
02 A. Yes, yes, I was referring to this.
03 THE PRESIDENT: Thank you. Good, no further questions?
04 DR DJERIC: Mme President, just one short question to follow
05 up on your question about the Ombudsman and its
06 statement to the Agency. The witness then said, well,
07 there is correspondence between the Ombudsman and the
08 Agency, and then he interpreted this correspondence.
09 Further cross-examination by DR DJERIC
10 Q. Could the witness tell us when he learned or when he got
11 familiar with this correspondence between the Ombudsman
12 and the Agency? Was it during the preparations of this
13 case?
14 A. I believe it was during this arbitration, but I don't
15 remember exactly.
16 DR DJERIC: Thank you.
17 THE PRESIDENT: Good. So that leads us to the end of your
18 examination, thank you very much, Mr Markicevic.
19 A. Thank you.
20 THE PRESIDENT: And this would be a good time to take
21 a break, would it not, and then we go over to the
22 examination of Mr Broshko. Let's take 15 minutes then.
23 (11.23 am)
24 (A short break)
25 (11.42 am)

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01 MR ERINN BROSHKO (called)
02 THE PRESIDENT: Good morning, Mr Broshko.
03 For the record, can you confirm you are Erinn
04 Broshko?
05 THE WITNESS: I confirm.
06 THE PRESIDENT: You are the managing director of Rand
07 Investments since 2012?
08 THE WITNESS: That is correct.
09 THE PRESIDENT: You have submitted four witness statements:
10 5th February 2018; 16th January 2019; 3rd October 2019;
11 and 5th March 2020?
12 THE WITNESS: That is correct.
13 THE PRESIDENT: Is that right?
14 THE WITNESS: Yes.
15 THE PRESIDENT: You are heard as a witness, and as a witness
16 you are under a duty to tell us the truth. Can you
17 please read the witness declaration?
18 THE WITNESS: I solemnly declare upon my honour and
19 conscience that I shall speak the truth, the whole truth
20 and nothing but the truth.
21 THE PRESIDENT: Thank you. So I will turn first to
22 Claimants' counsel for direct questions.
23 MR PEKAR: Thank you, Mme President.
24 Direct examination by MR PEKAR
25 Q. Good morning, Mr Broshko.

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01 A. Good morning.
02 Q. Mr Broshko, you submitted four witness statements in
03 this arbitration. Have you had a chance to review them
04 recently?
05 A. Yes, I have.
06 Q. Is there anything you would like to change?
07 A. No.
08 Q. Mr Broshko, could you please tell the Tribunal when and
09 why you got involved with BD Agro?
10 A. In 2011, I had finished my tenure as Chief Executive
11 Officer and then Executive Chairman of a publicly traded
12 biotechnology company in Vancouver, I was considering
13 what my next steps would be, and I was introduced to
14 Mr Rand through a lawyer who has relationships with both
15 of us. We had talked through 2011 about different
16 opportunities, principally resource opportunities,
17 nothing really tickled our fancy, and so in December
18 2011, Bill and I had lunch, and he asked me, "How would
19 you like to go to" -- I actually thought he said Siberia
20 at the beginning, but he said "No, Serbia", and so we
21 had a discussion about Serbia.
22 He explained to me that he was the owner of a number
23 of companies, that he bought them in the privatization
24 process, one was the largest dairy farm in Europe, and
25 he wanted to talk about how we could work together and

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01 potentially have me go down to Serbia to help with
02 oversight of the companies.
03 He explained the ownership, he said, "I own them,
04 I've got a local guy who helps with management, he's
05 the" -- I don't know if he used the word nominal owner,
06 but he said, "The shares are registered in his name but
07 I'm the ultimate owner" and he said that the ownership
08 ran through Cyprus and we had a good long conversation,
09 and follow-up conversations, and ultimately I agreed,
10 and in February 2012, I packed up my whole family,
11 including our three-year-old and two-month-old at the
12 time, and we moved to Belgrade and we were there for six
13 months.
14 Q. Mr Broshko, did you attend the opening statements on
15 Monday?
16 A. Yes, I did.
17 Q. Do you recall Serbia's counsel stating that the alleged
18 breach of the Privatization Agreement would have been
19 cured very simply by having Crveni Signal and Inex
20 return certain amounts to BD Agro?
21 A. I did hear that.
22 Q. Did the Privatization Agency or the Ministry of Economy
23 ever advise you of this?
24 A. Never.
25 MR PEKAR: Thank you. I have no further questions.

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01 THE PRESIDENT: Thank you. Ms Mihaj?
02 MS MIHAJ: Thank you, Mme President.
03 Cross-examination by MS MIHAJ
04 Q. Good morning, or good afternoon, Mr Broshko.
05 A. Good morning.
06 Q. My name is Senka Mihaj, I am counsel for Respondent and
07 I will ask you a few questions today. Let me start
08 where my colleague stopped. Can we go, please, to
09 RE-22? That is the note from the meeting held in the
10 premises of Ministry of Economy, and you will see that
11 you also attended this meeting. It was held in December
12 2014. Can we now go, please, to the second page of that
13 document, and it was stated:
14 "The representative of the Entity stated that the
15 condition regarding the already stated audit finding had
16 not been changed, and that, in their opinion, the
17 biggest problems in execution of obligations of the
18 Buyer from the respective Agreement on Sale of Capital
19 were claims which the Entity had towards the company
20 Crveni Signal Beograd and Inex Nova Varos."
21 So I would say that the repayment of money by Crveni
22 Signal and Inex to BD Agro was not only discussed but
23 was raised and acknowledged as the biggest problem in
24 executions of obligations of the buyer. So would you
25 please comment on that, because you were present at the

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01 meeting.
02 A. So the minutes of this meeting, I submit, do not
03 accurately reflect what happened in that meeting.
04 I would never have stated that the biggest problems in
05 the execution of obligations of the buyer were the
06 repayment of these loans. Logistically speaking,
07 because there was no restriction on BD Agro in terms of
08 making loans to third parties, I could have simply cured
09 the issue even through my Serbian company by giving
10 a loan to Inex and Crveni Signal, having them repay
11 BD Agro, and then BD Agro just in turn reloaning the
12 money back to Crveni Signal, and then repaying my loans
13 to Inex and Crveni Signal, so I would never have said
14 that, and it's just simply not true.
15 Q. Mr Broshko, but it says that "representative of the
16 Entity stated", so I think Mr Markicevic was also
17 there -- yes, he was, so maybe he said that, for
18 example.
19 A. No, he did not.
20 Q. It was not said that you stated it.
21 A. He did not say that.
22 Q. So are you saying --
23 A. If I may; neither of us said this. Neither of us
24 believed this. And certainly nobody had provided these
25 minutes to us at the meeting or, to my recollection,

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01 after the meeting, to allow us to comment on them
02 because if they had, we would have stated that we
03 believed that this was certainly a misrepresentation of
04 anything that was said.
05 Q. Are you saying, Mr Broshko, that these notes from the
06 meeting, that this document is then fabricated?
07 A. No, what I'm saying is that the text here which says
08 that the representative of the entity -- I don't know if
09 they are referring to me or to Mr Markicevic, they are
10 saying here that the biggest problems were the repayment
11 of these debts, and what I'm saying is that is simply
12 not true, because logistically, we could have addressed
13 that very quickly.
14 Q. According to your recollection, so what have you
15 considered as the conditions required by the Agency for
16 the privatization to be finalised, if this was not that?
17 What problems you understood?
18 A. Are you asking what was told to us?
19 Q. Yes.
20 A. So I would reference in particular the notices that were
21 sent by the Privatization Agency to BD Agro, where they
22 outlined continuously, at least until the moment of
23 termination, that there was a breach of 5.3.3, there was
24 a breach of 5.3.4, I think they even mentioned 5.2.1,
25 which you may recall is in reference to the obligation

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01 to make the investment amount, which was made and
02 accepted by the Privatization Agency years and years and
03 years ago.
04 So what we were seeing in those notices was in
05 particular, on 5.3.3, that there was a breach, I think
06 it was outlined in the opening statement that the breach
07 had only -- it's not even a breach, that the disposal of
08 assets went over the noted or prescribed threshold only
09 because of the culling of the cows, which, as a lawyer,
10 I would say is force majeure, it's a pretty clear case,
11 so 5.3.3 we never believed there was a breach. We
12 believed that it was a pretty straightforward case of
13 force majeure, but it continuously was alleged by the
14 Privatization Agency.
15 With respect to 5.3.4, we also never believed that
16 there was a breach; in fact, we believed that 5.3.4 had
17 been complied with, and so we talked about in
18 particular, when they said about the loans, we never
19 believed that there was any restrictions on the granting
20 of loans, and we believed that the pledges that had
21 remained with Agrobanka should have been -- and they had
22 an obligation to discharge when the loan was paid off in
23 2010.
24 Q. So you did understand that there are some problems with
25 completion of the privatization because there are some

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01 breaches of the Privatization Agreement, was that your
02 understanding back then?
03 A. No, no. What I noted earlier is we believed there were
04 no breaches of the Privatization Agreement, and to the
05 extent that there was any room, which we didn't believe,
06 for reasonable -- or disagreement with reasonable
07 people, the conditions under the Privatization Agreement
08 were complied with, with the payment of the purchase
09 price, but what we also know, simply by the record and
10 the notices from the Privatization Agency, is that
11 regardless of what we were saying, they continuously
12 made these claims which we believed were unfounded.
13 Q. Thank you. Can you go now to CE-328? That was the
14 letter that you have signed, and on the third page of
15 this PDF document, point 3, you say:
16 "The shares of BD Agro will continue to be pledged
17 ..."
18 Sorry, maybe I should read first the following:
19 "We suggest as follows:"
20 So this is your letter, and in point 3 you said:
21 "The shares of BD Agro will continue to be pledged
22 in favour of the Republic of Serbia and such pledge will
23 be released only upon us satisfying within an agreed
24 upon time period all conditions required to be met in
25 order to successfully complete the privatization process

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01 for BD Agro."
02 So from this I understand that your understanding
03 back then was that there are some conditions to be
04 fulfilled in order for the privatization to be
05 successfully completed?
06 A. That's not what we intended at all to convey in this
07 letter. In fact, we had multiple meetings in 2014 into
08 2015. BD Agro, because of the actions or perhaps lack
09 of actions taken by the Privatization Agency, was in
10 a very precarious situation. We needed to get the
11 pre-pack passed and adopted, we needed to put ourselves
12 in a position where Mr Rand could inject additional
13 capital into BD Agro, and we were in a position here in
14 January 2015 where, if we didn't get that -- if we
15 didn't put ourselves in a position to have the pre-pack
16 passed and capital injected, there was a very good
17 chance that BD Agro would simply find itself in
18 bankruptcy.
19 And so what we wanted to do here is because we had
20 all these meetings, meeting after meeting after meeting,
21 where we tried to find a solution, even though we
22 believed there was no breach of the agreement, we found
23 ourselves in a position where we thought, if we don't
24 take a step back and look at practical and pragmatic
25 opportunities here to put a pause in this, because we

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01 are having no success with the Privatization Agency, and
02 no matter what we said they did not want to listen to
03 our explanations on these non-existent breaches, we took
04 a step back and said, let's put it on hold, let's try to
05 see if we can just push these disagreements into the
06 future, and put BD Agro on solid footing through the
07 pre-pack and a capital injection.
08 Q. Mr Broshko, but I am not sure that I understand your
09 answer or that your answer was an answer to my question.
10 You said in the letter CE-328 that you suggest that you
11 met conditions required for successful completion of
12 privatization process, so it must be that you knew what
13 conditions were required to be met, or otherwise you
14 would not say that in this letter.
15 A. I respectfully disagree.
16 Q. Thank you.
17 THE PRESIDENT: Do you mind if I just ask for
18 a clarification while we have the document on the
19 screen?
20 If I understand your answer, when you say, we will
21 leave the pledge until, and then you write "all
22 conditions required to be met in order to successfully
23 complete the privatization process" are met, so you
24 write this as if the conditions were not met at the time
25 of writing, or do I miss something in the language?

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01 A. That was never our intention, Mme President. As
02 I noted, we were in a position where even though time
03 and time again we were explaining our position, we were
04 explaining 5.3.3, and on 5.3.4, we were explaining that
05 you're asking us, the Privatization Agency, to remove
06 the pledge that they found problematic, and on the other
07 hand, we had Agrobanka who was controlled by the Serbian
08 Government refusing to release them.
09 We had made no progress with the Privatization
10 Agency. We then were meeting with the Ministry of
11 Economy as well, we were making no progress there. The
12 time was ticking on the clock to save this company. And
13 what we thought is rather than going back to them
14 a tenth time and saying, "You're wrong on all this",
15 let's just try to put a pause now -- even the pledge,
16 for example, we said the pledge would continue; the
17 pledge agreement is a two-page agreement, and it says
18 right in there in black and white: when the purchase
19 price is paid, the pledge gets removed.
20 And we were losing on that, and they were refusing
21 to release the pledge. So what we really wanted to do
22 was have at this point no more disagreements with them,
23 let's just put this on pause, and let's do what we can,
24 so we can get the pre-pack passed and adopted and allow
25 the build-up of money. That's all this was an attempt

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01 to do, because if we continued with our disagreement
02 with them, we just thought we were going to continue
03 butting heads and we would make no progress.
04 THE PRESIDENT: So if I follow you correctly, what this
05 paragraph 3 says is basically, "We put our disagreements
06 on the completion of the privatization process on hold
07 for the time being, and we leave the pledge of the
08 BD Agro shares, and we move forward with the assignment
09 which will allow us to get the creditor approval, which
10 will allow us to have the reorganisation plan approved,
11 which will allow us to invest the money and reorganise
12 the business". Is that what is --
13 A. That is absolutely correct, Mme President. We honestly
14 thought that eventually, calmer heads or rational heads
15 would prevail, and that we would come to an agreement
16 and all this would pass, and because we were so
17 unsuccessful in 2014 and the beginning of 2015, it led
18 us to this position where we said, look, let's just try
19 and throw them a bone so they can allow us to take these
20 interim measures, and let's deal with all this other
21 stuff down the road.
22 THE PRESIDENT: But of course you agree that this is
23 implied. The idea that you park these issues and move
24 forward and resolve them later, that is not written in
25 the letter.

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01 A. That was our intent. I mean, we never intended to,
02 number one, agree with them, because we didn't agree
03 with them. We never believed there was an outstanding
04 breach at all.
05 Again, because we were so unsuccessful in our
06 dealings with the Privatization Agency and the Ministry
07 of Economy, we had a decision to make; do we try to move
08 with interim measures to keep the company alive, or do
09 we keep banging our heads against a wall, which almost
10 guarantees its failure?
11 THE PRESIDENT: Thank you, that is clear. I apologise for
12 the interruption.
13 MS MIHAJ: Mr Broshko, would you please tell me, are you
14 saying that, did you actually agree to continue
15 financing BD Agro even with the pledge, had the Agency
16 accepted or approved to assign the Privatization
17 Agreement to Coropi; is that what you are saying?
18 A. That would ultimately have been Bill's decision, but
19 I believe that had we shown some interim progress in
20 getting the assignment completed, and then putting the
21 pre-pack in, and allowing for the opportunity for Bill
22 to finance the company, I believe he would have done
23 that.
24 Q. But you were the one who represented Mr Rand at all
25 these meetings to the Agency, so I suppose that you must

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01 know what was the idea. So was the idea, okay, leave
02 the pledge, we will continue financing, if you assign
03 the agreement to Coropi. I suppose that you can confirm
04 that, because you represented Mr Rand.
05 A. Sorry, can you clarify what the question is?
06 Q. Well, the question is: are you able to confirm, as the
07 representative of Mr Rand at that time, that the idea
08 was that it would be acceptable for you that the pledge
09 remains, and that he continues financing, in case the
10 Privatization Agreement is transferred to Coropi?
11 A. It was never acceptable that the pledge remained. It
12 was never acceptable that the pledge remained in clear
13 contravention of the obligations of the Government of
14 Serbia. We never condoned that, we never accepted it.
15 This was a very pragmatic attempt to try to save the
16 company that had days, if perhaps a month, and so this
17 was our attempt to try to put things on pause and to try
18 to implement interim procedures.
19 Q. Mr Broshko, I think that just seconds ago you said the
20 opposite. You said that according to your
21 understanding, it was acceptable, the pledge to remain,
22 and then you continued with --
23 THE PRESIDENT: I think the problem is with the word
24 "acceptable", you didn't really accept it.
25 A. We did not.

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01 THE PRESIDENT: But you were ready to do it?
02 A. That is correct.
03 MS MIHAJ: You were ready to do it, okay.
04 A. We were never accepting of the fact that there was the
05 pledge. This was a last-ditch effort, as I mentioned,
06 to save the company, and we were trying to be very
07 pragmatic in our attempt to allow ourselves to move
08 forward with these interim measures.
09 Q. So sorry for misunderstanding. Now I understand that
10 you were ready to accept further financing even with the
11 pledge staying over the shares, in case the
12 Privatization Agreement was assigned to Coropi; is my
13 understanding correct?
14 A. I am sorry, I don't -- if you could be clearer in what
15 the question is? I think I have just gone through a lot
16 of this, but I am happy to elaborate further.
17 Q. Yes of course. So I understood now that you said that
18 you were ready to continue with financing of BD Agro, in
19 case Privatization Agreement was assigned to Coropi, and
20 regardless of pledge staying over the shares, but that
21 the condition was that the Privatization Agreement is
22 transferred to Coropi?
23 A. I believe that Bill would have done that, yes.
24 Q. Thank you. Can we now go, please, to the first witness
25 statement of Mr William Rand, and that is paragraph 48.

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01 Here you will see Mr Rand said:
02 "As the Serbian Government was refusing to release
03 the pledge on the Privatized Shares as they were
04 required to do, I was getting increasingly concerned
05 that the Serbian Government would not live up to the
06 terms of the Privatization Agreement and I was not
07 willing to make further investments into such an
08 uncertain environment."
09 So the way I read it, it seems that Mr Rand's
10 testimony contradicts to what you have just said.
11 A. No, I don't think it does actually. So what Bill had
12 said throughout the entire time is what is stated in his
13 witness statement, that there was a pledge that was
14 inappropriately held, contrary to the terms of the
15 pledge agreement that was committed to by the Serbian
16 Government. As we proceeded through 2014 and into 2015,
17 and as things became increasingly dire, and there was
18 a continued refusal by the Privatization Agency and the
19 Government to release the pledge, we found ourselves at
20 the very end in a position where we either needed to do
21 something to rectify the situation, and get the pre-pack
22 passed, or it was likely that all of this was over, and
23 so we made a pragmatic decision, as outlined in that
24 letter, to try to put things on pause to allow for that.
25 The funding that was called for in the pre-pack was

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01 a funding over time, and so there was an opportunity --
02 and I didn't draft the pre-pack, but I know the general
03 principles, or at least many of them, but the idea was
04 that there would be funding over time, so this was not
05 necessarily a commitment right now of a significant sum
06 of money.
07 We could start this, we would be getting some
08 satisfaction that there was an assignment, we would
09 hopefully see some movement by the Privatization Agency
10 to come to reasonable terms, and an interpretation of
11 the agreement, and then as we moved forward with the
12 pre-pack there would be an opportunity subsequently to
13 address again with the Privatization Agency and the
14 Ministry of Economy, if necessary, the issues and the
15 roadblocks that they had been putting up.
16 Q. Thank you, Mr Broshko. Tell me, after you became
17 involved in BD Agro's business, have you learned what
18 Mr Obradovic communicated with the Agency concerning the
19 breach of the Privatization Agreement, what was the
20 position of Mr Obradovic in that regard? Have you
21 consulted someone, have you consulted the documents in
22 that regard?
23 A. Would you be able to be a bit more specific in your
24 question?
25 Q. Have you consulted the documents that, for example,

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01 Mr Obradovic exchanged with the Agency before you became
02 involved in BD Agro's business, the documents that
03 concerned the breach of the Privatization Agreement?
04 A. Are you referring to the notices that the
05 Privatization --
06 Q. For example, letters exchanged with the Agency,
07 Mr Obradovic/BD Agro's letters exchanged with the
08 Agency.
09 A. I have seen some of them. I wouldn't say that I know
10 them in very significant detail but I certainly have
11 seen some of them, yes.
12 Q. Thank you. Can we go to RE-21? This is not a document
13 from the bundle but it is, of course, on the record, and
14 we also saw this document yesterday.
15 This is a document that was signed by Mr Djura
16 Obradovic and Ljubiša Jovanovic, and that is a document
17 from 2012. And you will see that in that document,
18 Mr Obradovic informs the Agency about the debt of Crveni
19 Signal, and the debt of Inex, and actually, it says that
20 the claim of BD Agro will be settled after the property
21 of Crveni Signal is sold, as well as that Inex is
22 selling a part of property out of which the obligation
23 to BD Agro will be returned.
24 So you will see in that document that actually, in
25 2012, for example, that is the document from 2012,

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01 Mr Obradovic explains to the Agency how it plans to
02 settle the debts of Inex and Crveni Signal, and that is
03 exactly the debt that was the reason for termination of
04 the agreement.
05 And then can we go back to RE-22, that is the
06 meeting that we saw -- the notes that we saw a few
07 minutes ago, from 2015, and again, we have discussion
08 about this letter, although you say that you do not
09 remember that discussion.
10 A. I never said I don't remember that discussion. To be
11 clear, I remember this discussion, and this was not
12 said, but the prior document that you had referred me
13 to, if you can put that back on the screen, I was in
14 Belgrade, this is when I was first engaged. My
15 involvement at that time period was not with this level
16 of detail at all. I had arrived, I was giving
17 consideration to general operational matters, and trying
18 to understand in terms of human resource issues where
19 our strengths were, perhaps where some things could be
20 improved.
21 I was advised by Mr Obradovic at that time that
22 there had been a dispute with the Privatization Agency,
23 he had noted that he didn't believe there was any
24 breach, and he noted that none of the conditions applied
25 subsequent to the payment of the purchase price, which

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01 again was prior to my time.
02 So I was advised this, but I was not involved at all
03 in drafting this letter, and I have only seen it in the
04 arbitration, so I can't comment on this letter, but
05 I can definitely comment on the minutes you showed me.
06 Those minutes are wrong, it was never said, I never
07 believed it, and as I explained to you, the issue of
08 those loans, if that was the only issue, which it
09 wasn't, at least from the viewpoint of the Privatization
10 Agency, if the only issue was the repayment of those
11 loans by Crveni Signal and Inex, we would have been in
12 a position to cause that to happen, and frankly, we
13 would have avoided all of this. But that wasn't the
14 case and that's not what the Privatization Agency was
15 certainly saying.
16 Q. But were you aware that that was the issue, the only --
17 or one of many, but were you aware that this was the
18 issue?
19 A. Was I aware that it was --
20 Q. Yes.
21 A. Was I aware that this was one thing that was being
22 alleged among many by the Privatization Agency? Of
23 course I was aware that this was one thing of many. But
24 I was also aware that what also was being alleged by the
25 Privatization Agency was that 5.3.3 was being alleged,

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01 which couldn't have been cured and wasn't a breach, and
02 that in 5.3.4, that the pledges that they were asking to
03 be removed were pledges that had no underlying loans,
04 and by their very terms should have been discharged by
05 Agrobanka, which was controlled by the Serbian
06 Government.
07 So there was a whole bunch of things they were
08 asking for. It was not ever just what you had noted in
09 your introductory statement. It was never "just pay
10 back the loan". If that's all it was, and it was
11 communicated to us, we would have just said, "Let's just
12 get this over with, let's just deal with it, and we're
13 done".
14 Q. Can we go now to the first witness statement of
15 Mr Broshko, paragraph 20? You said that Mr Rand had
16 full control over BD Agro and that Mr Obradovic had no
17 power in that regard, is that correct?
18 A. Sorry, could you highlight what you're referring to?
19 Q. I think I have the wrong reference here. But of course
20 I can ask you. Is it your testimony that Mr Rand had
21 full control over BD Agro and that Mr Obradovic had no
22 power in that regard? Is that what you are saying?
23 A. Sorry, can you repeat that?
24 Q. Yes, of course. Is your testimony that Mr Rand had full
25 control over BD Agro, and that Mr Obradovic had no power

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01 in that regard?
02 A. Mr Rand had control over BD Agro, yes.
03 Q. Full control over BD Agro?
04 A. I am not sure, what is your definition of full control?
05 I'm not -- he controlled BD Agro.
06 THE PRESIDENT: I think either you have control or you don't
07 have control. If you have 51%, subject to different
08 voting rights, you have control.
09 A. I agree, Mme President.
10 MS MIHAJ: Okay, I will continue.
11 THE PRESIDENT: But I think your question is, did Mr Rand
12 have control.
13 MS MIHAJ: Yes of course, and he confirmed that he did.
14 THE PRESIDENT: Of BD Agro, and the answer is yes.
15 A. Correct.
16 MS MIHAJ: Do you say that Mr Rand's control over BD Agro
17 and his beneficial ownership were widely known and
18 accepted also by BD Agro's employees and business
19 partners, customers, creditors?
20 A. You have piled a lot in there. Can you just repeat that
21 question again, please, maybe more specifically?
22 Q. Yes. Are you saying that Mr Rand's control over BD Agro
23 and his beneficial ownership were widely known to
24 employees, to business partners?
25 A. I can only speak to my experience. I did not have

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01 interaction with the 200 employees of BD Agro, but what
02 I can say is with respect to my involvement, as
03 Mr Rand's representative, that at all times I certainly
04 represented myself as his representative, and Rand
05 Investments; I represented that Mr Rand was the
06 beneficial owner, at all times I represented that; and
07 to my knowledge, any person that I had communication
08 with, business partners and so forth, it was made known
09 very clearly that fact, that Mr Rand was the ultimate
10 owner.
11 So in my involvement, the people that I had worked
12 with, I had, as a matter of course, stated this because
13 I was saying who I worked for and what I was doing.
14 Q. So practically nothing would effectively change with the
15 transfer of the Privatization Agreement and shares from
16 Mr Obradovic to Coropi, or Mr Rand, is that correct?
17 A. I am not sure I understand your question.
18 Q. What would have changed with the transfer of
19 Privatization Agreement and shares of BD Agro from
20 Mr Obradovic to Mr Rand?
21 A. Sorry, what would have changed?
22 Q. Yes, what would have changed? What effectively would
23 have changed?
24 A. The nominal ownership would have changed.
25 Q. But why would nominal ownership become that important

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01 after eight or nine years after the privatization took
02 place?
03 A. Maybe you can be a bit more specific with that. I'm
04 not --
05 Q. Well, I think that it was a specific question. Why
06 would the nominal ownership over shares in BD Agro
07 become that important after eight or nine years after
08 the privatization of BD Agro?
09 A. So the genesis of the request for the transfer of shares
10 was that Mr Obradovic in 2013 was replaced by
11 Mr Markicevic, we had made certain changes within
12 BD Agro. Along with that, we had decided to replace or
13 to hire individuals that had very specific knowledge
14 with respect to large herd management and so forth, to
15 more professionalise the individuals running what
16 logistically was a complex organisation.
17 As part of that, Mr Obradovic ceased to represent
18 Mr Rand with respect to BD Agro, and so part and parcel
19 of that transition was of course to transfer his nominal
20 ownership from Mr Obradovic to an entity of Mr Rand's
21 choosing, and it ended up being Coropi.
22 So the importance of this, number one, was that it
23 should have been -- there should have been no issue with
24 the request for the transfer of this, and as we went
25 along continuously with the Privatization Agency, it

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01 continued to be a proxy for the belligerence of the
02 Privatization Agency in refusing to accept a number of
03 obvious things.
04 Number one is that the pledge should have been
05 removed, and there should have been no need at all for
06 us to make this request and seek their approval, and
07 so --
08 Q. Mr Broshko, I am sorry, but we are far away from my
09 question.
10 A. But that's what would have changed. The nominal
11 ownership would have changed. It would have given --
12 Q. But why was that important? I don't still understand
13 what are you saying, what are you implying?
14 I understand that the management changed and that
15 Mr Markicevic in that regard, as you suggested, replaced
16 Mr Obradovic, but it wouldn't be strange that
17 Mr Obradovic remains the owner of the shares while
18 Mr Markicevic could manage BD Agro?
19 A. Yes.
20 Q. So why would the change of management require the change
21 of the owner of the shares? This is my question.
22 A. They were both hand in hand. When Mr Obradovic was --
23 I would like to say: when Mr Obradovic ceased to be
24 involved in BD Agro, it was a wholesale change that
25 Mr Rand wanted to undertake, and that included the

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01 transfer of nominal ownership, and so when it was asked,
02 it became of heightened sensitivity, again because we
03 believed throughout that the Privatization Agency and
04 the Government of Serbia were not complying with the
05 terms of the Privatization Agreement.
06 So to answer your question, it would have given us
07 increased confidence that perhaps the Privatization
08 [Agency] was starting to do the right thing and was
09 starting to comply with reasonable requests that we were
10 making and we were seeing none of that.
11 Q. Mr Broshko, I would like to refer you to the letter sent
12 by Mr Obradovic to the Agency on 8th September 2015,
13 that is Exhibit CE-048. That is the letter containing
14 a threat of initiating arbitration under the
15 Canada-Serbia BIT, and in your third witness statement
16 you say that this letter was in fact just formally sent
17 in Mr Obradovic's name, but that it was drafted by you,
18 Mr Markicevic and the attorney Slobodan Dokleštic. He
19 was Mr Rand's legal counsel, is that correct?
20 A. That is correct.
21 Q. You also say that Mr Rand approved the letter, is that
22 correct?
23 A. I believe he did, yes. I don't know if he went through
24 it in specific detail but I believe he did approve it.
25 Q. You further state -- that would be paragraph 16 of your

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01 third witness statement -- you say that when you wrote
02 the paragraph referencing arbitration under the
03 Canada-Serbia BIT, all of you were wrongfully under the
04 impression that Mr Obradovic would have the standing to
05 bring a claim under the BIT, is that correct?
06 A. Yes, we had gotten wrong advice.
07 Q. Mr Broshko, you are saying that if dual nationals were
08 allowed to initiate arbitration under the Canada-Serbia
09 BIT, well actually this arbitration would now be called
10 Obradovic v Serbia instead of Rand v Serbia, is that
11 what you are saying?
12 A. Well, you're asking me to speculate. I'm not an
13 arbitration lawyer, so I don't know what would have
14 happened under those circumstances. What I do know,
15 which is what I put in my witness statement, is that we
16 had been given advice from a local lawyer in Belgrade
17 with respect to the Treaty between Canada and Serbia and
18 it turned out very quickly that that advice was not
19 accurate, hence this has not happened.
20 Q. So your understanding that Mr Obradovic, as the national
21 of Canada and Serbia, would have the standing to bring
22 a claim under the Canada-Serbia BIT. That is what you
23 said in paragraph 16 of your third witness statement, is
24 that correct?
25 A. I can read what --

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01 THE PRESIDENT: That's really a legal assessment. The only
02 thing that I understand Mr Broshko is saying is that he
03 thought that was the case at the time this letter was
04 drafted.
05 MS MIHAJ: Yes, I fully understand that this is a legal
06 understanding and I am not going to ask any questions
07 about whether it is correct or not, the legal
08 understanding, but my question concerned what he said.
09 He said "my understanding was that he is double national
10 of Canada and Serbia, and that nevertheless he has the
11 standing to sue", and then what happened, the letter,
12 which was prepared by Mr Broshko, was sent to Serbia,
13 the Notice of Arbitration, and my question was: so from
14 the legal perspective, if that was acceptable, that
15 Mr Rand could sue as dual national of Canada and Serbia,
16 that would mean that this arbitration would proceed as
17 arbitration of Mr Obradovic against Serbia.
18 THE PRESIDENT: No, I understand your question, and I think
19 Mr Broshko has understood it, but he answered it by
20 saying that he is not an arbitration lawyer, he doesn't
21 know what would have happened.
22 MS MIHAJ: Well, my question is not what would have happened
23 legally, but why would they choose, in that hypothetical
24 situation, Mr Obradovic to be the one who would claim,
25 and not Mr Rand? If they say that Mr Rand is the owner

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01 of the shares, and always was, why would they choose
02 Mr Obradovic to initiate this arbitration instead of
03 Mr Rand?
04 THE PRESIDENT: Well, they didn't --
05 MS MIHAJ: Why would they try that?
06 THE PRESIDENT: They didn't, and I don't think this was
07 Mr Broshko's say, but of course you can correct me.
08 I am not sure this brings us much further. We have seen
09 this paragraph.
10 MS MIHAJ: I am sorry, Mme President, what I am saying is
11 that we didn't hear -- the explanation of Mr Broshko who
12 prepared the letter, who was in contact of course with
13 Mr Rand, when they had to choose who would sue against
14 Serbia-Canada BIT. Whether it will be -- am I on the
15 right track now? Whether it will be Mr Rand or
16 Mr Obradovic.
17 THE PRESIDENT: Yes, I understand your point.
18 Who made the decision who would be the claimant in
19 this arbitration? Did you make the decision or did you
20 have a say in this decision?
21 A. We always followed legal advice, and as I have noted
22 here, the initial legal advice that we had received with
23 respect to the applicability of the Treaty was
24 incorrect, so nothing had proceeded with respect to this
25 provision, and anything that we have -- I say "we",

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01 Mr Rand, Rand Investments, the Rand children, Sembi, who
02 is here as a claimant in front of you -- was done
03 obviously with legal advice and we relied on our legal
04 advice.
05 MS MIHAJ: At the time, when you were advised that it should
06 be Mr Obradovic who should send this letter to Serbia,
07 were you advised that Mr Rand cannot be the claimant?
08 MR VASANI: Mme President --
09 MR PEKAR: Mme President, objection. This is privileged
10 information.
11 MR VASANI: I was also going to interrupt on the same thing,
12 Mme President. I think we are trespassing into
13 potential legal privilege.
14 THE PRESIDENT: That is the objection indeed, and I think
15 this goes into attorney-client privilege. Frankly,
16 I don't think it helps us at all, because we have to
17 look at the Treaty and decide who can be a claimant or
18 who cannot. And what Mr Broshko says to this is
19 irrelevant to us frankly. With all due respect, of
20 course.
21 A. Thank you, Mme President.
22 MS MIHAJ: I will continue with another question.
23 THE PRESIDENT: Good.
24 MS MIHAJ: In your second witness statement, paragraphs 58
25 and 59, you said that in April 2015, the Agency's

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01 representatives requested that Mr Obradovic provides:
02 "... an audit report evidencing his compliance with
03 the Privatization Agreement, together with an updated
04 request for approval of the Assignment Agreement and the
05 previously requested bank guarantee."
06 It seems that this was a surprise for you.
07 A. I am sorry, what was the surprise?
08 Q. The Agency requested all these documents.
09 A. Sorry, would you like to be a bit more specific. Which
10 documents are you referring to?
11 Q. That I just referred to. Could you please read
12 paragraphs 58 and 59 of your witness statement?
13 THE PRESIDENT: Can you just remind us which witness
14 statement is it?
15 MS MIHAJ: Second one. So the Agency requested some
16 documents to be delivered and you say that:
17 "This request represented a 180 degree turn from the
18 position of the Privatization Agency ..."
19 And my question is: was this the first time that the
20 Agency requested an audit report evidencing the
21 compliance with the Privatization Agreement to be
22 delivered?
23 A. No, I believe they had asked for it a whole bunch of
24 times.
25 Q. Thank you.

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01 A. But I think it's important to note that we had given, or
02 it had been provided to the Privatization Agency in
03 January of 2015 an audit report which we think was very
04 clear and should have allowed the opportunity for
05 release of the pledge as well as -- although we thought
06 it was fulfilled in 2011, but it should have at that
07 point in time convinced the Privatization Agency to
08 finish up its work and release the pledge, so we were
09 satisfied at that point with the audit report, that was
10 in January, but the bank guarantee, yes, that was very
11 surprising. Nobody had ever mentioned that.
12 And then we show up at a meeting, and at the
13 meeting, where everybody knows that the full purchase
14 price is paid, and where we have been working with them
15 for, I don't know, two years at that point perhaps, and
16 all of a sudden, they say, "We want more documents, oh
17 and by the way, we want a bank guarantee", which was
18 very significant.
19 And of course, the reasonable question anybody
20 sitting there asks themselves is: so you want a bank
21 guarantee at this point to secure the purchase price
22 that had already been paid? This seemed to us
23 absolutely as just another attempt at stalling and
24 putting barriers in front of barriers, that had no
25 rational basis in what the Privatization Agency should

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01 be doing, and I even -- my understanding is even as this
02 proceeded, when they continued down the road to ask for
03 a bank guarantee, it was only a few days after that that
04 they said, "Oh, now our rules have changed".
05 So when we started, halfway in they changed the
06 rules to say they need a bank guarantee, even though it
07 was never asked at the beginning. Then we proceeded,
08 desperately trying to find a solution, they continued to
09 ask for a bank guarantee, then the last time they said
10 yes, we still need a bank guarantee, three days later
11 they changed the rules and said, "Oh, we don't need
12 a bank guarantee now".
13 So it was very frustrating, it was very confusing,
14 and frankly is not any way that a Privatization Agency
15 should be conducting itself.
16 Q. Have you ever checked with the rulebook that you have
17 just mentioned which documents you should deliver?
18 A. I have been advised on that specific matter about the
19 bank guarantee and what I noted is my understanding is
20 that the obligation that they saw for a bank
21 guarantee -- again, the only reason you could have
22 a bank guarantee is to secure the purchase price, and
23 the purchase price was paid -- is that that obligation
24 started kind of halfway through our discussions and
25 ended down the road just days after they had noted to us

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01 that it was still required. That was my understanding
02 of it. But the rulebook is in Serbian, so I can't read
03 Serbian.
04 Q. But you did have a Serbian lawyer in that matter, is
05 that correct, helping you with the assignment procedure?
06 A. We had legal counsel, correct.
07 Q. Was the only problem bank guarantee when it comes to
08 your assignment or are there some other documents that
09 were missing?
10 A. We never really understood what they wanted. They
11 seemed to be changing their mind from meeting to
12 meeting, and any time we said, you know, tell us what
13 you need, we never really got clarity, so I'm not sure
14 to this day we truly know what they were wanting, and it
15 certainly seems, with the benefit of hindsight, that it
16 didn't matter what we would have given to them.
17 Q. But could it be that maybe the Agency wanted to have all
18 documents required by the rulebook?
19 A. Well, I can't speak to what the Agency wanted, because
20 they weren't clear.
21 Q. Have you maybe checked the rulebook, your attorneys, to
22 see what documents you should file? Do you have any
23 information about that? Did he check it?
24 A. I can't tell what he checked or what he didn't check.
25 Q. Thank you. (Pause).

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01 Mr Broshko, have you spent and do you still spend
02 longer periods of time in Serbia or not?
03 A. I haven't been there in -- 2019.
04 MS MIHAJ: Thank you. Thank you, Mr Broshko, and thank you,
05 Mme President, I have no further questions.
06 THE PRESIDENT: Thank you. Mr Pekar?
07 MR PEKAR: No questions, Mme President.
08 THE PRESIDENT: Does Mr Vasani have questions for the
09 witness?
10 MR VASANI: Mme President, I have no questions.
11 THE PRESIDENT: Thank you.
12 Questions from the TRIBUNAL
13 PROFESSOR KOHEN: Good morning, Mr Broshko.
14 A. Good morning, Mr Kohen.
15 PROFESSOR KOHEN: I had a couple of questions. So you
16 participated in all the meetings with the Privatization
17 Agency, you say on behalf of Rand Investments, yes?
18 A. That is correct.
19 PROFESSOR KOHEN: Rand Investments, is it a corporation?
20 A. That is correct.
21 PROFESSOR KOHEN: What is the legal relationship between
22 Coropi and Rand Investments?
23 A. Rand Investments and Coropi are controlled by Mr Rand.
24 PROFESSOR KOHEN: I am asking about the legal relationship.
25 Is there a specific legal relationship? Control is an

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01 economic element.
02 A. Well, Mr Rand owns 100% of Rand Investments, and Coropi
03 is owned 100% by the Ahola Family Trust which is for the
04 benefit of Mr Rand's children, so they are two separate
05 legal entities.
06 PROFESSOR KOHEN: Thank you. My second question is in
07 relation to the meetings you had with the Privatization
08 Agency. So you mentioned that you contested the claim
09 that 5.3.3 and 5.3.4 were breached. You constantly
10 rejected this allegation.
11 A. We believed that all of the conditions were satisfied
12 with payment of the purchase price.
13 PROFESSOR KOHEN: But in front of the position of the
14 Privatization Agency that according to that agency there
15 were these breaches, so you challenged, you said, "No,
16 there was no breach"?
17 A. Yes, that's correct.
18 PROFESSOR KOHEN: And you also requested the release of the
19 pledges?
20 A. Yes, that had been asked for -- since 2012, correct.
21 PROFESSOR KOHEN: During these meetings with the
22 Privatization Agency, did you invoke --
23 A. Sorry, I am having a hard time --
24 PROFESSOR KOHEN: Sorry, I am also wearing the mask. During
25 these meetings with the Privatization Agency, did you

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01 invoke the existence of a dispute resolution clause in
02 the Privatization Agreement?
03 A. Sorry, did I invoke?
04 PROFESSOR KOHEN: The existence of a dispute resolution
05 clause in the Privatization Agreement?
06 A. I don't recall. I don't recall having a discussion
07 about that.
08 PROFESSOR KOHEN: Thanks. In which language these meetings
09 were conducted?
10 A. They were in both Serbian and English.
11 PROFESSOR KOHEN: And you have someone translating for you?
12 A. Yes, so it would be in English when I arrived, so
13 I would -- if I had something to say, obviously I would
14 say it in English, because I don't speak Serbian.
15 Sometimes they would ask to take conversation offline,
16 if there was something very specific and it was easier
17 for them in Serbian, and then it would get translated
18 back to me, either, for example, by Mr Markicevic, or
19 Mr Dokleotic, if he was there. But in a number of cases
20 I had the opportunity of just speaking directly with
21 them, and they had a pretty good handle on English, so
22 it was a combination of both.
23 PROFESSOR KOHEN: Thank you, Mr Broshko.
24 I don't have any further questions, Mme President.
25 THE PRESIDENT: Thank you.

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01 Mr Broshko, towards the end of the examination by
02 counsel for Serbia, there was a discussion about the
03 request for the bank guarantee, do you remember that?
04 At some point, you said, we never really understood what
05 they wanted, it changed at every meeting, we asked them
06 to specify many times, but they would not specify; and
07 then you said, "with the benefit of hindsight ... it
08 didn't matter what we would have given to them", I think
09 these are your words, it would not matter whatever we
10 gave to them; what did you mean by that?
11 A. When we were at these meetings, we would be struggling
12 at all times to try to understand what we can do to
13 resolve the situation. We would explain to them, for
14 example, that we believed there is no breach. We would
15 explain to them that audit reports had been provided to
16 them. We had discussions about the assignment and the
17 documents that they had requested in respect of the
18 assignment. I knew, as I was advised in 2013, that the
19 discussions on the assignment started, I was not there,
20 and the discussions continued into 2014 while I was
21 there.
22 When it comes to the bank guarantee, that really
23 came out of the blue for us. We were there in the room,
24 we had believed we had provided all documents that they
25 had asked for, we still had no movement, and when it

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01 came to the bank guarantee, we were having discussions
02 on what we needed to provide to them and what we had
03 provided to them for the assignment of the Privatization
04 Agreement, and then they dropped this on us, which is,
05 "Oh and by the way, we need a bank guarantee", and it
06 was very surprising at that point in time to have been
07 told that there would be expected what is a material
08 contribution in the form of a bank guarantee, like
09 I said, to secure what had already been paid.
10 So it was just very frustrating to not get clarity,
11 and to have -- it seemed like the goalposts would shift,
12 and at one point, they said -- because we had been
13 waiting so long, we had given documents, and they said,
14 "Well, because you have been waiting so long, now your
15 documents are stale, we want all new documents", and
16 I think that might have been in the same meeting as the
17 discussion or when they told us about the bank guarantee
18 but I can't confirm that.
19 So it was very frustrating, and I look back again,
20 we were really trying to provide what they wanted, even
21 to bend over backwards. And it certainly appears, like
22 I said, in hindsight, that they may not have been
23 wanting to find a solution, and -- I mean, I just think
24 that's very unfortunate, that's all.
25 THE PRESIDENT: Why would they not want to find a solution?

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01 A. That's a very good question. I can't answer that.
02 I mean, you would think that their job in the
03 Privatization Agency is to try to help companies, their
04 job is to try to find reasonable solutions to allow
05 these companies out of privatization to flourish. And
06 here we were, with a very well-known company, trying to
07 move this forward, to inject significant capital, to
08 show them that we had a solid plan for increasing the
09 scalability of the business, and they just kept putting
10 roadblocks in front of us and even at one point -- I was
11 not in the meeting, but I got a call back, where
12 Mr Markicevic, and I can't remember, but I think maybe
13 Mr Doklestic was there, where they had said that it
14 was -- Mira Kostic at the Privatization Agency had said,
15 "We should just put this company right into bankruptcy".
16 So you would hope that with the Privatization Agency
17 that they have a sense of a fiduciary obligation to help
18 and promote the enterprises that are being privatised
19 and that they are trying to work with these individuals,
20 again, to try to see the success of these companies, and
21 we just didn't see it. I can't tell you why, I can just
22 say it was a great disappointment.
23 THE PRESIDENT: Yes, that all goes, but in paragraph 59 of
24 your second witness statement, you say that this request
25 for a bank guarantee, and an additional report,

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01 represented a 180-degree turn. Does that go -- do you
02 find it?
03 A. Yes, and maybe just to get some clarification --
04 THE PRESIDENT: Because from when I hear you, I see that
05 what you are saying is the bank guarantee is a new
06 request, but I don't really see the 180-degree turn from
07 what you are explaining here, and also in your witness
08 statement.
09 A. Mme President, what I was referring to in that
10 180-degree turn is the information that we were being
11 provided, if you look at paragraph 53, where
12 Mr Markicevic said that he met with Mr Redžovic, who was
13 the chairman of the Privatization Agency, who met with
14 BD Agro's trustee, who was dealing with the pre-pack and
15 we were getting at that point information that seemed to
16 be very promising, that Mr Redžovic thought that the
17 demands of the bank loan were ridiculous, and that our
18 trustee and Mr Redžovic were increasingly confident that
19 things were going to be addressed here, and then all of
20 a sudden we come into that meeting and it seems that
21 now, instead of us having some type of positive
22 momentum, it just seemed to drop dead right at that
23 meeting. So that's -- when I say 180 degrees, I was
24 talking about the very recent changes that we thought
25 were positive, that's what I was referring to.

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01 THE PRESIDENT: In late February/March there was a phase, if
02 I follow your explanations, that looked more promising,
03 and then in April, towards the end of April, there is
04 a return to a more negative attitude; is that what you
05 are saying?
06 A. That's what it appeared to us. Now, there was not any
07 concrete steps in February where we had heard or gotten
08 formal correspondence from the Privatization Agency. We
09 were just struggling to try to understand the situation
10 from as many angles as we could, people that we knew, we
11 would ask for their help, we would ask for their
12 involvement, to try to get some type of understanding of
13 why we were just banging our heads against the wall.
14 And so when -- in February, when things were really
15 dire, it looked like there was a glimmer of hope, and
16 frankly we were a bit excited, okay, I think we're going
17 to -- if this is true, we're going to solve this, this
18 is good, they're coming around, and then we had that
19 meeting, and that was it. It was not good.
20 THE PRESIDENT: I have no further questions, and I thank you
21 very much for your explanations.
22 A. Thank you for hearing me.
23 THE PRESIDENT: That completes your examination. That is
24 a good time to have a break for lunch. Should we start
25 again at 2.00, is that fine? And then we will hear

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01 Ms Radovic, is that the next witness? Good. Have
02 a good lunch.
03 (12.54 pm)
04 (Adjourned until 2.00 pm)
05 (2.07 pm)
06 MS BRANKA RADOVIC JANKOVIC (called)
07 THE PRESIDENT: Apologies for having kept you waiting, we
08 are pleased that we have Mr Vasani in person now, and
09 that his test was negative, so we are reassured.
10 I should also say that I took the initiative of closing
11 the window there, because I thought you must be very
12 cold sitting there, but if you prefer to open it again,
13 you can -- yes, it is open again actually.
14 So from now on, we will have interpretation, and
15 I see the interpreters are there. And you know which
16 channel is which.
17 Ms Radovic Jankovic, do you hear me well when
18 I speak?
19 THE WITNESS: (Interpreted) Yes, I do, thank you. Can you
20 hear me?
21 THE PRESIDENT: Yes, absolutely. For the record, can you
22 confirm to us that you are Branka Radovic Jankovic?
23 THE WITNESS: (Interpreted) So hello, everyone. Yes, I can
24 confirm that I am Branka Radovic Jankovic.
25 THE PRESIDENT: You have been with the Privatization Agency

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01 until 2016, is that right?
02 THE WITNESS: (Interpreted) Yes, I worked there right from
03 the beginning, up until 2016, when the Agency was
04 closed, or when I actually stopped operating.
05 THE PRESIDENT: Do you have a current position elsewhere?
06 Or you are retired?
07 THE WITNESS: (Interpreted) I retired then, and for six
08 years now I have been retired.
09 THE PRESIDENT: Thank you. You have provided us with one
10 written statement that was dated 24th January 2020.
11 THE WITNESS: (Interpreted) Are you asking about the date
12 when I made the statement, is that what you are asking
13 me?
14 THE PRESIDENT: I was just wanting you to confirm that you
15 have made a statement, yes.
16 THE WITNESS: (Interpreted) Yes, and the date is
17 24th January 2020.
18 THE PRESIDENT: Fine, and you have the statement there in
19 front of you?
20 THE WITNESS: (Interpreted) Yes, I have it.
21 THE PRESIDENT: You also have in front of you the witness
22 declaration, I think you have a copy in Serbian, so
23 I would like to ask you to read it now.
24 THE WITNESS: (Interpreted) I solemnly declare upon my
25 honour and conscience that I shall speak the truth, the

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01 whole truth and nothing but the truth.
02 THE PRESIDENT: Thank you. So I will first turn to Serbia's
03 counsel for direct questions, please. Ms Mihaj?
04 MS MIHAJ: Thank you, Mme President.
05 Direct examination by MS MIHAJ
06 Q. Ms Radovic, would you wish to correct something in your
07 written witness statement maybe?
08 A. (Interpreted) I apologise, I made a technical error in
09 paragraph 2 of my witness statement, which discusses my
10 career. This might cause confusion, because I have one
11 version in print. So I will not make a mistake,
12 I believe, if, in the third line of paragraph 2, instead
13 of the word "January" the word "December" should be the
14 correct choice, and in line 8, instead of the word
15 "March" we should have the word "February". So these
16 are the only two corrections that I would like to make.
17 Q. I am sorry, Ms Radovic, did you refer to March? Because
18 I don't see March in paragraph 2 of your witness
19 statement. I think that you would like to refer to
20 June.
21 A. (Interpreted) My apologies, yes, I don't have that
22 version of the declaration here. You are right, yes,
23 instead of "June", it should be "February".
24 MS MIHAJ: Thank you, Mme President, I have no further
25 questions.

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01 THE PRESIDENT: Thank you. So I will turn to Claimants'
02 counsel, Mr Misetic, are you the one asking the
03 questions?
04 MR MISETIC: Yes, Mme President. Thank you, Mme President.
05 Cross-examination by MR MISETIC
06 Q. Good afternoon Ms Radovic Jankovic. My name is Luca
07 Misetic, I am counsel for the Claimants in this
08 arbitration. Let me just ask you, if you don't
09 understand a question that I pose to you, please ask me
10 to rephrase the question and I'll be happy to do so, and
11 the other point to keep in mind is that we're
12 communicating through interpretation, so if you would
13 give me some time to finish my question, I will give you
14 some time to complete your answer, so that we don't
15 speak over each other. Do you understand?
16 A. (Interpreted) Yes, I understand.
17 Q. Thank you very much. Just to pick up on Mme President's
18 questions about your background, I just wanted to
19 further clarify, I understand from your witness
20 statement that from February 2007 until January 2016 you
21 were the special legal adviser and specific legal
22 adviser to the Director of the Agency, is that correct?
23 A. (Interpreted) Yes, that is correct. The functions were
24 changing. Sometimes I was special legal adviser for
25 a while, then I was a specific legal adviser, in the

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01 office of the Director.
02 Q. Could you explain to us what the special legal adviser
03 and the specific legal adviser does?
04 A. (Interpreted) Essentially, if we are talking about the
05 kind of work that is done, there is no major difference.
06 In both of these functions I was actually doing the same
07 legal work. What changed was the systematisation of
08 positions, and the names changed from special legal
09 adviser to specific legal adviser.
10 Q. Were you providing legal advice to the Director?
11 A. (Interpreted) Among other things, yes. I gave him some
12 legal advice.
13 Q. From 2013 to December 2014 you were a member of the
14 Control Commission, is that correct?
15 A. (Interpreted) Yes, that is correct. In this time, I was
16 a member of this Commission and I was a member of the
17 Commission in some earlier times. I don't think it was
18 until February 2014, I think it was until August 2015.
19 Q. You were President of the Commission from December 2014
20 to August 2015, correct?
21 A. (Interpreted) That is correct.
22 Q. Turning to your witness statement, at paragraph 8 of
23 your witness statement you say that you attended
24 meetings held at the Ministry of Economy in 2014 and
25 2015, which related to the assignment of the agreement

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01 to Coropi, correct?
02 A. (Interpreted) that is correct.
03 Q. Do you recall how many such meetings you attended?
04 A. (Interpreted) I can't remember precisely how many
05 meetings there were, but I think I was at these two
06 meetings at the Ministry.
07 Q. In 2014 and 2015, you did not attend any meetings
08 concerning the assignment of the agreement to Coropi
09 where Mr Djura Obradovic was present for the meeting,
10 correct?
11 A. (Interpreted) I was at the meetings in the Ministry in
12 2014 and 2015, and as far as I can remember, Mr Djura
13 Obradovic was not attending these meetings.
14 Q. I would like to show you Claimants' Exhibit CE-273, and
15 this is Mr Obradovic's letter of 1st August 2013 to the
16 Privatization Agency requesting assignment of the
17 agreement to Coropi. I would just ask first whether you
18 have seen this document before.
19 A. (Interpreted) I can't remember. I handled a large
20 number of different documents. I was authorised to sign
21 documents of the Agency and I handled many documents.
22 We worked with some 4,000 companies, and you can see for
23 yourself how many different documents we have that
24 address this privatization subject only, so I can't
25 remember exactly whether I saw this particular document.

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01 Q. This is the letter that Mr Obradovic sent to the
02 Privatization Agency requesting assignment of the
03 Privatization Agreement to Coropi. The Privatization
04 Agency's view, according to your statement, is that
05 Mr Obradovic was the owner of BD Agro, correct?
06 A. (Interpreted) Mr Obradovic was the owner of BD Agro, and
07 I happened to sign the agreement, the sale and Purchase
08 Agreement, and Mr Obradovic, as the owner of the shares
09 of BD Agro that he bought, was registered in the
10 Registry of Commercial Entities, where all commercial
11 entities were registered, so all documents, all letters,
12 all meetings were held exclusively with Mr Obradovic.
13 For us, he was the owner of the capital.
14 Q. For you, in the Privatization Agency, only Mr Obradovic
15 could seek assignment of the Privatization Agreement,
16 correct? He was the party to the agreement?
17 A. (Interpreted) Yes, he was the signatory on the Sale and
18 Purchase Agreement, and it was only him who could assign
19 the agreement to a third party, under certain statutory
20 conditions.
21 Q. But if I understand your testimony, despite the fact
22 that it was his rights under the agreement, you never
23 attended a meeting in 2014 and 2015 where Mr Obradovic
24 was present, even though the discussion, according to
25 your statement, was related to the assignment of the

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01 agreement to Coropi, correct?
02 A. (Interpreted) Whether I was at these meetings I can't
03 remember, to be honest. It may have been the case, but
04 I can't claim. We had many meetings and I can't state
05 with absolute certainty that I was at a certain meeting.
06 Q. But I understood your earlier answer to be that you
07 don't recollect seeing Mr Obradovic at any of these
08 meetings in 2014 and 2015, did I understand you
09 correctly?
10 A. (Interpreted) In 2014 and 2015, we had meetings at the
11 Ministry, and as far as I can remember, Mr Obradovic did
12 not attend these meetings, ie he was present physically
13 but he was asked not to attend the meeting, given that
14 Mr Broshko, who was the representative of Mr Rand,
15 scheduled the meeting with the Ministry.
16 Q. Let me turn to that meeting you have raised, that's the
17 15th December 2014 meeting. This is RE-38, these are
18 the minutes of the meeting. You were present for that
19 meeting, correct?
20 A. (Interpreted) Yes.
21 Q. I think you have already alluded to the fact that
22 Mr Obradovic attempted to attend the meeting, correct?
23 A. (Interpreted) I think that's the meeting, but I can't
24 say with absolute certainty whether it was that meeting.
25 Q. I think the parties are --

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01 A. (Interpreted) I just said that on one occasion I saw
02 Mr Obradovic but he did not attend the meeting.
03 Q. I think the parties are in agreement that there was
04 a meeting on 15th December 2014 where Mr Obradovic
05 attempted to attend but was asked to leave, and these
06 are the minutes that you're looking at of that meeting.
07 Do you recall who invited Mr Obradovic to the meeting?
08 A. (Interpreted) I can't remember because the meeting had
09 been organised by the Ministry of Economy and not the
10 Privatization Agency, so we in the Agency did not make
11 the list of participants or people who were supposed to
12 attend the meeting.
13 Q. Were you present when Mr Obradovic was asked to leave?
14 A. (Interpreted) Yes, I was present.
15 Q. Who asked him to leave?
16 A. (Interpreted) I can't remember that, at this moment,
17 whether it was one of the representatives of the
18 Ministry, I don't remember who exactly.
19 Q. Was Mr Markicevic asked to leave?
20 A. (Interpreted) As far as I can remember, no. He did
21 attend the meeting.
22 Q. Do you know what Mr Markicevic's title was?
23 A. (Interpreted) I think Mr Markicevic at the time was the
24 director of BD Agro Dobanovci and that it is in this
25 title that he attended the meeting.

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01 Q. If I understand correctly, your understanding would have
02 been that Mr Markicevic worked for Mr Obradovic, who was
03 the owner of BD Agro, correct?
04 A. (Interpreted) I only said that Mr Markicevic was the
05 director of BD Agro. I did not make any mention --
06 I don't know which word you mentioned. Could you please
07 repeat your words in your question?
08 Q. That he worked for Mr Obradovic.
09 A. (Interpreted) That he worked for Mr Obradovic? I can't
10 put it in these words. I know he was the director of
11 BD Agro.
12 Q. In your view, he was the director of a company owned by
13 Mr Obradovic, correct?
14 A. (Interpreted) Yes.
15 Q. But he wasn't asked to leave the meeting?
16 A. (Interpreted) No, he wasn't asked to leave the meeting,
17 as far as I can remember.
18 Q. Did Mr Markicevic's presence at the meeting alongside
19 Mr Broshko suggest to you that Mr Markicevic worked for
20 Mr Broshko and not Mr Obradovic, who had just been asked
21 to leave the meeting?
22 A. (Interpreted) I can't remember that.
23 Q. Well, subsequent to this meeting, did you have
24 a follow-up meeting with Mr Obradovic?
25 A. (Interpreted) I apologise, I can't remember that either.

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01 I don't know whether we had a subsequent separate
02 meeting with Mr Obradovic. Are you asking about
03 a meeting at the Privatization Agency?
04 Q. Anywhere, Ministry of Economy or the Privatization
05 Agency.
06 A. (Interpreted) I can't remember. I would rather not
07 guess, I just don't remember.
08 Q. You were having a meeting with the party that was to
09 receive the assigned agreement, correct?
10 A. (Interpreted) Yes, we discussed the assignment of the
11 agreement.
12 Q. Did anyone at the Privatization Agency or the Ministry
13 of Economy think it would be appropriate to have
14 a conversation with the actual owner of the company on
15 the other side of the Assignment Agreement?
16 A. (Interpreted) I can't respond to the question whether
17 someone from the Privatization Agency thought this or
18 that, but this legal transaction would not have been
19 possible without the consent of Mr Obradovic, because,
20 according to law, he was the guarantor of the agreement,
21 and he was responsible for the enforcement of the
22 contractual obligations of the assignee.
23 Q. Let's look at the minutes of the meeting. These are
24 minutes prepared by the Privatization Agency, correct?
25 A. (Interpreted) From which meeting? Are you referring to

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01 the meeting in the Ministry that we just discussed, or
02 to some other meeting?
03 Q. Sorry, the minutes of the 15th December 2014 meeting
04 which should be in front of you right now [RE-38].
05 These minutes were prepared by the Privatization Agency,
06 correct?
07 A. (Interpreted) Yes, I see -- it's called a note from the
08 meeting, which was drawn up by my former colleague,
09 Mme Kostic, as it says here.
10 Q. Yes, and it identifies you at number 5 as having been
11 present, do you see that?
12 A. (Interpreted) Correct, I can see it.
13 Q. It also identifies at number 10 Erinn Broshko, Executive
14 Director, Rand Investments, do you see that?
15 A. (Interpreted) Yes, I see that it says so.
16 Q. Do you see that the minutes do not reflect the word
17 "Coropi" at all?
18 A. (Interpreted) Just a second, I need to go through it
19 then. (Pause). Yes, I can see here that it's just
20 a brief description of the topics discussed during the
21 meeting, and what is the Ministry expected to prepare
22 for the next meeting.
23 Q. Well, if you look at the last sentence of the notes
24 here, it says:
25 "The representative of the Entity of Privatization

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01 have committed to prepare for the next meeting, which is
02 agreed in principle to be held on 17th December 2014 in
03 the Ministry, the materials on the state of the
04 mortgages registered on the property of the Entity
05 undergoing privatization as a collateral warranty for
06 the liability of third parties."
07 A. (Interpreted) Yes.
08 Q. Why would the Ministry and the Privatization Agency ask
09 the person they believed to be seeking assignment of the
10 agreement to start gathering information such as the
11 state of mortgages on the registered property? Why not
12 ask Mr Obradovic to do that?
13 A. (Interpreted) Because the meeting was attended by
14 Mr Markicevic, who was the director of the company. It
15 didn't have to be done by Mr Obradovic. Such
16 information can also be provided by the director of the
17 company.
18 Q. He is the director of BD Agro, which is not a party to
19 the Privatization Agreement, correct?
20 A. (Interpreted) The person is not a contractual party, but
21 it doesn't mean that he cannot be a director and that he
22 cannot assume certain responsibilities. The director
23 is, as far as I know and remember, appointed by the
24 steering committee, steering board of the entity
25 undergoing privatization.

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01 Q. You never saw a document appointing Mr Markicevic as
02 Mr Obradovic's personal representative, correct?
03 A. (Interpreted) Correct, personally I haven't seen such
04 a document.
05 Q. Didn't this give you the understanding that
06 Mr Markicevic was working for Mr Broshko?
07 A. (Interpreted) I am not sure I fully understood your
08 question. Whether I didn't understand because of that
09 ... But Mr Markicevic attended the meeting in his
10 capacity of the director of BD Agro. Yes, he appeared
11 in the company of Mr Broshko, and from what
12 I understood, Mr Broshko was the representative of
13 Mr Rand, not Mr Markicevic.
14 Q. Let me ask a different way. As I understand your
15 testimony now, in 2014 and 2015 you attended meetings
16 about the assignment of the agreement where
17 Mr Markicevic and Mr Broshko attended but Mr Obradovic
18 did not, correct?
19 A. (Interpreted) Well, I have said that already.
20 Q. Any conclusions from that fact about who Mr Markicevic
21 was working for?
22 A. (Interpreted) Why would we have to draw any conclusions
23 about that? I don't understand. Mr Markicevic came as
24 a representative of BD Agro. We discussed the
25 assignment, possible assignment, possible investments

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01 into the company, as far as I remember.
02 Q. I guess my point is if you know that you didn't receive
03 a document that Mr Markicevic was Mr Obradovic's
04 personal representative, then who are you discussing
05 assignment of the agreement with on behalf of the buyer?
06 A. (Interpreted) First of all, I said that it was the
07 Ministry of Economy which scheduled this meeting, it
08 wasn't the Agency for Privatization. We were not
09 designated as the entity that can invite anybody to that
10 particular meeting. But Mr Broshko, as the director of
11 the company, was able to discuss the conditions for
12 assignment, it was possible for us to tell him what was
13 needed to be fulfilled for the entity undergoing
14 privatization to be taken over by a third party, though
15 the topic of the meeting was not only that. I think it
16 was wider than that, in that I think we were discussing
17 some unmet obligations, possible investments in the
18 future, should the assignment happen. Then there were
19 discussions about bankruptcy of the company, about the
20 pre-packaged reorganisation plan, being prepared, all of
21 these topics were discussed, not just the assignment.
22 Q. Let me turn your attention to a different part of your
23 witness statement, which is section III of your
24 statement, which begins in the English on page 4. If we
25 could start with CE-030, please? I would ask you to

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01 take a look at this document and let me know if you have
02 seen this document before.
03 A. (Interpreted) Report on the control?
04 Q. You can look in the hard copy -- just so you know, we
05 have a hard copy in Serbian for you, if you want to see
06 the original in Serbia, and then in front of you you can
07 see the translation in English if you wish.
08 A. (Interpreted) For the time being I can see only the
09 title. So I have the paper version in front of me.
10 Q. You can look through the document and let me know if you
11 have seen the document before and if you know what it
12 is.
13 A. (Interpreted) I truly cannot remember if I have seen
14 this document before, if I held it in my hands, but
15 I see that it is a report on the control of performance
16 of obligations of the buyer under the agreement on the
17 sale of socially-owned capital of BD Agro.
18 Q. This is an internal report of the Privatization Agency,
19 correct?
20 A. (Interpreted) Yes, that's what it says so. It's an
21 internal document.
22 Q. On page 2 of the report on control, it says, second
23 paragraph:
24 "The above stated [performance] obligations are in
25 effect during the term of the agreement (October 4,

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01 2010), which has been extended, since the Buyer failed
02 to pay the sixth installment of the sale and purchase
03 price, on which basis ..."
04 A. (Interpreted) I see what it says, these obligations are
05 valid during the validity of the agreement, and then the
06 date is here, which has been extended, because the buyer
07 has not paid the sixth instalment of the price, and on
08 this basis he was given the third and last additional
09 period for the payment of the purchase price. It
10 doesn't say for the payment of the purchase price, I am
11 guessing when they say additional period that means to
12 pay the price, to pay the final instalment, the sixth
13 one, that is probably what it refers to.
14 Q. Do I understand this correctly to mean that the term of
15 the agreement expires upon the payment of the last
16 payment due?
17 A. (Interpreted) Generally speaking, when it comes to all
18 agreements, where we have bona fide buyers, the payment
19 of the price is the final act that is done, but it often
20 happened like in this case that the price has been paid
21 but the contractual obligations have not been fulfilled.
22 In such cases, the agreement itself cannot be deemed
23 fulfilled. All of the obligations under the agreement
24 have to be cumulatively fulfilled. The execution of
25 other contractual obligations cannot be neglected by the

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01 fact that the purchase price was paid. Just the payment
02 of the price does not mean we can forget about the
03 performance of other contractual obligations.
04 Q. We'll get into that in a few minutes, but for now,
05 I just was interested in what this paragraph of this
06 document suggests. In this paragraph, it suggests that
07 the term was to expire upon the payment of the purchase
08 price, correct?
09 A. (Interpreted) Yes, this is what it says.
10 Q. If we turn to page 8 of this document --
11 PROFESSOR KOHEN: Sorry, I would like to have one
12 explanation, which is a linguistic one. Is in Serbian
13 "term" and "termination" synonymous or not?
14 THE INTERPRETER: The interpreters apologise, we are not
15 sure we quite understood your question. The term
16 "termination" is synonymous with which other term, did
17 we get that fully?
18 PROFESSOR KOHEN: Yes, I refer to the term "term" and
19 whether "term" means "termination".
20 MR MISETIC: Are you asking me or the witness?
21 PROFESSOR KOHEN: Everyone knowing Serbian and English.
22 THE PRESIDENT: Maybe the best thing would be to ask the
23 interpreters. The word "term" in English means the end,
24 the maturity of a contract, whereas "termination" means
25 the act by which you end a contract, which is

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01 a different thing. So the question is whether these two
02 words are the same in Serbian or not?
03 THE INTERPRETER: We have understood the question. No, they
04 are entirely different. The term "term" means validity
05 of the period, and "termination" is something completely
06 different, it's to terminate the validity, so they are
07 entirely different in Serbian language. I hope that
08 clarifies the question.
09 PROFESSOR KOHEN: Yes, thank you.
10 MR MISETIC: If we could turn to page 8 in the English, in
11 the section below 5.3.1, the second paragraph begins:
12 "The ban on disposal of shares expired on October 4,
13 2007, but given that the contract provision and the
14 Share Pledge Agreement stipulate a pledge in favour of
15 the Agency until payment of the complete sale and
16 purchase price, the Buyer was notified via a letter
17 announcing the control to ensure the Excerpt from the
18 CSD and CH on the state of his proprietary and pledge
19 account on the day of the scheduled control."
20 Do I understand this text correctly to mean that the
21 Agency understood that the pledge was in favour of the
22 Agency until payment of the complete sale and purchase
23 price?
24 A. (Interpreted) I was referring to that a while ago. The
25 pledge was introduced on the shares, and that was

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01 addendum 1 to the agreement, which stipulated that the
02 pledge would have a validity term of five years, or
03 until the payment of the purchase price. Was that what
04 your question was referring to?
05 Q. Yes. If I could then draw your attention to page 21 of
06 this same document, it discusses paragraph 5.3.3 of the
07 Privatization Agreement. If you could read the
08 paragraph -- I won't read the whole thing out loud, to
09 spare the interpreters, but the paragraph immediately
10 below the bolded section on 5.3.3 that begins:
11 "We highlight that over the course of 2007 ..."
12 (Pause).
13 A. (Interpreted) I have read it.
14 Q. Do you agree with me that as of the date of this report,
15 the Privatization Agency was aware that the percentage
16 of total disposal is decreased for the percentage based
17 on the reduction of the breeding herd from 2007 which
18 was caused by an order of the Ministry of Agriculture.
19 A. (Interpreted) The report of the auditor was such. It is
20 the auditor's report.
21 Q. If we could turn to Exhibit CE-031? I would note that
22 the date of this document is February 25th 2011. If we
23 turn to Exhibit CE-031? It's dated the same day,
24 February 25th 2011, received on 1st March 2011. Have
25 you seen this document before?

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01 A. (Interpreted) I don't know. I cannot say that I have
02 seen it. Perhaps I have in the materials for the
03 Commission, but I can't really say it with certainty
04 that I have seen it.
05 Q. This is the notice that was given to BD Agro of an
06 additionally granted term for fulfilment of contractual
07 obligations, do you see that in the subject line?
08 A. (Interpreted) Yes, I do.
09 Q. Please go to the last page. Do you see the dash lines
10 there? This is the request of the Agency of what
11 BD Agro had to do, do you see that? It alleges,
12 immediately above that, that there is an additionally
13 granted term to submit a report stating whether the
14 buyer has fulfilled its obligations referred to in items
15 5.3.3 and 5.3.4 of the Agreement, as well as the
16 statement relating to the following circumstances; do
17 you see that?
18 A. (Interpreted) Yes, I do.
19 Q. It's not the case that the Agency told the buyer here
20 that if Inex and Crveni Signal simply repaid the money,
21 the Privatization Agency would not terminate the
22 agreement, correct?
23 A. (Interpreted) I apologise, where does it state that? Is
24 it stated here?
25 Q. I am suggesting that what you have just read doesn't

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01 state that, does it?
02 A. (Interpreted) What I have read is an audit report, and
03 I don't know now if we accepted this audit report,
04 I don't know, I wasn't working in the control, and
05 I really couldn't answer this question with certainty as
06 to whether we had accepted this position of the auditor
07 or not, since this was followed by many audit reports
08 that had to do with both items 5.3.3 and 5.3.4.
09 Q. I guess it is my fault, there is some confusion about
10 what the document is that you should have in front of
11 you, which is Exhibit CE-031. It's a letter from the
12 Agency to Mr Obradovic, do you see that?
13 A. (Interpreted) Yes, I do, and it's from 2011.
14 Q. Yes. And it is a notice granting him an additional term
15 for fulfilment of contractual obligations, correct?
16 A. (Interpreted) Yes, it is.
17 Q. And the purpose of this letter is to advise him of what
18 he needs to do in order to be in compliance with the
19 agreement, correct?
20 A. (Interpreted) Yes, correct.
21 Q. I am asking you, and you can take your time and look
22 through the agreement -- through the document, if you
23 need to, but nowhere in the letter does it say to
24 Mr Obradovic that all he has to do is have Crveni Signal
25 and Inex repay the money and the Privatization Agency

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01 won't terminate the agreement, correct?
02 A. (Interpreted) All the time up to the last audit report,
03 in the audit reports by the auditor hired by the entity
04 undergoing privatization to which this entity submitted
05 documentation, said that the obligation from 5.3.4 had
06 not been met. As to 5.3.3, I cannot remember precisely
07 what it said there. But I do not understand your
08 question, what's the point of your question? If Crveni
09 Signal -- if Mr Obradovic had returned the money he had
10 loaned to third parties, would that have been considered
11 as meeting the obligation?
12 Q. It's a little bit broader question than that, but it's:
13 did this letter tell Mr Obradovic that he would fulfil
14 all of his contractual obligations if Crveni Signal and
15 Inex repaid the money?
16 A. (Interpreted) To my knowledge, Mr Obradovic would have
17 met the contractual obligations since he was in breach
18 of item 5.3.4, if he had removed the mortgage or if he
19 had returned the money that he had given as a loan to
20 third parties, since this was in breach of provision
21 5.3.4 of the agreement. So he should have done either
22 one thing or the other, but I believe another witness
23 could tell you much more about this, because I'm really
24 not well-versed in these economic matters, I am
25 a lawyer, and could make mistakes answering this.

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01 Q. I was actually more interested in your legal analysis
02 because of your function in the Agency but I do want to
03 follow up with one point. Do you see at the top of the
04 screen it alleges a violation of 5.3.3, correct?
05 A. (Interpreted) Yes.
06 Q. Payment by Crveni Signal and Inex wouldn't cure
07 a violation of 5.3.3, correct?
08 A. (Interpreted) Yes, but provision 5.3.3 was not a reason
09 to terminate the agreement, it was just 5.3.4.
10 Q. When was the first time you let the buyer know that the
11 Agency was no longer alleging a breach of 5.3.3?
12 A. (Interpreted) I cannot say this with certainty, but
13 I know that I advocated the view that in 5.3.3 it was
14 force majeure, because there was leukosis in the cows,
15 and that the cows had to be culled because the Ministry
16 of Agriculture had asked for this. So in this case, the
17 threshold of 30% had not been exceeded in terms of what
18 the buyer could dispose of throughout the duration of
19 the Agreement, and I didn't attend further meetings of
20 the Commission, 19th June was the last meeting of the
21 Commission that I attended, I didn't attend further
22 meetings, I don't know if any were held. I did not
23 attend the meeting of the Commission where the agreement
24 was terminated but according to my knowledge it was
25 terminated because of 5.3.4, and not 5.3.3.

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01 Q. Right, but my question was slightly different, and you
02 have answered it somewhat because now you are talking
03 about discussions within the Privatization Agency about
04 5.3.3 in 2015, correct?
05 A. (Interpreted) Yes, correct.
06 Q. Which means that from 2011 to 2015, the Agency was
07 continuing to allege a breach of 5.3.3 which is why you
08 needed to discuss it in 2015, correct?
09 A. (Interpreted) Yes, it was stated so in the audit
10 reports, and they never fully stated their opinion as to
11 whether there was a breach there or not.
12 Q. Your witness statement makes no reference to 5.3.3,
13 correct?
14 A. (Interpreted) In my witness statement, I don't make
15 reference to 5.3.3. Yes, in my statement I talk about
16 5.3.4, because 5.3.3 was not the reason to terminate the
17 agreement.
18 Q. If we look at paragraph 13 of your statement, you say:
19 "... the Agency received an opinion from the
20 Ministry of Economy stating that the Agreement should
21 not be terminated since it would not be economically
22 justified."
23 A. (Interpreted) Yes, correct.
24 Q. It is not the case simply that the Agency received an
25 opinion from the Ministry, correct? The Agency

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01 requested the opinion of the Ministry, correct?
02 A. (Interpreted) I cannot remember now whether we had
03 requested an opinion. It's possible that we had
04 requested it. We did not request an opinion only in
05 this privatization, we requested some opinions from the
06 Ministry on many occasions. It's possible that we had
07 requested one in this case, because Mr Obradovic had
08 approached the Ministry repeatedly with letters, with
09 complaints, through meetings, and each time we wanted to
10 know what the position of the Ministry of Economy was.
11 It doesn't mean that we accepted it, and you see that in
12 this case we didn't accept it. As you can see in this
13 case, the Ministry said it was economically justified
14 not to terminate the agreement but we terminated it
15 because the Ministry had taken into account only the
16 economic aspects of the privatization, without taking
17 into account the legal aspects.
18 Q. Before we turn to this opinion, you stated that:
19 "Mr Obradovic had approached the Ministry repeatedly
20 with letters, with complaints, through meetings, and
21 each time we wanted to know what the position of the
22 Ministry of Economy was."
23 You are referring to complaints from Mr Obradovic to
24 the Agency's allegations that he was in breach of 5.3.3
25 and 5.3.4, correct?

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01 A. (Interpreted) I cannot say precisely here, I don't have
02 the letters here in front of me, the letters he sent,
03 but probably yes, because we were insisting all the time
04 on the obligation from 5.3.4 to be met.
05 Q. Let's turn to Exhibit CE-033, please. You have seen
06 this opinion before, correct?
07 A. (Interpreted) Yes, I have seen it.
08 Q. The opening paragraph of the Ministry's opinion
09 references a letter from the Privatization Agency:
10 "... regarding the case of privatization of AD
11 'BD Agro' Dobanovci, requesting further instructions and
12 directions for additional actions ..."
13 Correct?
14 A. (Interpreted) Yes, correct.
15 Q. Does that refresh your recollection that the Agency was
16 the one that asked the Ministry for an opinion in the
17 case of BD Agro?
18 A. (Interpreted) Yes, that's what results from this letter.
19 Q. Why would the Agency need an opinion of the Ministry, if
20 it was a clear-cut case to you?
21 A. (Interpreted) Well, probably because it was a really big
22 entity undergoing privatization, a major agricultural
23 holding for the state, because the aim of privatization
24 was not to terminate agreements, but we tried to keep
25 the agreements going wherever possible, we tried in

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01 every possible way to keep this agreement with
02 Mr Obradovic as well. And we probably approached the
03 Ministry for this reason, but as you can see in the end
04 we didn't act in accordance with the opinion of the
05 Ministry. The Ministry is the supervision authority, it
06 supervised the work of the Agency in terms of the
07 Privatization Law and the Law on the Privatization
08 Agency, and we were not supervised only by the Ministry,
09 we were also supervised by the Government, we had to
10 send, through the Ministry, reports to the Government,
11 reports on our work, and then the Government sent those
12 reports to the National Assembly that had a special
13 privatization committee that discussed all privatization
14 cases.
15 So in every privatization, in every time we needed
16 to terminate an agreement, we tried, very well and
17 taking all the aspects into account, to see whether we
18 could keep a privatization agreement in force or not.
19 Q. Is it your testimony that at the time it requested this
20 opinion from the Ministry of Economy, the Privatization
21 Agency was already convinced that Mr Obradovic was in
22 breach and that the agreement should be terminated?
23 A. (Interpreted) We had granted many deadlines to
24 Mr Obradovic for performing the contractual obligations,
25 primarily the one from 5.3.4. In this way we wanted to

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01 be forthcoming with Mr Obradovic, and we didn't want
02 this agreement to be terminated until we understood that
03 all the possibilities had been exhausted to keep the
04 agreement in force. As long as we believed that
05 Mr Obradovic would honour the agreement, because he was
06 giving us reassurances that he would, that he would pay,
07 that he would return the money, that he would remove the
08 mortgages, we were giving additional deadlines so all
09 this time we were forthcoming with Mr Obradovic.
10 Q. Unfortunately, that didn't answer my question. My
11 question was: at the time the Agency sought the opinion
12 of the Ministry, was the Agency already convinced that
13 Mr Obradovic was in breach and that the Agency was
14 required to terminate the agreement by law?
15 A. (Interpreted) Well, we were aware that 5.3.4 had been
16 violated, and that the agreement could be terminated.
17 All the audit reports say that this obligation from
18 5.3.4 had been violated, and all the reports from the
19 Centre for Control that were sent to the Commission that
20 took the final decision said that the agreement should
21 be terminated, their suggestion was to terminate the
22 agreement. But each time we tried again and again and
23 again, who knows how many times, to give an opportunity
24 to Mr Obradovic to meet this contractual obligation
25 after all, he was aware of what the outcome was, because

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01 he had done that same breach of that same contractual
02 obligation in other privatization cases as well, and he
03 had rectified it there, but in this agreement, he did
04 not do it.
05 Q. You answered that the Agency was of the view that it
06 could be terminated, and my question was whether the
07 Agency was of the view that it was required by law to
08 terminate the agreement?
09 A. (Interpreted) Well, the law is clear. Article 41(1)(3)
10 says that disposal of assets in favour of third persons
11 is a reason to terminate an agreement, but this doesn't
12 mean that the buyer couldn't have met this contractual
13 obligation, and removed this reason for termination. He
14 could have done it, and he had many opportunities to do
15 it, and the Agency really was forthcoming with him on
16 many occasions.
17 Q. Please look at the opinion on the screen. The Ministry
18 says it reviewed "all delivered exhibits, as well as the
19 website of the ... commercial entity", and informed the
20 Agency of the following:
21 "We think that there is no economic justification to
22 terminate the agreement of sale of socially owned
23 capital of the subject of privatization, having in mind:
24 "That the buyer paid the entire amount of the sale
25 and purchase price,

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01 "That he used the funds received from disposal of
02 the property to comply with the obligations of the
03 subject of privatization towards the employees, state
04 creditors and commercial banks, mostly through
05 assignment payments, since his bank account was
06 blocked,
07 "That the stated disposal of the property did not
08 threaten the continuity of business activities of this
09 company,
10 "As well as that the buyer of the capital achieved
11 the highest possible level of organisation of this type
12 of primary agricultural production with the application
13 of the latest methods in the field of primary
14 production."
15 The Ministry never changed its opinion that there
16 was no economic justification for termination of the
17 agreement, correct?
18 A. (Interpreted) No. In their supervision, the Ministry
19 practically said that the Agency should act in line with
20 the law. It did change its opinion in a way, because it
21 took into account everything that the Agency sent in its
22 material, in terms of the fulfilment of contractual
23 obligations or non-fulfilment of obligations by the
24 buyer of BD Agro, but Mr Obradovic had been in breach of
25 5.3.4 before he paid the sale and purchase price.

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01 Q. So your position is that the change in opinion is
02 implied in the April 7th 2015 order issued to the
03 Privatization Agency, correct?
04 A. (Interpreted) No, it wasn't an order, it was just an
05 opinion. An opinion does not bind the Agency, the
06 Agency is a public service that is independent in its
07 work, independent in its decision-making, finances
08 itself, and is not obliged to accept opinions. It
09 accepts opinions when it believes them justified, and
10 purposeful. In this case, it wasn't legally possible to
11 accept this opinion, because that would have introduced
12 a practice that wouldn't have been good for
13 privatization. That would mean that any buyer could pay
14 early, although Mr Obradovic didn't do it early, before
15 the deadline, it was a bit after the deadline, but they
16 could pay after two or three years the price and thus
17 amnesty themselves from meeting the contractual
18 obligations, they no longer perform their contractual
19 obligations.
20 What would that have meant? The aim of
21 privatization wasn't only to sell the socially-owned
22 capital and turn it into private capital; the aim of
23 privatization was also to boost Serbia's economic
24 growth, to have social security, to have more jobs, to
25 foster technological development, and what would we have

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01 done in that way? We would have a new practice where
02 everyone would pay the price after two or three years,
03 they wouldn't invest any more, they would dismiss the
04 workers, they would sell the assets, and then what would
05 the privatization have achieved?
06 Q. Ms Radovic Jankovic, I appreciate the answer but I'm not
07 sure that it was directly on point to my question, so
08 let me ask my question again.
09 The document that you see in front of you concluded
10 that there was no economic justification to terminate
11 the agreement. The Ministry never explicitly
12 subsequently stated that this opinion was incorrect, do
13 you agree?
14 A. (Interpreted) I agree that we did not get an opinion
15 which said "our previous opinion is not valid", I can
16 agree with that. But I can't agree that the Ministry of
17 Economy did not do the supervision over the
18 Privatization Agency work, and list the things that had
19 not been performed in fulfilment of contractual
20 obligation, and then they said the Agency give them an
21 additional term of 90 days within which they can fulfil
22 the obligations that so far have not been fulfilled.
23 Q. Getting back to the document that's in front of you, you
24 say in your statement that this opinion of the Ministry
25 did not address the legal aspects of the problem, ie

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01 whether the legal conditions for termination of the
02 agreement had been met, that's at paragraph 13 of your
03 statement, correct?
04 A. (Interpreted) Yes, correct.
05 Q. The date of this opinion was 30th May 2012. You say it
06 didn't address the legal aspects of the problem, and as
07 a result the Agency sought the opinion of an outside law
08 firm to address the legal aspects of the problem,
09 correct?
10 A. (Interpreted) Yes. We requested an opinion from a law
11 firm which was engaged to do privatization disputes for
12 the Agency, and it was common for our Agency to seek the
13 opinion of the law firm on a specific legal point. We
14 did not accept the opinion of the law firm either,
15 because we were of the opinion that it was not in line
16 with the law. The opinion was based on the provision of
17 the agreement without paying attention to the imperative
18 provision of the law which says what the reasons are for
19 an agreement to be terminated.
20 Q. Let's take a look at the opinion, which is
21 Exhibit CE-034. If the Agency was already convinced of
22 the legal aspects of this, why would it seek the opinion
23 of the Radovic & Ratkovic law firm?
24 A. (Interpreted) I do not understand why we should not have
25 asked. This was not the first time for us to seek their

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01 position on an issue. We often did that. We simply
02 wanted to have several different opinions, several
03 different perspectives, and then the Commission
04 eventually took a decision based on its conscience and
05 the law.
06 Q. You would agree with me that government agencies don't
07 typically spend money on outside law firms to get
08 opinions on things they already have conclusive legal
09 opinions about, correct?
10 A. (Interpreted) I do not agree with you. External legal
11 assistance is often requested. In the Ministry of
12 Economy and in our Ministry as well we often have
13 foreign consultants, and these foreign consultants
14 usually drafted these agreements, and many ministries
15 would retain foreign consultants. This was quite
16 common.
17 Q. As I understand your testimony, the Agency sought an
18 outside legal opinion even though the Agency already was
19 convinced of the legal aspects of this case, correct?
20 A. (Interpreted) Correct. It was not an external firm, it
21 was a law firm which did the work for the Agency, it had
22 already been paid for this type of work, and if I can
23 repeat, this was not the first time that we were asking
24 for an opinion from the law firm.
25 Q. This is a law firm that the Agency trusted, correct?

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01 A. (Interpreted) Yes, it's one of two or three, I can't
02 remember how many exactly there were.
03 Q. Let's take a look at page 3 of the opinion. Under the
04 section marked "Fulfilment of the Agreement", it says:
05 "As mentioned above, the reasons for termination of
06 the agreement are stipulated in the clause 7 of the
07 Agreement and Article 41a of the Law on Privatization."
08 Do you see that?
09 A. (Interpreted) Yes, I can see that.
10 Q. Do you see that the law firm actually did consider
11 Article 41a of the Law on Privatization in arriving at
12 its opinion?
13 A. (Interpreted) Yes.
14 Q. If we look above in the document, it discusses
15 article 5.3.4 and then the underlined text says:
16 "As per this Agreement and the Law on Privatization,
17 violation of this obligation is not sanctioned by
18 termination of agreement."
19 Do you see that? Do you agree with me that the law
20 firm considered both the terms of the agreement and the
21 Law on Privatization and advised the Agency that
22 termination of the agreement is not sanctioned by either
23 the Law on Privatization or the contract terms
24 themselves?
25 A. (Interpreted) I do not agree with the law firm's

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01 opinion. I lost my good voice. I do not agree with the
02 opinion of the law firm that neither the law speaks of
03 this possibility to terminate the agreement, unless it's
04 explicitly stipulated by the agreement, and the law in
05 fact says that, in Article 41a(1)(3), I think there is
06 no need for me to read it again, so by law, it is not
07 possible to dispose of the assets in the way in which
08 these assets were disposed, so to dispose of the
09 property in the way as regulated by article 5.3.4 of the
10 Agreement, and Mr Obradovic, or BD Agro, disposed of the
11 property for the benefit of third parties, and the
12 Privatization Law says one cannot dispose of the
13 property in contravention of the agreement. Therefore,
14 article 5.3.4 cannot be exempted from the group of
15 provisions that are, by force of law, reasons for
16 termination.
17 MS MIHAJ: I am sorry, Mme President, maybe we should ask
18 the witness, does she need a little break?
19 THE PRESIDENT: I was asking myself this and then I thought
20 it was going again fine, but maybe I was wrong. Would
21 you prefer that we take a short break now? We are going
22 to take a break at some point in any event. What time
23 is it? 20 past. Would you prefer, so you can recover
24 your voice?
25 A. (Interpreted) Thank you very much. I think my good

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01 voice, figuratively speaking, is now okay. I don't
02 think we should make a break for me now, but if it's the
03 time for a break, according to the schedule, we can do
04 it. I have certain allergies that are affecting my
05 voice but I'm okay for now, thank you.
06 THE PRESIDENT: Maybe we can carry on a little while and
07 then in about ten minutes or a little bit more, you see
08 where there is a good place in your sequence to
09 interrupt.
10 MR MISETIC: Yes, thank you, Mme President.
11 Let me just stay on this document then, and if we
12 could go to page 5 of the document? I won't spend a lot
13 of time on it, but the law firm Radovic & Ratkovic
14 advised the Agency that the issue of the disposal of
15 cattle was a matter of force majeure, correct?
16 A. (Interpreted) Yes, correct.
17 Q. If we could turn to the final paragraph of the document,
18 the conclusion of the firm was:
19 "... besides the fact that there is no economic
20 justification, there is also no legal basis for
21 termination of the said Agreement on sale of
22 socially-owned capital."
23 It also then cautions:
24 "In that case, harmful consequences for the
25 Privatization Agency and, thus, for the budget of the

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01 Republic of Serbia would be enormous. Besides the
02 repayment of full sale and purchase price plus the
03 appropriate legal default interest, the buyer of capital
04 would also have the right to request (and get)
05 compensation of all the damages."
06 Correct?
07 A. (Interpreted) That is what it says in the opinion
08 drafted by the law firm, but this does not mean that
09 this was the opinion of the Agency.
10 Q. So as of 11th June 2013, the Agency was in possession of
11 an opinion from the Ministry that there was no economic
12 justification and an opinion from the law firm of
13 Radovic & Ratkovic that there was no legal justification
14 for termination, correct?
15 A. (Interpreted) Yes, correct.
16 Q. Who made the decision to ignore these opinions?
17 A. (Interpreted) The final decision was taken by the
18 Commission, based on the supervision conducted by the
19 Ministry upon the proposal of the Centre for the Control
20 of Contractual Obligations.
21 Q. And that occurred in April 2015, correct?
22 A. (Interpreted) Yes, correct.
23 Q. So it took two years after these opinions to get
24 a decision on whether to accept or reject the opinions?
25 A. (Interpreted) Yes, but what you are not mentioning is

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01 the fact that we tried to keep the agreement going. We
02 did not want to see the agreement terminated. We kept
03 giving them additional deadlines, we were trying to keep
04 the agreement effective all the way up until the end,
05 but again, let me repeat, the purpose of the
06 Privatization Agency was to keep as many agreements as
07 possible in effect, including this one, particularly if
08 the case was of major substantial privatizations, and
09 BD Agro was one such case.
10 Q. I would like to ask you just a few questions about that
11 period of two years between the opinions and then the
12 decision of the Ministry. You are familiar, are you
13 not, with the fact that the Ombudsman of Serbia also
14 opened his own investigation into the BD Agro situation,
15 correct?
16 A. (Interpreted) Yes, the Ombudsman did not open his case,
17 he sent a letter to the Privatization Agency asking what
18 was going on in this case, and we responded to the
19 letter, and the Ombudsman practically asked from us to
20 give a decision. He did not suggest as to whether we
21 should issue a positive or a negative decision, he just
22 wanted to have a decision.
23 Q. Let's turn to one such piece of correspondence, this is
24 Exhibit CE-043. This is a letter from the Privatization
25 Agency to the Ombudsman dated November 14th 2014, the

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01 subject is in response to the Ombudsman's letter
02 of October 30th 2014.
03 If you read the first sentence, it says:
04 "In a letter submitted to the Privatization Agency
05 on October 31st, 2014, you asked the Agency to provide
06 the reasons why it did not terminate the Agreement on
07 sale of capital of the privatization subject 'BD Agro
08 AD' ..."
09 Do you see that?
10 A. (Interpreted) Yes, I can see that.
11 Q. It says:
12 "... even though it determined that the Agreement
13 had been breached."
14 Do you see that?
15 A. (Interpreted) Yes, I can see that.
16 Q. It's correct, is it not, that what the Ombudsman was
17 doing was asking the Agency why it wasn't terminating
18 the agreement?
19 A. (Interpreted) Okay, he was asking a question, we gave
20 him our explanation, and he acted within his powers when
21 he asked the Agency, as set by law, and he would be
22 normally approaching other institutions with similar
23 questions on some other issues, and he asked us this,
24 and we explained why we had not. But the opinion of the
25 Ombudsman does not have a binding nature on us.

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01 Q. Let us look at the document as to the reasons you
02 provided to the Ombudsman for not terminating the
03 agreement, and if we could look at page 3 of the
04 document? When I say "you", I mean the Agency. If you
05 look at, in the English, the third paragraph from the
06 top of page 3?
07 A. (Interpreted) Isn't it page 1 where this is discussed,
08 where there is the list of reasons for the termination?
09 Are we looking at that? I can't see any mention of
10 those on page 3, so can we check the page, please?
11 Q. We can talk about the first point on page 1 that you
12 have highlighted, which is:
13 "There are several reasons why the Agency did not
14 render a decision on termination of the agreement ..."
15 And the first point is:
16 "Unresolved legal issue regarding fulfilment of the
17 contractual obligations."
18 Right?
19 A. (Interpreted) Yes, that's what it says here.
20 Q. If you go to page 3, there is the detailed discussion of
21 what those unresolved legal issues are. Just so you
22 understand, I'm talking about page 3 in the English
23 which might be different in the Serbian version.
24 A. (Interpreted) That's what confused me.
25 Q. So if you read through that, it says in that paragraph

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01 that begins:
02 "Even though the Agency asserted that the conditions
03 were met for the termination of the Agreement, in this
04 concrete case, besides the opinion of the competent
05 Ministry, that there was no economic justification for
06 termination of the Agreement, it turned out that the
07 legal basis for termination of the Agreement was also
08 disputed, not only in the sense of fulfillment or
09 failure to fulfil obligations from Articles 5.3.3 and
10 5.3.4 of the Agreement, but also in the validity of the
11 privatization agreement, that is, expiration of terms
12 for fulfilment of Buyer's obligations at the moment of
13 full payment of the purchase price, as stipulated by the
14 Agreement."
15 It then goes on to say the violation of
16 article 5.3.3 occurred as a result of force majeure, and
17 then it says, in that same paragraph, last sentence:
18 "Violation of obligation referred to in
19 Article 5.3.4 of the Agreement (encumbering with pledge
20 the fixed assets for third party benefit) is not
21 stipulated in the Privatization Agreement as a condition
22 for termination."
23 The next paragraph says:
24 "If the Agreement was to be terminated regardless of
25 all of the aforementioned circumstances, the Buyer would

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01 most certainly initiate a court procedure against the
02 Agency in order to protect his rights, which could have
03 as a consequence the repayment of the sale and purchase
04 price in the amount of €5.5 million in the dinar counter
05 value plus the appropriate interest, which would as
06 a consequence obligate the budget of the Republic of
07 Serbia, to which account the money from sale of capital
08 is transferred ..."
09 And then the final two paragraphs of that page:
10 "The factual and legal complexity of this situation,
11 possible consequences, as well as the need for taking
12 a stand based on interpretation of privatization
13 regulations and regulations about contract and torts,
14 are precisely the reasons why the Agency, in line with
15 its legal and contractual authorizations, was not able
16 to make a decision in this case without previously
17 obtaining an opinion from the Ministry of Economy.
18 "In line with this, the decision was made not to
19 take into consideration the case of 'BD Agro' AD
20 Dobanovci before the receipt of the response of the
21 Ministry, that is, the Conclusion of the Government."
22 Ms Radovic Jankovic, it's correct, isn't it, what it
23 says here, that this was a factually and legally complex
24 situation for the Agency and that's the reason the
25 Agency never took a decision on the matter?

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01 A. (Interpreted) It is a fact that these things existed,
02 stood before the Agency, the unresolved legal issue is
03 a fact, because there were two opinions not to terminate
04 the contract, then we had the opinion that it should be
05 terminated, there were differing points of view. There
06 were a lot of discussions and considerations regarding
07 this matter, so all of the things stated here are true,
08 but the Agency had a uniform practice towards all
09 entities undergoing privatization, therefore we treated
10 this entity the same as the other ones.
11 MR MISETIC: Mme President, I am going to go to a different
12 topic now, so this might be a good time for the break.
13 THE PRESIDENT: Absolutely. Do you have an estimate how
14 much longer your cross-examination will be?
15 MR MISETIC: I will give you a better estimate when I come
16 back from the break. I will try to shorten it up.
17 THE PRESIDENT: That is usually what happens, absolutely.
18 Because we had envisaged possibly to hear Ms Vuckovic
19 after this witness, is this still a possibility? It may
20 be premature to decide it now, but just making sure that
21 it's still a possibility.
22 MS MIHAJ: Yes, of course.
23 THE PRESIDENT: She is available and it's fine on your side
24 as well. Fine, then we can take a 15-minute break now,
25 and during this time, Ms Radovic, I should ask you not

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01 to speak to anyone about the facts of the case, about
02 your evidence, and the easiest way to avoid this is
03 simply not to speak. Of course, you can move around and
04 get something to drink other than the water.
05 (3.35 pm)
06 (A short break)
07 (3.50 pm)
08 THE PRESIDENT: So we are ready to continue, Ms Radovic, you
09 are ready too?
10 A. (Interpreted) Yes, I am, and I hope I will sound better,
11 I was quiet for a while, it seems to be better to me.
12 THE PRESIDENT: Mr Miseti?
13 MR MISETIC: Thank you very much, Mme President. In terms
14 of time, it depends, I think, on some of the answers,
15 and obviously the interpretation is slowing things down
16 a little bit but I hope to finish before 5.00, in which
17 case we would be able to start the next witness, if we
18 are going until 6.00.
19 THE PRESIDENT: We will see when we get there what time it
20 is, and what we want to do.
21 MR MISETIC: Thank you, Mme President.
22 Ms Radovic Jankovic, I would like to turn your
23 attention now to the meeting of the Privatization Agency
24 of 23rd April 2015. You know, I believe, that you were
25 a participant in that discussion, correct?

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01 A. (Interpreted) You are referring to the meeting of the
02 Commission in charge of monitoring the performance, that
03 is the execution of agreements, then yes, it is correct.
04 Q. I am going to call up Exhibit CE-768 which is
05 a transcript of that discussion. Have you reviewed the
06 transcript and/or audio of the meeting prior to this
07 arbitration hearing?
08 A. (Interpreted) Yes, I have reviewed the transcript.
09 Q. If we could first of all look at the cover page, it
10 confirms who the persons were who were present. It
11 includes Vesna Paunovic, Saša Novakovic, Slavica
12 Tanasijevic, Branka Jankovic, that would be you, and
13 then two persons who are not members of the Commission,
14 including Julijana Vuckovic, and then Milan Lazic is not
15 present. Could you tell us which members of the
16 Commission were appointed by the Ministry and which were
17 appointed by the Agency?
18 A. (Interpreted) All members of the Commission, the new Law
19 on Privatization was in force back then, so all of them
20 are appointed by the Ministry. Before that, the
21 Commission was an internal body, as an auxiliary body of
22 the Agency's director, and it included only employees of
23 the Privatization Agency, so all of the people you
24 mentioned here, including myself, were appointed by the
25 Minister of Economy and Privatization. I can say that

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01 all of them were not from the Ministry of Economy and
02 from the Agency, some of them were also from the
03 Ministry of Finance and Ministry of Labour and
04 Employment.
05 Q. Can you tell us which members, if you recall, were from
06 the Ministry of Finance and from the Ministry of Labour?
07 A. (Interpreted) I will attempt to recognise the names.
08 Mme Paunovic I believe came from the Ministry of
09 Economy. Mr Novakovic, possibly from the Ministry of
10 Finance. Slavica Tanasijevic from the Privatization
11 Agency, myself from the Privatization Agency. The rest
12 from the Agency, they had the position of expert
13 assistants, they were assisting the Commission, and
14 I believe that Mr Milan -- I actually cannot remember,
15 he could have been from the Ministry of Finance, he
16 could have also been from the Ministry of Labour and
17 Social Issues. Many years have passed since I have been
18 there.
19 Q. If we could look at page 2 at the bottom in the English
20 and my colleague Sara is able to locate the citations in
21 the Serbian version for you.
22 There at the bottom, I believe the speaker is
23 Ms Vuckovic, she says:
24 "Bearing in mind that all other obligations were
25 fulfilled at the time, the Commission took a standpoint

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01 to ask for the opinion of the competent ministry, since
02 this was the buyer's only remaining obligation ..."
03 And I believe if you look in the paragraph above,
04 the "this" refers to article 5.3.4.
05 If you look at the paragraph above, the paragraph
06 that starts:
07 "First of these provisions, 5.3.3 ..."
08 It says:
09 "... 5.3.3, was prescribed as a basis for
10 termination of the agreement, and the other one, which
11 refers to pledges, in accordance with the agreement [and
12 I believe that refers to 5.3.4] was not prescribed as
13 a basis for termination of the agreement, although
14 article 41a of the Law on Privatization, which is
15 applicable on these agreements, prescribes that an
16 agreement may be terminated in case of explicitly listed
17 violations of contractual obligations and, in the last
18 item of the article, it prescribes it may be terminated
19 in other cases as prescribed in the agreement."
20 Do you see that?
21 A. (Interpreted) Yes.
22 Q. Did you understand Ms Vuckovic there to be saying that
23 termination under Article 41a of the Law on
24 Privatization would be based on explicitly listed
25 violations of contractual obligations?

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01 A. (Interpreted) I really wouldn't like to go into
02 interpreting the statements of Mme Vuckovic. You will
03 be given an opportunity to hear her statement, and
04 I prefer myself not to interpret her words, if you
05 agree.
06 Q. That's why I was careful to ask you how you understood
07 what she said at that meeting, if you recall.
08 A. (Interpreted) I understood it within the meaning of the
09 law. The law enumerates the cases when an agreement may
10 be terminated. There is also a general part of the
11 provision which says that it can be also terminated in
12 other cases stipulated in the agreement.
13 Q. That's what she said at the end, but there's a part in
14 there where she says that the law "prescribes that an
15 agreement may be terminated in case of explicitly listed
16 violations of contractual obligations". Did you not
17 understand that to mean that under Article 41a, the
18 agreement could be terminated for violations that are
19 listed as violations in the agreement?
20 A. (Interpreted) According to my opinion, the agreement may
21 be terminated on the basis of provisions of the
22 agreement which are contrary to the imperative provision
23 of the law, regardless of whether they are enumerated
24 under item 7 of the agreement or not.
25 Q. I am going to show you a different quote here, and first

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01 I am going to show you something that Ms Vuckovic said,
02 and then I am going to play for you something that is
03 said by someone else at the meeting.
04 On page 4, in the middle of the page Ms Vuckovic
05 says:
06 "If this disposal of shares is permitted, and the
07 buyer is, I repeat, entitled to this in accordance with
08 the agreement, generally the Agency would no longer be
09 in a contractual relation with someone and you would no
10 longer be able to take measures against the contracting
11 party ..."
12 Do you see that?
13 A. (Interpreted) Yes.
14 Q. Then Ms Vuckovic says, on page 11:
15 "Well because ... So, the agreement prescribes that
16 the pledge is deleted once it pays the purchase price,
17 and not when it fulfils its obligation."
18 And then someone says:
19 "But the agreement also prescribes that it is
20 prohibited from selling, like, selling these, that
21 is ...
22 "Julijana Vuckovic: That is right, it violated one
23 of the provisions of the agreement, and the release of
24 the pledge is not tied to the fulfilment of contractual
25 obligations, rather it is tied only to the payment of

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01 the purchase price, which was clearly done carelessly in
02 the agreement."
03 Now I would like to play an audio on the same point.
04 The person on the audio in the transcript is referred to
05 as "Female voice 2". I would ask you to listen
06 carefully to the voice, because I would ask you to
07 identify, if you can, who the voice is of.
08 (Recording in Serbian played)
09 "Female voice 2: In this context, will it have
10 problems, objective problems, with acting in accordance
11 with our orders? This is the first and the second is
12 now the relation between the agreement and the proposal
13 of a decision regarding these ... pledge against shares,
14 because, in accordance with the agreement, the pledge
15 should be deleted, practically, when it pays the
16 purchase price which it did pay."
17 A. (Interpreted) This is my voice, yes, these are my words.
18 Q. In the transcript, you are "Female voice 2", correct?
19 A. (Interpreted) It is correct.
20 Q. Let me play you another clip of you, and this is an
21 audio clip but it is also on page 10 of the English
22 transcript:
23 "Saša Novakovic: And the agreement on purchase of
24 capital, it stated that the buyer can dispose of the
25 shares, right? Freely.

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01 "Female voice 2: That it can once it had paid the
02 purchase price. Which it did. But if we were to decide
03 like this, at least in my opinion, I would not be
04 inclined to, although I have a problem with the
05 provision of the agreement such as it is, if we were now
06 to release this pledge he would be free to dispose of
07 the shares freely, but then it is a problem, so I would
08 rather advocate that we postpone deletion of pledge
09 until execution, that is until expiry of this deadline
10 until which it had not fulfilled its contractual
11 obligations we have ordered it to fulfil, that is, that
12 is not us, but the minister ordered it. And we will
13 confirm such decision (laugh). Now, I just don't know,
14 they can enter into certain dispute and we are in
15 violation of contractual ..."
16 Ms Radovic Jankovic, it's a fact that at this
17 meeting, you acknowledged that the buyer was entitled to
18 have the pledge deleted contractually, correct?
19 A. (Interpreted) According to the agreement, according to
20 addendum 1 of the agreement governing the pledge, the
21 buyer had the right to have the pledge returned to him
22 after five years or after the pay-out of the price.
23 Those are the facts. Practice is something else,
24 however.
25 Q. In the second clip that we heard, you said that he can

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01 dispose of the shares freely once he has paid the
02 purchase price, but then you recommend not deleting the
03 pledge until after the deadline expires, correct?
04 A. (Interpreted) It is correct. I have made that
05 statement, first of all, because we did not perform our
06 obligation, because Mr Obradovic has not performed his
07 obligation, it's a matter of reciprocity really, pure
08 reciprocity. Secondly, had we removed the pledge, then
09 the buyer would have been free to dispose of the shares,
10 he could have transferred them to whomever, and he would
11 not perform his contractual obligations, because the
12 provision governing the pledge was formulated for bona
13 fide buyers. In more than 90 and something per cent of
14 cases, for sure, the buyer was paying out the price as
15 the final contractual obligation, meaning the buyer had
16 already performed all contractual obligations, and then
17 the buyer would afterwards, in the sixth year or
18 whatever the contract may have stipulated, pay out the
19 price.
20 However, the situation here was different.
21 Mr Obradovic had not performed his contractual
22 obligation, but he had paid the price, the purchase
23 price. Therefore, if we were to allow that the payment
24 of purchase price ends the term of the agreement and
25 that all contractual obligations are deemed fulfilled by

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01 this payment, which is not possible, the entire
02 privatization process would be ruined, and I believe
03 I have said this before, but let me repeat it, in that
04 case we would start a new practice regarding the buyers;
05 the rest of the buyers, the other buyers would consider
06 that once they pay out the price, that they fulfilled
07 fully their contractual obligations, we would return the
08 pledge to them, and they would not fulfil the rest of
09 the contractual obligations and do whatever they wanted
10 to with the assets.
11 Q. Just to clarify, Ms Radovic Jankovic, you did not say
12 any of that at the meeting, correct?
13 A. (Interpreted) What do you mean, I haven't said any of
14 these things at the meeting? I said these things at the
15 meeting.
16 Q. Well, you did not talk about practice in other cases
17 that would allow you to legally not release the pledge,
18 correct?
19 A. (Interpreted) Actually, let me quote:
20 "If we were to delete the pledge he would be able to
21 freely dispose of the shares and that would constitute
22 an issue for us. I would be in favour of postponing the
23 deletion of the pledge until the performance or until
24 the expiry of the term by which he needs to fulfil his
25 obligations."

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01 Maybe I didn't go entirely into details there but
02 this has been discussed by the Agency so many times
03 before.
04 Q. Let me take you back to page 4. Just a couple of
05 questions earlier you mentioned that there was
06 a practice of not releasing the pledge, I believe,
07 correct me if I misunderstood you. Was there a practice
08 of not releasing the pledge if the buyer had not
09 fulfilled his last contractual obligation?
10 A. (Interpreted) Yes, there was a practice in the Agency,
11 and I said why that practice existed, because releasing
12 the pledge would render the process of privatization
13 pointless, and I am repeating here, Mr Obradovic had not
14 met his contractual obligations, and in this case we did
15 not meet our contractual obligations, that's pure
16 reciprocity.
17 Q. I cited for you several times where Ms Vuckovic stated
18 that "release of the pledge is not tied to the
19 fulfilment of contractual obligations, rather it is tied
20 only to the payment of the purchase price"; you did not
21 correct her statement there, when she made it during the
22 meeting, correct? You didn't challenge it?
23 A. (Interpreted) No, I didn't challenge it.
24 Q. You made a comment, if we could go back to page 10, the
25 last sentence you said there, "Female voice 2" at the

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01 top, after you suggest that you don't release the pledge
02 and wait for the expiry of the deadline, you say:
03 "... we have ordered it to fulfil, that is, that is
04 not us, but the minister ordered it. And we will
05 confirm such decision ... Now, I just don't know, they
06 can enter into certain dispute and we are in violation
07 of contractual ..."
08 Now, it doesn't complete the sentence, but what
09 I understand there to mean is that you are in violation
10 of your contractual obligations under the pledge
11 agreement by not releasing the pledge, correct?
12 A. (Interpreted) I am not challenging that the agreement
13 said the pledge should be released once the purchase
14 price has been paid, but this implied that the other
15 obligations had been met by the buyer too, which in this
16 case had not been done, and this wasn't the first time
17 that we didn't release a pledge, although the purchase
18 price had been paid.
19 Q. If you had a right not to release the pledge because you
20 felt that he had an obligation to first complete all his
21 contractual obligations, then you wouldn't have said,
22 "We are in violation", right?
23 A. (Interpreted) I was the Chair of the Commission, this
24 was a completely new Commission, those people were new,
25 and I had to report to them what had been written and

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01 how it had been written, but I also hinted at what might
02 happen and what the consequences would be, and I think
03 that Ms Vuckovic says somewhere there what the practice
04 of the Agency was. This is why I suggested not to do
05 anything for the time being, until a supervision
06 decision was taken.
07 Q. If I can turn your attention to pages 4 to 5, again in
08 the English, Ms Vuckovic mentioned:
09 "We have mentioned daily communications we are
10 receiving from the employees and trade unions, wherein
11 they are requesting urgent measures to be taken and
12 stating that they generally have big problems concerning
13 business operations, in particular maintaining
14 production and keeping the cattle alive, which is the
15 core business activity of the subject of privatization."
16 Were you aware that the Agency was receiving daily
17 communications from employees and trade unions?
18 A. (Interpreted) Those messages did not reach me personally
19 because it wasn't in my area of responsibility, but
20 I learned, at Commission meetings, that this entity
21 undergoing privatization had been almost destroyed. Our
22 obligation was to follow a social programme during two
23 years. We sent all these letters to the competent
24 authorities, the prosecutor's office and the Ministry of
25 the Interior, all those letters from the trade unions.

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01 Q. And the employees and trade unions had been sending
02 letters for years to the Agency about BD Agro, correct?
03 Do you know that?
04 A. (Interpreted) As I said, I am not quite familiar with
05 this because it was not my official duty to receive
06 those, except for what I saw at Commission meetings, but
07 the Agency, when it comes to these complaints we
08 received, those were actually complaints about unlawful
09 operations in this entity undergoing privatisation, and
10 we sent this to the competent authorities for further
11 actions.
12 Q. Are you aware of cases where employees of the Agency
13 were wrongfully arrested and investigated on the basis
14 of allegations brought by employees' groups and trade
15 unions?
16 A. (Interpreted) I do know that certain employees of the
17 Privatization Agency were arrested but I don't know if
18 it was based on allegations by groups of employees.
19 I don't think this was connected with this entity
20 undergoing privatization, I think it was different
21 entities.
22 Q. If I could draw your attention to --
23 A. (Interpreted) I apologise, here you have the answer why
24 the Agency really took a long time to think about each
25 of its decisions, because it was all the time supervised

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01 by the prosecutor's office and the police and all the
02 other competent authorities, we had to be conscientious
03 in our decision-making, and we had to have uniform
04 practice in dealing with entities undergoing
05 privatization.
06 Q. Let me turn your attention to Exhibit CE-895. This is
07 a case where Ms Vuckovic was arrested by the prosecutors
08 in a different privatization. Were you aware of this
09 case?
10 A. (Interpreted) I was aware that Ms Vuckovic was arrested,
11 and of course she was released, and there was no
12 indictment, but unfortunately she was in prison and
13 suffered all the moral and other forms of damage that
14 she could have suffered.
15 Q. She was wrongfully accused, right? She was wrongfully
16 suspected, I should say.
17 A. (Interpreted) Yes, she was wrongfully suspected.
18 Q. In this article, the paragraph that begins:
19 "At that time, the labour union of Azotara employees
20 warned all public authorities, the police, the
21 judiciary, the ministries, the Privatization Agency,
22 that a state-owned company was being robbed and that
23 part of the factory was being sold without a permit.
24 No one reacted then and the plant was exported."
25 So actions of employees and unions were a frequent

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01 occurrence in many privatizations, correct? Protests,
02 allegations, et cetera.
03 A. (Interpreted) I do not understand what you want me to
04 answer.
05 Q. A poorly phrased question. Are you familiar with the
06 fact that employees of the Privatization Agency were
07 often subjected to false allegations by employee and
08 trade union groups?
09 A. (Interpreted) Yes, I am familiar, those were false
10 allegations.
11 Q. If we could turn now to a statement issued by the
12 Privatization Agency on 25th April 2012, and this is
13 Exhibit CE-897, this is from the website of the
14 Privatization Agency, and a release was issued to note
15 that Ms Vuckovic had been released from custody, and
16 first of all, have you seen this release before? Did
17 you maybe participate in its drafting, as a legal
18 adviser to the Director?
19 A. (Interpreted) No, I don't think I took part in its
20 drafting. I don't really remember. Unfortunately,
21 Julijana Vuckovic was not the only employee of the
22 Agency who was arrested. Many of our colleagues got
23 arrested. So I can't really recall either this text or
24 what it said. These are really difficult things for me,
25 and difficult for me, hard for me to talk about them.

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01 Q. Well, I want to actually follow up on your point that
02 many of your colleagues were arrested. If you could
03 look at the third paragraph of the Agency's statement
04 there, it says:
05 "We emphasize that this is not the first time that
06 the Agency, or its employees, although politically
07 neutral, have been publicly abused and labeled as part
08 of corruption and organized crime in Serbia. It is
09 unacceptable for the employees of the Agency to be
10 permanently exposed to malicious public and undocumented
11 commentary of their work, and used as media baits in the
12 pre-election campaign aimed at creating a negative image
13 of the privatization process in public."
14 Are you familiar -- I guess, following up on what
15 you said about many of your colleagues being arrested,
16 were you aware of this climate at the Privatization
17 Agency at the time you worked there?
18 A. (Interpreted) The topic of privatization is very
19 interesting for politics, and it was used a lot in
20 politics. But I am not a politician. I was
21 a professional for the work I performed, and I would not
22 want to comment on this, if you allow me.
23 Q. Let me go back to the meeting on 23rd April, if we could
24 go to page 11 of that document, which again is
25 Exhibit CE-768. Again, I started with this earlier,

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01 it's Ms Vuckovic at the top that says:
02 "That is right, it violated one of the provisions of
03 the agreement, and the release of the pledge is not tied
04 to the fulfilment of contractual obligations, rather it
05 is tied only to the payment of the purchase price, which
06 was clearly done carelessly in the agreement."
07 Then she says:
08 "Now, the new law rectifies this somewhat and it
09 prescribes that the certificate on deletion of the
10 pledge and fulfilment of contractual obligations is
11 issued once all obligations are fulfilled, and not only
12 payment of the price."
13 Do you see that?
14 A. (Interpreted) Yes, I do see it.
15 Q. What she is saying there is under the new law, you
16 rectified this situation where now the release on the
17 pledge would only be released after the fulfilment of
18 the final obligation, correct?
19 A. (Interpreted) Yes, correct. This law corrected it, and
20 it said that the pledge is released once the contractual
21 obligations had been met, and not when the purchase
22 price had been paid, which was logical, and which was
23 the result of our practice.
24 Q. But under the old law that was not the case. That's why
25 an amendment needed to be passed, correct?

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01 A. (Interpreted) But the old law, as far as I remember, did
02 not deal with this issue of pledge. It seems to me that
03 the pledge was only an issue of the agreement. I cannot
04 recollect this precisely. And then the new law included
05 this as a statutory provision. I really cannot remember
06 this now, but it seems to me that the old law did not
07 deal with pledges.
08 Q. It's fair to say, you would agree with me, that
09 BD Agro's Privatization Agreement was governed by the
10 old law, not the new law, correct?
11 A. (Interpreted) Yes, it was concluded under the old law,
12 and the provisions of the new law said that an agreement
13 was to be terminated in line with the provisions of the
14 old law.
15 Q. If we can scroll down now, and following up on what we
16 discussed and where you said that many of your
17 colleagues had been arrested and I believe you also said
18 that you were under the scrutiny of the prosecutor's
19 office and other institutions in your work, the
20 conversation continues, and it says:
21 "And that is it and we are now between a rock and
22 a hard place because on the one hand we have an
23 obligation in accordance with the agreement, and on the
24 other hand the consequences of this is clear to you.
25 "Female voice 4: And when did it pay the purchase

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01 price, in 2013?
02 "Julijana Vuckovic: No, the sixth instalment was
03 paid in April of ... 2011.
04 "Female voice 2 [that is you]: I don't know how we
05 could, we could not regulate this to cover both things.
06 "Female voice 3: If we consciously give it to him
07 now not even God could cleanse us."
08 You understood the dilemma of why you were between
09 a rock and a hard place, according to Ms Vuckovic, was
10 on the one hand you had an obligation and on the other
11 hand you were under the scrutiny that you referenced
12 earlier in your testimony, from labour unions, employee
13 groups, the prosecutor's office, the police, et cetera?
14 A. (Interpreted) Yes, was that a question?
15 Q. Yes, that's what that meant, being between a rock and
16 a hard place and only God could cleanse you?
17 A. (Interpreted) No, that's not what it meant. We took our
18 decisions independently, after a lot of analysis, and
19 from different angles, in terms of different
20 consequences, what would happen if, and that's how we
21 established our practice. This practice changed over
22 time with more experience, we adapted our practice to
23 the new conditions. We practically started from
24 scratch. The first privatization in 2001, we don't
25 count the one that had happened many years before,

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01 started from scratch. We didn't have experience, we
02 didn't have any rules, nothing existed, and we built it,
03 step by step.
04 Q. Ms Radovic, I'm going to take you to what happened
05 immediately after this meeting, and that is
06 Exhibit CE-348.
07 If you look at the heading, letter dated April 28th
08 2015, from the Privatization Agency to Mr Obradovic, and
09 if you look at the signature page on page 3, that's your
10 document? Did you prepare it?
11 A. (Interpreted) I would need to check the document first,
12 I can't recognise this. In principle, I don't believe
13 I drafted it alone, it was probably drafted by other
14 employees, people who were experts in this, and I had
15 the authority to sign the document. Of course, before
16 signing a document I normally read and analyse the
17 document.
18 Q. If you look at the document, again, which is one you
19 signed, on page 2, if we scroll to the top of the page,
20 first it references a notification on subsequently
21 granted time of November 9th 2012, do you see that?
22 So this was the first notice of subsequently granted
23 time requesting compliance since November 9th 2012,
24 correct?
25 A. (Interpreted) Yes, correct.

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01 Q. So almost two and a half years passed between the time
02 the Agency issued one notice, and extension of time, and
03 then this one; can you tell the Tribunal why it took two
04 and a half years for the Agency to issue a new notice?
05 A. (Interpreted) As you can see, in 2012 the last deadline
06 was set for Mr Obradovic, and he had not fulfilled his
07 obligations. In 2013, the Ministry of Economy started
08 supervising the Privatization Agency, and this decision
09 on the results of supervision was received by us in
10 2015. And that is why this letter was made then, after
11 supervision had been conducted.
12 However, in the meantime, there had been different
13 events, as you can see, there were many documents, huge
14 documentation that was produced by the Agency in this
15 meantime. So we did not just sit and remained silent,
16 we worked.
17 Q. Looking at your letter, could you please explain -- let
18 me first say, it says:
19 "... the Buyer needs to do the following:
20 "Fulfil the obligation from Articles 5.3.3 and 5.3.4
21 of the Agreement ..."
22 Right? That was the one that was contained in the
23 notice of -- sorry:
24 "Fulfil the obligations [contained in] Articles
25 5.3.3 and 5.3.4 of the Agreement ... [and] submit

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01 evidence that: all payments from the sale of fixed
02 assets have been received and used for the needs of the
03 Subject; all burdens have been removed and all other
04 security instruments for third parties have been
05 returned; all burdens registered on no grounds have been
06 removed, and all loans have been returned that were
07 given by the Subject to third parties from credit
08 resources secured by burdens on the Subject's assets."
09 Do you see that? You were writing to Mr Obradovic
10 saying that all of those things needed to be done in
11 order to be in compliance, correct?
12 A. (Interpreted) Yes, I can see that. I signed this as the
13 President of the Commission, this was the conclusion of
14 the Commission following the meeting held on 23rd April
15 2015.
16 Q. Now if we go to the next meeting of the Commission,
17 which was on 19th June 2015, and this is Exhibit CE-770,
18 if we go to page 6, it says:
19 "... personally I think that the disposal [this is
20 now referencing 5.3.3] was not in excess because it was
21 a case of force majeure. What will be our final ... or
22 rather the Commission's final position. I may have
23 prejudiced it a bit at this moment and presented my
24 opinion, but it really is not logical to me for us to
25 impose obligations on anyone or terminate the agreement

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01 for disposing of assets in excess, and in reality it was
02 force majeure."
03 Do you see that?
04 A. (Interpreted) Yes, I can see that.
05 Q. And then nevertheless, four days after this discussion,
06 Mr Obradovic received another notice, and if we could
07 take a look at that, CE-351, again this is a letter to
08 Mr Obradovic from the Privatization Agency and I would
09 ask you to look again at the signature page. Is that
10 your document?
11 A. (Interpreted) Yes, it is.
12 Q. It's a short document. Can you tell us whether you
13 prepared it?
14 A. (Interpreted) No, I am not the one who drafted
15 documents. The same goes for the previous one.
16 I signed it as the President of the Commission. The
17 expert assistants for the control of agreement
18 performance normally drafted documents, and they drafted
19 documents based on the conclusions of the Commission.
20 Q. If we go to the second page, number 7, it says what
21 Mr Obradovic has to do by July 27th, and the first point
22 is:
23 "Provide unequivocal statement on the performance of
24 the obligations of the Buyer referred to in
25 Article 5.3.3 of the Agreement, concluding with April

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01 8th, 2011."
02 Can you explain why the Commission was insisting on
03 5.3.3 even though in your discussions you all were aware
04 that it was the result of force majeure?
05 A. (Interpreted) Yes, we did say so, and I presented this
06 as my opinion, I share it with the Commission members.
07 However, we must have the auditor's report. It's the
08 auditor who needs to say that this threshold had not
09 been exceeded, even if it was the case of force majeure,
10 to take into account force majeure, and all our reports
11 were based on auditor's reports. I can't tell you much
12 about it, because I did not receive those auditor's
13 reports. I would normally receive parts of auditor's
14 reports that were presented as material for the
15 Commission meetings, but I am sure Ms Vuckovic can tell
16 you more about it. This simply was not the area of my
17 work.
18 Q. The next bullet point there of what Mr Obradovic was
19 being asked to do:
20 "Provide a statement on performance of the
21 obligations ... referred to in ... 5.3.4 ... and confirm
22 that all encumbrances were deleted and all other
23 security instruments for the obligations of third
24 persons were returned, burdens registered without basis
25 were deleted, as well as that all the loans given by the

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01 Subject to third persons from the loan assets secured by
02 encumbrances on the property of the Subject are
03 returned."
04 Correct?
05 A. (Interpreted) Yes.
06 Q. That meant all of those things had to be done in order
07 to be in compliance with the agreement from the Agency's
08 perspective, correct?
09 A. (Interpreted) Yes, of course. He had to remove all
10 pledges that he had placed for the benefit of third
11 parties on the assets -- actually, for the needs of
12 third parties, because the agreement was saying that he
13 could place burdens on the privatization subject's
14 assets for the needs of the privatization subject only,
15 and for the needs of its regular operation. He could
16 burden his own assets, but before that he needed to
17 obtain the approval of the Privatization Agency, this is
18 what the agreement said, and Mr Obradovic never required
19 such a consent or approval.
20 MR MISETIC: Mme President, may I just have a moment to
21 consult with my colleagues?
22 THE PRESIDENT: Sure.
23 MR MISETIC: Thank you. (Pause).
24 Ms Jankovic, thank you very much for your time in
25 answering my questions. Mme President, that concludes

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01 our cross-examination.
02 THE PRESIDENT: Thank you.
03 A. (Interpreted) Thank you.
04 THE PRESIDENT: Any questions in re-direct?
05 MS MIHAJ: No, Mme President, thank you.
06 THE PRESIDENT: Fine. Do my colleagues have questions for
07 Ms Radovic? Yes, please go ahead.
08 Questions from the TRIBUNAL
09 MR VASANI: Good afternoon. Ms Vuckovic was not a member of
10 the Commission, as I understand, she was invited to the
11 Commission meeting, is that correct?
12 A. (Interpreted) Ms Vuckovic was the director of the Centre
13 for Control of the Performance of Obligations, and she
14 had to attend all Commissions ex officio, and she was
15 the reporter to the Commission members.
16 MR VASANI: But on the Commission, is she considered
17 subordinate to you, equal to you, superior to you? Or
18 is there no such hierarchy?
19 A. (Interpreted) No, there was no hierarchy. She was
20 someone who had to report, she did not have the voting
21 right with respect to the Commission decisions, but she
22 was there to give us all the information on a specific
23 case that we were working on.
24 MR VASANI: Thank you, that's helpful. If we could go to
25 your witness statement, please, at paragraph 11, you

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01 talk about receiving an opinion from a law office, and
02 then you said at the end:
03 "[We] concluded ... such opinion in its key parts
04 was not in accordance with the then applicable Law on
05 Privatization."
06 What did you mean by that statement?
07 A. (Interpreted) I think I have already explained, so let
08 me repeat, it's because the Law on Privatization, as the
09 reason for termination, stipulated the disposal of
10 assets or property of the company whereas in the opinion
11 of the law firm, they looked at the article of the
12 agreement which discussed the disposition of the assets,
13 disposition of assets occurred in practice, and they did
14 not apply the imperative provisions of the law. In
15 other words, in this opinion of the law firm, the law
16 firm did not pay attention to the explicit provision of
17 the law which prohibits disposition of company's
18 property.
19 Was this clear enough or do I need to clarify? The
20 law has supremacy over an agreement, and that is why we
21 always stuck to the law for issues that were different
22 than what was happening in practice.
23 MR VASANI: Yes, and on that note, I understood from your
24 exchange with counsel that the Law on Privatization
25 changed to take care of potential mismatch between the

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01 pledge and the obligations, so that now obligations and
02 pledge only lift simultaneously, and you had said that
03 prior to that change in law, there was a practice to, in
04 essence, as I understood it, accomplish the same thing.
05 Before the change in law, how do you see that
06 practice with -- how did it marry with the law in force
07 at that time, before the change in law?
08 A. (Interpreted) The Privatization Agency, if the buyer
09 would pay out the full purchase and sale price but has
10 not met with all contractual obligations, did not return
11 the pledge. Actually, we had never had problems with
12 that. Buyers never requested the return of the purchase
13 price until they fulfilled all the contractual
14 obligations. In this case, we had a situation where the
15 price had been paid out but contractual obligations had
16 not been fulfilled, that had been breached much
17 before -- that had existed much earlier, before the
18 payment of the contractual purchase price. If this
19 pledge was to be returned -- these are practically the
20 shares, the buyer can freely dispose of the company's
21 shares, he can transfer shares on to a third party, he
22 can sell the entire assets of the company, so the actual
23 purpose of the privatization would not be met, and
24 I repeated this a number of times here, and the whole
25 privatization process would be devalued, and then other

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01 buyers would be paying the sale price and not meet other
02 contractual obligations.
03 And the law has this provision which says up until
04 the full sale and purchase price is paid. So buyers in
05 reality could say, "Okay, I have paid the purchase
06 price, I did not fulfil the contractual obligations,
07 give me back the pledge ie that certificate on pledge,
08 and now I can do whatever I want with the assets". This
09 was a bad provision and we tried to correct this in
10 practice, but then, the new legislation, enacted in
11 2014, this was rectified and the new law was saying that
12 the pledge can be returned only after all contractual
13 obligations had been met, and not when or after the
14 purchase price had been paid out. Because paying the
15 purchase price is just one of the obligations; all the
16 obligations need to be fulfilled cumulatively for an
17 agreement to be considered fully implemented.
18 MR VASANI: I understand that it is possible or it was
19 possible for the Privatization Agency to approve an act
20 of the company that but for the approval would be
21 a breach of 5.3.4, so in other words I understand it
22 would have been possible for the company to have
23 approached the Agency and say, "I would like to take
24 a loan, and it may breach 5.3.4, but I would like your
25 approval to do it anyway", and it's possible for the

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01 Privatization Agency to approve it, is that correct?
02 A. (Interpreted) Yes, it is correct, that the assets could
03 have been encumbered by either a pledge or a guarantee
04 in favour of third parties. It was only prohibited for
05 third parties in cases where consent was received from
06 the Privatization Agency. In such cases, the Agency
07 would analyse the condition of the company, whether it
08 was justified to allow such encumbrance in favour of
09 a third party or not, but in this case, such consent
10 from the Agency was not even asked, almost the entire
11 assets of the entity undergoing privatization were
12 encumbered, and the loan which was taken for the needs
13 of third parties was not repaid even -- well, I don't
14 think it was ever repaid, the money wasn't repaid, the
15 mortgage wasn't deleted, and that is stated as such in
16 the last auditor's report.
17 MR VASANI: I had understood one of your answers to be that
18 the breach or the alleged breach could have been
19 rectified by repayment of the sums by the two third
20 party companies back to BD Agro, do you remember that
21 answer?
22 A. (Interpreted) Yes, had the funds that were given to
23 third parties been returned to the entity undergoing
24 privatization, it would have been deemed as a fulfilled
25 obligation. Had the funds been returned, the mortgage

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01 would be deleted and the contractual obligations would
02 have been deemed fulfilled, so it would have sufficed
03 for the funds given to third parties in breach of the
04 agreement and the law to be repaid. The agreement would
05 have been deemed fulfilled then.
06 MR VASANI: So my understanding would be that the money
07 would have been paid back let's say on day one, the
08 pledge would have been lifted on day two, and the
09 Privatization Agency would have said to BD Agro, "Yes,
10 you have fulfilled your obligations" on day two, and
11 then on day three, BD Agro would be a private company,
12 and then could return the money back to those two
13 companies freely, is that correct? And I don't mean day
14 one, day two, day three literally, but those three steps
15 could have taken place?
16 A. (Interpreted) Yes, exactly, it wouldn't be day one, day
17 two, day three, the removal of the mortgage would take
18 some time, but yes, it would ultimately be deemed as
19 fulfilment of contractual obligations. Once he
20 fulfilled the contractual obligations, it's a private
21 company, he can do whatever he wants to.
22 MR VASANI: Thank you.
23 PROFESSOR KOHEN: Good afternoon, Ms Radovic Jankovic.
24 I would like to come back to --
25 A. (Interpreted) Good afternoon.

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01 PROFESSOR KOHEN: I would like to come back to the changes
02 in the Privatization Law. You mentioned that the new
03 law was adopted in 2014. In law in general there is
04 a distinction between immediate effect of new rules and
05 retrospective or retroactive effect of these new rules.
06 Could I ask any party to put on the screen the 2014
07 Privatization Law? It is CE-223. It is in the
08 cross-examination bundle? No, but maybe it can be put
09 on the screen.
10 I would like to show Article 15, probably we can put
11 it in Serbian language first for the witness, in the
12 English version there is "Article 15" and in brackets
13 "s1". I don't know whether this is a difference or not.
14 I don't know whether this is the right -- have you read
15 it?
16 A. (Interpreted) Yes, I have.
17 PROFESSOR KOHEN: Could you please put the English version?
18 It is Article 15. What I mean is Article 15 [s1].
19 MR MISETIC: I think it is not the right document that you
20 are citing to, so I am not sure --
21 PROFESSOR KOHEN: I asked for the Law on Privatization 2014,
22 Article 15 [s1]. I have it in front of me and it is
23 CE-223. Article 15 [s1].
24 PROFESSOR DJUNDIC: If I may, Professor Kohen, this is the
25 end of the document, so just scroll down.

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01 PROFESSOR KOHEN: Could you please put this in Serbian for
02 the witness? And now in the English version for all of
03 us? Thank you:
04 "Privatization procedures initiated prior to the day
05 this law entered into force shall continue according to
06 the provisions of this law."
07 Any comment about this? Do you consider that this
08 article would be applicable to the case of the
09 Privatization Agreement of Mr Obradovic?
10 A. (Interpreted) I believe that this refers specifically to
11 entities still undergoing privatization at that moment.
12 In case of Mr Obradovic, we were discussing the
13 termination of his agreement, and there is a provision
14 of the law included here in the transitional and final
15 provisions which actually says that agreements concluded
16 before the entry into force of this law would be
17 terminated in line with the law which was valid once
18 those agreements were concluded, meaning in line with
19 the law from 2005.
20 This article relates only to ongoing privatizations.
21 This law was aimed at introducing some, let's say,
22 relaxation into the privatization procedure because we
23 wanted to finalise some privatization processes, because
24 some of them took much longer than was initially
25 expected. I hope my answer was clear. I believe

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01 therefore that this provision does not have
02 a retroactive effect. I believe it is only applicable
03 to procedures which were ongoing. So I believe that it
04 refers solely to the procedures which were ongoing,
05 which were not finalised, and this is why it's not
06 a retroactive provision.
07 As regards specifically cases of termination of
08 agreements, regulations which apply are those which were
09 in force once the laws were rendered. If we were to say
10 that this law would be applicable, it would be
11 retroactive, because in 2005, they would not be able to
12 know what would be applicable to termination of the
13 agreement in 2014, so this law is not applicable to
14 termination of agreements which were concluded in 2005.
15 PROFESSOR KOHEN: Thank you, your answer was clear.
16 A. (Interpreted) Thank you.
17 PROFESSOR KOHEN: My second question concerns the
18 Privatization Agreement between the Privatization Agency
19 and Mr Obradovic. Could I also ask one of the parties
20 to put the Privatization Agreement on the screen?
21 I refer to article 9, which is the dispute resolution
22 clause. I suppose the witness has the Serbian version?
23 Take your time to read it, please, and tell me when
24 it is fine. (Pause).
25 So this provision explicitly excludes item 7, that

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01 is to say the termination, from the dispute resolution
02 manner envisaged here in item 9. My question is: which
03 kind of remedies had the seller in case the
04 Privatization Agency decides to terminate an agreement,
05 which kind of remedies are available for the seller in
06 the case of a decision of the Privatization Agency to
07 terminate the agreement? If the other party of the
08 agreement doesn't agree.
09 A. (Interpreted) Well, in that situation there's always
10 a court dispute, always, we have had quite a few court
11 proceedings, so the party does not have any other legal
12 remedy, it does not have any other instance, it cannot
13 complain to the Ministry, but it can initiate, you can
14 conduct a dispute. I see that this provision is
15 a bit -- I am not sure if it was formulated in the best
16 way but yes, disputes are conducted and we have quite
17 a few, when it comes to privatization cases, regarding
18 termination of the agreements.
19 PROFESSOR KOHEN: But which precise court would have
20 jurisdiction in these cases? That was my ...
21 A. (Interpreted) It would be the Commercial Court,
22 I believe it is the jurisdiction of the Commercial
23 Court.
24 PROFESSOR KOHEN: But this would be exactly the same as item
25 9.

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01 A. (Interpreted) Well, I truly cannot think of any other
02 court which could have jurisdiction. I am not sure if
03 I am able to answer to you how come cases under item 7
04 are excluded. To be specific, in this case, we don't
05 have item 7, we have item 5.4.3. I know from my
06 experience and practice from the Privatization Agency
07 that all of these disputes are mostly conducted before
08 the Commercial Court.
09 PROFESSOR KOHEN: Thank you. Were there many cases of
10 termination of privatization agreements during your term
11 in office?
12 A. (Interpreted) I do not know the exact figure now.
13 I might have known it in the past, but surely at this
14 point in my life, I do not have a figure to share with
15 you. But what I can share with you is that most of
16 those disputes were decided by the court in favour of
17 our Agency. I hope the answer is clear, I am not sure
18 it suffices as the answer to your question, but that is
19 what I can answer.
20 PROFESSOR KOHEN: Yes, I didn't ask for a specific view, but
21 I wanted to know more or less how many.
22 A. (Interpreted) Well yes, there were such disputes,
23 I cannot remember exactly the figure but the Agency was
24 always aiming at avoiding termination of agreements
25 except when that was necessary, we were really trying to

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01 even interpret the law in a way which will allow us to
02 avoid terminating the agreement, we oftentimes resorted
03 to interpreting the ratio legis of the law even when it
04 comes to this case, we tried to do that, interpret the
05 law in accordance with its ratio, in regards to the
06 pledge, and in most cases, we won the court proceedings.
07 Of course there were some which we lost as well but the
08 figure was much, much lower.
09 PROFESSOR KOHEN: And the cases in which the Agency lost,
10 how was the situation afterwards? How was the dispute
11 arranged?
12 A. (Interpreted) Well, in such cases, regarding the --
13 well, giving back the company, et cetera, the law says
14 it cannot be done, the shares would be transferred to
15 the shareholding fund, later to the Privatization Agency
16 after the termination. The employees were the only ones
17 that were allowed to keep their shares in such cases,
18 and the state had to pay out the purchase price plus
19 interest until the day when the decision became final.
20 PROFESSOR KOHEN: Thank you, Mme President, no further
21 questions.
22 THE PRESIDENT: Just to follow up, if I am not mistaken, you
23 told us in the course of your examination that you were
24 dealing with about 4,000 companies, do I remember this
25 well?

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01 A. (Interpreted) Yes, I did say that, though I must say
02 now, it's very possible that there were more than 4,000,
03 very possibly 4,500, but I am not sure about the figure.
04 THE PRESIDENT: So among those 4,000 or 4,500 companies that
05 were privatised, can you give us an idea of how many got
06 their privatization agreement terminated? 10, 400,
07 1,000? Just a general idea, is this something very
08 frequent, is it something very rare, is it in between?
09 A. (Interpreted) I would say it was moderately common.
10 I really forgot the specific data. However, it would
11 also happen that the agreement would not be terminated,
12 everything would be fine, all of the obligations would
13 be fulfilled, and then it got sold to another entity and
14 the new entity, the new buyer would destroy the company,
15 and the company would no longer exist.
16 There would be such cases as well, I don't want to
17 guess on the figures because I might surely make a big
18 mistake.
19 We had all analysis of such things at our disposal,
20 but I have been retired for six years now, many things
21 have changed in the meanwhile. If this means something
22 to you I could try to get this data and provide it to
23 the court later, but not now exactly.
24 THE PRESIDENT: I was not speaking of the time when you were
25 not involved, I understand you retired in 2016, and

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01 I was just asking for the time before. I suppose when
02 your decisions were challenged, this was something one
03 would remember, no? And especially if you lost later
04 the court case. But even if you won them, you would
05 remember as well.
06 A. (Interpreted) Well, it's a very difficult question,
07 truly. What I remember is if our funds are frozen,
08 because we had to do a pay-out to the former buyer once
09 we would lose a dispute, but let's say that it could
10 have been in 20% of cases, I would presume it wasn't
11 more than that, but please do not take this as a firm
12 figure.
13 THE PRESIDENT: No, it's just an indication, I take it as
14 such, and I understand your reservations.
15 When you discussed the practice of the Privatization
16 Agency not to release the share pledge when not all
17 contractual obligations were met, even though the
18 payment of the price may have been fulfilled, you said
19 that this practice existed because otherwise the
20 privatization process would be pointless, that you said
21 during your examination today, but you also said it in
22 writing at the end of paragraph 17 of your witness
23 statement, if you want to look at that. But
24 essentially, I understand you say there the same thing.
25 You say if you were to release the shares:

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01 "This would set a precedent ... [and] other buyers
02 as well [may] pay the sale and purchase price and not
03 fulfill other obligations, which would render the
04 purpose of privatization senseless."
05 Why are you saying this? I mean, the company would
06 have become a private company, and in that sense, the
07 privatization would have been achieved, maybe some
08 obligations that went with it were not completed, but
09 I am just not sure why you make this categorical
10 statement.
11 A. (Interpreted) Well, because the privatization process
12 did not have it as saying only to turn socially-owned
13 capital into private capital, there were also the
14 principles of privatization which were enshrined in the
15 basic provisions of the law, and that's economic
16 development, social stability, technological
17 development, et cetera.
18 And when we set investment obligations for buyers,
19 we asked for that in order for the company to develop,
20 and in order for it to have a promising future.
21 If this agreement were to be terminated with the
22 payment of the purchase price at the very beginning,
23 then it could be transferred to another person, a third
24 person, who no longer would have the obligation to make
25 an investment or keep the employees, nothing of that

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01 sort of contractual obligations ...
02 THE PRESIDENT: I understand what you are saying with
03 respect to the investment obligations; here they had
04 been fulfilled, if I am not mistaken, and if I am,
05 counsel will correct me. But I am asking myself whether
06 the positions the Privatization Agency took here were
07 not directly contrary to what you are now saying, about
08 ensuring that the company has a promising future?
09 A. (Interpreted) Well, I do not think it was contrary to
10 it, because when it came to that, when the agreement was
11 to be terminated, there was almost nothing left of the
12 company, the assets had been sold or encumbered with
13 pledges, wages were not being paid, the enterprise had
14 been destroyed completely already. And this was a big
15 agricultural holding that unfortunately ended like that,
16 and we are all really, really sorry because of that.
17 And this is why we wanted to be forthcoming with
18 Mr Obradovic. Of course, in other cases of
19 privatization we granted additional deadlines, many
20 deadlines, in order to keep the agreements in force.
21 THE PRESIDENT: Of course, one could object to what you are
22 saying, I am not saying I do it, but one could object
23 that there was a reorganisation plan in place with
24 approval of the creditors, and this could have gone
25 forward and gave a chance to the company, and the

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01 alternative was bankruptcy. So what was better, if you
02 think of the future of the company, if you think of
03 protecting jobs?
04 A. (Interpreted) Yes, but as far as I remember, the problem
05 was that in order for somebody to take over the
06 agreement, he needs to meet certain obligations, and the
07 buyer needs to meet certain obligations, in order for
08 the buyer to have the agreement to assign, he had to
09 give a guarantee. At that time, the guarantee was
10 a mortgage in the value of 30% of the price that he had
11 paid, and Mr Obradovic said that he couldn't do this.
12 As for the buyer -- not buyer, that is the assignee,
13 those who would receive the company, they didn't meet
14 certain obligations either. They sent some
15 documentation which was never complete. So further,
16 I don't know why they did not submit the documents that
17 had been asked, that shouldn't have been a problem to
18 send those documents.
19 We had many assignments over agreements, it wasn't
20 the first assignment over an agreement that we would
21 have done, but simply there was no will and it seemed to
22 me that the assignee didn't want to take over the
23 obligations of the buyer, and they would have had to
24 take over the obligations of the buyer.
25 THE PRESIDENT: Why are you saying that the assignee didn't

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01 want to take over the obligations of the buyer?
02 A. (Interpreted) Well, at those meetings, those two
03 meetings that I attended, I remember that they said they
04 didn't want to take over those obligations, the
05 obligations that the buyer had not met during the
06 implementation of the agreement.
07 THE PRESIDENT: Fine. We'll assess this as we go forward
08 and I thank you very much, Ms Radovic, for your
09 assistance. I assume there are no clarification --
10 there was one, it is a clarification? Because obviously
11 there is lots that could be said about the last answers,
12 and we will of course look at the record and look at the
13 other evidence.
14 MS MIHAJ: There is one question, and it concerns
15 clarification.
16 Re-direct examination by MS MIHAJ
17 Q. Ms Radovic, could you please tell us whether the Law on
18 Privatization before it was changed in 2014, I think,
19 regulated pledge on the shares at all?
20 A. (Interpreted) I thought that I knew that law so well,
21 and I had participated in its drafting, but really now
22 I cannot remember that. It seems to me that there is
23 a provision on pledges but I really cannot remember what
24 kind of provision.
25 MS MIHAJ: Thank you, Mme President. I have no further

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01 questions.
02 THE PRESIDENT: Fine, thank you very much, Ms Radovic, for
03 your help.
04 So it is now 5.20. I think it's a little late to
05 start with Ms Vuckovic because I don't know what the
06 estimate is, maybe you gave it to us yesterday, but it
07 will not be a very short examination, I assume.
08 MR MISETIC: Yes, it will be, I would say, roughly as long
09 as this one, maybe a little shorter.
10 THE PRESIDENT: That is what I figured out, so it's better
11 to do it tomorrow, and it is not an issue, because we
12 are well on time, so we will continue according to the
13 schedule, which means that tomorrow, we will hear
14 Ms Vuckovic, then Mr Cvetkovic, and then Mr Stefanovic,
15 and that will end the fact witnesses, and the day after,
16 we will start with the experts. Is that the plan?
17 MS MIHAJ: Yes, that is the plan.
18 MR MISETIC: We confirm.
19 THE PRESIDENT: I see that you are in agreement, so that is
20 always very nice. Is there anything that we need to say
21 before we close for today?
22 MR MISETIC: Nothing from our side, Mme President.
23 MS MIHAJ: Nothing from Respondent's side, thank you.
24 THE PRESIDENT: Thank you, then everyone have a good
25 evening, and we will see each other tomorrow at 9.00.

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01 (5.21 pm)
02 (The hearing adjourned until 9.00 am the following day)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

Prof Gabrielle Kaufmann-Kohler
Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
Marisa Planells-Valero

For the Claimants:

Rostislav Pekař
Stephen Anway
Luka Misetic
Matej Pustay
David Seidl
Kateřina Bolinová
- Squire Patton Boggs
Nenad Stanković
Sara Pendjer
- Stankovic & Partners (NSTLAW)

For the Respondent:

Senka Mihaj
Bojana Bilankov
Nemanja Galic
Milica Volarev
- Mihaj Ilic & Milanovic
Vladimir Djerić
Lena Petrovic
Ivana Vukcevic
- Mikijelj Jankovic & Bogdanovic
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Representatives:**

Scott Little
Heather Squires
Maria Cristina Harris
- Trade Law Bureau

Party representatives:

William Rand
Erinn Broshko
Li-Jeen Broshko
Igor Markicevic

Party representatives:

Olivera Stanimirovic
Ksenija Maksic
Mirko Cobanin
- State Attorney Office of the Republic of
Serbia

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Interpreters:

Milena Maric
Sanja Rasovic
Vesna Bulatovic

Hearing Location:

Peace Palace, The Hague

PAGE 1 (09:00)

01 Thursday, 15th July 2021
02 (9.00 am)
03 THE PRESIDENT: Good morning to everyone, I hope everyone is
04 well and ready to start Day 4 of this hearing. Is there
05 anything we need to raise before we start?
06 MR MISETIC: Good morning, Mme President. Yes, I just
07 wanted to raise one housekeeping matter. The Claimants
08 anticipate completing the cross-examination of
09 Respondent's fact witnesses by around 3.00 pm this
10 afternoon so we will have our first expert, Ms Tomic
11 Brkušanin, ready to go at 3.00, we wanted to let
12 everyone know that. Obviously we are in the hands of
13 Respondent as to how long that will take, but if they
14 anticipate that we should have the next witness after
15 that, Mr Miloš Milošević, ready, if they could let us
16 know after the lunch break, we will have him ready as
17 well today as well.
18 THE PRESIDENT: Thank you. Any comments on this?
19 I understand that you had anticipated for Ms Tomic --
20 yes, 45 minutes for the cross, and then Mr Milošević is
21 quite longer, so maybe it would make -- I mean, seeing
22 it from now, it may change as we go along, it might be
23 a good idea to take Ms Tomic but Mr Milošević may be
24 probably too tight, or we have to break his examination,
25 which is not ideal.

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01 DR DJERIC: We think that it might be the best way to
02 proceed to have Mr Milošević tomorrow morning.
03 MR MISETIC: That is fine.
04 THE PRESIDENT: That is probably reasonable. Good, then
05 let's proceed on this basis. Is there anything on your
06 side you wish to raise now?
07 DR DJERIC: No, Mme President.
08 THE PRESIDENT: Good.
09 MS JULIJANA VUCKOVIC (called)
10 THE PRESIDENT: Then, we can start with the examination of
11 Ms Vuckovic. Good morning, madam. Do you hear the
12 interpretation when I speak? Good. You have been,
13 since 2016, the Chief of the Department for Control of
14 Performance at the Privatization Agency?
15 THE WITNESS: (Interpreted) Just a small correction. Since
16 2016 I am Head of the Unit for Control of Agreements at
17 the Ministry of Economy, and from 2006 until 2016 I was
18 Head of the Control Department at the Privatization
19 Agency.
20 THE PRESIDENT: You have provided one witness statement in
21 this arbitration that is dated 22nd January 2020, is
22 that right?
23 THE WITNESS: (Interpreted) Yes, it is right. Yes, I do.
24 THE PRESIDENT: As a witness, you are under a duty to tell
25 us the truth. Can you please read the witness

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01 declaration that is on your table?
02 THE WITNESS: (Interpreted) Of course. I solemnly declare
03 upon my honour and conscience that I shall speak the
04 truth, the whole truth and nothing but the truth.
05 THE PRESIDENT: Thank you. So I first turn to Respondent
06 for some direct questions.
07 Direct examination by MS MIHAJ
08 Q. Thank you, Mme President. Ms Vuckovic, would you please
09 tell us who commissioned the preparation of the audit
10 reports which the buyer of the capital in BD Agro,
11 Mr Obradovic, delivered in the period from 2011 to 2015?
12 A. (Interpreted) Yes, Mr Obradovic commissioned all the
13 audit reports that were submitted in that period.
14 Q. The Agency received several audit reports in that
15 period. Have these audit reports dealt with all
16 breaches of the Privatization Agreement for which the
17 Agency was leaving additional periods?
18 A. (Interpreted) Yes, that's right. All the audit reports
19 submitted in this period dealt with the issues that were
20 the subject of the additional deadlines.
21 Q. Who was delivering documentation to the auditors used
22 for the preparation of those auditor's reports?
23 A. (Interpreted) The documentation was always submitted by
24 the entity undergoing privatization, of course, in
25 co-operation with the buyer.

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01 Q. So according to your opinion, was it clear to the buyer
02 of the capital which breaches of the Privatization
03 Agreement was he supposed to remedy exactly?
04 A. (Interpreted) Of course it was clear to him, this is
05 confirmed by the audit reports submitted by him in this
06 period.
07 Q. In your written statement you are mentioning that in
08 September 2015, Mr Obradovic delivered to the Agency the
09 documents related to deletion of some mortgage, and were
10 these documents related to deletion of the mortgage that
11 was established as a security of the 2021 million loan
12 or not, could you explain that?
13 THE INTERPRETER: The interpreter apologises, I didn't hear
14 the year of the loan.
15 MS MIHAJ: Do I need to repeat the question maybe for the
16 translators? I will do that.
17 In your written statement, you are mentioning that
18 in September 2015, Mr Obradovic delivered to the Agency
19 some documents related to deletion of some mortgage, and
20 were these documents related to deletion of the mortgage
21 that was established as a security of the 221 million
22 loan or not, could you explain that?
23 A. (Interpreted) Yes, of course. Given the actions of the
24 buyer regarding the given additional deadline, we could
25 see two ways of behaviour of the buyer, ie lack of the

PAGE 5 (09:08)

01 buyer's actions when it comes to the fulfilment of
02 obligation of 5.3.4. The first one had to do with the
03 third party taking the loan, and having a mortgage for
04 that loan on the assets of the entity undergoing
05 privatization. This was the loan that Crveni Signal
06 took from Agrobanka, that was RSD 65 million for which
07 a mortgage was established on the assets of the entity
08 undergoing privatization.

09 The other way of breaching this contractual
10 obligation had to do with the fact that the entity
11 undergoing privatization took a loan of 221 million from
12 the bank, which was the subject of this question, and
13 registered a mortgage on the assets of the entity and
14 while the loan was again used by third parties, more
15 specifically, loans were given to the legal persons
16 Crveni Signal and Inex Nova Varos. In this way the
17 buyer was in breach of the contractual obligation from
18 5.3.4, and in his response in the additional deadline,
19 he only sent the evidence regarding the obligation of
20 the loan of Crveni Signal which was RSD 65 million, and
21 during 2015, he submitted the evidence that he had
22 deleted this mortgage, which was the subject of this
23 additional deadline, the deletion of this mortgage.

24 As for the second loan, that also constituted
25 a breach of the contractual obligation, and had to do

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01 with the fact that the entity undergoing privatization
02 took a loan, registered a mortgage, and then loaned part
03 of those funds -- I think it was less than 50% of these
04 funds to other legal persons, more precisely to third
05 parties Crveni Signal and Inex Nova Varos. And of
06 course the buyer was asked to return those funds which
07 he never did.

08 MS MIHAJ: Thank you, Ms Vuckovic, I have no further
09 questions. Thank you, Mme President.

10 THE PRESIDENT: Thank you. Do I turn to you, Mr Miseti?

11 MR MISETIC: Yes, thank you, Mme President.

12 Cross-examination by MR MISETIC

13 Q. Good morning, Ms Vuckovic.

14 A. (Interpreted) Good morning.

15 Q. First, I would just like to tell you that we're going to
16 be going through some documents today, you have
17 Ms Pendjer sitting next to you, to the right, and she
18 has a complete book of the original documents in Serbian
19 for you if you need them. If you have any difficulties
20 finding a document, feel free to ask Ms Pendjer to
21 assist you, and she will be happy to locate documents
22 for you.

23 A. (Interpreted) Thank you.

24 Q. First, I should have said, my name is Luka Miseti and
25 I represent the Claimants in this action. I will be

PAGE 7 (09:11)

01 asking you a few questions this morning.

02 You were asked some background questions by the
03 President of the Tribunal, I just wanted to ask you
04 another question on that. You, as the Director of the
05 Center for Control of Performance of Agreements,
06 reported to the Commission for Control of Performance
07 Obligations, correct?

08 A. (Interpreted) Yes, that's correct.

09 Q. You yourself were not a member of the Commission,
10 correct?

11 A. (Interpreted) Yes, that's correct, I have never been
12 a member of the Commission, I didn't have a voting right
13 and I didn't take decisions.

14 Q. My next question was whether you had a voting right, so
15 thank you. Let me turn now to your witness statement at
16 paragraph 6. At paragraph 6 you state that you had
17 a large number of meetings with Mr Obradovic, do you see
18 that?

19 A. (Interpreted) Yes, that's right.

20 Q. From January of 2014 until the agreement was terminated,
21 how many meetings did you have with Mr Obradovic?

22 A. (Interpreted) I apologise, I really cannot give you
23 a precise answer.

24 Q. Did you ever meet with Mr Obradovic in 2014 or 2015 to
25 discuss assignment of the Privatization Agreement?

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01 A. (Interpreted) I do not remember precisely, but I don't
02 think I did.

03 Q. You say at paragraph 7 of your statement:

04 "All oral and written communication regarding
05 performance of contractual obligations was conducted
06 with Mr Obradovic as the buyer of the capital."

07 Do you see that?

08 A. (Interpreted) Yes, I do.

09 Q. Did you not have oral communications about the
10 performance of contractual obligations in 2014 and 2015
11 with Mr Markicevic and Mr Broshko?

12 A. (Interpreted) If you allow me, the question was here,
13 were you aware that Mr Rand allegedly was the beneficial
14 owner of BD Agro during the validity of the
15 Privatization Agreement. This answer was in this
16 context. We had meetings exclusively with Mr Obradovic
17 as the owner of the capital. This answer was given in
18 the context of the question from the title.

19 Q. I am asking you though about the specific statement
20 there, that you say that "All oral and written
21 communication regarding performance of contractual
22 obligations was conducted with Mr Obradovic". My
23 question to you is: did you not have conversations with
24 Mr Broshko and Mr Markicevic about the performance of
25 contractual obligations?

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01 A. (Interpreted) We had meetings with Mr Broshko and
02 Mr Markicevic, if you mean joint meetings, and those
03 meetings had to do with the proposal to have the
04 agreement assigned, and as for this topic, it was
05 explained to Mr Broshko which contractual obligations
06 had not been met at the time, that is which contractual
07 obligations were subject to the additional deadline.
08 Q. Let's look at one such meeting to see exactly what was
09 discussed with Mr Broshko and Mr Markicevic, and this is
10 a meeting of 15th December 2014, which is Exhibit RE-38,
11 if we could show that to the witness, please. These are
12 the notes of a meeting on 15th December 2014. If you
13 look on the first page?
14 A. (Interpreted) I apologise, just a moment. Please go
15 ahead.
16 Q. It says, at number 6, that you were present for the
17 meeting, do you see that?
18 A. (Interpreted) Yes, that's correct.
19 Q. In the description of the meeting -- sorry, let me also
20 point out that at numbers 9 and 10, Mr Markicevic and
21 Mr Broshko are also identified as present. If you look
22 through the ten people, Mr Obradovic is not present, do
23 you see that?
24 A. (Interpreted) Yes, that's correct.
25 Q. If you look at the last sentence of the description of

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01 the meeting, it says:
02 "The representative of the Entity of Privatization
03 have committed to prepare for the next meeting, which is
04 agreed in principle to be held on 17th December 2014 in
05 the Ministry, the materials on the state of the
06 mortgages registered on the property of the Entity
07 undergoing privatization as a collateral warranty for
08 the liability of third parties."
09 The Privatization Agency was asking Mr Broshko and
10 Mr Markicevic to prepare materials on the state of
11 mortgages registered on the property for their next
12 meeting with the Privatization Agency and the Ministry,
13 correct?
14 A. (Interpreted) Yes, that's correct, that's what the last
15 sentence here says. However, in order to understand the
16 context of this description of the topics of the
17 meeting, the meetings were organised with one aim, and
18 that's upon the proposal to have the agreement assigned.
19 Mr Broshko introduced himself at the meeting as the
20 Executive Director of Rand Investments from Canada, as
21 this official note says, and when having agreements
22 assigned in other cases too, not only in this case, but
23 also in other entities undergoing privatization, we
24 always talked to the buyers and the directors about the
25 situation of the entity undergoing privatization.

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01 The Assignment Agreement deals with the takeover of
02 the rights and obligations from the Agreement, ie the
03 situation that exists in that point in time. It was
04 necessary for the assignee to be informed about the
05 mortgages in the company which was the subject of the
06 breach of 5.3.4. So, there was nothing contentious
07 about it. The entity undergoing privatization prepared
08 the material, and it's very clear that the future
09 assignee should know about the situation in the entity
10 undergoing privatization, thus in the agreement itself,
11 because it takes over the rights and obligations from
12 the agreement. There is nothing disputable here.
13 Q. My question though is you are asking the assignee of the
14 agreement to prepare materials on the state of the
15 mortgages on the properties?
16 MS MIHAJ: Mme President, I must object to this question,
17 because it is definitely not fair to put that question
18 in that way having in mind the document that is on the
19 screen. In the documents, it is rightly stated who was
20 requested to deliver the document. So the counsel --
21 THE PRESIDENT: Yes, it says "the representative of the
22 Entity of Privatization". Can you tell us who you
23 consider to be the representative of the entity of
24 privatization among the ten people who attended?
25 A. (Interpreted) It was certainly Mr Markicevic who was the

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01 director of the privatization entity and who was
02 actually preparing also the materials needed for the
03 audit reports.
04 THE PRESIDENT: Yes, and it's the singular "representative",
05 and then the verb is in the plural, so "have committed".
06 MR MISETIC: That's correct, Mme President. I will clarify
07 this now with the witness.
08 THE PRESIDENT: Yes, please.
09 MR MISETIC: Is your testimony that the only person you
10 thought had a connection -- sorry, that the only person
11 who could have been a representative of the entity of
12 privatization is Mr Markicevic?
13 A. (Interpreted) that is correct.
14 PROFESSOR KOHEN: Sorry for one question in this regard,
15 because here we have the text in its English
16 translation, in which there is apparently a problem
17 because the representative is singular and then "have
18 committed" is plural, so may I ask, what is the Serbian
19 text, what does the Serbian text show? Probably like
20 yesterday, our interpreters can help us.
21 THE INTERPRETER: In Serbian version, it says
22 "representatives of the privatization entity have
23 committed themselves". Representatives is there, it is
24 plural in Serbian.
25 PROFESSOR KOHEN: Thank you.

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01 MR MISETIC: Thank you, Professor Kohen. That was helpful.
02 So in the original Serbian, it identifies plural
03 representatives; who else other than Mr Broshko then
04 could have been a representative of the entity of
05 privatization?

06 A. (Interpreted) At this meeting, I believe it would be
07 exclusively Mr Markicevic in his capacity of director of
08 the privatization entity.

09 Q. Let's examine that testimony, Ms Vuckovic. At
10 paragraph 8 of your statement, you say something
11 similar. You say:

12 "On the meetings with Mr Igor Markicevic and
13 Mr Erinn Broshko, held in the Ministry of Economy on
14 1st July 2014, 26th October 2014, 3rd November 2014, as
15 well as 15th December 2014, we were informed that
16 Mr Obradovic and Mr Rand are in some kind of financial
17 relationship, but we were not informed about the details
18 of that relationship ..."

19 At paragraph 6 of your statement, the last sentence
20 says:

21 "In addition, during 2014 and 2015, I attended
22 meetings with Mr Broshko, who introduced himself as
23 representative of potential assignee of the Agreement."

24 Do you see that?

25 A. (Answer not interpreted).

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01 Q. When was the first time you were introduced to
02 Mr Broshko?

03 A. (Interpreted) I believe it was already in 2013, when the
04 request to assign the agreement was submitted, I think
05 it was August 1st 2013 when such a request was
06 submitted.

07 Q. Well, let me take you to a meeting on 30th January 2014,
08 the notes are at Exhibit RE-28. Do you have that in
09 front of you now?

10 A. Yes.

11 Q. The minutes reflect that you were there, correct, at
12 number 5?

13 A. (Interpreted) It's correct.

14 Q. They also reflect, in points 1 and 2, that Mr Markicevic
15 and Mr Broshko were there, correct?

16 A. (Interpreted) Correct.

17 Q. The notes say that Mr Broshko is there as the director
18 of Rand Investments, correct?

19 A. (Interpreted) It is stated here, but I didn't draw up
20 these minutes, but that's what it says here.

21 Q. The minutes don't mention the word "Coropi" anywhere, do
22 they?

23 A. (Interpreted) I would need some time to take a look.

24 Well, sentence 1 says:

25 "The reason for the meeting was the Buyer's request

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01 dated 1st August 2013, for issuing the prior approval
02 for assigning the Sale Purchase Agreement of Capital."

03 If you take a look carefully at that request for the
04 assignment of the agreement, which was submitted by
05 Mr Obradovic, it says actually that the assignee would
06 be the legal entity Coropi.

07 Q. Yes, but your testimony in paragraph 6 of your statement
08 is that he introduced himself as the representative of
09 the potential assignee of the Agreement, which would be
10 Coropi, correct?

11 A. (Interpreted) Just a second, I am sorry, tell me which
12 sentence in paragraph 6 it is exactly?

13 Q. The last one.

14 A. (Interpreted) The last sentence of my statement says:

15 "In addition, during 2014 and 2015, I attended
16 meetings with Mr Broshko, who introduced himself as
17 representative of potential assignee of the Agreement."

18 I have to reiterate, in the request for assignment
19 it is stated that Coropi would be the assignee. If you
20 will allow me just to add, the one who is authorised to
21 submit an assignment request is exclusively the buyer of
22 capital, which is what happened here. Just like in all
23 other privatization procedures, we have treated this one
24 the same. So the authorised person to submit a request
25 for assignment was exclusively the buyer. In this case,

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01 it was Mr Obradovic who stated in his request that he
02 would be assigning the agreement to Coropi.

03 Q. What I would like to establish, Ms Vuckovic, is how
04 Mr Broshko introduced himself to you, so let's focus on
05 that in these notes. The notes say:

06 "Erinn Broshko stated that he represented the
07 company which provided funds invested in the Entity, and
08 that such practice is common in Canada. [Broshko]
09 stated that William Rand was not satisfied with the work
10 and management by the man to whom [the job] of
11 purchasing the company was entrusted, and that he was
12 interested to finish the assignment as soon as
13 possible."

14 Do you see that?

15 A. (Interpreted) Yes, I see that.

16 Q. I want to dig down a little bit in how Mr Broshko
17 introduced himself to you. He said he represented the
18 man who provided, past tense, funds invested, past
19 tense, in the Entity, which refers to BD Agro, correct?

20 A. (Interpreted) Correct.

21 Q. So he is more than just someone who is coming to
22 negotiate as a potential assignee of the Agreement,
23 correct?

24 A. (Interpreted) I wouldn't phrase it like that, I wouldn't
25 say it's correct. I would say that we already had an

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01 assignment request submitted to us, including the name
02 of the legal entity to which the agreement would be
03 assigned, so in this case, for us, the facts stated
04 hereunder that Mr Rand was not happy with the work of
05 this person, but this was irrelevant to us. From our
06 point of view, the buyer of capital was Mr Obradovic, so
07 there were no dilemmas concerning that. All
08 correspondence regarding the assignment request within
09 the privatization procedure throughout the validity of
10 the Agreement was submitted to us by the buyer, and the
11 buyer was stating therein who the assignee was, and then
12 again, on top of the request, there was the agreement on
13 assignment of rights and obligations arising from the
14 agreement, which also identified the company Coropi as
15 the assignee.
16 Q. Let's take this step by step. The sentence says that
17 Mr Broshko told you that Mr Rand was not satisfied with
18 the work and management by the man to whom the job of
19 purchasing the company was entrusted, or to whom the
20 business of purchasing the company was entrusted, and
21 that he was interested to finish the assignment as soon
22 as possible.
23 The man you knew was a reference to Mr Obradovic,
24 correct?
25 A. (Interpreted) Well, the only thing that was clear to us

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01 was that Mr Obradovic was the buyer of capital, he
02 presented himself as the buyer of capital, and he fully
03 controlled the privatization entity. We did not think,
04 at any point in time, that there was another owner apart
05 from Mr Obradovic. All correspondence, all
06 communication in verbal form, during the privatization
07 procedure, everything regarding the performance of
08 obligations, happened between us, the Privatization
09 Agency, and Mr Obradovic as the owner of capital.
10 Q. You agree that Mr Obradovic was not present for this
11 meeting, correct?
12 A. (Interpreted) That is clear from the minutes, yes.
13 Q. But Mr Markicevic, who was the director of BD Agro, was
14 present at the meeting, and he was part of the
15 management of BD Agro, correct?
16 A. (Interpreted) He was the director of the privatization
17 entity and he did attend the meeting.
18 Q. Did you find it odd that Mr Broshko was stating
19 Mr Rand's dissatisfaction with the management of BD Agro
20 while one of the members of the management of BD Agro
21 was sitting next to him in the meeting?
22 A. (Interpreted) At the first glance, maybe it could have
23 seemed to me -- I cannot really remember the exact
24 moment what I was thinking at that moment, but it could
25 have been strange to me back then. However, it was not

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01 relevant to us, it was not significant to us, having in
02 mind, I have to reiterate, that Mr Obradovic was the
03 buyer of capital and that all correspondence, all oral
04 communication and in writing was done with Mr Obradovic.
05 If you will allow me to add, there was no moment
06 when we had any written or verbal address by Mr Rand.
07 Throughout the validity of the period, throughout the
08 term of the period, from when the agreement was
09 concluded in 2005 until 2015 when it was terminated,
10 Mr Rand never addressed us.
11 Q. You say in your statement, again this is paragraph 8:
12 "... we were informed that Mr Obradovic and Mr Rand
13 are in some kind of financial relationship, but we were
14 not informed about the details of that relationship ..."
15 I will take you back now to the notes of the
16 30th January meeting to see what exactly you were told
17 about that relationship. Again, you were told expressly
18 that the funds invested in the entity were provided by
19 Mr Rand's company, correct?
20 A. (Interpreted) Correct.
21 Q. If you were told that Mr Rand was simply a lender, then
22 you would have understood the nature of the relationship
23 between the two of them, correct?
24 A. (Interpreted) I would disagree actually with this
25 statement, given the following. Yes, it is correct that

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01 we were told that there was some type of financial
02 relation, as it's stated here in the minutes. Let me
03 find it. It says here that his funds were used to fund
04 the entire privatization process. They might have had
05 some type of a financial relation, but again, it's
06 completely insignificant for the Privatization
07 Agreement, which states clearly that the buyer of
08 capital is Mr Obradovic.
09 Now, whether there was some form of a relation
10 between Mr Obradovic, Mr Rand or another third party,
11 it's an inter partes relation which is not relevant for
12 the Privatization Agreement.
13 Q. Well, let's look at what you knew about the nature of
14 their relationship. Mr Broshko told you, according to
15 these notes, that Mr Rand was not satisfied with the
16 work and management "by the man to whom business of
17 purchasing the company was entrusted", and I'm going to
18 focus on that word "entrusted". In Serbian, in the
19 original text, the word used is "povereno". What did it
20 mean to you when Mr Broshko said that Mr Rand had
21 entrusted Mr Obradovic with purchasing the company?
22 A. (Interpreted) Well, in the privatization procedure, in
23 accordance with regulations governing privatization,
24 which were valid throughout the privatization procedure,
25 even before this agreement was concluded and after the

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01 termination of the agreement, there was no possibility
02 to entrust these transactions related to purchase of
03 companies. The buyer of capital, according to the law,
04 is the person with whom the agreement was concluded.
05 According to the positive legislation, in order for
06 a transaction to be entrusted, it needs to be clearly
07 stipulated by the law, which is of course not the case
08 in the Law on Privatization. There was no possibility
09 to recognise a third person in such transactions. There
10 were no entrusted transactions according to the
11 legislation.
12 Q. I'm not asking for a legal opinion on whether you think
13 it was valid or not, I'm just trying to establish what
14 you understood about the nature of the relationship
15 between the two of them and my question to you is: what
16 does it mean to you when Mr Broshko says that Mr Rand
17 entrusted Mr Obradovic with purchasing BD Agro?
18 A. (Interpreted) I am sorry to all of you, to the Claimants
19 and to the arbitrators, but I have to say, it was
20 completely irrelevant for us. It is the relation that
21 the buyer has with somebody else. It was completely
22 irrelevant for the privatization procedure. Throughout
23 the term of the Agreement, Mr Obradovic represented
24 himself and behaved as the capital buyer.
25 I am sorry for having to repeat this, but all

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01 correspondence was conducted with Mr Obradovic
02 exclusively, when it comes to the performance of
03 obligations. He had absolute control over the capital.
04 And I apologise for making this personal digression. If
05 I were the beneficial owner, as you are saying, I would
06 at least during the term of this agreement, and allow me
07 to say that this agreement lasted for quite a long time,
08 from 2005 to 2015, during this time I would have at
09 least once addressed the Privatization Agency and made
10 remarks concerning the Agency's work, or at least asked
11 them what was going on.
12 So I repeat, there was no oral or written
13 communication or any contact by Mr Rand with the
14 Privatization Agency during the period when control was
15 conducted. We had not had such communication, it was
16 not recorded at all.
17 Q. A little bit earlier, you said that the practice of
18 entrusting someone to purchase a company was not
19 recognised under Serbian law, correct?
20 A. (Interpreted) Yes, correct. The privatization law does
21 not recognise this.
22 Q. So if you look at the notes again, it says that
23 Mr Broshko said that "such practice is common in
24 Canada". You understood that what he meant was the
25 practice of entrusting someone to purchase a company on

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01 their behalf, correct?
02 A. (Interpreted) What I understood, at both the beginning
03 and the end of this meeting, and during the meeting, and
04 during the term of this agreement, was that Mr Obradovic
05 was the sole owner of the company, and for us it was
06 totally irrelevant as to whether the buyer had any
07 financial relationships with any third party. He could
08 have had such relationship, but in the privatization
09 process, this was not possible. Nor did we ever have
10 any case that included a third party who appeared as the
11 owner of the capital, apart from the person who is
12 stated in the agreement and who is a contracting party
13 to that agreement together with the Agency.
14 Q. I would like to take you to -- staying on this topic,
15 but on a different document, this is Exhibit CE-317. Do
16 you have that document?
17 A. (Interpreted) Can you repeat the number?
18 Q. CE-317. The date is 21st August 2014, for the
19 interpreters.
20 A. (Interpreted) That's correct.
21 Q. If you look at the document, it purports to be a letter
22 from the Privatization Agency dated 21st August 2014 to
23 Mr Markicevic, correct?
24 A. (Interpreted) Yes, correct.
25 Q. I would ask you to go look at the original Serbian

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01 version of this document. Did that document go out with
02 your authorisation?
03 A. (Interpreted) Yes, so here it says that the director of
04 the centre is Ms Julijana Vuckovic. I was not the one
05 who signed it. Here it says "for the director", so this
06 was signed by my assistant, the deputy director of the
07 centre. Probably I was absent at the time.
08 Q. If you look at the bottom of the first page in English,
09 which says:
10 "Upon initiation of the procedure of supervision
11 ..."
12 A. (Interpreted) I can see that.
13 Q. "... the meeting was held on 30th January 2014 in the
14 Privatization Agency, which you attended in capacity of
15 the director of the Subject along with the
16 representatives of the Privatization Agency, Erinn
17 Broshko, director of Rand Investments ... and Milan
18 Kostic ..."
19 Do you see that?
20 A. (Interpreted) Yes, I can see that.
21 Q. Two paragraphs later, the letter summarises what was
22 discussed at the meeting:
23 "At the meeting, you introduced Erinn Broshko,
24 director of Rand Investments Limited, Vancouver, Canada,
25 company opened by William Rand, and you stated that his

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01 means were used to finance the entire process of
02 privatization of BD Agro Dobanovci."
03 Do you see that?
04 A. (Interpreted) Yes.
05 Q. The Privatization Agency was aware, as a result of that
06 30th January 2014 meeting, that it was Mr Rand's money
07 that had been used to finance the entire process of
08 privatization of BD Agro, correct?
09 A. (Interpreted) No, I do not agree with your statement.
10 In the paragraph that you are referencing, it says: at
11 the meeting, to the participants, you introduced
12 Mr Erinn Broshko, so Mr Markicevic introduced Mr Erinn
13 Broshko, as the director of Rand Investments, the
14 company owned by William Rand, for whom you stated that
15 his funds were used to finance the entire privatization
16 process.
17 We are here quoting the words of another person.
18 This does not mean that we believe what it says here was
19 true.
20 Q. Well, let's go back to paragraph 6 of your witness
21 statement, the last sentence. You are saying in that
22 sentence that Mr Broshko introduced himself as the
23 representative of the potential assignee. And in this
24 letter that we're looking at, you're now saying that
25 Mr Broshko was introduced to you as the director of the

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01 company owned by William Rand, and that his means were
02 used to finance the entire process of privatization of
03 BD Agro; correct?
04 A. (Interpreted) That's what it says here. Mr Broshko, as
05 you can see for yourselves, at these meetings that you
06 are focusing on, he introduced himself in different
07 ways, and this is what these texts say. This is not
08 a confirmation that the Agency felt this was true.
09 These are statements that were presented to us at the
10 meetings we held, and there is a huge difference between
11 the two.
12 Q. I am just trying to establish what you knew or what had
13 been represented to you, that's all. If we go to the
14 next paragraph --
15 A. (Interpreted) I think it is more precise to say what was
16 presented to us, but we did not know this, because
17 I repeat, we did not have a single document about that.
18 There was no representation to us, in either oral or
19 written form, throughout the term of this agreement, and
20 I repeat, this is a very long time, we never had the
21 official address during the term of the Privatization
22 Agreement in the period of control of the Agreement.
23 Q. If you look at the next paragraph in the letter that
24 went out under your authorisation to Mr Markicevic, your
25 own letter says or uses the word "entrusted", in

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01 recounting that Mr Broshko said --
02 A. (Interpreted) I apologise, I can't find it. Now I have
03 it, you can go on, thank you.
04 Q. Your letter says that what Mr Broshko said was that
05 William Rand was not pleased by the work and management
06 of the person they had entrusted with the purchase of
07 the company, and that he was interested in fast
08 completion of the assignment process. Again, your
09 letter used the word "entrusted" as to how Mr Broshko
10 had introduced himself to you, correct?
11 A. (Interpreted) Unfortunately, I'll have to repeat again,
12 these are the words of a third party, and the words are
13 repeated here in the same way in which they were
14 presented to the Agency. We never received any evidence
15 on that. As a result, we could not confide our
16 attention to this in the way in which you want me now to
17 confirm this.
18 Q. Mrs Vuckovic, at the outset of my questioning I asked
19 you whether you could recall meeting with Mr Obradovic
20 in 2014 and 2015 about assignment of the Privatization
21 Agreement, and you said you didn't recall having such
22 a meeting with him, correct?
23 A. (Interpreted) I think I don't remember.
24 THE INTERPRETER: The lady said "I think it was not", but
25 that was not absolutely clear. Can you ask the lady to

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01 repeat her sentence for clarity, please?
02 MR MISETIC: Can you repeat your answer? The interpreters
03 did not hear your answer. Can you repeat your answer
04 again?
05 A. (Interpreted) Could you please repeat the question?
06 Thank you.
07 Q. You stated at the beginning of your testimony that you
08 did not recall meeting with Mr Obradovic about
09 assignment of the Privatization Agreement in 2014 and
10 2015, correct?
11 A. (Interpreted) Yes, I said that unfortunately I am sorry
12 I can't respond to this question precisely, but I can't
13 remember. I think no, because we had a large number of
14 meetings on BD Agro Dobanovci with Mr Obradovic. The
15 number must have been more than ten. And I feel free to
16 say even more, but during this time that you are asking
17 about, I can't say we had those meetings.
18 Q. In preparation for your testimony today, have you seen
19 any notes of any meetings with Mr Obradovic in 2014 and
20 2015 about assignment of the Privatization Agreement?
21 A. (Interpreted) I can't remember, as I explained.
22 Q. Is one of the reasons that you may not have met with
23 Mr Obradovic in 2014 and 2015, about assignment of the
24 Purchase Agreement, that the Privatization Agency had
25 been informed that Mr Rand had financed the

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01 privatization, was dissatisfied with Mr Obradovic's
02 management, and therefore he no longer needed to be
03 present for any of these meetings?
04 A. (Interpreted) I apologise to Mme President and members
05 of the panel, let me repeat. This had no relevance at
06 all to the request by Mr Obradovic for assignment of the
07 agreement.
08 Q. I will just draw your attention again to paragraph 8 of
09 your witness statement. You identify meetings with
10 Mr Markicevic and Mr Broshko on 1st July 2014,
11 26th October 2014, 3rd November 2014, and 15th December
12 2014, do you see that?
13 A. (Interpreted) Yes, I can see that.
14 Q. Is there a reason you did not disclose the 30th January
15 2014 meeting with Mr Broshko and Mr Markicevic?
16 A. (Interpreted) No, not really. I think these meetings
17 were mentioned by the Claimants and I recorded them here
18 as such.
19 Q. Thank you. I am going to turn to a different topic now,
20 Ms Vuckovic. If we could show Exhibit CE-030, please?
21 A. (Interpreted) Please allow me some time to find it.
22 (Pause). I have it. You can go on, thank you.
23 Q. What is this document?
24 A. (Interpreted) It is the report on control.
25 Q. If we turn to page 2 of the document -- first, let me

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01 ask you, did you have any role in the preparation of
02 this document?
03 A. (Interpreted) No. As it was explained at the beginning
04 of my statement, the Center for Control was organised in
05 such a manner that it was headed by the director ie the
06 deputy, and there were also assistants and associates
07 who conducted the direct control of the documentation
08 that was submitted during the visit of the privatization
09 entity's premises, or the control of the documentation
10 that was submitted by the buyer to the Privatization
11 Agency, so I never was directly involved in the control
12 itself.
13 Q. If you look at the first paragraph on page 2, under
14 "Introductory remarks", the first two paragraphs, if you
15 could read them to yourself? (Pause).
16 A. (Interpreted) Okay, I have read them.
17 Q. The term of the Agreement was set to expire on October
18 4th 2010, do you see that?
19 A. (Interpreted) Yes, I can see that.
20 Q. Can you explain to the Tribunal why the term was set to
21 expire on October 4th 2010?
22 A. (Interpreted) All agreements on the sale of capital,
23 including the agreement on the sale of BD Agro Dobanovci
24 capital, entailed certain contractual obligations and
25 those obligations included the way in which the

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01 agreement was to be enforced and the terms, and if the
02 buyer was acting bona fide, and if he was performing all
03 his obligations within the term set by the agreement,
04 and in the manner set by the agreement, and bearing in
05 mind that the buyer of the capital, as a physical
06 person, could pay the purchase price in six separate
07 instalments, this was the longest contractual
08 obligations. Having in mind, however, and I need to
09 emphasise this, that the buyer was acting bona fide in
10 performing his contractual obligations. All other
11 obligations were usually set for two years. 5.3.4 had
12 a duration during the term of the Agreement, and 5.3.3,
13 until the payment of the purchase price.
14 Now, the Agreement was signed on 24th October 2005,
15 the first instalment was paid in 2005. Unfortunately,
16 the last instalment, the sixth instalment, was not paid
17 on 4th October 2010, and had the sixth instalment been
18 paid on 4th October 2010, or until the period before
19 4th October 2010, yes, that would have been the longest
20 term from the agreement.
21 Given that in a situation of BD Agro Dobanovci the
22 breach of the contractual obligation occurred before the
23 payment of the purchase price, so the obligation was
24 breached, and this breach happened before the payment of
25 the purchase price, in this case the buyer was delaying

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01 in payment of the sixth instalment of the purchase
02 price, and the instalment was paid on 8th April 2011, if
03 I remember well.
04 So practically, lack of action of the buyer was what
05 prolonged the contractual obligation.
06 Q. But that what you just added there, about the breach by
07 the buyer on other provisions, isn't stated in these
08 introductory remarks that are in front of you, correct?
09 It just says that the term would be extended so that he
10 could make the sixth and final payment, correct?
11 A. (Interpreted) Yes, that is correct. Taking into account
12 the provisions of the Agreement and the provisions of
13 the law. If the buyer does not perform his contractual
14 obligation, the Privatization Agency has the duty to
15 grant the buyer an additional deadline within which he
16 can remedy the breach. So by giving this additional
17 deadline, and I repeat, for the violation that occurred
18 before the payment of the sixth instalment of the
19 purchase price, so before the deadline which was set for
20 a bona fide buyer, the additional deadline was granted
21 and during this deadline the buyer was supposed to
22 remedy the breach which occurred before the payment of
23 the purchase price.
24 And please let me clarify this, the Privatization
25 Agency acted in this way from the conclusion of the

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01 Agreement until the termination of the Agreement, so the
 02 same practice has been in place throughout this time,
 03 because this privatization has not ended yet.
 04 Q. We will get to some of those issues a bit later on, but
 05 for now, let's stay with this document, and if we could
 06 look at page 8, please?
 07 A. (Interpreted) These pages do not have page numbers, so
 08 could you please help me find it?
 09 Q. I believe Ms Pendjer will assist you in locating it.
 10 A. (Interpreted) Thank you. Thank you, I have found it.
 11 Q. If you look at the second paragraph under the bolded
 12 paragraph that's at 5.3.1, the paragraph begins:
 13 "The ban on disposal of shares expired on October
 14 4th 2007 ..."
 15 A. (Interpreted) Okay.
 16 Q. "... but given that the contractual provision and the
 17 Share Pledge Agreement stipulate a pledge in favour of
 18 the Agency until payment of the complete sale and
 19 purchase price, the Buyer was notified via a letter
 20 announcing the control to ensure the Excerpt from the
 21 CSD and CH on the state of his proprietary and pledge
 22 account on the day of the scheduled control."
 23 The pledge on shares was only supposed to be in
 24 place until the complete sale and purchase price had
 25 been paid, is that correct?

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01 A. (Interpreted) Yes, that's correct. That's clearly
 02 stated in our agreement.
 03 Q. If we go to page 21 of this document, which discusses
 04 section 5.3.3, I am not going to read the whole
 05 paragraph out loud to spare the interpreters, but if you
 06 could please just read to yourself the paragraph that
 07 begins:
 08 "We highlight that over the course of 2007 ..."
 09 (Pause). So the Agency was aware that the reason
 10 that BD Agro had gone over the 30% threshold in 5.3.3
 11 was because of the order of the Ministry of Agriculture
 12 to put down livestock that had been infected, correct?
 13 A. (Interpreted) I apologise. It was concluded in the 2011
 14 control, but if you look at the previous pages of this
 15 report, you will see in the introductory remarks that
 16 the performance of obligation was checked from 18th June
 17 2010 until 17th January 2011, so the overall percentage
 18 wouldn't have reflected what you are discussing here.
 19 This was only for the period of this control. This is
 20 not a report regarding the period from the conclusion of
 21 the Agreement until the payment of the purchase price.
 22 This is only one of the segments, and it's clearly
 23 stated in this report. So in the introductory remarks,
 24 in the second sentence, the period of control was
 25 18th June 2010 to 17th January 2011, that is the period

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01 ie for the period between the previous and the last
 02 control.
 03 Q. Yes, but that same day the Agency then sent a notice to
 04 Mr Obradovic about certain steps he had to take to be in
 05 compliance with the Agreement, correct? And I can show
 06 you the document, that's Exhibit CE-031.
 07 A. (Interpreted) Yes, that's correct.
 08 Q. At the bottom of page 2 in English, the paragraph above
 09 the bullet points on page 3, it says:
 10 "Having in mind the above stated, in accordance with
 11 Article 41a of the Law on Privatization, the Buyer is
 12 given additionally granted term of 60 days from the day
 13 of the receipt of this Decision for fulfillment of
 14 obligations referred to in items 5.3.3 and 5.3.4 of the
 15 Agreement ..."
 16 Now, the only reason that he could, meaning
 17 Mr Obradovic, could have been -- or not have fulfilled
 18 5.3.3 on February 25th 2011 is if you include the cows
 19 that had been put down as a result of the order of the
 20 Ministry, correct?
 21 A. (Interpreted) It is correct that upon the control
 22 performed for a certain period, an additional deadline
 23 was given and you can see in the notice that this
 24 included the buyer's obligation to comment regarding
 25 both 5.3.3 and 5.3.4, which includes much more than

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01 disposal of assets. In the control period, already in
 02 2009, we established a breach of 5.3.4 by the buyer, and
 03 we granted 13 additional deadlines until the termination
 04 of the Agreement concerning this obligation, and seven
 05 deadlines approximately regarding disposal of assets.
 06 In 2011, I can claim responsibly, we didn't know
 07 with certainty that this was the only disposal of assets
 08 in the privatization entity, because we got some new
 09 information in the control, we got the information on
 10 disposal of land, and the buyer, that is the entity, did
 11 not submit documentation on this.
 12 The control also found that part of the assets had
 13 been given as a gift. We also got the information that
 14 part of the assets had been donated. We got the
 15 information that assets had been sold and the price had
 16 never been paid. So by engaging this auditor, we
 17 precisely requested that the auditor confirms the
 18 percentage of disposal, both annually, this has to do
 19 with the ban concerning the level of 10% and globally,
 20 and that's 30%.
 21 Q. If you go to the bullet points next, those were all of
 22 the steps that Mr Obradovic needed to fulfil in order to
 23 be in compliance with the agreement according to the
 24 Privatization Agency's perspective, correct?
 25 A. (Interpreted) Yes, precisely.

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01 Q. It included deleting encumbrances on the property and
02 Inex and Crveni Signal returning loans that had been
03 given to them, correct?
04 A. (Interpreted) Among other things, to delete all
05 encumbrances and return all the funds and loans. At the
06 moment, I cannot recall what exactly this control found,
07 whether it was only Crveni Signal and Inex Nova Varos.
08 You need to remember that in our controls we learnt
09 things, we ourselves, and also later on, the audit
10 reports found that the buyer had, during the term of the
11 Agreement, given many more loans than these mentioned
12 here that were reason for termination. There was also
13 a large number of mortgages registered that the buyer
14 deleted over time. Those are breaches of 5.3.4, meaning
15 that the privatization entity was not the user of those
16 funds. So this doesn't only concern the loans to Crveni
17 Signal and Inex Nova Varos, there were many loans that
18 were not repaid, and that during the validity of the
19 Agreement were repaid, so the buyer acted in terms of
20 repaying the loans and deleting the mortgages, as for
21 the other part of the obligation under 5.3.4.
22 Q. So it's fair to say that the Agency did not tell
23 Mr Obradovic that if Inex and Crveni Signal simply
24 repaid the money, the Privatization Agency would not
25 terminate the Agreement, correct?

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01 A. (Interpreted) I would not agree with you there. I will
02 not agree at all. It says clearly here that all the
03 loans the privatization entity had given to third
04 parties were to be repaid. It was very clear, all the
05 more so because Mr Obradovic bought several companies in
06 the privatization process, I don't remember exactly,
07 I think seven or eight. I apologise to the Tribunal for
08 not knowing the exact number, but it was not lower than
09 seven certainly.
10 In one of those companies, and that's PIK Pester,
11 and I remember that very well, we had the same
12 situation. A third party was the user of a loan that it
13 concluded with the bank, and PIK Pester, as the
14 privatization entity, registered a mortgage, and in an
15 additional deadlines Mr Obradovic lifted this mortgage.
16 Also during the validity of the Agreement, there
17 were rather a large number of loans based on which
18 mortgages were established that Mr Obradovic repaid, so
19 Mr Obradovic knew very well what he was supposed to do.
20 All the more so, I need to add that with
21 Mr Obradovic as the buyer of the capital, with the
22 director of the privatization entity, with the auditors,
23 with the representatives of the BD Agro technical
24 services on the one hand, and with the representatives
25 of the Privatization Agency and with the representatives

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01 of the technical services, on the other hand, meetings
02 were held where the buyer was clearly pointed to the
03 breaches of contractual obligations, and we understood
04 it so, and I'm 100% sure that the buyer knew very well
05 what he was supposed to do.
06 And confirmation of this are the audit reports,
07 where he spoke all the time about the mortgages and the
08 loans. So I really believe that there is no dilemma if
09 you look at the facts. All the more so when addressing
10 us the buyer was saying that he would repay the loans of
11 Crveni Signal and Inex Nova Varos. So those were the
12 grounds for which the agreement was terminated in the
13 end.
14 In one letter, he even says, "Please grant me an
15 additional deadline to do this". Let us remember, 13
16 additional deadlines were given to the buyer for the
17 implementation of this contractual obligation, and
18 I think this is more than enough.
19 All this was done with the aim of keeping the
20 Agreement in force. This was what led us in the entire
21 privatization process, not only with BD Agro Dobanovci
22 but all the agreements concluded in that process.
23 Q. I am not sure that we have understood each other with
24 the question, I appreciate the long answer, so I'm going
25 to ask it one more time, but if you could keep it

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01 short -- it's probably my fault for asking it poorly,
02 but let's --
03 A. (Interpreted) I think this was useful though.
04 Q. Let me try and ask a short question, and hopefully get
05 a short answer.
06 This letter was supposed to tell Mr Obradovic that
07 he was supposed to repay the loans from Inex and Crveni
08 Signal, and do more than that, correct?
09 A. (Interpreted) This letter says, I clearly gave you an
10 answer, that all the loans that the privatization entity
11 gave to third parties from the credit loans secured by
12 encumbrances on the assets, be returned. During the
13 privatization process, there were more such cases, not
14 only Crveni Signal and Inex, and Mr Obradovic deleted
15 some but we were stuck with these of Crveni Signal and
16 Inex Nova Varos.
17 Q. I think we understand each other, thank you. Let me
18 turn to a different part of your witness statement.
19 This is paragraph 14, I believe. Here, you discuss the
20 role of the Ministry of Economy, and the first sentence
21 says:
22 "In May 2012, the Agency addressed Ministry of
23 Economy and Regional Development concerning
24 Mr Obradovic's ... appeal against actions of the
25 Agency."

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01 What appeals of Mr Obradovic are you referring to
02 there?
03 A. (Interpreted) At one of the meetings that had been
04 requested precisely by Mr Obradovic that the meeting be
05 organised by the Ministry of Economy, and that was
06 indeed held, there were such meetings in late 2011 and
07 early 2012 in the Ministry, precisely at the initiative
08 of Mr Obradovic, who said that he had done everything,
09 and it was not founded for the Agency to ask for
10 anything because he believed he had met his obligations,
11 and that was at a time when there were quite a few
12 breaches of contractual obligations. He sent an appeal
13 to the Ministry but it's interesting that even in this
14 so-called appeal he mentioned that he had not repaid the
15 loans, but that he would repay them.
16 Q. That paragraph goes on to say:
17 "We received short answer from the Ministry stating
18 that they consider that termination of Privatization
19 Agreement is not economically justified. The Ministry
20 did not further elaborate its opinion, nor did it deal
21 with the issue of application of Article 41a of the Law
22 on Privatization, that is, whether the Agreement was
23 violated and whether the legal reasons for termination
24 of the agreement came into effect."
25 Why did the Commission decide to seek the opinion of

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01 the Ministry?
02 A. (Interpreted) Well, the reasons are the reasons I have
03 mentioned already. The Privatization Agency did not
04 decide just like that to ask the opinion of the
05 Ministry, it was because Mr Obradovic mentioned briefly
06 at the meeting at the Ministry that he intends to file
07 an appeal, so we have addressed the Ministry, because we
08 wanted to get the opinion of the Ministry about that
09 situation, because we wanted to hear from them whether
10 they thought that we were doing the right thing, and
11 acting properly.
12 The Ministry said delivered its response, wherein it
13 said they covered the response from an economic point of
14 view, which was not the topic of the Privatization
15 Agency. We were not deciding and taking actions on the
16 basis of economic justification, we were taking actions
17 on the basis of very clearly stipulated obligations from
18 the agreement which we were controlling, and in cases
19 where such obligations were violated we had to take some
20 actions. So their opinion actually did not contain the
21 legal aspect which was the decisive factor for us to
22 take such a decision.
23 Q. You say you sought the Ministry's opinion, but if we
24 could look at Exhibit CE-033, please, this is the letter
25 from the Ministry to the Privatization Agency, and in

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01 the first paragraph it says:
02 "In regards to your letter [dated] May 10th, 2012
03 regarding the case of privatization of AD BD Agro
04 Dobanovci, requesting further instructions and
05 directions for additional actions ..."
06 Do you see that? The Privatization Agency was
07 asking for instructions from the Ministry, correct?
08 A. (Interpreted) That's what it says here, and yes, that's
09 what was asked for.
10 Q. The Ministry there explains what materials it reviewed,
11 and then concluded that there was no economic
12 justification for termination, correct?
13 A. (Interpreted) It's correct, the Ministry says it's not
14 economically justified to terminate it.
15 Q. In paragraph 14 of your statement, you say that the
16 Ministry did not elaborate on its opinion that
17 termination of the Agreement was not economically
18 justified, do you see that?
19 A. (Interpreted) I can see that, yes.
20 Q. If we go back to the Ministry's letter, there are four
21 bullet points there explaining why they don't believe
22 it's economically justified. Why is it your testimony
23 that the Ministry did not elaborate on its opinion?
24 A. (Interpreted) It is because the Ministry only covered
25 a part, one part, the part related to economic aspect

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01 while disregarding the legal aspect, and the legal
02 aspect is the basis for our decision. We are
03 terminating the Agreement, not because something is
04 economically justified or not, we do not even have such
05 authorisations. We will be terminating only in the case
06 if a contractual obligation has not been performed.
07 Q. So what you intended to say was not that the Ministry
08 did not elaborate on its opinion that it was not
09 economically justified, but that the Ministry did not
10 provide a legal analysis on termination, correct?
11 A. (Interpreted) Yes, as we said, they did not provide
12 a detailed explanation, legal analysis, and that's the
13 first thing that we need, the legal analysis.
14 Q. Then the Ministry ultimately did seek a legal analysis
15 from the law firm of Radovic & Ratkovic, correct?
16 Sorry, let me correct that. The Agency did seek a legal
17 analysis from the law firm of Radovic & Ratkovic,
18 correct?
19 A. (Interpreted) It's correct.
20 Q. You discuss that at paragraph 20 of your statement. You
21 say:
22 "... the Agency did not accept the interpretation
23 expressed in the opinion of law office Radovic &
24 Ratkovic from 2013. The Agency did not agree with such
25 legal interpretation and, as I already stated, it acted

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01 in a different manner in privatizations when it comes to
02 termination due to reasons which are not stated in the
03 agreement (but they are in the law), as well as when it
04 comes to termination after payment of the purchase
05 price."
06 The Agency requested the opinion of the law firm,
07 correct?
08 A. (Interpreted) Yes.
09 Q. And the Agency sought that opinion in order to establish
10 whether there was a legal basis for the Agency to
11 terminate the Privatization Agreement, correct?
12 A. (Interpreted) Just a second, I'm trying to find that.
13 Where is that stated?
14 Q. It's not stated in the document. I am saying, you had
15 approached the law firm of Radovic & Ratkovic to obtain
16 an opinion on whether there was a legal basis to
17 terminate the Privatization Agreement, correct?
18 A. (Interpreted) Yes, we have addressed, that is the
19 Privatization Agency, just as you said, we have
20 addressed the Ministry precisely keeping in mind that
21 the buyer kept emphasising and asking for the opinion of
22 the Ministry, the buyer wanted to get a confirmation
23 that he had performed all the obligations at a time when
24 there were clear violations of contractual obligations,
25 so this law firm, which represented the Agency in all

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01 disputes against third parties, was addressed to get the
02 opinion, as we said.
03 The Privatization Agency, of course, disagreed with
04 the opinion, seeing that it was first of all contrary to
05 all of the previous actions taken, and to all of the
06 future ones. It's very interesting to note that the
07 same law office conducted a dispute in which they took
08 an entirely different opinion to this one. They had the
09 same opinion that we had, and that is that the Agreement
10 may be terminated after the payment of the purchase
11 price, under the condition that a violation of
12 contractual obligation has been established prior to
13 that. Additionally, that an agreement may be terminated
14 even though the termination reason is not stated in the
15 agreement itself, but it is stated in the law, and such
16 a position is contained in many final decisions of our
17 courts which have stipulated very clearly that if the
18 reason for termination of the agreement is not
19 stipulated in the agreement, but it is stated in the
20 law, then the agreement will be terminated under the
21 law.
22 So as I said, these are final court decisions,
23 stipulating that it is so, so it was very clear why such
24 position of the law office was not accepted. The Agency
25 acted like that before and after in all other cases, so

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01 why would we make an exception when it comes to this
02 case? There were no reasons to do that.
03 Q. You said that the Agency disagreed with the law firm's
04 opinion, and I believe you said that the law firm itself
05 took a contrary position in a different matter. Did you
06 approach the law firm --
07 A. (Interpreted) Yes, that's correct.
08 Q. Did you approach the law firm after this opinion and
09 raise any of these issues with them?
10 A. (Interpreted) No, the Center for Control or the
11 Commission did not have contact points in that regard,
12 but the Privatization Agency did communicate permanently
13 with this law firm so I believe that they probably did
14 share their disagreement with their opinion. For us, it
15 was important that we kept having the same points of
16 view when we are undertaking actions towards all
17 privatization entities, to have the same positions,
18 because had we taken a differing point of view in this
19 case, it would be a first step towards completely
20 different practice and completely inappropriate acting,
21 and towards allowing buyers to fail to act upon their
22 contractual obligations.
23 Q. Ms Vuckovic, there were in fact cases prior to the
24 BD Agro case where the Agency had lifted the pledge on
25 shares even though the Agency did not believe that the

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01 buyer had completed all of its obligations under the
02 agreement, correct?
03 A. (Interpreted) I do not remember such cases. I truly do
04 not remember any situation where the Agency would
05 remove, that is lift the pledge without the buyer
06 performing on his obligations.
07 Q. So your testimony now is you're not aware of any case
08 where the buyer had made the final payment, so the
09 Agency lifted the pledge, even though there had been, in
10 the Agency's view, some obligations that had not yet
11 been fulfilled, correct?
12 A. (Interpreted) I am not claiming it is so, I am saying
13 I cannot remember of any such a case, so it would be
14 incorrect.
15 Q. We will get to that point in a little bit. I am going
16 to stay on this topic for a second. If we go to
17 Exhibit CE-043, please, this is a letter from the Agency
18 to the Ombudsman dated 14th November 2014, do you see
19 that?
20 A. (Interpreted) Yes, I do.
21 Q. Did you participate in any discussions of the Agency
22 about how to respond to the Ombudsman's inquiry?
23 A. (Interpreted) I did take part when it comes to
24 discussions regarding the performance of contractual
25 obligations. Only as regards that part.

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01 Q. If we look at this letter, the first paragraph says:
02 "In a letter submitted to the Privatization Agency
03 on October 31, 2014, you asked the Agency to provide the
04 reasons why it did not terminate the Agreement on sale
05 of capital of ... BD Agro ..."
06 Do you see that?
07 A. (Interpreted) Yes, I do.
08 Q. Then in the next paragraph, it says:
09 "There are several reasons why the Agency did not
10 render a decision on termination of the agreement ..."
11 And the first bullet point there is:
12 "Unresolved legal issue regarding fulfilment of
13 contractual obligations."
14 Do you see that?
15 A. (Interpreted) Yes, I do.
16 Q. The reason there were unresolved legal issues was the
17 Agency was in possession of an opinion from the Ministry
18 saying there was no economic justification, and an
19 opinion from the law firm of Radovic & Ratkovic saying
20 there was no legal justification for termination,
21 correct?
22 A. (Interpreted) It is correct. I mean, it's stated that
23 way in this letter.
24 Q. If you go to page 3 of the document in English, there's
25 a discussion about the unresolved legal issues. I will

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01 give you a minute to take a look at it, so I don't have
02 to read it all out loud. (Pause).
03 A. (Interpreted) Can you please tell me which paragraph
04 that is specifically -- oh, I am sorry, I was shown --
05 THE INTERPRETER: Maybe for the sake of interpreters if you
06 could share? We are struggling to find it. Please, the
07 exact paragraph.
08 MR MISETIC: It is the paragraph that begins:
09 "Even though the Agency asserted that the
10 conditions ..."
11 A. (Interpreted) Where is that paragraph? I am trying to
12 find it. (Pause). I have found it, thank you.
13 (Pause). I have read it.
14 Q. The Agency was informing the Ombudsman that it did not
15 terminate the agreement because BD Agro's case was
16 a factually and legally complex situation, correct?
17 A. (Interpreted) It is correct.
18 Q. It was informing the Ombudsman there was a danger that
19 the buyer would sue, and that there would be serious
20 consequences for the state budget of Serbia, correct?
21 A. (Interpreted) That is what it says here.
22 Q. And that as a result of this, the decision was made not
23 to take into consideration the case of BD Agro Dobanovci
24 before the receipt of the response of the Ministry, that
25 is the conclusion of the Government, correct?

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01 A. (Interpreted) Well, at the beginning you said that the
02 Agency has stated that there are several reasons on
03 account of which it has not taken this decision, and
04 then you mentioned unresolved legal issues, we did not
05 get instructions from the line ministry, the point of
06 view of the Ministry of Economy that it's not
07 economically justified, the debatable legal basis, but
08 you did not mention the fact that the supervision
09 procedure of the work of the Agency has been initiated
10 but it hasn't been terminated.
11 All of this that was stated to the Ombudsman, who
12 has addressed us on the basis of the request he received
13 from the Association of Employers, represents basically
14 listing all of these questions that the Privatization
15 Agency had considered in this entity, and not only in
16 this privatization entity, but in all the other
17 entities. This shows that we truly acted with an
18 increased level of diligence, and in a bona fide way, we
19 were taking into consideration all aspects of the case,
20 making sure we don't violate any contractual
21 obligations, and to give a chance to the buyer to
22 perform on the obligations and to have a successful
23 privatization case.
24 Our interest was to achieve economic development and
25 growth, and social stability, given the number of

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01 employees, because all of these privatization
02 agreements, regardless of whether they concerned sale of
03 capital or sale of assets, they had an economic and
04 social nature.
05 Therefore, what we are saying to the Ombudsman is
06 that in -- let me remind you that in 2012, the position
07 of the Commission, that the conditions for the
08 termination of the Agreement were in place, but we were
09 trying again to resolve these issues so as not to cause
10 harm to the buyer himself either.
11 So all of the issues listed here were subject of
12 a thorough discussion by all the members of the
13 Commission. These same issues were also discussed with
14 the buyer, the representative of the technical services,
15 and with auditors, so the control of contractual
16 obligations was not only of a controlling character; it
17 also had a preventative nature, namely to help the buyer
18 perform on his contractual obligations.
19 So this is absolutely clear, what the Privatization
20 Agency was explaining to the Ombudsman. We were
21 actually telling him what issues had been discussed in
22 making its decisions given that this is the letter of
23 14th November 2014, and the supervision procedure over
24 the legality of the acts had already been initiated
25 in December 2013.

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01 So we waited for the report following the
02 supervision procedure. That is the essence of the
03 letter sent to the Ombudsman.
04 Q. Let me ask you this: if you would look at the third
05 paragraph from the end of the document, and just ask you
06 if you agree with what is stated there.
07 A. (Interpreted) So are you asking about the paragraph
08 saying:
09 "In line with this, the decision was made not to
10 take into consideration the case of BD Agro ... before
11 the receipt of the response of the Ministry, that is,
12 the Conclusion of the Government."
13 Is that the paragraph you are referring to?
14 Q. Do you agree that that decision was made for those
15 reasons, as stated in that paragraph?
16 A. (Interpreted) So the position was not to discuss this
17 until the response from the Ministry was received. The
18 reference here was to the report on the supervision
19 procedure. I really do not know what conclusion of the
20 Government referred to. For us, what was important was
21 the supervision conducted by the Ministry.
22 MR MISETIC: Thank you, Ms Vuckovic.
23 Mme President, I know we have to take a break, and
24 this would be a good opportunity for a break.
25 THE PRESIDENT: Absolutely, and you will tell me after the

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01 break how much longer your cross-examination will be,
02 I assume.
03 MR MISETIC: Yes, Mme President.
04 THE PRESIDENT: Then we can take a 15-minute break. I have
05 noted last night, looking at the time used, that
06 actually there is not that much party time used every
07 day, so maybe I am giving too long breaks but I think we
08 have a good rhythm, so it's fine, I don't want to
09 shorten the breaks, but I am just flagging this, because
10 if you insist on using your entire time allocated over
11 the entire hearing, the days towards the end will become
12 longer, so we just have to know this. Unless you tell
13 me you will absolutely need the entirety of your time,
14 we can continue as we do now. Otherwise, it's better to
15 accelerate and not be too tight at the end. We are
16 really in your hands, but I am just raising this.
17 MR MISETIC: Thank you, Mme President. We will discuss
18 internally with our team.
19 MS MIHAJ: We will also discuss it.
20 THE PRESIDENT: Fine. And then I should say to you,
21 Ms Vuckovic, that during the break, you should please
22 not speak to anyone. Thank you.
23 A. (Interpreted) Thank you.
24 THE PRESIDENT: Let's take 15 minutes now.
25 (10:44 am)

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01 (A short break)
02 (11.02 am)
03 THE PRESIDENT: I was just told that the next witness,
04 Mr Cvetkovic, will also testify in Serbian, is that what
05 is agreed?
06 DR DJERIC: Yes, Mme President. Mr Cvetkovic said that he
07 will testify in English but he is more comfortable with
08 Serbian, and the other side agreed. We informed them
09 now, and I asked Marisa if she could inform the
10 interpreters.
11 THE PRESIDENT: I think everybody is informed now.
12 DR DJERIC: I am thankful for the understanding of the other
13 side, thank you.
14 THE PRESIDENT: Good. Are we ready to continue?
15 MR MISETIC: Yes, Mme President.
16 THE PRESIDENT: Please.
17 MR MISETIC: I hope to finish before noon.
18 THE PRESIDENT: That would be perfect.
19 MR MISETIC: Welcome back, Ms Vuckovic.
20 A. (Interpreted) Thank you.
21 Q. We were looking at the letter to the Ombudsman which
22 concluded that the Agency was waiting for the receipt of
23 a response from the Ministry and in your witness
24 statement, at paragraph 16, you note that a letter and
25 report of the Ministry was received on 7th April 2015,

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01 after which, the Agency granted a deadline to the buyer,
02 correct?
03 A. (Interpreted) Yes, correct.
04 Q. So the response that the Agency was waiting for from the
05 Ministry is the response that came on 7th April 2015,
06 correct?
07 A. (Interpreted) Yes, it arrived in April 2015, correct.
08 Q. I would like to then turn to the discussion at the
09 meeting of the Commission on 23rd April 2015, which is
10 CE-768. Have you had a chance to review this
11 transcript?
12 A. (Interpreted) Yes, I have.
13 Q. As you know, I'm going to ask you a few questions about
14 the transcript. If we turn to page 2 in English, the
15 first paragraph I would like to start with starts with:
16 "First of these provisions, 5.3.3 ..."
17 And this is now you speaking. You said:
18 "First of these provisions, 5.3.3, was prescribed as
19 basis for termination of the agreement, and the other
20 one, which refers to pledges, in accordance with the
21 agreement, was not prescribed as basis for termination
22 of the agreement, although article 41a of the Law on
23 Privatization, which is applicable on these agreements,
24 prescribes that an agreement may be terminated in case
25 of explicitly listed violations of contractual

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01 obligations and, in the last item of the article, it
02 prescribes it may be terminated in other cases as
03 prescribed in the agreement."
04 Do you see that?
05 A. (Interpreted) Yes.
06 Q. A little bit further on, you said:
07 "The buyer then submitted certain proofs, wherein
08 the auditor confirmed that it fulfilled, that is, acted
09 in accordance with item 5.3.3."
10 Do you see that?
11 A. (Interpreted) Yes.
12 Q. Your position at the meeting was that the Agency had
13 already received confirmation from the auditor that the
14 obligations under 5.3.3 had been fulfilled, correct?
15 A. (Interpreted) Correct.
16 Q. Then at the bottom of that page, it says:
17 "Bearing in mind that all other obligations ..."
18 Sorry, let me start again. Immediately after that
19 sentence, it discusses a remaining obligation under
20 5.3.4, and then you said:
21 "Bearing in mind that all other obligations were
22 fulfilled at the time, the Commission took a standpoint
23 to ask for the opinion of the competent ministry, since
24 this was the buyer's only remaining obligation ..."
25 Correct?

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01 A. (Interpreted) Yes, that's what it says here.
02 Q. And then it goes on to discuss that request to the
03 Ministry from 2012. And my first question to you is: as
04 I understand your words at the time, back in 2012, the
05 Agency was already aware that the only remaining
06 obligation was 5.3.3 before it asked for an opinion of
07 the Ministry, correct?
08 A. (Interpreted) I apologise, I could not follow you, so we
09 are talking about the transcript for the meeting held on
10 23rd April 2015.
11 Q. Yes.
12 A. (Interpreted) And you mentioned 2012, I think, if
13 I correctly got your words.
14 Q. So let me clarify. Earlier this morning we discussed
15 that your testimony was that Mr Obradovic had complained
16 and appealed because he said he had fulfilled his
17 obligations, and as a result of that, the Agency sought
18 the opinion of the Ministry, correct?
19 A. (Interpreted) Yes, correct.
20 Q. And that occurred in 2012, correct?
21 A. (Interpreted) Yes.
22 Q. So if you read the paragraph in the transcript,
23 I believe there you were discussing that situation, and
24 you said:
25 "Bearing in mind that all other obligations were

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01 fulfilled at the time, the Commission took a standpoint
02 to ask for the opinion of the competent ministry, since
03 this was the buyer's only remaining obligation, whereas
04 the buyer objected and pointed out that it fulfilled all
05 of its obligations, and that we no longer have grounds
06 to take actions against the buyer after payment of the
07 purchase price. These were the reasons why we decided
08 to address the competent ministry, and the competent
09 ministry, in June of 2013 I think, excuse me, on June
10 5th, 2012, delivered its opinion that it would not be
11 expedient to terminate the agreement on sale of capital
12 ..."
13 Do you see that?
14 A. (Interpreted) I can't see the last part of your sentence
15 here in writing. Yes.
16 Q. So my question to you was what you were saying there was
17 back in 2012, the buyer had fulfilled all obligations
18 under the agreement except for 5.3.4, in the Ministry's
19 view. That's what the Ministry's position was -- sorry,
20 the Agency's position, I apologise.
21 A. (Interpreted) Of the Agency. So here we don't say that
22 this is Agency's position. Here we say that the auditor
23 confirmed that the auditor was saying that the buyer had
24 performed on his obligations from 5.3.3. This was not
25 the position of the Privatization Agency. Here, we are

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01 paraphrasing what the auditor was saying in his reports.
02 Had the auditor clearly stated in his report that the
03 obligation from 5.3.3 was fulfilled -- but concerning
04 the issue that there hasn't been a disposal more than
05 10% on the annual level and the issue that there hasn't
06 been a disposal of totally 30% before the payment of the
07 purchase price -- then it would have been considered
08 that the contractual obligation was fulfilled.
09 Allow me to remind you that the auditor's reports in
10 2011 and 2012 did not include a precise statement
11 anywhere that not over 30% had been disposed of.
12 The task of the auditor in all auditor's reports,
13 which is clearly stated in the introduction, is that the
14 task of the auditor is to clearly and unequivocally, we
15 are using these phrases, unequivocally, to confirm the
16 performance of the obligation, which includes the
17 threshold of 10% and threshold of 30%.
18 Unfortunately, the auditor in 2011, if you look at
19 his first report, the first that he submitted, and the
20 last one, there he mentions the 10% threshold only, and
21 doesn't say anything about the 30% threshold.
22 In mid 2011, he says --
23 THE PRESIDENT: Ms Vuckovic, I think the question was
24 relatively clear. When I read in this report, "Bearing
25 in mind that all other obligations were fulfilled at the

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01 time, the Commission took a standpoint to ask for the
02 opinion of the competent ministry", who is saying this?
03 Is it the auditors of BD Agro, or is it the Commission?
04 A. (Interpreted) Indirectly it can be concluded from the
05 opinion of the auditor, so this is practically retelling
06 the opinion of the auditor, with respect to 2012 and
07 2013.
08 THE PRESIDENT: I will appreciate that when we come to it.
09 MR MISETIC: Thank you, Mme President.
10 The other question I have on this point is you were
11 also telling the Commission that the buyer -- this is
12 now you are discussing what happened in 2012, and you
13 say:
14 "... the buyer objected and pointed out that it
15 fulfilled all of its obligations, and that we no longer
16 have grounds to take actions against the buyer after
17 payment of the purchase price."
18 You told the Commission that Mr Obradovic took that
19 position in 2012, correct?
20 A. (Interpreted) That's correct.
21 Q. If we could go to page 4, please? I am going to start
22 in the middle of the paragraph, where it says:
23 "If this disposal of shares is permitted, and the
24 buyer is, I repeat, entitled to this in accordance with
25 the agreement ..."

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01 THE INTERPRETER: The interpreters apologise, could you
02 please help us locate the paragraph?
03 MR MISETIC: I think we will have it on the screen in
04 a moment. You said:
05 "If this disposal of shares is permitted, and the
06 buyer is, I repeat, entitled to this in accordance with
07 the agreement, generally the Agency would no longer be
08 in a contractual relation with someone and you would no
09 longer be able to take measures against the contracting
10 party, when the legal ground had generally ceased with
11 it, and the buyer would be free to dispose of its
12 shares."
13 That's what you told the Commission on 23rd April
14 2015, correct?
15 A. (Interpreted) That is correct, that's what it says here.
16 Q. And then you go on to describe a change in the Law on
17 Privatization, and I want to just address this with you.
18 You say:
19 "Also, the new Law, let us remind, in article 37
20 paragraphs 8 and 9, prescribes that on the day of
21 certification of the agreement on sale of capital, the
22 Agency acquires a statutory pledge right against the
23 capital which was the subject of the sale, and it is
24 obligated, within 15 days after fulfilment of the last
25 contractual obligation of the buyer, to notify the

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01 competent registry for the purposes of deletion of the
02 statutory pledge against the capital. This provision of
03 the law was, in fact, an attempt to, so to say, prevent
04 and avoid that what we had as a clear omission in our
05 agreements ... where we allowed disposal of capital
06 during the validity of the agreement, we generally
07 allowed shares to be alienated and we were still
08 monitoring the agreement which was a substantial
09 problem."
10 Do you see that?
11 A. (Interpreted) Yes, I can see that.
12 Q. So you were advising the Commission that under the old
13 law, the Agency allowed shares to be alienated while you
14 were still monitoring the agreement, and that it was
15 a substantial problem, correct?
16 A. (Interpreted) No, that is not correct. So this
17 paragraph is about the fact that it is my duty to draw
18 the attention of the Commission to the contractual and
19 legal provision. The contractual provision was saying
20 that the certificate on the pledge of the shares was to
21 be kept by the Agency until the purchase price has been
22 paid. The 2014 Law -- so during the term of the
23 agreement -- envisaged that when the agreement was
24 established, the statutory pledge was established, and
25 that the pledge was to be deleted within 15 days

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01 following the fulfilment of the last contractual
02 obligation and we were supposed to implement this in
03 this case too.
04 In other words, at the moment when the request by
05 the buyer for the deletion of the pledge was submitted,
06 the fact is that the purchase price was paid at the
07 time, because this happened, if I remember well, in
08 early 2012. However, at this moment in time, as the
09 buyer had not fulfilled his obligation, the Agency
10 obviously did not perform its own obligation to delete
11 or lift the pledge from the shares. We thought this was
12 completely justified, given that if we had done so, the
13 buyer would have been able to dispose of the shares, and
14 in this way, the role of this privatization agreement,
15 and the privatization process, would have been
16 pointless. And in addition to that, this would have
17 created a practice for the buyer not to have any duty to
18 perform on its contractual obligations, as of the moment
19 he pays the purchase price. And he could have done this
20 much before. He could have paid the purchase price
21 without fulfilling any of the contractual obligations,
22 because he had paid the purchase price. So this was
23 what the Agency was guided by when taking the decision
24 on this.
25 And this was the position that the Agency had all

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01 the way until the end. What's more, I must add that the
02 Privatization Agency, on the issue of the deletion of
03 the pledge, don't have any problem whatsoever. So it
04 removed the pledge after the contractual obligations had
05 been met.
06 Q. Ms Vuckovic, I don't think that answered my question,
07 but let me ask some follow-up questions then. You say
08 here that the change in the law we're talking about in
09 2014 was an attempt to "prevent and avoid that ... we
10 had as a clear omission in our agreements". What was
11 the clear omission in your agreements?
12 A. (Interpreted) The agreement said that the pledge would
13 be removed after the purchase price has been paid. In
14 cases of mala fide buyers, this was not the last
15 contractual obligation. The point of having an
16 agreement is for a bona fide buyer in performing the
17 obligations, and the obligation that lasts the longest
18 is paying the purchase price in instalments. So the
19 assumption is that by the payment of the last
20 instalment, the buyer would have fulfilled the other
21 obligations that were shorter.
22 Before the payment of the purchase price in this
23 case, we had a breach of a contractual obligation, which
24 would have meant that by removing the pledge, we would
25 have opened the possibility for the buyer to dispose of

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01 the shares. We practically would not have had
02 a contractual party from which we could require to meet
03 the contractual obligations. This would have created
04 a very bad practice for all the others, because no one
05 would meet any obligations if they could dispose of the
06 shares, and it was certain that Mr Obradovic would
07 dispose of the shares very quickly, and this resulted
08 from his letters and requests.
09 Here, I also need to stress that in his request for
10 removing the pledge, Mr Obradovic was rather inert. If
11 he was completely convinced that this was right, and he
12 knew that the Agency would not release the pledge until
13 he had met all the obligations, he could have approached
14 the court. He could have asked for damages. He had
15 a lot of possibilities of action, but as far as I know,
16 he didn't do it.
17 Q. Ms Vuckovic, the transcript says you said:
18 "... we had as a clear omission in our agreements
19 ... where we allowed disposal of capital during the
20 validity of the agreement, we generally allowed shares
21 to be alienated and we were still monitoring the
22 agreement which was a substantial problem."
23 That's what you told the Commission, correct?
24 A. (Interpreted) Yes, that's correct. It had to do exactly
25 with this. You allow alienation of the shares by

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01 removing the pledge, and you allow the buyer to dispose
02 of the shares, while the agreement is in force, and
03 while it's not been honoured, so you have no further
04 influence when it comes to the privatization agreement.
05 You don't have a contractual party, no one to ask to
06 meet the obligations. And the fact was that the
07 contractual obligations had not been met, and this
08 breach, I repeat here, was established before the
09 purchase price was paid. The additional deadlines for
10 rectification of 5.3.4 which was the basis for
11 termination of the Agreement, started even back in 2009.
12 In this period, the buyer was acting under this
13 contractual obligation until 2015, when he had not
14 repaid the loan related to the 221 million agreement.
15 Q. Let me try and approach this one more time. You say
16 that the law was amended not because of a potential
17 problem but because -- and you used the past tense here:
18 "... we generally allowed shares to be alienated and
19 we were still monitoring the agreement which was
20 a substantial problem."
21 Correct?
22 A. (Interpreted) No, I don't use the past tense. I said if
23 we had allowed that, this and this would have happened,
24 and this is what's written here. If we had allowed for
25 the capital to be disposed of during the duration of the

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01 agreement, not allowing them to be disposed of, while
02 still monitoring the agreement, that would have been
03 a rather substantial problem because you wouldn't have
04 had the other contractual party, in a situation where
05 contractual obligations had not been met. That's very,
06 very clear.
07 Q. Let's look at paragraph 28 of your witness statement.
08 You say in this paragraph:
09 "... it was concluded [in] the meetings of the
10 Agency that the only right thing was to keep the pledge
11 on shares until Mr Obradovic finally fulfils his
12 contractual obligations. [The] stance of the Commission
13 ..."
14 A. (Interpreted) I apologise, paragraph 28 or 27 of the
15 statement?
16 Q. I believe, and I do note that there was a numbering
17 error in your witness statement, in the Serbian version
18 versus the English version, so in your version there are
19 two paragraphs in paragraph 26, and then there is a 27,
20 so the English version is paragraph 28, and the Serbian
21 version --
22 A. (Interpreted) Could you please tell me in the original
23 which paragraph it is?
24 Q. So the original Serbian version should be numbered
25 paragraph 27.

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01 A. (Interpreted) Correct.
02 PROFESSOR KOHEN: Which is paragraph 28 of the English
03 version?
04 MR MISETIC: That's correct. So the last sentence of
05 paragraph 27 in the Serbian version. You say:
06 "Having this in mind, it was concluded [in] the
07 meetings of the Agency that the only right thing was to
08 keep the pledge on shares until Mr Obradovic finally
09 fulfils his contractual obligations. [The] stance of
10 the Commission who decided upon this issue was that such
11 decision was the only possible."
12 When you say the only right thing to do, you were
13 aware that the contract required the Agency to lift the
14 pledge when the final payment had been made, correct?
15 A. (Interpreted) Yes, I have already said that.
16 Q. So is it your testimony that the only right thing for
17 the Agency to do was to breach the pledge agreement?
18 A. (Interpreted) The agreement established a certain
19 obligation that you have mentioned or quoted here. In
20 2012, the Commission had already taken a decision that
21 the conditions had been met to terminate the agreement.
22 In August 2013, the buyer submitted the request for
23 assignment of the agreement and concluded an assignment
24 agreement with Coropi. All these facts led to the
25 conclusion that the shares or capital would be disposed

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01 of. All this pointed to the fact that the agreement
02 would not be honoured through such actions. The aim of
03 the agreement was to keep it in force, provided that all
04 the contractual obligations are met.
05 I will remind you of Article 41 of the Law that says
06 that in case of termination of an agreement, the capital
07 will be transferred to the shares fund. In the event
08 that the buyer disposed of with the shares, at the
09 moment of termination of the agreement, you have nothing
10 to transfer.
11 THE PRESIDENT: Ms Vuckovic, this is a very long answer to
12 a relatively short question. The question was: you say
13 here in paragraph 28 of the English version of your
14 witness statement that the only right thing was to keep
15 the pledge on shares. And the question was whether you
16 were thereby saying that the only right thing was to
17 breach the pledge agreement. You can say yes or no. If
18 you have then to explain, you can. But I think it's
19 important here that we try to focus on the questions.
20 A. (Interpreted) I apologise for trying to give a broad
21 explanation, but these facts are important in order to
22 understand this decision of the Agency. A brief answer
23 would be yes, the position of the Agency was that this
24 was the only possibility, given that the buyer had not
25 met his contractual obligations, and so, reciprocally,

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01 the Agency for Privatization did not meet its
02 contractual obligation either.
03 THE PRESIDENT: Thank you. I understand witnesses always
04 are eager to explain and that's perfectly legitimate.
05 MR MISETIC: Thank you, Mme President.
06 Thank you, Ms Vuckovic. If we could go back to the
07 transcript, CE-768, at page 11, please, beginning with
08 where you speak at the top of the page:
09 "So, the agreement prescribes that the pledge is
10 deleted once it pays the purchase price, and not when it
11 fulfils its obligation."
12 And then you continue on:
13 "That is right, it violated one of the provisions of
14 the agreement, and the release of the pledge is not tied
15 to the fulfilment of contractual obligations, rather it
16 is tied only to the payment of the purchase price, which
17 was clearly done carelessly in the agreement. Now, the
18 new law rectifies this somewhat and it prescribes that
19 the certificate on deletion of the pledge and fulfilment
20 of contractual obligations is issued once all
21 obligations are fulfilled, and not only payment of the
22 price. And that is it and we are now between a rock and
23 a hard place because on the one hand we have an
24 obligation in accordance with the agreement, and on the
25 other hand the consequences of this is clear to you."

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01 There, this discussion is what Mme President just
02 asked you about, you were discussing the fact that you
03 had to decide whether to breach the agreement or to go
04 ahead and lift the pledge and then deal with the
05 consequences, correct?
06 A. (Interpreted) Precisely this means that we discussed
07 this issue in detail, and I have to admit a broad
08 discussion regarding this, deeply aware of what the
09 agreement said, and deeply aware of the consequences for
10 the performance of the Privatization Agreement, and
11 creation of bad practice for all future buyers who could
12 behave in this way.
13 Q. If you scroll down a little bit further, another voice
14 there says:
15 "If we consciously give it to him now not even God
16 could cleanse us."
17 Do you see that?
18 A. (Interpreted) Yes, I do.
19 Q. What did that mean to you, "not even God could cleanse
20 us"?
21 A. (Interpreted) Believe me, I cannot really comment on
22 this.
23 Q. Ms Vuckovic, what kind of -- let me ask it a different
24 way, and let me preface it by saying -- I'm sure you're
25 aware that these questions are going to be asked, but

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01 I will preface it again by saying our position is that
02 you were once wrongfully suspected of a crime, and
03 I want to emphasise wrongfully suspected of a crime, in
04 your capacity as an employee of the Privatization
05 Agency, and that resulted in your arrest, correct?
06 A. (Interpreted) Yes, that's correct. I wasn't an employee
07 of the Agency, I was Director of the Center for Control.
08 It was in 2012.
09 Q. You were arrested on the basis of some unjustified
10 suspicions, correct?
11 A. (Interpreted) Yes, the suspicions proved to be
12 unfounded.
13 Q. How long did you spend in detention?
14 A. (Interpreted) I was in detention for 30 days.
15 Q. Were you aware that the Agency issued a press release
16 when you were released from detention?
17 A. (Interpreted) Yes, I was aware. I think my colleagues
18 told me about it.
19 Q. Have you seen this statement before?
20 A. (Interpreted) No, I haven't.
21 Q. The suspicions -- let me bring up Exhibit CE-895 just to
22 ask one question about it.
23 This is an article discussing that case. The fifth
24 paragraph from the top says:
25 "At that time, the labour union of Azotara employees

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01 warned all public authorities, the police, the
02 judiciary, the ministries, the Privatization Agency,
03 that a state-owned company was being robbed and that
04 part of the factory was being sold without a permit.
05 No one reacted then and the plant was exported. Now,
06 the workers call for accountability of not only the
07 owners of Azotara at a time, but also of public
08 structures that had to react much earlier and prevent
09 malversations."
10 Is that what happened in the case where you were in
11 detention for 30 days, that the labour unions had raised
12 suspicions about the work of the Agency?
13 A. (Interpreted) I don't know if that was during the period
14 when I was in detention. I would say that this was
15 probably before that, because the trade unions had
16 written to us that assets were being alienated from
17 Azotara, and I remember that within four days, we
18 reacted to that letter, we sent a request to the buyer,
19 and asked for explanation. Since when performing
20 control, the Agency cannot stop people taking away
21 assets from the factory, we also informed the police.
22 I think we did everything that was necessary, but as you
23 know, it's not a good idea for me to talk about it.
24 That was a time when there were many criminal complaints
25 filed against the Agency for Privatization by buyers or

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01 trade unions, regardless of whether we had terminated an
02 agreement or not. That was simply a practice at the
03 time, and there were many cases, but fortunately no one
04 was convicted in any of those cases, as far as I know.
05 Q. Just to clarify, could you give us an estimate of how
06 many criminal cases were filed against Privatization
07 Agency personnel which resulted in acquittal?
08 A. (Interpreted) I really cannot say that. Neither do
09 I know it, nor is it in my competence to have that kind
10 of information, but this is what I know from my
11 colleagues. But no one was convicted or prosecuted for
12 that.
13 Q. If we turn to paragraph 26 of your statement, and let me
14 check to make sure it's the same one in the Serbian
15 version. Yes, it is paragraph 26 in the Serbian version
16 as well.
17 You say there:
18 "Unions have, so to say, immediately after the
19 conclusion of the Privatization Agreement, started
20 sending letters to the Agency in which they complained
21 about actions of the buyer and non-performance of
22 contractual obligations."
23 When you say that started "immediately", you mean
24 immediately upon the signing of the Privatization
25 Agreement?

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01 A. (Interpreted) That's exactly what it says here in
02 writing.
03 Q. If we go to paragraph 15 of your statement, you say:
04 "In 2013, Ministry of Economy initiated supervision
05 proceedings concerning the work of the Agency in
06 relation to privatization of BD Agro after a letter was
07 sent by representatives of representative unions as well
08 as strike board of BD Agro's employees which were
09 dissatisfied with management of the company, and hence,
10 requested termination of the Agreement, reconsideration
11 of business operations, as well as payment of salaries
12 and contributions which were due since 2009."
13 So if I understand correctly, your evidence is that
14 it was as a result of the letter of the representative
15 of the unions and the strike board that the Ministry
16 initiated the supervision proceedings over the Agency's
17 work in relation to BD Agro?
18 A. (Interpreted) I am sorry, I am not sure if I understood
19 you correctly. You said first that I said that
20 immediately after the conclusion of the Privatization
21 Agreement, the trade unions started sending the Agency
22 letters complaining about the buyer's actions and
23 non-performance of contractual obligations, which is
24 entirely true. Then it says, however, no decisions have
25 been taken by the Agency because of the complaints by

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01 the trade unions. Had these complaints been able to
02 impact the decision of the Agency whether to terminate
03 the agreement, the agreement would have been terminated
04 much sooner, because the trade unions, the shareholders'
05 associations were insisting that we needed to terminate
06 the agreement many years before, and which was
07 particularly intensive in 2009, so I do not see the
08 relation with that point and with the point discussing
09 the reasons for initiating the supervision procedure.

10 The supervision procedure over the work of the
11 Agency did not start because we asked it to be started,
12 it was started because the trade unions and strike board
13 of employees asked for it to be started.

14 Maybe I missed the context, the background of your
15 question. I don't see the link there between the two.

16 Q. You have answered the question as I posed it, which is
17 yes, the oversight of the Agency did not start because
18 we asked it to be started, it started because the trade
19 unions and strike board of employees asked for it to be
20 started.

21 I would like to go back to the --

22 A. (Interpreted) I am sorry, these are facts which have
23 been established, also in the decision taken by the line
24 ministry. We were just informed about the supervision
25 procedure because we had to submit all the available

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01 documents related to the case.

02 Q. If we go back to the transcript, CE-768, page 11, the
03 voice there said:

04 "If we consciously give it to him now not even God
05 could cleanse us."

06 And then it says:

07 "All right then, we can decide to not give it ..."

08 Sorry. (Pause). The female voice says:

09 "If we consciously give it to him now not even God
10 could cleanse us.

11 "Saša Novakovic: All right then, we can decide to
12 not give it to the buyer and then we are forcing him it
13 into suing us. This is ... may the court rule."

14 So it's fair to say that the Commission preferred to
15 breach the pledge agreement and be sued rather than
16 comply with the pledge agreement, correct?

17 A. (Interpreted) The Agency decided to terminate the
18 agreement, because of violations of contractual
19 agreements under 5.3.4, the Agency decided that it would
20 remove, that is lift the pledge, once all contractual
21 obligations have been fulfilled, which is a fact
22 Mr Obradovic was fully familiar with, and maybe that's
23 why he acted in such an inert way. He did not ask for
24 compensation or damages, he did not sue us or anything
25 of the sort.

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01 I am sorry if I expounded on this too long but

02 I just felt the need to explain this.

03 Q. I guess my question was -- I was trying to be
04 straightforward -- was it the Commission's preference to
05 be sued by Mr Obradovic for breach of the pledge
06 agreement rather than to comply with the terms of the
07 pledge agreement?

08 A. (Interpreted) I also believe I provided a clear answer.
09 The Privatization Agency decided to terminate the
10 agreement on account of violation of article 5.3.4. Had
11 the buyer within the additional deadline performed the
12 obligation, that is repaid the loans of Crveni Signal
13 and Inex Nova Varos, Mr Obradovic's pledge on shares
14 would have been lifted immediately, and he was fully
15 aware of those facts.

16 Q. Let me turn to a different portion of the transcript.
17 Ms Vuckovic, let's look at page 5 of the transcript.
18 This is now six lines from the bottom in the English
19 version, and Ms Pendjer will help you find it in the
20 Serbian version:

21 "... we have an order from the ministry to provide
22 an additionally granted term ..."

23 Do you see that?

24 A. (Interpreted) I have found it.

25 Q. And then if we go to page 7 in the English, the last

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01 paragraph on page 7, in the middle of the paragraph,
02 fifth line from the bottom:

03 "... so I think that the order of the Ministry
04 should be implemented as given, I am afraid that we do
05 not have any maneuvering room."

06 Do you see that?

07 A. (Interpreted) Yes.

08 Q. You told the Commission, or you categorised the April
09 7th letter from the Ministry as an order from the
10 Ministry when you were addressing the Commission,
11 correct?

12 A. (Interpreted) Well, if the transcript says that this is
13 what I said, then it must be true. My understanding of
14 all the decisions issued by the line ministry were that
15 they are generally speaking binding on the Privatization
16 Agency, and this is how we acted in all privatization
17 proceedings where supervision was conducted over the
18 Agency, and there were quite a few before this case and
19 after this case as well. Whereby the opinion of the
20 line ministry matched the fact that the line ministry
21 was of the same opinion as the Agency, and that is that
22 contractual obligation under 5.3.4 had been violated,
23 and that the buyer should be given one more chance on
24 top of all of the previous chances given to him to
25 remedy the agreement, because we believe that the buyer

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01 would make that effort and successfully complete the
02 agreement, and had it happened, the Privatization
03 Agency, believe me, would have been very happy that it
04 is so.
05 Q. Thank you. Is it the case that the Agency decided to
06 delay lifting the pledge on shares until after the
07 90 days given to Mr Obradovic to comply with the
08 Agency's request?
09 A. (Interpreted) I would say, I would phrase it
10 differently. The buyer was given a 90-day time limit,
11 but the buyer could have, during the -- I am sorry,
12 I have to rephrase. During the additional time limit
13 the buyer could, for example, perform his obligation on
14 day two, to repay the loan, and on day two, or day
15 three, we would have lifted the pledge on the shares.
16 So it depended on the buyer when the fulfilment of
17 contractual obligations would be confirmed. The maximum
18 time limit of 90 days was given. Had he done what he
19 was supposed to do, had he repaid the loan related to
20 the disputed credit loan 221 -- on day one, we would
21 have confirmed that he had fulfilled the contractual
22 obligations and the pledge would be lifted practically
23 immediately. There's no dilemma about that, these are
24 facts in this case, facts which are valid in this case,
25 and in other cases.

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01 MR MISETIC: Thank you.
02 Mme President, may we have one moment just to
03 consult?
04 THE PRESIDENT: Sure.
05 MR MISETIC: Thank you. (Pause).
06 Mme President, we have one document left that we
07 would like to show the witness, but it's not in the
08 bundle, so we would like to show it on the screen, if
09 that's okay with you.
10 This is Exhibit CE-047, it is a -- I don't think
11 there is a copy in the bundle there. It is a letter
12 from the Agency addressed to Mr Markicevic and to
13 Mr Obradovic. Do you need to see a copy of this in
14 Serbian, or can you follow in the English?
15 THE PRESIDENT: It may be fair to --
16 A. (Interpreted) I do need a copy in Serbian, please.
17 (Pause).
18 MR MISETIC: Are you familiar with this document?
19 A. (Interpreted) Most probably I have seen this, but
20 I would have to go through it to be sure about it. Take
21 a look, read it.
22 Q. Okay, let's scroll through it. This is the notice that
23 was sent in July of 2015 concerning compliance with the
24 Agreement, do you see that?
25 A. (Interpreted) Yes, I do.

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01 Q. Let me show you in the Serbian, there is ...
02 THE PRESIDENT: We were not sure whether something had not
03 been translated?
04 THE INTERPRETER: Everything was translated, it is all
05 covered.
06 MR MISETIC: If you would just let us know when you would
07 like us to turn the page, we will turn the page so you
08 see the whole document.
09 A. (Interpreted) Okay, the next page, please? (Pause). So
10 I do remember this document, we can move on.
11 Q. So it's 22nd July 2015. I just want to go through the
12 bolded points of what you were asking Mr Obradovic and
13 Mr Markicevic to do to be in compliance. The first was
14 to:
15 "Provide [an] unequivocal statement on the
16 performance of the obligations of the Buyer referred to
17 in Article 5.3.3 of the Agreement concluding with April
18 8th, 2011."
19 Correct?
20 A. (Interpreted) That's what it says, yes. But I believe
21 I said that during my responses to your questions.
22 Q. The next point was to:
23 "Provide a statement on performance of the
24 obligations of the Buyer referred to in Article 5.3.4 of
25 the Agreement concluding with April 8th, 2011, and

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01 confirm that all encumbrances have been deleted and all
02 other security instruments for the obligations of third
03 parties have been returned and all encumbrances which
04 have been registered on no grounds were deleted, as well
05 as that all ... loans given to ... parties by the
06 Subject of privatization from loan amounts secured by
07 encumbrances on the property of the Subject have been
08 returned."
09 Correct?
10 A. (Interpreted) Correct.
11 Q. "Confirm that all fixed assets sold until April 8th,
12 2011 were paid and used for the needs of the Subject."
13 A. (Interpreted) Yes, that's what it says.
14 Q. If I can just stop there, what that meant was from the
15 moment that the Privatization Agreement took effect
16 until April 8th 2011, the buyer was supposed to provide
17 proof that any assets sold in that six-year period were
18 used -- the proceeds were used for the benefit of the
19 company, correct?
20 A. (Interpreted) Correct.
21 Q. The next bullet point is:
22 "Confirm that the Buyer made the investment, without
23 encumbrances and capital increase, in line with
24 Article 5.2.1 of the Agreement, in the value of sold
25 fixed assets which are the subject of performance of the

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01 investment obligation of the Buyer (€202,245)."
02 Correct?
03 A. (Interpreted) Correct.
04 Q. "Confirm that the subject of performance of the total
05 investment obligation is not the subject of
06 pledge-mortgage."
07 Correct?
08 A. (Answer not interpreted).
09 Q. If you could just confirm that you were asking
10 Mr Obradovic and Mr Markicevic to confirm that the
11 subject of performance of the total investment
12 obligation is not the subject of a pledge-mortgage,
13 correct?
14 A. (Interpreted) Yes, correct, that's what we asked the
15 buyer to confirm.
16 Q. And the buyer had to complete all of these conditions by
17 the end of September or else the agreement would be
18 terminated, that's what happened, correct?
19 A. (Interpreted) We asked the buyer to submit certain
20 evidence, given that, as you know, the last additional
21 deadline for the performance of obligations was given in
22 2012, and that the buyer's conduct was not considered.
23 This was the first occasion when we discussed and
24 analysed all the obligations that he was given back in
25 2012. This was November 2012; the audit report was

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01 given in December 2012, and then there was this time in
02 2015. So the Privatization Agency never stated its
03 opinion on these obligations, and it was logical for the
04 Agency to repeat all this when it made its final
05 decision on its actions towards the buyer, namely to say
06 that the buyer has or has not performed on the
07 obligations from the agreement.
08 Q. Yes, but let's look at the last sentence of this
09 document. First, let me ask this: you were telling the
10 buyer that they had to complete all of those conditions,
11 correct, that I just read out?
12 A. (Interpreted) We asked the buyer to submit evidence on
13 all the parameters that you have just read.
14 Q. The letter is dated July 22nd, and if you look at the
15 last paragraph, you give him an additional term to July
16 27th, so you gave him five days to fulfil all of these
17 conditions, correct?
18 A. (Interpreted) Well, I would formulate it more precisely.
19 The buyer was given this additional deadline in April.
20 The deadline was 90 days then, according to the Ministry
21 of Economy's report. The buyer was given 90 days,
22 starting from April, until 27th July, within which he
23 was supposed to submit evidence showing that he had
24 acted upon this in compliance with all the obligations.
25 During the term of this additional deadline, he

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01 submitted part of the evidence, part of the
02 documentation, and we said, "We accept that these" -- we
03 gave a concrete list of the obligations that had been
04 fulfilled.
05 And then we say: because you have submitted certain
06 evidence during the term of this additional deadline,
07 please submit other evidence before the expiry of this
08 additional deadline. We did not give him five days.
09 The term lasted for 90 days.
10 The buyer submitted part of the evidence for the
11 duration of the agreement, and then we said, "You have
12 something else left, please do correct it before the
13 expiry of this additional deadline", whether this was
14 five, seven or eight days, I don't know, but the Agency
15 did not say to the buyer, "You have five more days".
16 Additional deadline of 90 days was given. The buyer
17 could act at any moment during this term, and he also
18 could have submitted his evidence on 27th July 2015, so
19 I think that acting in this way we actually did
20 accommodate the buyer. And let me repeat, and
21 I apologise for repeating, the aim of this was to see
22 that the buyer fulfils his obligation because we
23 believed he would do this after this much time. We
24 truly believed he would comply.
25 MR MISETIC: Thank you, Ms Vuckovic.

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01 Thank you, Mme President, that concludes our
02 cross-examination.
03 THE PRESIDENT: Thank you. Any questions in re-direct?
04 MS MIHAJ: Can we have two minutes, please, to consult?
05 THE PRESIDENT: Sure.
06 MS MIHAJ: Thank you. (Pause). Thank you for waiting. We
07 have no questions, thank you.
08 THE PRESIDENT: Sometimes it is worth waiting. Do my
09 colleagues have questions? Yes, please go ahead.
10 Questions from the TRIBUNAL
11 MR VASANI: Good afternoon.
12 A. Good afternoon.
13 MR VASANI: A distinction is being drawn between economic
14 justification for termination and legal justification
15 for termination. I understand very well legal
16 termination; can you help me understand a little bit
17 better what would be an economic justification for
18 termination?
19 A. (Interpreted) With all due respect to your question,
20 I cannot explain this, given that the Privatization
21 Agreement has very clear provisions. Our role was
22 exclusively to control the performance of the
23 contractual obligations and in case these obligations
24 were not fulfilled, we were to grant the buyer an
25 additional deadline in order to rectify the situation.

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01 If this was not done, we were there to terminate the
02 agreement. That was our mission, so to say when it
03 comes to control of performance of contractual
04 obligations.
05 We could not look into the economic aspect only,
06 given that the contractual obligation was not performed.
07 I am actually referring to any obligation, not
08 a specific obligation.
09 MR VASANI: Yes, but when you looked at the Ministry's
10 opinion, they said there is no economic justification
11 for termination, what did you understand by economic
12 justification for termination?
13 A. (Interpreted) Our interpretation was that this was not
14 the opinion that fully described how one should behave
15 in the privatization entity BD Agro Dobanovci. We had
16 never received such an opinion.
17 I must add something. Had we looked at the economic
18 aspect only, BD Agro Dobanovci, which it was obvious
19 from one year to another was going down in terms of its
20 economic performance, in 2012 only, based on the audit
21 reports, and the financial reports, it was obvious that
22 the active interest rates for the loans made almost 100%
23 of the revenue of the company.
24 But the buyer did ensure business continuity, two
25 years, and with ensuring this continuity the buyer

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01 performed on this obligation. We had no reason to look
02 into this issue any further.
03 MR VASANI: As a matter of law or even practice, can the
04 Privatization Agency waive a breach by a buyer?
05 A. (Interpreted) No, not that I know of. Contractual
06 obligations must be performed, in order to deliver a
07 certificate on complete fulfilment of the agreement. We
08 can't partly accept it. If I understood your question
09 correctly, we can't say one of the obligations was not
10 performed, but that's okay. This is simply not
11 possible. This is not in line with the concept of the
12 privatization procedure, or the contractual law, when it
13 comes to the application of the privatization law. We
14 simply did not have legitimacy to do this, or to act in
15 this way.
16 MR VASANI: But what if the breach was obviously de minimis?
17 Let me give you an example. In an ordinary commercial
18 relationship, let's say I'm buying oranges from you and
19 you have given me 49 instead of 50. Instead of saying
20 "You haven't performed", maybe I say "It's okay, you're
21 one short and let's move on because we have other things
22 to do"; can you not do that?
23 A. (Interpreted) We can't do that. Definitely no dilemma
24 on that. Contractual obligations must be fully
25 performed, every one of them, for the privatization

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01 agreement to be considered fulfilled, and for the buyer
02 to be able to dispose of the capital, and to organise
03 and manage his operations in the way which is in line
04 with the applicable legislation of the Republic of
05 Serbia, and the market conditions.
06 And the loan, the disputed loan which was the reason
07 for termination here, in some contexts, such as the sale
08 of the oranges you mentioned, it is an obligation. If
09 I give you a loan, and you have the obligation to repay
10 the loan, that's as simple as that, it's a matter of the
11 two parties entering into a contractual relation.
12 MR VASANI: Thank you. My final question, if you could be
13 shown CE-017, please, clause 9, which is the dispute
14 resolution provision. Reading this, it's apparent that
15 either party can be the plaintiff in bringing a dispute
16 under this provision. Am I reading it correctly, that
17 the Privatization Agency could also be a plaintiff and
18 not just a defendant in a dispute under that clause?
19 A. (Interpreted) That is correct.
20 MR VASANI: Can you give me some sort of example of the
21 types of disputes that the Privatization Agency would be
22 a plaintiff in under this type of clause?
23 A. (Interpreted) I apologise, I want to respond, but the
24 role of the Center for Control and the Commission for
25 the Control of Performance of Contractual Obligations

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01 was exhausted with the complete fulfilment of the
02 agreement or with the termination of the agreement, so
03 I would rather not respond and maybe give a wrong answer
04 that I would not be fully sure about. This was simply
05 something that was happening outside of the Centre for
06 Control. So we have had situations where the
07 Privatization Agency was the plaintiff.
08 MR VASANI: Thank you.
09 PROFESSOR KOHEN: Dobar dan, Ms Vuckovic. With your
10 permission, I will continue in English.
11 I have a couple of questions. You mention in your
12 statement that according to Mr Obradovic, the breach of
13 5.3.4 of the Privatization Agreement, if existed, would
14 be insignificant. Could you compare this alleged breach
15 with other cases of termination of privatization
16 agreements you may have in mind?
17 A. (Interpreted) Are you asking about the breach of 5.3.4
18 specifically, or any breach of any agreement in general?
19 So are you asking about the breach of 5.3.4, or are you
20 asking about breaches in general? I can cover both,
21 okay.
22 So we have had some loans based on which a mortgage
23 was registered on the assets of the privatization
24 entity, and some of these sums were smaller than the
25 sums related to Crveni Signal and Nova Varos. We have

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01 also had terminations relating to the investment
02 obligation, when the investment, that was paid into the
03 privatization entity in the amounts and within the terms
04 that were set by the agreement but was not functional,
05 or was removed from the entity, on various grounds. And
06 for that reason we had some cases where we terminated
07 those agreements.

08 And this is a reply to your question. The
09 obligations that were smaller than the one that
10 Mr Obradovic called an insignificant breach, so in these
11 other cases, agreements were terminated because the
12 contractual obligation was not fulfilled. We did not
13 have an insignificant or significant performance. So
14 agreements are terminated if obligations are not
15 performed, and the obligations were not that stringent.
16 And the Privatization Agency granted numerous times
17 additional deadlines and tried to act in a preventive
18 manner to point to the buyer various options in which he
19 could fulfil these obligations. We made every effort to
20 keep the agreement going. That was our main idea of any
21 privatization process, to keep the agreements going.

22 PROFESSOR KOHEN: Thank you. So my next question is the
23 following: do you consider that not having respected the
24 contract stipulation according to which the pledge would
25 be released after the full payment of the price, in this

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01 case would the Agency breach the law?

02 A. (Interpreted) I apologise, I am not sure absolutely
03 I understood your question fully. Would you be so kind
04 as to repeat your question? I apologise.

05 PROFESSOR KOHEN: Yes of course. So there is the contract
06 stipulation according to which the pledge should be
07 released after the full payment of the price; is that
08 correct?

09 A. (Interpreted) No, that is not the case. I can't see any
10 connection between the two. The obligation from
11 article 5.3.4 which is relating to the prohibition to
12 place a mortgage on assets without the approval of the
13 Agency in some cases lasts for as long as the agreement
14 has validity, and the obligation from 5.3.3, which
15 refers to the disposal of the assets, the sale and
16 disposal, alienation lasts until the payment of the
17 purchase price.

18 PROFESSOR KOHEN: My question is the following: there is
19 stipulation in the contract according to which the
20 pledge must be released if the full payment is
21 perfected, accomplished. This is something that has
22 been discussed with Mr Misetic. My question is the
23 following: if the Privatization Agency would not respect
24 this contract provision, would the Privatization Agency
25 breach the law? Do you understand my question?

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01 A. (Interpreted) Yes, I do, thank you. At that moment, if
02 the Agency hadn't observed this contractual provision,
03 if it had not returned the pledge, the pledge as such at
04 the time when the buyer paid the purchase price was not
05 defined by the law, it was defined by the agreement. In
06 2014, the law introduced the provision which set forth
07 that the statutory pledge was established at the moment
08 the agreement was concluded, and it was to be deleted or
09 lifted after all the contractual obligations had been
10 fulfilled.

11 Essentially, Article 41, which was valid at the time
12 the buyer paid out the purchase price, said the
13 following: in the event of a termination of the
14 agreement, if the buyer fails to perform on his
15 obligations, the capital concerned is to be transferred
16 on to the shares fund, and in a way, it would have been
17 in contravention of the law had we lifted the pledge
18 from the shares.

19 PROFESSOR KOHEN: I don't have any further questions, Mme
20 President.

21 THE PRESIDENT: Thank you.

22 Ms Vuckovic, when you were discussing with counsel
23 the fact that for you, Mr Obradovic was the owner of
24 BD Agro, and you went through the different documents,
25 so where you had other people attending the meetings,

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01 you said that whatever financial arrangements or
02 relationships existed between Mr Obradovic and Mr Rand,
03 this was completely irrelevant to you, because what
04 counted for you was who signed the Privatization
05 Agreement; did I understand this correctly?

06 A. (Interpreted) Yes, you have, fully.

07 THE PRESIDENT: Thank you. And then on several occasions,
08 you insisted that you had never had any communication,
09 neither oral nor written, with Mr Rand, and I was asking
10 myself why you were saying this, because if what matters
11 to you is who signed the Privatization Agreement, then
12 why would you tell us that you didn't speak to Mr Rand?
13 Why is that something you want to tell us?

14 A. (Interpreted) I wanted to mention this for the simple
15 reason that at these meetings it was mentioned that
16 Mr Rand and Mr Djura Obradovic were in some kind of
17 a financial relationship, and at one of the meetings --
18 I am sorry, I do not remember the name, I apologise,
19 I can't see the name -- Mr Misetic, I am sorry,
20 I apologise, yes, Mr Luka Misetic, said that at those
21 meetings it was mentioned that he was in a financial
22 relationship with him, and that he was not happy with
23 the work of Mr Obradovic.

24 THE PRESIDENT: All of this I understand, I don't think you
25 need to repeat, we have understood --

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01 A. (Interpreted) I simply felt the need to explain this,
02 given that at these meetings we were given this
03 information and I simply want to say that we had this
04 information, but this was not sufficient for us to view
05 any other statements, except the fact that we have in
06 front of us the buyer of the capital, Mr Djura
07 Obradovic, who behaved in every respect as the buyer of
08 the capital, as someone who controlled the shares in the
09 privatization entity, that is the company.
10 THE PRESIDENT: Let me try and ask my question differently.
11 If Mr Rand had come to Belgrade and he had come to visit
12 you, would that have made a difference to you?
13 A. (Interpreted) I haven't met -- when I took office as
14 director, we had around 2,000 privatization entities,
15 and I claim with full responsibility that in none of
16 privatization entities we had a similar situation. Had
17 we had any evidence that Mr Rand was potentially the
18 owner of the capital, we probably would have informed
19 the competent authorities of this, and tried to
20 establish the facts. But for the duration of this
21 procedure, at no moment in time, I apologise, I need to
22 give a personal comment, but had I been an owner,
23 I would have been interested very much in what was going
24 on in this company. I would have been interested in
25 what was happening with the additional deadlines, what

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01 constituted the violations of these provisions. I would
02 have written, asked for a meeting, but this has never
03 happened, so that's why I had this need to explain this.
04 We as the Center for Control did not at any moment
05 have any knowledge of a third party being the owner.
06 Mr Obradovic never mentioned this himself, and as
07 I mentioned earlier, we had numerous meetings and he had
08 never brought this up.
09 THE PRESIDENT: You have on various occasions during your
10 testimony referred to bona fide buyers and you have also
11 sometimes referred to a mala fide buyer. Do you mean by
12 that someone who is not performing -- if I am mala fide,
13 does it mean I am not performing my contractual
14 obligations, or does it mean something else, that I am
15 in bad faith? There are many reasons why you don't
16 perform an obligation. It doesn't mean that you are in
17 bad faith. So I am just trying to understand what you
18 mean when you speak of bona fide/mala fide purchasers.
19 A. (Interpreted) In the context in which I mentioned mala
20 fide buyers, I was referring to buyers who were not
21 performing their contractual obligations. That was the
22 only interpretation or the meaning in which I used the
23 term.
24 THE PRESIDENT: Thank you. When we discussed the meeting of
25 23rd April 2015, and the transcript, you emphasised in

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01 the meeting that the new law would rectify the omission
02 in the prior law that conditioned the release of the
03 pledge exclusively on the payment of the price, and not
04 on the fulfilment of all of the obligations. We can go
05 there, it's on page 4 of CE-768 but I think you have
06 repeated this orally as well, but you can look at it, of
07 course.
08 There is a sentence where you say:
09 "Now, the new law rectifies this somewhat and it
10 prescribes that the certificate on deletion of the
11 pledge and fulfilment of contractual obligations is
12 issued once all obligations are fulfilled, and not only
13 payment of the price."
14 Do you see this?
15 A. (Interpreted) I can't see it. I don't think the
16 translation followed the text.
17 THE INTERPRETER: The interpreter apologised, I couldn't
18 find that part in Serbian either.
19 MR MISETIC: Mme President, I believe it's on page 11.
20 THE PRESIDENT: Maybe my quote is incorrect.
21 MR MISETIC: The quote is on page 11 and we're highlighting
22 it on the screen.
23 THE PRESIDENT: Thank you, yes.
24 A. (Interpreted) Yes, I have already commented on this.
25 THE PRESIDENT: Yes, exactly. So now we have seen it again.

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01 And then you have explained to us what in your witness
02 statement you call the biggest dilemma, and what in the
03 meeting you mentioned being between a rock and a hard
04 place, which was to decide what to do with the shares,
05 because the price had been paid but in your view some
06 other contractual obligations had not been performed
07 yet.
08 When you explained that you decided to not release
09 the shares, one of the explanations you gave is that
10 this would create a bad precedent, because then
11 a purchaser could pay the price immediately and never
12 fulfil the obligations.
13 I am not certain that I understand this reason,
14 because there was this other law that did change this
15 situation, did it not?
16 A. (Interpreted) Yes, the law did change the situation in
17 2014. I was talking about the possibilities that
18 existed before that, because natural persons who were
19 buyers bought capital, and had a possibility to buy it
20 through instalments. The provision in the agreement was
21 that they would pay the price in six instalments. The
22 buyer had the right to pay this earlier. If paid
23 earlier, then the ban on disposal can last only up to
24 a year, which means that at the moment when they paid
25 the price after one year, we should have removed the

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01 pledge, whereby you have the obligation to invest over
02 a period of two years, you have the obligation to pay
03 the wages, you have the obligations from the annexes to
04 the agreement regarding the social programme, and that's
05 prohibition of determining technological redundancy,
06 payment of severance packages, of dividends, continuity
07 of operation. If you were to remove the pledge after
08 one year, who would you ask that from, to fulfil all
09 those contractual obligations?
10 THE PRESIDENT: You make the decision about not releasing
11 the pledge in 2015, when the new law was already in
12 existence, or do I miss the chronology? So the
13 explanation with respect to earlier situations is not
14 really pertinent.
15 A. (Interpreted) It is pertinent, and you know why, because
16 the buyer's request to have the pledge removed came in
17 January 2012, when this law hadn't entered into force
18 yet, and he did not renew this request from time to
19 time. In 2014, when this law came into force, this
20 contractual obligation was corrected in a way, and it
21 would have been then contrary to the law. So I believe
22 generally that we did not make a breach here when it
23 comes to the application of legal provisions.
24 THE PRESIDENT: Thank you. I have no further questions.
25 Any follow-up from counsel?

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01 MR MISETIC: Nothing from our side.
02 MS MIHAJ: Thank you, Mme President, we have no further
03 questions.
04 THE PRESIDENT: Good. Fine, so Ms Vuckovic, thank you very
05 much for all your answers, and this ends your
06 examination.
07 A. (Interpreted) Thank you too.
08 THE PRESIDENT: This is time for the lunch break. Should we
09 take until 1.30, is that fine?
10 MR MISETIC: Yes, that is fine with us.
11 THE PRESIDENT: Excellent. Have a good lunch.
12 (12.36 pm)
13 (Adjourned until 1.30 pm)
14 (1.30 pm)
15 THE PRESIDENT: Are we ready to resume?
16 DR DJERIC: Yes, Mme President.
17 MR VLADISLAV CVETKOVIC (called)
18 THE PRESIDENT: Mr Cvetkovic, good afternoon. Are you going
19 to use the interpretation?
20 THE WITNESS: I am going to speak in Serbian, if that's
21 okay.
22 THE PRESIDENT: Then you will need the headphones.
23 THE WITNESS: Thank you, Mme President.
24 THE PRESIDENT: Do you hear the interpretation now when
25 I speak?

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01 THE WITNESS: Yes, I do.
02 THE PRESIDENT: So can you please confirm your identity, you
03 are Vladislav Cvetkovic?
04 THE WITNESS: (Interpreted) Yes, my name is Vladislav
05 Cvetkovic.
06 THE PRESIDENT: You are with PriceWaterhouse Serbia since
07 2013?
08 THE WITNESS: (Interpreted) Yes, that's correct, Mme
09 President, I have worked in Pricewaterhouse Serbia since
10 late 2013 or early 2014 after I had stopped working at
11 the Agency.
12 THE PRESIDENT: And you were with the Privatization Agency
13 as director, and before that as deputy director, from
14 2007 to 2013, is that correct?
15 THE WITNESS: (Interpreted) Yes, that's correct. 2007 to
16 2009 I was deputy director; from 2009 to September 2013
17 I was director.
18 THE PRESIDENT: Thank you. You have filed one written
19 witness statement that is dated 4th April 2019?
20 THE WITNESS: (Interpreted) That's correct.
21 THE PRESIDENT: You have it there, I assume, yes, fine.
22 You are heard as a witness, and as a witness you are
23 under a duty to tell us the truth. Can you please find
24 the witness declaration that is on the table, and read
25 it aloud into the record?

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01 THE WITNESS: (Interpreted) I solemnly declare upon my
02 honour and conscience that I shall speak the truth, the
03 whole truth and nothing but the truth.
04 THE PRESIDENT: Thank you. I will first give the floor to
05 Respondent's counsel.
06 DR DJERIC: Thank you very much, Mme President.
07 Direct examination by DR DJERIC
08 Q. Good afternoon, Mr Cvetkovic, my name is Vladimir Djeric
09 and I am counsel for Respondent. Let me start by asking
10 you, have you had a chance to review your witness
11 statement recently?
12 A. (Interpreted) Yes, I have had an opportunity to review
13 it.
14 Q. Is there anything that you would like to amend or
15 clarify in your witness statement?
16 A. (Interpreted) I would like to give some clarification in
17 connection with paragraph 5 of my statement, that speaks
18 of the relationship between the Ministry of Economy and
19 the Privatization Agency. Perhaps the formulation is
20 not quite precise in the last few lines. I will just
21 explain here briefly what it has to do with.
22 The Privatization Agency performed administrative
23 supervision that had to do with -- that is the Ministry
24 checked the legality of the work of the Agency. This is
25 all said in one sentence here, so this clarification is

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01 perhaps needed, because those are two different things.
02 One thing is administrative supervision over the work of
03 the Agency, in terms of its legality, and the second
04 form was that of the Ministry being the second-instance
05 authority in case of complaints against the work of the
06 Agency, for instance concerning an auction process, or
07 some other process conducted by the Agency, and a party
08 could appeal with the Ministry as the second-instance
09 authority.
10 Q. Can you tell us about the position generally between the
11 Privatization Agency vis-à-vis the Serbian Government
12 and the Ministry of Economy?
13 A. (Interpreted) As for the Privatization Agency, it had
14 a clearly defined mandate, and clearly defined
15 responsibilities that were entrusted to it through the
16 law on the Agency, and of course the Privatization Law.
17 When it comes to its work, the Agency conducted all the
18 activities independently, and its mandate was clear in
19 terms of its manner of operation, and its model of
20 responsibility. Both things were clearly defined in the
21 law. The Agency was completely independent as
22 a professional body in its work, that had an area of
23 responsibility that included the privatization process
24 in Serbia. So just briefly, the Agency was independent
25 and professional in its work.

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01 Q. Could you tell us a little bit about how the Agency was
02 being managed at your time, the decision-making process
03 within the Agency?
04 A. (Interpreted) The Agency had a director in this period,
05 this is the period when I headed the Agency, the
06 director was independent and in charge of performing
07 duties in the Agency, just like a director in any other
08 entity.
09 When it comes to the organisation of work, since the
10 Agency had a very important mandate and a lot of
11 responsibility, it organised its work through its units
12 and departments, and each of those had their clearly
13 defined responsibilities.
14 So in operational terms, these were the things that
15 were important for the functions of the Agency. Of
16 course, the Agency also had a managing board that
17 adopted financial reports, and the agency plan, and that
18 was kind of a supervisory body in this system of direct
19 responsibility for work.
20 So these would be the most important elements of the
21 structure which was operated by the Agency by means of
22 the authority granted to it by the law and which we
23 adhered to in our work.
24 Q. Thank you. Could you now tell us specifically about the
25 workings of the Commission supervising the compliance

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01 with privatizations, privatization agreements and its
02 decision-making process?
03 A. (Interpreted) The Commission was a body that, at the
04 proposal of the Control Department, and this is now
05 linked to your previous question, so the Control
06 Department prepared materials and everything that in
07 technical terms was necessary for supervision over
08 performance of contractual obligations, and the
09 Commission itself was a body that looked at these
10 materials and took final decisions as to whether
11 additional deadlines will be granted to buyers, whether
12 they have met all the provisions of privatization
13 agreements.
14 The department prepared materials; the Commission
15 discussed them, and gave a final opinion as to whether
16 all the conditions have been met. Those were the two
17 main bodies of the Agency.
18 Q. Mr Cvetkovic, could you give us some more insights on
19 the way how the sessions were conducted, et cetera? You
20 were sitting at these sessions, in your capacity as the
21 director.
22 A. (Interpreted) As for Commission meetings, they were
23 convened once the Control Department had prepared
24 materials and submitted them to the Commission for
25 decision-making. And the Commission met as necessary.

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01 In periods where we had more privatizations, we of
02 course had more cases discussed by the Commission. The
03 materials were prepared by the Control Department with
04 proposals as to what should be adopted. The Commission
05 had an odd number of members, and could decide through
06 votes, but after these discussions, the Commission,
07 which was generally comprised of the heads of the
08 departments in the Agency, in most cases took decisions
09 unanimously, and once the Commission took a decision,
10 the material was sent to the buyers as the decision of
11 the Agency in terms of further actions.
12 Q. Thank you. Finally, could you tell us a little bit
13 about the funding of the Agency and the disbursement of
14 the funds, and what was the decision-making process in
15 that regard?
16 A. (Interpreted) When it comes to the finances of the
17 Agency, the Agency covered its expenses through the
18 revenues that came from a certain percentage of the
19 purchase prices paid in privatization transactions. The
20 Agency independently filled its budget from
21 privatization proceeds, and based on these own revenues
22 it covered its operational expenses, like any
23 organisation paid the salaries of its employees and
24 covered other operational expenses.
25 DR DJERIC: Thank you, we don't have any further questions.

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01 Thank you, Mme President.
02 THE PRESIDENT: Fine. Mr Anway?
03 Cross-examination by MR ANWAY
04 Q. Good afternoon, Mr Cvetkovic, it's a pleasure to meet
05 you. My name is Stephen Anway, I am counsel to the
06 Claimants in this arbitration and I will be asking you
07 a few questions about your witness statement today.
08 We have quite a lot of material to get through, so
09 I would ask that you please listen to my questions
10 carefully, and try to answer them succinctly, preferably
11 with yes or no answers; if my questions are unclear,
12 please let me know and I will rephrase them.
13 Because we have a translator, it's especially
14 important that you let me finish my question before you
15 begin your answer, so we don't speak over each other.
16 Do you understand?
17 Mr Cvetkovic, I think in response to Mme President's
18 questions, you stated that you were at the Serbian
19 Privatization Agency from 2007 to 2014, correct?
20 A. (Interpreted) Yes, that's correct, but for the sake of
21 precision, I was at the Agency until the end of 2013.
22 I handed in my resignation in September but it was
23 adopted in November. So it wasn't 2014 but the end of
24 2013.
25 Q. Thank you, that was actually a question I was going to

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01 ask. The term for a director at the Privatization
02 Agency statutorily is five years, or was five years, is
03 that right?
04 A. (Interpreted) If I remember it correctly, the term of
05 the director was five years at the time I was there.
06 Q. So you did not finish out your five-year term, correct?
07 A. (Interpreted) If I started in 2009 and finished in
08 September 2013, we can all do the math together.
09 Q. Could you tell us a little bit about the circumstances
10 behind your departure?
11 A. (Interpreted) There were no special circumstances that
12 I would comment on. At the time I decided to devote
13 myself to a different part of my professional career
14 because I had already spent quite a lot of time at the
15 Agency, and this decision was the result of that.
16 Q. From June 2009 until September 2013, you were the
17 director, correct?
18 A. (Interpreted) That's correct.
19 Q. And the director was the highest individual position at
20 the Privatization Agency, wasn't it?
21 A. (Interpreted) Yes, it was.
22 Q. Just to be clear, you are not a lawyer?
23 A. (Interpreted) No, I am economist and accountant by
24 training.
25 Q. You have had no formal legal training?

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01 A. (Interpreted) With the exception of some courses that
02 I had during my studies that concerned legal matters,
03 other than that, no.
04 Q. But you're not here to offer any legal opinions or
05 positions to the Tribunal, correct?
06 A. (Interpreted) I am here as a witness and I don't think
07 it's necessary for me to offer legal opinions outside of
08 what I can comment on.
09 Q. All right. Let me just make sure I understand the
10 structure of the Privatization Agency correctly. I may
11 leave out a few departments, but insofar as these
12 different departments are relevant to this case, first,
13 the Privatization Agency had a management board, is that
14 right?
15 A. (Interpreted) Correct.
16 Q. And that management board was comprised of five members,
17 one president and four other members, is that right?
18 A. (Interpreted) Yes, I believe it was so.
19 Q. The Privatization Agency also had a Center for Control?
20 A. (Interpreted) Correct.
21 Q. And that was part of the control sector which conducted
22 the control of compliance with the privatization
23 agreements, yes?
24 A. (Interpreted) Correct.
25 Q. In the event that it was established that a provision of

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01 one of the privatization agreements was violated, the
02 Control Center would notify the Commission for Control,
03 correct?
04 A. (Interpreted) Correct, though I would also add that the
05 Control Center would perform its part of the work, and
06 submit proposals to the Commission on what to do next.
07 Q. But the Commission was the body that made the decisions
08 itself, for example on whether to terminate
09 a privatization agreement, correct?
10 A. (Interpreted) The final decision was taken by the
11 Commission, but only once they would receive a reasoned,
12 professional proposal from the Department of Control
13 which had to contain a statement of reasons, an
14 explanation of why that needs to be done, in other
15 words?
16 Q. Yes. And if the Commission decided to terminate
17 a privatization agreement, it would not give back the
18 purchase price to the buyer, correct?
19 A. (Interpreted) Well, seeing that all proposals coming
20 from the Control Department were based exclusively on
21 the provisions of the agreement, the Commission would
22 receive such a proposal and its decision would also be
23 based on the contractual obligation of the buyer. So
24 I would say yes, in most cases that was the procedure,
25 those were the steps.

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01 Q. Is your testimony, sir, that in some cases the
02 Privatization Agency could give back the purchase price
03 to the buyer if they terminated the agreement?
04 A. (Interpreted) I believe that we haven't had any such
05 cases, from what I remember now, of course.
06 Q. Okay, why don't we turn to CE-220 which I'll represent
07 to you is the Law on Privatization. I understand you
08 are not a lawyer, sir, but I just want to ask for your
09 understanding of this as the highest ranking individual
10 at the Agency. If we could turn, please, to
11 Article 41a, the very last paragraph.
12 So I am picking up with the language:
13 "In case of termination ..."
14 You can read with me:
15 "In case of termination of the agreement on sale of
16 the capital or property due to the failure of the buyer
17 of the capital to fulfil the contractual obligations,
18 the buyer of the capital, as a dishonest party, shall
19 have no right to the refund of the amount paid as the
20 purchase price, in order to protect the public
21 interest."
22 Do you see that?
23 A. (Interpreted) I have read the paragraph, yes.
24 Q. Was it your understanding, having now seen this
25 provision, that in fact, if the Commission terminated

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01 a privatization agreement, it would not give back the
02 purchase price to the buyer, correct?
03 A. (Interpreted) To my understanding of this article, the
04 Commission isn't empowered to take a decision thereon,
05 if it's already governed by the law.
06 Q. Exactly. And it's true that this provision is specific
07 to the Privatization Agency, correct? It doesn't refer
08 to all private citizens, for example.
09 A. (Interpreted) Well, if I understood your question fully,
10 does this relate entirely to the work of the
11 Privatization Agency, and not others? I am not
12 a lawyer, so as such I can only tell you that as the
13 Privatization Agency, we had to stick to the wording of
14 the law exclusively.
15 Q. As a non-lawyer, you don't have an understanding about
16 whether, if there's a share purchase agreement between
17 two private parties, the seller would generally owe the
18 money back to the buyer in the event of termination; you
19 have no personal knowledge of that, or understanding, is
20 that fair?
21 A. (Interpreted) I cannot tell you this, because I do not
22 have this type of legal background, legal education.
23 However, I have to repeat, the wording of the law, the
24 text of the law was something that the Agency was
25 adhering to, and that is something that we were led by

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01 when we were carrying out certain actions in
02 privatization proceedings.
03 Q. Fair enough, and I think we'll leave that question to
04 the Serbian law experts.
05 Let's turn now to paragraph [5] of your witness
06 statement, please. You expounded upon this idea,
07 I think, earlier in response to Serbia's counsel's
08 questions.
09 You state:
10 "In accordance with the Law, the [Privatization
11 Agency] was making decisions independently, without
12 interference from the Ministry of Economy ..."
13 Do you see that, sir? My question is only whether
14 you see it.
15 A. (Interpreted) Yes, I can see that.
16 Q. I am going to ask you a series of questions now and for
17 each question I can take you to the relevant document if
18 you want, but I think most of these questions are
19 undisputed and may save time. In any event, if you want
20 to see any of the documents behind the questions that
21 I ask, please do ask.
22 First, could you please tell us who appointed you to
23 your position as director of the Privatization Agency?
24 A. (Interpreted) According to the best of my recollection,
25 there was a public competition, and formally speaking,

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01 well, I do not actually remember exactly, was it at the
02 proposal of the managing board or not, but the final
03 appointment I believe was done by the Government of the
04 Republic of Serbia but that was after the public
05 competition procedure was conducted.
06 Q. Thank you. And in fact, all of the directors of the
07 Privatization Agency were appointed by the Government of
08 Serbia, correct?
09 A. (Interpreted) I believe it is correct. I believe there
10 is a provision governing that. I believe most probably
11 this is stipulated in one of the relevant laws.
12 Q. We established earlier that the Privatization Agency had
13 a five-member management board, do you recall?
14 A. (Interpreted) Yes, I do.
15 Q. Which body was in charge of appointing each of the five
16 members of the management board?
17 A. (Interpreted) I do not recollect exactly. I would have
18 to consult the text of the law, so if you have
19 a relevant document to assist me in responding to this?
20 I really could not reply.
21 Q. Why don't we turn to CE-238, and I'll direct you to
22 Article 12. If you just take a moment to read it, that
23 may refresh your memory. (Pause).
24 A. (Interpreted) Yes, I have read it.
25 Q. Can you identify for the record then which body appoints

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01 each of the five members of the management board of the
02 Privatization Agency, please?
03 A. (Interpreted) It says here in Article 12 that they are
04 appointed and dismissed by the Government of the
05 Republic of Serbia, out of which at least one is
06 proposed by the body of territorial autonomy.
07 Q. Yes. We also established earlier that the Commission
08 for Control within the Privatization Agency ultimately
09 makes the decision about whether or not to terminate
10 a privatization contract, do you remember that
11 testimony?
12 A. (Interpreted) I do.
13 Q. I think we agreed that the Commission has five members,
14 one president and four other members, is that right?
15 A. (Interpreted) Does your question relate to this managing
16 board or the Commission itself?
17 Q. The Commission itself.
18 A. (Interpreted) The Commission itself by definition did
19 not have five members. I believe there were periods
20 when it had more members, but it had an odd number of
21 members. That is the Commission that decides on the
22 proposals of the Control Department.
23 Q. Let me take you to Article 15b of the same document.
24 I'll refer you to the third paragraph, where it says:
25 "The Commission shall have five members, out of

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01 which one shall be the President of the Commission."
02 Do you see that?
03 A. (Interpreted) Yes, I believe -- I'm trying to figure out
04 what this is. I believe these are amendments to the law
05 on Privatization Agency which were introduced once
06 I wasn't in that position, so I believe that these were
07 the most recent amendments to the law, if I am not
08 mistaken.
09 Q. Indeed, in fact they were amended in 2014. But you can
10 confirm from the first sentence of Article 15b that
11 after these amendments were passed, the ministry in
12 charge of economic affairs, which I understand to be the
13 Ministry of Economy, shall establish the Commission for
14 Control, correct?
15 A. (Interpreted) I can only confirm that this is what
16 Article 15b says, but it might be more relevant to say
17 that when I was the director of the Agency, that is not
18 the way in which the Commission was established, in
19 which it functioned.
20 Q. Who appointed the members of the Commission while you
21 were director of the Privatization Agency?
22 A. (Interpreted) The members of the Commission, formally
23 speaking, were appointed by the director, and as a rule
24 these people were directors of departments within the
25 Agency, meaning colleagues from the Agency managing

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01 various departments, people who are very familiar with
02 the privatization process, and the work in which the
03 Agency was operating, and that's how it was set up, it
04 was established.
05 Its members were the most prominent, most renowned
06 professionals within the Agency, most commonly
07 directors, that is managers of various departments.
08 Q. So prior to 2014 and these amendments, the positions of
09 the Commission were appointed by the director himself or
10 herself, but as we see from the first sentence of
11 Article 15b, after 2014, and therefore at the time when
12 BD Agro's Privatization Agreement was terminated, the
13 Ministry of Economy appointed the Commission members, do
14 I understand correctly?
15 A. (Interpreted) I can only say that these amendments to
16 the law happened after 2014, as you said yourself.
17 Q. If we look down the page to Article 18, and I think this
18 is along the lines of what you were describing earlier,
19 do you see that Article 18 says:
20 "The supervision of the work of the Agency shall be
21 done by the ministry in charge of economic affairs."
22 Do you see that?
23 A. (Interpreted) I do.
24 Q. And it goes on to state that at least two times a year,
25 the Agency needs to report to the Ministry of Economy.

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01 Do you see that in the next paragraph?
02 A. (Interpreted) Yes.
03 Q. While you were director, did you provide at least two
04 reports to the Ministry of Economy each year?
05 A. (Interpreted) To the best of my recollection, although
06 I do not remember this precisely, the Agency was
07 delivering its reports to all those who were allowed by
08 law to receive such reports, so that relates to the
09 Ministry, to the Government, to the Parliament, these
10 were periodic reports, and it was governed in writing
11 how to submit them and within which deadlines to submit
12 them to those institutions.
13 Q. I would like to turn now to your witness statement, and
14 a paragraph that I think you sought to clarify in your
15 opening remarks in response to questions from Serbia's
16 counsel. I am focused on paragraph 5, the last
17 sentence, where you talked about the Ministry of Economy
18 and its "second-instance authority in the [Privatization
19 Agency]'s decision-making procedure". Are you there?
20 I am wondering if you can help me understand a little
21 bit more what you mean by "second-instance authority in
22 the [Privatization Agency]'s decision-making procedure",
23 perhaps with an example. Could you give us an example
24 of an instance where the Ministry of Economy exercised
25 second-instance authority over the Agency's

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01 decision-making procedure?
02 A. (Interpreted) This role actually meant that if
03 a participant of a privatization procedure had some
04 issues or objections, complaints against the Agency, if
05 such a party felt that its rights were not observed in
06 a way envisaged by the law, in those situations the
07 Ministry could act as a second-instance authority, and
08 review the complaints and see whether there are any
09 grounds for the complaint or not. For example, if
10 a participant in an auction felt that he was
11 disqualified for no good reason, if he hadn't met
12 conditions to participate in an auction, he was free to
13 submit a complaint with the Ministry.
14 Q. Let's turn to CE-328. I take it back, let's turn to
15 CE-206, I apologise. Mr Cvetkovic, I will represent to
16 you that this document ...
17 A. (Interpreted) Could I just have a moment? I have just
18 received the document.
19 Q. Of course. I recognise this may not be a document you
20 have seen before.
21 A. (Interpreted) You are right, I have never had a chance
22 to see this.
23 Q. All I am trying to understand is whether this would be
24 an instance where the Ministry would be exercising its,
25 to use your words, "second-instance authority". It's

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01 a document dated December 23rd 2013, from the Ministry
02 of Economy, in connection with the BD Agro
03 privatization, and you'll see the decision there on the
04 very first page is:
05 "To initiate the procedure of supervision of the
06 work of the Privatization Agency ..."
07 Is this an example of the work you describe in
08 paragraph 5, or is this something different?
09 A. (Interpreted) I haven't read the document in its
10 entirety, but I will go back to my additional comments
11 on paragraph 5. So this is not such an example. This
12 is an example where a decision was issued by the
13 Ministry to initiate the procedure of supervision. This
14 is not an example where someone filed a complaint to
15 complain against the work of the Agency. This is an
16 example of a different procedure, something that has to
17 do with supervision of the legality of the Privatization
18 Agency's work.
19 Q. I see, that's very helpful. So what you are referring
20 to now, together with this letter, are two different
21 types of involvement that the Ministry of Economy may
22 have. One, as you describe in paragraph 5 of your
23 witness statement, is when it exercises "second-instance
24 authority in the PA's decision-making procedure", and
25 the other is when it may initiate the procedure "of

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01 supervision of the work of privatization", which is on
02 CE-206, and that is to review the legality of the
03 Privatization Agency's actions, do I understand
04 correctly?
05 A. (Interpreted) That is the only conclusion I can reach,
06 given that I haven't had the time to read this letter
07 carefully, I have only looked at it now, so I can assume
08 that yes, this is the case in this decision.
09 Q. We saw earlier in the first sentence of paragraph 5 of
10 your witness statement that you stated that PA was
11 making decisions independently without interference from
12 the Ministry of Economy, but isn't it true, sir, that in
13 fact the Agency sought instructions from and indeed
14 received instructions from the Ministry of Economy with
15 regard to privatization projects?
16 A. (Interpreted) I would say that the Agency could seek an
17 opinion from different institutions, including the
18 Ministry of Economy, which addressed the policy-making
19 of privatizations in general. But Agency, on its own
20 side, had a very clear mandate over the implementation
21 of the law that regulates its work, and also relating to
22 some other authorisations that it had based on that law.
23 Opinions could be sought, and they could be discussed,
24 but the Agency, in all these instances, has taken
25 decisions in line with its authorisations as defined by

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01 the law.
02 Q. You distinguish between opinions that may be sought or
03 given by the Ministry and instructions or orders; fair?
04 A. (Interpreted) Yes, that's correct.
05 Q. Would it surprise you to learn, sir, that numerous
06 personnel from the Agency during your tender were
07 referring to the letters from the Ministry of Economy as
08 instructions and orders? Would that surprise you?
09 A. (Interpreted) If we are not focusing here on the
10 semantics of words, I am absolutely sure that these were
11 not orders, that were orders to the Agency on what the
12 Agency should do, but I wish I could see the documents,
13 if they are available here, before I make my statement
14 on this. I believe, and from what I know, we have not
15 had such situations.
16 Q. Why don't we look at some of those documents now then?
17 Why don't we turn first to CE-043? Again, I recognise
18 you may not have seen this document before, and I am
19 happy to represent to you what it is, once you have it
20 in front of you. This is a letter, you can see at the
21 very top, letterhead of the Privatization Agency of the
22 Republic of Serbia, and the date of the letter is
23 November 14th 2014. Are you with me so far?
24 A. (Interpreted) Yes, I have it, but it's a long document.
25 It will take me more time to read it before I can make

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01 any comments relating to the document.
02 Q. I'll take you to the specific language that I think is
03 relevant. Just to provide you the context of this
04 letter, the Ombudsman for Serbia had written to the
05 Privatization Agency and asked why it had not terminated
06 the BD Agro Privatization Agreement, and this letter is
07 the Privatization Agency's response and explanation for
08 why it had not terminated the Privatization Agreement
09 with BD Agro.
10 I want to direct your attention to the second
11 paragraph, where it says:
12 "Regarding the abovementioned, we would like to
13 inform you of the following: There are several reasons
14 why the Agency did not render a decision on termination
15 of the agreement for the subject of privatization
16 BD Agro ... as follows."
17 Picking up on the second bullet point:
18 "Failure of the competent Ministry of Economy to
19 provide instructions [it doesn't say 'opinions']
20 regarding further actions."
21 The next bullet point says:
22 "Standpoint of the Ministry of Economy that
23 termination of the Agreement is not economically
24 justified."
25 And then you will note in the last bullet point it

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01 refers to the procedure of supervision. Do you see
02 that?
03 A. (Interpreted) Yes, I can see them.
04 Q. Then if you look at the top of page 2, it says:
05 "Due to this legal situation, and since the Ministry
06 competent for economic affairs [the Ministry of Economy]
07 was actively involved in resolving of the problems of
08 the Subject of privatization, the Agency sent several
09 urgency notes to the competent Ministry in order to
10 obtain instructions ..."
11 Was it common, Mr Cvetkovic, for the Ministry to be
12 "actively involved" in individual privatization
13 projects?
14 A. (Interpreted) If I can go back to what -- I actually had
15 a very short time to read some of this. My
16 understanding of this is that at the moment this letter
17 was sent, the supervision procedure had already started,
18 and this circumstance definitely was very important, had
19 a decisive impact on the further procedure in this
20 privatization, and in that sense, the word "instruction"
21 is the word I do not understand. I wouldn't give it
22 that much weight. It simply means that there is no need
23 for an additional legal confusion, now that the
24 supervision had already started, and that the Agency
25 should not be complicating things further regarding this

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01 case. But as I said, I have not had a chance to read
02 this more carefully, so I cannot give you a more
03 detailed statement on this.
04 Q. The second paragraph on that page then says:
05 "The Agency addressed the competent Ministry, for
06 the first time, with a request for instructions on
07 further actions in the case after the meeting held on
08 March 30th, 2012, with the representatives of the
09 competent Ministry ..."
10 And I might note that at the bottom of the page,
11 there is another mention of a meeting held on November
12 2nd, this is the last paragraph, in the premises of the
13 Privatization Agency, again with representatives of the
14 competent Ministry present.
15 My question to you is: was it common for the
16 Ministry to attend meetings at the Privatization Agency
17 with respect to particular privatizations?
18 A. (Interpreted) If you could please allow me some time to
19 find the text?
20 Q. Sure. It's again second paragraph on page 2, it's
21 highlighted, it begins "The Agency". (Pause).
22 So again, my question was: was it common for
23 representatives of the Ministry of Economy to have
24 meetings at the Privatization Agency to discuss
25 particular privatization projects?

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01 A. (Interpreted) I can't remember exactly, but I am sure
02 there have been situations where on some cases we had
03 sometimes representatives of the Ministry attending, but
04 I can't give you a precise answer, I do not remember.
05 Q. Let's turn then to page 3 and to the last paragraph on
06 that page, and I promise we're almost done with this
07 document. Picking up with the paragraph "In line with":
08 "... the decision was made not to take into
09 consideration the case of BD Agro ... before the receipt
10 of the response of the Ministry, that is, the Conclusion
11 [capital C] of the Government."
12 A. (Interpreted) Yes, I have read it.
13 Q. Do you know why they capitalised "the Conclusion of the
14 Government"? It seems like that's far more than just
15 merely an opinion, would you agree?
16 A. (Interpreted) I really don't know what to say. I cannot
17 respond. I can't tell you why it is with capital Z, and
18 what the intention of this letter was.
19 Q. Isn't it true, sir, that the decisions made by the
20 Ministry during the supervision procedure were
21 obligatory for further actions of the Privatization
22 Agency?
23 A. (Interpreted) It is my understanding of the mandate of
24 the Ministry prescribed by the law with respect to the
25 supervision over the work of the Agency, it could only

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01 say whether the Agency was implementing the law properly
02 in its work, and nothing more. In other words, I don't
03 think it was possible for the Ministry to communicate
04 with the Agency in any other way, except for making
05 comments on whether the Agency did something in line
06 with the law or not.
07 Q. I don't think that answered my question, sir, so I'll
08 ask it again. Isn't it true that the decisions made by
09 the Ministry during the supervision procedure are
10 obligatory for further actions of the Privatization
11 Agency?
12 A. (Interpreted) I am not a lawyer, so I can't say whether
13 the decisions of the Ministry were of binding nature.
14 I think the Agency had a clear mandate, and I haven't
15 encountered such a situation during my office in the
16 Privatization Agency.
17 Q. This letter was issued on November 14th 2014, so it was
18 slightly after you departed, but take a look at the last
19 paragraph of that letter. This is obviously very
20 relevant to BD Agro, since its contract was terminated
21 after this letter. I will read you what it says:
22 "Having in mind the fact that the Buyer has not
23 completely fulfilled his contractual obligations, as
24 well as the fact [and now here's the key language] that
25 decisions made by the Ministry during the supervision

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01 procedure are obligatory for further actions of the
02 Privatization Agency, the Agency is not able to make an
03 independent decision in this case before completion of
04 said supervision procedure."
05 Mr Cvetkovic, contrary to your testimony in your
06 witness statement that you acted independently of the
07 Ministry of Economy, this contemporaneous document
08 specifically says the Agency cannot act independent, and
09 that the Ministry's orders are obligatory for further
10 actions of the Privatization Agency, correct?
11 A. (Interpreted) I think not. I think we have here
12 a thesis that the supervision procedure, and its binding
13 nature, on the further actions of the Agency, refers
14 only to the fact that the Ministry has the right and
15 possibility to check the legality of the Agency's work,
16 and not to take decisions on its behalf, the decisions
17 that are by law placed within the competence of the
18 Agency.
19 Q. So you dispute that the Ministry of Economy's
20 instructions were binding on the Agency, do you?
21 A. (Interpreted) Again, in my mandate, as the director of
22 the Privatization Agency, I did not encounter such
23 a situation, and given that all of this to which you are
24 referring to and the letter we are discussing here were
25 made and exchanged between the Ministry and the Agency

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01 at a time after I left the Agency, I now can't give you
02 my opinion on the circumstances that led to these
03 formulations.
04 Q. I am going to show you the testimony of Serbia's witness
05 that appeared before you, Ms Vuckovic, the Chairman of
06 the Commission, including during the time you were
07 director. If we could pull up this morning's
08 transcript, page 78, line 23? Starting on line 23 with
09 the words "My understanding". This is Ms Vuckovic's
10 testimony to the Tribunal earlier today:
11 "My understanding of all the decisions issued by the
12 line ministry were that they are generally speaking
13 binding on the Privatization Agency, and this is how we
14 acted in all privatization proceedings where oversight
15 was conducted over the Agency, and there were quite
16 a few before this case and after this case as well."
17 Isn't it true, Mr Cvetkovic, that the personnel at
18 the Privatization Agency, including personnel while you
19 were director, considered the instructions from the
20 Ministry to be obligatory, which we just saw from the
21 letter I showed you, and binding, which we just saw as
22 an admission from Serbia's witness earlier today?
23 DR DJERIC: I am sorry, Mme President, we would like to
24 object. I think that we have a line of questioning
25 where the witness is asked about what is binding, what

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01 is obligatory. The witness has given its point of view,
02 and now I think that this is pushing it into
03 a definitive position on the legal question, and then
04 his statement is contrasted with the statement of
05 a lawyer, which was Ms Vuckovic, today.
06 THE PRESIDENT: These are all fact witnesses. Even
07 Ms Vuckovic, who has a legal background, because she has
08 a bachelor in law, was heard as a fact witness.
09 I understand these questions to turn around the witness
10 statement, in paragraph 5 it says, "In accordance with
11 the Law, the PA was making decisions independently", so
12 if I make a decision independently, it means that I am
13 not bound by someone else's decision, and I understand
14 that this is what is being tested now with the
15 understanding of others within the Agency. I think that
16 is fine, frankly.
17 DR DJERIC: Okay.
18 MR ANWAY: I am happy to move on.
19 At paragraph 4 of your witness statement, and this
20 is another paragraph to which you referred earlier, you
21 stated that:
22 "The [Agency] was independent and had the capacity
23 of a legal person. It had its own bank account and
24 budget ..."
25 Do you see that?

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01 A. (Interpreted) Yes, I do.
02 Q. "Financial resources for the PA's budget came from its
03 own revenue, which the Agency, due to its independence
04 ..."
05 Do you see that?
06 A. (Interpreted) Yes, I do.
07 Q. But you confirmed that at least the initial budget for
08 the Agency came from the Government of Serbia, correct?
09 A. (Interpreted) I cannot either confirm or deny this,
10 because at that time, I wasn't employed at the Agency,
11 but I believe that under the law, the Agency had the
12 possibility of filling its budget from donations,
13 subsidies, and there were other possibilities of filling
14 the budget. And I assume, and to the best of my
15 recollection, I think in that period donations too were
16 used at the beginning of the work of the Agency, but in
17 any case I cannot comment on how the first budget of the
18 Agency was filled and created for it to start operating.
19 Q. Fair enough, I accept that you don't know where the
20 initial budget came from, and we'll again leave it to
21 the Serbian law lawyers to discuss that.
22 With respect to the proceeds and where they went,
23 after a commission was kept by the Commission, or by the
24 Agency, the proceeds you received had to be handed back
25 over to the State budget, correct?

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01 A. (Interpreted) I would be more precise there. The Agency
02 kept part of its commission fee that it was entitled to
03 under the law, and the privatization proceeds were
04 transferred either to the State budget or to other
05 owners whose capital assets were sold and the
06 distribution of the revenues was in accordance with the
07 law and the percentage kept by the Agency was also
08 defined by the law.
09 Q. But you acknowledge at least a portion of the money that
10 was received as a result of the privatization was put
11 back into the State budget?
12 A. (Interpreted) Most of the money ended up either in the
13 budget if it concerned socially-owned capital, and some
14 other parts were distributed to other owners if there
15 were some minority shareholders. It all depended on
16 what was subject to privatization in a given case.
17 Q. I would like to talk for a minute then about what
18 happened when there was a termination of a privatization
19 agreement, and how the shares were transferred back to
20 the Privatization Agency; again, just according to your
21 understanding. First of all, just very approximately,
22 while you were director, how many terminations of
23 privatization agreements were there; five, 10, 50, 100?
24 Just a general number.
25 A. (Interpreted) Really a lot of time has passed since, and

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01 it would be difficult for me to give you an exact
02 figure, but certainly it was a two-digit or three-digit
03 number of terminated agreements.
04 Q. When an agreement was terminated, the shares would then
05 be returned to the Privatization Agency, correct?
06 A. (Interpreted) Yes, they were returned to the
07 Privatization Agency.
08 Q. And the procedure by which the Agency would do that is
09 that it would issue a decision to terminate, and then
10 order the Central Securities Depository to transfer the
11 privatised shares to the Agency, correct?
12 A. (Interpreted) There was a similar mechanism, but
13 I couldn't give you a precise answer.
14 Q. What I am really driving at is there was no court
15 procedure before the shares were transferred back to the
16 Privatization Agency, it was something that the Central
17 Securities Depository did automatically based on the
18 unilateral order from the Privatization Agency, correct?
19 A. (Interpreted) I wouldn't say it was only an order of the
20 Agency, it was the letter of the law that stipulated
21 that this was the procedure after a terminated
22 agreement. This wasn't the discretion of the Agency to
23 decide on this.
24 Q. Since you mention the law, let's just note it for the
25 record, let's go to CE-254, Article 56. Is that the

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01 legal provision to which you were referring? For the
02 record, this is the Business Rules of Central Register,
03 Clearing and Depository of Securities.
04 A. (Interpreted) Yes, I haven't read this text before and
05 I cannot comment, but what I referred to was that once
06 an agreement was terminated, the Agency disposed of the
07 shares, that is they were transferred to the Agency. My
08 comment had to do with that, not with these rules for
09 the operation of the Central Depository.
10 Q. Do you have any understanding about whether a private
11 seller of shares would have been able to achieve return
12 of the shares if it terminated a share purchase
13 agreement with a buyer without going to court first?
14 Again, if the answer is you don't know because you're
15 not a lawyer, that's perfectly fine.
16 A. (Interpreted) I do not know the answer, but I think that
17 court proceedings were the only possibility.
18 Q. For a private party?
19 A. (Interpreted) I apologise, what was your question?
20 Q. You had said "I think that court proceedings were the
21 only possibility", and my question was: if the seller
22 was a private party; that's what you were referring to,
23 sir?
24 A. (Interpreted) Yes, why I didn't understand your question
25 was because it wasn't clear if you asked about the

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01 Agency and its actions or hypothetically if there was
02 a case between two private parties, that's why I didn't
03 understand your question. We are talking here about the
04 Agency agreement.
05 Q. Let me make sure I understand that. I am afraid the
06 transcript may have gotten a little confused and perhaps
07 it's my fault. Your understanding is that if the
08 Privatization Agency terminates a privatization
09 agreement, that it can obtain the shares back
10 unilaterally without having to go to court first,
11 correct?
12 A. (Interpreted) The answer is no, the Agency could not
13 return the shares to a buyer without going to court.
14 Q. Sir, we just looked at a legal provision which I think
15 stated the opposite. I understand you're not a lawyer
16 but your prior testimony was the opposite.
17 THE PRESIDENT: I wonder whether there is not
18 a misunderstanding. Do I understand you correctly, sir,
19 that you say no court proceeding is required for the
20 shares in a privatization agreement with the
21 Privatization Agency to be returned to the Agency in
22 case of termination?
23 A. (Interpreted) The law stipulated that once an agreement
24 was terminated, the Agency would transfer the shares to
25 its ownership. That has been clear from my statements

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01 so far. It wasn't clear whether the question had to do
02 with the Agency having the right to return the shares to
03 the previous owner. And it didn't have this right.
04 THE PRESIDENT: I think the other question was a different
05 one, it was a hypothetical: in case there is a share
06 purchase agreement between two private parties, does the
07 seller, when it terminates the agreement, recover the
08 shares without going to court, and I understood you
09 there to say no, a court proceeding is required. Now if
10 I misunderstood you, you will correct me.
11 A. (Interpreted) I apologise for this misunderstanding.
12 The question was a hypothetical one, whether in some
13 other situation, where there are two private parties
14 that are contractual parties. Whether, in termination
15 of an agreement, one party can return the shares to the
16 other party. I think this is beyond my knowledge of the
17 law of contracts and torts in Serbia and my general
18 knowledge of these regulations.
19 MR ANWAY: Were you aware, sir, that during your tenure as
20 director, the Privatization Agency was sued in an ICC,
21 an International Court of Arbitration proceeding
22 concerning the Uniworld privatization?
23 A. (Interpreted) I do not have any broader knowledge of
24 this. I only have anecdotal information. I knew that
25 there was a dispute where one of the parties was

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01 a company called Uniworld.
02 Q. At the outset you had noted that after you left the
03 Privatization Agency, you went to work at PwC, correct?
04 A. (Interpreted) Yes, correct.
05 Q. And PwC and the Privatization Agency worked on a number
06 of projects together during your tenure, did they not?
07 A. (Interpreted) During my tenure, you mean my tenure at
08 the Privatization Agency?
09 Q. Correct, your tenure as director of the Agency.
10 A. (Interpreted) According to my knowledge, before I was
11 employed by PwC, PwC had worked on some projects with
12 the Agency, but other than this anecdotal information,
13 I had no knowledge on those projects.
14 Q. Approximately how many different projects during your
15 tenure as director at the Agency did PwC work on? Just
16 approximately.
17 A. (Interpreted) I don't know. I really don't have that
18 information, I don't remember.
19 Q. Would 30 or so sound about right?
20 A. (Interpreted) I don't know. I don't think so, but
21 I don't know, I can't remember.
22 Q. But you nevertheless felt it was appropriate to go work
23 for PwC immediately after leaving the Agency, that there
24 was nothing improper about that, correct?
25 A. (Interpreted) Correct.

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01 Q. And in fact, it's quite common for government employees
02 to leave the government and go work for private parties,
03 private companies with which they had worked while in
04 government, isn't that true?
05 A. (Interpreted) I don't think that this is some kind of
06 practice, but in any case, this is not what led me in my
07 decisions, because both before my work in the Agency and
08 after that work, I did similar jobs before my work in
09 the Agency, I was a consultant in projects that were
10 funded by international donors, and I was a consultant
11 at Deloitte. That's my profession.
12 Q. But you agree that there's nothing suspicious about
13 a government employee going to work for a private
14 company after leaving government, even if, while in
15 government, they worked for that company, or worked with
16 that company, correct?
17 A. (Interpreted) My post of director of the Agency for
18 Privatization was not a post of civil servant. I took
19 it over after a public competition. I performed
20 professional duties. And I don't believe these two
21 things that you are mentioning here are linked in any
22 way.
23 Q. But you would agree with me there's nothing suspicious
24 about a government employee going to work for a private
25 company after he or she leaves government?

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01 MS MIHAJ: I am sorry, Mme President, I have to object
02 because I don't see any relevance with this question.
03 THE PRESIDENT: Yes, I think we understood that this was the
04 way your career evolved, and that's it, unless you can
05 explain to us why it is relevant.
06 MR ANWAY: I mention the point because there have been
07 allegations against certain employees of BD Agro that it
08 was improper for them to come to government after they
09 left their relevant post, and what I was trying to
10 establish is there's nothing inherently suspicious about
11 a government employee that later takes a private
12 position.
13 THE PRESIDENT: We can assess this. We know that this is
14 what occurred with Mr Cvetkovic.
15 MR ANWAY: I will move to a different topic.
16 At paragraph 7 of your witness statement, you stated
17 that you visited BD Agro, the farm, in 2007, correct?
18 A. (Interpreted) That's paragraph 11.
19 Q. You are correct, thank you for the correction. You say
20 there that you met Mr Obradovic, do you see that?
21 A. (Interpreted) Yes, I do.
22 Q. Did anyone else accompany you on that trip?
23 A. (Interpreted) I do not remember exactly the composition
24 of the delegation, but this was a delegation that
25 included several persons from the Privatization Agency

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01 and other institutions, and I cannot remember who were
02 all the people who were there with me, but the
03 delegation was rather large and broad. Yes, I mentioned
04 this in my statement as the moment when I met
05 Mr Obradovic.
06 Q. I understand from paragraph 11 that you say that while
07 you were aware of the BD Agro privatization, you visited
08 the farm at least on one occasion, you generally can't
09 remember many other details about that particular
10 privatization because you had so many other
11 privatizations with which you were concerned at the
12 time; is that a fair characterisation?
13 A. (Interpreted) Yes, just as it says in my statement, it
14 was one of many visits that I had to take, so there
15 wasn't any particular difference between this visit and
16 other visits that I had to make as an employee of the
17 Agency.
18 Q. But you were aware, were you not, that the buyer of
19 BD Agro had pledged the shares in BD Agro to the
20 Privatization Agency; you were aware of that, correct?
21 A. (Interpreted) I have clarified the circumstances when
22 I first met Mr Obradovic in 2007, when I was deputy
23 director, and when I didn't have a more active role in
24 the Commission in charge of taking measures, so this
25 part of my statement relates only to my first

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01 recollection of BD Agro as a privatised entity.
02 Q. My question was different, sir, it was whether you were
03 aware that the buyer of BD Agro had pledged the shares
04 to the Privatization Agency.
05 A. (Interpreted) Back then, I did not know that. It was
06 just not something I had to deal with.
07 Q. Are you familiar with the Privatization Agency's rule
08 handbook, or were you at the time?
09 A. (Interpreted) I am not sure which rulebook you are
10 specifically referring to.
11 Q. Let's look to CE-763, section 9.5, which is on page 5.
12 I am going to pick up, just to avoid reading the entire
13 paragraph, in the second line from the bottom of the
14 first paragraph:
15 "... the entity being privatised has been paid in
16 full, [the Centre] shall draft a decision removing the
17 pledge from the shares/shareholdings."
18 So this is a provision from the Privatization
19 Agency's rule handbook, paragraph 9.5. Do you see that?
20 A. (Interpreted) Yes, I can see it.
21 Q. During your tenure at the Privatization Agency, did the
22 Agency follow this rule?
23 A. (Interpreted) Well, in my capacity of director of the
24 Agency, I was in charge, I was responsible for all of
25 the activities of the Agency. I cannot tell you,

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01 however, whether the Center itself adhered to this,
02 because the Center itself had its professional
03 management and they had rules for acting, defined rules
04 for acting. I cannot state much about anything that
05 relates to the work of the Center, or Department for
06 Control, because they were working in line with the job
07 descriptions act. I believe that all of the employees
08 of the Agency did a conscientious job.
09 Q. Let's turn then to CE-033. This is a letter from the
10 Ministry of Economy dated May 30th 2012, in which it
11 concluded that there was no economic justification to
12 terminate the Privatization Agreement with BD Agro and
13 my first question to you, sir, is: have you ever seen
14 this letter before?
15 A. (Interpreted) A lot of time has passed and I have seen
16 so many letters, so I cannot say with certainty that
17 I have seen this, but -- okay, never mind, I have it
18 here in front of me, you can ask whatever you want
19 regarding this one.
20 Q. I guess my question was: were you made aware at the time
21 that the Ministry of Economy had concluded that there
22 was no economic justification to terminate the BD Agro
23 Privatization Agreement?
24 A. (Interpreted) From what I remember, the Commission, in
25 whose work I took part, was discussing everything

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01 related to the actions taken by the Agency, and
02 naturally, all of our activities were focused on those
03 circumstances. According to my understanding, this is
04 an opinion on economic justification, whether it exists
05 or not, and the Ministry is the one that makes an
06 assessment from an economic point of view, and from
07 a broader point of view, but this letter as such is not
08 specifically relevant for the actions of the Agency,
09 it's just one in a series of opinions that we will get
10 in order to take our decision.
11 Q. My question simply was: were you made aware of this
12 letter from the Ministry at the time? Did it make it to
13 your desk?
14 A. (Interpreted) I really do not remember that.
15 Q. Okay. Let's turn to another document where I'll have
16 the same question, which is CE-034, and I will represent
17 to you, sir, that this is a legal opinion from the law
18 firm Radovic & Ratkovic, dated June 12th 2013, where the
19 Agency was seeking advice from outside legal counsel on
20 whether it could lawfully terminate the Privatization
21 Agreement with BD Agro. I will just direct you to two
22 passages, and then ask you my question. The first is,
23 on the third page, the words "According to", it will be
24 highlighted for you on your screen. The law firm
25 concluded:

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01 "According to the agreement itself, the Agency does
02 not have the right to terminate the agreement due to
03 violation of obligation referred to in Article 5.3.4,
04 because this is not stipulated as a reason for
05 termination."
06 Do you see that?
07 A. (Interpreted) Fine, I have read this.
08 Q. Okay, and then if we go to the very end of the legal
09 opinion, last paragraph, first two sentences:
10 "Based on all of the above, we conclude that,
11 besides the fact that there is no economic
12 justification, there is also no legal basis for
13 termination of the said Agreement on sale of
14 socially-owned capital."
15 And then it goes on:
16 "If the agreement is still terminated ... we believe
17 that the buyer's success in a future legal procedure
18 would be almost certain."
19 Mr Cvetkovic, this is a legal opinion that is
20 describing the buyer's success in a future legal
21 proceeding as "almost certain"; in view of that, I would
22 expect this legal opinion or at least knowledge of it to
23 have been made aware of you while you were director of
24 the Agency; was it made available to you or known to you
25 at the time?

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01 A. (Interpreted) First of all, I would like to say that
02 this legal opinion, just like all opinions, is a point
03 of view of a lawyer or, I would say, a group of lawyers
04 which have signed this document and that the Agency was
05 entitled, and it had the possibility to seek opinions
06 from all relevant professionals, from anybody else. So
07 that's one thing, it's an opinion, it's not binding,
08 it's not a binding position of any party.
09 Q. That wasn't my question, sir, I'll ask it again. Sorry,
10 go ahead.
11 A. (Interpreted) It's not a problem, repeat your question,
12 I can be more precise in my answer.
13 Q. Given that the legal opinion came in from outside
14 lawyers that stated "the buyer's success in a future
15 legal procedure would be almost certain", I would assume
16 this would be a matter of significance to the Agency,
17 such that you would have been made aware of it at the
18 time; were you made aware of it at the time?
19 A. (Interpreted) Well, my awareness of all the activities
20 took part -- actually happened by participating in the
21 work of the Commission. All of the requests for
22 opinions and consultations sent by the Agency were sent
23 by our services. We had very good lawyers within the
24 Control Department, within the Legal Department, who, as
25 I believe is the case in other legal matters, sometimes

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01 felt the need to seek an external opinion, to get an
02 outside opinion, but my awareness of these matters
03 existed only when, in the procedure of judging whether
04 the requirements from the agreement were met or not, the
05 case would reach the Commission, the level of the
06 Commission.
07 And if the minutes said that the relevant service of
08 the Agency asked for an opinion, then for sure, me and
09 the rest of the colleagues within the Commission had to
10 become aware of that, so such letters could be sent
11 routinely by various professionals from the Agency.
12 They wouldn't necessarily land on my desk. So I would
13 get acquainted with such opinions sometimes in my
14 capacity of a member of the Commission, but in any case,
15 our professionals within the sectors could ask by
16 themselves for such opinions.
17 Q. If I understood your answer correctly, it sounds like
18 you were generally aware of it through your activities
19 and work participating with the Commission, is that
20 fair?
21 THE PRESIDENT: The way I understood it, and you will
22 correct me, I did not understand that there was
23 a specific answer with respect to this legal opinion,
24 but that Mr Cvetkovic said that if legal opinion would
25 reach the Commission, and be discussed there, then he

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01 would be aware of it, and I did not understand -- do you
02 remember being aware of this very opinion or not?
03 A. (Interpreted) Okay, for the sake of clarification,
04 I really could not remember now if this has been
05 submitted to me or not. What I clarified is that
06 employees of the Agency requested this opinion to be
07 issued by external parties, and as such, it was probably
08 included in materials which were submitted for the
09 meetings of the Commission, and that there was
10 a possibility for us as Commission members to be
11 acquainted with it. So it was the technical and
12 professional services of the Agency that were requesting
13 such opinions and obtaining such opinions; whether this
14 particular opinion was mentioned in one of the materials
15 at the level of the Commission or not is something that
16 I cannot recollect.
17 It's very important, however, that all minutes from
18 all meetings of the Commission, all decisions, have been
19 recorded chronologically and very precisely at the
20 Agency, so I believe you can find the answer to this
21 specific question in the minutes of the work of the
22 Commission.
23 MR ANWAY: I raise the matter, Mr Cvetkovic, because in
24 paragraph 9 of your witness statement, you state:
25 "It can be said that the [Privatization Agreement]

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01 practiced a policy to keep privatization agreements in
02 force as much as possible."
03 We have just seen a letter from the Ministry of
04 Economy stating that there was no economic justification
05 to terminate; we have now seen a legal opinion stating
06 that there is no legal basis to terminate, and in
07 addition to saying that the buyer's success in the
08 future legal proceeding would be almost certain, it
09 says:
10 "Besides the repayment of full sale and purchase
11 price plus the appropriate legal default interest, the
12 buyer of capital would also have the right to request
13 (and get) compensation of all the damages."
14 It would seem there are very good reasons to keep
15 this Privatization Agreement in force, and so when you
16 state in paragraph 9 that you had this policy to keep
17 agreements in force as much as possible, given these two
18 documents, how do you explain that the Privatization
19 Agency nevertheless terminated?
20 A. (Interpreted) I believe that these two things are not
21 mutually colliding. I would say that the statement that
22 I made is completely true. The Agency for Privatization
23 acted in such a way that it attempted to keep all
24 agreements in force, with the exception of those cases
25 when we would analyse the developments regarding the

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01 execution of agreements, and decided that we had to
02 terminate them. We were giving so many additional
03 deadlines to the buyer, to give them a chance to correct
04 the irregularities, and to make sure the agreement stays
05 in force, and that's what I say in paragraph 9 of my
06 statement, the Agency always intended to keep all
07 agreements in force, that was the best thing for the
08 Serbian economy, that was our competence.
09 Otherwise if we hadn't acted that way, the Agency
10 could have terminated not just one but many other
11 agreements much sooner, but that's not something we
12 wanted to do. It was our policy to keep in force the
13 agreement as much as possible and that can be seen
14 through numerous additional deadlines, but when you see
15 even though that you have given so many additional
16 deadlines that there is no progress, then certainly the
17 agreement has to be terminated, so I believe these two
18 things are not mutually conflicting.
19 I would also underline that consistency in actions
20 taken by the Agency always existed towards all buyers
21 equally. All of our buyers knew what it is that they
22 had to rectify, and all of them were given numerous
23 chances to do that. The Agency has never terminated any
24 agreement without using all possible chances to rectify
25 the irregularities.

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01 Q. You have just noted a number of times that there were
02 deadlines given to the buyer, correct?
03 A. (Interpreted) Exactly.
04 Q. In fact, you authored a number of the letters to the
05 buyer giving the buyer deadlines, didn't you, sir?
06 A. (Interpreted) I did not draw them up myself, support
07 services would normally draw them up, the sector that
08 was responsible for this kind of work.
09 Q. But you signed them?
10 A. (Interpreted) That is correct, I would sign them.
11 Q. Let's take a look at one of them, which is CE-096.
12 I just want to review what you told the buyer that the
13 buyer needed to do to avoid termination. First let me
14 identify the document for the record, it is a letter
15 from the Privatization Agency of the Republic of Serbia
16 dated June 24th 2011, and can you confirm you are the
17 signatory on this document?
18 A. (Interpreted) Yes, that's my signature.
19 Q. If we go back to the beginning you'll see that you grant
20 the buyer an additional 60 days as of the receipt of
21 this decision, and then it gives them a number of things
22 that the buyer needs to do to comply; fair?
23 A. (Interpreted) Allow me a moment to read it carefully,
24 please. (Pause). It's okay, you can start asking
25 questions.

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01 Q. So if we start under the highlighted language with the
02 dash, the first thing you informed the buyer that it
03 needed to do was comply with articles 5.3.3 and 5.3.4,
04 correct?
05 A. (Interpreted) Yes.
06 Q. Do you have an understanding of how the buyer could have
07 possibly cured the alleged violation of article 5.3.3?
08 A. (Interpreted) I am not sure I fully understand your
09 question, so how could the buyer remedy the breach, or
10 what exactly did you mean, could you please clarify?
11 Q. Do you even recall what the alleged violation of
12 article 5.3.3 was?
13 A. (Interpreted) At this moment I do not recall what
14 exactly these refer to, but I am absolutely sure that
15 the buyer was informed exactly about the obligations
16 that he had. The buyer normally knows the agreement
17 very well, but I would need to go back to the agreement
18 and see what these two refer to, that would be
19 beneficial, but what I'm trying to emphasise is that the
20 buyer was aware of the contractual obligations, he
21 received information on this in writing, and then
22 because auditors were hired, he knew exactly what the
23 obligations were. So in that sense, I am trying to say
24 that the buyer knew perfectly well what the letter of
25 the Agency referred to.

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01 Q. You understand from the very last paragraph of this
02 letter that if all of the conditions that are laid out
03 on pages 1 and 2 of this letter are not satisfied:
04 "... the Privatization Agency will undertake the
05 measures under Article 41a of the Law on Privatization
06 ..."
07 You were effectively stating that unless all these
08 conditions were satisfied, the Privatization Agency
09 would terminate the contract, correct?
10 A. (Interpreted) According to this, we are ordering the
11 buyer to remedy all the violations that we had
12 established, and we were granting him additional
13 deadline by which to rectify the violations.
14 Q. And all of these conditions had to be satisfied, not
15 just one of them, correct?
16 A. (Interpreted) All the conditions need to be fulfilled
17 for the Agency to state that the buyer had fulfilled all
18 his obligations, but as I have just explained in my
19 reply, the Agency was the one who assessed whether the
20 buyer continued to be a bona fide buyer, by meeting at
21 least part of the contractual obligations, to an extent
22 where he would appear to be a bona fide buyer, and even
23 if he did not meet all the contractual obligations, this
24 does not mean that in the next cycle the agreement would
25 be terminated, ., in that case maybe another additional

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01 period of time maybe would be given, that is to continue
02 upon what was the previous question.
03 Q. All I am trying to establish is that of all the
04 conditions on here, your expectation when you signed
05 this letter was that the buyer had to satisfy each and
06 every one of them, and if it didn't, then the
07 Privatization Agency would terminate the contract; it
08 wasn't a matter of just satisfying one, the buyer had to
09 satisfy all of them, correct?
10 A. (Interpreted) So we are not talking about an automatic
11 procedure, so the Agency would not terminate the
12 agreement automatically. Instead, what we have here is
13 the list of conditions that he was presented with, and
14 the deadline by which he was supposed to remedy the
15 breaches.
16 Q. Mr Cvetkovic, I have four or five other letters, I think
17 we can just skip them all with a simple answer to this
18 question. Did you ever tell the buyer that if it only
19 returned the money given to Inex or Crveni Signal, then
20 the agreement would not be terminated, and all these
21 other conditions didn't need to be satisfied, did you
22 ever tell the buyer that?
23 A. (Interpreted) I can't say I did not say so to the buyer.
24 I don't think something of this kind could be
25 communicated orally to the buyer by anyone from the

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01 Agency, and the reason for this is that all
02 communication with the buyer happened through formal
03 letters. So I don't think one failure of the buyer to
04 act concerning the actions he was undertaking during the
05 breach of contractual obligations was the only reason
06 for the Agency to act further -- I don't think this was
07 possible.
08 MR ANWAY: Mme President, I have no further questions.
09 THE PRESIDENT: Thank you. Any questions in re-direct?
10 DR DJERIC: No, Mme President, thank you.
11 THE PRESIDENT: Do my colleagues have questions? Let me see
12 whether I have questions that have not been asked so
13 far.
14 Questions from the TRIBUNAL
15 THE PRESIDENT: You were the deputy director from May 2007
16 to June 2009, and then you were the director of the
17 Privatization Agency from June 2009 until November 2013,
18 is that right?
19 A. (Interpreted) That is correct.
20 THE PRESIDENT: During this time, about how many
21 privatizations have you overseen?
22 A. (Interpreted) During my tenure as deputy director, I,
23 formally speaking, was not involved in the supervision.
24 As deputy director at the time I did some other work
25 relating more to the preparation of the privatization.

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01 THE PRESIDENT: Maybe I didn't formulate this right. During
02 your time, how many privatizations did the Agency
03 handle?
04 A. (Interpreted) It's difficult to come up with a precise
05 figure, because we had a really big number of different
06 privatizations. But we are speaking about hundreds.
07 THE PRESIDENT: A big number? What is big?
08 A. (Interpreted) In one stage or another, so including
09 preparation stage, supervision of procedures, I think we
10 are speaking about 300 to 500 different privatizations
11 but I am giving you a rough figure that I am now giving
12 you from the top of my head, so this was the rough
13 figure, but we were addressing a large number of
14 privatizations. During my office, the Agency handled
15 even more privatizations, I believe, but if we are
16 talking about what privatization procedures I worked on
17 more intensely or the privatizations I had more
18 knowledge about, then we are talking about several
19 hundred, and the total number of privatizations that the
20 Agency handled was much, much bigger.
21 THE PRESIDENT: How big was that, approximately?
22 A. (Interpreted) During its work the Agency privatised
23 somewhere between 2,500 and 3,000 companies.
24 THE PRESIDENT: Thank you. What's the percentage of
25 terminations of privatization agreements on these

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01 2,500-3,000? Do you have an indication of that?
02 A. (Interpreted) If I remember well, the number of
03 terminated privatizations varied from one period to
04 another, but I think from one-fourth to one-third was
05 terminated at one period of time. They were considered
06 unsuccessful privatizations. Why is it difficult to
07 give you figures; because some companies were
08 reprivatized or privatized for the second time and then
09 it would happen that the second privatization was
10 successful. Some other companies sold their assets,
11 that's how they were counted, so it's difficult to give
12 precise statistics on this.
13 THE PRESIDENT: But you say something like 25-30%,
14 I understood you to say, one-third to one-fourth, would
15 fail?
16 A. (Interpreted) To the best of my knowledge, yes. But
17 I think it's not -- it can be made available officially.
18 I am not sure my memory serves me right, please
19 understand if my figures are not precise.
20 THE PRESIDENT: It is fine, it is just to have an idea, it
21 could have been 5% or 50%, and that is something in
22 between, thank you.
23 I have no further questions. So that ends your
24 examination. Thank you very much, Mr Cvetkovic, for
25 your answers.

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01 A. (Interpreted) Thank you, Mme President, and thank
02 everyone.
03 THE PRESIDENT: Yes, I think we should take a break, because
04 we have been going for quite a long stretch, especially
05 for the interpreters and the court reporters it has been
06 long.
07 Let's resume in 15 minutes from now, and so the next
08 witness is Mr Stevanovic, is that right? I suppose so,
09 nobody says no.
10 (3.20 pm)
11 (A short break)
12 (3.35 pm)
13 MR DRAGAN STEVANOVIC (called)
14 THE PRESIDENT: Good afternoon, sir. Do you hear the
15 interpretation when I speak?
16 THE WITNESS: (Interpreted) Yes, I can hear it, thank you.
17 THE PRESIDENT: You are Dragan Stevanovic?
18 THE WITNESS: (Interpreted) That is correct.
19 THE PRESIDENT: You are Secretary of State at the Ministry
20 of Economy, and you have held this post since 2014, is
21 that right?
22 THE WITNESS: (Interpreted) That is correct.
23 THE PRESIDENT: Before that, you were President of the
24 Commission for Public-Private Partnership, is that
25 right?

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01 THE WITNESS: (Interpreted) That is correct, and I am on
02 this position today too.
03 THE PRESIDENT: Oh, you still have this position, that's
04 right, I didn't read my notes well. Apologies. You
05 have provided us with one written statement dated
06 23rd January 2020?
07 THE WITNESS: (Interpreted) Yes.
08 THE PRESIDENT: You are heard as a witness; as you know, you
09 are under an obligation to tell us the truth. Could you
10 please read the witness declaration that should be on
11 the table before you?
12 THE WITNESS: (Interpreted) I solemnly declare upon my
13 honour and conscience that I shall speak the truth, the
14 whole truth and nothing but the truth.
15 THE PRESIDENT: Thank you. So I first turn to Dr Djeric.
16 DR DJERIC: Thank you, Mme President. We have no questions
17 at this time, thank you.
18 THE PRESIDENT: Good. Then Mr Misetic.
19 MR MISETIC: Thank you, Mme President.
20 Cross-examination by MR MISETIC
21 Q. Good afternoon, Mr Stevanovic, my name is Luka Misetic
22 and I will be asking you a few questions on behalf of
23 the Claimants. Before we get into the substance of your
24 witness statement, first, could you tell me in what
25 month in 2014 did you become the State Secretary in the

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01 Ministry of Economy?
02 A. (Interpreted) I think it was the first half of the year,
03 maybe May or June. The first half of 2014 definitely.
04 Q. And the Commission for Public-Private Partnership, can
05 you tell us what that is?
06 A. (Interpreted) It is the Government's Commission,
07 addressing public-private partnership projects. It
08 approves such projects.
09 Q. And this Commission is at the level of the Government or
10 is it within a Ministry?
11 A. (Interpreted) Public-private partnership is within the
12 competence of the Ministry of Economy, and the
13 Commission was set up by the Government's decision.
14 Q. At paragraph 6 of your statement, you state:
15 "... Mr Rand was interested in assigning the
16 Agreement on privatization of BD Agro dated 4th October
17 2005 ... by having the Privatization Agency conclude an
18 agreement on assignment of the Privatization Agreement
19 with his company Coropi."
20 It's your position, is it not, that only
21 Mr Obradovic as the nominal owner could seek to assign
22 the Privatization Agreement, correct?
23 A. (Interpreted) The assignment could be sought by anyone.
24 But Mr Obradovic was the owner, and he could seek that.
25 Q. Well, the assignment was seeking to assign rights that

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01 he had in the Privatization Agreement, correct?
02 A. (Interpreted) Can you please repeat your question?
03 Thank you.
04 Q. It was Mr Obradovic who was the nominal owner in the
05 Privatization Agreement, correct?
06 A. (Interpreted) That is correct.
07 Q. You continue on in paragraph 6, you say:
08 "In that regard, several meetings were held in the
09 Ministry of Economy during 2014 and 2015. These
10 meetings were attended by Ms Neda Galic and I, for the
11 Ministry of Economy, Ms Julijana Vuckovic, for the
12 Privatization Agency, Mr Erinn Broshko and attorney at
13 law Slobodan Dokleštic, for Mr Rand, as well as Mr Igor
14 Markicevic who was the then director of BD Agro."
15 At none of these meetings did Mr Obradovic attend
16 the actual meeting, correct?
17 A. (Interpreted) He was invited to one but unfortunately he
18 did not stay in the meeting.
19 Q. So to the best of your recollection, Mr Obradovic never
20 attended one of these meetings where the assignment of
21 the Agreement was discussed, correct?
22 A. (Interpreted) No, he didn't.
23 Q. And no one representing Mr Obradovic attended any of
24 these meetings, correct?
25 A. (Interpreted) It's not like that, Mr Igor Markicevic was

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01 there, he was the director of the company that was owned
02 by Djura Obradovic.
03 Q. Igor Markicevic was not Mr Obradovic's personal
04 representative, was he?
05 A. (Interpreted) He was the director of the company
06 BD Agro.
07 Q. That's correct, but you never saw a power of attorney or
08 some other written document authorising Mr Markicevic to
09 act on behalf of Mr Obradovic, correct?
10 A. (Interpreted) I did not request that, I don't think that
11 was necessary.
12 Q. We'll get to that point in a moment. From 1st January
13 2014 until the Privatization Agreement was terminated in
14 October 2015, how many meetings did you have with
15 Mr Obradovic?
16 A. (Interpreted) With Mr Obradovic, I had one meeting.
17 Q. When was that?
18 A. (Interpreted) I can't remember precisely.
19 Q. Who else was present?
20 A. (Interpreted) My colleagues from the Ministry of
21 Economy, from my office only.
22 Q. What are their names?
23 A. (Interpreted) I think that only Ivana Janackovic was
24 there.
25 Q. Were any notes taken of that meeting?

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01 A. (Interpreted) No.
02 Q. Is it usual for the State Secretary to have a meeting
03 with the owner of a privatised entity and no notes be
04 taken?
05 A. (Interpreted) Minutes can be taken, but they needn't be
06 taken.
07 Q. Who decided there would be no notes taken at this
08 meeting that you're referring to?
09 A. (Interpreted) I, because I was the one who chaired the
10 meeting.
11 Q. Why did you decide not to take any notes of your alleged
12 meeting with Mr Obradovic?
13 A. (Interpreted) I felt this was not important.
14 Q. The meeting was not important, or that the notes were
15 not important?
16 A. (Interpreted) That minutes were not important.
17 Q. Why were minutes not important?
18 A. (Interpreted) Because I assessed that it wasn't
19 important.
20 Q. My question is: why did you assess that it wasn't
21 important?
22 A. (Interpreted) Because the topic was not so important as
23 to require keeping of minutes.
24 Q. What was the topic?
25 A. (Interpreted) We discussed a loan from the Development

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01 Fund.
02 Q. You don't think it was important to take notes of
03 someone asking for a loan from the Development Fund?
04 A. (Interpreted) I believe that it wasn't important.
05 Q. If we look at Exhibit CE-769, I just want to show you
06 a document and see if you were aware of the information
07 that's contained in it. If we go down to the last
08 email, please, this is an email sent to the Minister of
09 Economy, dated 18th December 2013, and it had a letter
10 attached. If we could take a look at the letter, it is
11 signed by Mr Milan Kostic. Do you know who Milan Kostic
12 is?
13 A. (Interpreted) No, I don't.
14 Q. In the letter, in the first paragraph, Mr Kostic writes
15 to the Minister requesting a meeting for Mr Erinn
16 Broshko:
17 "... who would like to collect sufficient level of
18 information for the purpose of furthering the
19 development plan of the company and inform Mr William
20 Rand from Canada who is a majority owner of PD BD Agro."
21 Do you see that?
22 A. (Interpreted) Yes, I do.
23 Q. Were you ever informed by the Minister of this
24 information that William Rand was the majority owner of
25 BD Agro?

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01 A. (Interpreted) No, never.
02 Q. If we could turn to paragraph 8 of your witness
03 statement, this is the meeting of 15th December 2014 at
04 which you asked Mr Obradovic to leave the meeting. You
05 say:
06 "... when Mr Rand's representatives showed up at the
07 meeting, they were dissatisfied with the fact that
08 Mr Obradovic was also present, so they asked that
09 Mr Obradovic leaves the meeting. Having in mind this
10 meeting was not actually scheduled upon the Buyer's
11 initiative, but upon the initiative of Mr Rand's
12 representatives, we asked Mr Obradovic to leave the
13 meeting."
14 Which of Mr Rand's representatives asked that
15 Mr Obradovic leave the meeting?
16 A. (Interpreted) I think it was Mr Broshko.
17 Q. Do you think or do you know for sure?
18 A. (Interpreted) I know for sure that it was him.
19 Q. I asked you whether any representatives of Mr Obradovic
20 attended these meetings, and you mentioned
21 Mr Markicevic. Did you find it unusual that the owner
22 of the company was being asked to leave but the director
23 was allowed to stay?
24 A. (Interpreted) Yes, it was.
25 Q. Were you made aware prior to this meeting that

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01 Mr Broshko, 11 months earlier, had told the
02 Privatization Agency that the privatization of BD Agro
03 had been conducted with Mr Rand's money?
04 A. (Interpreted) No, I don't have that information.
05 Q. Were you made aware that Mr Broshko, 11 months prior to
06 this meeting, informed the Privatization Agency that
07 Mr Rand had entrusted Mr Obradovic with acquiring
08 BD Agro?
09 A. (Interpreted) No, I wasn't.
10 Q. If we can take a look at the notes of the meeting, which
11 is Exhibit RE-38, at number 1 it records you as being
12 present, and in line 9 Mr Markicevic is present, and in
13 line 10 Mr Broshko is present. If you could take a look
14 at the description of the subject of the meeting, and
15 read it to yourself, please? (Pause). It says, in the
16 first sentence:
17 "The reason for the meeting was to present to the
18 Ministry of Economy the factual findings about the
19 Entity of privatization BD Agro, Dobanovci, in order for
20 the Ministry to take a position on the subject of the
21 completion of the procedure of supervision over the work
22 of the Privatization Agency in the subject case."
23 Do you see that?
24 A. (Interpreted) Yes, I do.
25 Q. Who presented the factual findings to the Ministry of

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01 Economy at that meeting?
02 A. (Interpreted) I really do not remember who spoke.
03 Q. The next sentence says:
04 "The [representatives] of the entity of
05 privatization have committed to prepare for the next
06 meeting, which is agreed in principle to be held on
07 17th December 2014 in the Ministry, the materials on the
08 state of the mortgages registered on the property of the
09 Entity undergoing privatisation as a collateral warranty
10 for the liability of third parties."
11 Do you know which specific representatives committed
12 to preparing those materials for the next meeting?
13 A. (Interpreted) I really do not remember that. It was
14 a long time ago and I really cannot say that.
15 Q. You never attended a meeting with Mr Obradovic after
16 this meeting to discuss his views on the assignment,
17 correct?
18 A. (Interpreted) I have just said that I had one meeting
19 with Mr Obradovic, and it did not concern the topic we
20 are discussing here today. I apologise, could you
21 please repeat your question, was it only about me having
22 a meeting -- could you please repeat your question?
23 Q. After this meeting, did you have a meeting with
24 Mr Obradovic to discuss the assignment of the Agreement
25 to Coropi?

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01 A. (Interpreted) No, I did not. I had one meeting with
02 Mr Obradovic, we did not discuss this topic at all, and
03 I never saw Mr Obradovic after that.
04 Q. You earlier testified that you had a meeting regarding
05 a loan from the Development Fund; were you involved with
06 the Development Fund at the time of your alleged meeting
07 with Mr Obradovic?
08 A. (Interpreted) No, I wasn't.
09 Q. So you were having -- I am not sure I understand, you
10 were having a discussion with him about a loan from the
11 Development Fund even though you weren't involved with
12 the Development Fund at the time of the meeting,
13 correct?
14 A. (Interpreted) Yes, you understood it well, that's what
15 I said.
16 MR MISETIC: Mme President, I don't have any more questions,
17 thank you very much.
18 THE PRESIDENT: Thank you. Do we have any questions in
19 re-direct?
20 MS MIHAJ: Again, thank you for your patience, we do not
21 have any questions.
22 THE PRESIDENT: Thank you. Do my colleagues have questions
23 for Mr Stevanovic? Yes, please.
24 Questions from the TRIBUNAL
25 PROFESSOR KOHEN: Good afternoon, Mr Stevanovic. I would

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01 like to know in which capacity Mr Obradovic requested
02 you the meeting you have with him.
03 A. (Interpreted) Mr Obradovic requested a meeting as
04 a businessman. Since he had a loan, that's what
05 I learned then, from the Development Fund that he had
06 not repaid in time, he requested a meeting at the
07 Ministry of Economy to discuss this topic. As a good
08 host, I organised this meeting, as any other meeting.
09 We discussed this with him, in his capacity as
10 a businessman.
11 PROFESSOR KOHEN: Thank you. My second and I think last
12 question is the following: you mentioned that the origin
13 of the meetings you had with Mr Broshko and
14 Mr Markicevic was a request from the Canadian Embassy;
15 could you elaborate a little bit more about this, how
16 was the request made?
17 A. (Interpreted) Yes, that's correct. The first meeting
18 organised with the representatives, or rather potential
19 Canadian investors or Canadian nationals, was organised
20 at the initiative and request of the Canadian Embassy.
21 I do not remember precisely whether the Canadian Embassy
22 had sent this invitation to the Minister and the
23 Minister delegated this to me, or whether I had received
24 the invitation and informed the Minister that we would
25 see them.

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01 But all meetings held with representatives of Rand
02 Investments happened at the initiative of the Canadian
03 Embassy, and each future meeting that we held came at
04 the initiative of the Canadian nationals. In their
05 words, the topic was the assignment of the BD Agro
06 Privatization Agreement, from Mr Djura Obradovic to
07 Mr Rand. As good hosts, we organised the first such
08 meetings, and all the other meetings. My mission was to
09 bring to the table all those who were relevant and who
10 had responsibility for this procedure, and they couldn't
11 expect me to resolve this issue, but my role was to
12 bring there all of those who were responsible for this,
13 those were my colleagues from the Ministry, from the
14 privatization department there, as well as the people
15 from the Privatization Agency.
16 They discussed. If you ask me about my view, I had
17 nothing against this personally, against this assignment
18 of the Agreement. Unfortunately, the conditions were
19 not in place, in line with the law, and this transaction
20 never took place. This was the view of my colleagues
21 from the Ministry of Economy, and this was the view of
22 the Privatization Agency, and respecting their views and
23 relying on those views, we had the outcome in this case
24 that we had, and that's all I can say.
25 PROFESSOR KOHEN: After the first meeting, did the Canadian

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01 Embassy enquire about the outcome of the meeting, or
02 later on?
03 A. (Interpreted) They didn't ask me. They didn't contact
04 me.
05 PROFESSOR KOHEN: Thank you. No further questions,
06 Mme President.
07 THE PRESIDENT: Thank you. I think all my questions have
08 been asked but I would like just to go back to your
09 witness statement, paragraph 8, about the 15th December
10 2014 meeting. If I understand you correctly, you
11 considered that Mr Obradovic was the buyer, and he was
12 the owner of the BD Agro shares. And the topic of the
13 meeting is the assignment of these shares, and the
14 attendees whom you called the Rand representatives,
15 specifically Mr Broshko, asked you to ask Mr Obradovic
16 to leave, and somehow -- and you do it.
17 But it is strange to me, because if you really
18 considered that this was the owner, and this meeting is
19 about his property, why did you not say, "He can stay",
20 or, "I don't understand why he should leave", why do
21 you, with the understanding you had in mind, ask him to
22 leave?
23 A. (Interpreted) Our understanding on whether he should be
24 present there or not was reflected in the fact that we
25 had invited him to the meeting. If you ask me

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01 personally, and also in that capacity that I had at the
02 time, I really believed that it was his place to be
03 there, and that was in the interests of those who wanted
04 to take over the agreement. That was in their interests
05 too. The meeting was organised at the initiative of
06 Canadian businessmen, at their request, it was not
07 pleasant, but I asked Mr Obradovic to leave the meeting.
08 What was important to me was that on my side of the
09 table, I had the people that were responsible for this
10 business, and those were people from the Privatization
11 Agency, and my colleagues from the Ministry.

12 Essentially, his presence or absence could not
13 change anything there. They had to resolve their
14 relations with the Privatization Agency, and meet the
15 conditions that they were obliged to meet under the law,
16 and I think the transaction could have happened.

17 I think they made a mistake in asking Mr Obradovic
18 to leave the meeting, but this showed their mutual
19 relations. It could be felt that there was a problem
20 there.

21 What I really don't know, and I didn't want to deal
22 with that, I organised the meeting at their initiative,
23 at their request, I asked Mr Obradovic to leave the
24 meeting, but I believed that was an omission on their
25 part, not on my part. I only acted as a good host.

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01 THE PRESIDENT: When you organised the meeting, was it your
02 initiative to invite Mr Obradovic?

03 A. (Interpreted) Yes, certainly, I was of the opinion that
04 he was supposed to be there, since he was the owner,
05 since the Agency had concluded the Privatization
06 Agreement with him, and he would certainly have to take
07 part in the transaction, had the conditions for the
08 agreement assignment been fulfilled. We expressed our
09 relationship towards Mr Obradovic as the owner and the
10 buyer by the fact that we had invited him at the
11 meeting. I understood that that was my mission in this
12 entire transaction. But the Canadian party decided it
13 should be otherwise, I have complied with their request
14 and each meeting that they requested me to organise was
15 organised in the best way possible.

16 We were of the opinion, as representatives of
17 Serbia, that we had the obligation to be good hosts, and
18 to treat our Canadian guests properly, and to leave
19 a good impression. We did our best to leave a good
20 impression. I don't know what were their expectations,
21 I will not discuss that, but the precondition for the
22 transaction to be effectuated was for the requirements
23 under the law to be fulfilled. I was told by my
24 associates from the Ministry, and by the staff of the
25 Privatization Agency, that it did not happen; therefore,

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01 the transaction couldn't have been effectuated.

02 THE PRESIDENT: Thank you. I have no further questions, so
03 this ends your examination, Mr Stevanovic, thank you for
04 your assistance.

05 A. Thank you very much.

06 THE PRESIDENT: So now it is a little past four. I think it
07 would make sense if we hear the next witness, who is the
08 first expert actually. Are we all in agreement with
09 that?

10 MR MISETIC: Yes, Mme President.

11 DR DJERIC: Yes, Mme President, but we suggest a short break
12 of five minutes, so we can organise ourselves.

13 THE PRESIDENT: Yes, we can get organised. Let's just take
14 five minutes to switch witnesses and then we will
15 restart.

16 (4.08 pm)

17 (A short break)

18 (4.14 pm)

19 MS BOJANA TOMIC BRKUŠANIN (called)

20 THE PRESIDENT: Are we ready to go? Good afternoon. Now
21 I will try to pronounce your name correctly, I hope
22 I can manage -- well, maybe I ask you, can you please
23 state your identity?

24 THE WITNESS: Yes, Mme President, I am Bojana Tomic
25 Brkušanin. You can just say Tomic or Bojana.

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01 THE PRESIDENT: How do you pronounce your first name?

02 THE WITNESS: Boy-ana.

03 THE PRESIDENT: And I understand that you will testify in
04 English, is that right?

05 THE WITNESS: Yes, that's right.

06 THE PRESIDENT: Good, thank you. You are currently and
07 since May 2019 Regulatory Officer in the Foreign
08 Investors Council, is that right?

09 THE WITNESS: Well, since last August, I am now CEO of
10 Digital Serbia Initiative so I now work in a different
11 business association but it is also a business
12 association of some of the largest Serbian IT companies.

13 THE PRESIDENT: Thank you. Before the Foreign Investors
14 Council, from 2012 to 2019, you were holding various
15 positions in the Securities Commission?

16 THE WITNESS: Yes, that is right.

17 THE PRESIDENT: Thank you. You have handed in two expert
18 reports, the first one is dated 3rd October 2019, and
19 the second one, 5th March 2020.

20 THE WITNESS: Yes, that is right.

21 THE PRESIDENT: As you know, you are heard as an expert. As
22 an expert, you are under an obligation to make only
23 statements in accordance with your sincere belief. Can
24 you please confirm that this is what you will do by
25 reading the expert declaration that should be on the

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01 table in front of you?
02 THE WITNESS: Yes, I solemnly declare upon my honour and
03 conscience that my statement will be in accordance with
04 my sincere belief.
05 THE PRESIDENT: Thank you. So I will first turn to
06 Claimants' counsel, please.
07 MR PEKAR: Thank you, Mme President. We do not have any
08 questions.
09 THE PRESIDENT: Fine.
10 PROFESSOR DJUNDIC: Thank you, Mme President.
11 Cross-examination by PROFESSOR DJUNDIC
12 Q. Good afternoon, Ms Tomic Brkušnin, it is a pleasure to
13 finally meet you.
14 A. Good afternoon, pleasure to meet you too.
15 Q. My name is Petar Djundic and I am here on behalf of
16 Respondent in these proceedings. As you know, I am here
17 to ask you some questions about the two reports that you
18 submitted, so let me first try to summarise my
19 understanding of certain theses that you give in your
20 reports.
21 In your first report, you state that the transfer of
22 shares under the Share Purchase Agreement or the MDH
23 Agreement and the Sembi Agreement was possible under
24 Serbian capital market regulation, and you also submit
25 that this was possible using the three different

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01 methods; that would be block trade transaction, an
02 in-kind contribution of BD Agro's shares into a newly
03 founded LLC, and finally, delisting BD Agro's shares and
04 subsequent transfer outside the Belgrade Stock Exchange.
05 Is this correct?
06 A. Yes, that is correct.
07 Q. So to clarify at the beginning, did the MDH and Sembi
08 Agreement in your opinion result in transfer of
09 ownership in shares from Mr Obradovic to MDH or Sembi
10 under the rules of Serbian law? Please.
11 A. Did the MDH and Sembi Agreements --
12 Q. Result in transfer of ownership in shares of BD Agro
13 under the rules of Serbian law, immediately after the
14 conclusion?
15 A. In terms of nominal ownership, they did not result in
16 transfer, because in order to change the nominal
17 ownership, you need to be inscribed in the Central
18 Registry as the owner. In terms of change of beneficial
19 ownership, I was instructed that the law of the Republic
20 of Serbia is not applicable to these two agreements, so
21 therefore, that was not the object of my opinion.
22 I opined on the consequences that those agreements would
23 have in terms of the capital market law and in terms of
24 the law on takeovers, and I find that they establish
25 control of MDH and Sembi over BD Agro.

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01 Q. I understand, thank you. You are a lawyer by training,
02 right?
03 A. Yes.
04 Q. But you are not an expert in conflict of laws, I am
05 assuming?
06 A. No, I am not. I was advised and instructed that the
07 Serbian law was not applicable to these two --
08 Q. I see. Have you consulted the expert opinion of
09 Professor Uglješa Grušić as well?
10 A. Yes.
11 Q. So you would remember that in his expert report he
12 claims that the regulation of capital markets, or rather
13 Law on Securities, 2002 and 2006 Law on Securities, they
14 represent the so-called overriding mandatory provisions
15 of Serbian law; are you familiar with the concept of
16 overriding mandatory provisions?
17 MR PEKAR: Mme President, I object, there was
18 a misrepresentation. Mr Grušić certainly did not say
19 that all norms of these two laws are overriding
20 mandatory norms.
21 PROFESSOR DJUNDIC: Fair enough.
22 THE PRESIDENT: Yes, we have noted that. The last question
23 is just: are you familiar with the notion of overriding
24 mandatory laws?
25 A. I read Mr Uglješa's report, yes.

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01 PROFESSOR DJUNDIC: What about the concept of overriding
02 mandatory rules in private international law, are you
03 familiar with the concept?
04 A. Yes, I also read that in his report, but actually that
05 was not my area of opining.
06 Q. I see. You were referring to the concept of beneficial
07 ownership in shares just --
08 A. Could you please point me where I was talking about
09 beneficial ownership?
10 Q. Yes. (Pause). This is line 176/05:
11 "In terms of nominal ownership, they did not result
12 in transfer, because in order to change the nominal
13 ownership, you need to be inscribed in the Central
14 Registry as the owner. In terms of change of beneficial
15 ownership, I was instructed that the law of the Republic
16 of Serbia is not applicable ..."
17 A. Correct. So I was not opining on that, I was instructed
18 that --
19 Q. I understand that. I have a question about beneficial
20 ownership of shares in joint stock companies under
21 Serbian law. Are you aware of any court decision that
22 was rendered, that has been rendered by Serbian court by
23 which a natural or legal person was recognised as an
24 owner of shares in a joint stock company that was
25 registered in the name of another natural person?

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01 A. I have to say that that was not the scope of my
02 analysis, and I do not know about it on the spot, as
03 that was not really in the scope of my work. I was
04 advised that these contracts were not governed by
05 Serbian law, in terms of beneficial ownership, and that
06 was not the scope of my work.
07 Q. Thank you. Moving to the so-called methods of transfer
08 of shares that was within the scope of your reports. As
09 for block trade transactions, I understand that a block
10 trade transaction is effectuated on the Belgrade Stock
11 Exchange in accordance with the Belgrade Stock Exchange
12 rules, is this accurate?
13 A. Yes, that is accurate.
14 Q. Under those rules, under the 2004 and 2009 Belgrade
15 Stock Exchange rules, a block trade transaction could be
16 concluded only during stock exchange meetings, is that
17 correct as well?
18 A. Okay, they were concluded --
19 Q. If you need some help, I can direct you to BSE Rules
20 2004, this is Article 108, paragraph three. This is
21 Respondent's Exhibit RE-323.
22 A. Yes, I am aware.
23 Q. A block trade transaction needed to get an approval from
24 an employee authorised by the director of the Belgrade
25 Stock Exchange, is that true as well?

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01 A. I do not know this rule by heart, if you point me to
02 the --
03 Q. Yes, in terms of 2004 BSE Rules, this is article 111,
04 paragraph two. So this is correct?
05 A. Correct.
06 Q. Can we now look at paragraph 30 of your first report?
07 A. Yes.
08 Q. Here you state that between 2004 and 2018, there was
09 requirement for a block trade transaction with regard to
10 the maximum price deviation of 10 or 20% from the
11 average price of shares achieved during the last three
12 trading days, correct?
13 A. Yes.
14 Q. So your report does not deal, or does not try to answer
15 whether this requirement was ever met when it comes to
16 the MDH Agreement, is this correct?
17 A. Correct.
18 Q. Do you know what was the price stipulated for the
19 purchase of 70% of BD Agro's shares in the MDH
20 Agreement?
21 A. Yes, I do.
22 Q. Can you please share with us?
23 A. €1,000, I think, or dollars.
24 Q. Sorry, can you repeat?
25 A. €1,000 or dollars, I think.

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01 Q. Yes, precisely, it was €1,000, that is correct, and this
02 is Claimant's Exhibit CE-15, of course.
03 Do you have a general idea what was the number of
04 shares in the entire stock of BD Agro once those shares
05 were listed at the Belgrade Stock Exchange, that was
06 on March 12th 2007?
07 A. I do not know that.
08 Q. Can you go to Claimant's Exhibit CE-526?
09 A. Okay.
10 Q. And you will confirm, I hope, that it was a little over
11 700,000 shares.
12 A. Yes.
13 Q. So 70% of that number would be in the neighbourhood of
14 half a million shares, am I correct? 70% of 700,000.
15 A. Okay, I cannot calculate it right now, but I will trust
16 you.
17 Q. So this would entail that as long as the number of those
18 listed shares remained the same, MDH would pay €1,000
19 for almost half a million of BD Agro's shares, does this
20 sound accurate to you?
21 A. Yes, that was the price that was foreseen by the MDH
22 Agreement.
23 Q. Thank you. So let us look now at the next paragraph of
24 your first report, that is paragraph 31. You opine
25 there:

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01 "During that entire period [you are speaking about
02 this requirement of price deviation] the BSE board of
03 directors had a discretionary power to allow for
04 a larger discrepancy in price."
05 This is accurate?
06 A. Yes.
07 Q. So I understand that the board of directors of the
08 Belgrade Stock Exchange was under no obligation to allow
09 discrepancy, they have a discretionary power, am
10 I correct?
11 A. Yes, discretionary power.
12 Q. Thank you. Moving on to the next matter, this is
13 in-kind contribution. I was hoping that you will help
14 me understand. In-kind contribution would mean that
15 Mr Obradovic would establish a limited liability
16 company, then he would transfer his shares in BD Agro,
17 as his --
18 A. In-kind contribution.
19 Q. Yes, in-kind contribution, thank you. Then the LLC
20 becomes the owner of shares in BD Agro, and afterwards,
21 Mr Obradovic sells his shares in this LLC to MDH or
22 Sembi, is this construction correct?
23 A. Correct.
24 Q. Would it be correct to say that this option means that
25 Mr Obradovic and MDH or Sembi would need to conclude

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01 another Share Purchase Agreement in order for
02 Mr Obradovic to sell his shares in that hypothetical LLC
03 to MDH or Sembi?
04 A. They would have to have another contract in terms of
05 transferring the ownership of the share in the LLC, yes.
06 Q. Thank you. And the last option would be delisting of
07 BD Agro's shares from the Belgrade Stock Exchange. To
08 the best of your knowledge, have shares in BD Agro ever
09 been delisted from the Belgrade Stock Exchange between
10 12th March 2007 and 21st October 2015?
11 A. No.
12 Q. Thank you. Please let us go now once again to
13 Claimants' Exhibit CE-015, that is again the MDH
14 Agreement. Article 2 of the MDH Agreement, as far as
15 I understand, it contains or provides for the transfer
16 of shares outside of the stock exchange, is this
17 correct?
18 A. This provision says that the share transfer will be
19 executed through duly endorsed share certificates.
20 Q. So this would be, I assume, outside Belgrade Stock
21 Exchange?
22 A. Yes.
23 Q. Thank you. In your first report, you stated that you
24 disagreed with Professor Radovic about the
25 interpretation of the 2008 decision of Serbian Supreme

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01 Court; do you know to which decision I am referring?
02 This is Respondent's Exhibit RE-2.
03 A. Yes, I do. I know.
04 Q. Please refer to paragraph 71 of the first report. You
05 state there:
06 "First, Dr Radovic incorrectly insinuates that the
07 contracts on sale and purchase of shares addressed in
08 decision Prev 438/2007 were null and void because they
09 had been agreed outside the stock exchange."
10 And then you continue to say:
11 "In my opinion, the Supreme Court held these
12 contracts invalid because they provided for transfer of
13 shares outside of the stock exchange."
14 This is your position?
15 A. Yes.
16 Q. So in your interpretation, the Supreme Court of Serbia
17 considers null and void the contracts that provide for
18 transfer of shares outside of stock exchange, is this
19 correct?
20 A. Yes.
21 Q. Thank you. So my next question concerns the rules on
22 takeover bids, and this was described, or one of your
23 theses was described in paragraph 88 of your first
24 report.
25 So there you state:

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01 "The conclusion of the MDH Agreement was not subject
02 to any takeover rules. The takeover rules under the
03 2002 Securities Law only applied to transfer of nominal
04 ownership in a joint stock company. Because the
05 conclusion of the MDH Agreement did not cause transfer
06 of nominal ownership of any shares, its conclusion did
07 not trigger the takeover rules under the 2002 Securities
08 Law."
09 Is this your position?
10 A. Yes.
11 Q. Basically that the takeover rules from that 2002
12 Securities Law applied only to the purchase of nominal
13 ownership of shares, correct?
14 A. Yes.
15 Q. So what about acquisition of beneficial ownership? Did
16 the rules on Takeover Law provide any protection of
17 minority shareholders in case of such takeover through
18 acquisition of beneficial ownership?
19 A. In 2002, no. Only when the new Takeover Law in 2006 was
20 adopted.
21 Q. Are you saying that the 2006 Takeover Law contained
22 protection of minority shareholders in cases of
23 beneficial takeover?
24 A. In cases of?
25 Q. Beneficial takeover.

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01 A. In the case --
02 Q. I am referring -- I am sorry, maybe this is not fair to
03 you. I am referring to the case in which a company or
04 an individual, an entity, does not take over nominal
05 ownership in shares, but it becomes what is known as
06 beneficial owner. So this Takeover Law, as
07 I understand, applies only to the transfer of nominal
08 ownership.
09 A. The 2006 Takeover Law? No, not only nominal ownership.
10 Q. Could you explain?
11 A. The 2006 Takeover Law was introduced to basically
12 protect minority shareholders against change of whether
13 direct but also indirect control, wherever there is
14 a factual shift of control in the company, whether or
15 not the nominal shareholding has changed, and nominal
16 control. Therefore, if you have, for example, indirect
17 change of ownership, or you have the contracts which do
18 not even have to be written down, they can be oral, the
19 agreements can be tacit, they don't have to be express,
20 whenever you have a real change in control, the
21 obligation to publish a mandatory takeover bid is
22 triggered, and I think there is detail on that in my
23 report.
24 Q. I see, you are basically saying that an indirect owner
25 of a company comes under the scope of obligation in 2006

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01 Takeover Law?
02 A. Yes, and not just indirect owner. Any person who can
03 influence the company's business operations in
04 a meaningful way.
05 Q. I see. So moving on, this is another question that
06 concerns takeover bids. This is a question that goes to
07 the failure of Mr Rand, Sembi and Mr Obradovic and MDH
08 Serbia to issue a takeover bid once MDH Serbia started
09 acquiring an additional 3.9% of shares in BD Agro. So
10 you do remember?
11 A. Yes, I do.
12 Q. In paragraphs 69 and 70 of the second report, you state
13 there the Securities Commission could not sanction
14 Mr Rand, Sembi, Mr Obradovic and MDH Serbia with the
15 loss of voting rights of all persons acting in concert,
16 is this correct?
17 A. Yes, I do.
18 Q. Would you like to elaborate on why is this so?
19 A. Because the sanction you are referring to, where you
20 take all the voting rights in the target company, once
21 you have breached the obligation to publish a mandatory
22 takeover bid, was introduced after the breach of the
23 Takeover Law has happened, and you cannot retroactively
24 apply this section to a breach that happened prior to
25 its adoption.

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01 Q. So when did the breach exactly happen?
02 A. I do not know it by heart, we can look at it.
03 Q. But it is your opinion that it was before 2012?
04 A. Yes, it was before 2012.
05 Q. So the new law containing the new sanction --
06 A. Yes.
07 Q. -- it came in force on 4th February 2012, if I am
08 correct?
09 A. Yes, and the first acquisition of first share outside of
10 those that were issued in the privatization scope would
11 come under the effect of the Takeover Law, and that is
12 when the breach would happen, and the law applicable of
13 the first acquisition would be applied.
14 Q. Right, can I take you to Claimants' Exhibit CE-545? So
15 this is the text of the amended law. This is so-called
16 2011 Takeover Law. I am interested in Article 49, which
17 is in Serbian. Claimants did not submit a translation
18 of this provision, in Claimants' Exhibit CE-545, this is
19 the Serbian text. But this provision is exactly the
20 same as in the previous law, and this is Claimants'
21 Exhibit CE-540. So I don't know if you can see, these
22 are the two provisions?
23 A. Yes, okay.
24 Q. On your left is the provision from the 2006 Takeover
25 Law, and on your right would be the provision,

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01 Article 49 from the amended law, in force since February
02 2011. Can you confirm that those provisions are in fact
03 identical?
04 A. Yes, they are.
05 Q. So the English translation of Article 49 in Claimants'
06 Exhibit CE-540 is as follows:
07 "Shareholders who own 25% of the voting shares in
08 a joint stock company on the day this law comes into
09 force and have the intention of acquiring further voting
10 shares of that company after this law comes into force,
11 are obligated to carry out a takeover procedure in
12 accordance with provisions of this law."
13 So this is a transitional provision, right?
14 A. Yes.
15 Q. Meaning the provision that establishes the temporal
16 scope of the law. So would you agree with me that this
17 provision basically says that if a shareholder who owns
18 25% of the shares continues to acquire the shares after
19 4th February 2012, comes under the purview of scope of
20 this new amended law as well?
21 A. No, I would not.
22 Q. Would you care to explain?
23 A. Yes, because the obligation, it was really a matter of
24 many discussions in the SEC whether the obligation to
25 publish a takeover bid can be breached once or numerous

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01 times, and the conclusion is that you look at the first
02 time the obligation was breached, the further shares
03 that you acquire after that are actually the breach of
04 different article of the law which says you cannot,
05 after you have passed that threshold, any further
06 acquisitions are forbidden.
07 But this provision cannot be retroactively applied
08 because for the first time you have breached the
09 obligation to the Takeover Law, that is the time when
10 you look at the applicable law; later on, you are
11 constantly in breach, but the time of the first breach
12 is the one that is relevant for the law that needs to be
13 applied, and actually, I submitted the court decision
14 where the SEC tried to retroactively apply this and the
15 court said it is the retroactive obligation of the law.
16 Q. You do agree that this is what Article 49 of the 2011
17 Takeover Law says?
18 A. This is --
19 Q. What is your interpretation of this provision, if not in
20 a way that --
21 A. This would apply if you were not already in breach, but
22 if you are already in breach, you need to apply the law
23 which was in force at the time of that breach.
24 Q. So we can maybe come back to that later on. The final
25 set of questions that I intended to ask you, they

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01 concern the issue of control over companies under
02 Serbian law. In your second report, and this is section
03 III.A, you say that Mr Rand exercised control over
04 BD Agro from October 2005 to October 2015.
05 A. Could you please point me to the paragraph?
06 Q. Yes, those are paragraphs 8 to 27. I understand that
07 probably this is not the best time for you to read
08 paragraphs 8 to 27 but generally am I right to say that
09 it is your opinion that Mr Rand exercised control over
10 BD Agro from October 2005 until October 2015?
11 A. Yes.
12 Q. So your conclusion is based on provisions of the 2006
13 Takeover Law, and the 2011 Capital Market Law, is this
14 correct?
15 A. Yes, that is correct.
16 Q. If I can refer you again to the Claimants'
17 Exhibit CE-540, Article 4, paragraph three of the 2006
18 Takeover Law, it says here:
19 "In the sense of [paragraph] 2 of this Article, it
20 is considered that a [natural] or a legal persons
21 controls a legal person if it has", and the provision
22 continues.
23 The notion of control in this paragraph was given
24 for the purpose of establishing of acting in concert, or
25 acting together, acting in accord, is this correct?

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01 A. The purpose of these provisions is to protect minority
02 shareholders against the change in control of the target
03 company, and to protect their rights, yes.
04 Q. Ms Tomic Brkušanin, I understand but the definition of
05 control that is contained in Article 4, paragraph three,
06 is given in the sense of a previous paragraph, which
07 defines acting in concert; am I correct?
08 A. Yes.
09 Q. Thank you. You also rely on Article 2(1), item (29) of
10 the 2011 Capital Market Law for a definition of control,
11 this is Claimants' Exhibit CE-728.
12 Article 2 defines terms in the context of this law,
13 do you accept that?
14 A. Yes, I do.
15 Q. Let us now look at paragraphs 25 and 26 of your second
16 report. In paragraph 25 of the second report, you state
17 that you disagree with Professor Radovic's conclusion
18 that the notion of control under the 2011 Capital Market
19 Law refers only to the relationship between a parent
20 company and its subsidiary; is this correct?
21 A. Yes.
22 Q. So you continue to explain in the next paragraph, this
23 is paragraph 26:
24 "Article 2(2)(30) of the 2011 Law on Capital Market
25 expressly provides that 'control ... means the

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01 relationship between the parent and the subsidiary in
02 all cases referred to in item 29) of this paragraph, or
03 a similar relationship between the natural or legal
04 person and a company."
05 This is accurate? Item (30) of Article 2(2), going
06 back to Claimants' Exhibit CE-728, was meant to define
07 the notion of close links, am I correct?
08 A. Yes, but close links, when it comes to control, are in
09 point number (2).
10 Q. I understand that. This is the definition of close
11 links and not the definition of the notion of control.
12 A. But within the definition of control for those close
13 links.
14 Q. Yes, establishing close links through means of control,
15 that would be the --
16 A. Yes.
17 PROFESSOR DJUNDIC: Thank you Ms Tomic Brkušanin once again,
18 this is all that I had.
19 THE PRESIDENT: Thank you. Any questions in re-direct?
20 MR PEKAR: Yes, Mme President.
21 Re-direct examination by MR PEKAR
22 Q. Ms Tomic Brkušanin, you were asked a few questions about
23 your paragraph 31, relating to the Belgrade Stock
24 Exchange board of directors and its discretionary power
25 to allow for a larger price discrepancy for block

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01 trades, do you recall that?
02 A. Yes, can you please just tell me, are you talking about
03 the first --
04 Q. Yes, first. My question is simple: in your experience,
05 did the board of directors allow for a larger
06 discrepancy in price?
07 A. Yes.
08 Q. Then you also got a question about article 2 of the MDH
09 Agreement, and the fact that it foresaw transfer of
10 share certificates by their endorsement, do you recall
11 that?
12 A. Yes, I do.
13 Q. Do you know whether BD Agro had share certificates that
14 could be endorsed?
15 A. Yes, I do. They did not.
16 Q. Finally, you were shown document RE-323, which is the
17 operative rules of Belgrade Stock Exchange market.
18 I don't know if that could be, please, Article 108, if
19 that could be put on the screen, I would be very
20 grateful. There is one thing which surprised me because
21 you were taken, as we have seen right now, to
22 paragraph three of that provision, and there also is
23 paragraph two of the provision. Paragraph two says:
24 "Block transaction is transaction concluded outside
25 of stock exchange meeting on which it is traded by the

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01 method of prevailing price or by method of continuous
02 trade, in bilateral relation of one buyer and one
03 seller."
04 So that's what paragraph two says, and then in
05 paragraph three, it says:
06 "Block transaction can be concluded only during
07 stock exchange meeting ..."
08 Which to me seems to be in contradiction with the
09 beginning of paragraph two. So could you please explain
10 or comment on these two provisions? Thank you.
11 A. I think this is not really a good translation, that is
12 why I was confused. They are concluded outside of the
13 stock exchange session, but during stock exchange
14 meetings. But I think what is really important about
15 block transactions, of course they will be executed on
16 the stock exchange, but the matter of fact is that the
17 parties needed to agree that they will execute that
18 block transaction, it was virtually impossible to
19 execute a block transaction without previous agreement,
20 because of the conditions under which block transactions
21 actually happened, on the Belgrade Stock Exchange. You
22 needed to have matching of orders of buyers and sellers
23 in all important elements, in the matter of 15 minutes,
24 so there were always agreements that the parties will
25 execute a block transaction. It needed finally to

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01 happen on the block exchange meeting outside of the
02 regular trading sessions.
03 MR PEKAR: Thank you. I have no further questions.
04 THE PRESIDENT: Thank you. Do my colleagues have questions?
05 Yes, please.
06 Questions from the TRIBUNAL
07 MR VASANI: Good afternoon. I just wanted to understand
08 a bit more about the discretion of the board of the BSE
09 on a block trade which deviates more than a particular
10 amount on the price. Do you know what dictates their
11 discretion, in other words, are there guidelines, or
12 under what circumstances -- and I heard your answer to
13 counsel that they do it, I am just interested in when or
14 why.
15 A. As an employee former of the SEC, I know we do not have
16 that information. That was basically their complete
17 discretion, and it was like that in the rules itself.
18 It did not say they have a discretion within these
19 parameters or et cetera, they just have a complete
20 discretion to decide.
21 MR VASANI: Thank you.
22 PROFESSOR KOHEN: Good afternoon, Mme Tomic Brkušnin. Just
23 one question: at the very beginning, you mentioned that
24 you were requested to consider that the Serbian law is
25 not applicable for your analysis. Could you tell me

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01 which areas of Serbia law you didn't take into account,
02 or you put aside or you were requested to put aside?
03 You mentioned conflict of laws the first time.
04 A. I was advised that even though the Serbian law was not
05 competent for these agreements, that they still needed
06 to be executed of course in Serbia and on the Belgrade
07 Stock Exchange, so I was looking at the securities laws
08 applicable to that transfer of shares. So I was looking
09 at the Takeover Law, Securities Market Law and Capital
10 Market Law in terms of the possible methods how parties
11 could effectuate basically the transfer of shares under
12 MDH and the Sembi Agreement.
13 PROFESSOR KOHEN: It means that you didn't take stance about
14 the potential consequences of the application of other
15 Serbian legislation?
16 A. I am sorry, of other?
17 PROFESSOR KOHEN: My question is whether you didn't take
18 stance about the actual or potential consequences of the
19 application of other Serbian legislation?
20 A. Yes, I was basically talking about the capital market
21 regulations. That was the scope of my analysis.
22 PROFESSOR KOHEN: Thank you. No further questions,
23 Mme President.
24 THE PRESIDENT: Thank you. I had questions but they have
25 been asked, so I have no further questions. Thank you

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01 very much, that completes your examination.
02 A. Thank you.
03 THE PRESIDENT: So we are doing better in terms of time than
04 what we had expected. Let's just look at the programme.
05 There is one question about interpretation:
06 I understand that there is no further witness who will
07 speak Serbian except for Ms Ilic who is heard on Monday,
08 is that right?
09 MS MIHAJ: Yes, that's right.
10 THE PRESIDENT: You do not expect someone to want to change,
11 like Mr Cvetkovic did today?
12 MS MIHAJ: No, we do not expect that.
13 THE PRESIDENT: Does that mean that we can tell the
14 interpreters that we don't need them tomorrow and
15 Saturday, only to be back on Monday?
16 MS MIHAJ: Yes, that's correct, Mme President.
17 THE PRESIDENT: Is this agreed on your side as well, or do
18 you want them here?
19 MR PEKAR: I think it might be helpful for the interpreters
20 to be present for the cross-examination of Dr Milošević,
21 on our side. He will definitely be answering in
22 English, but he is less sure.
23 THE PRESIDENT: In case there are some language issues.
24 MR PEKAR: There may be some expressions that he might
25 require help with.

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01 THE PRESIDENT: It may be helpful to have them here. We
02 will have to see whether we want them to interpret
03 constantly, or just be available in case we need help.
04 You can consider this and we can decide tomorrow
05 morning.
06 MR PEKAR: What we had in mind was being available in case
07 of need.
08 THE PRESIDENT: Is that what you have in mind too?
09 MS MIHAJ: Yes, of course, no problem.
10 THE PRESIDENT: Fine, so they hear us, we would expect them
11 to be here and just follow the discussion in case we
12 need help, mainly I suppose on a specific term, but
13 without having to interpret the discussions.
14 Good, and then in terms of timing of the witnesses,
15 so we will start with Mr Milošević tomorrow, and then we
16 will hear Ms Grušić; Mr Deane I think is by video
17 conference, is that right? And is he planned for
18 a certain time?
19 MR PEKAR: That's correct, he is planned for a time because
20 he is in Vancouver. I just sent him an email asking
21 whether he could be available a bit earlier, given that
22 we are ahead of the schedule. I will be happy to report
23 on that as soon as I can.
24 THE PRESIDENT: Do we want to take someone else tomorrow?
25 The next one would be Professor Radovic. Or not? We

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01 can just reserve the possibility.
02 MS MIHAJ: Of course, no problem, Professor Radovic will be
03 available to be cross-examined tomorrow.
04 MR PEKAR: On our side, because there is the issue with
05 Mr Deane, so it depends a little bit on how much time
06 you want to spend with Mr Milošević and Mr Grušić so
07 that we then know how much time we have in the
08 afternoon, because we will need to do the
09 cross-examination of Mr Deane on that day, and at the
10 specific hour.
11 PROFESSOR DJUNDIC: If I may, I do not foresee that it will
12 take more than 45 minutes that are reserved for
13 Mr Grušić, so basically we will keep to the schedule.
14 THE PRESIDENT: But if we are done too early for Mr Deane's
15 time, because he must be about nine hours behind us,
16 right, then could we start with Ms Radovic, do
17 Ms Radovic first?
18 MS MIHAJ: Or maybe, Mme President, we can start at 10.00
19 tomorrow morning.
20 THE PRESIDENT: Oh, we are starting at 10.00, that is
21 already provided, yes, absolutely. We are not going to
22 change this, I suppose, because everybody will enjoy the
23 time tomorrow morning. So maybe it will not be needed,
24 and we are in time for Mr Deane.
25 MR PEKAR: The only thing is for us to know whether we

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01 should have the binder ready for Ms Radovic or not. We
02 will have it ready.
03 THE PRESIDENT: I think it is better you prepare it if you
04 can tonight, and then we can leave some flexibility, and
05 see where we stand tomorrow at lunchtime.
06 MR PEKAR: Perfect.
07 MS MIHAJ: We agree.
08 THE PRESIDENT: The only thing we would like to avoid is
09 that we all sit here and have nothing to do, but cannot
10 leave because we have another examination coming.
11 MR PEKAR: We can also agree that we will split
12 Professor Radovic's cross-examination. The scenario
13 I am afraid of is that we have just one hour before the
14 hour for Mr Deane. Then the question will be, do we
15 start the cross-examination knowing that we will not be
16 able to finish it within that one hour, or we just
17 postpone it for Saturday, but we may decide that
18 tomorrow.
19 THE PRESIDENT: That is for you to say, but maybe we don't
20 have -- we will cross this bridge when we get to it,
21 because maybe it won't occur. Maybe we can finish
22 Professor Radovic, maybe we cannot even start, and maybe
23 we can do parts of it tomorrow and the rest on Saturday,
24 and then we will see whether that is acceptable to
25 everyone.

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01 MS MIHAJ: We agree.
02 THE PRESIDENT: Fine.
03 PROFESSOR KOHEN: May I ask you at what time it is envisaged
04 to have Mr Deane?
05 MR PEKAR: I think currently it was 5.00 pm, if I am not
06 mistaken, but I sent him an email message enquiring
07 whether he would be available earlier.
08 MR VASANI: Nine hours?
09 THE PRESIDENT: So 17 minus nine is already 6.00 for him.
10 MR PEKAR: It is 8.00 am.
11 THE PRESIDENT: So maybe he can get up earlier. So you will
12 tell us --
13 MR PEKAR: We will send an email when we hear from him.
14 THE PRESIDENT: Maybe that's better so everyone is prepared
15 accordingly. Is there anything else we need to discuss
16 now?
17 MR PEKAR: Nothing for the Claimants.
18 MS MIHAJ: No, thank you, Mme President.
19 THE PRESIDENT: Good, then I wish everybody a nice evening,
20 and we will see each other tomorrow at 10.00.
21 (5.05 pm)
22 (The hearing adjourned until 10.00 am the following day)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

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Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
Marisa Planells-Valero

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Interpreters:

Milena Maric
Sanja Rasovic
Vesna Bulatovic

Hearing Location:

Peace Palace, The Hague

PAGE 1 (10:00)

01 Friday, 16th July 2021
02 (10.00 am)
03 MR MILOŠ MILOŠEVIC (called)
04 THE PRESIDENT: Good morning to everyone. We haven't heard
05 the bells yet but everybody seems ready to go so let's
06 start. We have received the notice that Mr Deane will
07 be available at 4.00 this afternoon, so that should work
08 out well.
09 Is there anything we need to raise before we start
10 on the Claimants' side?
11 MR PEKAR: Nothing on the Claimants' side.
12 THE PRESIDENT: Excellent. Then good morning, Mr Milošević.
13 Thank you for being with us today. I understand you
14 will testify in English, is that right?
15 THE WITNESS: Yes, Mme President, this is right.
16 THE PRESIDENT: You are Miloš Milošević?
17 THE WITNESS: Yes.
18 THE PRESIDENT: And you are in private practice, after
19 having been a judge?
20 THE WITNESS: Yes, at the moment, I am.
21 THE PRESIDENT: And then at university. You are a partner
22 of the law firm Živkovic Samardžić?
23 THE WITNESS: Yes, I am.
24 THE PRESIDENT: You have given us three reports, one of
25 16th January 2019, 3rd October 2019 and 5th March 2020,

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01 is that right?
02 THE WITNESS: Yes, that is correct, Mme President.
03 THE PRESIDENT: I understand you have them there with you?
04 THE WITNESS: Yes, I have them with me.
05 THE PRESIDENT: So I will ask you to read the expert
06 declaration into the record, as you are under a duty
07 only to make statements in accordance with your sincere
08 belief, please.
09 THE WITNESS: Yes, I will. I solemnly declare upon my
10 honour and conscience that my statement will be in
11 accordance with my sincere belief.
12 THE PRESIDENT: Fine. I will turn first to Claimants'
13 counsel for direct questions, Mr Pekar?
14 MR PEKAR: Thank you, Mme President.
15 Direct examination by MR PEKAR
16 Q. Mr Milošević, good morning.
17 A. Good morning.
18 Q. In the previous days, we heard about provisions on
19 pledge of shares of privatised companies that were
20 introduced in the 2014 Law on Privatization. Could you
21 please comment on these then new provisions?
22 A. May I see the provision, please?
23 Q. Yes, this is document CE-223, the Law on Privatization
24 enacted in 2014, and the respective provision is in
25 Article 37.

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01 A. Which one in particular are you referring to, sorry?
02 Q. This is 37, sub-paragraphs six and seven. It starts
03 with:
04 "On the date of certification ..."
05 A. Just a second, please. (Pause). Okay. Well, this is
06 change of the method of establishing a pledge on shares.
07 Back in 2005, it was by the agreement of the parties,
08 and in 2014, this law introduced the establishment of
09 the pledge ex lege. However, just a second:
10 "On the date of certification of the agreement ...
11 the Agency shall acquire a pledge ..."
12 So this is connected to the date of certification of
13 the agreement of sale of the capital, which is --
14 certification is the moment of the conclusion of the
15 agreement of sale, because in the 2014 Law, as
16 I remember, it was concluded when it is certified.
17 However, it is the date of certification or the date
18 of conclusion when the ex lege pledge is established,
19 but it cannot be retroactively applied to this
20 particular Privatization Agreement, if that is what you
21 are asking me. If this is applicable, it is not
22 applicable to the BD Agro Privatization Agreement, this
23 provision.
24 Q. Thank you. Mr Milošević, assuming that the buyer
25 breached article 5.3.4 of the Privatization Agreement in

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01 2010, could the Privatization Agency terminate the
02 Privatization Agreement in 2015, despite payment of the
03 full purchase price in April 2011?
04 A. No, it could not terminate it in 2015, because the
05 payment of the purchase price was the last obligation,
06 the last main obligation for the Privatization
07 Agreement. With the payment of purchase price, the last
08 positive obligation was performed, and the term of all
09 negative obligations has been expired at that moment.
10 So it could not be terminated for the breach of
11 article 5.3.4 in 2015, that is after the payment of the
12 full purchase price, if that answers your question.
13 Q. Mr Milošević, are you aware of any decision of a Serbian
14 court that would opine on the character of the
15 Privatization Agency's termination notice and subsequent
16 decision on transfer of shares to the share fund which
17 was rendered after the Ministry of Economy instructed
18 the Privatization Agency in accordance with Articles 46
19 and 47 of the Law on State Administration?
20 A. No, I am not aware that such decision exists which
21 established this particular fact.
22 Q. Did you review the court decisions filed into the record
23 of this arbitration to verify your response?
24 A. Yes, I did review them, on this particular file, because
25 it was important for my assessment, and I haven't found

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01 a single decision where this fact has been established.
02 MR PEKAR: Thank you. Mme President, we do not have any
03 further questions.
04 THE PRESIDENT: Thank you. Can I turn to Respondent,
05 Dr Djerić?
06 DR DJERIC: Thank you, Mme President.
07 Cross-examination by DR DJERIC
08 Q. Good morning, Mr Milošević.
09 A. Good morning.
10 Q. My name is Vladimir Djerić and I am counsel for
11 Respondent. You will now receive a bundle of documents
12 in paper that can be turned by my colleague. You will
13 also see the documents on the screen, so you may choose
14 which ones you will consult. I will ask you a few
15 questions; if you have any problems in following the
16 documents, you just let us know, and we will slow down
17 or return to the documents.
18 A. Okay.
19 Q. Mr Milošević, from paragraph 3 of your first expert
20 report, I understand that you are now head of litigation
21 in Živković Samardžić law firm in Belgrade?
22 A. Yes, I am.
23 Q. How many people are in the litigation department which
24 you head?
25 A. At this moment, there is -- I have to count it. There

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01 is six attorneys and there is, I think, five trainees.
02 Q. Thank you. Before entering private practice, you were
03 a judge in District Court until 2010, correct?
04 A. Yes, that is correct.
05 Q. That is Serbian Visi Sud?
06 A. No, the District Court had a competence of two types of
07 courts today, this is Visi and Apelacioni, so that was
08 just a single one whose name was District Court.
09 Q. Mr Milošević, what did you do as a judge in District
10 Court, what types of cases?
11 A. All civil law cases, under general jurisdiction.
12 Q. At your time, did the District Court deal with corporate
13 law, and especially privatization?
14 A. No, it did not directly, but indirectly, yes.
15 Q. Am I right to conclude that your experience as a judge
16 does not include cases dealing with privatization?
17 A. Not directly, but indirectly, it does.
18 THE PRESIDENT: Can you please explain what you mean by
19 indirectly?
20 A. Yes, under the factual circumstances in some cases, it
21 was often that the issues which are related to the
22 privatization agreements did arise, so I was not
23 deciding directly upon privatization agreements and
24 their fate, but I had indirectly those issues that
25 should be ruled on.

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01 THE PRESIDENT: Thank you.
02 DR DJERIC: Okay, let's try to specify, then, the meaning of
03 indirectly. Did you deal as a judge with cases
04 involving termination of a privatization agreement by
05 the Agency?
06 A. No, I did not.
07 Q. Thank you. Have you published anything on privatization
08 in a law review?
09 A. No, I did not.
10 Q. Have you published anything on administrative law in
11 a law review?
12 A. No, I did not.
13 Q. Thank you. If you can turn to your third report,
14 paragraph 33, in the second sentence of the paragraph
15 you say:
16 "I have already demonstrated above that Serbian law
17 recognises the existence of beneficial ownership."
18 Is that correct?
19 A. Yes, it is correct.
20 Q. If I ask you to turn to Exhibit CE-867, which is the
21 Serbian Law on the Prevention of Money Laundering, and
22 if you could take a look at Article 3(4). This is also
23 a provision that you quote at paragraph 24 of your third
24 report, for the record. If you can read that?
25 A. Yes, I can read that.

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01 Q. Can you read it, please?
02 A. Yes, I can:
03 "Person under foreign law means a legal arrangement,
04 which does not exist in domestic legislation,
05 established to manage and dispose of property (eg
06 a trust, anstalt, fiduciary, fideikomis, etc)."
07 Q. Thank you. Does this provision state that trust does
08 not exist in domestic, that is in Serbian legislation?
09 A. I don't understand what are you asking me. You want me
10 to interpret the meaning of this, or to just literally
11 answer -- can you just rephrase the question in order to
12 understand you better?
13 Q. Well, you read that provision.
14 A. Yes, I did.
15 Q. And I asked you a simple question, whether it says that
16 trust does not exist in domestic legislation, and
17 I believe it does say exactly that.
18 A. So you want me to interpret this?
19 Q. No, I want you to confirm whether --
20 A. Actually, I don't think it says that this does not exist
21 in domestic, it just is aimed to extend the meaning to
22 foreign law, and it is just defining what does it mean
23 here, but it doesn't say that it does not exist under
24 the domestic law.
25 Q. Okay, let's read the provision together.

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01 A. What do you want to --
02 Q. Well, just give me a second. So it begins with saying
03 "person under foreign law means", right?
04 A. Yes.
05 Q. And then it says "means a legal arrangement", right?
06 And then it describes this legal arrangement and says
07 "which does not exist in domestic legislation", is that
08 correct?
09 A. Okay.
10 Q. And then it further describes it, and this is not
11 important at the moment, "established to manage and
12 dispose of property", and then it gives examples of this
13 legal arrangement which does not exist in domestic
14 legislation, and the first example it gives is a trust,
15 is that correct?
16 A. Yes, it says that, yes.
17 Q. Thank you. Are you aware of any decision rendered by
18 a Serbian court recognising that shares of a joint stock
19 company registered in the name of one natural person are
20 actually property belonging to another person or to
21 another entity?
22 A. No, I am not.
23 Q. Thank you. Can we please go to paragraph 205 of your
24 second report? This is now dealing with the Sembi
25 Agreement.

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01 A. Just a second, please.
02 Q. Yes, please read it, paragraph 205.
03 A. Okay.
04 Q. Ready?
05 A. Yes, I am.
06 Q. If I may rephrase what you said, and you will tell me
07 whether I am correct in rephrasing it, you basically say
08 that Sembi Agreement is not an assignment agreement, for
09 which consent of the Privatization Agency would have
10 been necessary?
11 A. Yes, that is correct.
12 Q. Thank you. Then you say that a further agreement would
13 be necessary in order to transfer the Privatization
14 Agreement from Mr Obradovic to Sembi, is that correct?
15 A. Yes, that is correct.
16 Q. On this basis, is it correct to conclude that the
17 Privatization Agency has nothing to do with the Sembi
18 Agreement, that it is for it, what we would say in
19 Latin, *res inter alios acta*?
20 A. Well, I would not say that. This implies what I said
21 that it implies, what is said here, that this is related
22 to my conclusion that it does not have effects of the
23 assignment agreement, that is all.
24 Q. But does the Sembi Agreement entail any rights or
25 obligations of the Privatization Agency?

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01 A. Well actually, from this agreement stems the contractual
02 relationship between the contractual parties, as one of
03 these parties, in the relationship with the
04 Privatization Agency. As I have explained in my expert
05 report, it is a duty to the Privatization Agency not to
06 interfere or not to cause any damages to this
07 relationship. In that regard, it has significance for
08 the Agency under condition that the Agency has been
09 acknowledged of existence of such relationship.
10 Q. Has the Agency been acknowledged of the existence of the
11 Sembi Agreement, to your knowledge?
12 A. I have been advised that it has been acknowledged.
13 I don't know whether it has been acknowledged on this
14 particular contract or agreement but I am advised that
15 it has been acknowledged that there was relationship
16 between the parties to this agreement.
17 Q. Let me just rephrase the previous question. Is the
18 Sembi Agreement an agreement as any other agreement
19 between third parties for the Privatization Agency?
20 A. Well, for the Privatization Agency, it is.
21 Q. Thank you. Okay, let's move on a little bit on the
22 privatization now. In paragraph 28 of your first
23 report, you state:
24 "... the primary goal of privatization has been to
25 create better conditions for the development of Serbian

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01 economy, social security, and economic well-being ..."
02 Is that correct?
03 A. Yes, that is correct.
04 Q. And then in the next paragraph of the same report, you
05 refer to the 2001 Law on Privatization and you say that
06 it:
07 "... explicitly stipulated that one of the main
08 principles of privatization is the creation of
09 conditions for economic development and social
10 stability."
11 Is that correct?
12 A. Yes, that is correct.
13 Q. Would you agree that privatization agreements by which
14 socially-owned companies were sold were one of the main
15 instruments of privatization by which privatization was
16 conducted?
17 A. Well, I cannot completely agree with that, the
18 privatization agreements were just one aspect of the
19 privatization, but the fact that the proceeds from
20 privatization were aimed to the state budget, and then
21 used in accordance to national investment plan and all
22 other strategies of the government, it was as much
23 important for privatization, even much more important
24 for privatization than the sole privatization agreement,
25 but yes, the privatization agreement was also one of the

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01 crucial elements in that policy.
02 Q. Thank you. Having in mind the purposes of the
03 privatization that we just mentioned, could we say that
04 the purpose of privatization agreements was not solely
05 or exclusively and simply to get the money from selling
06 the socially-owned companies, would you agree?
07 A. Yes, I would agree with that.
08 Q. We will return to that. Moving on to the reasons for
09 termination of the Privatization Agreement and if you
10 kindly could look at the Privatization Agreement,
11 CE-017, or actually better to look at -- unfortunately,
12 we don't have two screens, but it's better to look at
13 the moment at Article 41a, but we are going to deal with
14 these two questions now.
15 A. Sorry, if you have Article 41a in written, then it would
16 be sufficient.
17 Q. Sorry about that. This is a rather general question.
18 A. Either one -- if you can provide me with one in written
19 form and the other can be on the screen, I would suggest
20 maybe that would be easiest.
21 Q. So we have Article 41a on the screen, and my first
22 question will relate to that. It is a very simple
23 question. Mr Milošević, do you think that the Agency
24 could terminate a privatization agreement just on the
25 basis of Article 41a of the Law on Privatization?

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01 A. Not in all cases, because there are provisions which
02 should be connected to the agreement itself, if you are
03 asking about reasons for termination.
04 Q. Could you please point to such provision?
05 A. Yes, I will. It is 41a, paragraph one, item (3), and
06 I will explain why.
07 Q. But would you agree that this particular paragraph, and
08 others as well, refer to the privatization agreement and
09 its provisions, and the violation of its provisions, but
10 do not refer to a particular provision of the
11 privatization agreement dealing with privatization?
12 A. Just if you can rephrase --
13 Q. Let me put it this way. Let's say that there is no
14 article 7 in the privatization agreement, the article
15 which defines the grounds for termination, would it be
16 possible to terminate the privatization agreement simply
17 on the basis of Article 41a?
18 A. Okay, it's a hypothetical situation, and hypothetically,
19 if there would be no article 7, which provides grounds
20 for termination in a particular privatization agreement,
21 just I would like to see article 5.3.4 before I finish
22 my answer if possible, because you are asking me if it
23 would be possible to terminate for that. (Pause).
24 I don't think it would be possible to terminate
25 privatization agreements even if there would be no

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01 article 7 for this reason, article 5.3.4.
02 Q. Would you care to explain?
03 A. Sorry?
04 Q. Could you explain, please?
05 A. Yes, I can explain. And maybe it's easier to -- I maybe
06 need one legal authority on this. Just give me a second
07 to find it. Is it possible to see CE-714? This is the
08 commentary of Professor Vizner to the Law on
09 Obligations.
10 Q. I am sorry, we will go to Professor Vizner later. My
11 question was simple: is it possible to terminate the
12 privatization agreement simply on the basis of law,
13 supposing there is no article 7?
14 A. I will provide you a short answer, then we can discuss
15 it further when we come to Professor Vizner. I don't
16 think so, because this provision is aimed to support
17 other provisions. It cannot stand on its own, it
18 doesn't have any purpose on its own. It only supports
19 other provisions.
20 Q. Which provision are you referring to?
21 A. Article 5.3.4, that is the provision that we are talking
22 about.
23 THE PRESIDENT: When you say "this provision supports other
24 provisions", do you mean this provision is article 7 or
25 41a?

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01 A. Yes, I mean -- I will try to clarify this. I am trying
02 to answer to Dr Djeric's hypothetical question which
03 provides if it would be possible to terminate the
04 privatization agreement for the breach of article 5.3.4,
05 in connection with the Law on Privatization,
06 Article 41a, paragraph one, item (3), if article 7 in
07 the privatization agreement does not exist. My answer
08 was no, it would not be possible to terminate the
09 agreement even if article 7 hypothetically do not exist.
10 The reason why it could not be possible to terminate
11 just for this provision is that this provision supports
12 other provisions. The point is, this is accessory
13 obligation and the other provisions are main
14 obligations.
15 So this provision could be the ground for
16 termination only if it happens before all other main
17 obligations are fulfilled, and before the term of the
18 main obligations, negative obligations expires, but to
19 be terminated after fulfilment of all other obligations
20 and after the term of negative obligations, main
21 obligations, expires, by my opinion it would not be
22 possible, because this is an accessory obligation, which
23 does not have purpose on its own, if that answers your
24 question.
25 And I can provide more detailed explanation when we

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01 come to Professor Vizner.
02 DR DJERIC: Okay, we will come to Professor Vizner in
03 a second. Now just one quick question: are you actually
04 saying that the way the parties draft a contract could
05 affect the way Article 41a on the Law on Privatization
06 is implemented or binding or operates? So in that way,
07 parties could sometimes put something in a contract that
08 would modify Article 41a, and sometimes they would not?
09 A. No, I didn't say that. I didn't say it that way. Yes,
10 the parties can provide provisions which could have
11 impact on implementation of Article 41a.
12 Q. Let's look at Article 41a, and then we will move to
13 Professor Vizner, as I have promised. Article 41a says:
14 "The agreement on sale of the capital or property
15 shall be deemed terminated due to non-fulfilment, if the
16 buyer, even within an additionally granted term for
17 fulfilment ..."
18 And then the provision that you mentioned:
19 "disposes of the property of the subject of
20 privatization contrary to provisions of the agreement."
21 A. Yes, it says so.
22 Q. Are you saying to me that the parties could actually say
23 that this does not apply?
24 A. No, not at all, I didn't say that.
25 Q. And that the buyer --

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01 A. What is the proper meaning of item (3)? The important
02 words are "contrary to provisions of the agreement".
03 The legislator provided the parties to give specific
04 meaning to this provision, which means they cannot
05 replace, they cannot avoid this provision, but they can
06 stipulate specific meaning to this provision, which they
07 did in particular privatization agreements. We have
08 article 5.3.3, which treats disposal of the property in
09 some limits which are provided; and we have
10 article 5.3.4, which is not under article 7, and that is
11 the will of the parties, which is where the legislator
12 provided them to do so. So they are not excluding this
13 provision, they are just giving specific meaning to this
14 provision.
15 Q. Mr Milošević, turning back to article 5.3.4 of the
16 Privatization Agreement, does this provision -- you can
17 take a look. Does this provision regulate the disposal
18 of the property by the buyer?
19 A. Just if I may, Article 41a at the same time? I need
20 a cross-reference.
21 Q. I am asking you about the contract now, I am not asking
22 you about the law. So if you look at the contract, and
23 tell me whether article 5.3.4 regulates disposal of the
24 property.
25 A. It regulates prohibition of the buyer to cumulatively

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01 perform two things, and that is to encumber the assets
02 with a pledge in order to gain loan for the third
03 parties, let's say, that way, if that answers your
04 question.
05 Q. But that is actually disposal of the property which is
06 regulated in that provision, right?
07 A. Can you be more specific on the question?
08 Q. I don't think so. I think that I can use a Serbian word
09 from the article --
10 A. No.
11 Q. But I think that my question was specific enough,
12 whether this is disposal of the property which is
13 regulated in article 5.3.4.
14 A. If you are asking me whether the burdening of the asset
15 could be considered by the Serbian law as disposition,
16 yes, it could be considered as disposition.
17 Q. Thank you.
18 A. But as I have said, if you go back to paragraph (3), it
19 doesn't forbid all disposition of the property. It
20 establishes grounds for termination only for
21 dispositions which are contrary to the agreement.
22 Q. Exactly.
23 A. And if we look into article 7 where the parties
24 stipulate which are the main obligations which are
25 sanctioned by termination, we will not find

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01 article 5.3.4. We will find article 5.3.3, but we will
02 not find article 5.3.4. So not any disposition is
03 sanctioned with the termination.
04 Q. Thank you. We have heard in the opening statement and
05 today a reference to Professor Vizner, and I am going to
06 move on to that today. According to Claimants' counsel,
07 and you have part of the transcript in your bundle, in
08 their opening, Serbian law provides that a contract may
09 be terminated only for a violation of an essential
10 obligation, and only if such violation is not minor.
11 That is page 43, line 9 --
12 A. You are talking about the opening statement?
13 Q. I just wanted to give the reference, that is the
14 transcript.
15 A. Yes, I understand what you mean. You are talking about
16 the opening statement of the Claimants?
17 Q. Exactly.
18 A. Okay, I understand what you were talking about.
19 Q. Do you share this position?
20 A. Yes, I share. I share it.
21 Q. If you take a look at the slide that they presented in
22 the opening, that is slide 109, they say that the
23 concept of essential obligations exists in Serbian law,
24 and there is a reference to Professor Vizner, right, you
25 see that on the bottom of the slide?

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01 A. Yes, I see.
02 Q. This is also your position?
03 A. Yes, this is also my position, I wrote it in my ...
04 Q. Can you tell us the year when this commentary of
05 Professor Vizner was published?
06 A. I don't know an exact year --
07 Q. Sorry, it says on the bottom of the screen.
08 A. Yes, it says on there.
09 Q. Could you say that for the record, please? Does it say
10 1978?
11 A. Yes, it says 1978.
12 Q. So this is about 40 plus years, right?
13 A. Yes, but actually, the law hasn't changed substantially
14 from 1978, it is the same law as it was then, and
15 Professor Vizner is still a very respected authority in
16 Serbian judiciary.
17 Q. So the Law on Obligation was also adopted in 1978?
18 A. Yes, it was.
19 Q. So that means that Professor Vizner's commentary was
20 published the same year the law was adopted, is that
21 correct?
22 A. Yes, it is correct, and it is quite logical, because
23 Professor Vizner was participating in the group drafting
24 the law, and he is the one who knows the best what is
25 the ratio legis and what is the real interpretation of

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01 some provisions so yes, I would refer to him.
02 Q. But you would agree that this commentary, which was
03 published in the same year the law was adopted, does not
04 and could not take into account the 40 years' practice
05 of implementation of the Law on Obligations?
06 A. Well, I do not know of any other practice. If you know
07 that there is any practice which is contrary to this,
08 I would like to share that.
09 Q. My point is: would you agree that there is more recent
10 literature on the Law on Obligations which is not 40
11 years old?
12 A. Well, I don't know really. On this particular issue,
13 I don't know.
14 Q. Thank you. Back to the substance, what Professor Vizner
15 says here. Would you here first agree that
16 Professor Vizner writes about Article 131 of the Law on
17 Obligations and talks then about what is an
18 insignificant part of obligation and the termination in
19 that case if only an insignificant part of the
20 obligation was violated, is that correct?
21 A. Yes, that is correct and it would be good if possible to
22 see the full, because in my expert report I have cited
23 only one small part of his opinion, but there is more
24 which clarifies this relation of the term "insignificant
25 part" with the situation, when this is related to

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01 termination, because of a breach of one out of more
02 obligations, so I can explain that if you want, and lead
03 you to the conclusion why did I use the word "essential
04 obligation", and not any other word. But I propose to
05 see what Professor Vizner says on that issue.
06 Q. Well, my question is exactly to -- in your second
07 report, paragraph 95, you speak of essential obligations
08 and you refer to article 5.3.4 and say it is not an
09 essential obligation, but you don't give us any
10 reference to the concept of essential obligations.
11 A. Okay, if you want me, I can provide it here, at this
12 point, if you need clarification on that. Just say so
13 and I will provide it.
14 Q. We cannot introduce now new exhibits.
15 A. No, it is not a new exhibit, it is based on --
16 Q. Then can you refer me to the exhibit?
17 A. Yes, I can clarify it, how to read it.
18 Q. Please do.
19 A. If you want me to answer your question --
20 Q. My question is very simple. In paragraph 95 of your
21 opinion, you speak of essential obligations, and then
22 you don't refer to any authority. My question is where
23 do you find the authority for essential obligations?
24 A. Well, if you want me to answer your question properly,
25 then I suggest to open Professor Vizner's commentary,

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01 I saw it on the screen previously, and then I will
02 explain --
03 Q. Please do.
04 A. -- as brief as possible. If you can scroll a bit down,
05 just to find the part which is -- more down. Yes, that,
06 there is a sentence which says:
07 "Any dispute on the matter ..."
08 And the paragraph below that one, if that could be
09 marked just for the Tribunal to see that. Thank you
10 very much. Now I will explain.
11 So Article 131 of the Law on Obligations provides
12 that the agreement cannot be terminated due to
13 unfulfilment on insignificant part of obligation. And
14 that is what Dr Djerić is asking me, how it comes to be
15 insignificant breach.
16 Professor Vizner recognised the problem, because he
17 recognised two situations, that "insignificant part"
18 could be related only to divisible obligations, but
19 there are also obligations which are not divisible, and
20 there are situations where there are more than one
21 contractual obligation. So he recognised that problem,
22 and this is where he explains how to deal with it. And
23 he says:
24 "It must ... be determined whether the partial
25 breach relates to a principal or ancillary obligation,

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01 and then whether performance of the obligation is
02 divisible or indivisible. As a rule, termination of
03 a contract is possible and permissible only in case of
04 partial failure to fulfil the principal obligation, and
05 not in respect of a subordinate obligation. Similarly,
06 termination of a contract is possible in the case of
07 failure to fulfil of an indivisible obligation [so it is
08 possible], whereas the legal rules ..."
09 The other part is something else which is not
10 related to this. So he concludes that if there is more
11 than one obligation and only one obligation is not
12 fulfilled, the first thing that should be determined is
13 whether that obligation is principal or ancillary or
14 accessory obligation.
15 However -- I have not finished, if you allow me?
16 Q. I do.
17 THE PRESIDENT: I think you should finish.
18 A. This is the part I want to link it with essential
19 obligation. So this leads us to the conclusion that the
20 agreement cannot be terminated if only minor obligation
21 has been breached, but not the principal one, but as we
22 know, by the will of the parties sometimes the minor
23 obligation can be also essential, due to the -- in the
24 meaning of Article 26 of the Law on Obligations, which
25 provides agreement is concluded when the parties achieve

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01 consent on essential elements, period.
02 So if the parties agree that the minor obligation is
03 an essential element of the contract, then the agreement
04 can be terminated also for breach of the minor
05 obligation. This rule could not be applied in that
06 situation.
07 I will give you example. In a banking loan, it is
08 usual to stipulate that the debtor, the client is due to
09 provide security for the loan. This is accessory
10 obligation. But it is also usual that the bank provides
11 that this provision is sanctioned by termination, by
12 putting it in special provision, which says if the buyer
13 doesn't provide security, then the bank could terminate
14 the agreement.
15 By this minor obligation which is an accessory
16 obligation, it is becoming an essential obligation, and
17 that is why I have used the term "essential obligation".
18 It seemed to me that it is more honest to use this word
19 than to use the word "principal obligation". So for the
20 same reasons as we have two situations, which one
21 extends above the divisible obligation, I did not use
22 the term "insignificant part" but I used the term
23 "insignificant breach".
24 DR DJERIC: Mr Milošević, thank you for this explanation.
25 I just have to say that it is not in your report, but

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01 it's very useful. My question to you is whether -- so
02 you are saying that a principal obligation is not the
03 same as an essential obligation, there is a difference?
04 A. Yes, there is a difference between principal and
05 essential.
06 Q. But Professor Vizner here is talking about principal or
07 about essential obligations?
08 A. I have just explained why did I use the term
09 "essential". You can also translate it as "principal",
10 it will have the same meaning. Just "essential"
11 provides, let's say, extended scope, because it covers
12 a situation when the minor obligation can also be
13 essential.
14 Q. If there is a difference in English between principal
15 and essential, is there a difference in Serbian? What
16 are the Serbian words that you would use? This is
17 Serbian law.
18 A. Dr Djeric, I don't think -- yes, I can say principal is
19 glavni and essential is bitna, in Serbian. So I don't
20 think you have understood me on my answer.
21 You can also translate this, everywhere where
22 I mentioned essential obligation, you can translate it
23 as principal obligation, it will be okay with me.
24 THE PRESIDENT: Can I just ask a clarification? If I try to
25 summarise what you are saying, you say you can terminate

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01 for breach of a principal obligation?
02 A. Yes.
03 THE PRESIDENT: And you can also terminate for breach of an
04 ancillary essential obligation?
05 A. Yes, that is correct. It can be terminated for breach
06 of an ancillary obligation if the parties provide
07 consent that this will be an essential element of the
08 contract.
09 DR DJERIC: Mr Milošević, I understand your explanation but
10 I would like to ask you, do you have any other authority
11 in Serbian law that supports this theory of yours?
12 Because we see that Professor Vizner is not using the
13 word "essential" or, as you said in Serbian, remind me,
14 bitna.
15 A. No, I do not have it.
16 Q. Thank you.
17 THE PRESIDENT: Before you leave this, can we just have the
18 page of CE-714? [Page 2 of 8 on the PDF, page 524 of
19 the document]. Thank you.
20 DR DJERIC: Can we now discuss the obligations under the
21 Privatization Agreement in the light of Serbian court
22 practice and see what they have to say and if we can
23 turn to RE-62, page 5, there you can see the quote --
24 THE PRESIDENT: You need to identify what it is for the
25 transcript.

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01 DR DJERIC: I am sorry, RE-62.
02 THE PRESIDENT: Yes, but it is a decision of this and this
03 court of --
04 DR DJERIC: This is the judgment of the Supreme Court of
05 Cassation of Serbia from 2013, Exhibit RE-62, page 5.
06 It says, if you can bear with me:
07 "The goal of privatization defined by
08 Article 2 Par 1 item 1 of the Law on Privatization can
09 be achieved only through full realization of all
10 contractual obligations. Failure to perform any of the
11 contractual obligations obstructs the very purpose of
12 privatization."
13 Do you see that?
14 A. Yes, I see that.
15 Q. A little bit further -- no, let's stop here for
16 a second. Let's suppose that we accept your theory
17 about essential obligations.
18 A. If you would allow me just to --
19 Q. Yes, please do.
20 A. Just a quick look. (Pause). Okay, I cannot see just
21 from which period was the privatization agreement, what
22 was the date of the privatization agreement. Yes, it
23 was even before 2003. The privatization agreement was
24 from 8th April 2003. Okay, ask me.
25 Q. Okay, but you will agree that this is a kind of general

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01 pronouncement by the Supreme Court of Cassation, as
02 Supreme Courts of Cassation usually do, and it says that
03 the goal of privatization can be achieved only through
04 full realisation of all contractual obligations, and
05 would you say, if we accept your theory of essential
06 obligations and how they are defined, would you say that
07 this means that actually, all contractual obligations
08 under a privatization agreement are essential
09 obligations?
10 A. Well, I don't think this is a good example, for two
11 reasons. First, it doesn't bear the same facts of the
12 case as in this case, because as I can see on page 6 in
13 Serbian version, this was the termination due to the
14 failure of the buyer to provide additional investments,
15 which is the main obligation. This is not at all the
16 same obligation as the obligation from 5.3.4. That's
17 one thing.
18 The other thing, and I have checked it, it is
19 dealing with the privatization agreement which has been
20 concluded in 2003, and just for the purpose of
21 clarification maybe for the Tribunal, I would like to be
22 more clear on this, there are three periods which are
23 relevant for the case law, and maybe to help even more,
24 that is very well explained in Mr Slobodan Spasic's
25 article where he just discussed on this.

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01 First period is from 2001 to 2003. In this period,
02 which is related to this particular contract here, the
03 Law on Privatization did not have any provision which
04 regulates the termination of the privatization contract,
05 so the case law should have to rely on the Law on
06 Obligations and on particular provisions of the
07 agreement.
08 So in that period, the courts tend to interpret all
09 the agreements, that all of the provisions are equally
10 important, but it is completely different situation, and
11 this case law is not applicable to this case.
12 Q. Okay, let's find some other case law. Let's look at
13 RE-166. That is the judgment of the Supreme Court of
14 Serbia, from 2006. It now deals with yet another
15 obligation of the buyer, if you take a look at page 1,
16 last paragraph.
17 A. I will just read it, and if you can allow me just to
18 read the full --
19 Q. The full decision? Okay. (Pause).
20 A. Okay, let's try to speed it up. What did you say here,
21 what was the period when the agreement has been
22 concluded?
23 Q. Let me just ask a question first.
24 A. Okay, I will reply. Everything that I --
25 Q. Sorry --

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01 A. Everything that I said for the previous example is
02 applicable to this one. At 2004, they were already
03 terminating the agreements, so it is certain that it was
04 before 2003, and if you look at the beginning of this,
05 if you can scroll up a bit, the second sentence says:
06 "During the first instance proceeding it was
07 established that the defendant did not fully perform all
08 assumed obligations."
09 So we have a situation where the buyer was
10 defendant, and the Agency was the plaintiff. That did
11 not happen after 2005, because before 2005 the Agency
12 had to initiate litigation in order to terminate the
13 agreement and to effectuate termination by transferring
14 of shares. After 2005 it was acted as a holder of
15 public power who was entitled to terminate an agreement
16 and to transfer the shares by its own unilateral
17 decision.
18 Q. Thank you, Mr Milošević. But if you look at these
19 quotes, and actually I didn't even ask you a question
20 still, but it says here:
21 "... all contractual obligations from the contract
22 on the sale of the socially-owned capital are equally
23 important for achieving its goal."
24 A. This is not what is marked, sorry. (Pause). Okay.
25 Q. Would you agree that this statement is mentioning the

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01 goals of privatization, right? And it says that all
02 contractual obligations are important for the goal of
03 privatization; is that correct, what the court is
04 saying?
05 A. Yes, but this particular statement is not in any way
06 different comparing to my conclusion. If you look into
07 the --
08 Q. Mr Milošević, I asked you a simple question.
09 A. If you want me to answer, let me to answer. If you
10 allow me, I will clarify. If you do not want me to
11 answer, that's okay.
12 Q. My question was: does the court say that all contractual
13 obligations from the contract are equally important for
14 achievement of the goal of privatization?
15 A. Yes, but it provides the breach of the major obligation,
16 which can be seen at the beginning of the paragraph. It
17 was the obligation to pay the contractually defined
18 amount of salaries to employees, of course it is a major
19 obligation.
20 Q. Yes, the court says what you are saying in the next
21 sentence, but in this sentence, does it say that all
22 contractual obligations are important for the goal of
23 privatization? It is a simple question, yes or no.
24 A. If you want me to read what the court says, yes. But if
25 you want me to extend this to all cases --

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01 Q. No, you have extended already, Mr Milošević.
02 A. -- I cannot extend it.
03 Q. Can we go back to RE-62? Does this highlighted part
04 also mention the goal of privatization that can be
05 achieved only through full realisation of all
06 contractual obligations?
07 A. If you are asking me to read, I can say yes. If you are
08 asking me to give you my opinion, I have already
09 provided opinion --
10 Q. Yes, you did.
11 A. -- that either of these decisions are not applicable to
12 this particular case, and I provided the reasons why.
13 Q. Tell me, the goal of privatization, we have discussed
14 that at the very beginning, and you confirmed what the
15 law says, that the goal of privatization is the creation
16 of conditions for economic development and social
17 stability, is that correct?
18 A. Yes, that is correct.
19 Q. And then I asked you whether the goal or the purpose of
20 privatization agreements, considering this goal, was not
21 solely and simply to get the money from the
22 privatization, in order to achieve this goal?
23 A. Yes, and I have already answered you affirmatively, that
24 was not the only --
25 Q. Can you not tell me, despite all these changes in law,

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01 has the goal of privatization, as defined initially in
02 the Law on Privatization that you refer to, that is
03 Article 2(1), already in 2001, has this goal changed in
04 any way, and has this provision been amended in any way?
05 A. Basically it hasn't changed, it remained the same.
06 Q. Thank you.
07 A. The main purpose.
08 Q. Now moving on to the second limb or second element for
09 termination according to Claimants and yourself, and
10 that is that the obligation must not be insignificant,
11 in reference to Article 131 of the Law on Obligations.
12 A. Okay.
13 Q. Can we have Professor Vizner's excerpt on the screen, in
14 the part that was quoted by the Claimants and
15 Mr Milošević.
16 THE PRESIDENT: So this is CE-714, just for the record.
17 DR DJERIC: Yes, I am just going to confirm that. CE-714.
18 I would now like to discuss the precise quote that you
19 use, and that Claimants use, and it says that:
20 "... [if] it turns out that a debtor has not
21 fulfilled only an insignificant part of its obligation
22 and this insignificance does not factually endanger the
23 creditor's interests regarding the remaining part of the
24 already fulfilled contractual obligation, and
25 accordingly, does not endanger the achievement of the

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01 main goal, the main purpose of the agreement ..."
02 Do you see that?
03 A. Yes, I see that.
04 Q. That is the end of the quote. Does Professor Vizner
05 actually say that there are two conditions or
06 requirements when applying Article 131? First, that
07 there must be an insignificant part of the obligation,
08 right? And then says, and he uses "and", this
09 insignificance does not factually endanger the
10 creditor's interests, et cetera.
11 Do you read that as two requirements?
12 A. They are connected by the word "accordingly", but
13 I would agree with that interpretation, yes.
14 Q. Professor Vizner actually qualifies what the plain text
15 of Article 131 of the Law on Obligations provides, would
16 you agree?
17 A. In this paragraph.
18 Q. You agree?
19 A. Yes, I could agree with that.
20 Q. So according to Professor Vizner, you can terminate
21 a contract even for an insignificant breach, if such
22 breach endangers the purpose of the contract, affects
23 the purpose of the contract?
24 A. Well, actually it is not what Professor Vizner says
25 here. That is important to provide this second

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01 paragraph also, which is stipulated here. He also says
02 explicitly that the -- just a second. Yes, the first
03 paragraph, which is not cited in my -- but I have
04 already explained, just not to repeat.
05 Q. Can you repeat?
06 A. I am referring you to the first marked paragraph, second
07 sentence, where he says:
08 "As a rule, termination of a contract is possible
09 and permissible only in case of partial failure to
10 fulfil the principal obligation ..."
11 So he is very explicit in that, and what are you
12 asking me, whether it is possible to terminate for the
13 minor obligation if that would endanger the purpose of
14 the contract, that is your question?
15 Q. Exactly.
16 A. And I have already explained, yes, it is possible, but
17 if the parties, in the meaning of Article 26 of the Law
18 on Obligations, already provided that particular minor
19 obligation would be the essential part of the agreement,
20 article 5.3.4 was not provided as essential part of the
21 agreement.
22 Q. Let's stay with Professor Vizner. And if
23 Professor Vizner is saying that the insignificance has
24 to factually endanger the creditor's interest and the
25 achievement of the main purpose of the agreement, does

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01 he mean actually the same thing as you, that there must
02 be an agreed purpose which tells us that some
03 obligations are essential, as you say?
04 A. Well, this is a theory statement, so he had to make
05 broader margins here. So yes, I would agree with him,
06 but I have tried to connect these theory statements to
07 the particular case and to implement them, explaining
08 you why I have qualified these as essential or
09 non-essential obligations.
10 Q. My question is again, going back to my first question,
11 does that mean that even or despite Article 131, that
12 Article 131 of the Law on Obligations has to be
13 interpreted that you can terminate a contract even in
14 the case of insignificant breach, if such insignificant
15 breach is related to the obligation that is connected to
16 the purpose of the contract, or the breach is related to
17 the purpose of the contract?
18 A. And I explained you an example -- I mean, if we look to
19 his opinion, we have to look at it as a whole, not only
20 fragments. The first part is the part where he
21 explicitly says that the agreement can be terminated
22 because of the breach only of principal obligations, and
23 not for minor obligations. And I have already explained
24 the situation where it can be terminated also for minor
25 obligations.

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01 Q. Actually, I want to --
02 A. I don't know what do you want --
03 Q. I am asking what you are actually saying in your report.
04 We have one situation that is not relevant at this
05 particular moment, and that is the breach of what
06 Professor Vizner calls principal obligations; and then
07 we have a situation of Article 131 of the Law on
08 Obligations which is the breach of insignificant
09 obligations, right? They are two different situations,
10 would you agree?
11 A. Yes, I could agree.
12 Q. So when he comments Article 131, and I thought you would
13 take the same position, Professor Vizner says:
14 "... [if] it turns out that a debtor has not
15 fulfilled only an insignificant part of its obligation
16 and this insignificance does not factually endanger the
17 creditor's interests [et cetera, including the main
18 purpose of the agreement] then such agreement cannot be
19 terminated ..."
20 I am just turning it around. If it endangers the
21 main purpose of the agreement, insignificant breach can
22 also be a reason for termination?
23 A. I think this is too far from the issue of principal and
24 ancillary obligations. By definition, minor
25 obligations, accessory obligations, cannot endanger the

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01 agreement unless the parties stipulate it that way, but
02 in that situation it is an essential part of the
03 contract, and it is a completely different situation.
04 I mean, we can theoretically and hypothetically run this
05 over and over, but the result will be the same.
06 Q. Well, let me now turn to your second report,
07 paragraph 96, where you say, in the second sentence:
08 "The highly regarded Professor Vizner explains in
09 his commentary that the assessment whether the breach of
10 an obligation was only minor must be not only
11 quantitative, but also qualitative."
12 A. Yes, that's correct.
13 Q. So the assessment whether a breach was minor can also be
14 qualitative, is that what you are saying?
15 A. Yes, that is correct.
16 Q. How do we assess whether a breach was qualitative? Do
17 we do that by looking at the purpose of the contract?
18 A. Yes, that's correct. I agree with that.
19 Q. So if the minor breach is related to the purpose of the
20 contract, then you can terminate even for the minor
21 breach?
22 A. I didn't say that. Nor did Professor Vizner say that.
23 Q. Let's just go back to the purpose of the privatization
24 and privatization contracts. This is the third time, so
25 I guess we can just quickly recall that you agreed with

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01 me that the purpose of the privatization and
02 privatization contracts is achievement of economic and
03 social stability, and not only the payment of the
04 purchase price?
05 A. Yes, I agree with that.
06 Q. If we agree with that, and if you assume for a moment,
07 and we don't agree with that, that a breach of
08 article 5.3.4 could be an insignificant breach --
09 A. Sorry, I don't know -- yes, okay, finish your question.
10 Q. Would you say that article 5.3.4 is connected to the
11 purpose of the privatization? Article 5.3.4 of the
12 Privatization Agreement.
13 A. Sorry, if you can just rephrase the question? I am not
14 sure that I understood you properly.
15 Q. Is the purpose of article 5.3.4 of the Privatization
16 Agreement related to the overall purpose of the
17 privatization?
18 A. Well, as it is accessory obligation, I would not go that
19 far. Its purpose is to support other provisions of the
20 Privatization Agreement, which provides the purpose of
21 the privatization.
22 Q. Well, obviously I know that you are saying it is an
23 accessory, and that is why I am asking you, on the basis
24 of hypothesis, that it is a minor breach, a breach of
25 article 5.3.4 is a breach of an accessory obligation,

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01 but under that assumption, and you agreed that we have
02 to take a qualitative analysis, as you say in your
03 report, and look at the purpose of the agreement, and
04 whether a minor obligation is connected to the purpose
05 of the agreement, so my question to you is whether
06 article 5.3.4 is connected to the purpose of the
07 Privatization Agreement?
08 THE PRESIDENT: I think the expert gave the answer.
09 I understood him to say no, it is not related to the
10 purpose of the privatization but it supports other
11 provisions that are related to the purpose.
12 A. Yes.
13 THE PRESIDENT: You of course correct me if I misunderstand.
14 A. Yes, Mme President, you understand me very well.
15 DR DJERIC: Okay, let's rephrase then. How does
16 article 5.3.4 work, or what it protects? Does it
17 protect the property of the privatized company?
18 A. Well actually, I would not say that it protects the
19 property of privatized company, but it protects that
20 the, and I could say so, that the buyer would not, for
21 example, strip the assets of the company before he
22 fulfils all other main obligations and before the term
23 of negative obligations are expired.
24 Q. So you said it prevents the buyer from stripping the
25 assets of the company?

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01 A. Yes, I said that.
02 Q. I would understand that as protecting the assets of the
03 company or property of the company?
04 A. Yes, it is protecting the assets of the company, I would
05 say so, yes. But just with one difference. It does not
06 protect the assets of the company, it protects the other
07 provisions which protect the assets. I mean, the main
08 obligations. It does not directly protect the assets of
09 the company.
10 Q. A healthy privatized company, is it important for the
11 economic stability of the country?
12 A. Yes, of course.
13 Q. Workers that are paid their salaries from the assets of
14 the company, that's important, right?
15 A. Yes, it is important, of course.
16 Q. So safeguarding the assets of the company is important
17 for the goal of privatization, is that correct?
18 A. Yes, that is correct.
19 DR DJERIC: Mme President, maybe we could make a break here,
20 if you wish?
21 THE PRESIDENT: If you wish!
22 DR DJERIC: Probably everyone wishes.
23 THE PRESIDENT: Yes, do you have an indication of how much
24 longer you will need? After the break --
25 DR DJERIC: I would say -- not as much as we already did,

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01 but let's say one hour.
02 THE PRESIDENT: Fine, let's take a 15-minute break now and
03 Mr Milošević, while you are on the stand testifying,
04 during breaks please do not speak to anyone.
05 A. I will not, Mme President, I understand that, thank you.
06 (11.24 am)
07 (A short break)
08 (11.41 am)
09 THE PRESIDENT: Mr Milošević, are we ready to continue?
10 A. Yes, I am ready.
11 THE PRESIDENT: Dr Djeric, please.
12 DR DJERIC: Thank you, Mme President.
13 Good morning again, Mr Milošević. Let's pick up on
14 some of the things that we have already discussed.
15 Article 5.3.4, which you said is an accessory and
16 insignificant obligation under the privatization
17 contract, correct?
18 A. Yes, correct.
19 Q. Let's suppose that the buyer mortgages 100% of the
20 company's property for the benefit of third persons.
21 A. Okay.
22 Q. That would be a violation of article 5.3.4, correct?
23 A. Yes, but that would be insignificant --
24 Q. Is it still insignificant, that was my question.
25 A. That depends on the performance of all other

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01 obligations, because if the buyer performs all other
02 obligations, then it would not be significant, and
03 before the last obligation which would be payment of the
04 purchase price, the last instalment of the purchase
05 price, payment of the last instalment of the purchase
06 price, it would lose its purpose.
07 Q. We will come back to that as well but would you agree
08 that mortgaging 100% of the company's property in
09 violation of article 5.3.4 in principle would not be an
10 insignificant or minor violation of the privatization
11 contract?
12 A. Well, that is a hypothetical situation, which is very
13 far from the situation which happened here.
14 Q. Yes, it is hypothetical obviously, but I am just asking
15 you, I can rephrase the question, is there a possibility
16 that a violation of article 5.3.4 is not insignificant?
17 A. Well, it would be not enough, I would have to assess all
18 the facts, this is all speculation. Theoretically yes,
19 theoretically yes, it could happen, but it's just
20 hypothetical answer to hypothetical question. In order
21 to provide proper answer I would have to assess all the
22 facts in order to give you proper answer, whether it is
23 or it is not significant breach.
24 Q. Let's have another hypothetical, which I think will help
25 us -- I mean, hypotheticals are here to help us with

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01 understanding what Serbian law is. Would you agree that
02 investment obligation is one of, you say, the essential
03 obligations under the privatization contract?
04 A. Yes, I would agree with that. Yes, it is.
05 Q. Why is fulfilment of the investment obligation important
06 for the privatized company? Is it important because it
07 will improve its financial standing?
08 A. This is more complex issue, but let's say it would be in
09 accordance with all goals of the privatization process.
10 Q. Yes, but can you be more specific? Why is, in your
11 opinion, the buyer required to invest in a privatized
12 company?
13 A. I did not assess that, but I have interpreted that
14 provision as essential one, because it's obvious --
15 Q. But what is the purpose of that provision in the
16 contract?
17 A. The purpose is to provide some -- as other obligation,
18 as continuity of the business, as providing the social
19 programme, it is aimed to improve economic stance of the
20 privatization subject. Yes, for this part I would
21 agree, yes.
22 Q. Now coming to the hypothetical, let's say that the buyer
23 has the obligation to invest in the subject of
24 privatization for five years after concluding the
25 contract. As he was fulfilling this obligation, not

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01 only four years has passed, so he has not completed this
02 obligation, there are still certain parts of this
03 investment obligation that he has to fulfil, and he has
04 to invest the remaining funds.
05 A. Okay.
06 Q. The buyer decided to pay the purchase price before it
07 was due, and it paid it in third or fourth year.
08 A. Okay.
09 Q. Would you say that in that case, the buyer's obligation
10 to complete the investment no longer exists?
11 A. No, I would not say so, because there are two types of
12 main obligations. The one are positive obligations
13 which are aimed to some performance, like payment of the
14 purchase price, in some timely manner. The other
15 obligations are negative obligations, which are some
16 prohibitions, and both of them have some time limits.
17 So in this example that you have provided, as
18 I understand, we have one main obligation which is
19 providing this investment in the term of five years, and
20 the other one is payment of the purchase price, so the
21 payment of the purchase price was committed before the
22 investment term has been finished, and of course, the
23 buyer is due to provide additional investment because
24 the term of the agreement has not been finished, and the
25 agreement is not consummated by the payment of the

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01 purchase price. But this is completely different
02 hypothetical situation than the situation that we have
03 here.
04 Q. And then once it's confirmed that the privatization
05 agreement has been fulfilled, moving on to another
06 situation, can the buyer dispose of its investment and
07 for example donate the equipment he invested?
08 A. If you mean all main obligations are fulfilled, and all
09 terms --
10 Q. Yes.
11 A. -- provided for the main obligations has expired?
12 Q. Yes.
13 A. Yes, it can. It is private property and it can dispose
14 of it however it wants.
15 Q. Moving back to slightly different but still same area,
16 slightly different issues. In your first report, for
17 example, at paragraph 111 and following, I think it is
18 not a specific text but a general point that you make,
19 that in your opinion, termination of a privatization
20 agreement is an administrative act; is that correct?
21 A. No, what you just stated is not correct. Do you want me
22 to read, or you would read it?
23 Q. If you read, start from paragraph 111, and explain
24 why --
25 A. Yes, I will read it. So I did not say that they are

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01 administrative acts, I said that they have
02 characteristics of administrative acts.
03 Q. What is the difference?
04 A. Well, the difference is that I am Serbian lawyer and
05 I cannot ignore the case law. As a matter of fact, the
06 prevailing case law does not consider neither notice of
07 termination nor decision on transfer of capital as
08 administrative acts, and I have also stated it in my
09 expert reports, but my scope was not to determine if
10 they were considered in the Serbian jurisprudence as
11 administrative acts but to determine whether they have
12 characteristics of administrative acts, and there is
13 a big difference.
14 Q. Well, I have a couple of questions there. Why is it
15 then important that you mention that?
16 A. Sorry, I didn't understand your question.
17 Q. If the Serbian law and the highest courts in Serbia are
18 on the position that notice on termination and decision
19 on transfer are not administrative acts, and we have
20 case law to that effect, why is it important for you to
21 say that they have characteristics of administrative
22 acts, and this is a quote from --
23 A. Well, that was the question I was answering upon. I am
24 not into why it is important, this was my task, to
25 assess the legal issue, and to provide answer, which

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01 I did.
02 PROFESSOR KOHEN: Mme President, can I make a point of
03 clarification?
04 Good morning, Mr Milošević. What would be these
05 characteristics of administrative acts?
06 A. Yes. In the following lines of the same -- you will
07 find it in paragraph [112], that's the interpretation of
08 the Supreme Court of Serbia, which says:
09 "... an act by which a state body or a company or
10 other organisation in exercise of public authority
11 decides on a certain right or obligation of a natural or
12 legal person or other party in an administrative
13 matter."
14 And below that line, there is the situation of
15 Article 4 on the Law on Administrative Disputes which
16 provides that administrative acts -- maybe it would be
17 easier, I would just mark the characteristic, it is:
18 "... individual legal act [that's the first] by
19 which [second] a competent authority, by direct
20 application of regulations, decides on a particular
21 right or obligation of a natural or legal person or
22 other party in an administrative matter."
23 Those are characteristics of administrative acts.
24 PROFESSOR KOHEN: Thank you.
25 DR DJERIC: Thank you. Mr Milošević, you are an expert on

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01 Serbian law, and you are here to tell us, I guess, what
02 Serbian law is and you have just said that Serbian law
03 does not recognise termination of the privatization
04 agreement as an administrative act, is that correct?
05 A. (Interpreted) I did not say that. I said that Serbian
06 case law does not recognise it as administrative acts,
07 and that is the fact I didn't ignore, I stated it even
08 in my expert report.
09 Q. So this is only your opinion de lege ferenda, as I would
10 say?
11 A. It is my opinion that there are elements that these
12 could be assessed and characterised as administrative
13 acts. As a matter of fact, the case law doesn't fit to
14 that characterisation, prevailing Serbian case law.
15 Q. But no one shares that opinion with you, that we know
16 of.
17 A. Well, can you define me no one?
18 Q. Well, legal authorities, commentators, court practice,
19 scholars on Serbian law.
20 A. Well, let me say it this way. I don't know on any case
21 until now that Ministry of Economy directly involved in
22 privatization process by issuing instruction on the
23 grounds of Article 46 and Article 47 of the Law on State
24 Administration, instructing the Agency what to do with
25 the privatization agreement, and implying that it should

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01 be terminated.
02 Q. Could you tell us where in your reports you provide this
03 position or statement that you have just said?
04 A. Where in the reports? I have provided it. I cannot at
05 this moment tell you, but if you want to wait, I will
06 find it. If that is important, I just need some time to
07 find it.
08 Q. Well, we will find it or not find it by ourselves, thank
09 you.
10 Let's go to another point, and that is that you
11 mention, for example, in your first report, paragraphs
12 105 and 109, that termination of the privatization
13 agreement involves an irrebuttable presumption that the
14 buyer, against whom the agreement was terminated, is
15 a "dishonest party", and then that the buyer cannot
16 claim restitution of purchase price upon termination.
17 A. Yes.
18 Q. Could you please tell us or explain to us what is your
19 understanding of the concept of an irrebuttable
20 presumption under Serbian law?
21 A. I will. In order to be more clear, I would kindly ask
22 if we can provide on screen Article 41a(3), if possible
23 [CE-220, page 20 of the PDF]. If you can mark the last
24 paragraph? Thank you very much.
25 When we are assessing whether a presumption is

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01 rebuttable or irrebuttable, we have to go a bit deeper
02 and see what is the structure of presumption. Every
03 presumption, whether it is rebuttable or irrebuttable,
04 has two main components. The first component is the
05 ground for presumption, which is in Latin called basis,
06 and the other is the consequence or presumed fact which
07 is in Latin called thesis. Regardless the presumption
08 is rebuttable or is irrebuttable, it can always be
09 contested on the level of basis, but the difference
10 arise on the level of thesis. While a rebuttable
11 presumption can be contested also on the level of
12 thesis, the irrebuttable presumption cannot.

13 So let's see what is the structure of this
14 presumption. It says:

15 "In case of termination of the agreement on sale of
16 the capital or property due to the failure of the buyer
17 of the capital to fulfil the contractual obligations
18 ..."

19 This is the base, this is basis, this is the ground,
20 first component of presumption. What is the presumed,
21 what is the consequence, what is the thesis, the other
22 part?

23 "... the buyer of the capital [is] a dishonest party
24 [and] shall have no right to the refund of the amount
25 paid ..."

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01 So this is the structure of this presumption, and
02 termination, as a base of presumption, is always
03 rebuttable. I mean, it's not rebuttable, it can be
04 contested, but the other one, hypothetically, imagine
05 a situation when the buyer does not want to contest
06 termination, can he claim payment of the purchase price,
07 repayment? He cannot. Because he cannot rebut either
08 his dishonesty or the consequence of non-payment of the
09 purchase price. So that is, if you want -- if that
10 answers your question.

11 Q. Thank you. But I always thought that the idea behind
12 irrebuttable presumption is that it cannot be rebutted.

13 A. Yes, it is the idea.

14 Q. If you say that something is an irrebuttable
15 presumption, then you cannot contest it, you cannot
16 challenge it anywhere, it has to stay, by the force of
17 law, correct?

18 A. That is what I already said, yes, and I agree with you.

19 Q. And if it's a rebuttable presumption then you can
20 challenge it in some way, before the court or by
21 producing some document, and change the situation,
22 correct?

23 A. Yes, but as I explained, there are different ways to
24 contest the presumption. Even irrebuttable presumption
25 could be contested on the ground of basis. You have to

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01 contest the basis of presumption in order to clear the
02 presumption, if I say that.

03 Q. Okay, let's take a look at the provision that you
04 quoted, and you tell me, what part of the provision is
05 irrebuttable, that cannot be contested?

06 A. Okay, on the assumption that the privatization agreement
07 is terminated, it cannot be rebutted that the buyer is
08 dishonest party, and that he has no right to the refund
09 of the amount paid as the purchase price.

10 Q. So the irrebuttable part is the second part, right?

11 A. Yes, the irrebuttable part is the second part.

12 Q. And it kicks in if the agreement is terminated?

13 A. Yes, that is correct.

14 Q. And we have a situation in which the agreement is
15 terminated, that's it, right?

16 A. Yes, that's it.

17 Q. And then we go to the court and challenge the
18 termination, and we rebut the second part of the
19 sentence, that we are --

20 A. That is not how it works.

21 Q. Can I finish?

22 A. Sorry.

23 Q. That we are dishonest, that we don't have the right to
24 refund of the purchase price, et cetera. So what is
25 irrebuttable there?

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01 A. Well, I will try to explain, maybe I was not clear
02 enough. This is not how it works. As I explained,
03 basis, the grounds of presumption can always be
04 contested regardless it is rebuttable or irrebuttable
05 presumption, the thesis cannot be contested. So if we
06 are speaking hypothetically, let's see, the
07 Privatization Agency terminated the privatization
08 agreement and by its unilateral decision on transfer of
09 shares took over the shares of the buyer, and took
10 control over the company, of course. The buyer wants to
11 contest that, but then he decides that he doesn't want
12 to contest the termination, because the company is
13 already under Agency control, the litigation will last
14 for ten years, until it finishes, he has no interest to
15 return the shares. He wants to claim return of the
16 purchase price. Under this provision, it is not
17 possible situation. He has to contest the termination
18 in order to return the purchase price. And while
19 contesting the termination, if he succeeds, he will get
20 his shares back, unless the company is sold. So I am
21 trying to do it as simple as I can --

22 THE PRESIDENT: Can I ask a clarification?

23 A. Yes, Mme President.

24 THE PRESIDENT: I understand that what you are saying is as
25 a buyer who received a termination what I can do is say

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01 the termination is not valid.
02 A. Yes, that's correct.
03 THE PRESIDENT: And then the presumption is the consequence,
04 or what you call the thesis, does not kick in at all?
05 A. Yes, that's correct, Mme President.
06 THE PRESIDENT: However, what I cannot do is accept the
07 termination, and say, "Yes, but I am not dishonest and
08 please give me my price back"?
09 A. Exactly, Mme President.
10 THE PRESIDENT: Obviously if I challenge the termination and
11 I'm right, then there is no termination, and then
12 I cannot claim -- there is no issue of returning the
13 purchase price, right?
14 A. That is it.
15 THE PRESIDENT: I stay in control of the company.
16 A. Yes.
17 THE PRESIDENT: Unlike what you said just at the end.
18 A. Yes, that's correct, Mme President.
19 THE PRESIDENT: Thank you.
20 DR DJERIC: Well, you basically say that the presumption is
21 irrebuttable if the buyer does not do anything, but it
22 is rebuttable if the buyer challenges it? Okay.
23 A. I think Mme President perfectly well understood and
24 explained this. I do not understand -- can you just
25 rephrase your question, please? I mean, I can repeat

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01 what I said, but I want to be helpful as much as --
02 THE PRESIDENT: Maybe I can restate it the way I understood
03 it and you will correct me if that's not right. What
04 I understand the position is of the expert is that what
05 you cannot do is challenge the consequence of
06 a termination. You cannot say, "I accept the
07 termination, but I am not dishonest, and I have a right
08 to repayment of the purchase price", that is not
09 possible, because what the expert says is that if the
10 termination stands, then it has a consequence by
11 operation of law, or automatic, if you want, that you
12 cannot reclaim the purchase price. And of course you
13 correct me if I did not understand what you were saying.
14 A. Yes, that was it. Thank you, Mme President.
15 DR DJERIC: Yes, I understood that, but then, don't we have
16 the same situation under many other provisions of
17 contract law, that you have a situation when, for
18 example, a buyer or whatever, a party to a transaction,
19 is presumed dishonest or in fault or whatever, and then
20 that party can challenge that, or change that in some
21 way?
22 THE PRESIDENT: Let's ask this question: how would the
23 provision read if the presumption were rebuttable?
24 A. Shall I answer to this hypothetical situation, taking
25 into consideration, or just on theoretical level?

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01 THE PRESIDENT: You can do it on a theoretical level first,
02 at least.
03 A. It would work in such a way that the buyer could claim
04 the amount paid as purchase price, without contesting
05 the termination, if it would be irrebuttable.
06 THE PRESIDENT: So would it read like something "the buyer
07 of the capital is a dishonest party unless he/she proves
08 the contrary"?
09 A. Yes, that is correct. It will be the way. And
10 Dr Djerić, if you want me to answer to your question
11 that you have, which is related to civil law?
12 DR DJERIC: We can follow up on this, and my question is
13 very simple: can the buyer prove the contrary, under
14 Serbian law?
15 A. Sorry, can you?
16 Q. I will say it again. Mme President said, and you
17 agreed, that it would read -- in case it's irrebuttable,
18 it would read like something "the buyer of the capital
19 is a dishonest party unless he/she proves the contrary";
20 my question to you is whether under Serbian law, the
21 buyer can or cannot prove the contrary?
22 A. You mean in civil law relation, according to the Law on
23 Obligations, or something else? I don't understand that
24 part.
25 Q. According to this particular provision of Article 41a

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01 that we were discussing.
02 A. Maybe I did not understand you very well. Can you
03 rephrase the question or ask me again, please?
04 Q. Okay, I will ask again. Mme President asked you, how
05 would the provision -- and that is the provision of
06 Article 41a, last paragraph; how would the provision
07 read if the presumption were rebuttable and she offered
08 to you the possibility that it would read like "the
09 buyer of the capital is a dishonest party unless he/she
10 proves the contrary".
11 A. Yes.
12 Q. And then you agreed with that, that if it had read that
13 way, it would have been rebuttable.
14 A. Yes, it would be.
15 Q. And my question to you is whether under Serbian law the
16 buyer can prove the contrary, that he is not a dishonest
17 party?
18 A. Well, it is completely different situation that is
19 provided in Article 124 of the Law on Obligations, and
20 Article 132. In this situation, and why it's also
21 important to emphasise that it is irrebuttable
22 presumption, there are two phases. The first phase is
23 appropriating the shares, restitution. In this phase,
24 the Agency rules the procedure, where it terminates the
25 agreement and transfers the share. There is no way that

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01 a buyer could prove that there are no grounds for
02 termination, or that he or she was dishonest. He can
03 just initiate litigation with a claim that the court
04 declares that the termination was not valid, and that
05 the privatization agreement is still valid.
06 THE PRESIDENT: I am not certain, I am sorry for jumping in,
07 that this is the question. The question, as
08 I understood it, is: do you need to have an express
09 mention in a statutory provision of the fact that you
10 can prove the contrary, or is it a matter of
11 interpretation of the provision whether the buyer is
12 allowed to prove the contrary or not, on the
13 consequence?
14 A. Yes, I understand. In civil law, it is not required,
15 because it is a completely different situation. The
16 party who wants to terminate does not have authorisation
17 to unilaterally terminate and enforce termination. But
18 it has to initiate litigation, and then to prove the
19 first step, and that is that there are grounds for
20 termination. So it is not necessary to introduce such
21 a rule.
22 MR VASANI: Can I just add something to the mix, and I hate
23 to complicate things further. Does it make any
24 difference that 7.2 of the Privatization Agreement has
25 a similar provision?

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01 A. Just let me see, 7.2, may I see that, please? (Pause).
02 That is just -- I mean, a pasted provision of
03 Article 41a, which is in substance the same.
04 MR VASANI: Right, but in one instance it's in the law, and
05 therefore applicable differently than in an agreement,
06 so I guess my question is: your explanation to counsel's
07 questions, is that changed by the fact that it is
08 actually part of the agreement by the buyer?
09 A. Yes, it can be said so, but until the termination, but
10 not through the step which is transfer of shares.
11 I mean, unilateral transfer of shares. It is not under
12 consent of --
13 MR VASANI: Thank you. Sorry to interrupt.
14 DR DJERIC: Just again, a clarification. The question from
15 Mme President and the follow-up to my question was:
16 "Do you need to have an express mention in
17 a statutory provision of the fact that you can prove the
18 contrary, or is it a matter of interpretation of the
19 provision whether the buyer is allowed to prove the
20 contrary or not, on the consequence?
21 "Answer: Yes, I understand. In civil law, it is
22 not required, because it is a completely different
23 situation. The party who wants to terminate does not
24 have authorisation to unilaterally terminate and enforce
25 termination."

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01 When you say in civil law, are you saying that is
02 under the regime of the Law on Obligations, as opposed
03 to the regime under the Law --
04 A. Yes, I mean in commercial contracts, yes, pure
05 commercial contracts.
06 Q. But under the specific regime of the Law on
07 Privatization, the buyer could go to the court -- the
08 Agency may terminate the contract without going to the
09 court, we know that. That was a change of the law. But
10 once it terminates the contract, the buyer can go and
11 challenge the termination of the contract and rebut the
12 presumption that follows, which means that he is
13 a dishonest party?
14 A. Well, I think we already discussed that, but I will
15 answer. The Agency will not only declare termination
16 but it will also decide on the buyer's rights, before it
17 can be heard.
18 Q. But that is a different issue, I am sorry. I am just
19 asking whether the buyer can go to the court and
20 disprove the whole thing, and turn the clock back, so to
21 say?
22 A. Yes, but that is again on the level of the basis of
23 presumption, if you are talking about presumption. Not
24 on the level of thesis. Yes, he can contest termination
25 at the court, of course. He can claim --

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01 Q. Now if you could go to paragraph 46 of your second
02 report, you comment on article 5.3.4. You say:
03 "Article 5.3.4 allows for pledges on BD Agro's
04 assets if the pledges secure BD Agro's acquisition of
05 funds [and then you quote the provision] 'to be used by
06 BD Agro'.
07 A. Yes.
08 Q. I submit to you -- and we will now have to discuss it
09 a little bit, this phrase, or this translation, "to be
10 used by BD Agro".
11 You say that this means that the funds are used by
12 BD Agro when it loans the funds to third parties, grants
13 the loan, is that correct? That is paragraph 46.
14 A. Yes, that is correct.
15 Q. If you look at the Serbian text of the Privatization
16 Agreement, and that is CE-017, and perhaps,
17 Mme President, we could have also interpreters jump in
18 to help us, or we will see whether help is needed, so
19 the Serbian phrasing of the text is -- it says "tje ce
20 korisnik biti subjekat", so I would submit to you -- so
21 my translation from my head is "the user shall be the
22 subject", so it's not "to be used by" but "the user
23 shall be", so the emphasis is on the subject, not on the
24 verb, so to say.
25 A. Well, that would be a literal translation. Sorry,

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01 Dr Djerić, if you want --
02 Q. Sure, go ahead.
03 A. That would be a literal translation, that what you have
04 said, but the meaning is the same for me. It's not any
05 different.
06 Q. Maybe we could hear what the translators have to say on
07 this, whether the emphasis is on the subject or on the
08 verb, so to say.
09 THE PRESIDENT: Can you please read the Serbian version, and
10 then we have the translator interpret, and then we will
11 see whether we still have questions for them.
12 DR DJERİĆ: [Counsel reads document in Serbian]
13 THE INTERPRETER: The meaning in our opinion is the same.
14 I am now looking at the English version of the provision
15 here, which says:
16 "... for the purpose of acquiring of the funds to be
17 used by the subject."
18 In our opinion, this is a proper translation of the
19 Serbian provision which says, in Serbian "ciji ce
20 korisnik biti subjekat". So we do not see any
21 difference in the intended meaning of the provision.
22 DR DJERİĆ: Let's move on. Thank you for the clarification.
23 THE INTERPRETER: You are welcome, thank you.
24 DR DJERİĆ: Mr Milošević, let's take a look again at the
25 Privatization Agreement, that is CE-017, and if you

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01 would be so kind as to look at annex 1 of the
02 Privatization Agreement which deals with the protection
03 of the employees.
04 A. Okay.
05 Q. Can you confirm to us that annex 1 is called "Social
06 program"?
07 A. To confirm what, sorry?
08 Q. That annex 1 of the contract is called "Social program"?
09 A. Yes, I agree with that.
10 Q. Can you confirm to us that in paragraph two of this
11 annex, there is an obligation of the buyer not to
12 unilaterally terminate the collective agreement with the
13 employees in the period of two years?
14 A. Yes, that says.
15 Q. And then in the next paragraph, the buyer is obligated
16 not to fire employees in the period of two years?
17 A. Yes, it says so.
18 Q. Now if we move on to the next page of this social
19 programme, and that is the page in the translation,
20 page 9, there is a title "Protection of union related
21 rights and union representatives". Would you agree that
22 this obligation of the buyer is not limited in time,
23 just according to the text?
24 A. I wouldn't agree. It has also in the scope of
25 annex 1 -- can you please return back to the start of

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01 the annex, if possible? So the annex, Article 41a, this
02 cannot be applied longer than the last term of the
03 Privatization Agreement. So whatever states here, and
04 let's see what is in the privatization -- I mean, this
05 was not a part that I have detailedly assessed in this
06 manner, that's why I'm -- can we see Article 41a?
07 (Pause). No, it is in the Privatization Agreement,
08 sorry. It cannot last in any way above the term of the
09 agreement. You are implying that it could last
10 indefinitely, this provision, as I understand you.
11 Q. No, I am not implying, I am just saying that this is not
12 a provision that is limited by two years, as other
13 provisions that you mention.
14 A. Also in that case, it cannot extend above the last term
15 on main obligations, on other main obligations, which
16 are under some time limit.
17 Q. In your second report, at paragraph 147, you discuss
18 Ombudsman's involvement, and you say that the
19 justification for his involvement was "clearly bogus".
20 Is that correct?
21 A. Yes.
22 Q. Then you say that the Privatization Agency and the
23 Ministry of Economy did not have the task to protect the
24 rights of the employees of BD Agro through their
25 supervision, so therefore, the involvement of the

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01 Ombudsman was not justified, so to say, is that correct?
02 A. That is correct, in the concept of the termination of
03 the Privatization Agreement, yes, in that scope, yes.
04 Q. But would you agree that at least as they are
05 formulated, some of the rights in the annex 1 of the
06 Agreement were still there?
07 A. Well yes, but as far as I recall, the Ombudsman didn't
08 ground his interference just on the rights of the
09 workers. He just informed the Agency that they informed
10 him that the Agency did not terminate the Agreement, and
11 it should be terminated for some other reasons. That is
12 a field where the Ombudsman should not go.
13 Q. If you take Exhibit CE-042, page 2, which states the
14 reasons of the Ombudsman's recommendation.
15 A. Let me read it in Serbian, it will be faster.
16 Q. It's the last document in the bundle.
17 A. Give me a few moments to read it. I have reviewed this,
18 but some time past.
19 Q. Please could you read the first paragraph of the
20 reasons, page 2? Does it mention that the Ombudsman
21 received a complaint from employees of company BD Agro?
22 A. Yes, I see that, and they are also stating below that
23 they are having problems for quite a while, and that
24 there were irregularities in fulfilment of the buyer's
25 obligation as per provisions of the Sale and Purchase

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01 Agreement.
02 Q. Do they mention at the very end of that paragraph that
03 you just started to read that the letter calls for
04 termination of the Sale and Purchase Agreement, and
05 payment of salaries, taxes and contributions that have
06 not been paid since 2009?
07 A. Yes, they said that.
08 Q. So there are some rights that allegedly have been
09 violated, and have been subject or the reason for
10 Ombudsman's control?
11 A. Yes, I do not dispute that his control was triggered
12 inter alia with that also, but there is also another
13 part, in Serbian version, it is the second -- it should
14 be the fourth paragraph of the reasons. Yes, that was
15 not in issue.
16 Yes, actually it is in the Serbian version on
17 page 4, can we see that part? Because it clearly
18 shows --
19 Q. Which part do you refer to?
20 A. The one which is above the bolded part.
21 Q. Page 5 in the English?
22 A. If we can find it in the English version?
23 Q. Page 5 of the English version, at the top.
24 A. Yes, first paragraph:
25 "The Ombudsman once again addressed the Ministry of

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01 Economy with an official document ... in order to find
02 out whether the process of supervision of the work of
03 the Privatization Agency on privatization of company ...
04 was completed and with what results. With act ..."
05 et cetera, et cetera.
06 It explains what has been done in the Ministry
07 supervision, and what this is finishing with is the last
08 sentence:
09 "The report ordered the Privatization Agency to send
10 to the buyer ... a notification on an additionally
11 granted 90-day term ..."
12 So at the end, the Ombudsman is dealing with
13 termination of the agreement, not on the grounds of
14 violation of annex 1 but on the grounds of termination
15 of other provisions of the contract.
16 Q. But you agree that one of the triggers for the
17 Ombudsman's involvement was the letter of the workers,
18 the complaint about the protection of their rights?
19 A. Yes, I agree with that.
20 DR DJERIC: Mme President, this concludes our
21 cross-examination. Thank you very much.
22 THE PRESIDENT: Thank you.
23 Mr Pekar, are there questions in re-direct?
24 MR PEKAR: Yes, Mme President, I will have one question to
25 clarify.

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01 Re-direct examination by MR PEKAR
02 Q. Mr Milošević, you were asked questions about the social
03 programme attached in annex 1 to the Privatization
04 Agreement.
05 A. Yes.
06 Q. And one provision there which did not state a time
07 limit.
08 A. Sorry, can you repeat? I did not hear you well.
09 Q. One provision in annex 1 which did not state a time
10 limit, do you recall that?
11 A. Yes.
12 Q. Then you asked Dr Djerić whether he implied that the
13 provision applied indefinitely, he said he did not imply
14 that, and if I remember well, you then answered that the
15 provision in any event could not have applied longer
16 than the main provisions under the Privatization
17 Agreement, do you recall that?
18 A. Exactly, yes.
19 Q. When, in your opinion, did the main provisions of the
20 Privatization Agreement cease to apply?
21 A. In particular case with the payment of the last
22 instalment of the purchase price, because before that
23 all other terms have expired and all other obligations
24 have been fulfilled.
25 Q. Do you recall the date when it happened?

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01 A. It was in 2011, but I do not recall the date, I would
02 have to look.
03 Q. Do you recall when the Ombudsman started his procedure,
04 in which year?
05 A. No, I do not recall. I would also have to check. That
06 was in 2015, I think, but I don't know the exact date
07 when it start.
08 MR PEKAR: Thank you, I have no further questions.
09 THE PRESIDENT: Thank you. Do my colleagues have questions?
10 Yes, please.
11 Questions from the TRIBUNAL
12 MR VASANI: Good afternoon. I would like to understand
13 a little bit about the effect of court decisions on the
14 Privatization Agency, so as the Agency it has the law
15 and its regulations. What effect should court decisions
16 have on the conduct of the Privatization Agency in how
17 the court interprets the law?
18 A. In the case of termination and transfer of shares, if we
19 are talking about post 2005 period, the court decision,
20 where the court adopts the claim of the buyer, would
21 hypothetically terminate -- sorry, not terminate, would
22 declare the privatization agreement valid --
23 MR VASANI: Sorry, I think I have led you astray. What
24 I mean is that if the court says something about one
25 case, how would the future conduct of the Privatization

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01 Agency in relation to other cases -- in other words, did
02 the Privatization Agency say, "Oh, remember there was
03 a case last week which said this, now we have to do
04 that"?
05 A. Actually, the case law is not mandatory, because we are
06 not a common law system.
07 MR VASANI: Thank you. If we could put back up on the
08 screen RE-166, which was one of those court decisions,
09 and I noticed at the beginning of it it has got what
10 says "Dispositive" and then the final sentence of that
11 in the English says:
12 "... can be legally terminated due to the
13 non-performance of only one of the contractual
14 obligations assumed, which is simultaneously an
15 essential element of the contract."
16 In English, that could be ambiguous, it could mean
17 "only if it is simultaneously an essential element" or
18 it could be "which is always an essential element".
19 I am just wondering if the Serbian is any clearer as to
20 how that final part after the comma conditions the part
21 that came before the comma.
22 A. This is cumulative condition, it has to be the agreement
23 could be terminated due to the non-performance of only
24 one of the contractual obligations assumed, if it is
25 simultaneously an essential element, yes, I think that

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01 it is correct translation of this.
02 MR VASANI: If breach of a minor and non-essential
03 obligation were found, then in your opinion termination
04 is not a remedy. What is a remedy?
05 A. I am trying not to go out from hypothetical situation,
06 and to think, what should happen here. (Pause). By
07 your question, you mean what could the Agency do if the
08 termination existed, how they could act?
09 MR VASANI: Yes, so as I understand your testimony, if it is
10 minor, and non-essential, but is breached, then in your
11 opinion it cannot be terminated, the contract. So my
12 question is then what is the remedy for the
13 Privatization Agency?
14 A. Yes, I understand you now. According to
15 Professor Vizner, such breaches can lead to the damages.
16 Damages claim, sorry. To claim for the damages, that's
17 what I --
18 MR VASANI: So the Privatization Agency would have to be
19 a plaintiff to claim damages?
20 A. Yes.
21 MR VASANI: Okay, understood.
22 If we go to your second report, at 167, on the
23 pledge agreement, we heard quite a lot of testimony from
24 the fact witnesses, I don't know if you had a chance to
25 read the transcript, or were in the room during --

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01 A. Some of them. Some of them I did not.
02 MR VASANI: Well, they talked about reciprocity and it was
03 implied in the pledge agreement that it was side by side
04 with the obligations, and then you give three reasons
05 why in your opinion Article 122 of the Law on
06 Obligations doesn't apply to this situation.
07 A. Yes.
08 MR VASANI: What I would appreciate your help with is if we
09 then pull up CE-017, which is the Privatization
10 Agreement, they will just show that to you, at 11.1, and
11 you see there -- I don't know if you have it in front of
12 you.
13 A. Which provision?
14 MR VASANI: 11.1. There it says:
15 "The following appendices shall constitute integral
16 part of this agreement."
17 And the Share Pledge Agreement is therefore an
18 integral part of the main agreement. Does that change
19 any of your answers that you gave in 167 and onwards?
20 A. No, it does not change it.
21 MR VASANI: And why not?
22 A. We are talking about the Share Pledge Agreement?
23 MR VASANI: Yes.
24 A. And you are asking me whether it is mentioned in the
25 appendix change anything to my statements?

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01 MR VASANI: Yes, that it constitutes an integral part of the
02 principal agreement.
03 A. Well, it doesn't change its nature. I mean, usually
04 it's referred in practice to appendices as an integral
05 part of an agreement, and the nature and the purpose and
06 everything that I said here does not change due to the
07 fact that this is integral part of this main agreement.
08 It doesn't make it main obligation or something. It is
09 still accessory.
10 MR VASANI: I see.
11 A. Which is there to provide security for the payment of
12 the purchase price, which stems particularly either from
13 the Share Pledge Agreement, and also from article 3.2.1
14 or something.
15 MR VASANI: So following paragraph 169 of your second
16 report, what you're saying is that the fact that it is
17 considered an integral part of the main agreement
18 doesn't change the fact that it is an accessory to the
19 main obligation.
20 A. Yes, that is the nature.
21 MR VASANI: And therefore your opinion remains valid as it
22 is in 169?
23 A. Yes.
24 MR VASANI: Thank you. No more questions.
25 PROFESSOR KOHEN: Mr Milošević, if I understand well, if

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01 a payment of the purchase price of the privatization is
02 made immediately after the conclusion of the
03 privatization agreement, the privatization agreement is
04 still in force for a period of five years, is that
05 correct?
06 A. The Privatization Agreement was in force for, I think,
07 five years, and the purchase price was paid in
08 instalments.
09 PROFESSOR KOHEN: If it is made immediately, the
10 privatization agreement is still in force, or not?
11 A. Sorry, I don't think I quite understand well your
12 question.
13 PROFESSOR KOHEN: If the payment of the price is made, say,
14 immediately, after the conclusion of this privatization
15 agreement, is the privatization agreement still in
16 force.
17 A. Yes, it is, of course.
18 PROFESSOR KOHEN: For which period?
19 A. It depends on particular other main obligations. There
20 are positive and negative obligations; positive ones,
21 which are aimed -- that the buyer has something to
22 perform, in some granted term; and negative obligations
23 were that the buyer should perform in a certain way for
24 a certain period. So if the payment of the purchase
25 price was, at the date of the conclusion for example of

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01 the agreement, immediate, then still the buyer would be
02 in obligation to, in certain period of time, fulfil
03 other obligations like social programme, like
04 article 5.3.3, to invest, et cetera, et cetera, all
05 others. So payment of purchase price in that case would
06 not be the last obligation. In this case, it was the
07 last.
08 PROFESSOR KOHEN: So when can we consider that the
09 privatization agreement is terminated, after the
10 fulfilment of all obligations?
11 THE PRESIDENT: Maybe you don't want to say "terminated",
12 you want to say when does it end.
13 PROFESSOR KOHEN: Exactly, yes. Thank you, Mme President.
14 My question aims at determining the moment in which the
15 agreement ceases to be in force.
16 A. Yes, I understand you. After fulfilment of the last
17 main obligation, and expire of the last term which has
18 to be provided, that is for negative obligations.
19 PROFESSOR KOHEN: Thank you. So if the agreement ceases to
20 be in force and one of the parties considered that one
21 of the provisions of the agreement was breached by the
22 other, what happens? Is it possible to raise the
23 question?
24 A. In the case that the buyer doesn't perform and fulfil
25 the last main obligation which is left, then it could

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01 terminate, but if the buyer performs the last main
02 obligation without remedying the breach of the one which
03 is purported to secure that main obligation, then the
04 accessory obligation, ancillary obligation, loses its
05 purpose after fulfilment.
06 PROFESSOR KOHEN: Yes, but my question was in relation to,
07 say, discovery that one of the provisions of the
08 privatization agreement was not fulfilled, the
09 privatization agreement has ceased to be in force, is it
10 possible to raise the question of the breach of this
11 obligation even if the agreement is no longer in force?
12 A. In some situations, hypothetical situation, it is.
13 PROFESSOR KOHEN: Yes, I am speaking in a general manner.
14 A. Yes, generally, there is --
15 PROFESSOR KOHEN: On the basis of Serbian law, that's my
16 idea.
17 A. Yes, there are some prolonged obligations in certain
18 situations.
19 PROFESSOR KOHEN: And I suppose -- I am not a specialist in
20 Serbian law, for sure, I suppose there will be kind of
21 prescriptive terms in Serbian law, like in many other
22 domestic legislations, there are prescriptions for
23 actions?
24 A. Sorry?
25 THE PRESIDENT: Statute of limitations.

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01 PROFESSOR KOHEN: Yes, that is a better translation. Yes?
02 A. Yes.
03 PROFESSOR KOHEN: Okay. I suppose that the statute of
04 limitations is different with regard to administrative
05 or with regard to private actions. Obviously in civil
06 law, in criminal law, there must be different statute of
07 limitations.
08 A. Actually, it depends. It does not necessarily. Statute
09 of limitations in the Law on Obligations, as a general
10 law which prescribes the statute of limitations, only
11 make differences between court judgments as a single
12 category under special provisions, but it does not make
13 any difference on administrative acts or administrative
14 relations in particular.
15 PROFESSOR KOHEN: Thank you.
16 A. Unless it is prescribed by the special law, some special
17 law.
18 PROFESSOR KOHEN: Thank you. Another question: I understand
19 that a foreigner cannot make a bid in a privatization
20 auction?
21 A. Sorry, I did not maybe hear you well.
22 PROFESSOR KOHEN: I am sorry, I will try to speak louder.
23 I understand that a foreigner cannot make a bid in
24 a privatization auction?
25 A. A foreign investor cannot make a bid, no. I think in

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01 the period which was relevant, I guess the foreign
02 investor could make a bid for a privatization. There
03 was a legal possibility for them. That was not
04 restricted for foreign investors.
05 PROFESSOR KOHEN: It was not only for Serbian nationals?
06 A. No, it was not only for -- actually, the explanation,
07 one of the explanations, I think, from 2005 exactly
08 explains that the privatization is aimed to provide
09 foreign investments, for example. So yes, it did not
10 restrict foreign investors.
11 PROFESSOR KOHEN: During the period which interests us,
12 a foreign investor could have participated in the
13 privatization of BD Agro directly? This is what you
14 say?
15 A. Yes, they could participate.
16 PROFESSOR KOHEN: Thank you. In your first expert report,
17 in paragraph 29, the second sentence, I read it:
18 "The 2001 Law on Privatization also articulated
19 other basic principles of privatization, such as
20 transparency, flexibility and the sale of the privatized
21 assets at a market price."
22 How do you reconcile the idea of transparency with
23 the distinction between a nominal owner and a beneficial
24 owner?
25 A. Well, actually the principle of transparency is aimed to

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01 the Agency to provide transparent procedural
02 privatization. It is not aimed to buyers. The buyers
03 are not those that have to be transparent. Unless the
04 Agency require them to do so.
05 PROFESSOR KOHEN: Yes, another point. So if I understand
06 you well, the provisions for termination in
07 privatization agreements would be considered like a lex
08 specialis, and then would prevail over Article 41a of
09 the Law on Privatization; this is what I understood, is
10 it correct?
11 A. Not necessary. I would not put them in such relation.
12 It will not prevail -- I mean, it does not prevail over
13 the law. It cannot prevail, because the law provisions
14 are mandatory. It just provides specific meaning where
15 it is possible. So Article 41a, paragraph one, item (3)
16 provides that the buyer cannot dispose of the property
17 contrary to the agreement, so that just points to the
18 agreement, and the parties just give specific meaning to
19 that provision. And determining which disposition and
20 how would be prohibited.
21 PROFESSOR KOHEN: Does it mean that both co-exist?
22 A. Sorry?
23 PROFESSOR KOHEN: Does it mean that both the provisions of
24 the law and the provisions of the agreement co-exist?
25 A. Yes, they co-exist.

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01 THE PRESIDENT: Can I just ask a clarification, if you don't
02 mind? They co-exist to the extent the Privatization Law
03 refers to the contract?
04 A. Yes, exactly, Mme President.
05 PROFESSOR KOHEN: Thank you. Do you consider that
06 a provision aiming at securing the fulfilment of the
07 substantial obligations are essential or not essential?
08 A. I presume you are meaning article 5.3.4?
09 PROFESSOR KOHEN: No, I am talking in general. I am not
10 talking specifically on this Privatization Agreement.
11 In general.
12 A. In general, provisions which provide security for
13 fulfilment of the main obligation usually is accessory
14 obligation.
15 PROFESSOR KOHEN: Accessory?
16 A. Yes, unless stipulated otherwise.
17 PROFESSOR KOHEN: You refer that in the period 2001-2003,
18 the Law on Privatization in force at that time did not
19 contain any provision on termination of agreements; this
20 is what I understood?
21 A. Yes, you understood me well. Before 2003, which means
22 the version of the law from 2001 did not provide special
23 provision on termination, with the grounds for
24 termination.
25 PROFESSOR KOHEN: Does it mean that the new legislation that

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01 followed was more restrictive with regard to the
02 possibilities of termination?
03 A. Well, yes, in the meaning that the legislator has
04 started to introduce mandatory rules in 2003, and it
05 also broadened its scope in 2005, and broadened the list
06 of the reasons for mandatory termination, yes.
07 PROFESSOR KOHEN: So during the period 2001-2003, what was
08 employed in order to decide about termination was the
09 Law on Obligations?
10 A. Yes, it was the Law on Obligations, and provisions of
11 the particular contracts, that was --
12 PROFESSOR KOHEN: Does it mean that the Law on Obligations
13 is more developed, so to speak, compared with the Law on
14 Privatization that followed?
15 A. It's general law, Law on Obligations is general law,
16 while Law on Privatization is special law.
17 PROFESSOR KOHEN: But what I mean is, is it easier to
18 terminate a contract between two persons, you and me,
19 for instance, than a contract like a privatization
20 agreement?
21 A. Well actually, there was not much difference before the
22 amendments in 2005, but after these amendments, and
23 after the Agency was given the power to unilaterally
24 transfer the shares from the buyer to itself, or to
25 a share fund, upon a unilateral decision, then it was

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01 much easier to terminate and to effectuate termination,
02 which is even more important. To terminate agreements
03 is quite easy, even in civil law, but to effectuate
04 termination is what requires time. In this case, the
05 Agency was able to effectuate termination and to
06 appropriate the shares at the same day when it
07 terminates the agreement.
08 PROFESSOR KOHEN: Thank you. I have a legal curiosity,
09 Mme President, with your permission. The Law on
10 Obligations of the Socialist Federal Republic of
11 Yugoslavia is still applied in Serbia and the other
12 states from the former Yugoslavia?
13 A. Yes, it still applies in Serbia and I think most of it
14 is still applying in Slovenia, Bosnia, Montenegro,
15 everybody applies this law, because it was very well
16 prepared.
17 PROFESSOR KOHEN: Thank you very much. No further
18 questions, Mme President.
19 THE PRESIDENT: We have been dealing with the question of
20 duration of the Privatization Agreement in a number of
21 ways but I was struck when I read your reports, if you
22 go, for instance, to the first report, paragraph 65, and
23 then you -- do you have it there? You said:
24 "The Privatization Agreement imposed numerous
25 obligations upon the buyer for various periods of time,

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01 but in no event for a period longer than the term of the
02 Privatization Agreement, which term expires upon payment
03 of the full purchase price."
04 And you say this in various other places in your
05 reports. Today I understood that the position was
06 a little different, right? Because what I heard you
07 saying today, and you will correct me if that is wrong,
08 is that it is the payment of the full purchase price,
09 and the performance of any other principal obligation?
10 A. Yes, that's correct, Mme President.
11 THE PRESIDENT: And that is principal obligation whether it
12 is a positive or a negative obligation?
13 A. That's correct, Mme President.
14 THE PRESIDENT: The difficulty we have with this contract,
15 of course, is that it has no provision on term or
16 maturity date or expiration date.
17 A. Yes, that's why it requires interpretation but the final
18 term of the agreement, by my opinion, should be assessed
19 while assessing the terms of every particular
20 obligation. So every one of them has some term on its
21 own, and the last one, which lasts for the longest
22 period, is payment of the purchase price in instalments.
23 So by my opinion -- sorry.
24 THE PRESIDENT: In theory, it would be the longest one is
25 the five years for the payment of the purchase price.

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01 Now, as we have discussed, there could be other facts or
02 situations where this is not the last one. But yes,
03 I understand your point, that it's the performance of
04 the last principal obligation.
05 A. Exactly, Mme President.
06 THE PRESIDENT: It's still related to this: in paragraphs 73
07 and 74, still in your first report, you say the same
08 thing, that you could not terminate after full payment
09 of the purchase price. Now I understand this needs to
10 be somewhat nuanced, but then you say:
11 "The existence of such time limit [which
12 I understand is the full payment of the purchase price
13 time limit] ... was confirmed by the Commercial
14 Appellate Court ..."
15 And then you have a quotation. I don't read this
16 quotation to say this.
17 A. I will explain. This is not related to the term of the
18 particular obligations. This is related to the term of
19 the Agency's control on performance, and this case law
20 was to emphasise -- what I wanted to emphasise here is
21 with the expiry of all obligations, of all main
22 obligations, the Privatization Agency is not entitled to
23 control any more, because that is the moment when the
24 company becomes private company.
25 THE PRESIDENT: So that is what you mean, good. You have

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01 this position that you have explained in several of your
02 reports that even if there had been a ground for
03 termination, legally the termination would not have been
04 proportionate.
05 A. Yes.
06 THE PRESIDENT: I have been asking myself, the
07 proportionality test is one that comes more from public
08 law, and what is the relationship between
09 proportionality on one hand and your distinction between
10 minor or accessory/principal obligations and minor
11 breaches, is this not just a different way of saying the
12 same thing?
13 A. Yes, it is different way of saying the same thing, but
14 I had to provide that assessment because this is not
15 simple commercial contract, and it has also elements of
16 commercial relationship but also the elements of
17 administrative relationship, and in regards to the
18 elements of administrative part of this relationship,
19 I thought that it would be useful to make also the
20 proportionality analysis.
21 THE PRESIDENT: There is a discussion in your second expert
22 report that is triggered by the opinion of Dr Radovic,
23 and it's in paragraph 112 and following, about whether
24 the termination has the legal effect, or whether you
25 need to give a notice. Do you have it there?

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01 A. Yes, I have it there, Mme President.
02 THE PRESIDENT: It is also on the screen.
03 A. Give me just a second, please, to remind myself what was
04 that about. Yes. The main reason for which we do not
05 agree -- I will try to give the example. In civil law,
06 there is also termination ex lege, it is Article 126 of
07 the Law on Obligations. It is basically the same
08 method. One party shall notify the other party of
09 a breach, and leave additional deadline, and if that
10 party does not comply, the contract shall be terminated.
11 So this is also ex lege, but the effects of
12 termination, even they are ex lege, cannot be performed
13 by themselves. So in civil law, the party which wants
14 to terminate an agreement will initiate the court
15 proceeding; in this case, the Agency will bring the
16 decision to transfer shares, which is necessary for
17 effectuation. That is not just the law, as
18 Professor Radovic implies, or just declaration, this is
19 decision which effectuates the termination.
20 THE PRESIDENT: So it is linked to this kind of
21 "self-enforcement mechanism"?
22 A. Yes.
23 THE PRESIDENT: That has made me ask myself whether -- you
24 say here that the Law on Privatization did not provide
25 for the maximum number of additional deadlines that the

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01 Agency could give. I have asked myself whether it is
02 admissible that the creditor of an obligation, after
03 a breach, makes no decision for a long period of time
04 about whether it wishes to terminate or not. Assuming
05 it is entitled to terminate, does it have an obligation
06 to at some point say, "Now it's too much, now I stop",
07 or can it go on and on?
08 I understand that it can give additional deadlines
09 but does that not at some point end?
10 A. Yes. Well, the law does not provide such limitation,
11 but it is reasonable to interpret it in such a manner.
12 There is also some case law which is provided on this
13 issue, which opines that until the expiry of the terms
14 of the main obligations, the control powers of the
15 Agency shall be fulfilled, stopped, it could not control
16 further. But in the practice in this case, the Agency
17 could indefinitely postpone, provide additional
18 deadlines, if it interprets that this is correct.
19 I mean, there was nothing that the buyer could do to
20 prevent that.
21 THE PRESIDENT: Yes, I can see that this is not problematic
22 if you have a company that is making profits, because
23 then you can say for this time the owner does collect
24 the profits. If it's loss-making, and the owner invests
25 more and more into it, is it then still admissible that

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01 you wait?
02 A. Well, it should not be. You mean for the Agency, is it
03 admissible?
04 THE PRESIDENT: Yes, that the Agency waits, or any creditor
05 in this same situation.
06 A. By my opinion, it would not be admissible, nor
07 proportional.
08 THE PRESIDENT: That is your other answer. At the beginning
09 of your cross-examination, you were led to the Law on
10 Money Laundering which is CE-867, and there is
11 Article 3(4) with definition of "person under foreign
12 [control]". You said that trust exists under Serbian
13 law, I understood you to say this, but then I have
14 a little trouble following you, considering the wording.
15 At the same time, I am asking myself, there are
16 jurisdictions where trusts do not exist as a legal
17 construct, yet there is a recognition of foreign trusts,
18 and at least certain of foreign trusts' effects. Is
19 there such a recognition under Serbian law?
20 A. I will just -- maybe it would be more helpful to check
21 paragraph 9, where I have defined what did I presume as
22 the beneficial ownership, because I am not an
23 international law expert, nor any common law.
24 THE PRESIDENT: Fine. Then maybe that's not a question for
25 you. I should ask it to someone --

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01 A. I had to define it, yes.
02 THE PRESIDENT: I have no further questions, so
03 Mr Milošević, thank you very much for your explanations.
04 A. Thank you, Mme President.
05 MR PEKAR: Mme President, no opportunity for clarifications
06 this time? I would like to have one.
07 THE PRESIDENT: Sorry, it's just because I think that
08 everybody is hungry, but of course.
09 MR PEKAR: My professional obligations come first.
10 THE PRESIDENT: No, I agree.
11 Further re-direct examination by MR PEKAR
12 Q. Mr Milošević, you were asked some questions about
13 principal positive and negative obligations under the
14 Privatization Agreement that we are talking about in
15 this case. Just to clarify, is the obligation set out
16 in article 5.3.4 a principal obligation or not?
17 A. No, it is not a principal obligation.
18 Q. Were there any principal, whether positive or negative,
19 obligations that remained to be fulfilled under the
20 Privatization Agreement after payment of the last
21 instalment of the purchase price in April 2011?
22 A. No, it was not any remaining main obligation to be
23 fulfilled.
24 MR PEKAR: Thank you.
25 THE PRESIDENT: Thank you. Fine, so this now ends --

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01 DR DJERIC: I beg your indulgence, just a small
02 clarification from the expert.
03 Further cross-examination by DR DJERIC
04 Q. In line with what Mr Vasani has asked, I believe it was
05 his first question, regarding Exhibit RE-166, and you
06 asked about the first paragraph of the English, and the
07 last sentence of that, and what is the meaning, if the
08 witness can clarify that this what says here
09 "Dispositive" is not a ruling, but actually a summary of
10 the text of the court decision which follows under the
11 inverted commas afterwards?
12 A. Yes, I can confirm that the part which is labelled
13 "Dispositive" is not a ruling, it's someone's summary of
14 what is below.
15 MR VASANI: Sorry, when you say "someone's summary", is it
16 not the court's own summary of its decision?
17 A. It could be court associate, it could be even judge, it
18 could be redactor.
19 MR VASANI: Because I would note that I don't see "essential
20 element of the contract" in the actual decision, but
21 I do see it in the dispositive.
22 A. Exactly, yes.
23 DR DJERIC: Thank you.
24 THE PRESIDENT: Thank you. So now this ends your
25 examination. Thank you for your help.

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01 A. Thank you very much.
02 THE PRESIDENT: Let's take the lunch break, and resume at
03 2.15, is that fine?
04 (1.19 pm)
05 (Adjourned until 2.15 pm)
06 (2.15 pm)
07 MR UGLJEŠA GRUŠIĆ (called)
08 THE PRESIDENT: Are we ready to start again? I should say,
09 if there are attendees in the other room, then I would
10 like to greet them, because when we sit here we tend to
11 forget about them, and I don't know whether the Canadian
12 representatives are also attending on Zoom, if so they
13 are welcome.
14 Professor Grušić, is that your name?
15 THE WITNESS: Yes, that's correct.
16 THE PRESIDENT: Your first name is maybe more difficult, but
17 maybe it looks difficult, Uglješa?
18 THE WITNESS: Yes, it is difficult, Uglješa.
19 THE PRESIDENT: Oh, you pronounce the G. So for the record,
20 you are Uglješa Grušić?
21 THE WITNESS: That is correct.
22 THE PRESIDENT: You are a Professor at University College
23 London?
24 THE WITNESS: Yes, Associate Professor.
25 THE PRESIDENT: Yes, I dropped the Associate. Where you

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01 teach, among other areas, private international law?
02 THE WITNESS: Yes, private international law is my core
03 discipline.
04 THE PRESIDENT: You have written two reports in this
05 arbitration, the first one of 3rd October 2019, and the
06 second one of 5th March 2020?
07 THE WITNESS: That's correct.
08 THE PRESIDENT: You are heard as an expert witness; as an
09 expert witness, you must make only statements in
10 accordance with your sincere belief. Can you please
11 confirm that this is what you intend to do by reading
12 the expert declaration?
13 THE WITNESS: I solemnly declare upon my honour and
14 conscience that my statement will be in accordance with
15 my sincere belief.
16 THE PRESIDENT: Thank you. So I will first turn to
17 Claimants' counsel for initial questions, and then we
18 will go to Serbia's counsel.
19 MR PEKAR: Mme President, we have no questions.
20 THE PRESIDENT: Then Professor Djundic?
21 PROFESSOR DJUNDIC: That name is even more difficult.
22 Cross-examination by PROFESSOR DJUNDIC
23 Q. Thank you, Mme President. Good afternoon, Mr Grušić.
24 A. Good afternoon.
25 Q. Thank you for being with us here. I have some questions

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01 obviously for you, and I would like to start with the
02 issue of the law applicable to the MDH Agreement, so
03 I will try to paraphrase your conclusions and you will
04 tell me if I am right or not.
05 You claim that the MDH Agreement is governed by the
06 law of British Columbia, either by the way of express
07 choice of law made subsequently by Mr Obradovic and
08 Mr Rand, or as a result of the tacit or implied choice
09 of law, is this correct?
10 A. Yes.
11 Q. So in paragraphs 23 and 24 of your first report, you
12 state:
13 "An express choice of law can be made at any time,
14 ie not only at the time of conclusion of the contract in
15 question but also subsequently. The chosen law applies
16 from the outset, ie from the moment the contract was
17 concluded. The only limitation is that the rights of
18 third parties should not be adversely affected."
19 Your position is that your understanding is that
20 such choice was made by Mr Rand and Mr Obradovic in
21 their respective witness statements in this arbitration,
22 this is paragraph 24, is this correct?
23 A. Yes.
24 Q. So the witness statements that you referred to, and that
25 contained the subsequent agreement on the applicable

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01 law, were drafted and signed in October 2019, is this
02 correct?
03 A. As you can see, it's not mentioned in this paragraph, so
04 this is what I have been instructed.
05 Q. For the record, this is Mr Obradovic second witness
06 statement, paragraph 15, and Mr Rand's second witness
07 statement, paragraph 19. So according to Mr Rand's
08 second witness statement, if we can have it here,
09 paragraph 56:
10 "The Sembi Agreement replaced the MDH Agreement" on
11 22nd February 2008, that is the MDH Agreement was
12 terminated on the same date. Is this correct?
13 A. I see what is written, yes.
14 Q. So to clarify, is it your position that parties to
15 a contract that ceased to exist in 2008 can choose law
16 applicable to the contract in 2019, although the
17 contract in question does not exist any more?
18 A. My position is that the parties to a contract can select
19 the applicable law subsequently.
20 Q. Even though the contract is, I would say, dead and
21 buried for 11 years?
22 A. Yes.
23 Q. Two parties, MDH on the one side and Mr Obradovic from
24 the other, they choose the applicable law, the law of
25 British Columbia, in the arbitration in which Mr Rand is

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01 one of the parties, one of the claimants, against the
02 Republic of Serbia.
03 MR PEKAR: Mme President, I will object, this is
04 a misrepresentation of the content of the two witness
05 statements.
06 PROFESSOR DJUNDIC: I believe that Mr Grušić is here and he
07 can answer for himself.
08 MR PEKAR: I maintain my objection.
09 THE PRESIDENT: We would have to go to the witness
10 statements, because I don't have them present now in my
11 mind. Let's go to Mr Rand's second statement,
12 paragraph 56, quickly.
13 PROFESSOR DJUNDIC: If I may, this is only to confirm what
14 has not been disputed so far, and this is that the MDH
15 Agreement was indeed terminated when the Sembi Agreement
16 was concluded.
17 THE PRESIDENT: I didn't understand this to be the issue.
18 I understood your question is about whether one can
19 select the applicable law to a contract when that
20 contract has ended.
21 PROFESSOR DJUNDIC: Yes, this is my question.
22 THE PRESIDENT: It's an interesting question.
23 MR PEKAR: Mme President, if I may explain the basis for my
24 objection.
25 THE PRESIDENT: Yes, please.

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01 MR PEKAR: The question was not asked in the abstract. It
02 insinuated that the choice of British Columbia law was
03 made only during the time of this arbitration, and that
04 is not in accordance with the contents of the witness
05 statements of Mr Obradovic and Mr Rand. I can take you
06 to these provisions, they state there that it was their
07 understanding from the beginning when this agreement was
08 signed.
09 THE PRESIDENT: So they express a past implied choice, is
10 that what you are saying?
11 MR PEKAR: I believe their testimony is that it was their
12 understanding at the time, in 2005 --
13 THE PRESIDENT: But it was not written, so it was an
14 implicit choice, made in the past.
15 MR PEKAR: Correct.
16 THE PRESIDENT: Would you want to comment on this? Not in
17 terms of facts, but in terms of law.
18 A. So my conclusion was that the parties to the MDH
19 Agreement made a tacit choice of British Columbia law
20 when the contract was concluded, and I was also advised
21 that the two parties, Mr Rand, who signed the contract,
22 and Mr Obradovic, said that they both understood that at
23 the time, they made a contract which was subject to the
24 law of British Columbia, and I did say that the parties
25 to a contract can subsequently also agree on the

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01 applicable law.
02 THE PRESIDENT: Which is not what they have done here, if we
03 follow what Mr Rand says.
04 A. So there was no change of the applicable law. The
05 applicable law was the law of British Columbia, and we
06 have witness statements where they confirm that they
07 operated on the assumption that the contract was
08 governed by the law of British Columbia, so there is no
09 change of the applicable law, if that's what
10 Professor Djundic is suggesting.
11 PROFESSOR DJUNDIC: If we can both agree that there was no
12 explicit choice of law, then we can move on.
13 A. I believe that the parties to a contract can make an
14 explicit choice at the moment of court proceedings or at
15 the moment of arbitration. In this particular case, the
16 parties have made a tacit choice at the moment of
17 entering the MDH Agreement, and they have confirmed in
18 their witness statements that this was the assumption on
19 the basis of which they were operating at the time.
20 Q. I see, so your statement is given in general terms, and
21 not in this particular case, there is no express choice
22 of law?
23 A. The parties to this contract made a tacit choice.
24 Q. I see. Moving to the tacit choice of law under the MDH
25 Agreement, in your report you rely on several different

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01 factors that have been identified by the Serbian Higher
02 Commercial Court in its 2006 decision to support your
03 conclusion of the existence of tacit choice of law for
04 the MDH Agreement. This is Claimants' Exhibit CE-446.
05 A. Can you please refer me to my witness statement, where
06 I say this?
07 Q. Yes, this would be section 3.2.3 of the first report.
08 A. You refer to a specific court decision from 2006, can
09 you refer me to the part where I mention this court
10 decision? Because I don't know by heart whether it was
11 made in 2006, so I just want to see it.
12 Q. Yes, I can project it for you on the screen. This is
13 Claimants' Exhibit CE-446. Yes, this is it. Can we see
14 the bottom?
15 A. Could you please refer me to the part in my statement
16 where I say that this is the case law on which I am
17 relying for this particular proposition? (Pause).
18 Q. This is paragraph 21 of your expert report:
19 "Serbian courts have confirmed on many occasions
20 that the parties' choice of law can be made expressly or
21 tacitly."
22 This is footnote 8.
23 "For example, the Higher Commercial Court held in
24 its decision of 1st September 2006 ..."
25 And then you go on and list different factors that

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01 serve as indicators of the so-called implied or tacit
02 agreement. Going back to Claimants' Exhibit CE-446, in
03 the paragraph starting with "However, it is a slippery
04 slope between ...", there is a list of those factors.
05 They are highlighted for us here.
06 So my idea was to ask you to go with me through some
07 of these factors for tacit agreement on the choice of
08 law.
09 The first one would be "choice of court". The
10 parties did not insert a choice of court clause in the
11 MDH Agreement, is this correct?
12 A. Yes.
13 Q. The other one is "use of standard form contracts or
14 general conditions of business based on the law of
15 a particular country". So this criterion does not point
16 to any particular national law --
17 A. When you say the other one, you are referring to the
18 third factor listed here?
19 Q. Yes.
20 A. I understand that this wasn't a standard form contract,
21 or based on certain general conditions of business.
22 Q. Thank you. So the next one is "agreement on a (common)
23 place of performance or conclusion of the contract", so
24 according to your report, that would be paragraph 31 of
25 the first report, there is no common place of conclusion

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01 of the contract. Mr Obradovic signed the contract in
02 Serbia and Mr Rand in Canada, is this correct?
03 A. That's what I was instructed.
04 Q. You also state that the agreement did not specify the
05 place of performance, and that I quote from paragraph 31
06 of the first report:
07 "It is clear that some obligations arising under the
08 contract, eg the payment obligations and negative
09 obligations, do not seem to be limited to any particular
10 territory."
11 Is this correct?
12 A. Yes.
13 Q. So what about Mr Obradovic's obligations under article 5
14 of the MDH Agreement? If we could see CE-015, the text
15 of the MDH Agreement, as you can see here,
16 Mr Obradovic's obligation to:
17 "... vote any Shares held by him from time to time
18 at any Shareholders Meeting of the Company in accordance
19 with instructions received from the Purchaser [the
20 purchaser being MDH]. The Seller [Mr Obradovic] further
21 agrees to cause the Board of Directors of the Company to
22 consist of those parties nominated or agreed to by the
23 Purchaser and to keep the Purchaser advised from time to
24 time of all communications received by him as the
25 registered owner of the Shares. The Seller shall follow

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01 the instructions of the Purchaser with regard to the
02 management of the Company and shall use his best efforts
03 at all times to enhance the value and income of the
04 Property."
05 So would you agree, would it be fair to say that the
06 place of performance of those obligations is Serbia?
07 A. No.
08 Q. Even though Mr Obradovic resides in Serbia, and
09 BD Agro's place of business is Serbia?
10 A. There is no geographic limitation in this provision of
11 this particular obligation, and I understand that
12 Mr Obradovic is a Canadian citizen.
13 Q. So geographical limitation would exist only if article 5
14 would stipulate that those obligations must be done in
15 Serbia, Serbian territory?
16 A. I wouldn't speculate, but in this particular provision
17 there is no geographical limitation. I can agree that
18 this is a Serbian company but there is no geographical
19 limitation of this particular obligation.
20 Q. I see. Another criterion is common nationality of the
21 parties. To clarify, your position is that parties to
22 the MDH Agreement have common nationality, is this
23 correct?
24 A. No. My position is that Mr Obradovic -- I was
25 instructed he is a dual national, so he is a Serbian

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01 national and a Canadian national. The other party to
02 this agreement is a company called MDH which
03 I understand is incorporated in British Columbia, but
04 has an office -- sorry, incorporated in British Virgin
05 Islands but has an office in British Columbia, and
06 Mr Rand, who is a director of the company, he is
07 a Canadian national who resides in British Columbia.
08 Q. Well, wouldn't it be correct to say that according to
09 Serbian rules of private international law, Mr Obradovic
10 would be considered as solely Serbian citizen?
11 A. This is an international contract, and Mr Obradovic is
12 a dual citizen of Canada and of the Republic of Serbia,
13 and I believe that the Serbian court would take both of
14 these factors into account.
15 Q. But in this particular issue, in determining the
16 nationality of parties, the Serbian court would take
17 into account its Private International Law Act, am
18 I right?
19 A. Yes.
20 Q. Can we go to Respondent's Exhibit RE-315? This is the
21 Serbian Private International Law Act. For the
22 Tribunal, I should probably state that this was the old
23 Federal Yugoslav Act of Private International Law that
24 was inherited by Serbia, and still in force in Serbia,
25 so any reference to Yugoslavia or Yugoslavian citizen

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01 should be read as Serbia or Serbian citizen. Can we go
02 to Article 11, paragraph one. It reads:
03 "If a person who is a Yugoslav [Serbian] citizen
04 also has the citizenship of another State, he shall be
05 considered for the purpose of application of this law to
06 have solely the Yugoslav [Serbian] citizenship."
07 Is this correct?
08 A. That is what the provision says.
09 Q. Thank you.
10 A. But I also believe that when determining the law
11 governing a contract, especially the tacit choice of the
12 law governing a contract, a Serbian court will take
13 a holistic approach, and would consider all the relevant
14 circumstances of the case, and in this particular case
15 Mr Obradovic was a citizen of Canada, as well as of the
16 Republic of Serbia, and there is a number of other
17 factors which point to the application of British
18 Columbian law, so on a holistic approach, the Serbia
19 courts would have to conclude that the law of British
20 Columbia governs the contract.
21 Q. Well, the formulation "holistic approach" sounds
22 somewhat mysterious. Would you care to explain, does
23 this mean that the holistic approach suspends the
24 application of Private International Law Act?
25 A. What it means is that there is a number of factors that

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01 the Serbian court will take into account when
02 determining the applicable law.
03 Q. Sorry, we are now going through those factors.
04 A. Would you let me finish? You asked the question. When
05 you look at the contract, you will see that the parties
06 clearly use certain terms which are peculiar to common
07 law countries, and British Columbia is a common law
08 jurisdiction, so they refer to terms such as beneficial
09 ownership, and some other terms which clearly suggest
10 that when this contract was drafted, the parties had the
11 law of British Columbia in mind as the applicable law,
12 and that is the main factor, I would say, for reaching
13 a conclusion that this contract was governed by the law
14 of British Columbia.
15 The fact that Mr Obradovic is a Canadian citizen is
16 also relevant, but I would say that it's a less
17 important fact.
18 Q. So out of seven factors listed in this Higher Commercial
19 Court decision, you would submit that the one that you
20 just mentioned is more important than the others?
21 A. I do think that the use of the terms in this particular
22 contract that are a peculiarity of common law countries
23 clearly suggests that they had the law of British
24 Columbia in mind, and that is also something that is
25 confirmed in the witness statements.

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01 Q. I see. So if we can go back to the said decision,
02 Claimants' Exhibit CE-446, page 1, third paragraph from
03 the bottom of the page, this is precisely the same
04 paragraph, starting:
05 "However, it is a slippery slope between it [the
06 tacit choice] and the hypothetical party autonomy. It
07 should not serve to the court only to achieve the
08 application of its own law as the governing law. It is,
09 therefore, necessary that the indications of a tacit
10 agreement by the parties are beyond any doubt, that they
11 can convince the court that the parties have reached an
12 agreement."
13 The last sentence of the same paragraph:
14 "One should not lose sight of the fact that the
15 basic feature of party autonomy is that it removes
16 uncertainty about the applicable law, so it would not
17 make much sense and be justified to engage in exploring
18 a 'choice' that gives rise to controversies, different
19 interpretations."
20 Do you agree with the statement made by the Higher
21 Commercial Court?
22 A. Do I agree with the statement? I agree with what is
23 written here, that there is a number of factors that
24 ought to be taken into account in order to determine
25 whether the parties have made an implied or tacit choice

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01 of law and what we can see in this particular contract
02 is that the parties agreed that one party will give
03 consideration of \$10, we can see that they mentioned
04 certain concepts that are peculiar to common law
05 systems, such as trust, beneficial equitable ownership;
06 we can also see that they used the "time shall be of the
07 essence" clause, and I believe that it is beyond doubt
08 that the parties had in mind the law of British Columbia
09 when they made this contract, and that is also what they
10 testified. They said that they had in mind the law of
11 British Columbia when they made this agreement.
12 Q. So you are saying there are no factors pointing to
13 Serbian law in this contract, in the MDH Agreement?
14 A. Could you repeat the question?
15 Q. You are saying that there are no factors which point in
16 the direction of Serbian law in the MDH Agreement?
17 A. What I am saying is that the parties in this particular
18 case agreed -- they used certain terms, they used
19 certain concepts which basically make sense in the
20 context of British Columbia law.
21 Q. Mr Grušić, I think you made your point, I see what you
22 mean. So if we can move on, another Higher Commercial
23 Court decision, or those are, rather, answers to
24 questions from Commercial Court that you use in your
25 report. This is Claimants' Exhibit CE-448. This is for

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01 your reference your report, paragraph 23. The last
02 sentence in the sixth paragraph of the decision, you can
03 see it on the screen, it reads:
04 "It is essential that the indications used to draw
05 a conclusion as to the parties' tacit consent are
06 infallible, and convince the court that an agreement was
07 reached."
08 So what I meant to ask you basically is this: when
09 you consider these decisions, would you agree with me
10 that the indications for the existence of implied choice
11 must be clear and unequivocal, in general terms, of
12 course, I understand your position?
13 A. So in this particular case, the parties used terms:
14 beneficial owner, consideration, trustee, \$10
15 consideration, time is of the essence. To my mind, this
16 convinces the court and should convince this Tribunal as
17 well that the law governing this contract is the law of
18 British Columbia, and moreover, the parties expressly
19 mention in their witness statements that this is the law
20 that they had in mind.
21 Q. I thought that we all agreed that this is not an express
22 choice of law, what they mention in their witness
23 statement, because it would amount to be an express
24 choice of law in this arbitration.
25 A. What I believe I said is that the parties to this

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01 contract made a tacit choice of law in favour of the law
02 of British Columbia, and also the parties to a contract
03 can make an express choice of law after the contract was
04 concluded.
05 Q. Thank you, Mr Grušić. Tell me, does Serbian private
06 international law accept the doctrine of proper law of
07 the contract?
08 A. Could you repeat the question?
09 Q. Does Serbian private international law accept the
10 doctrine of the proper law of the contract?
11 A. In this particular case, we are dealing with a situation
12 where the parties selected the applicable law in a tacit
13 way, so I am not entirely certain.
14 Q. Do you know what the doctrine of the proper law of the
15 contract is?
16 A. Yes.
17 Q. Can you explain it for us?
18 A. The doctrine of the proper law of a contract is a common
19 law doctrine. It is applied traditionally by the
20 English courts, and many other common law courts, but
21 I am not sure that this is what I am supposed to talk
22 about here today.
23 Q. Thank you. Moving on to the law applicable to the Sembi
24 Agreement, the law applicable to the agreement is the
25 law of Cyprus, according to your report. I believe that

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01 this is your understanding, is this correct?
02 A. Yes, because the parties expressly agreed at the time of
03 conclusion of the contract that the law of Cyprus will
04 govern.
05 Q. Is it correct to state that the chosen law governs the
06 contractual relationship between Sembi and Mr Obradovic?
07 To clarify, I mean that the law chosen by Mr Obradovic
08 and Sembi does not govern the relationship between Sembi
09 and the Privatization Agency, is this correct?
10 A. I am sorry, I am not sure I understand your question.
11 Q. Well, my question is that the law chosen by Sembi and
12 Mr Obradovic has inter partes effect, meaning that it
13 governs the contractual relationship between those two
14 parties, and don't have effect on the relationship
15 between Sembi and the Privatization Agency, is this
16 correct?
17 A. The Sembi Agreement is governed by Cypriot law.
18 Q. Is it correct to say that in Serbian private
19 international law, the law chosen for the contract does
20 not govern the effect that the contract might have on
21 the property?
22 A. Could you please specify your question, make it more
23 specific?
24 Q. Is it correct, if you want me to specify my question, to
25 be the most precise question that I can give, the law

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01 chosen as the applicable law for the Sembi Agreement is
02 the law of Cyprus; does the law of Cyprus which is
03 chosen for the contractual relationship between Sembi
04 and Mr Obradovic have proprietary effects on the shares
05 of BD Agro?
06 A. Could you please define what you mean by "proprietary
07 effect?"
08 Q. I mean defining the moment in which the ownership is
09 acquired on those shares.
10 A. Could you please specify what you mean by ownership?
11 THE PRESIDENT: Maybe can I try this? Does the law that
12 governs the contract extend to property issues?
13 A. So my understanding is that this contract is governed by
14 the law of Cyprus, and that under the law of Cyprus it
15 basically transferred beneficial ownership to Mr Rand.
16 PROFESSOR DJUNDIC: If I may ask, you were giving your
17 reports on issues of Serbian private international law,
18 is this correct?
19 A. Yes.
20 Q. My question concerns the effect of the chosen law based
21 on rules of Serbian private international law.
22 A. Yes.
23 Q. Would you care to answer to my question then?
24 A. So I understand --
25 Q. Under the rules of Serbian private international law,

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01 does the law chosen for contractual relationship affect
02 at the same time and does it have the proprietary
03 effects?
04 A. Again, could you please define what you mean by
05 proprietary effects? In this particular case, the Sembi
06 Agreement is governed by Cypriot law and I understand
07 from the expert witness statement given by the Cypriot
08 lawyer that the effect of the agreement is to create
09 some beneficial interests in Mr Rand, and I believe that
10 Serbian law would recognise these beneficial rights that
11 Mr Rand acquired.
12 Q. So Sembi, let's say, buys a certain stock of shares in
13 BD Agro from Mr Obradovic; the parties agree that the
14 applicable law for their contract, their mutual rights
15 and obligations, is Cypriot law. The Cypriot law
16 determines the exact moment in which the ownership in
17 those sold shares transferred from Mr Obradovic to
18 Sembi. That is my question, and I was hoping I am going
19 to get the answer that concerns the rules of Serbian
20 private international law.
21 A. Again, could you please be more specific? Are you
22 referring to legal title --
23 PROFESSOR DJUNDIC: Mme President, I don't think I can be
24 more specific than this.
25 THE PRESIDENT: Let's take it one step after the other. You

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01 are saying that under the law of the contract, the
02 contract creates beneficial ownership?
03 A. That is what the Cyprus law expert says.
04 THE PRESIDENT: And that's your premise?
05 A. Yes, that is my premise, exactly.
06 THE PRESIDENT: So is this beneficial ownership, if I look
07 now from the standpoint of Serbian private international
08 law, a matter that I characterise or qualify as
09 a property right issue, or a contract right issue?
10 A. So unfortunately, I don't think this particular matter
11 is settled in Serbian law.
12 THE PRESIDENT: How do you see it?
13 A. Yes, how I see it. I believe that there is a gap in the
14 law, in the Serbian Private International Law Act, so
15 there is simply not a choice of law category for trusts,
16 foreign trusts, beneficial ownership. And that in
17 situations like this, a Serbian court would find that
18 there is a gap in the law, and would apply Article 2 of
19 the law which deals with gaps in the law, and according
20 to Article 2 of the Serbian Private International Law,
21 gaps in the law are to be filled by taking into account
22 the principles of Serbian legal system in general, the
23 principles of the Private International Law Act and the
24 principles of comparative private international law.
25 And I believe that. Two principles in particular, one

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01 is the principle of in favorem negotii and also
02 I believe that it's a principle of comparative private
03 international law to recognise at least certain effects
04 of foreign trusts.
05 So having these two principles in mind, I believe
06 that Serbian law would recognise rights created under
07 Cypriot law.
08 THE PRESIDENT: Thank you.
09 PROFESSOR DJUNDIC: Yes, I was going to get to the issue of
10 recognition of trust in Serbian private international
11 law, but since Mr Grušić already raised the issue, I am
12 going to ask a question with regard to Article 2 of the
13 Serbian Private International Law Act that you just
14 mentioned.
15 This is, as you said, a provision that serves the
16 purpose of filling the gaps in Serbian choice of law
17 rules, am I correct?
18 A. Yes.
19 Q. So this is not the rule of Serbian substantive law, it
20 does not determine rights and obligations of the
21 parties, it is just a rule that should help the court
22 determine the applicable law?
23 A. It's a rule that is found in Article 2 of the Serbian
24 Private International Law Act and it deals with
25 situations where there are no provisions in this law on

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01 the applicable law with respect to a relation that falls
02 within the scope of the Act.
03 Q. Just for the ease of convenience for the Tribunal, can
04 we see Claimants' Exhibit CE-874? This is Article 2.
05 So this Article 2 basically obliges Serbian courts to
06 come up with a choice of law rule if and when faced with
07 a dispute involving foreign trusts, and not to give
08 substantive law effect to all or some of its aspects.
09 Is this correct, does it sound accurate?
10 A. This provision says:
11 "If ... there is no provision concerning the law
12 applicable to a relationship from Article 1 ..."
13 Q. I understand that.
14 A. "... the provisions and principles of this Act, the
15 principles of the legal order of the [Republic of
16 Serbia] and the principles of private international law
17 shall be applied accordingly."
18 Q. I would say that probably my question was not clear
19 enough. I would need to specify once more. So this
20 provision will help the Serbian court to determine, to
21 formulate the choice of law rule when there is not one
22 in the Act, is this true?
23 A. This provision is meant to help a Serbian court to deal
24 with a situation where there is no provision concerning
25 the law applicable to a relationship, from Article 1(1)

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01 of this Act.
02 Q. So you agree with me basically. But it does not say
03 that, for example, a beneficiary of a trust has
04 a beneficial ownership in shares in joint stock company,
05 does it?
06 A. I think that there are two principles that should be
07 taken into account, so one is the principle of in
08 favorem negotii, so if you have two parties that enter
09 into an agreement that is governed by Cypriot law and
10 the agreement is valid, and under Cypriot law the effect
11 of the agreement is to create certain beneficial rights,
12 I think that the principle of in favorem negotii, which
13 is a principle of Serbian law, would mean that from the
14 perspective of Serbian law those rights would be upheld,
15 and I also believe that that is a principle of
16 comparative private international law.
17 Q. Yes, so this principle, in favorem negotii, that means
18 in favour of transaction, does it apply when the rule of
19 the foreign law is in contradiction to the overriding
20 mandatory provision of Serbian law?
21 A. Overriding mandatory provisions apply to legal
22 situations that fall within the scope.
23 Q. Yes. My question was: if this transaction that a court
24 should favour, to keep it alive, let's say like that, if
25 this transaction is contrary to Serbian overriding

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01 mandatory rule, then this principle, in favorem negotii,
02 does not apply, is this correct?
03 A. No, I don't think it's correct. I think what is correct
04 is that an overriding mandatory rule applies to
05 situations and only to situations which fall within
06 their scope.
07 Q. Thank you, Mr Grušić. You also state that
08 comparative -- and you mentioned that just earlier --
09 private international law shows that trusts should be
10 recognised, this is paragraph 99 of Mr Grušić's second
11 report.
12 A. Could you repeat what paragraph I refer to?
13 Q. 99. This is the last sentence:
14 "Comparative private international law shows that
15 trusts should be recognised, at least for some
16 purposes."
17 And there is a footnote 67. There you explain that
18 the Hague Convention on the Law Applicable to Trusts and
19 on their Recognition demonstrates that the principle of
20 recognition of trusts, or the principle of comparative
21 private international law is that trusts should be
22 recognised, is this correct?
23 A. At least for some purposes.
24 Q. Yes, at least for some purposes. So is Serbia bound by
25 this Convention?

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01 A. No.
02 Q. You speak about the fact that many common law and civil
03 law countries were accepting or accept this Convention,
04 and this fact should be taken into account when
05 determining what the comparative law position is?
06 A. What I say is that if there is a gap in the law,
07 a Serbian court will apply certain principles; amongst
08 those principles are principles of comparative private
09 international law, and I believe that Serbian law would
10 not invalidate foreign trusts very easily, and that it
11 would give recognition to foreign trusts, at least for
12 some purposes, and I believe that that is in accordance
13 with general principles of private international law,
14 and those principles are reflected to an extent in the
15 Hague Convention.
16 Q. Understood, but you also say that the comparative law,
17 or the acceptance of these principles, so your position
18 on comparative law, is demonstrated by the fact that
19 many civil law and common law countries are contracting
20 parties of the Hague Convention mentioned in footnote
21 67, is this correct?
22 A. So, there are many countries that are parties to this
23 Convention.
24 Q. How many?
25 A. Excuse me?

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01 Q. How many countries?
02 A. I don't know by heart.
03 Q. So a number of ten, for example, sounds --
04 A. I don't want to speculate.
05 Q. Going back to the issue of overriding mandatory
06 provisions under Serbian private international law, in
07 your first report, and that is paragraph 76, you accept
08 that certain provisions of Serbian law listed here can
09 be regarded as overriding mandatory provisions under
10 Serbian private international law, is this correct?
11 A. I accept that these four provisions mentioned here are
12 overriding mandatory provisions.
13 Q. Understood. In paragraph 65 of your first report, you
14 explain the two main characteristics of those mandatory
15 provisions, overriding mandatory provisions, we can just
16 see that there:
17 "They are regarded by the country to whose legal
18 system they belong as crucial for safeguarding its
19 public interests, such as its political, social or
20 economic organisation; and
21 "They apply to any situation falling within their
22 scope without regard to the law determined as applicable
23 under the relevant choice-of-law rule."
24 So my question is: if there is a conflict between
25 the law applicable under the choice of law rule, the

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01 general choice of law rule, and some overriding
02 mandatory provision of the forum, this would entail that
03 the overriding mandatory provision must be applied, is
04 this correct?
05 A. An overriding mandatory provision applies to situations
06 that fall within the scope of the provision.
07 Q. Thank you. Paragraph 27 of the second report. You
08 state:
09 "My opinion was, and still is, that any provision of
10 the MDH and Sembi Agreements that was contrary to an
11 overriding mandatory provision of Serbian law could not
12 be effectuated in Serbia. But the consequences of any
13 such conflict for the validity of the MDH and Sembi
14 Agreements are to be determined under the law governing
15 these agreements rather than Serbian law."
16 You support this statement by saying, also in
17 paragraph 27 of the second report:
18 "There is an agreement in Serbian private
19 international law that the issue of validity of
20 a contract is subject to the law applicable to the
21 contract."
22 Is this correct?
23 A. Yes.
24 Q. I would submit to you that this is the general rule as
25 well. The law chosen for the contract applies subject

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01 to certain exceptions, for example the law chosen for
02 the contract does not apply if it is in contradiction to
03 public policy or overriding mandatory rules, is this
04 correct?
05 A. My position is that the law governing a contract applies
06 to the contract, to different issues, including the
07 issue of validity. However, if there is an overriding
08 mandatory provision and the situation falls within the
09 scope of the provision, then the overriding mandatory
10 provision applies.
11 Q. Thank you. Paragraph 29 of the second report, you
12 state:
13 "It is accepted in Serbian legal theory that the
14 concept of overriding mandatory provisions must be
15 interpreted narrowly because the application of
16 overriding mandatory provisions of Serbian law to
17 contracts governed by foreign laws should be an
18 exceptional event. An expansive application of domestic
19 overriding mandatory provisions would undermine the
20 Serbian system of private international law which is
21 principally based on multilateral choice-of-law rules
22 and, in the field of international contracts, on the
23 principles of party autonomy and the closest
24 connection."
25 I would like only the second part of the paragraph

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01 to be highlighted, thank you. So when stating this, you
02 referred to a Serbian textbook on private international
03 law, which is contained as Claimants' Exhibit CE-454.
04 A. Yes.
05 Q. Page 390. Mr Grušić, I would like you to take your time
06 and identify the exact paragraph of this textbook in
07 which the citation or the language, the formulation that
08 you refer to, is contained. Let me remind you:
09 "An expansive application of domestic overriding
10 mandatory provisions would undermine the Serbian system
11 of private international law which is principally based
12 on multilateral choice-of-law rules and, in the field of
13 international contracts, on the principles of party
14 autonomy and the closest connection."
15 A. So my position is that the Serbian system of private
16 international law, so choice of law rules, are based on
17 multilateral rules, and we can see that from the Private
18 International Law Act because it doesn't actually
19 mention the concept of overriding mandatory rules, so
20 that implies that the law applicable to a relationship
21 is primarily the law that is determined on the basis of
22 the multilateral rules contained in the Private
23 International Law Act.
24 Q. I understand.
25 A. Sorry, would you let me finish?

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01 Q. I would like you to answer my question.
02 A. Yes, I am answering your question.
03 Q. I must disagree.
04 A. I believe it is also uncontroversial that Serbian law
05 recognises the concept of overriding mandatory
06 provisions, and I think it is also uncontroversial that
07 overriding mandatory provisions apply to the extent to
08 which the situation falls within the scope of the
09 overriding mandatory provision, and I also think that it
10 is uncontroversial that because the Serbian system of
11 private international law, its choice of law rules,
12 basically, its choice of law system, is based on
13 multilateral choice of law rules, that exceptions from
14 this, that is the application of overriding mandatory
15 rules, should be an exceptional event and consequently,
16 overriding mandatory provisions should be applied
17 restrictively. I believe that this is supported by
18 paragraph 7.34 of the textbook that you refer to, so if
19 you read after the comma on line 3:
20 " ... such an approach carries with it the danger of
21 protectionism and gives rise to considerable legal
22 uncertainty for natural and legal persons involved in
23 international transactions ... This authority [the
24 authority to apply overriding mandatory rules] may very
25 easily be exploited and may lead to an unwarranted

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01 extension of the application of national law."
02 I believe that these two statements support what
03 I wrote in my report, namely that the application of
04 overriding mandatory rules is an exception to the system
05 of private international law in Serbia, which is based
06 on bilateral choice of law rules, and that consequently,
07 overriding mandatory rules should be interpreted in
08 a narrow fashion.
09 Q. So let me try again. You submit that "the concept of
10 overriding mandatory rules must be interpreted
11 narrowly"; this is your position. And then you cite
12 a page or a paragraph of Serbian textbook on private
13 international law, and you say:
14 "An expansive application of domestic overriding
15 mandatory provisions would undermine the Serbian system
16 of private international law ...", and so on.
17 Can you point the Tribunal to the exact wording of
18 this text?
19 A. "... such an approach carries with it the danger of
20 protectionism and gives rise to considerable legal
21 uncertainty for natural and legal persons involved in
22 international transactions ... This authority [namely
23 the authority to apply overriding mandatory rules] may
24 very easily be exploited and may lead to an unwarranted
25 extension of the application of national law."

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01 Q. It could be that we have a different understanding of
02 the same text.
03 A. I believe that these two sentences that I read from the
04 textbook basically say that the application of
05 overriding mandatory rules is an exception to how the
06 Serbian system of private international law should work,
07 and in order to avoid the danger of protectionism and an
08 unwarranted extension of the application of national
09 law, overriding mandatory rules should be interpreted
10 narrowly.
11 Q. So where do you find precisely this formulation:
12 "An expansive application of domestic overriding
13 mandatory provisions would undermine the Serbian system
14 of private international law which is principally based
15 on multilateral choice-of-law rules and, in the field of
16 international contracts, on the principles of party
17 autonomy and the closest connection."
18 MR PEKAR: Mme President, I would object. The question was
19 asked three times, I believe it was also answered.
20 PROFESSOR DJUNDIC: But it was not answered three times,
21 Mme President.
22 THE PRESIDENT: What I understand is that the textbook
23 doesn't use these words, and doesn't say exactly that.
24 A. That is correct, yes.
25 THE PRESIDENT: But Mr Grušić understands the dangers of

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01 protectionism and expanding too much the application of
02 national law that is addressed in the textbook to be
03 reflected in his statement. Now, you may disagree, of
04 course, but that is what I understand.
05 PROFESSOR DJUNDIC: Yes, thank you, Mme President. I would
06 like us to stay with this page 390 of Claimants' Exhibit
07 CE-454. In the middle of paragraph 7.34, it says:
08 "Sight should not be lost of the fact that under
09 this approach, the court is left to assess whether the
10 mandatory provisions of national law are of such
11 a nature that they may be construed as mandatory
12 regulations directly applicable to cases with a foreign
13 element."
14 So would you agree with me that the authors of the
15 book, they warn Serbian courts about dangers of
16 identifying just any provision of Serbian law as
17 overriding mandatory rule?
18 A. I am not sure I understand the question, sorry.
19 Q. This particular paragraph warns that not just any
20 provision of Serbian law may be identified as overriding
21 mandatory rule, is this correct? Is this your
22 understanding of this highlighted text?
23 A. So my understanding is that Serbian courts decide which
24 provisions are of an overriding mandatory nature and my
25 understanding is that the application of overriding

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01 mandatory rules to relationships governed by foreign law
02 is an exception, and that the Serbian courts should be
03 wary of the danger of protectionism and unwarranted
04 extension of the application of national law, which
05 means that they should not interpret domestic overriding
06 mandatory provisions expansively.
07 Q. Well, here the authority that you rely on basically says
08 that courts should be cautious in identifying rules of
09 Serbian law as overriding mandatory provisions, but they
10 do not say that once identified as such, those
11 provisions must be interpreted narrowly; am I right?
12 A. I believe that Serbian courts need to take into account
13 the system of private international law, which is based
14 on multilateral choice of law rules. This is an
15 exception to how the system works, and in order to avoid
16 the danger of protectionism, and unwarranted extension
17 of the application of national law, Serbian courts
18 should be cautious and should interpret overriding
19 mandatory provisions in a restrictive way.
20 Q. A restrictive way?
21 A. Narrowly, restrictive.
22 Q. So there is a contract with a choice of law clause
23 identifying foreign law as applicable, and under that
24 applicable foreign law, the contract is valid; on the
25 other hand, you have Serbian overriding mandatory rule

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01 and by application of that Serbian overriding mandatory
02 rule, the contract is null and void. Which of those two
03 would be applicable?
04 A. That's a hypothetical question. If you are referring to
05 the facts of this particular case, we have --
06 Q. I am referring --
07 A. We have contracts that are governed by foreign law, and
08 we do know, I believe this is not contested, that
09 article 2 of the MDH Agreement, for example, could not
10 have been effectuated in Serbia because it was contrary
11 to some overriding mandatory rules of Serbian law. The
12 possibility to effectuate a legal provision in a
13 situation like that would be assessed under the Serbian
14 overriding mandatory rule but the validity of the
15 contract would be governed by its applicable law, which
16 is foreign law in relation to these two contracts that
17 we are dealing with.
18 Q. So basically, when you say that the consequences of
19 Serbian overriding mandatory rule would be assessed
20 based on the law applicable to the contract, you mean
21 that in this question that I asked, which is a general
22 question, principle question, when you have foreign law
23 applicable to the contract, by which the contract is
24 valid, but you have Serbian overriding mandatory rule by
25 which the contract is invalid, in your assessment this

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01 would mean that Serbian court would apply the foreign
02 law, am I right?
03 A. That's not what I said. I said that if a contractual
04 provision cannot be effectuated in Serbia, cannot be
05 performed in Serbia, because it is contrary to an
06 overriding mandatory provision, then this fact will be
07 taken into account and the validity of the contract will
08 be assessed under its governing law. In this particular
09 case --
10 Q. Thank you, Mr Grušić.
11 A. In this particular case, the contracts are governed by
12 foreign law and the fact that one of the contractual
13 provisions could not have been effectuated, performed in
14 Serbia, would be taken into account as a fact under the
15 relevant applicable laws.
16 Q. So you are saying that Serbian court, by application of
17 its private international law, would give effect to the
18 MDH Agreement, is this your position?
19 A. I believe so, yes. Sorry, the Serbian court would not
20 give effect to article 2, but it would find that the MDH
21 Agreement is valid.
22 Q. Would it consider that the MDH Agreement transferred the
23 ownership in BD Agro's shares from Mr Obradovic to MDH?
24 A. Could you please define what you mean by ownership, in
25 this question that you ask?

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01 Q. In this question?
02 A. Yes.
03 Q. I mean ownership under Serbian law.
04 A. Are you referring to legal title in shares?
05 Q. I am referring to the right of ownership, under Serbian
06 law.
07 A. If you are referring to legal title, then the answer is
08 no.
09 Q. Thank you. So I understand that you are an expert in
10 issues of private international law.
11 A. Yes, that is my primary field.
12 Q. Would you say the main areas of your interest are,
13 I would say, English and European private international
14 law?
15 A. And Serbian as well.
16 Q. So in your second report in particular, you comment on
17 the validity of the MDH Agreement and the Sembi
18 Agreement under the rules of Serbian contract law?
19 A. That is correct.
20 Q. Would you consider yourself an expert in Serbian
21 contract law as well?
22 A. In the parts of her report, Professor Mirjana Radovic
23 referred to certain issues of Serbian substantive
24 contract law and I was instructed by counsel for
25 Claimants to address those issues.

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01 Q. That was not exactly my question. My question was:
02 would you consider yourself as an expert in Serbian
03 contract law?
04 A. Define expert.
05 Q. Well, I will. Have you published any works in this
06 field?
07 A. In the field of Serbian contract law?
08 Q. Substantive contract law, yes.
09 A. No, I haven't.
10 Q. Do you have extensive experience as a practising lawyer
11 dealing with issues of Serbian contract law?
12 A. I practised law in Serbia for three years and I have
13 dealt with many contracts under Serbian contract law.
14 Q. When was this?
15 A. Apologies?
16 Q. When was this?
17 A. So I practised between 2005 and 2008 roughly and then
18 afterwards I worked at the Faculty of Law at the
19 University of Belgrade for two years, and I am regularly
20 engaged by clients to give opinions in cases like this
21 on Serbian law.
22 PROFESSOR DJUNDIC: Thank you, Mr Grušić. Thank you,
23 Mme President, this concludes Respondent's cross.
24 THE PRESIDENT: Thank you. Any questions in re-direct,
25 Mr Pekar?

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01 MR PEKAR: No questions, Mme President.
02 THE PRESIDENT: Any questions from my co-arbitrators? Yes,
03 please.
04 Questions from the TRIBUNAL
05 PROFESSOR KOHEN: Good afternoon, Mr Grušić.
06 A. Good afternoon.
07 PROFESSOR KOHEN: I have a question concerning issues of
08 nationality; indeed, I have two questions concerning
09 issues of nationality. On the basis of the
10 documentation you received for this case, if you have to
11 determine the prevailing nationality of Mr Obradovic,
12 what would you say?
13 A. If you were to apply a choice of law rule from the
14 Serbian Private International Law Act and the connecting
15 factor is nationality, then it would be Serbian
16 nationality of Mr Obradovic that is relevant.
17 PROFESSOR KOHEN: Irrespective of the Serbian law on private
18 international law, put aside the Serbian law on private
19 international law, on the basis of the information you
20 have, what would be in your view the prevalent
21 nationality of Mr Obradovic?
22 A. I haven't been instructed to give an answer to that
23 question. I don't think I can give it on the spot.
24 PROFESSOR KOHEN: But this is a question I am raising. You
25 may answer or not, it is your right, of course.

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01 A. I really apologise, so if you are asking me if a Serbian
02 court were to apply a choice of law rule from the
03 Serbian Private International Law Act and that provision
04 of the Serbian Private International Law Act uses the
05 connecting factor of nationality, then I think
06 Mr Obradovic's Serbian nationality would be relevant,
07 but I am not sure I can opine on anything other than
08 that.
09 THE PRESIDENT: I think maybe the prevalent or effective
10 nationality test is more a public international law
11 issue than a private international law one.
12 PROFESSOR KOHEN: My second question also concerns the
13 nationality of MDH. If you had to determine the
14 nationality of MDH, what would you say?
15 A. Under Serbian private international law?
16 PROFESSOR KOHEN: Give your answer.
17 A. Under Serbian private international law, the starting
18 point would be the place of incorporation, but also some
19 other factors might be relevant, so sometimes another
20 country might be treated as the country of nationality,
21 if certain requirements are met, but I have to say that
22 I haven't been instructed on this and I don't feel
23 comfortable giving an opinion on the spot.
24 PROFESSOR KOHEN: Well, that was my question. Thank you.
25 THE PRESIDENT: Mr Grušić, when you were taken to article 5

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01 of the MDH Agreement, CE-015, can we just show it on the
02 screen? Yes, here it is. You said there is no
03 geographical limitation, you said limitation, but
04 there's no geographical indication in this wording.
05 A. Yes.
06 THE PRESIDENT: You said this, I think, but you have to tell
07 me, because you were applying the different factors for
08 determining whether there is a tacit choice of law, and
09 one of the factors is whether there is an agreement on
10 the place of performance, is that right?
11 A. That is correct, yes.
12 THE PRESIDENT: But that is because we were in the exercise
13 of the tacit choice. If we now were for one reason or
14 another to consider that there is no express choice,
15 there is no tacit choice, and we go over to what in
16 French I would call "rattachement objectif" which is
17 just looking at the closest connection test, then
18 I would consider -- would I consider these factors, with
19 others, of course, but this is one connection, isn't it?
20 Or these are connections.
21 A. Yes, so on the assumption that the parties didn't make
22 a choice of law, then there is article 20, which deals
23 with the law that governs a contract in the absence of
24 party autonomy, and there is a possibility to take into
25 account basically all the objective connecting factors

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01 to determine the applicable law.
02 THE PRESIDENT: And that would include -- well, in part the
03 same factors like those you would include for tacit
04 choice, but it would also include the actual place of
05 performance of the obligations envisaged in the
06 contract, is that right?
07 A. Yes.
08 THE PRESIDENT: And that would point to Serbian law? I am
09 not saying we would end up with Serbian law, but that
10 would be an element in favour of Serbian law?
11 A. I am not actually sure that it would be, because when
12 I look at article 5, we are obviously dealing with
13 a Serbian company, but I am not sure where the bodies of
14 that company necessarily sit.
15 THE PRESIDENT: Assume they sit in Serbia.
16 A. I haven't been advised on the composition of the board
17 of directors. I am not privy to how the decisions or
18 where the decisions are made.
19 THE PRESIDENT: Is the fact that we are dealing with
20 a Serbian company not an element pointing towards
21 Serbian law?
22 A. That would be a relevant element.
23 THE PRESIDENT: There may be countervailing elements, right?
24 A. Yes.
25 THE PRESIDENT: Let me see whether I have other questions.

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01 (Pause). Did I understand you correctly about
02 overriding mandatory provisions that your point is that
03 if there is one, first you have to identify it, and
04 identify that you are within its scope, and that it
05 seeks to capture this fact situation?
06 A. Yes, I think there are several steps that have to be
07 taken, so one is to check whether a particular provision
08 is an overriding mandatory provision or not; then
09 I think the next step is to look at the scope of the
10 provision, to determine what is the scope. The temporal
11 scope of the provision, I think that is quite important
12 with respect to some of the provisions that we are
13 dealing with here, but also the subject matter scope.
14 And then the third step would be to see whether the
15 facts or the circumstances of the particular case fall
16 under the scope of the overriding mandatory provision.
17 THE PRESIDENT: And then this mandatory provision, if it
18 does apply, may apply to parts of the contract or to the
19 contract as a whole?
20 A. Correct.
21 THE PRESIDENT: How do I know whether a mandatory overriding
22 provision is a mandatory overriding provision?
23 A. That is a good question, I think that is the holy grail,
24 in a way of private international law. One indication
25 might be to look at the introductory provisions of the

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01 Act, so there are some acts which specify their
02 geographic scope, so that would be, I would say, an easy
03 way out.
04 THE PRESIDENT: But many do not specify their scope.
05 A. Many don't specify. Then it's a question of
06 interpretation.
07 THE PRESIDENT: Would it be right to say that what
08 determines whether it is an overriding mandatory
09 provision is whether the provision wants to apply
10 itself, to the extent that provision can want something?
11 A. Yes, that is correct. So in some cases, the act
12 specifies its geographical scope, and that indicates
13 that the provision of the act wants to be applied to
14 facts that take place within a certain territory. If
15 there is no indication of that kind, of that nature,
16 then it's a question of interpretation, to what extent
17 the provision, if you will, reaches.
18 THE PRESIDENT: Fine. I think I have no further questions,
19 and if there is no follow-up clarification needed, then
20 I would like to thank you very much, Mr Grušić.
21 A. Thank you very much.
22 THE PRESIDENT: Let me look at the time. Now it's 3.30. We
23 understand that Mr Deane is available starting at 4.00,
24 is that right?
25 MR PEKAR: This is correct, yes.

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01 THE PRESIDENT: So I think we have no choice but to have
02 a break of half an hour.
03 Are we impliedly saying that we will not start the
04 examination of Professor Radovic today, or what's the
05 view?
06 MS MIHAJ: I think that it will be better that we start
07 examination of Professor Radovic tomorrow morning.
08 MR PEKAR: I would not be able to finish the
09 cross-examination of Professor Radovic today, so I think
10 it would not be fair to her to have her in purdah for
11 a night.
12 THE PRESIDENT: Let me just see how it looks tomorrow. Yes,
13 that was the plan in any event, so I don't think that
14 should be an issue, and then we have two other experts,
15 but they are not as long, I would say, so that should be
16 do-able.
17 Good, then let's resume at 4.00.
18 (3.30 pm)
19 (A short break)
20 (4.00 pm)
21 MR ROBERT DEANE (called)
22 THE PRESIDENT: Are we ready? Good morning, sir. Do you
23 hear me when I speak?
24 THE WITNESS: Yes, I can hear you. Can you hear me?
25 THE PRESIDENT: Yes, perfectly well, excellent. Thank you

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01 for being with us so early in the day. For the record,
02 can you confirm that you are Robert Deane?
03 THE WITNESS: Yes, I am.
04 THE PRESIDENT: You are a partner at Borden Ladner Gervais?
05 THE WITNESS: Yes, correct.
06 THE PRESIDENT: You have provided us with one written report
07 that was dated 3rd October 2019, do you have it there?
08 THE WITNESS: I do have a copy before me.
09 THE PRESIDENT: Is it an unannotated copy?
10 THE WITNESS: It is an unannotated clean copy of the report,
11 yes.
12 THE PRESIDENT: Thank you. Are you alone in the room from
13 which you testify?
14 THE WITNESS: Yes, I am the only one here.
15 THE PRESIDENT: And you have no communication information
16 sources other than the video conferencing platform on
17 which we communicate now?
18 THE WITNESS: That's correct.
19 THE PRESIDENT: No smartphone, no open tablets?
20 THE WITNESS: No.
21 THE PRESIDENT: No other laptop?
22 THE WITNESS: Nothing.
23 THE PRESIDENT: Good. You are heard as an expert; as an
24 expert witness, you are under a duty to make only
25 statements in accordance with your sincere belief.

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01 There will be a declaration now shown that will appear
02 on your screen, can you please read it aloud into the
03 record? Or you have it?
04 THE WITNESS: I have a copy with me, so perhaps I can read
05 that.
06 THE PRESIDENT: Excellent, that is even easier.
07 THE WITNESS: So I will begin. I solemnly declare upon my
08 honour and conscience that my statement will be in
09 accordance with my sincere belief.
10 THE PRESIDENT: Thank you. You also know that if you are
11 asked questions about specific documents we will show
12 them by sharing the screen; if you want to see more of
13 the document, scroll up, scroll down, you just tell us.
14 THE WITNESS: I will do so.
15 THE PRESIDENT: Good, so let me first turn to Claimants'
16 counsel, Mr Pekar?
17 MR PEKAR: Thank you, Mme President. We do not have any
18 questions.
19 THE PRESIDENT: No direct questions, then I turn to Serbia's
20 counsel, Professor Djundic?
21 Cross-examination by PROFESSOR DJUNDIC
22 Q. Thank you, Mme President. Good morning, Mr Deane.
23 A. Good morning.
24 Q. My name is Petar Djundic, I am counsel for Respondent
25 and I have a couple of questions for you, I would say.

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01 To start, some of those questions concern the issue of
02 the law applicable to the MDH Agreement, so in
03 paragraph 48 of your report, you start your choice of
04 law analysis by stating there that the first necessary
05 step in the choice of law process is characterising the
06 issue under consideration. Is this correct?
07 A. That's what I say in paragraph 48, yes.
08 Q. In paragraph 49, you explain:
09 "The matter under consideration is best
10 characterised as one of contract, given that the
11 fundamental questions relate to the effect of the MDH
12 Agreement. The MDH Agreement is concerned with the
13 parties' rights and obligations in respect of intangible
14 property, that being the BD Agro Shares, and other
15 contractual rights under the MDH Agreement."
16 Correct?
17 A. Correct.
18 Q. In paragraph 71 of your report, you state:
19 "The MDH Agreement contemplated that MDH would
20 acquire ownership of shares in a Serbian company. Thus,
21 the MDH Agreement could be characterised as dealing with
22 ownership of foreign movable property."
23 Is this correct?
24 A. That's what I say in paragraph 71, yes.
25 Q. If this characterisation would be accepted, then the law

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01 applicable to the MDH Agreement would be Serbian law, is
02 this correct?
03 A. It's not that simple. You can see, in paragraph 71,
04 I refer to that proposition as one of the factors that
05 may be said to support Serbian law being the proper law
06 of the contract. No one factor is dispositive. In
07 paragraph 71, when I say that the MDH Agreement could be
08 characterised as dealing with the ownership of foreign
09 movable property, that is one characterisation that one
10 may advance as being one factor that would lend credence
11 to the suggestion that Serbian law is the proper law of
12 the contract. As you know, my conclusion and my
13 judgment is otherwise.
14 Q. Thank you. Moving on to those factors listed in
15 paragraphs 70 to 74 of your report, those are factors
16 supporting Serbian law being the proper law of the MDH
17 Agreement, correct?
18 A. Yes, those are factors that one would rely upon as
19 pointing the court to the direction of finding that
20 Serbian law is the proper law of the contract.
21 Q. I noticed that you left out the place of performance of
22 the contract as a factor. Would you agree that the
23 place of performance of the contract is one of the
24 factors that were listed in the Imperial Life Assurance
25 case that you rely on in your report?

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01 A. The place of performance is one of the factors. Of
02 course, it's an open question here where the MDH
03 Agreement would in substantive terms be performed. But
04 certainly what I want to make clear is that in assessing
05 the proper law of the contract, and at this stage, sir,
06 we're assessing the question of the real and substantial
07 connection or whether there is an implied choice of law,
08 a British Columbia court would not restrict itself to
09 a series of watertight compartments. It would take into
10 account all of the factors surrounding the contract to
11 come to its best judgment as to what is the proper law.
12 One of those factors may indeed be the place of
13 performance. However, that is defined in the particular
14 case.
15 Q. Can we go to Claimants' Exhibit CE-015? That is the
16 text of the MDH Agreement.
17 You will notice in article 5 there are some
18 obligations taken upon by the seller, meaning
19 Mr Obradovic. Would you agree with me that most of
20 those obligations, the place of most of those
21 obligations is Serbia, him being Serbian resident, and
22 BD Agro being Serbian company and having its whole
23 business activities in Serbia?
24 A. Well, I would need more facts. I mean, it refers to
25 shareholders' meetings of the company; perhaps those

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01 would be in Serbia, even presumably those might be in
02 Serbia. It refers to conduct of the board of directors
03 of Serbia (sic); presumably those may be in Serbia.
04 They may not be. But certainly the management of
05 BD Agro, I think one would safely conclude, would
06 involve contacts with Serbia, of course.
07 Q. Thank you. In paragraph 91 of your report, you
08 characterise rights obtained by MDH through MDH
09 Agreement as "quintessential rights of the controlling
10 shareholder of a corporation in British Columbia";
11 correct?
12 A. Correct.
13 Q. Would you agree that the right to receive dividends is
14 also one of those most fundamental rights?
15 A. The right to be eligible to receive dividends is one of
16 the rights of a shareholder of a corporation in British
17 Columbia, yes.
18 Q. Does the MDH Agreement contain the right of MDH to
19 receive dividends stemming from BD Agro's shares?
20 A. I don't recall. I don't have the agreement in front of
21 me but I do not recall.
22 Q. Would you like for us to show you the text of the
23 agreement?
24 A. I don't recall sitting here whether it refers to the
25 right to be eligible to receive dividends, and I will

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01 leave it up to counsel to determine what I should be
02 shown.
03 Q. Thank you. So according to your instruction, has MDH
04 ever received any dividends based on its supposed
05 ownership of shares in BD Agro?
06 A. That was not one of the facts I was instructed to
07 assume.
08 Q. Thank you. Moving on, in your report, in paragraph 100,
09 you basically explained that the MDH Agreement resulted
10 in Mr Obradovic holding BD Agro shares as a constructive
11 trustee of a substantive trust, correct?
12 A. That's what I say in paragraph 100. A substantive or
13 institutional trust, in respect of the BD Agro shares.
14 Q. Thank you. Am I right to say that the constructive
15 trust may be imposed by the court only if certain
16 prerequisites are met?
17 A. No. There are at least two types of constructive trusts
18 in Canadian law and certainly in British Columbia law.
19 One of the types of constructive trusts is what is known
20 as a remedial constructive trust. A remedial
21 constructive trust, as the name would suggest, is
22 a remedy that the court can impose, the court can find,
23 based upon certain prerequisites being established.
24 Those prerequisites are generally those applicable to
25 unjust enrichment in Canadian law; a deprivation, an

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01 enrichment, with the absence of juristic reason.
02 A substantive or institutional trust is different
03 from a remedial constructive trust. It is not a remedy,
04 but rather a trust that arises in a circumstance where,
05 for example, one assumes an obligation to hold property
06 for the benefit of another. It's not remedial, and
07 that's the distinction that I want to draw.
08 Q. I was hoping you will help me understand. Being
09 remedial means that it must be imposed by the court?
10 A. Well, I don't -- I am sorry, go ahead.
11 Q. Unlike substantive trust that arises automatically from
12 the contract; is that the difference?
13 A. I don't want to say it would be imposed by a court,
14 because under our theory of law, the court finds rights
15 that exist, but it is a remedy that is found to exist in
16 circumstances particularly of unjust enrichment, and
17 where a party has received property to which it is not
18 entitled, that it is not entitled to receive, British
19 Columbia law, provided certain prerequisites are
20 established, will allow a remedial constructive trust to
21 be found or, to use your word, imposed on the party
22 holding the property at the time. That's different from
23 the substantive or institutional trust I am addressing
24 in paragraph 100.
25 Q. Can you explain the difference?

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01 A. A substantive or institutional trust is not necessarily
02 a remedial trust, but rather arises by virtue of
03 a relationship, and the relationship typically is one
04 where one assumes an obligation to deal with property
05 that one owns for the benefit of a third party. So it's
06 not intended to remedy a legal wrong, it is a trust that
07 arises as an incident of a relationship.
08 PROFESSOR DJUNDIC: Thank you. Thank you, Mme President,
09 that concludes Respondent's cross. Thank you, Mr Deane.
10 A. Thank you, sir.
11 THE PRESIDENT: Any questions in re-direct on the Claimants'
12 side?
13 MR PEKAR: No questions, Mme President.
14 THE PRESIDENT: Do my colleagues have questions? I do not
15 think I have questions either, let me just check.
16 No, I don't, so Mr Deane, that was fast. Thank you
17 very much for being available, and for your assistance,
18 and that would conclude your examination, so you can
19 either stay with us or leave the Zoom meeting. Thank
20 you.
21 A. Thank you, I will leave you to your work and I will
22 depart.
23 THE PRESIDENT: Thank you, goodbye. So that leaves us
24 now -- what do you want to do?
25 MR PEKAR: I think we have an agreement that we would just

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01 wait until tomorrow morning in order to avoid putting
02 Professor Radovic in isolation for the evening.
03 MS MIHAJ: Yes, that is correct.
04 THE PRESIDENT: Fine, then enjoy the rest of the afternoon.
05 Dr Djerić, do you have a point?
06 DR DJERIC: Yes, one short point of housekeeping, I am sorry
07 we have to raise it. Mme President, as you know, in big
08 arbitrations as this one, there are many exhibits and
09 some exhibits become cursed, so to say.
10 It seems to me that our demonstrative exhibit
11 number 2, RDA-2, which was already corrected, will have
12 to be corrected again, and it is again to the benefit of
13 the Claimants. Something was wrong with the
14 calculation, it was calculated on 100% of the company,
15 the tax was calculated, and it should have been
16 calculated only for the part owned by Mr Obradović, so
17 we are going to be uploading a revised and I hope final
18 exhibit, and I trust that the Claimants' experts will
19 have sufficient time to consider it before their
20 examination, if they wish to consider it.
21 THE PRESIDENT: Remind me what the exhibit is?
22 DR DJERIC: That is the calculation of the capital gains tax
23 under Serbian tax law. So it is relevant basically for
24 Tuesday.
25 THE PRESIDENT: That should not be a problem, the experts

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01 will have enough time to look at it.
02 MR PEKAR: Yes, we agree.
03 THE PRESIDENT: Anything else on the Respondent's side? No.
04 Anything on the Claimants' side?
05 DR DJERIC: We would need some guidance, how do you envisage
06 tomorrow's hearing, which is starting at 9.00? There
07 are three expert witnesses, two of which may not be that
08 long, one of which may be very long, Professor Radović
09 probably will be long, I expect, but perhaps we could
10 work from 10.00 onwards, or we could --
11 THE PRESIDENT: I suspected you would say that.
12 DR DJERIC: But we just wanted to be ready, whether you have
13 any other considerations for tomorrow, nothing else.
14 THE PRESIDENT: Any considerations on the side of the
15 Claimants?
16 MR PEKAR: Just to explain my non-verbal communication with
17 Dr Djerić. Over the break, I suggested that we might
18 enquire whether Mr Papadopoulos, who is the first
19 witness on Monday, could be available tomorrow, but then
20 I was advised by my colleagues that that was not a good
21 idea on my part to make that enquiry -- I mean, my
22 colleagues within my team, not my friends across the
23 aisle, therefore we would not suggest to cross-examine
24 four experts tomorrow, rather just the three which are
25 scheduled.

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01 As to the starting time, frankly, we probably have
02 no preference, but since it's Saturday, it might be
03 interesting to have a longer Saturday night, rather than
04 a longer morning on a Saturday.
05 THE PRESIDENT: These are very personal preferences. If you
06 ask me, I would rather start late. But looking at the
07 Monday, it's true that the Monday is relatively full, at
08 least according to your initial estimates, with rather
09 longer cross-examinations, while tomorrow is somewhat
10 shorter, so we are in your hands. If you feel it is
11 safer to try and advance Mr Papadopoulos, if at all
12 possible, then we could also try to have him tomorrow.
13 DR DJERIC: We will go along with the Claimants, so we are
14 not insisting, and with Mr Papadopoulos, we think we
15 should go along with the schedule and have him on
16 Monday.
17 MR PEKAR: I will appraise Mr Anway of your comment,
18 Mme President, and see whether that has an impact on his
19 preference for Saturday versus Monday.
20 The only aspect which makes me wonder is that
21 Ms Ilić will be testifying in Serbian on Monday, which
22 may make it a bit longer, but on the other hand,
23 I understand that she will be able to read documents in
24 English that I put to her.
25 THE PRESIDENT: I have found the parts that were interpreted

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01 fairly efficient frankly, it worked well, so I don't
02 think that's a major concern. The concern was rather
03 I see that Mr Grzesik is a rather long witness, and
04 Ms Ilic is a rather long witness as well, but you have
05 been pretty much within your estimates or below your
06 estimates, so it shouldn't be a real concern. Should we
07 leave it as it is planned simply?
08 MR PEKAR: I think in that connection, it will be also
09 determinative to some extent how much time the Tribunal
10 would like to have on Tuesday for potential questions.
11 THE PRESIDENT: Yes, we have thought about this, and without
12 having a definitive position on it now, because we need
13 to rediscuss it, it seemed to us that what we would
14 probably do on Tuesday is rather articulate what we
15 expect for the post-hearing briefs, and that will be
16 more efficient than asking you to improvise answers to
17 questions on which you in any event will write again in
18 the post-hearing briefs, so it is more for us to try and
19 define what are the areas -- there may be specific
20 questions, but it may also be just areas where we would
21 like you to focus in the post-hearing briefs, without
22 having to repeat the entire case. So that shouldn't
23 take too long. If we have part of the afternoon, that's
24 fine, and if we can close a little before the end of the
25 afternoon, it would be appreciated. It will give us

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01 a little time to have a final discussion.
02 MR PEKAR: Would it be fine if we plan to end the crosses
03 at, let's say, 4.00 pm, or earlier?
04 THE PRESIDENT: Yes, I would say no later than that, but
05 that should really be do-able.
06 MR PEKAR: It should be do-able; in that case, I think there
07 is no need to move Mr Papadopoulos from Monday to
08 Saturday. That was the reason for that enquiry.
09 THE PRESIDENT: It is also better to have both damages
10 experts one after the other. Any comments on your side?
11 DR DJERIC: Not really. We will stick with the schedule as
12 you indicated.
13 THE PRESIDENT: Yes, I think so. We have a schedule that
14 works well, so let's just apply it. Good. Then I wish
15 everyone a good end of the day, and we see each other
16 tomorrow at 9.00, that is what I understood, or at
17 10.00? At 9.00. That closes the hearing for now.
18 (4.23 pm)
19 (The hearing adjourned until 9.00 am the following day)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

Tribunal:

Prof Gabrielle Kaufmann-Kohler
Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

ICSID Secretariat:
Marisa Planells-Valero

For the Claimants:

Rostislav Pekař
Stephen Anway
Luka Misetic
Matej Pustay
David Seidl
Kateřina Bolinová
- Squire Patton Boggs
Nenad Stanković
Sara Pendjer
- Stankovic & Partners (NSTLAW)

For the Respondent:

Senka Mihaj
Bojana Bilankov
Nemanja Galic
Milica Volarev
- Mihaj Ilic & Milanovic
Vladimir Djerić
Lena Petrovic
Ivana Vukcevic
- Mikijelj Jankovic & Bogdanovic
Petar Djundic
- Faculty of Law, University of Novi Sad

**Government of Canada
Representatives:**

Scott Little
Heather Squires
Maria Cristina Harris
- Trade Law Bureau

Party representatives:

William Rand
Erinn Broshko
Li-Jeen Broshko
Igor Markicevic

Party representatives:

Olivera Stanimirovic
Ksenija Maksic
Mirko Cobanin
- State Attorney Office of the Republic of
Serbia

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Interpreters:

Milena Maric
Sanja Rasovic
Vesna Bulatovic

Hearing Location:

Peace Palace, The Hague

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01 Saturday, 17th July 2021
02 (8.58 am)
03 PROFESSOR DR MIRJANA RADOVIC (called)
04 THE PRESIDENT: It seems like we are all ready, even on
05 a sunny Saturday morning, before the time, so
06 congratulations.
07 Can we start with the examination of
08 Professor Radovic or is there anything you want to
09 raise? Good, excellent.
10 Good morning.
11 THE WITNESS: Good morning.
12 THE PRESIDENT: You are Mirjana Radovic?
13 THE WITNESS: Yes.
14 THE PRESIDENT: You are a professor at the University of
15 Belgrade?
16 THE WITNESS: Yes.
17 THE PRESIDENT: You have given two expert reports, the first
18 is of 19th April 2019, and the second one, 22nd January
19 2020?
20 THE WITNESS: Yes.
21 THE PRESIDENT: You have them there?
22 THE WITNESS: Yes, they are here.
23 THE PRESIDENT: Fine. Can you please read the expert
24 declaration into the record?
25 THE WITNESS: Of course. I solemnly declare upon my honour

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01 and conscience that my statement will be in accordance
02 with my sincere belief.
03 THE PRESIDENT: Thank you. I will turn first to Respondent,
04 and then we will go over to Claimants' counsel.
05 DR DJERIC: Thank you, Mme President.
06 Direct examination by DR DJERIC
07 Q. Good morning, Professor Radovic, my name is Vladimir
08 Djeric and I am counsel for Respondent. Let me start
09 with asking you a question that was raised yesterday,
10 and the question is: let's suppose there is a breach of
11 article 5.3.4 of the Privatization Agreement, what
12 remedies, in your opinion, stand at the disposal of the
13 Privatization Agency as a party to that agreement?
14 A. Thank you. Remedies for breach of any contractual
15 obligation, but here specifically for breach of
16 article 5.3.4 of the Privatization Agreement, are
17 regulated in general part under the general rules of
18 Serbian contract law, in the Law on Obligations, and as
19 specifically here, because we are dealing with the
20 Privatization Agreement, within the Law on
21 Privatization, but the Law on Privatization contains
22 only some provisions with this regard, so that we have
23 to rely on the rules of the general contract law to see
24 what remedies stand at the Agency's disposal.
25 When we look at these two sources of law together,

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01 the way they should be applied, there are three possible
02 remedies of an innocent party against the buyer who
03 breaches this obligation, article 5.3.4.
04 First of all, the Agency could insist on specific
05 performance under Serbian law; second of all, the Agency
06 could terminate the contract if the conditions for
07 termination are met; and thirdly, the Agency would,
08 under general contract law, have the right to claim
09 damages, and this is what was mentioned yesterday.
10 It should be also noted that under Serbian law,
11 under no circumstances can a contractual party ask for
12 disgorgement of profits. This is not a remedy under
13 Serbian law, so a claim for damages is the only thing
14 that remains apart from specific performance and
15 contract termination.
16 Now, if we look at the claim for damages, there is
17 a problem here because the party seeking damages would
18 have to prove that it suffered damages due to breach of
19 a contractual obligation of the other party, here the
20 buyer.
21 The problem here is that if the buyer breaches
22 article 5.3.4, the Agency could actually -- I cannot
23 think of a situation where the Agency could prove that
24 it suffered any specific damages because of that, simply
25 because article 5.3.4 serves not to protect the Agency

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01 but to protect the assets of the company. The only
02 person that could directly suffer damages from the
03 breach of article 5.3.4 would actually be the company,
04 BD Agro.
05 Under Serbian law the Privatization Agency could not
06 sue in its own name and claim damages for the benefit of
07 the company. This is not possible, because such actions
08 are not possible under Serbian law, so the claimant
09 would have to prove his claim, the claim for damages,
10 and the Agency could not do this.
11 It should also be noted that under Serbian law, the
12 so-called Drittschadensliquidation, or third party
13 liquidation, damages liquidation, is not possible. This
14 is something that is not regulated under our
15 legislation, and the Serbian judicial practice does not
16 have that concept. Drittschadensliquidation would
17 enable, so the third party damages liquidation, would
18 enable one party that has the right against the other
19 party, the contractual right that was breached, to claim
20 damages for the benefit of the other party that suffered
21 the damages but was not entitled to claim the breach.
22 This is not possible under Serbian law.
23 So the damages claim that was mentioned, this is
24 what I wanted to explain, could not be successfully
25 enforced.

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01 Q. Thank you, Professor Radovic. So it seems that the
02 Agency in this case had only the possibility to ask for
03 performance, or to seek termination of the Privatization
04 Agreement?
05 A. Yes.
06 Q. Thank you. Could we now move on to another topic in
07 your direct. You did not have a chance to respond to
08 reports of Claimants' experts that commented on your
09 second expert report, so perhaps you could use the rest
10 of your time in direct to respond to their reports,
11 please.
12 A. Thank you, I will try to stay within the time limit,
13 I am sorry if this can be a little bit longer than ten
14 minutes, but first of all, I wanted to raise three
15 issues in this case.
16 The first issue deals with assignment of the
17 Privatization Agreement; the second issue deals with the
18 transfer of shares in the company BD Agro; and the third
19 issue deals with beneficial ownership.
20 All these three issues I am going to analyse from
21 the perspective of the Sembi Agreement because this was
22 the only agreement that potentially existed between the
23 parties at the time of the alleged violation of the
24 Claimants' rights. But before I begin explaining these
25 three issues, I just wanted to say that the rules on

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01 contract interpretation under Serbian law have not been
02 fully correctly presented by the Claimants' expert,
03 Mr Grušić, namely Article 99(1) of the Serbian Law on
04 Obligations says explicitly, you can take a look at that
05 provision, that contractual terms are to be interpreted
06 as they are formulated, so that is the primary rule of
07 contract interpretation.
08 The primary rule therefore says that we have to look
09 at the text of the agreement to interpret the text, and
10 if we do that, if we look at the text of the Sembi
11 Agreement, for example, article 4 of the Sembi
12 Agreement, we see that Mr Obradovic agrees to transfer
13 the Privatization Agreement and do all such things as
14 may be necessary to effectuate the transfer.
15 Such obligations, the way they are formulated, fully
16 correspond to the main obligations of the assignor under
17 the Assignment Agreement, according to the general rules
18 of the Serbian Law on Obligations. Therefore, this is
19 why I interpreted this article 4 as being an attempt to
20 assign the Privatization Agreement.
21 However, such an attempt to assign the Privatization
22 Agreement could not be successful because it is in
23 contravention of Article 41ž of the Law on Privatization
24 from 2001, which article states that in order for an
25 assignment of the privatization agreement to be valid,

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01 there needs to be a prior consent of the Privatization
02 Agency, prior meaning before the agreement is entered
03 into.
04 Here, there was no such prior consent of the
05 Privatization Agency, and therefore, my conclusion was
06 that such an agreement cannot exist, and such
07 obligations of Mr Obradovic never came into existence,
08 were not created.
09 However, Mr Grušić claims that article 4 of the
10 Sembi Agreement should be interpreted differently, that
11 it was actually a preliminary agreement, creating an
12 obligation of Mr Obradovic to subsequently enter into an
13 assignment agreement. Even if this were the case, this
14 obligation would be treated as an obligation in the
15 state of coming to existence. In German, we would say
16 a *Schwebend unwirksame pflicht*. So it is an obligation
17 in the state of coming into existence, it has not yet
18 arisen, it has not yet been created, but can be created
19 if the condition precedent, and this condition precedent
20 is the prior consent of the Privatization Agency, which
21 has to happen before the conclusion of the subsequent
22 assignment agreement, occurs.
23 Unfortunately, in the present case, the prior
24 consent of the Privatization Agency never was obtained,
25 so that the obligation that was in the state of coming

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01 to existence never came to existence, and therefore the
02 obligation of Mr Obradovic to assign the Privatization
03 Agreement could not have been enforced against him. So
04 it was not created, it did not exist, and could not have
05 been enforced against him.
06 This is what I wanted to explain, that the outcome
07 in both cases is actually the same.
08 The second issue I wanted to raise regards the
09 transfer of shares under the Sembi Agreement. Again, if
10 we look at the text of the agreement, we see that
11 Mr Obradovic, according to article 4 of the Sembi
12 Agreement, undertook an obligation or agreed to transfer
13 any assets which in particular mean shares in the
14 company BD Agro together with contract assignment,
15 together with assignment of the Privatization Agreement.
16 From this provision, I draw the conclusion that
17 transfer of shares was meant to happen, or the
18 interpretation of the contract leads us to conclude that
19 transfer of shares was only meant to happen together
20 with contract assignment and not independently thereof.
21 Nevertheless, the Claimants' expert, Mr Grušić,
22 claims that this was not the idea, this was an
23 independent obligation, and now I will just give a brief
24 analysis, if we were to accept the qualification given
25 by Mr Grušić that this was indeed an independent

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01 obligation, I will now explain how that would work out.
02 If this obligation to transfer the shares was meant
03 as an obligation to transfer the shares, as it is
04 formulated, then under Serbian law, that would be
05 a contract creating an obligation to transfer the shares
06 for a certain price, which is what the Sembi Agreement
07 says.

08 However, an obligation to transfer the shares in
09 such a contract for a certain price would qualify as
10 a sale of securities, trade in securities, which means
11 a contract creating an obligation to transfer shares for
12 a certain price.

13 The sale of securities, the contract containing an
14 obligation to transfer securities was against overriding
15 mandatory rules of Serbian law which is confirmed also
16 by the Claimants' expert report, Mr Grušić, and namely
17 that such a contract to transfer shares in an open joint
18 stock company concluded outside the stock exchange is
19 null and void. Therefore, such an obligation cannot
20 exist, and cannot be enforced against Mr Obradovic.

21 That is the second point I wanted to raise with
22 regard to the transfer of shares.

23 The Tribunal should also bear in mind that if we
24 have a contract containing an obligation to transfer the
25 shares, under Serbian law, only one additional step

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01 would be needed to effectuate the transfer, that means
02 to perform that obligation, the obligation to transfer
03 the shares is effectuated or performed by initiating the
04 transfer in the Central Securities Registry, so the
05 seller, here Mr Obradovic, would have to initiate the
06 transfer in the Central Securities Registry and the
07 transfer is effectuated or performed, the obligation is
08 performed when there is a change in the accounts held by
09 the Central Securities Registry, from the account of the
10 transferor to the account of the transferee, the shares
11 have to move from that account to the other account, and
12 then we say that the seller fulfilled his obligation,
13 the transfer was performed.

14 Now, since all this could not happen, the transfer
15 could not be initiated before the Central Securities
16 Registry on the basis of the Sembi Agreement, the
17 Claimants' expert, Ms Tomic Brkušnin, claims that the
18 Sembi Agreement in this part should qualify as
19 a preliminary agreement where the parties contemplated
20 concluding other transactions, further transactions,
21 meaning that they wanted to subsequently enter into the
22 main agreement on sale, the sale purchase agreement.

23 The way that may be perhaps most convincing for the
24 Tribunal that she offers is the block trade. The block
25 trade transaction, and this is what the Tribunal should

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01 have in mind, the block trade transaction is not an
02 exception to the rule that trading shares in an open
03 joint stock company has to be concluded over the stock
04 exchange, that means during the stock exchange session.
05 A block trade transaction is actually confirming the
06 rule, because a block trade transaction has to be
07 concluded during the stock exchange session, at the
08 stock exchange.

09 What happens in a block trade transaction? In
10 a block trade transaction, the parties have
11 a preliminary agreement, before giving orders to their
12 brokers at the stock exchange, they have a preliminary
13 agreement to co-ordinate their orders, to order, for
14 example the seller should give an order to sell
15 a specific amount of shares for a specific price, and
16 the buyer should give his order to the same or the other
17 broker and specify the same amount of shares for the
18 same price, and they have a preliminary agreement to do
19 that. And after that, then comes the main agreement,
20 the main sale Purchase Agreement, which is called the
21 block trade transaction, and is concluded at the stock
22 exchange session, provided that all the requirements
23 under the BSE rules, that is the Belgrade Stock Exchange
24 rules, are fulfilled.

25 However, in the present case, the requirements for

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01 effectuating such a preliminary agreement, for
02 performing such a preliminary agreement over the stock
03 exchange through a block trade transaction were not
04 fulfilled, and now, Ms Tomic Brkušnin is also aware of
05 this fact, and she now claims that the board of
06 directors of the Belgrade Stock Exchange could have
07 amended the requirements on an ad hoc basis, and
08 I remember her saying that then the board of directors
09 had full discretion, that was the answer to the
10 Tribunal's question, if I remember correctly.

11 I completely disagree with what she said.
12 I consider this ... I do not consider this, I know that
13 this is illegal.

14 First of all, the Belgrade Stock Exchange is a joint
15 stock company under Serbian law, it is not a state body,
16 it is a market participant.

17 Second of all, the Belgrade Stock Exchange is
18 regulated currently by the Law on Capital Markets and
19 the Law on Capital Markets regulates the stock exchange,
20 which is a regulated market, as a market which operates
21 under its objective, which means non-discretionary
22 rules.

23 The Belgrade Stock Exchange would violate the very
24 nature of a stock exchange if it changed the
25 requirements on an ad hoc basis, thus treating market

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01 participants differently on a case-by-case basis.
02 Therefore, I cannot comment if the Belgrade Stock
03 Exchange did that, I don't see that the annex Ms Tomic
04 Brkušanić provided proves her point, but if such
05 practice did exist, it was illegal and it stopped. The
06 Belgrade Stock Exchange, after amendments, there is no
07 longer a provision in the rules that this can be done,
08 so obviously it was warned that such practice was
09 illegal.
10 And the second thing that arises also --
11 THE PRESIDENT: I am looking at the clock. It is true that
12 as a rule, as per the procedural order it is ten
13 minutes, but now you are well beyond, so I am not
14 cutting you off, I am just saying it would be good if
15 you get to a conclusion.
16 A. This will be the last point actually. The last point
17 I wanted to say, and nobody raised that unfortunately in
18 the expert reports, is the way the price was agreed
19 under the Sembi Agreement. It was not agreed that the
20 price would be transferred to the seller in exchange for
21 the shares, but differently, there were some other
22 stipulations that some debts would be assumed,
23 et cetera, et cetera. If we conclude a share purchase
24 transaction, and that is a block trade transaction, over
25 a stock exchange, that would mean that the seller would

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01 be under an obligation to transfer the shares over the
02 accounts in the Central Securities Registry, whereas in
03 exchange thereof, the buyer would have to transfer the
04 price, because the Central Securities Registry would
05 only execute the stock exchange transaction on
06 a so-called DVP basis. DVP principle means delivery
07 versus payment.
08 So the Central Securities Registry, when deciding to
09 settle the transaction, this is what the term is used in
10 the Capital Markets Law, when the Central Securities
11 Registry settles the stock exchange transaction, it
12 checks whether the seller has the required amount of
13 shares on his account, and whether the buyer has the
14 required amount of money on his account, in order to do
15 that in exchange and not to damage. For example, if the
16 Central Securities Registry transferred the shares
17 without the money coming to the seller, that would not
18 work.
19 So in my opinion, and this is my conclusion, the way
20 the price was agreed upon under the Sembi Agreement
21 clearly shows that the parties never intended to execute
22 this agreement through a stock exchange transaction.
23 THE PRESIDENT: Thank you.
24 DR DJERIC: Thank you, Mme President.
25 THE PRESIDENT: Let me turn then to Claimants' counsel.

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01 MR PEKAR: Thank you, Mme President.
02 Cross-examination by MR PEKAR
03 Q. Good morning, Professor Radović.
04 A. Good morning.
05 Q. My name is Rostislav Pekar, I am counsel for the
06 Claimants and I will be asking you a few questions about
07 your expert reports, and also about a few documents that
08 you have probably seen when you were getting ready to
09 prepare the report.
10 I would first just have one clarification question
11 on the presentation that you have just given. At the
12 very beginning, you were asked about the remedies which
13 are available under Serbian law in case of breach of
14 a privatization agreement, and I just wanted to know
15 whether under Serbian law it would be possible to agree
16 on what is called sometimes liquidated damages,
17 sometimes contractual penalties; are you familiar with
18 this concept?
19 A. Yes, under Serbian law, there is a possibility to --
20 I am sorry if I am using German terminology, because it
21 more resembles the Serbian terminology, because we are
22 both civil law systems. So the parties could conclude,
23 for example, an obligation to pay out -- that would be
24 called like a penalty, a Vertragsstrafe, contractual
25 penalty, so the amount of money to compensate that is

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01 presumed to correspond to the damages suffered.
02 Q. Would it be possible for the Privatization Agency to
03 agree in the agreement that, for example, in case of
04 violation of article 5.3.4, there is a contractual
05 penalty, I don't know, in the amount of the purchase
06 price, or €1 million, or some discretionary amount of
07 that type?
08 A. Well, the idea behind such a contractual penalty, if you
09 call it that way in English, the idea is that this is
10 a presumed amount of damages, but if a person cannot
11 suffer damages I do not see how such a provision could
12 be upheld, because we cannot presume that the
13 Privatization Agency suffered the damages, where this is
14 impossible to presume.
15 Q. So your answer is no, it would not be possible?
16 A. I do not think that would be possible but I am not
17 now -- I am trying to think of whether there are cases
18 that decided on this issue, but from the logic of the
19 penalty -- anything can be agreed upon, if that is what
20 you are asking, but the question is whether that would
21 succeed before a court.
22 Q. Then I have also one preliminary question, obviously we
23 will return to all of these issues later, but is the
24 Sembi Agreement governed by Serbian law?
25 A. The Sembi Agreement, I am sorry, I have to first give

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01 a short explanation of my competences. I am not an
02 expert in private international law, and in my reports,
03 I did not give an opinion on the applicable law to the
04 agreement. I was instructed by the legal
05 representatives of the Respondent to give my opinion on
06 the basis of Serbian law. I know that there is
07 a provision in the agreement saying that this agreement
08 is governed by the Cypriot law, and I did not go into
09 that. I just provided analysis on the basis of Serbian
10 law, as I was instructed, and this is for other persons
11 to explain.
12 Q. When you used the Serbian rules of contract
13 interpretation to the interpretation of the Sembi
14 Agreement, that also stems from the instruction that you
15 received to apply Serbian law, correct?
16 A. Could you please repeat, I am sorry?
17 Q. You apply Serbian laws of contract interpretation to
18 your interpretation of the Sembi Agreement, correct?
19 A. Yes, I did that, for two reasons, as I said: because
20 I was instructed to do that, to give my analysis on the
21 basis of Serbian law; and second of all, now in my reply
22 to the second expert report of Mr Grušić I did that
23 because he quoted Article 99 of the Law on Obligations,
24 but only partially, he quoted paragraph (2) and said
25 something, so I wanted to reply and say that there is

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01 also paragraph (1) of the same article, which is the
02 primary rule on contract interpretation. So this was
03 a reply to the second expert report of Mr Grušić.
04 Q. Now let's clarify one issue which actually may be quite
05 important for this arbitration. Please go to page 14,
06 footnote 41 of your first report. In this footnote, you
07 quote Article 41a of the Law on Privatization, correct?
08 A. I am sorry, you said page 41?
09 Q. No, page 14, footnote 41.
10 A. Yes.
11 Q. In this footnote, you quote the Law on Privatization,
12 Article 41a, correct?
13 A. Yes.
14 Q. This is the version of Article 41a which is applicable
15 to this dispute, correct? Sorry, to the dispute
16 regarding termination of the Privatization Agreement
17 between the Privatization Agency and Mr Obradovic, which
18 is the subject matter, among others, of this
19 arbitration.
20 A. Yes, it doesn't say here with which amendments this
21 law -- but it seems that this is the article, because
22 I don't know in this CE-220 whether the law including
23 amendments just from 2005 is the one reproduced, but it
24 seems that it is --
25 Q. Professor Radovic, you quoted it in your opinion because

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01 when you were preparing the opinion you probably looked
02 at these issues?
03 A. Yes. Yes.
04 Q. CE-220 is a translation submitted by the Claimants,
05 there also is a competing translation submitted by
06 Respondent, it's RE-136.
07 A. Okay.
08 Q. I would ask you to review the English translation there,
09 you can just concentrate on the first two lines, what
10 I would call, if I can reciprocate for your use of
11 German, I would use a bit of French, the chapeau.
12 A. This is also okay.
13 Q. "The agreement on sale of the capital or property is
14 deemed terminated for non-performance, if the buyer,
15 even within the additional deadline, fails to remedy his
16 breach of contract regarding:"
17 Just these two lines. Now I would ask you to look
18 at the Serbian original, maybe we can leave the English
19 version on screen, and you can look at the Serbian
20 original in your hard copy. Again, just the first two
21 lines.
22 A. Yes.
23 Q. Does the Serbian original include the words "fails to
24 remedy his breach of contract regarding"?
25 A. No, but if I may just clarify, if I were to leave out

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01 that part, then it would turn out that the article --
02 just by looking at paragraph one, this first sentence,
03 and point (3), it would seem this way: "The agreement on
04 sale of the capital or property is deemed terminated for
05 non-performance, if the buyer, even within the
06 additional deadline, disposes of the property of the
07 subject of privatization contrary to provisions of the
08 agreement", and that would be completely out of context
09 and completely in contradiction to the vast Serbian
10 judicial practice, and this is why I included this part
11 in order to clarify what this means.
12 The idea is certainly not that only within the
13 additional deadline the buyer should refrain from
14 disposing with the property of the subject of
15 privatization contrary to provision, the idea is to
16 remedy the breaches. And that is why this is included,
17 because I was only focusing on point (3).
18 Of course, this part could be left out if we only
19 focused on point (1), if the buyer did not pay the
20 stipulated price, that would be the literal translation
21 of point (1), if the buyer didn't invest into the
22 subject of privatization, and then point (3) says
23 "disposes of the property" which would mean that if the
24 buyer even in the additional deadline given to him
25 disposes of the property, that would be completely

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01 illogical, and this is why I included this, because
02 I focused -- and in my expert report, I think I quoted
03 just point (3), so that is why, to make a complete
04 sentence.
05 Q. Professor Radovic, did you prepare the translation
06 RE-136?
07 A. I don't remember, but I approved it.
08 THE PRESIDENT: Would you mind if we asked the interpreters
09 to just look at the Serbian original and give us their
10 interpretation?
11 THE INTERPRETER: I am now looking at Article 41a in
12 Serbian. The article says:
13 "An agreement on sale of capital or property shall
14 be deemed terminated for non-performance if, within the
15 additionally granted deadline for performance, the
16 buyer" and then a colon, and then it lists the reasons.
17 THE PRESIDENT: Can you translate reason (3)?
18 THE INTERPRETER: "Disposes of the assets of the
19 privatization entity contrary to provisions of the
20 agreement".
21 THE PRESIDENT: Fine. So if I understand this correctly,
22 it's in line with the Respondent's translation.
23 MR PEKAR: Claimants'.
24 THE PRESIDENT: Which you consider not to reflect at least
25 the meaning of the provision because the disposition is

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01 to be remedied within the deadline and does not occur
02 within the deadline, do I understand this correctly?
03 A. Sorry, I am looking at RE-136, right? This is the
04 document we are now looking at, the translation?
05 THE PRESIDENT: No, I have listened to the interpreters,
06 I understand the interpreters to give a meaning that is
07 closer to RE-136.
08 MR PEKAR: No, the other way around.
09 THE PRESIDENT: Maybe counsel can help me.
10 MR PEKAR: Yes, Mme President. The interpreters were
11 reading the Serbian original, from RE-136, this is the
12 Serbian document. They confirmed that the words "fails
13 to remedy his breach of contract" are not there. This
14 is the translation, the incorrect translation in RE-136,
15 which we have on screen right now.
16 THE PRESIDENT: Yes.
17 MR PEKAR: Now we will put on screen Claimants' translation
18 in CE-220, which is also the translation that
19 Professor Radovic referred to in footnote 14 of her
20 report, and which is --
21 THE PRESIDENT: The one which she considers correct? Well,
22 you can say.
23 MR PEKAR: But this is the one that the interpreters
24 consider correct, let's say.
25 DR DJERIC: I am sorry, then this is the one that

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01 Professor Radovic was using, so I am not sure --
02 A. I am using the original in Serbian, I am sorry, I am not
03 even reading these translations. So we can read this:
04 "The agreement on sale of the capital or property
05 shall be deemed terminated due to non-fulfillment, if
06 the buyer, even within an additionally granted term for
07 fulfillment: ...
08 "(3) disposes of the property of the subject of
09 privatization contrary to provisions of the agreement."
10 The way this is formulated is completely different
11 from the meaning of this article, the way this is
12 written here. The meaning is not that within the
13 additional deadline the buyer should not make new
14 dispositions, I mean, this was not the idea here, that
15 would not be the grounds for termination. If the buyer,
16 in the additionally granted term, disposed of some new
17 property, then there would have to be set a new
18 additional deadline to remedy that breach. I do not
19 know -- do you understand what I am trying to say?
20 THE PRESIDENT: It is clear that's what I had understood.
21 Maybe I have not well expressed it.
22 MR PEKAR: However, this is what corresponds to the Serbian
23 original, right? Word by word, this is a literal
24 translation of the Serbian original, correct?
25 A. Yes.

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01 Q. Professor Radovic, do you agree with me that Article 41a
02 sets out a two or more step process for termination of
03 a privatization agreement by the Privatization Agency
04 due to non-fulfilment of one or more of the buyer's
05 obligations?
06 A. Could you please repeat the question? I did not hear
07 the beginning.
08 Q. Article 41a sets a two-step process for termination,
09 correct?
10 A. Yes. I mean, which two steps? First they shall
11 identify the breach --
12 Q. Professor Radovic, I think it will be easier for this
13 cross-examination if you let me talk until I ask
14 a question, and then answer my question.
15 A. Yes, just please be precise.
16 Q. I promise that my questions will be very easy to be
17 answered with a yes or no. Obviously, if you want to
18 elaborate, you are free to do so.
19 So you wanted me to explain the two processes, the
20 two steps in the process. The first step is that the
21 Agency ascertains something which the Agency believes is
22 a breach, and the Agency must give an additional term
23 for fulfilment of the unfulfilled obligation, correct?
24 A. That's correct.
25 Q. In the second step, at the end of that period the Agency

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01 must look whether (1), (2), (3), (4), (5), (6) of
02 Article 41a is met with respect to the situation which
03 it previously identified as a potential breach of the
04 Privatization Agreement or the provisions of the Law on
05 Privatization.
06 A. After this first step, the Agency would have to satisfy
07 itself that the buyer actually remedied the breach
08 within this additionally granted term.
09 Q. Does Article 41a use the word "remedy" in any of its
10 terms?
11 A. No, but legislation under Serbian law is not merely
12 interpreted by using textual interpretation. We use
13 also many other means of interpretation. So the Serbian
14 judicial practice unequivocally interpreted this article
15 the way I am just presenting it to the Tribunal.
16 Q. Article 41a does not give the Privatization Agency the
17 right to request that the buyer perform a specific
18 remedy in addition to fulfilling the unfulfilled
19 obligation, does it?
20 A. Excuse me, what type of remedy? Could you please repeat
21 again?
22 Q. Article 41a does not give the Privatization Agency the
23 right to request that the buyer perform a specific
24 remedy in addition to fulfilling the unfulfilled
25 obligation, does it?

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01 A. In addition to fulfilling, there is no need to do
02 anything else.
03 THE PRESIDENT: I think the word "remedy" was used in the
04 same sense like cure, that within the additional time
05 limit the buyer cured the breach.
06 A. If the buyer cured the breach within the additional
07 deadline, that would be enough.
08 MR PEKAR: Would you also agree with me that another way to
09 put it is that in the additional deadline, the buyer
10 must fulfil the unfulfilled obligation?
11 A. Yes.
12 Q. So I will give you a hypothetical example. Let's say
13 that the Agency establishes that the last instalment of
14 the purchase price was not paid, that would be
15 a non-fulfilment of a contractual obligation to pay the
16 purchase price, correct?
17 A. Yes.
18 Q. Now to use the language in the chapeau of Article 41a,
19 the Privatization Agency must give the buyer an
20 additional term for fulfilment of that obligation,
21 correct?
22 A. Yes.
23 Q. And then, to use the language of Article 41a(1), if the
24 buyer fails to pay by the end of the additional term for
25 fulfilment of the payment obligation, the privatization

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01 agreement is terminated ex lege, correct?
02 A. That is correct.
03 Q. Can the Agency insist that the buyer prove the payment
04 by providing an auditor's report confirming the payment
05 rather than, for example, simply sending a statement
06 issued by the buyer's bank showing that the amount of
07 the last instalment was transferred to the Privatization
08 Agency's account?
09 A. The creditor must satisfy itself that the debtor
10 fulfilled the obligation. This is not even regulated
11 under the general contract law. If you are asking me
12 whether -- if the creditor is not convinced whether the
13 debtor should convince him in some additional manner,
14 I would say that if a dispute here arises, that would
15 have to be settled by a court, under this Article 41a
16 this is not prescribed, but it is also not prescribed
17 under the general contract law.
18 Q. Would you agree with me that if the amount was sent to
19 the Privatization Agency's account, then the
20 Privatization Agency ipso facto knows that the payment
21 was made?
22 A. Yes, I would agree.
23 Q. Therefore, can you answer my question whether the Agency
24 could actually insist that this is not enough and we can
25 terminate simply because an auditor's report was not

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01 sent to us which would confirm the payment?
02 A. I do not think that would be necessary to insist on
03 that, if the Privatization Agency received the money.
04 Q. If the Privatization Agency terminated on the basis that
05 it did not receive an auditor's report but having
06 received the money, that would be an unlawful
07 termination, would it not?
08 A. That is for the court to decide, the Commercial Court to
09 decide. There are many different aspects of examining
10 whether termination was justified or not.
11 Q. Would you agree with me, Professor Radovic, that what
12 Article 41a requires the Privatization Agency to do is
13 to check at the end of the additional term whether the
14 reason for termination identified in the Privatization
15 Agency's notice granting that additional term is still
16 present, correct?
17 A. Whether the breach established during the term of the
18 contract was remedied?
19 Q. No, is still present.
20 A. Is still present. Yes, this is what the Agency should
21 determine.
22 Q. Professor Radovic, can the Privatization Agency
23 terminate the agreement if the unfulfilled obligation
24 which led the Privatization Agency to grant the
25 additional term ceased to apply in the meantime before

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01 the end of the additional term?
02 A. The relevant moment for looking at this matter is when
03 the breach happened. To my understanding, in the
04 present case, the breach due to which the agreement was
05 terminated happened when this obligation was still
06 existent and in force between the parties, so this
07 breach needs to be remedied. This was not a subsequent
08 breach, after the term of the agreement, but during the
09 term of the agreement. This is how I understood the
10 facts of the case.
11 Q. I believe, Professor Radovic, that we established
12 a while ago that what the Privatization Agency has to do
13 is to look at whether the breach or the unfulfilled
14 obligation is still present, but I will give you
15 a hypothetical which may clarify my point.
16 So let's assume again that we have the situation we
17 had before, there's only one violation, the last
18 instalment of the purchase price was not paid. The
19 Privatization Agency provide an additional term of
20 90 days. And then in the meantime, the Privatization
21 Agency and the buyer actually agreed that the
22 Privatization Agency would waive the last payment, so
23 the contract changes, and the non-payment of the last
24 instalment, which was a violation of the contract as it
25 stood at the time when the payment was to be performed,

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01 is suddenly no longer a violation of the privatization
02 agreement, because the privatization agreement changed,
03 and the payment is no longer required.
04 Can the Privatization Agency terminate the agreement
05 in this hypothetical scenario?
06 A. From a contractual law perspective, the Agency could not
07 terminate the agreement because it waived its rights.
08 However, I cannot imagine this case happening in
09 practice, because the Privatization Agency has certain
10 duties. It needs to either complete a certain
11 privatization process successfully or terminate the
12 contract. These are two ways of ending this whole
13 situation, and the Privatization Agency does not have
14 authority, this is not within her tasks she was set upon
15 to fulfil, when she was established, it is not within
16 her powers to let go of a particular contract, to forget
17 about it, to waive rights, this is something -- but
18 strictly looking from a contractual law perspective, if
19 one contractual party waives its rights, it's done.
20 Q. If the rights cease to apply by operation of the
21 contract, hypothetically, could then the Privatization
22 Agency still terminate for unfulfilment of an obligation
23 which does not exist as of the moment of the potential
24 termination?
25 A. I am sorry, there are so many "ifs", can you please

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01 repeat the "if" question?
02 Q. Yes, hypothetically --
03 A. Yes, I understand this is hypothetical.
04 Q. The Privatization Agency identifies a breach. On the
05 terms of an obligation which ceases to -- no, let's wait
06 until we discuss specifically about article 5.3.4, that
07 will be easier.
08 MR VASANI: Can I just interject, Mme President, one
09 question? I was interested when you say that the
10 Privatization Agency couldn't waive a breach, it's not
11 within their duties. What if it's genuinely better for
12 the privatization goals as a whole to waive a breach?
13 In other words, if you waive the breach and move
14 forward, privatization goals are met better than if you
15 insist on the breach. Could the Privatization Agency
16 waive under those circumstances?
17 A. I really cannot think of a situation where this would
18 apply, because breaches that are listed here in
19 Article 41a are all very significant obligations that
20 serve to meet the goals of privatization, so I cannot
21 think of -- the only way to discuss this matter is if
22 the Privatization Agency is convinced that a certain
23 breach is only an insignificant breach. Otherwise,
24 I cannot imagine such a scenario that you are talking
25 about.

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01 MR PEKAR: Let's now look at Article 41 of the Law on
02 Privatization, paragraph one. It states:
03 "Agreement on sale of capital or property shall
04 contain the provisions indicating the following:"
05 And then we have the, how would I call it, mandatory
06 terms of such an agreement, correct, after the colon?
07 Contracting parties, subject of sale --
08 A. Yes, but it is an open list.
09 Q. At the end actually we have "and other provisions agreed
10 upon by the contracting parties".
11 A. Exactly, yes.
12 Q. The other provisions which are not required but optional
13 may also include provisions limiting the buyer's
14 disposal of the property of the privatized company,
15 correct?
16 A. Just a second, please. (Pause). Yes, which
17 dispositions of the property are prohibited, yes, also
18 can be included in the contract.
19 Q. Are the Privatization Agency and the buyer free to agree
20 that breaches of such contractually agreed limitations
21 would not constitute grounds for termination of the
22 privatization agreement?
23 A. No, you are not looking at the relevant article here,
24 you are looking at Article 41, whereas grounds for
25 termination are prescribed by Article 41a of the Law on

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01 Privatization, and this is the provision applicable
02 here --
03 Q. Let's put it on the screen.
04 A. -- for grounds for termination. If you are asking about
05 termination, the applicable provision would be in
06 Article 41a, and not in Article 41.
07 Q. So let's look at Article 41a, and I believe that you
08 refer here to point (3):
09 "Disposes of the property of the subject of
10 privatization contrary to provisions of the agreement."
11 A. Yes.
12 Q. Article 41a(3) refers to the provisions of the
13 privatization agreement in plural, correct?
14 A. Provisions in the plural? Yes.
15 Q. Shouldn't the use of plural be read as reference to the
16 entirety of the agreement, rather than a reference to
17 each individual provision in isolation from the other
18 terms of the privatization agreement?
19 A. Yes, all provisions that prohibit dispositions of the
20 property.
21 Q. That was not my question. I was not limiting my
22 question just to provisions limiting disposition of
23 property, my question related to the entirety of the
24 provisions of the privatization agreement. Would you
25 agree that proper application of Article 41a(3) requires

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01 the Privatization Agency to look at the entirety of its
02 own agreement?
03 A. Only the entirety with regard to prohibited dispositions
04 of the property. Point (3) reads:
05 "Disposes of the property ... contrary to provisions
06 of the agreement."
07 Which means if disposition is contrary to provisions
08 of the agreement, that is what is meant, so only
09 provisions of the agreement regulating prohibited
10 dispositions should be consulted.
11 Q. Does Article 41a(3) state so?
12 A. In my opinion, yes.
13 Q. Can you point me to the specific words in
14 Article 41a(3)?
15 A. I just read them, point (3):
16 "Disposes of the property of the subject of
17 privatization contrary to provisions of the agreement."
18 This is what your translation says.
19 Q. The term "provisions of the agreement" at the end of
20 that sentence is not qualified in any way, is it?
21 A. It is qualified by the beginning of the line, "disposes
22 ... contrary to provisions of the agreement".
23 Q. Well I would say actually that from a grammatical
24 perspective, the "provisions of the agreement" connects
25 to "disposes" in the sense that it modifies or explains

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01 the "disposes" but we are not here to discuss
02 linguistics.
03 MR VASANI: Can I ask one more question? As I understand
04 your opinion, there need not be provisions in the
05 agreement in relation to disposal of property in order
06 for there to be a mandatory requirement for there not to
07 be disposal of the property, because it's in the
08 Privatization Law, am I understanding that correctly?
09 A. These were standard contractual terms, so this was
10 already included in the standard text of the contract.
11 I do not know of any privatization agreement that did
12 not have provisions restricting dispositions of
13 property, because these are very important provisions
14 protecting the fixed assets, the asset base of the
15 company, and therefore I cannot imagine this happening,
16 I guess.
17 MR VASANI: Right, but as I had understood, reading your
18 opinion, whether it was in the contract or not
19 ultimately didn't matter for their obligatory nature?
20 A. Could you repeat? I didn't understand what you asked.
21 MR VASANI: I had understood that these provisions, all of
22 them, that we are looking at, are mandatory in relation
23 to obligations of the buyer.
24 A. Exactly, these are mandatory provisions.
25 MR VASANI: And whether they are repeated or not in the

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01 contract is not relevant to their mandatory nature in
02 relation to the buyer.
03 A. That is completely correct. There is only point (7) in
04 Article 41a that gives the contracting parties the right
05 to create some additional grounds for termination, but
06 grounds for termination that are mandatorily prescribed
07 are the ones from point (1) to point (6)(a). This
08 prevails over contractual provisions, these points.
09 MR PEKAR: Now let's please look at article 5 of the
10 Privatization Agreement, it's CE-017. 5.3, please.
11 These are further obligations of the buyer. Just
12 a small question, Professor Radovic, did the
13 Privatization Agreement prevent Mr Obradovic from buying
14 land from BD Agro?
15 A. To buy land from BD Agro?
16 Q. Yes.
17 A. Well, there were some restrictions on that possibility.
18 Q. Which restrictions do you have in mind?
19 A. Article 5.3.3.
20 Q. "The buyer will not sell, assign or otherwise alienate
21 any of the fixed assets" within certain limits?
22 A. Yes.
23 Q. So within the limits set within this paragraph,
24 Mr Obradovic was able to buy land from BD Agro?
25 A. Okay, this is now a much wider question than you are

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01 asking, namely Mr Obradovic was a controlling
02 shareholder of the company. Controlling shareholders of
03 a company, under the Serbian Companies Act, have
04 specific duties towards the company, and their contracts
05 with the company are under scrutiny, whether for example
06 the duty of care, the duty not to be in a conflict of
07 interest, et cetera, are met. So this whole transaction
08 would fall under the scope of the law on companies, and
09 it depends, this is why I cannot give a decisive answer,
10 but if everything is under market terms, the assets were
11 bought for a price that is a fair market price, and it
12 comes within these limits here, then I would say this is
13 allowed, sale of assets, yes.
14 Q. Then article 5.3 also states the time period during
15 which each of the obligations that it sets out must be
16 fulfilled, correct?
17 A. Yes.
18 Q. So in 5.3.1, we say the sales limitation with respect to
19 shares is for the period of two years; in 5.3.2, we have
20 a business continuity requirement for two years; in
21 5.3.3, we have until payment of the entire sale and
22 purchase price; and in 5.3.4, we have during the term of
23 the agreement, correct?
24 A. Correct.
25 Q. So now let's focus on 5.3.3, since we mentioned that.

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01 That obligation ceases to apply when the purchase price
02 is paid in full, correct?
03 A. This article 5.3.3 differentiates between two
04 situations, but if you are referring to the first
05 paragraph of this provision, yes, that is correct, until
06 the payment of the purchase price in full, but there is
07 a separate paragraph -- okay.
08 Q. In the separate paragraph, it is one year after
09 conclusion of the agreement in case the purchase price
10 was paid in one instalment upon conclusion of the
11 agreement.
12 A. Yes.
13 Q. Are you aware, Professor Radovic, that the purchase
14 price was paid in full on 8th April 2011?
15 A. I didn't question that, it was an information given to
16 me.
17 Q. Therefore, after the date, neither the Privatization
18 Agreement nor the Law on Privatization prevented BD Agro
19 from selling all of its assets, correct?
20 A. The agreement did not prevent him, after that, to sell
21 the assets.
22 Q. Did the Law on Privatization prevent such a sale?
23 A. No, then if all the -- I am sorry, if all obligations of
24 the buyer were met, then the privatization process is
25 successfully completed, and after that, what happens is

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01 no longer the business of the Privatization Agency.
02 Q. Is it your testimony that the privatization process is
03 always completed upon the payment of the full sale and
04 purchase price?
05 A. No, you misinterpret what I just said. After all
06 obligations of the buyer are fully performed, then the
07 privatization process has been successfully completed,
08 and it is no longer the business of the Privatization
09 Agency to worry about what happens with that company.
10 Q. This is why I ask, because article 5.3.3 is not linked
11 to the successful completion of the privatization
12 process, is it?
13 A. I didn't say that. I said obligations, when they are
14 performed, in accordance with the contract, some
15 obligations are performed earlier, some of them later.
16 It depends on the obligation.
17 Q. If we look at 5.3.3, it means that after the payment of
18 the full purchase price, BD Agro can sell all of its
19 assets regardless of anything else?
20 A. That's correct.
21 Q. Was BD Agro also free to sell assets that had been
22 contributed to BD Agro in fulfilment of the buyer's
23 investment obligation under 5.2.1?
24 A. Could you please repeat the question?
25 Q. Yes. Was BD Agro also free under this provision of

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01 5.3.3 to sell assets that had been contributed to
02 BD Agro in fulfilment of the buyer's investment
03 obligation under 5.2.1?
04 A. Again, it is complicated, the way you are asking me
05 these questions, first of all because we are talking
06 hypothetically, and second of all because --
07 Q. I am not talking hypothetically.
08 A. Because you are saying, is it free. The company is not
09 completely free to do anything or everything, because
10 there is the Law on Companies and the directors cannot
11 enter into any transaction, so it depends on the
12 transaction, we would have to look at the specifics of
13 a particular case. Some transactions need to be
14 approved by the shareholders' meeting of the company.
15 I mean, it depends on the transaction. I do not feel
16 comfortable answering just generally and saying, is it
17 free.
18 As regards the privatization agreement, it is free,
19 after that. As regards other legislation, I am not
20 sure --
21 Q. That was my mistake, Professor Radovic. Please assume
22 all my questions look only at the Privatization
23 Agreement and the Law on Privatization.
24 A. Just be precise.
25 Q. Thank you for that, this is very helpful. Now let's

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01 assume that BD Agro sold all of its assets on 11th April
02 2011. Did the Privatization Agreement and/or the Law on
03 Privatization, just these two, prevent BD Agro from
04 donating the proceeds for a good cause completely
05 unrelated to Serbia?
06 A. I am sorry, what was the date of the subject?
07 Q. 11th April 2011, three days after the payment of the
08 full purchase price.
09 A. If it alienated all the assets?
10 Q. Yes. We already established they were able to sell all
11 the assets, and again, just under the Privatization
12 Agreement and the Law on Privatization, were they able
13 to donate all that money to, I don't know, fight
14 deforestation in sub-Saharan Africa?
15 A. Again, that would be against company law legislation
16 because a joint stock company has a minimum capital
17 requirement, it cannot donate all its assets to somebody
18 else and remain without any assets. So if you are
19 asking me whether the buyer, as the controlling
20 shareholder, could have initiated liquidation of the
21 company after successful privatization, my answer would
22 be, in accordance with company law legislation, probably
23 yes.
24 Q. Professor Radovic, that was not my question at all, and
25 I would kindly ask you to answer my questions.

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01 A. I am sorry, I did not understand the question.
02 Q. My question was: limited, and I think we discussed that
03 before, to the Privatization Agreement and the Law on
04 Privatization, so did the Privatization Agreement and/or
05 the Law on Privatization prevent BD Agro from donating
06 all of the proceeds from this hypothetical sale of its
07 assets to fight deforestation in sub-Saharan Africa?
08 A. The Privatization Agency only had the right to control
09 fulfilment of this obligation until the expiration of
10 the term of this obligation. The obligation,
11 article 5.3.3, paragraph one, says that the term of this
12 obligation lasts until full payment of the purchase
13 price. After that moment, according to the agreement,
14 this was not possible to control.
15 Q. Was it not possible to control, or was it allowed or
16 rather not prohibited by the Privatization Agreement?
17 Those are two different things.
18 A. The Privatization Agency controls breaches and if this
19 obligation was not breached during its term, I do not
20 see what confuses you.
21 Q. Now if you look at 5.3.2, it states the business
22 continuity obligation for two years, correct?
23 A. Yes.
24 Q. So that means that after two years, BD Agro actually
25 could have discontinued its business operations,

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01 correct?
02 A. If you mean it could enter into liquidation so the
03 company would cease to exist, is this your question?
04 Q. No, my question is it could discontinue its business
05 operations, in its main business activity, so
06 agricultural production, for example, it had no
07 obligation to continue with agricultural production
08 after two years.
09 A. Yes, but it could not lead the company to cease to
10 exist, if this is what you are asking. The company
11 needs to exist during the whole term of the agreement
12 because this agreement is the agreement regulating the
13 legal status of the company. The company cannot be
14 liquidated before that, before the agreement ceased to
15 exist.
16 Q. Where is this written, please?
17 A. I am sorry?
18 Q. Where is this written in this agreement?
19 A. It is written -- just a second. In article 2.1 of this
20 Privatization Agreement, it says, "by concluding this
21 contract which has the force of a founding act of the
22 subject of privatization". So it is therefore an act on
23 the basis of which the status of the company is
24 regulated. As long as this act is in force, the company
25 needs to exist.

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01 Q. I am sorry, I somehow don't see it written there.
02 A. Article 2.1.
03 Q. It says:
04 "With conclusion of this agreement, which has the
05 effect of the articles of incorporation of the subject
06 ..."
07 A. Yes, I said a founding act, this is a literal
08 translation given here, "osnivacki akt", founding act or
09 articles of association.
10 Q. "... the buyer acquires the right of management,
11 participation in profit and the right to a part of the
12 liquidation mass, proportionately to the amount of
13 purchased capital. The right to free disposal of
14 purchased capital is acquired by the buyer pursuant to
15 provisions of Article 456 of the Company Law and
16 provisions in the agreement, and in proportion to paid
17 value of sale and purchase price."
18 That's all there is, right, Professor Radovic?
19 A. Yes, I was referring to the first line saying that this
20 agreement has the force or the effects of association
21 agreement of the subject of privatization.
22 Q. So is it then your testimony that BD Agro did not have
23 its own articles of incorporation later on?
24 A. Of course it did. It had to have articles of
25 association. This is why the term you are using is

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01 maybe not the perfect one. This is like a founding act,
02 this is the formulation used in Serbian, and the meaning
03 of that -- this is a general act of the company, such is
04 the understanding.
05 Q. We are in agreement that each liquidated company had
06 a founding act, sometimes at the beginning of its
07 existence, right?
08 A. Yes.
09 Q. So let's go to article 5.3.3. It mentions alienation;
10 how Serbian law defines alienation?
11 A. Alienation means -- just a second, let me concentrate to
12 give you a precise definition. Alienation means to
13 transfer one's ownership rights to another person.
14 I can say if this is precise, I hope it is.
15 Q. Does a pledge constitute an alienation?
16 A. No, a pledge is encumbering assets. Both alienation and
17 encumbrance constitute dispositions of assets.
18 Alienation means the transfer of ownership, and
19 encumbrance means burdening certain assets with, for
20 example, the pledge.
21 Q. Does entering into a call or put option constitute an
22 alienation?
23 A. It depends whether it is a call or a put option.
24 Q. This is interesting actually. So if I as a seller --
25 you state -- so which one is alienation and which one is

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01 not?
02 A. Okay, again, alienation means the transfer of ownership,
03 and the option you are referring to, do you mean the
04 call option or the option contract? This is also
05 different.
06 Q. The contract. The entering. I said entering.
07 A. Into a contract, okay. An option contract is a contract
08 containing an obligation, if it is -- I am sorry, if it
09 is a call option, giving the purchaser the right by
10 unilateral statement of intent to create the share
11 purchase agreement. So if it is a call option, then
12 such an option agreement only creates an obligation on
13 the part of the seller to transfer shares if the other
14 party exercises the call option, but this is again in
15 German Verpflichtungsgeschäft, this is a contract
16 creating obligations. The main contract first has to
17 come into existence. Therefore the call option has to
18 be indeed exercised and then the share purchase
19 agreement comes into existence. After that it needs to
20 be performed.
21 Q. So the alienation would happen at the end?
22 A. At the end, yes. Sorry, just a second, you just
23 highlighted the word, but I forgot to read the whole
24 sentence, I am sorry.
25 Q. Professor Radovic, we are discussing the concept of

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01 alienation under Serbian law in general, we are not
02 specifically talking with 5.3.3.
03 A. Yes, but it needs to be read within this context:
04 "The buyer [shall] not sell ..."
05 This is how the whole sentence begins, "assign"
06 et cetera, which actually means that even the contract
07 creating an obligation to do so, because selling is
08 a contract on sale, so I would just like then to correct
09 myself, because you just highlighted the word
10 "alienate", then even within this context, it would mean
11 also the contract creating an obligation.
12 Q. No, I was asking about alienation in general, so
13 alienation in general, could we agree that it does not
14 include options until they are exercised?
15 A. Yes, but creating an obligation to transfer, if you are
16 the seller under a call option agreement, this already
17 fulfils this scenario given here. Selling means taking
18 on an obligation to transfer and then also a call option
19 agreement means taking on an obligation to transfer if
20 the call option is exercised. However, if it is not,
21 then the obligation is not created.
22 Q. When the Privatization Agency controlled that provision,
23 what did it look at, do you know?
24 A. I'm afraid that the Privatization Agency is a third
25 party with regard to contractual relationships the buyer

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01 enters into, so in my opinion, the Privatization Agency
02 probably would not even know that such a contract was
03 concluded until it is performed, so the only point I can
04 imagine where the Privatization Agency becomes aware of
05 such alienation would be when this was actually
06 performed.
07 Q. But the Privatization Agency could certainly ask to be
08 presented with all sale contracts entered into by the
09 entity, couldn't it?
10 A. Yes, then it would be informed.
11 Q. Do you know whether the Privatization Agency, whether
12 they were asked about sales agreements which were not
13 performed?
14 A. No.
15 Q. Let's now look at document CE-098. The document is
16 called:
17 "Report on the performed supervision of the work of
18 the Privatization Agreement in the case of privatization
19 of the company ... BD Agro Dobanovci."
20 Professor Radovic, are you familiar with this
21 document?
22 A. I don't think I have quoted it in my reports, I am not
23 sure, there is a lot of documents. You can please refer
24 me to a specific --
25 Q. Okay, I will be referring to a specific part. At this

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01 moment, and we will return to the document later, but at
02 this moment, please turn to the last page. In the first
03 paragraph after the bullet points, the document explains
04 that the Privatization Agency had requested instructions
05 and directions for further proceedings, can you see
06 that?
07 A. Just a second, it differs from the Serbian version, just
08 let me find the paragraph. Okay, just let me see it.
09 (Pause). Yes.
10 Q. In the second paragraph, the Ministry of Economy states
11 that "the Privatization Agency is instructed to", and
12 then colon.
13 A. Yes.
14 Q. And the immediately following paragraph speaks of
15 sending a notice to the buyer, can you see that?
16 A. Yes.
17 Q. In the paragraph below, the penultimate paragraph of the
18 entire report, the Ministry of Economy states:
19 "Since the contractual provision 5.3.4 is as
20 follows: 'The Buyer will not encumber with pledge the
21 fixed assets of the subject during the term of the
22 Agreement, except for the purpose of securing claims
23 towards the subject accrued based on regular business
24 activities of the subject, that is, except for the
25 purpose of acquiring of the funds to be used by the

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01 subject', as well as that the longest deadline from the
02 Agreement is set by payment of the sale and purchase
03 price, and that it was entirely paid on April 8th 2011,
04 and interest [was then paid later], limitations from
05 this provision should be considered concluding with
06 April 8th 2011."
07 Can you see that?
08 A. Yes.
09 Q. Do you agree with me, Professor Radovic, that the
10 Ministry of Economy instructs the Privatization Agency
11 that limitations from article 5.3.4 should be considered
12 concluding or concluded with 8th April 2011?
13 A. Yes, this was interpretation of how the law should be
14 applied.
15 Q. And the Ministry's reasoning seems to focus on three
16 things. First, the text of article 5.3.4, right? Then
17 the fact that the longest deadline from the
18 Privatization Agreement was for the payment of the
19 purchase price. And then third, the fact that that
20 payment was made on 8th April 2011, correct?
21 A. Yes.
22 Q. This report, this instruction, I represent to you, is
23 dated 7th April 2015, so that would be at the time when
24 both the Privatization Agency and the Ministry were well
25 aware of the allegations of violation of articles 5.3.4,

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01 5.3.3 and other violations of the Privatization
02 Agreement, correct?
03 A. I am trying to find the date, I am sorry. 7th April
04 2015.
05 Q. Correct. So that would be at the time when the Ministry
06 of Economy was aware of the alleged violations of 5.3.4,
07 5.3.3 and other provisions of the Privatization
08 Agreement by the Privatization Agency? I mean
09 allegations by the Privatization Agency.
10 A. You are now mentioning different violations. In this
11 last paragraph only 5.3.4 is mentioned.
12 Q. Okay, so let's limit it to 5.3.4 then.
13 A. Yes, it was aware obviously.
14 Q. How is the longest deadline from the Privatization
15 Agreement, being the payment of the purchase price, and
16 the fact that that payment was made on 8th April 2011,
17 related to the text of article 5.3.4? You have the text
18 here in the paragraph.
19 A. I hope this corresponds to the agreement. It is related
20 because 5.3.4 is an obligation that should be fulfilled
21 during the term of the contract, and now the Ministry
22 obviously interprets what the term of the contract
23 means, in its opinion.
24 Q. So the Ministry here says that the term of the contract
25 was until 8th April 2011, doesn't it?

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01 A. It is obviously the Ministry's opinion.
02 Q. That was actually the Ministry's instruction to the
03 Privatization Agency, was it not?
04 A. The Privatization Agency is a public service, and in
05 accordance with the law on public services, the Ministry
06 of Economy has the right to steer the work of the
07 Privatization Agency, which actually means to guide her
08 as to how to interpret the legislation and to uniformly
09 apply that legislation so as to treat all participants
10 equally, and this is how I interpret this. So this was
11 an instruction in that respect, an instruction how to
12 interpret the law. Steering the work of the
13 Privatization Agency.
14 Q. Now let's look at document CE-348. This is a letter the
15 Privatization Agency sent to the buyer on 27th April
16 2015, a few days after the Privatization Agency received
17 the document that we have just seen, the report.
18 Professor Radovic, are you familiar with CE-348?
19 A. Just a second, let me see what this is.
20 Q. This is, as I said, a letter that the Privatization
21 Agency sent to Mr Obradovic on 27th April 2015.
22 A. Giving an additional deadline, am I correct?
23 Q. Correct.
24 A. Yes.
25 Q. On the first page we have point (1), where the Agency

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01 says, "In line with the Ministry of Economy's Report of
02 April 7th 2015 [so the document we have seen]", they
03 sent this letter, and then what I am interested in is
04 the first bullet point on page 2, which states that the
05 buyer must:
06 "Fulfil the obligation from Articles 5.3.3 and 5.3.4
07 of the Agreement not later than April 8th ... as well as
08 submit evidence that: all the payments from the sale of
09 fixed assets have been received and used for the needs
10 of the Subject; all burdens have been removed and all
11 other security instruments for third parties have been
12 returned; all burdens registered on no grounds have been
13 removed, and all loans have been returned that were
14 given by the Subject to third parties from credit
15 resources secured by burdens on the Subject's assets."
16 When I read that, I could not figure out how the
17 buyer in 2015 could fulfil the obligations under
18 articles 5.3.3 and 5.3.4 not later than, or concluding
19 with 8th April 2011, as the Privatization Agency seems
20 to require. Do you have a view on this?
21 A. Yes, of course. It is a completely logical
22 understanding that this should be understood as
23 remedying the breaches, which happened before April 8th
24 2011.
25 Q. But this is not what this bullet point states, does it?

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01 A. Again, you are only focusing on the textual
02 interpretation, but the meaning is more important than
03 just looking at these words. It is illogical to think
04 anything else.
05 Q. Professor Radovic, is it your opinion that the request
06 formulated by the Privatization Agency was in accordance
07 with the Law on Privatization?
08 A. Could you please repeat the question?
09 Q. Yes. Professor Radovic, is it your opinion that the
10 request formulated by the Privatization Agency in this
11 bullet point was in accordance with the Law on
12 Privatization?
13 A. How this is formulated -- again, this question does not
14 enable me to answer, because whether such a notice, in
15 such a way formulated notice, can be given an additional
16 deadline with such a notice, of course yes, and now if
17 you are asking me whether these breaches all happened --
18 Q. No, I am asking you whether the notice was in accordance
19 with the Law on Privatization, the request which was
20 made in this notice, this specific request to fulfil the
21 obligation from articles 5.3.3 and 5.3.4 of the
22 agreement not later than April 8th 2011, as well as all
23 the following requirements in that bullet point.
24 A. I would please ask you, because this is a very long
25 paragraph, to be more specific, and to please -- which

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01 part do you think might not be in accordance with the
02 law, and then I can --
03 Q. If you think that it's all fine, then you say it's all
04 fine, and we can move on.
05 A. I am afraid not to skip something, because as I said,
06 it's a long paragraph.
07 Q. If you are not sure, you can answer that you are not
08 sure that it is all fine.
09 A. I would like you to be more specific if possible.
10 Q. My question relates to the entirety of this bullet
11 point.
12 A. This bullet point does not fully repeat the provisions
13 of articles 5.3.3 and 5.3.4 but the way I understand it
14 is that the Agency already informed the buyer of the
15 breaches to which it is now referring, and that this is
16 something that goes without saying which breaches it
17 wants the buyer to remedy, but the formulations in 5.3.3
18 and 5.3.4 of the agreement have not been fully in detail
19 repeated here.
20 Q. Isn't it here that the Agency is requiring the buyer to
21 submit proof that obligations from articles 5.3.3 and
22 5.3.4 had not been breached before April 8th 2011?
23 A. I am sorry, I wanted to open the Privatization
24 Agreement, just give me a second, please.
25 Now, please again the question.

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01 Q. Isn't what the Privatization Agency requires here for
02 the buyer to submit proof that obligations from articles
03 5.3.3 and 5.3.4 had not been breached before April 8th
04 2011?
05 A. No, I would not understand this that way. I would
06 understand this in a way that the Privatization Agency
07 thinks that these obligations were breached, and now
08 wants them remedied, because it says here to delete all
09 pledges, so it wants the buyer to remedy the breach, and
10 not to establish that there was no breach. The
11 assumption, the basis on which this whole paragraph is
12 written, that obligations were breached, and now the
13 remedies are sought. And specific performance is sought
14 or requested.
15 Q. If you focus now on the first part:
16 "Fulfil the obligation from Articles 5.3.3 and 5.3.4
17 of the Agreement not later than April 8th 2011 ..."
18 What does that mean?
19 A. As I said again, if you are looking just word by word,
20 it sounds completely illogical and insane. Of course
21 that the buyer cannot fulfil an obligation not later
22 than 2011 if we are in 2015, so this is not what any
23 sane person would think that the Privatization Agency is
24 requesting. How I understand this is that the
25 Privatization Agency specifies now, in accordance with

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01 the interpretation of the law, the guidance given by the
02 Ministry of Economy, that the buyer could only be in
03 breach with regard to these obligations until 8th April
04 2011. After that, the Privatization Agency would no
05 longer control whether there was an additional new
06 breach, because this is the last date until which -- but
07 however, as I understand in the present case, the
08 breaches did happen, at least I didn't check the facts
09 again, I am an expert on law, but the breaches were
10 established before April 8th 2011. This is how
11 I understand the matter.
12 DR DJERIC: Mme President, if I may just ask my colleague
13 that they project the Serbian version of the text, which
14 might help the expert. I think it is much clearer in
15 the Serbian version.
16 A. It is not a problem, I have the Serbian version --
17 MR PEKAR: The expert is working off the Serbian version
18 already.
19 DR DJERIC: Excellent.
20 MR PEKAR: There is one thing I would like to clarify --
21 THE PRESIDENT: It would be interesting to the Tribunal to
22 understand what the Serbian version says, because it's
23 true that it's very awkward to tell someone that they
24 have to respect something four years earlier.
25 MR PEKAR: Should we ask the interpreters?

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01 THE PRESIDENT: Yes, please.
02 THE INTERPRETER: Can you please repeat the paragraph number
03 we need to look at? Thank you.
04 MR PEKAR: You should look at the first bullet point on
05 page 2, so in Serbian it starts with "ispuniti", in
06 English it starts with "fulfill".
07 THE INTERPRETER: Can we just make sure we understand? You
08 are asking us to interpret into English the provision in
09 the Serbian text, right? Thank you, just a second.
10 (Pause).
11 So:
12 "Fulfil the obligation referred to in articles 5.3.3
13 and 5.3.4 of the agreement not later than 8th April
14 2011, as well as to submit evidence that: all fixed
15 assets that have been sold have been -- money from the
16 sale of fixed assets has been collected and spent for
17 the need of the subject; that all the burdens have been
18 deleted; and all the remaining security assets for the
19 needs of third persons have been returned; that all the
20 burdens registered without a proper ground or for no
21 good reason have been deleted; as well as that all the
22 loans that the subject has given to third parties from
23 the loan funds that have been secured by pledges on the
24 subject's assets have been returned."
25 MR VASANI: Can I ask the interpreter, does the "not later

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01 than" provision of the date better go to the obligation
02 or does it better go to the evidence? That control time
03 period, is it in relation to the obligation or the
04 evidence, or is it ambiguous?
05 THE INTERPRETER: It is connected more to the beginning of
06 the sentence, syntactically speaking, because it goes
07 "comply with the obligation from these articles",
08 literally speaking, it says here "conclusively with
09 8th April", which is the same as "not later than", so
10 yes the date is linked to the beginning "fulfil the
11 obligation", so the date refers to the beginning of the
12 sentence, and the fulfilment of the obligation.
13 DR DJERIC: Mme President, if I may intervene, could we ask
14 the translators to read the sentence as a whole, meaning
15 this is only just one bullet point, which is necessarily
16 connected to the -- well, not the previous paragraph,
17 but to the text before the semi-colon, in the line
18 above. So to read the whole sentence as it stands --
19 THE PRESIDENT: I understand what you want. Yes, we can do
20 that.
21 DR DJERIC: And to say the meaning of the sentence as such,
22 to their understanding.
23 THE INTERPRETER: I can see a colon before the first bullet
24 point, not a semi-colon, so could you please help me
25 locate the line you are referring to?

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01 DR DJERIC: Well, wherever the sentence starts, in
02 paragraph 1, if you read from the very beginning, you
03 probably don't have to translate everything but you
04 translate what you think is necessary, but if you start
05 with number 1, you will have the whole sentence, which
06 finishes with the first bullet point, I would say.
07 THE INTERPRETER: Thank you.
08 "In light of the Ministry of Economy's report on the
09 supervision conducted over the work of the Privatization
10 Agency of 7th April 2015, and in accordance with
11 Article 88 of the Privatization Act, in relation to
12 Article 41a of the Privatization Law, the buyer is
13 granted an extended deadline of 90 days from the receipt
14 of the notification for the submission of evidence on
15 action in line with the agreement on the sale of the
16 socially-owned capital by method of the public auction
17 of the agricultural holding Buducnost Dobanovci and in
18 line with the notification on the additional deadline
19 granted of 9th November 2012, namely to, and then the
20 colon, and then the list of obligations follows."
21 THE PRESIDENT: Yes, the operative language, if I understand
22 it correctly, is "the buyer is granted an extension of
23 90 days for the submission of evidence" and then it says
24 "namely to" and we get to the bullet points. Can the
25 interpreter confirm that this is correct?

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01 THE INTERPRETER: Yes, Mme President, your interpretation of
02 the language is correct.
03 MR PEKAR: Mme President, it might be a good time to break.
04 THE PRESIDENT: Absolutely, yes.
05 Professor Radovic, during the break please do not
06 speak to anyone. You can walk around, but just no
07 communications.
08 A. Thank you.
09 THE PRESIDENT: Good, let's take 15 minutes.
10 (10.38 am)
11 (A short break)
12 (10.55 am)
13 THE PRESIDENT: Mr Pekar, you may continue.
14 MR PEKAR: Thank you, Mme President. Professor Radovic,
15 before the extensive linguistic considerations and
16 questions we were discussing the Ministry's instruction
17 to the Privatization Agency of April 7th 2015, document
18 CE-098, do you recall that?
19 A. Yes.
20 Q. We established that as of that date, the Ministry of
21 Economy believed that the term of the agreement had
22 occurred on 8th April 2011, do you recall that?
23 A. Yes, that was the interpretation of the law.
24 Q. That interpretation was included in the instruction part
25 of the report which was provided to the Privatization

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01 Agency, correct?
02 A. Yes.
03 Q. Now assuming that the Ministry of Economy was right,
04 that would mean that the obligations under article 5.3.4
05 ceased to apply as of 8th April 2011, correct?
06 A. Yes.
07 Q. Now if we look at the text of Article 41a(3), this is
08 CE-220, if we look at the language, would you agree with
09 me that if the Ministry of Economy was right, there
10 could not have been any disposal of the property of the
11 subject of privatization contrary to provisions of the
12 agreement within the additional term which was granted
13 from 27th April 2015 to 27th July 2015?
14 A. That's correct. Such prohibited dispositions needed to
15 happen before 8th April 2011, according to the
16 interpretation given by the Ministry, and these
17 dispositions had to be remedied.
18 Q. Well, we established, I think, at the very beginning
19 that Article 41a does not even include the word
20 "remedy", does it?
21 A. Actually it does, in the sense that in point (1), even
22 within the additional deadline, it doesn't pay, it
23 doesn't invest, it doesn't ensure continuity, but here
24 this was not a negative formulation, therefore it turned
25 out illogical, because it lacks this "it doesn't", and

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01 therefore, as I said, in order not to confuse anybody,
02 the correct interpretation here is that this disposition
03 should be remedied within the additional deadline, and
04 not that within the additional deadline, the buyer
05 should not dispose.
06 I mean, the thing you are advocating, and continuing
07 to explain, is that the buyer could dispose of the
08 property contrary to provisions of the agreement during
09 the entire term of the agreement, and then the
10 Privatization Agency would not have the right to
11 terminate the contract on the basis of that, but even if
12 within the additionally granted term it disposed of the
13 property then it would have the right to terminate on
14 that ground. This is illogical and it is not how
15 legislation was applied in practice.
16 So we also have to look at the judicial practice.
17 The law does not stand in isolation, we do not just look
18 at word by word text, we look at how the courts
19 interpreted this, and it is also the interpretation in
20 accordance with the Law on Obligations, the general law
21 of contracts in Serbia. This provision actually is the
22 reflection of the general provision in the Law on
23 Obligations. This is why it should be understood that
24 way, and it is understood that way.
25 Q. Professor Radovic, I am speaking here very specifically

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01 about breach of article 5.3.4 alone. Are we in
02 agreement that that was the only breach of the
03 Privatization Agreement determined in the termination
04 notice?
05 A. Could you refer me to the document, please?
06 Q. You do not recall that that was the only breach which
07 was determined in the termination notice?
08 A. No, because we were just looking at leaving an
09 additional deadline for several --
10 Q. If you don't recall, you don't recall, and I represent
11 to you that it is so.
12 A. I believe that it is so.
13 Q. In the specific context of the only breach which
14 occurred prior to the term of the agreement being
15 a breach of article 5.3.4, I still don't understand how
16 the continuation of such a non-compliant pledge could be
17 deemed a breach of the Privatization Agreement after
18 article 5.3.4 ceases to apply on its own terms. To
19 illustrate my point, we are on June 30th 2015; can at
20 that moment BD Agro pledge its land to secure a loan
21 taken by me?
22 A. I believe that we are now playing with words here. Just
23 let me explain how I understand this, if you would allow
24 me.
25 Q. Professor Radovic, this is a cross-examination, not

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01 a colloquium. I asked you a question, and I would
02 kindly ask you to answer to my question. Can BD Agro,
03 or could BD Agro, on June 30th 2015, pledge all of its
04 land to secure a loan taken by me and only from the
05 perspective obviously of the Privatization Agreement and
06 the Law on Privatization?
07 A. Yes, it could.
08 Q. So a new pledge from 2015 was not a violation of 5.3.4
09 as of that date, June 30th 2015, but a pledge agreed in
10 December 2010 was a violation of 5.3.4, as of the same
11 date; is that your testimony?
12 A. Excuse me, what does "as of the same date" mean?
13 Q. Today is 30th June 2015, and the question is: is there,
14 as of today, as of 30th June 2015, a violation of
15 article 5.3.4 of the Privatization Agreement?
16 A. I believe I already answered that question. The
17 interpretation given is that it is not a violation.
18 Q. Just to make sure we understand, so I am now asking you
19 about two pledges. One pledge was established today, to
20 secure a loan that I have taken to buy a fancy house,
21 and this is not a violation, correct?
22 A. According to the interpretation given by the Ministry,
23 no.
24 Q. And then we have a pledge from December 2010. Is, as of
25 today, as of 30th June 2015, that pledge a violation of

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01 article 5.3.4?
02 A. The violation happens when the pledge is established, if
03 it was established before 8th April 2011. In this
04 example you are now giving, that is when the breach
05 happened and it is necessary that the Privatization
06 Agency found out about the breach in a timely manner,
07 which to my understanding happened in the present case,
08 it did establish the breach before 8th April 2011, and
09 now the only question remains, and the way I understand
10 it is whether this breach should be remedied or not, and
11 according to the legislation that was in time in effect,
12 it should be remedied, or the contract should be
13 terminated. Those are two ways of resolving this
14 problem.
15 Q. I will try one last time. As of June 30th 2015, is the
16 December 2010 pledge a violation of 5.3.4, yes or no?
17 A. Yes, it is a continuous violation, because it was never
18 remedied.
19 Q. And the obligation to remedy in your opinion stems from
20 Article 41a which does not even include the word
21 "remedy"?
22 A. It stems from the interpretation of the way grounds for
23 termination and the whole process of out of court
24 termination of the privatization agreements has been
25 accepted in the Serbian judicial practice, in the

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01 Serbian general contract law, everything -- when we look
02 at the whole picture, not just the words of Article 41a,
03 but also the implementation, the practice, the
04 experiences and the general contract law. Most
05 importantly, I should actually have mentioned that in
06 the first place, this is how it reads, yes.
07 Q. So what BD Agro needed to do was to pledge all of its
08 assets, take a new loan, loan that money to Crveni
09 Signal and Inex, have them repay the money they owed to
10 BD Agro, and that would have done the trick?
11 A. I believe that they only could have removed the pledge,
12 and that would already have done.
13 Q. That was again not my question, Professor Radovic.
14 I was asking about return -- so okay, they could have
15 removed the pledge. Would it have been sufficient for
16 the pledge not to be enforceable?
17 A. I am sorry, could you repeat?
18 Q. Would it have been sufficient for the pledge not to be
19 enforceable?
20 A. The pledge needs to be deleted. If it is a pledge over
21 immovables, it is removed when it is deleted from the
22 public books.
23 Q. So now let's focus on the repayment. Would it have been
24 sufficient if Crveni Signal and Inex repaid the money
25 which, according to the Privatization Agency, they were

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01 not supposed to be using?
02 A. In my opinion, that would also be sufficient.
03 Q. And to provide that money to Crveni Signal and Inex,
04 BD Agro was perfectly free to pledge the entirety of its
05 assets, give all of that money to Crveni Signal and
06 Inex, and then take a very small portion of it back,
07 that would have done the trick?
08 A. I am sorry, when? I am not sure what you are referring
09 to.
10 Q. We are during this time period, let's say we are on June
11 30th 2015.
12 A. Could you please repeat your hypothetical example?
13 Q. Yes. BD Agro can pledge all of its assets, BD Agro
14 pledges these assets to secure a loan taken by Crveni
15 Signal and Inex Nova Varos, and they then return a small
16 fraction of the money they received from the bank to
17 repay their obligations to BD Agro. That's the
18 hypothetical. By that, they repay all of the
19 obligations to BD Agro. Would that have been
20 sufficient?
21 A. Sufficient for what?
22 Q. To remove the alleged breach of article 5.3.4?
23 A. So if I understand you correctly, could the buyer have
24 encumbered all the assets of BD Agro in order to raise
25 a loan --

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01 Q. Correct.
02 A. -- to satisfy the claims against the bank and release
03 the pledge -- I am not sure I understand your example,
04 it's very complicated, I didn't understand it
05 completely, I am sorry.
06 Q. No, BD Agro takes a loan secured by a pledge on all of
07 its assets. It provides all of the money to Crveni
08 Signal and Inex, or alternatively actually, Inex and
09 Crveni Signal could take the loan and secure it with
10 BD Agro's assets, it doesn't make any difference. And
11 that money is then used for repayment of Crveni Signal's
12 and Inex's obligations to BD Agro.
13 A. I am sorry, such a number of transactions are contrary
14 to so many mandatory rules of Serbian law, I am not even
15 sure that it would be valid to do that to a company.
16 THE PRESIDENT: The question is simple. If we look at the
17 Privatization Agreement and the Privatization Law, and
18 not at other provisions of the Law of Companies or
19 otherwise, can BD Agro take a new loan, for that give
20 security, then give this loan to Crveni Signal and Inex,
21 for them to use this money to repay the loan that was
22 deemed a breach prior to the term of the agreement?
23 A. Okay, thank you. Just by looking at the privatization
24 process, that would be possible. Otherwise it would be
25 illegal for so many reasons.

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01 MR PEKAR: Thank you, Mme President.
02 Professor Radovic, let's look again at document
03 CE-098, the instruction that was given by the Ministry
04 of Economy to the Privatization Agency. I would like
05 you to focus on page 1 in the English version, this is
06 the last paragraph on page 1, and it states:
07 "In connection with the aforementioned, in order to
08 determine legality and purpose of the work of the
09 Privatization Agency, in accordance with the provisions
10 of Article 46 of the Law On State Administration ...
11 which states that 'Supervision of the work shall consist
12 of supervision of legality of work and supervision of
13 the purpose of work of state administration authorities
14 and holders of public authorities while performing
15 delegated state administration tasks' ..."
16 And then the quotation continues. Do you see that?
17 A. Yes.
18 Q. Is the Privatization Agency a holder of public
19 authorities?
20 A. It is.
21 Q. Do I understand correctly that a holder of public
22 authority can be supervised only over matters that
23 constitute performance of delegated state administration
24 tasks?
25 A. Supervision in the sense of the law on state

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01 administration, which gives the Ministry certain powers,
02 measures it can take against the Privatization Agency,
03 only relate to that part of the Privatization Agency's
04 work which is the performance of public powers, or the
05 performance of the conferred administrative tasks.
06 Q. On the following pages, the Ministry of Economy
07 describes the entire privatization of BD Agro. This is
08 a very long document, but I would invite you actually to
09 flip through it. So we have a description of the entire
10 privatization of BD Agro; then we have a description of
11 the controls for performance, for example, on page 4;
12 then we have a summary of the correspondence between the
13 buyer and the Privatization Agency, immediately
14 following -- are you with me?
15 A. I am browsing.
16 Q. We then have a discussion of the buyer's fulfilment of
17 its obligations under the Privatization Agreement. We
18 also have a discussion of the alleged breaches of the
19 Privatization Agreement. And then on page 12, there is
20 an express reference to the notice that the
21 Privatization Agency had sent to the buyer on
22 9th November 2012, and there even is a quote of all the
23 requirements that, or requests that the Privatization
24 Agency had addressed to the buyer at that time. Can you
25 see that?

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01 I would like just to draw your attention in passing
02 to page 11, it states:
03 "In respect of the statement regarding delays in
04 payments of the salaries, the following was determined:
05 "In accordance with the Social program -- Annex 1 to
06 the Agreement, the Buyer undertook that the salaries of
07 the employees would not be lower than the salaries valid
08 on the day of signing of the Agreement, as well as that
09 he would secure their growth in case of the improved
10 business activities of the company.
11 "In accordance with Article 5.3.2 of the Agreement,
12 the Buyer undertook that in the period of two years as
13 of conclusion of the Agreement, he would secure
14 continuity of business operation of the company in main
15 business activity the company had been registered for on
16 the day of the auction.
17 "In accordance with the practice of the Agency, when
18 the obligation of regular payment of salaries is not
19 agreed in certain duration, it is monitored within the
20 time period for maintaining of the continuity of the
21 business activities in main business activity."
22 Can you see that?
23 A. Yes.
24 Q. So that would actually suggest that the obligations
25 included in the social programme which do not have their

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01 own term would be tied to the obligation of business
02 continuity for two years, which is set out in
03 article 5.3.2 of the Agreement, correct?
04 A. This is the interpretation of the Ministry but I am not
05 sure how the Commercial Court would interpret this same
06 contractual provision. Just to complete the sentence,
07 the opinion of the Ministry is not binding on the court,
08 on how to interpret the contract.
09 Q. Would it be fair to say that since the Ministry of
10 Economy included all these matters, the ones that we
11 went through, the entire history of privatization,
12 et cetera, in the report, then the Ministry actually
13 considered that all these matters constitute delegated
14 state administration tasks performed by the
15 Privatization Agency as a holder of public authority?
16 A. No, definitely not. The Ministry of Economy also had
17 the right to supervise the whole work of the
18 Privatization Agency, but within that sort of
19 supervision, that sort of supervision was not covered by
20 the Law on State Administration. The Law on State
21 Administration covers only supervision of those
22 activities of the Privatization Agency which fall under
23 the category of conferred public powers, and this is
24 very important for understanding the whole issue,
25 because if, for example, the Ministry of Economy

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01 establishes that the Privatization Agency excluded
02 a particular buyer from the auction process --
03 Q. Professor Radovic, I am sorry to interrupt, but we are
04 maybe running short of time, and so far I was very
05 respectful. With the Tribunal's permission, I will try
06 to focus you a little bit more. You may want to refer
07 back to page 1 and this Article 46 of the Law on State
08 Administration. Is that the only legal basis that the
09 Ministry itself states for its supervision of the
10 Privatization Agency in this report?
11 A. I haven't read through the whole document but if you
12 refer just to this paragraph, this is the only provision
13 it refers to. However, I would like you to open
14 Article 46 of the Law on State Administration, and the
15 following Article, 47, in order to explain to the
16 Tribunal what I meant to say.
17 Q. The articles are not on the record, as you probably
18 know, Professor Radovic, but they are quoted in full in
19 the opinion, and I believe that you can work off the
20 quotes. So Article 46 is here in the last paragraph on
21 the last page, and then Article 47 is included on the
22 last page, in the fourth paragraph from the bottom, or
23 second paragraph from the top.
24 A. Article 47 unfortunately has not been reproduced, but
25 Article 47 provides certain measures that the Ministry

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01 of Economy can take against the Privatization Agency if
02 it establishes certain illegalities, for example, with
03 regard to its conferred public powers. However, one of
04 those measures is to give instructions to the
05 Privatization Agency, but instructions cannot be given,
06 and this is explicitly provided under Article, I think,
07 48, that is the following article in the same Law on
08 Public Administration, the instructions cannot be given
09 with regard to a particular case of privatization. This
10 is the one thing.
11 The second thing is that when exercising these
12 measures in the process of control of conferred public
13 authorities, after the Privatization Agency, for
14 example, does not follow the instruction, it is one of
15 the powers of the Ministry would be to take over the
16 administrative task, and do it by itself.
17 These whole three articles I just mentioned actually
18 prove that termination of privatization agreements was
19 not an administrative task, because the Ministry of
20 Economy could not intervene and itself terminate the
21 contract if the Privatization Agency did not obey and
22 follow these sort of instructions. So my conclusion
23 would be that this instruction is not a binding
24 instruction, and that it merely represents an
25 interpretation of the law explaining to the

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01 Privatization Agency that it is still possible to give
02 additional deadlines, that this is not against the law.
03 THE PRESIDENT: Thank you for this explanation, but I think
04 now you need to be a little bit more concise in your
05 answers, and not start explaining matters that go beyond
06 the question, because it's just the rule of the game
07 here. It is not a game, but --
08 A. I am sorry.
09 MR PEKAR: Thank you, Mme President. If we can refer again
10 to the instruction, what the Ministry of Economy refers
11 to is during the process of supervision, a public
12 authority shall be authorised to issue instructions,
13 correct?
14 A. Yes, this is what I just mentioned.
15 Q. So the Ministry of Economy clearly was giving that as
16 binding instructions, weren't they?
17 A. As I just explained, an instruction to give an
18 additional deadline could not be in any way considered
19 binding. It is against the Law on Public
20 Administration.
21 Q. And the Law on State Administration actually applied to
22 these matters because these are matters which the
23 Privatization Agency performed as a holder of public
24 authority while performing delegated state
25 administration tasks, correct?

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01 A. As I said, I disagree. Providing additional deadlines
 02 and terminating the contract, even concluding
 03 a contract, are private acts, and this is how they are
 04 understood in the Serbian judicial practice and under
 05 Serbian law. So with this regard, the Privatization
 06 Agency does not have a position of an authority, it does
 07 not authoritatively determine whether there was
 08 a breach, whether the buyer was liable. This is not its
 09 power.
 10 Q. Professor Radovic, is it then your opinion that this
 11 entire supervision procedure and instruction by the
 12 Ministry of Economy were simply illegal?
 13 A. No, I say that they were not binding, that they were
 14 merely interpretation of how the Agency could proceed,
 15 in this case and in all other cases, because it has to
 16 act uniformly. It stems actually from the law on public
 17 services.
 18 Q. I think we can leave this topic, and go to paragraph 44
 19 of your second report. You state there that the
 20 Ombudsman -- at least in my version the paragraph spans
 21 over two pages, so it's the part which is on page 25.
 22 You state there that the Ombudsman was authorised to
 23 control the legality and proper work of holders of
 24 public authority, such as the Privatization Agency, can
 25 you see that?

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01 A. Is this paragraph 45 or 44, I am sorry?
 02 Q. 44, on the first line on page 25, you say:
 03 "... the Ombudsman is defined ..."
 04 A. Yes, I have found it, thank you.
 05 Q. My question is the following: is the Ombudsman --
 06 actually, I will read that. You italicised here that
 07 the Ombudsman:
 08 "... controls the work of ... organisations ...
 09 entrusted with public authority' (emphasis added). As
 10 I explained in my First ... Report, the Ombudsman was
 11 expressly authorised to control the legality and proper
 12 work of authorities ... including holders of public
 13 authority (such as the Privatization Agency)."
 14 My question is the following: is the Ombudsman
 15 authorised to review all activities of holders of public
 16 authority, or only their activities that constitute
 17 delegated state administration tasks?
 18 A. I would say only activities where the public authorities
 19 decide on the rights affecting parties like citizens,
 20 for example.
 21 Q. I am sorry, I don't -- maybe you answered my question
 22 and I did not realise that. My question was: is the
 23 Ombudsman authorised to review all activities of holders
 24 of public authority, or only their activities that
 25 constitute delegated state administration tasks?

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01 A. Not all activities, only activities where the public
 02 authority acts as an authority.
 03 Q. Thank you. So let's see the Ombudsman's decision, it's
 04 CE-042. Are you familiar with this document?
 05 A. Yes.
 06 Q. On page 1 of the decision, the Ombudsman states that the
 07 Privatization Agency and the Ministry of Economy made
 08 omissions in their work to the detriment of the
 09 employees of BD Agro, and he -- I should have started
 10 here:
 11 "In the process of control of performance of
 12 contractual obligations from the Agreement on sale of
 13 socially owned capital during the method of public
 14 auction of the subject of privatization [BD Agro] the
 15 Privatization Agency ... and the Ministry of Economy
 16 made omissions in their work to the detriment of the
 17 employees of company BD Agro by doing the following,
 18 regardless of the fact that it had been determined on
 19 January 17, 2011 that the buyer [of BD Agro] failed to
 20 fulfill his contractual obligations."
 21 Then he says:
 22 "... the Privatization Agency failed to make a
 23 decision ...
 24 "The Ministry of Economy failed to give instructions
 25 ..." et cetera.

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01 Can you see that?
 02 A. Yes.
 03 Q. Here it seems to me that the Ombudsman clearly believed
 04 that the Ministry of Economy can give binding
 05 instructions to the Privatization Agency with respect to
 06 the termination of the agreement, wouldn't you agree?
 07 A. I do not see that that is written here.
 08 Q. But he says actually that the Ministry of Economy failed
 09 to give instructions, doesn't he?
 10 A. This is how you interpret it, but I don't see that it
 11 says binding instructions.
 12 Q. Then he issues his recommendations, and the first
 13 recommendation is to determine -- or actually:
 14 "[That] the Ministry of Economy, the Privatization
 15 Agency shall take all necessary measures to determine,
 16 within the shortest period of time, whether all
 17 conditions stipulated by the Law on Privatization of
 18 2001 for termination of the Agreement on sale ... have
 19 been fulfilled ..."
 20 That is recommendation number 1, correct?
 21 A. Yes.
 22 Q. Then if we go into the rationale or the reasons part on
 23 page 6, in this big paragraph which starts around one
 24 third of the page, in the middle of the paragraph, there
 25 is a sentence:

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01 "During the control performed on January 17, 2011,
02 at the seat of the subject of privatization ... BD Agro,
03 the Privatization Agency determined that there was
04 a violation of the Agreement ..."
05 And then in the following sentence -- actually he
06 refers specifically to the obligation "not to alienate
07 assets over the agreed percentage" and the obligation
08 not to encumber the "fixed assets of the subject of
09 privatization with pledge for a third party benefit".
10 A. Yes.
11 Q. Then he says:
12 "The first circumstance constitutes a condition for
13 termination as per the Agreement on sale, and the second
14 one constitutes a condition for termination as per
15 Article 41a of the Law on Privatization of 2001 ..."
16 Can you see that?
17 A. Yes.
18 Q. Then he goes on to explain Article 41a of the Law, and
19 the requirement to give the buyer one additionally
20 granted term for fulfilment, and then he goes on and
21 says:
22 "This implies that, if the additionally granted term
23 does not give results, the bodies competent for conduct
24 and supervision of privatization must make a clear
25 decision about the survival of the concluded agreement

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01 on sale and must not prolong the decision over a longer
02 period of time, thus giving the buyer several
03 consecutive additionally granted terms for fulfilment."
04 Do you see that?
05 A. Yes.
06 Q. One thing puzzled me, which is that in the
07 recommendation, the Ombudsman says, "You must determine
08 that, not to leave the workers in anxiety over their
09 future"; but then in the rationale, he says very clearly
10 that there was a breach, and that such a breach is
11 a basis for termination. Do you see that contrast
12 between how, on page 2, recommendation number one is
13 formulated, and then what is said in the long paragraph
14 in front of you?
15 A. If I understand your question correctly, the opinion of
16 the Ombudsman whether or not the contract was breached
17 is irrelevant.
18 Q. Could we then look at CE-045. This is a press release
19 that the Ombudsman issued on his website at the same
20 time that he published the recommendations themselves,
21 and it states:
22 "The Ombudsman has determined that despite the fact
23 that several years ago it was ascertained that the buyer
24 did not fulfil its contractual obligations in the
25 privatization procedure, the Privatization Agency and

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01 the Ministry of Economy have not terminated the
02 Agreement, but rather have prolonged rendering of the
03 final decision and thus breached the rights of employees
04 of this company."
05 Do you see that?
06 A. Yes.
07 Q. Is it a proper comment to make for the Ombudsman?
08 A. Here, the rights of the employees were obviously, in the
09 opinion of the Ombudsman, indirectly negatively affected
10 and again we are returning to what I already explained,
11 it is that the Privatization Agency either has to
12 satisfy itself that the privatization process has been
13 successfully completed, or terminate the agreement. It
14 cannot forget about the agreement. This is its legal
15 task, the reason why it was established. And this is
16 actually what the Ombudsman wants, for the Privatization
17 Agency not to forget about this privatization process,
18 but to act upon it.
19 Q. But the Ombudsman also says that it was ascertained that
20 the buyer did not fulfil its contractual obligations in
21 the privatization procedure, correct?
22 A. No, it says that the Agency established the breach. It
23 says here "although a few years earlier it was
24 established".
25 Q. Yes, but not the Agency, it was ascertained probably by

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01 the Agency --
02 A. But it didn't say "I established", it says "it was
03 established".
04 Q. Was it actually established?
05 A. The Agency thought there was a breach.
06 Q. But thinking and establishing, is it the same?
07 A. It is not the same. The court is to give an
08 authoritative decision on whether or not there was
09 a breach or there wasn't a breach. The Agency did not
10 have the authority to authoritatively determine that
11 there was a breach. This was a matter of a commercial
12 dispute.
13 Q. So was it appropriate for the Ombudsman to say that
14 a breach was established?
15 A. I believe that what is meant here is that the Agency
16 established a breach, not authoritatively, but it
17 established that there was a breach, and in the meantime
18 forgot about that privatization process, and was silent
19 for several years. This is something it cannot do. It
20 has to either successfully satisfy itself that the
21 privatization was successfully completed, or terminate
22 the agreement. It cannot leave things unfinished, so to
23 speak. I do not know how to express myself.
24 Q. But the Ombudsman here does not refer in this
25 explanation only to failure to take a decision, the

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01 other element he mentions there is that the
02 Privatization Agency and the Ministry of Economy have
03 not terminated the agreement?
04 A. I am really not sure who writes this excerpt, but when
05 we read the recommendation, actually this is something
06 from the website, is it not?
07 Q. Correct, that is from the website.
08 A. Okay, I don't know who administers the website, but when
09 we read the recommendation, there it was explicitly
10 stated that the Ombudsman asks the Privatization Agency
11 to act, to decide, is it successfully completed or isn't
12 it? And not to leave things undecided.
13 Q. Could a publication of such a statement on the website
14 of the Ombudsman have negatively affected the
15 decision-making of the individuals within the
16 Privatization Agency?
17 A. Well, I already explained in my expert reports that the
18 Ombudsman's recommendations -- I don't know if they
19 consulted the website. They are not binding, so if the
20 Privatization Agency thinks it acts fully in accordance
21 with the law, then it should not fear the
22 recommendation, but obviously, and in my opinion, the
23 Privatization Agency was wrong to do nothing. It had to
24 either give another additional deadline, or terminate
25 the agreement. It had to continue following up on this

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01 privatization process. This way, it was not finished.
02 Q. Now I would like to ask you to go to paragraph 72 of
03 your first report. This is in the paragraph of your
04 report dealing with beneficial ownership.
05 A. Yes.
06 Q. I think what I would like you to focus on is the last
07 sentence, where you state:
08 "For all the reasons set out above, under Serbian
09 law a purported trust relationship could only create
10 personal rights of the 'beneficiary' against the
11 'trustee', but no property rights whatsoever over the
12 'trust' assets."
13 Correct?
14 A. Yes, correct.
15 Q. So you agree that under Serbian law, a person other than
16 the nominal owner of shares may have personal rights
17 against the nominal owner relating to such shares?
18 A. Of course, but I wouldn't use the term "nominal owner",
19 I am sorry. The owner of shares, yes. A contracting
20 party can have certain personal rights against the owner
21 of shares.
22 Q. Now please go to paragraph 64 of your second report,
23 where you discuss the definition -- and we have a slight
24 disagreement with respect to beneficial versus indirect
25 owner, but that is not that important here. The part

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01 I would like you to focus on is the sentence:
02 "The correct meaning of this definition is that the
03 so-called 'indirect owner' is legally not the owner of
04 financial instruments, but in economic sense of the word
05 'owns' those instruments."
06 Can you see that?
07 A. Yes, the word "owner" was not used in its legal meaning.
08 Q. And then you give an example of basically an indirect
09 shareholding structure, and you say:
10 "Therefore, the definition of an indirect 'owner'
11 does not imply that such a person has any rights in rem
12 (ie over financial instruments) under Serbian law."
13 A. Yes.
14 Q. So Serbian law recognises that a person other than the
15 nominal or legal shareholder can be the owner of shares
16 in the economic sense, not in the legal sense but in the
17 economic sense, to use the expression that you yourself
18 used in paragraph 64 of your second report?
19 A. Again, there is no nominal owner under Serbian law,
20 there is only one owner, and that is the one entered
21 into the Central Securities Registry. Of course, that
22 some person can have certain rights against the owner,
23 for example the right for him to pass on dividends, the
24 right for him to, for example, act in accordance with
25 their voting agreement, and so on, yes.

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01 Q. Just to make clear, what you say in paragraph 64 of your
02 second report is that a person other than the nominal or
03 legal or registered shareholder can be the owner of
04 shares in the economic sense, correct?
05 A. Again, not the owner in an economic sense. The word
06 "owner" is not a correct term here, but yes,
07 economically, it can have interest in those shares.
08 Q. As an example, you used, I would say, a classical
09 corporate structure, where we have the direct owner and
10 then the indirect owner, yes?
11 A. Actually, the example I gave you, this is not the
12 indirect owner. I mean, the owner of shares, you mean?
13 Q. Yes, but all that discussion occurs in the context of
14 the definition of indirect owner under the 2011 Law on
15 Capital Markets?
16 A. Yes, but you should bear in mind again -- because there
17 is a problem of terminology here. The Law on Capital
18 Markets defined this term indirect owner solely for the
19 purposes of that Act, so if we are now talking
20 generally, we cannot use that term.
21 Q. I think we are talking about shares in a publicly-traded
22 company, so the Law on Capital Markets is probably
23 appropriate, would you agree with that?
24 A. But it doesn't apply to all issues that are relevant to
25 the present case, so that is why I have to avoid using

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01 that term, because ownership is something that
02 I disagree is the correct term, it is a misleading term
03 in my opinion.
04 Q. But would you agree with me that this misleading term
05 used in the 2011 Law on Capital Markets of indirect
06 owner would apply the same regardless of whether the
07 indirect owner's connection to the registered owner
08 stems from ownership, as between the indirect owner and
09 the direct owner, or whether it stems from contract, for
10 example?
11 A. Can I have a look at the provision? I would have to
12 take a look at the provision, the definition, because
13 there are so many definitions of indirect.
14 Q. This is CE-728, Article 2(34). I can read it out loud:
15 "A" -- we said "beneficial", you would prefer
16 "indirect owner", actually it doesn't matter so much,
17 "means a person who has the benefits of ownership of
18 a financial instrument either entirely or partially,
19 including the power to direct the voting or disposition
20 of the financial instrument or to receive the economic
21 benefits of ownership of that financial instrument, and
22 yet does not nominally own the financial instrument
23 itself."
24 You may also refer to the Serbian version if you
25 prefer.

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01 A. Yes, the Serbian version is a little bit different,
02 that's why I was confused, but okay, yes. This can be
03 also based on a contractual relationship, yes, but as
04 I explained, this definition is used within this Act,
05 the Law on Capital Markets, in order to impose certain
06 obligations, to expand supervision given to the
07 Securities Exchange Commission over different persons
08 connected with market participants, and the beneficial
09 owner is by no means -- this definition you see here
10 gives the beneficial owner no rights and not any kind of
11 protection, he is not specifically protected, so if he
12 has contractual rights, that would be his protection
13 under contractual law, but he doesn't have any specific
14 protection under this law. This law only imposes duties
15 and wants to encompass beneficial owners in order to
16 enable the Securities Exchange Commission to expand its
17 supervision also to those persons connected with the
18 market participants.
19 Q. What you have in mind here is if we take your example
20 from paragraph 64, where you have this chain of
21 ownership of company A owning B, and then B owning C,
22 I believe what you are trying to say here is that
23 company A does not have the standing to bring a claim,
24 for example, if -- I don't know, it doesn't work that
25 well, but let's assume that shares can be stolen, so the

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01 shares in company C were stolen from company B, and so
02 you are saying that under Serbian law, company B can
03 claim for protection, and company A cannot, is that what
04 you are --
05 A. Of course, because there are no rights in rem of company
06 A in this example. No rights directly over shares in
07 company C. And they cannot be protected against, for
08 example, compulsory enforcement by the creditors of
09 company B. They do not constitute separate assets of
10 company B, but part of their entire assets.
11 Q. Now another question: does Serbian law allow put and/or
12 call option agreements regarding shares traded on the
13 Belgrade Stock Exchange?
14 A. Put and call options are allowed.
15 Q. Professor Radovic, are you aware or are you not that the
16 Serbian Government has used the block trade procedure to
17 effectuate transfer of shares in Serbia under terms
18 agreed with foreign investors outside of the stock
19 exchange?
20 A. Yes, but to my understanding, in such cases the option
21 was exercised through the stock exchange.
22 Q. Could we please go to Exhibit CE-533? This is a news
23 article relating to shareholder agreement between Serbia
24 and a German company DEG, and a Swedish company, and
25 EBRD, and the IFC, with respect to shares in

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01 Komercijalna Banka; are you aware of that transaction?
02 A. I would just like to remind myself.
03 Q. Yes, please. (Pause). I will read it out loud
04 actually:
05 "International financial institutions which own
06 a total stake of 41.47 in Komercijalna Banka have
07 activated a clause from previously executed harmful
08 agreements with the Government of Serbia, according to
09 which the state is obligated to pay them 252 million
10 euros to purchase their stakes, it was confirmed for
11 Insajder by the Ministry of Finances."
12 Do you see that?
13 A. Just a second, yes. I am reading it in Serbian.
14 Q. I will then just continue reading in English:
15 "According to Insajder's research, in accordance
16 with those harmful agreements executed 10 years ago [so
17 that would be in 2009], foreign shareholders were given
18 the right to sell their stakes to the state for
19 a previously guaranteed price if the bank is not sold or
20 if they are not satisfied with the price. Considering
21 the current value of the bank, payment for stakes of
22 foreign co-owners in the amount of 252 million euros
23 will drastically reduce the state's profit from the
24 ongoing privatization."
25 My first question is: is it your understanding that

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01 this describes a put option?
02 A. I am sorry, this goes beyond something I investigated in
03 detail. I cannot give an opinion on this case. This is
04 a news article, this is not an official document, and
05 there are so many unknown facts, I am sorry, I cannot do
06 this.
07 Q. If we can turn the page, there it states:
08 "Foreign shareholders have activated the "put
09 option" on March 26th 2018', it is stated in the reply
10 from the Ministry to Insajder."
11 Can you see that?
12 A. Yes.
13 Q. Is it your understanding that the put option was
14 activated on the stock exchange?
15 A. I cannot testify to this case. I am not prepared to
16 testify on this case. And news articles often use
17 language that is not strictly legal language, so when
18 a newspaper article says "activated the option", that
19 can mean something else. These are often not educated
20 lawyers that write such articles.
21 Q. I would just draw your attention to one last point and
22 then we will leave the document, if you are not able to
23 comment. On the following page, the penultimate
24 paragraph says:
25 "From 2008 to today, the situation in the bank

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01 market has changed drastically, thus Komercijalna Banka
02 was valued at 1.5 billion euros on the Belgrade stock
03 exchange in 2007, while its current value is around
04 400 million euros. Since foreign shareholders have
05 activated the 'put option' Serbia will lose most of its
06 profit after the bank is sold."
07 Do you agree with me that this suggests that the put
08 option was exercised at a price which was quite
09 different from the price of the shares at the moment the
10 put was exercised?
11 A. I am sorry, again, this is yet another case. There are
12 two things you should bear in mind when we talk about
13 options. One possibility is to conclude an ad hoc
14 option agreement, non-standard option agreement. This
15 is what happened in our present case. The MDH Agreement
16 is such a non-standard option agreement. On the other
17 hand, sometimes options can be issued as standardised
18 agreements, and in that case those are financial
19 instruments that can be traded on the stock exchange,
20 et cetera, et cetera. So I am not in a position now to
21 comment on this case, because I don't know whether here
22 the stock options were issued as standardised financial
23 instruments or as non-standard option agreement as is in
24 the present case the situation. So without knowing all
25 the facts of the case, I cannot comment, especially

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01 because this is again not some official document. But
02 if you have more documentation, I can study it in
03 detail, and give an opinion.
04 Q. Professor Radovic, just on page 3 at the very beginning:
05 "As the research of our editorial staff has shown,
06 agreements executed in 2009 and various subsequent
07 annexes have enabled international financial
08 institutions to exercise the right to activate the
09 so-called 'put option' during the privatization process
10 if the state decides not to sell the bank or if they are
11 not satisfied with the manner of sale or with the sale
12 price."
13 A. But this still doesn't say that the option would be
14 activated outside the stock exchange.
15 Q. That was a different part of the article. Does that
16 look like a standardised option which is traded on
17 a stock exchange?
18 A. As I said, I cannot comment on this case, I would have
19 to see the documentation. This is a news article.
20 Q. Ms Tomic Brkušanić in her report was also discussing
21 another method of effectuating a transfer of shares, and
22 that was the in-kind contribution. Under this method,
23 the shares of a listed company are entered into
24 a limited liability company, and the shares of the
25 limited liability company are then transferred to the

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01 buyer. Would such an indirect transfer of shares in
02 a joint stock company violate Serbian regulations of
03 stock markets?
04 A. To invest shares in a company?
05 Q. Yes, specifically with respect to the shares of BD Agro.
06 If Mr Obradovic puts the shares he owns -- assuming that
07 the pledge is released and so on, he contributes the
08 shares into a limited liability company, and then he
09 sells or transfers the limited liability company to
10 Sembi or another company of Sembi's choosing.
11 A. Investing shares in a company does not constitute sale
12 of shares, and sale of shares is, under the Serbian
13 legislation that was in force at the time, prohibited to
14 happen outside the stock exchange.
15 Q. So the transfer of ownership of the limited liability
16 company, which now owns the shares that had been
17 contributed into the capital of that limited liability
18 company, the transfer of ownership of the limited
19 liability company is not subject to regulations with
20 respect to stock markets?
21 A. The direct answer to your question is yes, but if we
22 apply this to the present case, investing shares in
23 a limited liability company would be in contravention of
24 the obligations stipulated in the Sembi Agreement,
25 because under the Sembi Agreement, Mr Obradovic took on

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01 an obligation, together with assignment of the
02 Privatization Agreement, to transfer the shares to
03 Sembi, and not to some other legal entity. Lawyers know
04 the difference between different legal persons. For
05 lawyers, this is an important issue. I understand that
06 from an economic perspective someone cannot understand
07 that, but ...
08 Q. But would you agree with me that it would be primarily
09 for Sembi and Mr Obradovic to interpret their agreement,
10 and if they agree on a joint interpretation of the
11 agreement, then there is no issue?
12 A. No, I wouldn't agree, and I can explain.
13 THE PRESIDENT: It doesn't seem to be needed for now. It is
14 not needed for now, I understand. Do you want
15 Professor Radovic to explain her answer?
16 MR PEKAR: No, this is not needed. I beg your pardon for
17 one minute. We have covered a lot of ground, I would
18 need to consolidate my notes. (Pause).
19 Now let's discuss Article 41ž of the Law on
20 Privatization.
21 A. Okay.
22 Q. This is a provision which makes assignment of any
23 privatization agreement subject to consent of the
24 Privatization Agency, correct?
25 A. To prior consent, yes.

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01 Q. Professor Radovic, you agree, do you not, that the
02 Privatization Agreement was never assigned to Sembi
03 within the meaning of assignment under Serbian law,
04 correct?
05 A. As I explained in my introductory remarks, the contract
06 concluded in my opinion under Serbian law corresponds to
07 an assignment contract.
08 Q. First of all -- actually, you were instructed to assume
09 that the contract is governed by Serbian law, right?
10 A. No, I was applying the overriding mandatory provision of
11 Article 41ž, and that provision talks about assignment,
12 so I interpreted assignment under Serbian law in order
13 to apply this provision. I cannot interpret --
14 I thought that I cannot interpret assignment under any
15 other jurisdiction in order to apply the Serbian
16 overriding mandatory provision.
17 Q. Does Serbian law define assignment --
18 A. Assignment is regulated --
19 Q. Sorry, I haven't finished asking my question. You
20 thought that was the question? No.
21 Does Serbian law define assignment as essentially
22 the replacement of one party to the contract with
23 another party to the contract?
24 A. No, assignment takes again two steps. First, you
25 conclude a contract where you take on an obligation to

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01 transfer a particular contract, you conclude it with
02 a third party; and then the second step would be to
03 perform this obligation or to effectuate this
04 assignment. Assignment under Serbian law is effectuated
05 either by notifying the party to the contract being
06 assigned, or by obtaining its consent. In the present
07 case, there should have been prior consent of the
08 Privatization Agency in place, and then after concluding
09 an assignment contract, the performance of an obligation
10 to assign would mean just to notify the Privatization
11 Agency that the contract on assignment was concluded.
12 That's the moment when the privatization agreement is
13 definitely transferred from the privatization --
14 everything I explained right now is regulated in the Law
15 on Obligations.
16 Q. I believe it may be clearer if we go to paragraph 113 of
17 your second report.
18 A. Yes.
19 Q. Sorry, I may have given you the wrong reference. No,
20 I meant 115. In the last sentence, you state:
21 "However, the Privatization Agreement was never
22 assigned to Sembi, and therefore, the necessary
23 precondition for transferring shares was not met."
24 Do you see that?
25 A. Yes.

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01 Q. So that's your opinion? The Privatization Agreement was
02 never assigned to Sembi, correct?
03 A. Yes, in the meaning that the assignment obligation --
04 the obligation to transfer was not performed, there was
05 no -- first of all, it was actually invalid. There was
06 no assignment.
07 Q. This is actually -- we can look at Article 145 of the
08 Law on Contracts and Torts, this is CE-462, and in
09 paragraph (1), it says:
10 "Each party in a bilateral agreement may, if agreed
11 to by another party, assign an agreement to a third
12 person, which thus becomes the bearer of all 1of its
13 rights and obligations arising from that agreement.
14 "(2) By assignment of an agreement, the contractual
15 relation between an assignor and the other party is
16 transferred to the assignee and another party at the
17 moment when the other party agreed to assignment ..."
18 And so on. Can you see that?
19 A. Yes.
20 Q. The conclusion of the Sembi Agreement did not achieve
21 any of these, as to the relationship between Sembi and
22 the Privatization Agency, correct?
23 A. No, it did not achieve.
24 Q. Mr Obradovic remained the Privatization Agency's sole
25 contractual counterparty even after the Sembi Agreement

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01 was signed, correct?
02 A. Yes.
03 Q. Now please go to paragraph 72 of your second report, and
04 there you state that the fact that Mr Obradovic would
05 not bear any risk regarding his investment in BD Agro
06 would be:
07 "... contrary to the idea and purpose of
08 shareholding, since shareholders are inherently the
09 persons most interested in the well-being of the
10 company."
11 Do you see that?
12 A. Yes.
13 Q. I am now thinking about the financial institutions which
14 were able to exercise the put option, and put their
15 shares in Komercijalna Banka to the Serbian State.
16 Wouldn't it be true that these financial institutions
17 also were not so interested in the financial well-being
18 of the company, because their downside risk was limited
19 by the put option they had?
20 A. Again, you are referring to the case I cannot comment
21 on, but I can explain what I wrote here. So here,
22 Mr Obradovic was the controlling shareholder. Under
23 Serbian law, the controlling shareholder has specific
24 duties towards the company. These are called fiduciary
25 duties. It has to take care of the company, apply the

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01 business judgment rule, apply the duty of care, apply
02 the duty to refrain from any conflicts of interest,
03 et cetera. These specific duties apply to
04 a shareholder, which means a person who is registered in
05 the Central Securities Registry as the owner of shares.
06 On the other hand, if we have this provision that
07 a third party, a non-related third party, a third party
08 that has no direct interest or that is not a shareholder
09 of the company, fully takes over the risks of the
10 shares, and this other party does not fall into the
11 scope of these special duties of the Companies Act, in
12 that sense I wanted to say that it is the expectance of
13 the law that shareholders are the ones that bear the
14 risk of the investment, and the ones that are the most
15 interested and the ones that have specific duties
16 towards the company.
17 That is why even in the Serbian legal theory it is
18 disputed that even voting agreements between
19 a shareholder and a third party are valid. This is
20 something I didn't write in my reports, because I do not
21 have judicial practice to support it, but the same logic
22 is used by some leading authors, company law authors,
23 even the textbook we teach our students in the Faculty
24 of Law at the University of Belgrade says it is
25 disputable in Serbian law whether a third party that is

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01 not already a shareholder can have the right to instruct
02 voting of the shareholder, because he does not have
03 duties towards the company, and the controlling
04 shareholder does.
05 Q. I would put to you the example of -- going back to the
06 example of company A which owns company B which owns
07 company C.
08 A. Okay.
09 Q. Company A is a big international corporation with lots
10 of assets; company B is an empty special purpose vehicle
11 incorporated in the British Virgin Islands. It does
12 nothing on its own. All of it is directed by the big
13 corporation. Can company B own shares in a publicly
14 listed company in Serbia?
15 A. Of course.
16 Q. Now I would like you to focus on the pledge over
17 BD Agro's shares, which was discussed in this
18 arbitration a lot. Please go again to Exhibit CE-017,
19 and the pledge agreement, I believe, is annex 2 thereto.
20 Article 2 states that the pledge is:
21 "... for the period of 5 years as of the day of
22 conclusion of the sale and purchase agreement, that is,
23 until final payment of sale and purchase price."
24 Correct?
25 A. Yes.

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01 Q. Professor Radovic, would you agree with me that the
02 meaning of these words "for the period of 5 years" as
03 well as "until final payment" is absolutely clear and
04 without any ambiguity?
05 A. Well, it does need interpretation in the present case,
06 because the term was extended.
07 Q. That was not my question. My question was whether the
08 "final payment of sale and purchase price" is a clear
09 term, is it?
10 A. Yes.
11 Q. "5 years as of the day of conclusion of the sale and
12 purchase agreement", is that a clear term?
13 A. Yes.
14 Q. The period of five years as of the day of conclusion of
15 the sale and purchase agreement lapsed on 4th October
16 2010, would you remember that?
17 A. Yes I remember.
18 Q. And final payment of sale and purchase price occurred on
19 8th April 2011, correct?
20 A. Yes.
21 Q. Could we please look at Article 99 of the Law on
22 Contracts and Torts, it is CE-865. This is the article
23 actually which was disputed with Mr Grušić,
24 I understand. Article 99(1) states -- these are the
25 rules on contract interpretation under Serbian law, and

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01 Article 99(1) states:
02 "The provisions of the agreement shall apply as they
03 are worded."
04 Correct?
05 A. Yes.
06 Q. So that is the primary rule of contract interpretation
07 under Serbian law, is it not?
08 A. Yes. But there is paragraph (2) which your expert
09 cited, this is not the only ...
10 Q. But this is the primary rule, is it not?
11 A. Yes, this is the primary rule.
12 Q. We also have another rule, it's in Article 100, we don't
13 have it translated into English but we have the Serbian
14 original.
15 A. Yes, that is the rule of contra stipulatorem.
16 Q. Could perhaps the interpreters interpret that provision
17 into the record?
18 THE INTERPRETER: The title of the provision is "Unclear
19 provisions in special cases".
20 In cases where an agreement has been concluded
21 following content printed in advance, or when the
22 agreement was prepared and proposed by one of the
23 contracting parties otherwise, or in another way
24 prepared and proposed by one of the contracting parties,
25 we could say it that way also, there is a comma there,

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01 unclear provisions shall be interpreted in favour of the
02 other party to the agreement.
03 MR PEKAR: Thank you. Professor Radovic, do you agree this
04 is an expression of the contra proferentem rule?
05 A. Yes.
06 Q. Do you agree with me, Professor Radovic, that the
07 Privatization Agreement was entirely proposed by the
08 Privatization Agency to the buyer?
09 A. Yes.
10 Q. Do you agree with me that therefore, the contra
11 proferentem rule should apply for the benefit of the
12 buyer and to the detriment of the Privatization Agency
13 in the interpretation of the Privatization Agreement?
14 A. Only for unclear contract terms, but you said it
15 yourself that the term was clear, and it clearly covered
16 the term of the Privatization Agreement, in my opinion.
17 Q. In paragraph 66 of your first report, you state, if
18 I may paraphrase, that even if the Agency would
19 otherwise have to release the pledge over the privatized
20 shares after the full payment of the purchase price, it
21 could refuse to do so based on the buyer's alleged
22 breach of article 5.3.4 of the Privatization Agreement,
23 is that a fair summary?
24 A. As long as there is conditional and future rights that
25 the Privatization Agency can have the shares returned,

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01 because of contract termination, so as long as contract
02 termination is possible, there is a ground for contract
03 termination, the pledge can be retained, yes. So these
04 questions are connected.
05 Q. So there has to be a connection?
06 A. There has to be a grounds for contract termination, or
07 until it is possible to terminate the contract the
08 pledge should be retained. When it is no longer
09 possible to terminate the contract or, for example, all
10 obligations have been performed fully, in accordance
11 with the contract, then it cannot keep the pledge no
12 longer.
13 Q. But the term of the pledge, as we just saw in article 2
14 of the Share Pledge Agreement, is tied to the period of
15 five years, that is, for whatever that means, until
16 final payment of sale and purchase price, correct?
17 A. Okay, but if I give you a pledge for a debt I owe you,
18 and we agree that the pledge will last for two years,
19 and after two years I still did not repay the debt,
20 would you give me back the pledge?
21 Q. I would, yes.
22 A. This is illogical. You have an exception, exceptio
23 adimpleti contractus, to say you did not perform your
24 obligation, now I am not going to return the pledge.
25 This is the idea. So the question here is what was

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01 secured by the pledge? This is how I understand things.
02 And my understanding is that the pledge secured the
03 right of the Privatization Agency to take shares back
04 from the buyer, because of contract termination, so as
05 long as there was a possibility to terminate the
06 contract, as long as there was a breach of contract that
07 constituted grounds for termination, it could have
08 objected to return the pledge, not by relying on the
09 period of five years, but relying that the reciprocal --
10 THE PRESIDENT: But why would you not rely on the words
11 "until final payment of sale and purchase price"?
12 A. As I said, in my opinion, this meant to cover the period
13 of the contract as it was agreed upon between the
14 parties. If everything happens as agreed. But
15 everything obviously did not happen as agreed.
16 THE PRESIDENT: So you are implying that this reflects an
17 intention that is not expressed?
18 A. No, then the intention, in my opinion the intention was
19 to cover the period of the contract. Under this
20 agreement, the last obligation was to be fulfilled after
21 five years.
22 THE PRESIDENT: How do you reconcile this with Article 99(1)
23 of the Law on Contracts?
24 A. Just a second, let me open it again.
25 THE PRESIDENT: That says that contracts are to be applied

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01 as they are worded.
02 A. Again, as I said, I would not here solely rely on the
03 deadline given here in article 2. First of all, I would
04 rely on the fact that the reciprocal obligation was not
05 performed, and that's how the Agency could refuse to
06 release the pledge. But as I said, in Article 99 the
07 first main rule is to apply the contractual terms the
08 way they are formulated. However, if the parties
09 disagree as to the interpretation of the contract, and
10 this is number (2), when we interpret those -- how do
11 I say this? Those contractual terms, that there is
12 a disagreement about them -- is there a translation,
13 I am sorry, of Article 99(2) or maybe the interpreter
14 could help me.
15 THE PRESIDENT: Let's look at the English text, if we can.
16 A. You do have it, okay great. Then if terms are disputed
17 between the parties, if the Privatization Agency thinks
18 otherwise, et cetera -- did you mean Article 99(2), am
19 I on the right spot here?
20 THE PRESIDENT: Yes, I meant how do you reconcile your
21 understanding with Article 99(1)? I understand 99(2) to
22 be a situation not where the parties dispute the meaning
23 but where there is a genuine lack of clarity.
24 A. Yes, as I said again, I did not rely in my report solely
25 on the deadline. I relied on the fact that the pledge

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01 secured certain rights of the Privatization Agency,
02 conditional and future rights, and as long as these
03 rights and the reciprocal obligations have not been
04 performed, in my opinion, the pledge could remain in
05 place or could not be released. That is how
06 I interpreted this, and yes, I interpreted also
07 article (2) as covering the term of the contract and not
08 literally just five years, but I understand --
09 THE PRESIDENT: That assists us, thank you.
10 A. I understand your point.
11 MR PEKAR: To summarise your position, you are of the
12 opinion that the pledge secures all obligations arising
13 under the Privatization Agreement for the buyer?
14 A. No, only those obligations that constitute valid grounds
15 for contract termination.
16 Q. But you accept that it is not stated anywhere in the
17 Privatization Agreement, expressly?
18 A. Expressly, no.
19 Q. Could you now please look at article 8.6 of the
20 Privatization Agreement? The second part of it. It
21 states:
22 "Extension of the deadline for performance of any
23 obligation or undertaking of any action, defined by this
24 Agreement, shall not be considered an extension of the
25 deadline for performance of other obligations or

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01 undertaking of other actions defined by this Agreement."
02 Can you see that?
03 A. Yes.
04 Q. Actually, doesn't that provision prohibit that because
05 of let's say extension of the deadline for performance
06 of the buyer's obligations, the Privatization Agency
07 would also somehow extend the deadline or refuse to
08 perform its own obligations under this agreement?
09 A. I do not think that the deadline for complying with
10 article 5.3.4 was extended here; rather, the remedy of
11 the breach was requested. I do not understand your
12 question, I am sorry.
13 Q. Okay, so your position is that the deadline for
14 performance of 5.3.4 was not extended by the extensions,
15 the extensions were only there to --
16 A. Ensure compliance.
17 Q. Not compliance --
18 A. Performance.
19 Q. Not performance, ensure remedy, right?
20 A. Correct, of the breach.
21 Q. This is different because if the obligation ceased to
22 exist, I may have an obligation to remedy a prior
23 breach, but that does not change the fact that the
24 obligation does not exist any more, and we were
25 discussing that when we were talking about June 30th

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01 2015.
02 A. Yes, after that moment, yes, that is something we
03 concur.
04 Q. Please look at articles 1 and 2 of the Share Pledge
05 Agreement again. The parties agreed to pledge with the
06 Agency the confirmation of the shares of BD Agro which
07 was purchased at the auction held on September 29th
08 2005, and then in article 2, they state:
09 "Confirmation of the shares referred to in Article 1
10 of this Agreement is pledged ..." and so on.
11 I am somewhat puzzled by this language because
12 I believed that the shares in BD Agro are immaterial.
13 A. They are dematerialised, yes. The dematerialisation
14 started in Serbia -- I am sorry.
15 Q. So what is this confirmation of the shares of BD Agro
16 which has to be pledged with the Agency --
17 A. This is another proof -- sorry?
18 Q. What is that, please?
19 A. This is another proof that we cannot rely on literally
20 the text, because otherwise this would all be void.
21 I mean, there is no confirmation of shares, it does not
22 exist, it does not represent the shares, it can only be
23 an excerpt from the Registry, and you can take as many
24 excerpts as you want. There is no such thing as
25 confirmation of the shares as a paper incorporating

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01 shareholders' rights. If you understand, shares are not
02 materialised, they are dematerialised, they exist solely
03 as entries into accounts, electronic accounts, held by
04 the Central Securities Registry, and this is how so the
05 pledge was created, in the Central Securities Registry.
06 Q. Does the fact that the pledge could not be created
07 through the means stated in article 1 and 2 invalidate
08 the Share Pledge Agreement?
09 A. I am not really sure at what moment exactly were the
10 shares entered into the Central Securities Registry,
11 whether at the time, but I suppose they did. This does
12 not invalidate the obligation because it is bad wording,
13 but the essence is understood.
14 Q. The parties created the pledge through a different
15 manner, and that did not affect the validity of the
16 pledge agreement, correct?
17 A. Could you please repeat?
18 Q. The parties created the pledge through a different
19 manner, and that did not affect the validity of the
20 Share Pledge Agreement, correct?
21 A. Okay, the pledge was allowed under Serbian law, it was
22 allowed to pledge shares, and this could only be done
23 over the Central Securities Registry, so if you are
24 asking me whether the obligation to create a pledge was
25 validly created, I would say yes. Whether the

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01 performance of that obligation could have been done in
02 accordance with this article 1, no, performance was only
03 possible, so *modus acquirendi*, the only way to reform
04 the obligation would be in the Central Securities
05 Registry.
06 Q. This is what happened because the parties agreed on it,
07 and the fact that the *modus acquirendi* was different
08 than that foreseen in the Share Pledge Agreement did not
09 affect the validity of the Share Pledge Agreement,
10 correct?
11 A. Yes, the Share Pledge Agreement contains an obligation
12 to pledge, and this is just a matter of performance of
13 an obligation, and the obligation was validly created.
14 MR PEKAR: Thank you. That concludes my cross-examination.
15 THE PRESIDENT: Thank you. Do we have any questions in
16 re-direct, Dr Djeric?
17 DR DJERIC: We don't have questions at this moment, thank
18 you, Mme President.
19 THE PRESIDENT: Do my colleagues have questions? Yes,
20 please.
21 Questions from the TRIBUNAL
22 MR VASANI: Good afternoon.
23 A. Good afternoon.
24 MR VASANI: In the exchange between you and counsel, if you
25 remember, on the ability of BD Agro to give money to

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01 Inex and Crveni Signal in 2015 in order to repay the
02 past debt in 2011, one thing that struck me when you had
03 said under certain circumstances that was possible,
04 although there were other Serbian laws that would not
05 allow that, am I right then in understanding that your
06 position is that the Privatization Agreement could not
07 have been further breached after April 2011?
08 A. Yes, that is correct.
09 MR VASANI: So the only reason that the Privatization
10 Agreement stayed alive was in order to cure or remedy
11 the breach that you consider to have crystallised prior
12 to April 2011?
13 A. Yes, to my understanding, it was established prior to
14 April 2011.
15 MR VASANI: Can we go, please, to your second opinion at
16 paragraph 24, if someone could pull that up? Thank you.
17 This is your understanding of 5.3.4, and we had
18 a helpful interpretation yesterday, I don't know if you
19 were able to read the transcript on that, but
20 regardless, I understand you interpret that provision to
21 mean that the funds have to be used for the benefit of
22 BD Agro?
23 A. Yes.
24 MR VASANI: Claimants say that Inex and Crveni Signal were
25 related parties, creditors in past, they had done

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01 favours or done good things for BD Agro in the past,
02 might have done good things for BD Agro in the future;
03 why is a friendly relationship among related parties not
04 to the benefit of BD Agro?
05 A. The way I understand the wording of article 5.3.4 is
06 that these funds should be spent to improve the state of
07 the assets of BD Agro. For example, to buy certain new
08 assets, or to settle certain existing debts. That would
09 be my understanding. For the needs of BD Agro, that's
10 how I would understand it.
11 MR VASANI: But if I had a relationship with a third party
12 that was to my benefit, as BD Agro, that would not be
13 sufficient in your opinion, it would have to be
14 benefitting me in my assets only?
15 A. I would look at that from a legal perspective, and not
16 just factually whether you can benefit just from
17 a friendly relationship but have no rights arising
18 out -- I do not know if you understand me. You cannot
19 give away money for free and say that it's a friendly
20 company, and you shall benefit. This is not a legal
21 explanation of the benefits.
22 MR VASANI: Fine, that is understood.
23 A. That is how I understand it.
24 MR VASANI: Thank you. Could we please pull up CE-253?
25 This is a June 2014 Supreme Court of Cassation case, and

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01 if we go to page 3, second paragraph, and if you could
02 please read that? This was quoted in Mr Milošević's
03 opinion.
04 A. Would you like me to read the whole paragraph?
05 MR VASANI: Yes, if you could just read the paragraph -- you
06 don't have to read it out loud, just to yourself.
07 (Pause).
08 A. Yes.
09 MR VASANI: The way I read this is that the court is saying
10 that when you look at the termination of a privatization
11 agreement, don't just look at laws of obligation and
12 breaches, look to a greater purpose, which is
13 privatization; am I reading the court's interpretation
14 correctly?
15 A. You are completely correct, because the Law on
16 Privatization is the *lex specialis*, so this is the first
17 law to be consulted, and only subsidiarily you can
18 consult the Law on Obligations, for all the issues --
19 contractual issues that are not explicitly differently
20 regulated within the Law on Privatization, so this is
21 completely correct, and the Law on Privatization
22 regulates the purpose, and this is how we interpret and
23 draw conclusions.
24 MR VASANI: I think you answered all the rest of my
25 questions, thank you.

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01 PROFESSOR KOHEN: Good afternoon, Professor Radovic.
02 A. Good afternoon.
03 PROFESSOR KOHEN: I have a number of questions on different
04 topics.
05 I will start with the introduction you made when you
06 referred to the role of the Privatization Agency, and
07 you analysed the socially-owned -- I would say property,
08 so you criticised this term, or company indeed you
09 criticise. You refer to socially-owned enterprise. So
10 I can understand that the state can privatize its own
11 property, so privatization of a state property, but with
12 regard to this socially-owned capital, we saw that the
13 court employed this terminology, and if I am not
14 mistaken, also the Ombudsman. So who is the owner of
15 this socially-owned enterprise, to use your words?
16 A. This is an issue that cannot be explained to a lawyer of
17 a developed legal system.
18 PROFESSOR KOHEN: I come from South America, by the way.
19 But you can consider that my country is developed if you
20 wish, no problem.
21 A. I will expand. Social property was an idea created
22 under the Socialist regime that existed in Serbia, and
23 started being introduced after World War II. First we
24 had state property, and then all state property was
25 turned into social property. There was no private

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01 property at the time. Social property meant that
02 everyone, the whole society, is the owner of means of
03 production. The capital, as you said. So no one and
04 everyone, that would be the answer, was the owner of
05 social property. This is what I tried to explain also
06 in the report I gave you.
07 For example, if the company was a social enterprise,
08 it could not be the owner of, for example, a building,
09 it could only have the right to use social property.
10 That was a very complicated concept. There was no
11 private ownership but just the right to use
12 socially-owned property.
13 PROFESSOR KOHEN: You said it didn't belong to anyone?
14 A. To everyone actually.
15 PROFESSOR KOHEN: It belongs to everyone?
16 A. Yes, the society as a whole, but the workers in
17 a particular enterprise were given the rights to manage
18 the company. The workers as a whole, so they decided on
19 what to do with the company. They were given the right
20 to manage socially-owned capital. That is how this
21 worked. The socially-owned enterprises were very
22 complicated to understand, from the perspective of
23 lawyers --
24 PROFESSOR KOHEN: One could assimilate, strictly speaking,
25 there was no difference for the work of the

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01 Privatization Agency whether the enterprise was state
02 property or socially-owned property in that case, so
03 there was no difference.
04 A. There would be a slight difference, because you see,
05 under the constitution of Serbia, social property never
06 was turned into state property. We still have, in our
07 constitution, both types of property. We have state
08 property, this is the one thing, that belongs to the
09 state, and social property that belongs to the whole
10 society.
11 So this has never been done in Serbia. For example,
12 in our neighbouring country, Croatia, they decided,
13 after the reforms, after turning to the market economy,
14 they decided to turn all social property into state
15 property, and then conducted privatization. In Serbia,
16 this was not done that way. In Serbia, we still have
17 socially-owned enterprises, and the difference is that
18 if you have state property, then you can, for example,
19 found a public enterprise, or you can found a company
20 with shares that belong to the state, et cetera.
21 PROFESSOR KOHEN: Okay, thanks. Now with your explanation
22 about the difference between the Croatian practice and
23 the Serbian practice, I understood the point.
24 I move to a different topic, which is termination of
25 contracts or agreements. Can we say that

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01 a privatization agreement can be terminated in the same
02 manner as a private contract?
03 A. Yes of course, this is what I wrote about so
04 extensively. Termination is only partially, or I can
05 say rudimentary, specifically regulated under the Law on
06 Privatization. But all other matters, and there are so
07 many other issues that are not mentioned in the Law on
08 Privatization, those matters are regulated applying the
09 general rules of contract law. But I should also
10 mention that the rule in Article 41a fully corresponds
11 to the main rule of contract termination for
12 non-performance in the Law on Obligations. The
13 difference is only that Article 41a knows specific
14 grounds for termination, whereas the Law on Obligations
15 allows termination for non-performance of, in principle,
16 any obligation.
17 PROFESSOR KOHEN: So this explains probably what you say in
18 paragraph 44 of your first expert report, you say that
19 the notice of termination is just an expression of will.
20 A. Yes, it is an expression of will, but if I may clarify?
21 PROFESSOR KOHEN: Yes, please.
22 A. Because I saw that this was in one place disputed. If
23 we look at Article 41a, and this is copied in the
24 Privatization Agreement, we see that if the Agency
25 thinks that the buyer breached his obligations, the ones

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01 listed in Article 41a, it has to give certain additional
02 deadlines for the buyer to remedy the breach, as
03 I explained. If that additional deadline expires
04 without the buyer remedying the breach, the contract
05 would be terminated ex lege, which means would be deemed
06 terminated. No other action of the Privatization Agency
07 would be needed except to give a notification to tell
08 the buyer, "You know, I just wanted to tell you that the
09 contract is now terminated, just to inform you that it
10 was ex lege terminated", this is how things work.
11 And the same concept exists under the Law on
12 Obligations. You can see that -- I am sorry, just
13 a second. Under Article 125, that after the deadline of
14 the performance -- I am sorry, just a second, this is
15 a different Act than the one I usually use. Give me
16 just a second, please. Maybe this is important.
17 DR DJERIC: Could we put it on the screen perhaps?
18 A. I am sorry, not all paragraphs are here. Does anyone
19 have the Law on Obligations, the full text?
20 Not all articles are here, I am sorry. This is not
21 helpful. Okay, you can check for yourself when you are
22 provided with the whole text, but under the Law on
23 Obligations, there is also a rule that if one party
24 breaches the contract, an obligation of the contract,
25 then the innocent party has to set an additional

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01 deadline in order to enable the other party to remedy
02 the breach. If this additional deadline elapses and the
03 breach is not remedied, then the contract is terminated
04 ex lege. This is the same rule as in Article 41a, and
05 now what happens? Under the present case, everything we
06 have under the Law on Privatization. However, the Law
07 on Obligations enables --
08 DR DJERIC: I am sorry, if I may interrupt just for
09 a second, we have that article in the Exhibit RE-32, so
10 these articles of the Law on Obligations are there,
11 RE-32.
12 A. So the Law on Privatization is silent as to what happens
13 next, if the first additional deadline elapses and the
14 buyer has not remedied the breach, and that's where we
15 come to the Law on Obligations, because we could not go
16 further on the basis of the Law on Privatization. This
17 is what the Serbian judicial practice did, it consulted
18 the general law of contracts. And the general law of
19 contracts says, this is Article 125(2), that the
20 innocent party can keep the contract in force by
21 notifying the party that it still is interested in
22 specific performance, it still wants performance, and
23 this is what the Privatization Agency did. It gave
24 a new additional deadline, and a new one and a new one
25 and a new one, so it kept the contract in force.

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01 And under Serbian law, if this was done, if you give
02 more than one additional deadline, so if you show
03 intention to keep the contract in force, then if you
04 want to terminate the contract, the termination does not
05 happen any more ex lege, but you need to give
06 a statement of intent saying, "There will be no more
07 deadlines, this is it, it's the end". So this is how it
08 works under the Law on Obligations, and this is also
09 confirmed in the privatization cases. The Supreme Court
10 of Cassation has a judgment where it says that when
11 giving more additional deadlines you have to give
12 a statement of intent saying this is the end, and there
13 will be no more additional deadlines, we want to
14 terminate.
15 PROFESSOR KOHEN: Probably it is a question of terminology,
16 but I have some difficulty in following you when you say
17 a notice of termination is just an expression of will,
18 means it doesn't terminate the relationship.
19 A. It does, in Serbian law --
20 PROFESSOR KOHEN: If it is an expression of will.
21 A. An expression of will that leads to contract
22 termination.
23 PROFESSOR KOHEN: So if we have a contract, and I can say
24 that it is termination, but it is my expression of will
25 only. This is why I have some difficulty in following

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01 you. If you put on the screen, please, Article 41a of
02 the Law on Privatization that was mentioned many times
03 this morning, and even we had the assistance of the
04 interpreters:
05 41a -- So "The agreement on sale of the capital or
06 property shall be deemed terminated ..."
07 A. Yes, after the first additional deadline expires and the
08 Privatization Agency does not express its will to stick
09 with the contract and continue insisting upon specific
10 performance.
11 PROFESSOR KOHEN: It means -- sorry.
12 A. But it can insist on specific performance and give new
13 additional deadlines. This is not written here, but our
14 judicial practice allows this under the general law on
15 contract.
16 PROFESSOR KOHEN: In your first expert report, paragraph 36,
17 probably we can also put it on the screen, so there is
18 the deadline, the deadline expires, the buyer fails to
19 remedy the breach, the privatization agreement is
20 terminated ex lege.
21 A. Yes.
22 PROFESSOR KOHEN: Without the need for any further
23 additional act?
24 A. Except to inform the buyer that this happened. This was
25 a contractual obligation under article 7 of the

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01 Privatization Agreement.
02 PROFESSOR KOHEN: Well, maybe it's a difference of kind of
03 interpretation of mere expression of will and
04 termination ex lege, here ex lege means ipso facto.
05 A. Yes, it's deemed terminated, that's it, upon the basis
06 of the law itself.
07 PROFESSOR KOHEN: It's a consequence of the law?
08 A. Of the law itself, yes.
09 PROFESSOR KOHEN: The termination?
10 A. After the deadline expires, the first deadline expires.
11 PROFESSOR KOHEN: So my further and last question is with
12 regard to the overriding mandatory provisions, you said
13 that you are not a specialist in private international
14 law, but this concept goes beyond private international
15 law, I think. Do you believe that the Law on
16 Privatization contains overriding mandatory provisions?
17 A. Of course, one example given was Article 41ž of the Law
18 on Privatization which we examined in detail and that is
19 the article explaining under which conditions can the
20 Privatization Agreement validly be assigned, because the
21 contract on assignment is concluded between the party,
22 the buyer of the Privatization Agreement, and the third
23 party, and they can, for example, agree upon application
24 of some other jurisdiction to their agreement, the
25 assignment contract, but Article 41ž remains applicable,

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01 even though it's Serbian law.
02 THE PRESIDENT: Thank you. During the discussion about the
03 Ombudsman's recommendations of 23rd June 2015, you were
04 asked different questions, and at some point, you said
05 the Privatization Agency was wrong to do nothing, and
06 I understood this to be your position, not just
07 a restatement of the Ombudsman, is that right?
08 A. No, it was the interpretation of the laws, its duty
09 was --
10 THE PRESIDENT: It's your interpretation of the law?
11 A. Yes.
12 THE PRESIDENT: We were discussing, this also follows up on
13 the last discussion of the additional time limits that
14 you can give, and then the termination doesn't happen by
15 operation of law, but then you have to say "now
16 I terminate", if you give more than one additional time
17 limit.
18 Can you give indefinitely additional time limits?
19 Is there not a time -- and that's law on contracts,
20 I presume -- when your right to terminate for a past
21 breach, if you do not exercise it, is waived?
22 A. Of course there is a time limit. You cannot have
23 a contractual right that lasts for an indefinite period
24 of time.
25 So we are here dealing with --

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01 THE PRESIDENT: Is it just a statute of limitation that you
02 would apply? No, I was not thinking of that. I would
03 rather think of some kind of good faith principle that
04 means that at some point you need to say what you want
05 to do with this contract, because you have, on the other
06 side, your contract partner, who relies on your
07 behaviour.
08 A. Okay, so in our legal system there are no restrictions
09 on an innocent contract party not to terminate the
10 contract, so it is free to choose. After the first
11 deadline expires, it is free not to extend the contract
12 further, and the contract will be terminated ex lege.
13 I am now talking about the general contract law, but the
14 same applies here.
15 It is completely free to decide to give another
16 opportunity to the buyer, as long as it has interests to
17 insist on specific performance. When it no longer is
18 interested or thinks that this is pointless, that
19 although so many chances were given, that was not
20 remedied, it can change its opinion and terminate the
21 contract. There are no restrictions to do that. And
22 you cannot find any rule under Serbian general contract
23 law or the Law on Privatization that would prevent the
24 Agency or any other contracting party from doing that.
25 The party that breached the contract cannot rely on

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01 the other party being patient and giving deadlines --
02 THE PRESIDENT: No, it would rather be relying on the fact
03 that at some point, the other party must become
04 impatient and say, "Now it's enough".
05 A. Exactly.
06 THE PRESIDENT: "I terminate".
07 A. Exactly.
08 THE PRESIDENT: If the innocent party does not say so after
09 years, can you not rely on the fact that the innocent
10 party in the end does not consider that this is such an
11 important breach that it could give rise to terminate?
12 A. Could you please repeat?
13 THE PRESIDENT: There are some legal systems that I know
14 that require an innocent party to at some point, and you
15 can discuss what this some point, needs to make
16 a decision, to terminate or not to terminate, for a past
17 breach.
18 A. Under Serbian law, the only thing that would apply here
19 would be the statute of limitations, because at some
20 point you would have to sue --
21 THE PRESIDENT: The statute of limitation is a clear limit,
22 that is not my question.
23 A. Other than that we do not have any rules in that regard.
24 THE PRESIDENT: Thank you.
25 A. Or practice.

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01 THE PRESIDENT: During your examination, we were also
02 looking at this Supreme Court of Cassation case of June
03 2014 that mentions the purposes of privatization.
04 I mean, we can go back to it, but I am sure you remember
05 it, that was economic development and social stability,
06 and stability in business, something like that, it said.
07 In what sense was this termination consistent with
08 these goals? Is this something that one needs to
09 consider or not?
10 A. I believe that -- if you mean the breach of
11 article 5.3.4, whether it --
12 THE PRESIDENT: I mean the termination in 2015 of a breach
13 that was notified in early 2011.
14 A. Did it serve the goals? Well, the fulfilment of this
15 obligation did serve the goals of the privatization,
16 because article 5.3.4 in my opinion served to protect
17 the assets of the company BD Agro and this is why it was
18 an important grounds for contract termination, it was
19 listed as one possible grounds for contract termination,
20 so the Agency did not have a great manoeuvre possibility
21 here. As I explained earlier, either the breach could
22 have been remedied or the contract should be terminated,
23 those were the two ways of the Privatization Agency, and
24 we have heard the legal representatives of the Claimants
25 that this breach could have been easily remedied, that

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01 BD Agro could pledge all the -- but that makes it
02 strange.
03 THE PRESIDENT: That is a different question, right? I was
04 just asking myself -- so if I understand you correctly,
05 and I think you have already said that, there was no way
06 for the Privatization Agency to waive the ground and not
07 terminate?
08 A. No, there was no possibility to waive -- either the
09 privatization was successful, and all obligations have
10 been completed, or not. Those were the two options.
11 THE PRESIDENT: And successful you measure in legal terms of
12 performance of the relevant obligations?
13 A. Yes, except minor breaches that can be put aside.
14 THE PRESIDENT: You would say we don't consider what the
15 economic outcome is?
16 A. If you ask me about the Serbian law, no. The economic
17 outcome would not be considered by Serbian judges, just
18 the law.
19 THE PRESIDENT: Thank you. You heard Mr Grušić yesterday?
20 A. Yes.
21 THE PRESIDENT: In his second report, if someone can pull
22 this up, in paragraph 37, he wrote -- you probably
23 covered this in your direct, but I just want to be sure
24 I understand it correctly. He writes:
25 "I explained in my First Expert Report that the MDH

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01 Agreement was governed by the law of British Columbia.
02 This part of my Report is not contradicted by Professor
03 Radovic. This point alone is sufficient to refute
04 Professor Radovic's opinion on the validity of the MDH
05 Agreement under Serbian law."
06 Do I understand you correctly that the reason why
07 you did not contradict this was simply your instructions
08 not to look into private international law issues?
09 A. I was not analysing the law applicable to the contract,
10 I was just analysing the overriding provisions of
11 Serbian law and also the applicable company law, the lex
12 societatis. In the present case, and this is what I can
13 say although I am not an expert in private international
14 law, but I do know to identify what the lex societatis
15 of the company BD Agro is, and I hope we can all agree,
16 and even Mr Grušić did not comment on that, is that the
17 lex societatis here is Serbian law, because this is
18 a Serbian company, founded in Serbia, registered in
19 Serbia, has its activities in Serbia, everything.
20 So those are the two things that I commented on.
21 The first part, I commented on the transfer of shares,
22 and I identified provisions in the --
23 THE PRESIDENT: You don't have to repeat all this. So you
24 made no analysis of private international law, but for
25 applying the private international law notion of

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01 overriding mandatory laws?
02 A. Yes, if I did --
03 THE PRESIDENT: So you did some private international law
04 analysis?
05 A. -- make certain observations, I did that upon the
06 instruction to analyse things under Serbian law. But
07 I do not have an opinion on what law is applicable to
08 this agreement.
09 THE PRESIDENT: Somehow you do, because when you say you
10 have to disregard foreign law and apply a rule of
11 Serbian law because it is a mandatory provision, that is
12 a determination of applicable law, isn't it?
13 A. No, it means even if foreign law were applicable, these
14 provisions would nevertheless apply. I am sorry if
15 I didn't express myself clearly enough, but that was the
16 idea. I did not analyse which legal system is
17 applicable to contracts. I was instructed to give an
18 opinion under Serbian law, as if Serbian law were
19 applied.
20 THE PRESIDENT: Yes. Do I consider that you have made
21 determinations on which provisions of Serbian law are
22 mandatory overriding provisions or you simply applied
23 Serbian law?
24 A. No, I made -- I did not expressly say that in the first
25 report, but I think that -- or I did, I cannot remember,

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01 but Mr Grušić and I finally agreed that provisions
02 regarding transfer of shares over the stock exchange
03 provisions regarding Article 41ž, the assignment of the
04 Privatization Agreement, are all mandatory rules of
05 Serbian law, overriding mandatory rules, so I didn't
06 think this is under dispute.
07 THE PRESIDENT: Thank you. I will have to check my notes.
08 In your second report, in paragraph 14 and
09 following, you discuss the powers from the perspective
10 of the performance of administrative tasks, and you say
11 that termination is not an administrative task, is an
12 act of a contract party, like any commercial party could
13 do.
14 A. Yes.
15 THE PRESIDENT: I was asking myself -- I think you say the
16 same also later on for the enforcement of the
17 termination and the share transfer. Yes, that follows
18 in paragraph 19.
19 The transfer happens on the basis of the statute, or
20 how do you view this? The transfer of the share capital
21 after the termination.
22 A. Yes, but somebody has to notify the Central Securities
23 Registry, but the legal basis is statute.
24 THE PRESIDENT: And the fact that you have a provision to
25 the same effect in the privatization contract is

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01 irrelevant, or does it play a role in the assessment of
02 whether it is an administrative task or not?
03 A. I did not think that it is an administrative task, so
04 for me it is --
05 THE PRESIDENT: I understand that, but why do you --
06 A. The conclusion would be, from my perspective, the same.
07 Whether the provision is also in the agreement or just
08 in the statute, my conclusion would be the same.
09 THE PRESIDENT: Then in paragraph 19, and I am still on your
10 second report, it is still about the same issue of the
11 unilateral enforcement, and you give an example of
12 Stornorecht, and then you say, towards the end:
13 "In the present case, the provisions regarding
14 transfer of shares because of termination of the
15 Privatization Agreement were known to the buyer at the
16 time of concluding the contract."
17 I was asking myself, does knowledge have anything to
18 do with this? Would it be different if they had not
19 known?
20 A. No, because under Serbian law, ignorantia juris nocet,
21 that means it is detrimental to the party if it doesn't
22 know the legislation applicable to its relationship, so
23 because this was directly prescribed in the Law on
24 Privatization, even if the buyer did not know, it
25 wouldn't make a difference. Even if it didn't know the

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01 law.
02 THE PRESIDENT: If that is not the reason for considering
03 it -- you say this is commercial because -- or it's not
04 a public act because the buyer knew? Now, if we say the
05 knowledge is irrelevant, what is the reason for saying
06 it is a commercial act?
07 A. I was comparing this to the situation where, even under
08 other commercial contracts, we can agree upon unilateral
09 enforcement, so I wanted to connect this actually,
10 I maybe now --
11 THE PRESIDENT: That is because you did this connection,
12 yes.
13 A. Yes, I wanted to make a connection between the situation
14 where any parties to any commercial contract can agree
15 upon unilateral enforcement, and that would work out,
16 that would be possible. And then I just draw a parallel
17 with that, and so this here does not seem any different
18 to me.
19 THE PRESIDENT: I see where you get it, yes.
20 Good, I have no further questions. No
21 clarifications needed?
22 DR DJERIC: Mme President, I would have --
23 THE PRESIDENT: I don't think the Claimants have anything?
24 MR PEKAR: Sorry, my mic was off. We do not have any
25 clarification questions.

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01 Re-examination by DR DJERIC
02 DR DJERIC: We have one very short question following up on
03 your questions, Professor Kohen's, and I know you said
04 the prescription is clear for you, but I think it would
05 be useful if Professor Radovic would say what was the
06 statute of limitations under Serbian law for seeking
07 remedy and then termination of the breach of
08 article 5.3.4 in our case.
09 A. Yes, this is regulated, as I said, under the Law on
10 Obligations and the statute of limitations says that
11 contractual rights can be enforced only until the elapse
12 of ten years after the right was created, after it
13 started existing. And giving notices to the other
14 party, and urging the other party to perform the
15 obligation, is not sufficient to stop the lapse of time,
16 so the deadline continues regardless of setting, for
17 example, additional deadlines and trying to obtain.
18 After ten years, it would no longer be enforceable, and
19 you could no longer do anything with the claim.
20 DR DJERIC: Thank you.
21 THE PRESIDENT: Good. So that ends your examination,
22 Professor Radovic, thank you very much for your
23 assistance this morning.
24 A. Thank you.
25 THE PRESIDENT: That is a good time for us to take the lunch

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01 break. Should we start again at 2.00? Good.
02 (1.07 pm)
03 (Adjourned until 2.00 pm)
04 (2.00 pm)
05 MR AGIS GEORGIADES (called)
06 THE PRESIDENT: So we are ready to go? Yes, you have been
07 ready for a few minutes and I was not ready!
08 Good afternoon, sir. Thank you for being with us.
09 Can you please state your name?
10 THE WITNESS: It's Agis Georgiades.
11 THE PRESIDENT: I figured that, but I was not sure, so
12 I thought I would rather ask you to pronounce it. You
13 are an advocate in Cyprus?
14 THE WITNESS: Yes.
15 THE PRESIDENT: At the law firm Christos Georgiades, is that
16 how you pronounce it, in Nicosia?
17 THE WITNESS: Yes, I am based in Nicosia.
18 THE PRESIDENT: Thank you. You have provided three expert
19 reports dated 16th January 2019, 3rd October 2019 and
20 5th March 2020.
21 THE WITNESS: Correct, yes.
22 THE PRESIDENT: You are heard as an expert; as you know, you
23 are under a duty to make statements only in accordance
24 with your sincere belief. Can you please confirm this

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01 by reading the expert declaration?
02 THE WITNESS: Yes, thank you. I solemnly declare upon my
03 honour and conscience that my statement will be in
04 accordance with my sincere belief.
05 THE PRESIDENT: Thank you. So I will first give the floor
06 to you, Mr Pekar, for direct questions.
07 MR PEKAR: Thank you, Mme President.
08 Direct examination by MR PEKAR
09 Q. Good afternoon, Mr Georgiades. Mr Georgiades,
10 I represent to you that Article 41ž of the Serbian Law
11 on Privatization enables the buyer of privatized shares
12 to assign the privatization agreement to an assignee
13 subject to prior consent of the Privatization Agency.
14 Please assume that Article 41ž is a mandatory provision
15 of Serbian law. Does that affect your analysis of the
16 validity and effects of the Sembi Agreement?
17 A. As I explained in my reports, and especially in my third
18 report, I have read the provision of 41ž, and I think
19 that it is irrelevant to the issue of validity of the
20 equitable assignment vis-à-vis the assignor and the
21 assignee.
22 MR PEKAR: Thank you. No further questions.
23 THE PRESIDENT: Thank you. Professor Djundic?
24 PROFESSOR DJUNDIC: Thank you, Mme President. Before we
25 start, there is a matter of binders on the expert's

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01 table. We would need a clarification on the documents
02 that the expert has with him.
03 A. I have a clean copy of CE-029, which is the Sembi
04 Agreement, and then I have all the exhibits that were
05 presented through my reports, most of them are
06 authorities on Cyprus and generally English law, and
07 there are also some documents which relate to the
08 corporate structure and the details of Sembi.
09 THE PRESIDENT: I think you can put those aside, I had not
10 seen that you have your own documents. Of course
11 I understand that it's always nicer to have one's own
12 documents but you be will given copies when questions
13 are asked about specific documents, and if you want to
14 check something, you just tell us, and we will take it
15 from there.
16 A. Thank you.
17 Cross-examination by PROFESSOR DJUNDIC
18 Q. Mr Georgiades, good afternoon, my name is Petar Djundic,
19 I am here on behalf of Respondent in these proceedings.
20 Your reports obviously deal with the effects and
21 validity of the Sembi Agreement according to the Cypriot
22 law, but before we go on, I would like a small point of
23 clarification. The Sembi Agreement, under the rules of
24 Cypriot law, is an assignment or is it a sale of shares,
25 or is it maybe both?

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01 A. One does not negate the other. It is an agreement by
02 which the two parties agreed to sell certain things.
03 The effect of this agreement on some of these things was
04 that they were assigned from one party to the other, so
05 I can say that it is both a sale agreement and an
06 assignment agreement.
07 Q. So both of those things at the same time?
08 A. Correct.
09 Q. Thank you. The reason I ask is because from the second
10 report, I understood that you argue that Sembi is
11 a voluntary assignment, the Sembi Agreement, and then in
12 paragraph 2.23 of your third report, you are discussing
13 the issue of sale between Mr Obradovic and Sembi.
14 You see 2.23, but this is clarified now, because as
15 you say, one agreement covers both qualifications, as
16 I understand it.
17 A. Yes, I explained that, I think, in my second report,
18 where I state that assets that were the subject of the
19 sale by the Sembi Agreement, that their transfer was not
20 conditional upon something, were effectively sold. They
21 were transferred, using the Sembi Agreement.
22 Other assets, like the shares, where the transfer
23 was conditional on something else, were in effect
24 assigned by the Sembi Agreement pending the transfer of
25 legal title later on.

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01 Q. Understood, but what I don't understand is if one
02 agreement is two types of contract at the same time,
03 there must be different rules applicable as to the sale
04 in contrast to those rules applicable to the voluntary
05 assignment. I mean, what are the legal standards then,
06 if the agreement is two things in the same time? This
07 is what confuses me.
08 A. The two are not in conflict. If a contract of sale has
09 the result of producing an assignment, then special
10 rules relating to assignments do apply, but these do not
11 negate the application of the general rules of contract
12 and the general rules of selling something under Cyprus
13 law.
14 Q. The next question concerns your third report, in which
15 you explain what you have just said, that the equitable
16 assignment is not prevented by Article 41ž of Serbian
17 Law on Privatization. This is paragraph 2.13 of the
18 second report.
19 A. The second report or the third report?
20 Q. I am sorry, it is the third report, I apologise. 2.13.
21 There you state, as you see:
22 "Article 41ž imposed certain requirements that had
23 to be met for an assignment to be performed. This did
24 not mean that the failure to meet these requirements
25 rendered the assignment invalid vis-à-vis assignor and

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01 assignee ... There is strong authority to the contrary."
02 Then you go on and cite that authority, which is
03 Chitty on Contracts, this is Claimants' Exhibit CE-840,
04 paragraph 19-045:
05 "However, it seems that a prohibited assignment can
06 be effective as between assignor and assignee."
07 This is the thing that is clear, but would you agree
08 with me that this paragraph refers to restriction on
09 assignment contained in the contract, rather than in the
10 law, in the statute, this sentence that is highlighted?
11 A. Sorry, I didn't understand the question. You are asking
12 whether?
13 Q. I apologise, I am asking whether this sentence refers to
14 the restriction on assignment contained in the original
15 contract or does it refer to the restriction or
16 prohibition on assignment which is contained in statute,
17 in the law?
18 A. I read it as a prohibition to assign the underlying
19 contract, so that is exactly the case that we have
20 before us, it's the same situation.
21 Q. Yes, this is a restriction, I don't dispute that.
22 A. Yes.
23 Q. But does this authority speak about the restriction
24 contained in the original contract, which means for
25 example, in our case, that would be the Privatization

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01 Agreement; or does it refer to the restriction contained
02 in some statute or law?
03 A. I read this as a prohibition which can be imposed by
04 law, but further down in the same report I also deal
05 with restrictions that could be imposed contractually on
06 assignment.
07 Q. Can we just scroll up to 19-043? Can you read the
08 highlighted part for me? It's on the screen,
09 Mr Georgiades.
10 A. It is difficult because of the microphone, it's easier
11 this way. (Pause). Yes.
12 Q. So these are the rights declared, or this section refers
13 to:
14 "Rights declared by contract to be incapable of
15 assignment."
16 Not in the statute, or by the statute, am I right?
17 A. Yes.
18 Q. Thank you. So in your second report, and this is
19 paragraph 3.19, you once again state:
20 "Where the terms of the original contract or the law
21 of the place where a piece of movable property is
22 located prohibit or restrict assignment (ie transfer of
23 legal title), the prohibition or restriction may render
24 the assignment ineffective as against the debtor.
25 Nevertheless, this does not invalidate the assignment

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01 between the assignor and the assignee."
02 So this is basically again your position.
03 A. Yes of course.
04 Q. You go on to cite Snell's Equity, this is Claimants'
05 Exhibit CE-507, paragraph 3-050. The thing is that this
06 paragraph does not speak anything about cases in which
07 assignment is prohibited by the law. It refers again to
08 contractually prohibited assignments. Can you confirm
09 this?
10 A. It is correct that 3-050 of Snell refers to prohibitions
11 by contract terms, but the excerpt from Chitty which you
12 referred me before refers to prohibitions that include
13 statutory prohibitions, so the position that I stated in
14 my report is correct.
15 Q. Well, can we go back to Chitty on Contracts, that is
16 Claimants' Exhibit CE-840, paragraph 19-043?
17 A. Yes, I was referring to 19-045. 19-045 of Chitty.
18 Q. Yes, 19-045 is in this section that is called "Rights
19 declared by contract to be incapable of assignment", is
20 it correct?
21 A. It does cover the same thing.
22 THE PRESIDENT: Can you please show 19-045?
23 PROFESSOR DJUNDIC: As I see it now, the author speaks about
24 prohibited assignment, I don't see any reference to the
25 assignments prohibited by law or by the statute, am

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01 I right?
02 A. This is my interpretation of it. A prohibition can be
03 a statutory prohibition and can be a contractual
04 prohibition. The effect on equitable assignment is the
05 same. The only exception would be if, for example,
06 there was a statutory prohibition which rendered the
07 assignment a criminal offence, or offended public
08 policy. That could be a different case, but the
09 prohibition in the sense of an enabling provision, like
10 41ž, is exactly the same thing, it's just a requirement
11 that the assignee or the assignor must comply with the
12 provision in order to proceed with performance of the
13 contract, and actually, there is a Cypriot case,
14 a Cypriot judgment exactly on that point, I will refer
15 you to it.
16 Q. Mr Georgiades, is it on the record, that case?
17 A. Yes, it is. It is the case of Arsiotis, I will find it
18 in my report. (Pause).
19 Q. Mr Georgiades, maybe we can circle back to that issue
20 later on. I have further questions for you.
21 A. Am I allowed --
22 THE PRESIDENT: If you have it there, it's fine, otherwise
23 we take it up in re-direct examination.
24 A. It is the case of Arsiotis --
25 MR PEKAR: How is it spelt?

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01 A. A-r-s-i-o-t-i-s, CE-841, page 11. It is exactly a case
02 where there was a contract entered which could not be
03 performed until a licence could be acquired.
04 PROFESSOR DJUNDIC: Thank you, Mr Georgiades, this is
05 something that --
06 A. Well, I haven't finished my answer though. It is
07 a contract where for the performance, it was required
08 that the particular licence would be obtained, and the
09 Cyprus Supreme Court held that this was not an invalid
10 contract because it was just a matter of applying to
11 obtain that licence before carrying on the performance,
12 so it was a perfectly valid contract.
13 Q. Thank you. My next question for you is: is every
14 contract assignable under equity, under Cyprus law, or
15 rather in equity?
16 A. In theory, every valid contract is assignable. It may
17 not be assignable in some very exceptional cases, but
18 the general rule is that everything is assignable, yes.
19 Q. I was actually -- I am interested in those limited
20 cases.
21 A. Okay. Let's assume, for example, that we have
22 a contract which is for the sale of illegal drugs, that
23 is not a contract that can be assigned. It may be
24 valid --
25 Q. This is the only limitation --

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01 A. It may be valid at a certain jurisdiction, because the
02 drugs may not be illegal there, but it may be invalid if
03 it is assigned in circumstances that would require some
04 illegality.
05 Q. Surely there must be other exceptions to this rule as
06 well, not only contracts for illegal drugs, or this is
07 the only exception? Illegal contracts cannot be
08 assigned --
09 A. That is the main reason for which an assignment can be
10 refused, if it is offending public policy, or if it is
11 something which is so illegal that it cannot be the
12 subject of a valid agreement.
13 Q. Understood. Can we go to your third report, this is
14 paragraph 2.16? Here you state:
15 "Where the contract is of a 'personal contract' (ie
16 involves personal considerations such as skill), it may
17 not be assignable."
18 Then you go on and say:
19 "But generally commercial contracts are prima facie
20 readily assignable."
21 So there are other contracts except those illegal
22 ones that you provided in your example, that cannot be
23 assigned even under the rules of equitable assignment,
24 am I right?
25 A. Yes, but that's why I said that it is the main category,

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01 it's not the only category of cases where assignment is
02 not possible, so this example that you have given me
03 here refers to something very specific. So if, for
04 example, I ask a famous painter to prepare my portrait,
05 he can of course assign the contract so that the
06 proceeds can be paid to his son, or to his friends, but
07 he cannot assign his part of the performance and ask
08 somebody else to paint a portrait for me. So this is
09 what the case refers to.
10 Q. These are those contracts, if I understand it correctly,
11 that are personal contracts, this is your example of
12 a personal contract, am I right?
13 A. Correct.
14 Q. Would you agree that there are other personal attributes
15 or characteristics of an assignor that are important to
16 the original contracting party, and that prevent
17 assigning the contract to the assignee, or this refers
18 only or applies only to so-called personal contracts?
19 A. First of all, you must specify whether you are referring
20 to the validity of the assignment vis-à-vis the debtor
21 or assignor and assignee, because these are two
22 different things.
23 Q. I apologise, you can just assume that I am always
24 talking about the validity between the assignor and
25 assignee.

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01 A. In respect of that relationship, a personal contract is
02 a case where there may be a restriction to assignment.
03 Like the example I gave you with the famous painter.
04 Q. Let me give you an example.
05 A. Please do.
06 Q. You have an assignor, and because of his personal
07 characteristics, such as his nationality, he was
08 provided with the right to pay the purchase price in
09 instalments, and he wants now to assign the contract to
10 the assignee who does not have those characteristics,
11 personal characteristics. So would you say that it
12 would be correct to say that the assignor's identity is
13 important in that case to the original contracting
14 party?
15 A. Under Cyprus law, in respect of the validity of the
16 assignment vis-à-vis assignor and assignee, this is
17 probably irrelevant.
18 Q. Can we consult now Snell's Equity? This is Claimants'
19 Exhibit CE-507 again, paragraph 3-049. So the first
20 paragraph speaks about certain kinds of contract that
21 involve confidence or personal skill, and the second
22 paragraph of the authority that you rely on heavily in
23 your report says:
24 "There may be other reasons which make the identity
25 of the contracting party important and so prevent

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01 assignment."
02 Do you agree with this statement?
03 A. If I agree the statement, that the statement is correct
04 in Snell?
05 Q. Yes.
06 A. Who am I to judge? Of course, yes.
07 Q. Thank you. So the other authority that you use
08 extensively in your reports is Chitty on Contracts.
09 This is Claimants' Exhibit CE-840, the paragraph is
10 19-055. In the middle of the paragraph:
11 "Indeed, any contractual right involving personal
12 skill on the part of the creditor, or other personal
13 qualifications (such as his credit), is incapable of
14 assignment."
15 So would you agree again that certain identified
16 personal qualifications are also capable of making even
17 the assignment in equity impossible?
18 A. No.
19 Q. You disagree with the authority that you --
20 A. No, you are reading the authority in the wrong way.
21 I am not disagreeing with the authority. What the
22 authority says is that the assignment in relation to the
23 debtor may be ineffective, but the equitable assignment
24 vis-à-vis assignor and assignee, as is stressed in
25 19-045 of Chitty, actually survives.

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01 Q. I submit to you that this is part of Chitty on Contracts
02 that speaks about exceptions from the rule that the
03 equitable assignment is possible in between the assignor
04 and assignee, you agreed with me earlier on that there
05 are some contracts which are incapable of being assigned
06 even in equity.
07 A. Yes, I referred to the issue of illegality, issues of
08 public policy, and issues of personal contract where
09 skill is required, like the example I gave with the
10 painter and the portrait. But it is beyond doubt wrong
11 to say that one cannot assign a debt.
12 Q. Thank you, Mr Georgiades. My next question concerns
13 this alternative stance that the Sembi Agreement was
14 actually a contract on sale of shares between
15 Mr Obradovic and Sembi, this is your third report,
16 paragraph 2.23.
17 A. That is from the third report?
18 Q. Third report, yes, 2.23. You can see it on the screen,
19 if it is more convenient.
20 A. It's not very convenient actually because of the
21 microphone.
22 Q. By all means be free to read from the paper. If this
23 was indeed a sale and purchase agreement, what would be
24 the law applicable to the Sembi Agreement if qualified
25 in such a way, characterised in such a way?

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01 A. First of all, this is not an alternative position. As
02 I explained in one of my first answers to your
03 questions, a contract can be a contract of sale and at
04 the same time can also have the effect of assigning
05 rights, so it's not an alternative position, the two can
06 co-exist.
07 Generally, without referring to this particular case
08 first, a contract for the sale of shares is generally
09 governed by the law selected by the parties. The
10 transferability of those shares, of course, may involve
11 the law of the situs of the shares, and this is what we
12 have here. We have the Sembi Agreement which is clearly
13 governed by Cyprus law but of course it wouldn't be
14 possible to file a form in the Cyprus Companies Registry
15 to transfer those shares, one had to go and take certain
16 action in Serbia in order to transfer those shares.
17 That doesn't mean that it was Serbian law that governed
18 the transfer of the shares.
19 Q. Yes, so you do accept there is a difference between
20 contractual and proprietary aspects of a transaction?
21 A. I do, but that is a very difficult academic issue for
22 which --
23 Q. It is an important legal issue as well.
24 A. Yes, I can --
25 Q. And a practical one.

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01 A. If you allow me to finish, I was just going to say that
02 it is something for which I can express an opinion, but
03 I can tell you that even amongst top scholars, on
04 English contract law, there are some disagreements on
05 this topic, so it's not a very simple issue, and
06 especially in the context of private international law,
07 and in respect of the application of Rome I.
08 Q. Thank you. Can I refer you to Claimants' Exhibit
09 CE-836? That is paragraph 33-027. This is the
10 paragraph that speaks about the Rome Regulation, and the
11 Rome Convention.
12 If a contract is considered to be the contract on
13 sale of movable property, the main rule is that on the
14 proprietary effects of that contract, the law which is
15 applicable is the law of lex situs, am I right?
16 A. No. Let's assume that there is a contract which is
17 governed by express agreement of the parties by Cyprus
18 law, and this is a contract for the sale of shares in
19 companies in various jurisdictions. With your
20 understanding, that would be a complete decoupage, where
21 the contract would be split and the law of different
22 jurisdictions would apply to different parts of it.
23 That is wrong. The correct position is that the
24 contract is governed by Cyprus law, which is the choice
25 of the parties, but the law of the situs of the shares

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01 becomes relevant in respect of transferability.
02 The extent would depend on what is the procedure
03 that is required for the transfer of shares. It is very
04 different to transfer shares in a place like Nevis and
05 St Kitts where you do that by a simple form exchanged
06 between the two parties, and selling shares which are
07 listed in the London Stock Exchange, where various
08 procedures and licences need to be obtained.
09 So the extent to which the law of the situs will be
10 applied will depend on the rules of transferability,
11 without negating the choice of the parties.
12 Q. Thank you. But you do accept that Dicey, Morris and
13 Collins that you rely on in writing your report state
14 that the contractual effects of the sale are governed by
15 the governing law of the contract, and the proprietary
16 effects thereof are a matter for the lex situs? The
17 paragraph says what it says, am I right?
18 A. Well, it's in front of the Tribunal, I cannot dispute
19 what the book says, but what I'm saying is that maybe
20 your understanding and my understanding of what that
21 means, and what proprietary effects are, may be
22 different.
23 THE PRESIDENT: Can I just ask a clarification? When you
24 speak of transferability, what do you mean? Do you mean
25 whether the property is transferred, or what exactly do

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01 you have in mind?
02 A. What I have in mind are the formalities that will be
03 required at the situs of the shares for them to be
04 considered as legally transferred.
05 THE PRESIDENT: And what about the ownership?
06 A. Well, the ownership of the shares, under Cyprus law,
07 would have moved to the assignee. That is what
08 equitable assignment is all about.
09 PROFESSOR DJUNDIC: Thank you. Can we move on now to
10 Claimants' Exhibit CE-029? That is the text of the
11 Sembi Agreement, article 4 of the agreement.
12 Mr Georgiades, would you agree with me that in this
13 article 4, there is no mention of separate transfer of
14 Mr Obradovic's shares in BD Agro independently from the
15 transfer or assignment of the contract, the contract
16 being the Privatization Agreement?
17 A. I think I state in my report that I was given advice as
18 to what this means. Please allow me to check that.
19 Yes, in my second report, paragraph 3.4, I state
20 that according to my instructions, the other assets to
21 which this clause refers, referring to clause 4, are the
22 BD Agro shares, and certain shareholders' loans that
23 Mr Obradovic had provided to BD Agro.
24 I should also say here that these obligations
25 could -- I mean, even if one of these obligations could

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01 not be performed, this would not affect the validity of
02 the contract, so if, for example --
03 Q. I understand, this is another issue that we will talk
04 about.
05 A. I am just referring to the principle of severability.
06 If you wish me to state something more, I can do that
07 later.
08 Q. Thank you.
09 MR PEKAR: Mme President, I believe there were several
10 instances of our witness not being able to finish his
11 answer, and I don't believe that these are very long
12 answers.
13 THE PRESIDENT: Yes, and we have in part listened to long
14 answers this morning, so I think we should let the
15 expert finish.
16 A. I had almost finished, it was quite simple, I was just
17 going to say that Cyprus law recognises the principle of
18 severability, which means that there were a bundle of
19 rights and obligations under this agreement. That some
20 of them may have not been capable of being performed is
21 not something which renders the agreement invalid. To
22 the contrary, the case law -- generally English common
23 law on the subject, but also Cypriot case law -- states
24 that if something can be distinguished, is distinct in
25 a contract, then it can be severed.

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01 PROFESSOR DJUNDIC: Thank you, Mr Georgiades. Just to be
02 clear, your position that the Sembi Agreement indeed
03 stipulates separate transfer of shares to Sembi is the
04 result of your instructions that you received, and not
05 the fact that this is stated explicitly in the contract,
06 am I right?
07 A. Yes.
08 Q. Thank you. Is it a rule of Cyprus contract
09 interpretation to look at the meaning of words and
10 phrases used objectively, to deduce the true intention
11 of the parties?
12 A. That is the general rule, correct, yes.
13 Q. Thank you.
14 A. One of the exceptions though is when there is an
15 ambiguity in the contract, where you can rely on what
16 the parties say in order to be able to explain what the
17 meaning is.
18 Q. So you are referring to subsequent statements of the
19 parties as means of interpretation under Cypriot
20 contract law, am I right?
21 A. The reference I just made was a general reference to an
22 exception of the parol evidence rule, or extrinsic
23 evidence rule, as we say it, but in my report, you are
24 correct that at some stage, when I refer to a specific
25 issue, I mention the subsequent conduct of the parties,

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01 and that is, I think, in relation to the shares, and
02 they are mentioning in the financial statements of
03 Sembi, and in minutes of the board of directors that
04 took place after the Sembi Agreement.
05 Q. If we can go to the third report, paragraph 2.25? Here
06 you state:
07 "Under Cyprus law, subsequent conduct of the parties
08 is not generally taken into account in contract
09 interpretation."
10 So this is the rule, as I understand it, and you
11 just explained it previously, but there is, according to
12 you, an exception:
13 "But it can be looked at where such conduct points
14 to the intentions of the parties at the time the
15 contract was made."
16 This is the exception.
17 A. I think the exceptions are six in total. I should know
18 better, because I teach law of evidence at the
19 university, but the general rule is called the parol
20 evidence rule, or the extrinsic evidence rule, and there
21 are exceptions. One of these exceptions is the one
22 mentioned in 2.25.
23 Q. Thank you. To support this statement, you cite again,
24 once again, Chitty on Contracts, and this is again
25 Claimants' Exhibit CE-840. This time, paragraph 30-054.

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01 Would you agree with me -- are you there? This
02 paragraph deals with the issue of the so-called implied
03 choice of law under the Rome Convention, am I right?
04 A. You are right, but it is an application of the general
05 rule in respect of extrinsic evidence.
06 Q. Thank you, but this particular paragraph, it is about
07 tacit or implied choice of law, but not about Cyprus
08 substantive law, contract law, am I right?
09 A. It does refer specifically to the choice of law but as
10 I said, this is an application of a general principle,
11 very well established by case law for several decades
12 now, that it is an exception to the extrinsic evidence
13 rule.
14 Q. I am only wondering why didn't you refer in your report
15 to that other authorities? I mean, you referred to the
16 authority that does not support your position.
17 A. Well, I do not agree with your comment. I can of course
18 produce more authorities to support this position, but
19 I don't think it's necessary, because they make the
20 point.
21 Q. Thank you, Mr Georgiades. I have only two questions
22 left for you. Both of those questions concern the issue
23 of seat under the Cypriot Companies Law.
24 In paragraph 2.26 of your second report, you state:
25 "If the legislature intended to introduce a new

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01 legal concept with the term 'seat', one would expect the
02 concept to be defined in the amending laws."

03 So my question for you is: is there a definition of
04 the term "registered office" in Cyprus company law?
05 A. We have a provision which is article 102 which tells us
06 what are the minimum requirements that a registered
07 office must have, of a Cypriot company, I agree with you
08 that that is not a definition, but if the legislature
09 intended to introduce the notion of seat as a distinct,
10 different legal term, then it would of course have
11 provided a definition, and I will give you an example to
12 understand what I'm talking about.

13 The first time that the word "seat" was used in
14 an amending law was 1999. Five years earlier, in one of
15 the cases which I cite in my first report, CE-121, there
16 is reference by a Supreme Court judge to a seat. There
17 is only one explanation for that, because at that time,
18 there was no issue of transferring seats, such a thing
19 was unknown to the Cypriot legal order. There was no
20 law stating anything about the company having a seat.

21 The only possible explanation is that in the
22 Albatros case, CE-121, which I have cited before, the
23 judge used the Greek word edra which means seat as
24 something meaning exactly the same as registered office.
25 And the subsequent use of the word "seat" in case law,

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01 textbooks and the amending laws were inserted with
02 exactly the same purpose.

03 Q. Thank you. You were just talking about the inclusion,
04 I would say, of "seat" in the Cyprus company law in
05 1999, so in paragraphs 2.20 and 2.21 of your second
06 report you explain how the term "seat" was introduced
07 into Cypriot law, and then you go on to explain that
08 "seat" was meant to denote registered office and was
09 probably included in this amending law as a result of
10 poor drafting, is this correct?

11 A. Yes, and thank you for the opportunity, because this is
12 a perfect example which shows my point. If "seat" in
13 Cyprus law meant the effective management and control of
14 a company, that is a place other than the country where
15 that company has its registered office, why would it be
16 inserted in this provision? This provision does not
17 refer to another country. This provision refers to
18 a registered office which may be at another place of the
19 same country, which is occupied.

20 Cyprus does not recognise the occupied part, the
21 TRNC is only recognised by Turkey, and it is beyond
22 doubt impossible that any law, any Cypriot law would
23 refer to the TRNC as a different state, so clearly here,
24 it refers to a registered office being at a different
25 district, not a different country. So there would have

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01 been no object for using the word "seat" especially
02 having the meaning that Mr Papadopoulos attributes to
03 it.

04 Q. Mr Georgiades, my question would be if the inclusion of
05 "seat" was the result of poor drafting, do you know how
06 many times the Cypriot company law was amended since
07 1999?

08 A. I can tell you if you wish, more than ten. If it's
09 a rhetorical question, I would say more than ten. If
10 you want me to give you a specific answer, I will need
11 to check the law.

12 Q. No need for that, thank you. If this was the result of
13 poor drafting, then why the Cypriot legislature did not
14 try to rectify this poor drafting?

15 A. Well, to my understanding, the use of the word "seat" in
16 various parts of the Companies Law as it was amended did
17 not create any problem in Cypriot cases, at least not
18 cases that I'm aware of, so maybe the issue which arises
19 in this case, with your side trying to convince that
20 "seat" means something different, is not something that
21 has occurred to the Cypriot legislature so that they
22 attempt to correct the wording. But I explain in my
23 report the reasons why such errors were introduced in
24 our legislation, ie I understand that the Tribunal may
25 not wish me to repeat what I write in my reports, but

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01 I could just refer you, if I may, to my third report,
02 paragraphs 3.6 to 3.8, where I explain and give other
03 examples of how the translation of statutory instruments
04 into Greek, because of fundamental differences between
05 Greek and Greek-Cypriot legal culture, have resulted in
06 some terms being wrongly used in our statutes.

07 PROFESSOR DJUNDIC: Thank you, Mr Georgiades.

08 Mme President, this concludes Respondent's
09 cross-examination of Mr Georgiades.

10 THE PRESIDENT: Thank you.

11 MR PEKAR: No questions on direct.

12 THE PRESIDENT: Any questions from my co-arbitrators? Yes,
13 please.

14 Questions from the TRIBUNAL

15 MR VASANI: Good afternoon.

16 A. Good afternoon.

17 MR VASANI: If someone could put up your first report, at
18 2.14, I understand that in 2019 you made a surprise
19 visit to the two addresses that Sembi had claimed was
20 its registered offices. With regard to the current
21 office, Palaceview House, at the entrance was this
22 picture that you have taken.

23 A. Yes, this is a picture that I took using my phone, and
24 I have inserted in my report.

25 MR VASANI: I understand HLB there on the door, they provide

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01 administrative services to Sembi, yes, accounting, tax,
02 director?
03 A. Yes, I understand that they are primarily an auditing
04 firm, but they also provide fiduciary services and
05 accounting services.
06 MR VASANI: Do you know who Aims International is?
07 A. No.
08 MR VASANI: Did you ask when the Sembi plate was put up on
09 the building entrance?
10 A. No.
11 MR VASANI: Presumably Sembi is one of hundreds or thousands
12 of companies that HLB provides services for.
13 A. Well, I assume so, yes.
14 MR VASANI: Did it not then surprise you that something was
15 special -- why is Sembi on the front, as opposed to the
16 thousand other companies that HLB does services for?
17 A. Through the entrance, the glass doors that you see on
18 your screen, was a big table where other plates were
19 put, with different company names. I do not know why
20 the two names were outside, and the rest were inside.
21 I did not ask that.
22 MR VASANI: One other question: do you have constructive
23 trusts under the Cypriot legal order?
24 A. Of course.
25 MR VASANI: Is that similar to English constructive trusts,

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01 or common law constructive trusts in general?
02 A. Our constitution and our law on contracts, as well as
03 the law of our civil courts, expressly provide that the
04 rules of equity apply in Cyprus, so it is exactly the
05 same; except to the extent that the matter is regulated
06 by some English statutes, for example the Land
07 Registration Act of 1925, which do not apply in Cyprus.
08 MR VASANI: But in general common law terms, it's roughly
09 equivalent?
10 A. It is exactly the same.
11 MR VASANI: Thank you.
12 THE PRESIDENT: Let me just make sure I understand your
13 opinion correctly. If I go to your last report, three,
14 paragraph 2.5, you say the Privatization Agreement is
15 governed by Serbian law. I think that's
16 uncontroversial.
17 A. Yes.
18 THE PRESIDENT: So its assignability is also governed by
19 Serbian law?
20 A. Correct.
21 THE PRESIDENT: The Sembi Agreement is governed by Cyprus
22 law?
23 A. Yes.
24 THE PRESIDENT: So the assignment of the Privatization
25 Agreement vis-à-vis Mr Obradovic, between assignor and

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01 assignee, is governed by Cyprus law, is that what you
02 are saying?
03 A. Correct, yes.
04 THE PRESIDENT: Let me just check, but I don't think I have
05 other questions.
06 So that completes your examination, Mr Georgiades,
07 thank you very much for your assistance.
08 A. Thank you very much.
09 THE PRESIDENT: Shall we take a 10-minute break and then go
10 over to Professor Emilianides who is on video
11 conference?
12 PROFESSOR DJUNDIC: Mme President, in case we need to reach
13 Professor Emilianides, it might be a good idea to have
14 15 minutes' break.
15 THE PRESIDENT: I was told that he was connected.
16 MS PLANELLS-VALERO: He is already connected to the Zoom.
17 THE PRESIDENT: So that should be fine, good.
18 (3.00 pm)
19 (A short break)
20 (3.13 pm)
21 PROFESSOR ACHILLES EMILIANIDES (called)
22 THE PRESIDENT: Good afternoon, sir. Do you hear me when
23 I speak?
24 THE WITNESS: I hear you very well.
25 THE PRESIDENT: Good, we hear you too, so that's perfect.

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01 Thank you for being with us this afternoon. You are
02 Achilles Emilianides?
03 THE WITNESS: Correct.
04 THE PRESIDENT: You are a Professor at the University of
05 Nicosia, and you are also the Dean of the Law School,
06 and you are a practising advocate as well?
07 THE WITNESS: Yes, I am a practising advocate with
08 Emilianides Katsaros.
09 THE PRESIDENT: Thank you, you have provided us with one
10 written expert report that is dated 23rd January 2020.
11 Do you have it there with you?
12 THE WITNESS: Not in my desk, I can bring it if you want,
13 but I understood you will be showing it to me on the
14 screen.
15 THE PRESIDENT: We will show you the documents on which we
16 ask you questions, and we will show you as well your
17 expert report if needed so that's fine. Are you alone
18 in the room from which you testify?
19 THE WITNESS: Yes.
20 THE PRESIDENT: Do you have no other communication channels
21 or information sources, other than just the video
22 conferencing platform on which we communicate now?
23 THE WITNESS: Right now, no. All my phone and all other
24 details are outside the room.
25 THE PRESIDENT: Thank you very much. So I would ask you to

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01 confirm that as an expert witness in this arbitration
02 you will only make statements in accordance with your
03 sincere belief, can you please confirm so?
04 THE WITNESS: Yes.
05 THE PRESIDENT: Good. Now I will turn first to
06 Respondent -- I suppose it's fine, he has not read the
07 declaration, but he doesn't have the declaration
08 available, so he has confirmed --
09 THE WITNESS: I have been sent it, so if you want I can take
10 the paper and read it, I don't have a problem with that.
11 THE PRESIDENT: That would be perfect, if you have it.
12 THE WITNESS: Just give me one second to pick it up.
13 I solemnly declare upon my honour and conscience
14 that my statement will be in accordance with my sincere
15 belief.
16 THE PRESIDENT: Thank you, Professor. Now let me turn first
17 to the Respondent for some introductory questions,
18 please.
19 PROFESSOR DJUNDIC: Thank you, Mme President.
20 Direct examination by PROFESSOR DJUNDIC
21 Q. Good afternoon, Professor Emilianides, my name is Petar
22 Djundic. I have a few questions for you.
23 Do you agree with Mr Georgiades that the choice of
24 law rules for the Sembi Agreement are contained in the
25 Rome Convention on the law applicable to the contractual

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01 obligations rather than in the Rome I Regulation?
02 A. Yes, I agree on that point with Mr Georgiades, and
03 I thank him for pointing this out. Indeed, as he also
04 notes, however, Article 12(2) of the Rome Convention is
05 essentially identical to Article 14 of the Rome I
06 Regulation, so my analysis carried out in my report
07 doesn't change in any respect, other than the reference
08 to the article.
09 Q. Thank you. Please explain why you consider that Serbian
10 law is applicable under the Cypriot choice of law rules
11 to the issue of transferability of ownership in shares
12 from Mr Obradovic to Sembi.
13 A. Well, as I pointed out in my report, the issue of
14 transferability of ownership is one relating to
15 proprietary rights, so this is governed by the common
16 law rules, and essentially pursuant to common law, it is
17 the situs of the shares, namely the place of
18 incorporation, this place that will govern the issue,
19 and that's Serbian law, that's undisputed. I understand
20 Mr Georgiades also agrees on this point. I would simply
21 add that in my understanding, Serbian law would govern
22 in this respect both the mode of transfer, the question
23 of the moment of time when the transfer takes place, as
24 well as the question whether the underlying transaction
25 can lead to a transfer of ownership in this case.

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01 Q. Thank you. Please explain why you consider the Sembi
02 Agreement void under the law of Cyprus and what are the
03 effects of a void contract of assignment under Cypriot
04 law?
05 A. Well, I have mentioned this issue in my report, so no
06 need to reproduce the entirety of the written text.
07 I just point out that in my view, since there is
08 a specific law of Serbia which is the applicable law on
09 assignability, which precludes assignment unless there
10 is consent by the Agency, this would mean that pursuant
11 to section 23 of the Cypriot contract law, the object of
12 the agreement would be such so as to be inconsistent
13 with the rule of law of the applicable law, and it would
14 defeat essentially the provisions of such law, and of
15 public policy, so this would be the reasons why I would
16 rely on the issue of it being void due to its object,
17 and the consequences would be like in all cases that it
18 would be deprived of any effect and in my opinion either
19 legal or equitable.
20 Q. Thank you. Would you like to comment on the opinion of
21 Mr Georgiades contained in paragraph 2.9 of his third
22 report that:
23 "Cyprus law distinguishes between a contract which
24 is void because the public interest requires strict
25 adherence to the law, and a contract that requires the

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01 taking of a step or meeting of a precondition before it
02 can be performed."
03 Mr Georgiades argues that contracts in the latter
04 category are not void ab initio.
05 A. Well, thank you. The distinction that my learned
06 colleague Mr Georgiades makes is applicable as far as
07 I understand the law with regard to the performance of
08 the contract, but my point that I explained earlier
09 doesn't have to do with the stage of performance of the
10 contract, it has to do with the object of the contract,
11 and the reasons I stated have to do with whether the
12 object of the contract is contrary to the law. So as
13 has been clarified by the Supreme Court explaining,
14 analysing the cases that my learned colleague refers to,
15 this distinction does not in any way affect the
16 questions of voidability having to do with section 23 of
17 the contract law cap 149.
18 Q. Thank you. Can you please explain why you consider that
19 rights and obligations from the Privatization Agreement
20 were not assignable under the rules of equity?
21 A. Yes, thank you. First of all, as I noted, it is Serbian
22 law that governs the issue of assignability. Now, to
23 the extent that Cypriot law would be relevant here,
24 I think there is a clear exception on the possibility to
25 apply equitable rights when this would be contrary to

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01 a statutory obligation which would be the case here,
02 because as is standard, the notion of equity in common
03 law is that equity does not defeat and does not run
04 contrary to statute.
05 But in any event, the reasons I explained in my
06 report, an exception when we have a personal
07 characteristic, that is important for the contract. And
08 in this case I have been instructed that first of all,
09 the identity of Mr Obradovic was important because this
10 was a public auction, so not everyone could take place,
11 but also because Mr Obradovic was given specific
12 possibilities like to pay in instalments, which were not
13 available to legal persons or to foreign citizens.
14 So taking this into account as well as the specific
15 provision in the law, I would say that the personal
16 characteristics are there, and I would consider this
17 equivalent to cases like public contracts in Cypriot law
18 or insurance contracts or other similar cases where the
19 personal characteristics of the counterparty are
20 considered to be so important that no assignment can
21 take place without the consent of the other party.
22 Q. Thank you. Do you agree with the conclusion of
23 Mr Georgiades from paragraph 2.25 of his third report
24 that the intention of the parties in the Sembi Agreement
25 "was for the beneficial interest in the BD Agro Shares

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01 to pass to Sembi immediately after entering the said
02 agreement"?
03 A. I do not agree with this conclusion of my learned
04 colleague, in the sense that having read the agreement,
05 I would say that it does not in any way refer to
06 a transfer of a beneficial interest, it refers to
07 a transfer of rights and obligations, so there is no
08 reference to any transfer of only a beneficial interest
09 in this respect.
10 I understand that my learned colleague relies on
11 subsequent conduct of the parties. To the extent, and
12 this is a factual issue, of course, the subsequent
13 conduct, to which I will not express an opinion; but on
14 the legal point, I think that when you have a contract
15 in accordance with standard rules of interpretation, you
16 interpret it on the basis of the contract, not on the
17 basis of subsequent conduct of the parties, and I do not
18 think that here, there is any room to apply an exception
19 and different interpretation.
20 PROFESSOR DJUNDIC: Thank you, Professor Emilianides.
21 Mme President, no further questions, thank you.
22 THE PRESIDENT: Thank you. Mr Anyway, please.
23 Cross-examination by MR ANWAY
24 Q. Good afternoon, Professor.
25 A. Good afternoon.

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01 Q. My name is Stephen Anyway, I am counsel to the Claimants
02 in this arbitration and I will be asking you some
03 questions about your expert report today. First, I must
04 apologise if I mispronounce your name.
05 A. That's okay.
06 Q. I don't mean to do so, and I certainly mean no
07 disrespect by it. You are here testifying as a Cyprus
08 law expert, correct?
09 A. Yes.
10 Q. And not here as a Serbian law expert?
11 A. That is clear, I do not claim any kind of expertise on
12 Serbian law.
13 Q. I note that unlike the other Cypriot experts in this
14 case, you only issued one report with Serbia's
15 Rejoinder, correct?
16 A. I issued one report. I do not know how many reports all
17 other experts issued, to answer the other part of your
18 question.
19 Q. Do you recall when you were first contacted to
20 potentially act as an expert in this case?
21 A. Well, yes, I do. I was contacted by email.
22 Q. My question was do you recall when you were first
23 contacted to potentially act --
24 A. Okay, you mean the date? No, I would have to search for
25 the email, I do not remember an exact date.

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01 Q. But you were never asked to submit a first report with
02 Serbia's Counter-Memorial, the expert report you
03 submitted was the only one you were requested to submit?
04 A. Yes, that's correct.
05 Q. I noted in your opening remarks that you acknowledged
06 you had applied the wrong Rome instrument, you had
07 stated in paragraph 14 that Rome I Regulation governs
08 but you accept that in fact, that is incorrect, in that
09 the Rome Convention 1980 governs?
10 A. Correct.
11 Q. That's because the Rome I Regulation only applies to
12 contracts concluded after 17th December 2009?
13 A. Yes, this is correct, it has to do with the temporal
14 application that my colleague Mr Georgiades pointed out,
15 and he is right on that point, hence why I agreed with
16 him.
17 Q. Let's turn to your expert report, I want to see if I can
18 understand the structure of it. Part of the reason I do
19 this is I hear sometimes us referring to transferability
20 without specifying whether we're talking about
21 transferability of legal title versus transferability of
22 a beneficial interest.
23 If we just look at your expert report, I see you
24 divided it into four sections; the first, expert
25 details; the second, background; but the next two

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01 sections are really the substantive portions of the
02 report. Section C, which starts on page 5, is entitled:
03 "Assignability of Rights under the Privatization
04 Agreement and the Law Applicable to the Issue of
05 Assignability Pursuant to Cypriot Law."
06 And then the last section is on page 11, D:
07 "Is equitable assignment under the law of Cyprus
08 possible in view of the prohibition imposed by the law
09 applicable to the Privatization Agreement?"
10 I just want to ask you, in C, do I understand that
11 you're talking there about transferability of legal
12 title, whereas in D, you are discussing the
13 transferability of equitable interests?
14 A. In chapter C that you showed to me, I discuss the
15 assignability of rights, and I discuss the various
16 different contracts that we have here, namely the
17 contract between assignor and assignee, and the contract
18 between the initial Agency and Mr Obradovic, and
19 I discuss whether there can be assignability of rights,
20 and which are the applicable legislations in accordance
21 with Cypriot private international law. But the last
22 paragraph of chapter C that you show refers specifically
23 to transfer of ownership, so this is actually -- yes,
24 paragraph 25, so this is actually quite a different
25 issue, in the sense that it refers to the transfer of

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01 ownership which is a proprietary question, as opposed to
02 the other issues which are contractual. So paragraph 25
03 refers, as far as it refers to transfer of ownership, to
04 the transfer of both, the transfer of ownership or legal
05 or equitable title.
06 Chapter D, as you pointed out, refers to the
07 question raised by my learned colleague whether we had
08 an equitable assignment in this case, and whether that
09 would be possible under the laws of Cyprus.
10 Q. If I understand you correctly then your section C
11 addressed both the transfer of legal title as well as
12 the transfer of equitable interests?
13 A. As I said, paragraph 25 refers to the issue of transfer
14 of ownership, which is different than the issue of
15 assignability by contract, which is governed by the
16 preceding paragraphs of section C.
17 Q. You begin section C then by referring to the Rome I
18 Regulation, we're referring to it instead as the Rome
19 Convention, and why don't we turn to the Rome
20 Convention? This is CE-835, and I'll just ask the
21 question as they're pulling it up, perhaps you already
22 know the answer. In fact the Rome Convention 1980
23 excludes from its application the construction of trusts
24 and the relationship between settlors, trustees and
25 beneficiaries, correct?

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01 A. Yes.
02 Q. That's the essence of beneficial ownership, the
03 construction of trusts, would you agree?
04 A. Well, yes, beneficial ownership created by trust is an
05 issue of trust. However, I should point out that what
06 is excluded by the Rome Convention, and if you want to
07 get to the relevant section, so that I can read it
08 specifically from you, I think it is Article 1 of the
09 Rome Convention.
10 Q. That's correct, it is Article 1(g), we can pull it up on
11 the screen.
12 A. Yes, so I can read it for you. If you see the issue
13 raised here is:
14 "The constitution of trusts and the relationship
15 between settlors, trustees and beneficiaries."
16 So not every issue relevant to trust law is
17 excluded. What is specifically excluded is what is
18 written there, namely the question of constitution of
19 trusts and the question of the relationships between
20 settlors, trustees and beneficiaries.
21 Q. In fact, if we look at the commentary that you quote in
22 paragraph 21 of your report, I would ask you to turn to
23 that now, it's on page 9, you state, and I am picking up
24 the third sentence in that paragraph:
25 "As stated in Rome I Regulatory Commentary, 'the

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01 Regulation uses the ratio legis institute under the
02 Convention in order to protect the debtor by assuring
03 that the assignability and the opposability in relation
04 to the debtor shall be governed by the law applicable to
05 the assigned claim'. "
06 So it seems the Rome I Regulation and I would assume
07 therefore the Rome Convention, its reference to
08 assignability is referring to the possibility of binding
09 the debtor by an assignment between an assignor and an
10 assignee, would you agree?
11 A. Well yes, look, the main purpose of why assignability is
12 governed by the applicable law in this case is because
13 there is an intention to protect the debtor, so this is
14 the main ratio of why this particular provision had been
15 introduced. Now everything else is a question of
16 interpretation on how the issue of assignability would
17 affect the other contract, that's what I mention in the
18 subsequent section, the question of whether the contract
19 is void has to be seen in conjunction with Cypriot law,
20 otherwise it would be purely a question of Serbian law.
21 Q. But you would agree with me that the Rome Convention
22 does not address the possibility of the assignor and the
23 assignee entering into a valid assignment agreement of
24 beneficial ownership?
25 A. Well, what effect the assignability of the contract has

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01 is to be determined on the basis of an analysis of both
02 the law governing the contract between the assignor and
03 the assignee, which in this case is Cypriot law, and
04 taking into account mandatory provisions of the
05 applicable law governing assignability so it would not
06 be a question where you would not consider anything
07 else, so if this is what you are asking, this is the
08 answer.
09 Q. I was asking about the scope of the Rome Convention, but
10 I think the Tribunal has the text before it, and we can
11 move on to some basic legal principles under Cyprus law.
12 Would you agree with me, sir, that the general rule is
13 that the parties are free to agree on whatever law they
14 like, and if there's a different country's mandatory law
15 that may be applicable, that will not invalidate the
16 parties' choice of law, but it must be considered?
17 A. Then general principle of the Rome I system is that
18 there is freedom of the parties with specifically
19 restrictions indicated in specific parts of the
20 regulation. One of these specific restrictions is the
21 public policy issue; another is the overriding mandatory
22 requirements; another is where, in specific cases, the
23 Rome system provides that there can be no free choice of
24 law in particular contracts.
25 So the general principle underlying the Rome I

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01 system is freedom of the parties to choose the
02 applicable law, with specific exceptions provided in the
03 system.
04 Q. Let's turn to paragraph 17 of your expert report to talk
05 about the law that the parties chose under the Sembi
06 Agreement. To just cut to the conclusion, in the last
07 sentence you acknowledge that the relationship between
08 Mr Obradovic and Sembi is governed by Cypriot law,
09 correct?
10 A. Correct.
11 Q. I just wondered if you might help me a little bit
12 understand the Cyprus legal system. I would like to
13 take you to a portion of the book you wrote titled
14 "Constitutional Law in Cyprus", which is CE-847.
15 A. Sure.
16 Q. Again, this is just for my own edification. That should
17 be appearing on the screen now. In chapter 4,
18 paragraph 86, you state:
19 "The principles of common law and equity apply in
20 the Republic of Cyprus. Previous judgments of the
21 Supreme Court are binding for lower courts: thus, case
22 law is of great significance with regard to the
23 interpretation of legal provisions."
24 And then I will skip down:
25 "Having a substantially codified legal system,

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01 Cyprus applies common law principles where there is no
02 Cypriot legislation in force and insofar as existing
03 Cypriot legislation is not contradicted."
04 A. Yes.
05 Q. So it sounds like Cyprus has sort of the bedrock of
06 common law systems, a stare decisis doctrine that
07 applies in all facets of its law, is that fair?
08 A. Yes. Look, the Courts of Justice Law 14 of 1960
09 provides that the common law and the principles of
10 equity are a source of law which apply in the Cypriot
11 courts and in the Cypriot legal system in general, so to
12 the extent that there is not the hierarchically superior
13 source of law that precludes the application of common
14 law in equity, they are considered as a perfectly valid
15 and applicable source of law.
16 Q. And the Cyprus system, at least with respect to contract
17 law, companies law and equitable law, follows the
18 English law system, correct?
19 A. Well, company law has been codified during the British
20 rule of Cyprus, this is why it has the cap 149. Cap
21 refers to the codification that took place prior to
22 independence by the then Attorney General in 1959. So
23 whenever you see "cap" in the numbering of a law, this
24 means that this is a law that pre-existed, before
25 Cypriot independence, and applied during the British

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01 rule of Cyprus. So contract law is basically
02 substantially codified rules of common law, as they had
03 been codified taking into their model also of Indian,
04 for instance, contract law and other places where there
05 had been prior codification of common law, before the
06 independence of Cyprus.
07 Q. Given that legal ancestry, is it fair to say that the
08 most authoritative text on contract law in Cyprus is
09 Chitty on Contracts? I note, for example, you cite it
10 in your report several times.
11 A. Yes, I would say that this remains the most
12 authoritative textbook used by courts, to the extent
13 that I mention that there is not statutory legislation
14 precluding its application, or to the extent that Chitty
15 refers to statutory developments in England, because in
16 this case they would not be considered part of the
17 common law that applies in Cyprus.
18 Q. Similarly, the most authoritative text on the law of
19 equity would be Snell's Equity which is also an English
20 law authority, correct?
21 A. Yes, again, the same answer applies, and as I have seen,
22 both my learned colleague Mr Georgiades and I have
23 referred to both Snell and Chitty in our respective
24 reports.
25 Q. Given that, I assume you would agree that Cyprus law in

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01 principle fully recognises beneficial ownership?
02 A. Well, the Cypriot law recognises beneficial ownership
03 not by statute but through common law, yes.
04 Q. When there is a beneficial ownership arrangement, the
05 assignee holds the asset in trust for the benefit of the
06 assignor, correct?
07 A. If you have beneficial ownership, yes, that is what
08 happens.
09 Q. Under Cyprus law, there is no general requirement for
10 the assignor or the assignee to give notice to the
11 debtor of such an assignment, correct?
12 A. Notice to the debtor, no, but I consider that there is
13 a requirement that the assignment can take place, which
14 is after all the question here.
15 Q. There are no formalities with regard to the creating of
16 a beneficial ownership arrangement, correct?
17 A. Correct, since we apply common law, and there are no
18 formalities prescribed in common law. There are, just
19 to be clear, cases where statute would preclude
20 beneficial ownership, like land law, for instance, and
21 so on, and hence why there is a question of the
22 exceptions, but the general law other than where there
23 are specific principles, either in statute or in common
24 law precluding it, would be that no formalities are
25 required.

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01 Q. With those principles now established, and I thank you
02 for that, I would like to just go through two or three
03 examples to make sure I understand beneficial ownership
04 in Cyprus. Let me give you my first example.
05 Suppose a seller agrees to sell to a buyer a car in
06 Cyprus for some amount of money, say €10,000. They sign
07 the contract, the buyer pays the full price to the
08 seller, the buyer obtains insurance, takes the keys and
09 starts driving the car. Legal title to the car is not
10 transferred for some weeks or months afterwards. My
11 question is: during that intervening time, under Cyprus
12 law, isn't it true that the seller is the legal owner,
13 but the buyer is the beneficial owner of the car?
14 A. Well, the buyer may be the beneficial owner in this
15 case, of course, he might not end up ever becoming the
16 legal owner.
17 Q. That's right, but my question was: during that time
18 before which legal title transfers, the buyer is the
19 beneficial owner of the car, correct?
20 A. The buyer is considered to have a beneficial right, in
21 the sense that he has a contractual right to claim the
22 car, and if the transfer cannot be effected, because
23 that does not depend on the question of whether he has
24 a contractual right, then he might have the right to
25 claim damages against the seller.

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01 Q. If the car during that intervening time, before legal
02 title has transferred, is destroyed or otherwise
03 damaged, is it true that both the legal and the
04 beneficial owner can bring a claim against the third
05 party for the damage to the car?
06 A. In this case, it is clear that the legal buyer can bring
07 a claim against the third party; whether the beneficial
08 owner can bring a claim is not a question that can be
09 replied with a yes or no, because as I told you, the
10 beneficial owner would in principle have a right to
11 claim compensation against the person who sold him the
12 car, so if, during this action, he can also add the
13 third party as part of his claim, that would be
14 a question to be determined by the court in the
15 particular case.
16 Q. You don't know whether the buyer in this circumstance
17 would have a direct cause of action against a third
18 party that may have done damage to the car?
19 A. No, because it would need to be determined by the court
20 that the circumstances would justify such a direct right
21 for recourse.
22 Q. Let's take a different example, a share transfer in
23 Cyprus. Suppose I own a private company with shares,
24 and I wish to transfer the shares to you. You pay me
25 all the money, and we sign what I understand is called

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01 a share transfer form, which says that you have paid me
02 the money, and I transfer the shares to you.
03 Some period of time later, let's say 30 days,
04 I submit the relevant forms with the company register,
05 and I get a share certificate showing that the shares
06 belong to the buyer. Same question: isn't it true that
07 the beneficial ownership to the shares was transferred
08 to you when we signed the share transfer form?
09 A. Yes, but this would apply if you refer to a private
10 company, as you understand, for instance, if you refer
11 to a company that is in the stock exchange, or where
12 there needs to be approval by specific organs, in order
13 to carry out the sale, like for instance a classic case
14 is when you need an approval by the Radio Television
15 Authority --
16 Q. Professor, I am terribly sorry to interrupt, I very
17 intentionally asked my question to refer to a private
18 company with shares.
19 A. Yes, that is why I clarified that when we refer to
20 a private company with shares, the answer is yes, and
21 that is why I made the distinction.
22 Q. All right, let me give you a final example. Suppose
23 a Cyprus company owns intellectual property rights, IP
24 rights, trademarks, copyrights, and it owns them in
25 various jurisdictions around the world. Let's say that

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01 there are trademarks and copyrights in some 20 different
02 jurisdictions worldwide. And the Cyprus company signs
03 a contract transferring all of its rights in the
04 intellectual property to another Cyprus company, so one
05 Cyprus company to another. And the contract states that
06 the seller will take required steps to have the rights
07 registered in the name of the buyer in all the different
08 jurisdictions. Let's just pause there; based on just
09 those facts, and only those facts, that's a perfectly
10 valid contract, would you agree?
11 A. What facts? You have not indicated to me what are the
12 facts exactly. I mean, can you specify what are the
13 facts you want me to comment upon?
14 I mean, you have a sale of IP rights, like
15 trademarks and so on; what are the additional facts you
16 want me to comment on?
17 Q. I want you to answer whether the facts as I have just
18 described them to you, and I can repeat them if you
19 would like, would be a contract that is valid under
20 Cyprus law?
21 A. Okay, can you please repeat the facts then?
22 Q. Sure. We have a Cyprus company that owns IP rights, and
23 the example I gave were trademarks and copyrights. It
24 holds those trademarks and copyrights in a number of
25 different jurisdictions around the world. The number

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01 I gave you was 20; it could be 10, it could be 30.
02 The Cyprus company signs a contract to transfer the
03 rights in the intellectual property to another Cyprus
04 company in a contract governed by Cyprus law, and the
05 contract states that the seller will take required steps
06 to have the rights registered in the name of the buyer
07 in all of the different jurisdictions, and my question
08 was: is that a valid contract?
09 A. Well, how can I reply to you on the basis of the facts
10 you are giving me whether it's a valid contract or not?
11 You refer to different jurisdictions without me knowing
12 whether the contract can apply in the different
13 jurisdictions.
14 To give you an example, just last month there was
15 issued a case by a court which was similar to this one
16 in a case like the one you mentioned, where you had --
17 not 20, but 10 jurisdictions where the rights were
18 published, and there were different applicable laws
19 relating to the transfer of the trademarks, and
20 eventually the court held that because --
21 Q. Professor, I am sorry to interrupt again, could you
22 please tell me whether the case to which you are
23 referring is on the record?
24 A. No, because you are asking me theoretical question. You
25 are not asking me something on the record, you have been

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01 asking me theoretical questions here, so that's why
02 I referred you an IP case that you just referred to me.
03 How could it be in the record? The record has nothing
04 to do with IP rights.
05 Q. Let me try to ask the question a different way. Based
06 on the hypothetical I gave you, which I described twice,
07 is there anything in those facts that suggests to you
08 that the contract would be void?
09 A. I consider the facts that you gave me as insufficient to
10 properly reply in your hypothetical. If you want to add
11 in your facts that there are additional jurisdictions,
12 then one can never reply -- I would never as a lawyer
13 advise a client without being aware of what the other
14 jurisdictions provide, on whether his agreement would be
15 valid or not. How can I reply to your hypothetical
16 since I don't know all the facts and you are not giving
17 them to me? If you want to give me facts that the other
18 jurisdictions allow for this contract to be made, then
19 yes, I can gladly answer to you, but you are not giving
20 me these facts.
21 THE PRESIDENT: So I understand that your response is: to
22 answer, I would need to know whether, under the
23 different jurisdictions where the trademarks are
24 registered, this transfer is valid; is that what you are
25 saying?

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01 A. Yes, whether the transfer is valid, and whether there is
02 anything precluding the validity of this contract.
03 MR ANWAY: Let's assume then that we know that in all 20
04 jurisdictions, we know that in principle the transfer of
05 title to the intellectual property rights is not
06 prohibited but it nevertheless requires an additional
07 step by the relevant state authorities to transfer the
08 rights.
09 A. Yes, what do you mean by an additional step by the
10 relevant authorities? This is too hypothetical.
11 I mean, I am sorry but I cannot simply keep on answering
12 hypothetical questions where you do not specify the
13 precise facts. I am a professional lawyer, I do not
14 give advice on hypotheticals where facts are not
15 clarified.
16 Q. I would put it to you, sir, that before any of the
17 authorities in the relevant 20 jurisdictions approve
18 a transaction like that, because of the contract that
19 was signed, the beneficial ownership rights and the IP
20 rights were transferred to the assignor even before
21 legal title to the rights were transferred in each of
22 the different jurisdictions; correct?
23 A. Well, I wouldn't say so, no. Because if you refer to
24 trademarks, the actual action takes place after
25 approval, so I would have to be convinced that there is

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01 nothing precluding the beneficial right to be created in
02 this case that you describe.
03 Q. But you certainly wouldn't describe a contract like this
04 as void ab initio, you would at least agree with me on
05 that?
06 A. Simply on the facts that you have given me, no, I would
07 not. That's why I said it is fact-specific.
08 Q. I would like to discuss now which assets your report
09 analysed as being subject to the Sembi Agreement, and
10 I would ask you to turn to paragraph 10 of your report,
11 where you discuss the scope of your assignment. You
12 state there:
13 "In particular, I have been asked to consider the
14 validity and the effects of the Sembi Agreement under
15 the law of Cyprus in so far as the transfer of
16 Mr Obradovic's claims" and this is what I want to focus
17 on "in the Privatization Agreement towards the
18 Privatization Agency are concerned and whether such
19 claims can be assigned, after taking into account the
20 expert opinion ..."
21 A. Yes.
22 Q. Do I take it then that you did not consider separately
23 the validity and the effects of the Sembi Agreement on
24 the beneficial rights, with the emphasis on "beneficial"
25 rights, to the BD Agro shares? I know you pointed me to

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01 a paragraph -- indeed it's the only paragraph in your
02 report that talks about shares, but I think as you
03 clarified to my question earlier, that's only with
04 regard to the transfer of legal title. My question is
05 about --
06 A. No, I did not say that. I never said that. On the
07 contrary, that was not my answer.
08 Q. Okay.
09 A. My answer was that the transfer of ownership would be
10 covered by Serbian law, that would refer to whether,
11 with regard to the transfer of ownership, the particular
12 transaction can be considered sufficient to give title.
13 So if Serbian law does not recognise for the purposes of
14 transfer of ownership, which I don't know, the
15 beneficial title, that would be completely relevant. So
16 I never said that this is restricted to legal title,
17 this is something, as I said, that would be governed by
18 Serbian law, both the question of legal title and the
19 question of beneficial title, with regard to the
20 transfer of ownership question.
21 Q. There is no mention specifically of a beneficial
22 ownership to the shares in paragraph 25, sir, is there?
23 A. No.
24 Q. Paragraph 25 is the only paragraph in which you talk
25 about the shares, correct?

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01 A. As I said, in paragraph 25 I talk about the transfer of
02 ownership of the shares, not about the shares in
03 general, but about the question of transfer of
04 ownership. And the reason I do not include any specific
05 reference to beneficial ownership is because it is clear
06 that the entire issue is governed by Serbian law, there
07 is no need to distinguish between the question of legal
08 title and beneficial title. The question of transfer of
09 ownership of shares, which is a very specific question,
10 is governed entirely by Serbian law.
11 Q. Let's turn to CE-029, which, as everyone in this room
12 knows, is the Sembi Agreement, and let's just walk
13 through it together. If we scroll down, past the
14 whereas clauses, we'll see the substantive provisions
15 start with article 1, and I would just like you to
16 review very briefly articles 1 through 3, and tell me if
17 you take issue with any of these particular provisions,
18 whether you think any of these promises or agreements
19 were ineffective or void?
20 A. But I have already explained to you what I consider to
21 be void, so what would be the point to talk about
22 specific paragraphs? I did not refer to specific
23 paragraphs of the agreement.
24 Q. Fair enough. So you don't dispute that all of the
25 promises and agreements made in the first three articles

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01 are perfectly valid?
02 A. Well, let's be clear on something. Any promises made
03 within an agreement are valid only to the extent that
04 the agreement is valid. So how can I tell you that the
05 promises are valid when I have explained why I consider
06 that the agreement could be void? If you are asking me
07 if I did not have the opinion that for the reasons I am
08 saying, which again is a complete hypothetical, would
09 simply by seeing these provisions say, okay, this
10 agreement is void, I never said it would be void simply
11 by seeing this, I have referred specifically on why
12 I consider the agreement void. So I don't understand
13 what the purpose of answering anything else would be.
14 Q. All right, let's turn to article 4 then. This is the
15 last real substantive -- certainly it's the provision
16 with which you do take issue. Let me just read it into
17 the record:
18 "Mr Obradovic, in consideration for the Purchaser
19 assuming such obligations, has agreed to transfer to the
20 Purchaser all his right, title and interest in and to
21 the Contract. Mr Obradovic agrees to sign any such
22 documents and do all such things as may be necessary to
23 effect the transfer to the Purchaser of the Contract
24 together with any other assets whatsoever held by
25 Mr Obradovic which are related to the business of

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01 BD Agro."
02 Isn't it true, sir, that the second sentence there
03 specifically contemplates future conduct by Mr Obradovic
04 when it says that he "agrees to sign any such documents
05 and do all such things as may be necessary to effect the
06 transfer", do you agree?
07 A. I agree that this is a standard contractual term. What
08 do you want me to reply on that? This is a standard
09 contractual term.
10 Q. My question, sir, was that this language, whether it's
11 standard or not, contemplates future conduct by
12 Mr Obradovic, does it not?
13 A. Well, not necessarily, because it states that he agrees
14 to sign any documents and do all things that may be
15 necessary, it's not clear whether there are things that
16 are necessary by the agreement, so that's why I said
17 this is standard language. If it was "I agree to sign
18 a specific document", for instance, that would be
19 a contemplation of specific future action, but in this
20 way that it is written, it does not contemplate whether
21 such specific action is necessary. So that's why I am
22 saying it's a standard provision.
23 THE PRESIDENT: Professor, I think the question was simply:
24 does this sentence envisage future conduct of
25 Mr Obradovic?

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01 A. Yes, I understand that, and that's why I said it
02 envisaged future conduct of Mr Obradovic to the extent
03 that there is something necessary to be done, as it
04 states in the provision. I am just saying that I cannot
05 know whether such action would be needed by reading the
06 provision, because it states "as might be necessary" so
07 it is not clear whether it will be necessary or not.
08 MR ANWAY: But Professor, you don't dispute that this
09 language would cover the situation where Mr Obradovic
10 would seek approval from the Agency under Article 41ž.
11 A. No, I would disagree with you, because if that was the
12 case, I would have expected a specific provision in the
13 contract stating that both parties acknowledge that such
14 consent by the Agency is needed, and that Mr Obradovic
15 has secured such consent.
16 Q. Whether or not you would prefer to have more specific
17 language in it, the language does contemplate
18 Mr Obradovic doing all such things as may be necessary
19 to effectuate the transfer, and on your own opinion, one
20 of the things he needed to do to effectuate the transfer
21 was obtain the Privatization Agency's approval under
22 Article 41ž?
23 A. Okay, let me disagree with you again, and your
24 interpretation, because this is not a question of
25 preference. If you want to have a valid agreement under

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01 Cypriot law, you would have the provision I mentioned.
02 By not having the provision I mentioned, you cannot
03 simply interpret a general wording saying "he will do in
04 the future something to be needed" as specifying that
05 the object of the agreement is not to circumvent the
06 provisions of the law.
07 As I said, in my understanding, for such
08 a provision, if it was a public contract in Cyprus,
09 where you cannot under any circumstances simply assign
10 a public contract without the consent of the Republic of
11 Cyprus, it would be clear that any such wording in
12 a contract, and if someone signed such a contract
13 without having secured the agreement of the Republic of
14 Cyprus, the agreement would be void. So I do not agree
15 with the different interpretation here.
16 Q. Professor, I would put it to you that this provision was
17 not an attempt to circumvent 41ž, it was an attempt to
18 comply with it?
19 A. I don't read it that way, I was clear on that point.
20 Q. Let's turn to -- and I apologise for the
21 pronunciation -- Mr Georgiades' second report, to which
22 your report purports to respond. We have already talked
23 about how Mr Georgiades analysed the shares separately
24 from the Privatization Agreement, and he did so, if we
25 can look very quickly in paragraph 3.21, and 3.23, you

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01 see here he is analysing the shares separate and apart
02 from the agreement itself in both 3.21 and 3.23, do you
03 see that?
04 A. Yes.
05 Q. I understand from your testimony today that your
06 article 25 in your report was your attempt to respond to
07 this, is that correct?
08 A. Well, as I said in article 25, I specified which is the
09 applicable law, so with regards to these arguments
10 raised by my learned colleague Mr Georgiades, I have
11 also replied in section D of my report, which you
12 indicated before.
13 Q. Not specifically about the shares you did not, sir.
14 A. Correct, because my conclusion, as I told you before,
15 was that on the shares, on the transfer of ownership of
16 the shares, the issue is governed by Serbian law. With
17 regards to the issue of whether there can be equitable
18 assignment, because this is the issue raised in the
19 paragraphs you showed to me, and whether this can apply,
20 I have answered in section D of my report.
21 Q. Mr Georgiades also analysed a third type of asset; we
22 have the Privatization Agreement, we have now seen the
23 shares, but the third type of asset he analyses is at
24 paragraph 3.4, which are certain receivables. Do you
25 see that?

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01 A. The shareholder's loans, you mean?
02 Q. I am actually referring to receivables that transferred
03 under article 4 of the Sembi Agreement, these were
04 receivables that were owed to Mr Obradovic from BD Agro.
05 A. Okay.
06 Q. I will represent to you, sir, that the receivables owed
07 to Mr Obradovic from BD Agro, which Mr Obradovic
08 transferred to Sembi under this agreement, were valued
09 at approximately €4.7 million. I'll just represent that
10 to you.
11 A. Okay, I have no idea, so I cannot comment on that.
12 Q. So we have three assets that were allegedly transferred
13 under this provision alone: the Privatization Agreement,
14 the shares and the receivables, and I want to focus for
15 a minute on the receivables.
16 You did not specifically discuss the receivables in
17 your report, correct?
18 A. Correct.
19 Q. So you don't dispute that both the legal and the
20 beneficial ownership in the receivables were transferred
21 immediately upon signing the Sembi Agreement, correct?
22 A. No, that's not correct, because I was not asked to
23 comment on receivables that you mention, so that's why
24 I did not comment, so it's not a question of whether
25 I dispute it or not. It's a question that I was not

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01 asked to comment on that.
02 Q. Just to be clear, if all this contract sought to
03 transfer was the receivables owed to Mr Obradovic, then
04 you're not aware of any reason why the agreement would
05 be void?
06 A. Again, I was not asked to comment on that, so I cannot
07 express an opinion on something I did not provide
08 expertise on.
09 Q. Let's talk for a minute about the shares then. Do you
10 acknowledge that the shares can be transferred
11 independently of the Privatization Agreement?
12 A. What do you mean by that?
13 Q. Let me show you testimony from earlier this week from
14 personnel from the Privatization Agency, let's turn to
15 Day 4, page 65, lines 10 through 22, please. I am
16 picking up on line 10, this is Ms Vuckovic, who worked
17 at the Privatization Agency at the relevant time, and
18 the questioner was reading back her answer to her, and
19 stated, in her words:
20 "... we had as a clear omission in our agreements
21 ... where we allowed disposal of capital during the
22 validity of the agreement, we generally allowed shares
23 to be alienated and we were still monitoring the
24 agreement which was a substantial problem'.
25 "That's what you told the Commission, correct?

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01 "Answer: (Interpreted) Yes, that's correct. It had
02 to do exactly with this. You allow alienation of the
03 shares by removing the pledge, and you allow the buyer
04 to dispose of the shares, while the agreement is in
05 force, and it's not been honoured, so you have no
06 further influence when it comes to the privatization
07 agreement."
08 I put it to you, sir, that this is testimony from
09 the Privatization Agency personnel that the shares can
10 be alienated --
11 PROFESSOR DJUNDIC: I must object, Mme President, this is
12 clearly a misrepresentation of what was said by
13 Ms Julijana Vuckovic. This is taken out of the context,
14 and it is aimed at extracting the answer from the expert
15 witness.
16 THE PRESIDENT: I am just not sure, this is a quotation of
17 something that Ms Vuckovic said.
18 MS MIHAJ: Mme President, it was taken out of the context,
19 because Ms Vuckovic was here explaining what was written
20 in the agreement, and how they understood what was
21 written in the agreement, and of course that she
22 confirmed in his written statement, as well as by giving
23 the testimony at the hearing, that the Agency never
24 actually allowed that, because the Agency never removed
25 the pledge before the privatization agreement was

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01 fulfilled, and that is something that is important for
02 the expert that we are hearing now to be aware of.
03 That's all my point.
04 THE PRESIDENT: Let's ask a hypothetical question, then we
05 do not go into this, and you can then link in your
06 submissions.
07 MR ANWAY: Well, I think the quote was read entirely
08 accurately, I am happy to move on to a different
09 question that I think illustrates the same point.
10 Are you aware, sir, that Mr Obradovic fully paid the
11 purchase price for the BD Agro shares to the
12 Privatization Agency on 8th April 2011?
13 A. I have been informed of this, yes.
14 Q. Are you aware that it is Claimants' position, if not
15 undisputed, that at that point, the Agency's pledge on
16 the BD Agro shares should have been lifted according to
17 the terms of the Privatization Agreement?
18 A. You are telling me this is the Claimants' position, what
19 do you want -- I am sorry, I didn't understand your
20 question.
21 Q. I asked if you were aware of that.
22 A. That this is the Claimants' position?
23 Q. Yes.
24 A. I don't recall specifically, but I don't know if I have
25 seen it in the documents I had been given, because you

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01 understand there were allegations, so I didn't pay the
02 utmost attention to all the allegations, to the extent
03 that these were not relevant for my task, which was very
04 specific. I was not called to comment on the factual
05 situation, I was asked to comment on how Cypriot law
06 applies to some predetermined facts.
07 Q. But my questions are going to whether the shares can be
08 alienated from the Privatization Agreement itself, as
09 a matter of transfer under this Sembi Agreement, and how
10 you understood those assets to be purportedly
11 transferred.
12 If it is the Claimants' position that the
13 Privatization Agreement terminated as of the full
14 payment of the purchase price, then the agreement has
15 gone, and all that is left are the shares.
16 A. Yes okay, but isn't this something to be determined by
17 Serbian law? I am not the one to discuss or express an
18 opinion on whether the Privatization Agreement has been
19 terminated or not.
20 Q. Were you aware, sir, that the Privatization Agency
21 specifically contemplated beneficial ownership in its
22 invitation for companies to participate in bids for
23 other privatized companies?
24 A. No, I am not aware of this. Again, this is an issue
25 that is a question of fact, and a question of Serbian

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01 law. Again, this is not something I can comment upon.
02 Q. Let's turn to paragraph 35 of your expert report,
03 please, and I am going to pick up from the end of it
04 actually. About five lines from the bottom:
05 "Also, it follows from [you cite the Peters case]
06 that where a contract is of personal nature, where the
07 personal identity and the relation between the parties
08 of the original contract is significant, such a contract
09 may not be assigned, by contrast to the product of the
10 contract, when it crystallises and is disconnected from
11 the personal relation and capacity of the parties."
12 Do you see that?
13 A. Yes.
14 Q. As I understand it, this is really that the
15 characteristic performance is not assignable, correct?
16 A. Well, the characteristic performance is a term used in
17 the Rome regime, regarding conflict of laws, so I would
18 not use the word "characteristic performance" here,
19 because characteristic performance is a specific
20 terminology regarding PIL.
21 Q. Let me give you a few examples. I could give you an
22 example of a famous painter who has been hired to paint
23 a portrait, or a famous architect to design a luxury
24 villa, or a famous soprano being hired to sing at
25 a festival. I understand your point to be that the

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01 soprano, the architect, the painter can't assign the
02 contract for someone else to perform, because they were
03 hired because of their own personal identity, do
04 I understand correctly?
05 A. Yes, this is correct.
06 Q. But you wouldn't dispute that those same assignees would
07 certainly be able to assign the proceeds, the money
08 under the contract, to, for example, a family relative?
09 A. You mean the painter would assign -- you mean the money
10 he would receive under the contract, right?
11 Q. Correct.
12 A. Yes, he would.
13 Q. He would be allowed to do that?
14 A. Yes. Unless there was something precluding it, of
15 course, in the contract or otherwise, but in principle
16 he would.
17 Q. Let's now apply some of these principles to this case.
18 At paragraph 16, I don't think it's necessary for you to
19 flip there but just so I accurately represent what you
20 wrote, you identify three distinct relationships under
21 an assignment:
22 "(a) the relationship between the assignor and the
23 debtor, (b) the relationship between the assignor and
24 the assignee and (c) the relationship between the
25 assignee and the debtor."

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01 And you correctly note that here the assignor is
02 Mr Obradovic, the assignee is Sembi, the debtor the
03 Privatization Agency, correct?
04 A. Yes.
05 Q. As you already agreed, the relationship between
06 Mr Obradovic and Sembi is governed by Cyprus law,
07 correct?
08 A. By Cypriot law, yes.
09 Q. We also established Cyprus law recognises beneficial
10 ownership transfers in principle, but you say that the
11 Sembi Agreement is void because of Article 41ž of the
12 Serbian Law on Privatization, correct?
13 A. Yes, in conjunction with Cypriot contract law of course,
14 right.
15 Q. If we turn to paragraph 30 of your report, the very last
16 line of that paragraph, you say:
17 "Therefore, if assignment is precluded by statute,
18 in this case Article 41ž of Serbian Law on
19 Privatization, then it would be void in any event."
20 I note you seem to have copied and pasted that same
21 sentence in the next paragraph, I won't repeat it, it
22 says the exact same thing, but I would put to you, sir,
23 that this is the real disagreement between you and
24 Mr Georgiades. You assume, or you say you have been
25 instructed to assume that 41ž is a prohibition against

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01 transfer; but in fact, the statute doesn't prohibit
02 assignment. Why don't we look at it now? Let's go to
03 CE-220, Law on Privatization, Article 41ž.
04 It's the first paragraph up on your screen:
05 "Subject to prior consent of the Agency [that is the
06 condition], the buyer of the capital (hereinafter:
07 assignor) may assign the agreement on sale of the
08 capital or property to a third party ... under the
09 conditions stipulated by this law and the law on
10 obligations."
11 Sir, this is not a prohibition, it's an enabling
12 provision. It's a provision by which consent has to be
13 sought, yes, but if consent is given, the buyer is
14 indeed allowed to transfer not just beneficial ownership
15 but legal title, correct?
16 A. Well, first of all, as I have pointed out in my report
17 and I can repeat here, the interpretation of this
18 provision is a question for Serbian law, so it cannot be
19 determined conclusively either by myself or by my
20 learned colleague, Mr Georgiades, since this is
21 a question of Serbian law expertise, since this is
22 a provision of Serbian law.
23 Having said that, as you noted, yes, I have been
24 instructed to consider this as a provision prohibiting
25 the sale, but if this was a Cypriot law provision,

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01 I would have also considered it as prohibiting unless
02 there is a prior consent of the Agency.
03 This is again a provision we find very often to
04 occur in public contracts and elsewhere, whose purpose
05 is essentially not to allow for any assignment to occur
06 in a valid way unless there is a prior consent by the
07 public authority or the person concerned. So this is
08 not an unusual provision, and when you refer to prior
09 consent I consider that this is prohibition, not an
10 enabling provision, in the sense that it prohibits
11 unless these conditions are fulfilled. But again, as
12 I stressed, the conclusive interpretation for this is
13 a question of Serbian law, and not a question of Cypriot
14 law.
15 Q. Let me ask you a question of Cypriot law then. If we
16 could pull up CE-841, which the Tribunal may remember is
17 a judicial decision that Mr Georgiades referred to
18 during his testimony. CE-841. And if we scroll down,
19 I have just a portion of this translated, and it's the
20 only portion to which I'm going to refer. Just if we
21 could go back up to the top to identify the document?
22 This is a decision from the Supreme Court of Cyprus,
23 from 2018. You see the parties there, I won't try to
24 pronounce them.
25 If we scroll down, I just want to read to you the

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01 part we have translated and my question to you is simply
02 going to be: is this an accurate reflection of Cyprus
03 law, according to your understanding?
04 "The case of an illegal contract for the provision
05 of services by a contractor who is not registered, where
06 public interest demands strict compliance with the Law,
07 is distinguished from the case where the statutory
08 provisions do not render the entering of a contract
09 illegal but require the fulfilment of a certain
10 formality or precondition before it can be performed,
11 where the contract is not illegal ... According to case
12 law, there is a clear 'distinction between contracts
13 that are void ab initio and contracts that are to be
14 performed in a future time (executory) where the law
15 does not render such contract impossible but the
16 contract is potentially executable if the required
17 consent is given by the appropriate state authority ...
18 "... agreements that are potentially legally
19 executable shall not be declared as ab initio void
20 unless it appears that the parties intended at the time
21 of making the contract to violate the law when
22 performing it."
23 I will repeat my question. Do you agree that this
24 is an accurate reflection of the law in Cyprus?
25 A. As I mentioned also in a question answered in my direct

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01 examination, this is a distinction made having to do
02 with the performance of the contract, so this is an
03 accurate reflection of what the law stands for with
04 regards to the performance of the contract.
05 Now, as I mentioned, my point doesn't have to do
06 with the performance of the contract, so if the
07 interpretation of the provision of the Serbian law you
08 have shown to me would be that this is a provision that
09 applies only with regards to the performance of the
10 contract, then this would apply. But to the extent that
11 this is a provision that necessitates not only the
12 consent as a requirement for the performance of the
13 contract but also as a requirement for concluding
14 a valid contract, then this would not be the authority
15 covering it, but the authority covering it would be
16 section 23 of the contract law that I mentioned before,
17 so it all has to do with what is a proper interpretation
18 here of the provision of Serbian law in order to answer
19 the question whether we are at the stage of performance
20 of the contract, or at the stage of signing the
21 contract.
22 Q. Professor, I have two last questions for you.
23 A. Sure.
24 Q. First, if Mr Obradovic had received the Agency's
25 approval for transfer of the agreement and the shares

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01 one day before he signed the Sembi Agreement, then in
02 your view, the Sembi Agreement would be valid, correct?
03 A. Well, if he had received the consent before signing,
04 yes.
05 Q. If Mr Obradovic had received the Privatization Agency's
06 approval for the transfer of the agreement and the
07 shares one day after he signed the Sembi Agreement, then
08 isn't it true it would still be the case that the Sembi
09 Agreement was valid?
10 A. Well, not necessarily, because as I mentioned, we turn
11 back to the object of the agreement and the object of
12 the agreement is determined on the day that the
13 agreement is signed, and not afterwards, so what you are
14 just now saying would have to be considered by the court
15 whether a subsequent action by the Privatization
16 Agreement might create an estoppel prohibiting it from
17 raising the issue of the agreement being void, but I do
18 not think that a question of the object of the agreement
19 could be considered by subsequent actions. So it would
20 be a different legal question for me, it would be
21 a question of estoppel.
22 MR ANWAY: Mme President, I have no further questions.
23 THE PRESIDENT: Thank you. Any questions in re-direct?
24 PROFESSOR DJUNDIC: No questions.
25 THE PRESIDENT: No questions in re-direct. Questions by my

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01 co-arbitrators? Yes, please.
02 Questions from the TRIBUNAL
03 PROFESSOR KOHEN: Good afternoon, Mr Emilianides, can you
04 see me and can you hear me, I hope?
05 A. Yes, very well.
06 PROFESSOR KOHEN: Despite the mask.
07 A. Yes. We are used to the mask nowadays.
08 PROFESSOR KOHEN: Yes, unfortunately, I would say. You
09 mentioned that the concept of beneficial ownership has
10 entered Cypriot law through common law?
11 A. Yes.
12 PROFESSOR KOHEN: And you also mention that this concept can
13 be applied but not if there is a statutory provision
14 prohibiting it, is that correct?
15 A. Yes.
16 PROFESSOR KOHEN: And the example you mentioned was land
17 law. My question is: it means that if an individual, if
18 a person owns land, there cannot be a relationship with
19 a beneficial owner, is that correct?
20 A. Land, the Cypriot law on registration of immovable
21 property explicitly excludes by its provision, by
22 statutory provision, the application of the principles
23 of equity with regard to the transfer and registration
24 of immovable property, so to the extent that we are
25 referring to an equitable right, this would not be valid

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01 with respect to questions of transfer of immovable
02 property, or registration of immovable property.
03 PROFESSOR KOHEN: What would happen if the owner of land is
04 a corporation, and then there is a beneficial owner for
05 the shares of this corporation?
06 A. Well, the beneficial owner of the shares would be
07 a different question, because there we would not have an
08 application of registration of immovable property. The
09 question would be of registration of shares. So the
10 question would be one to be governed by issues relevant
11 to the registration of shares, not of questions relevant
12 to the registration of immovable property.
13 My point is that if I have a piece of land, and I am
14 a company, and the only things that happen is that there
15 is a transfer of shares of the company, this has nothing
16 to do with cap 224 that governs registration of
17 immovable property.
18 PROFESSOR KOHEN: Thank you very much. No further
19 questions, Mme President.
20 THE PRESIDENT: Thank you.
21 Professor Emilianides, just to make sure
22 I understand your evidence correctly, for you the
23 contract issues are governed by Cypriot law because of
24 the choice of law. The property issues are governed by
25 Serbian law, because we deal with a Serbian corporation.

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01 A. I am sorry to interrupt, but the proprietary issues
02 relevant to the transfer of the ownership of the shares
03 are governed by Serbian law. The question of the
04 assignability of the contract, or the question of the
05 relationship between the Agency and the assignee, is
06 governed also by Serbian law. As I said, the question
07 of the contract between the assignor and the assignee,
08 that is governed by Cypriot law.
09 THE PRESIDENT: Fine, yes, you went faster than I was. The
10 modalities of contract performance with respect to the
11 transfer of the shares are also governed by Serbian law?
12 A. Yes, that is my view of the transfer of the shares, yes.
13 THE PRESIDENT: And the assignability of the privatization
14 contract is governed by Serbian law except in respect of
15 the relationship between the assignor and the assignee,
16 did I understand you correctly?
17 A. The relationship between the assignor and the assignee
18 is not truly a question that has to do with
19 assignability of the contract, it's a different
20 question. So the contractual relationship between the
21 assignor and the assignee would be governed by Cypriot
22 law, whereas the question of assignability of the
23 original contract would be governed by Serbian law.
24 THE PRESIDENT: Yes, that is a different -- it may be a more
25 precise way of putting it.

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01 But you also said, if I am not mistaken, that if
02 Cypriot law were applied to the assignability, then it
03 would bar assignment because of the personal nature of
04 the privatization contract?
05 A. Well, I take it as granted that it is Serbian law that
06 applies to the assignability question. What you just
07 referred to was my comment with regards to the question
08 of application of the beneficial ownership by
09 application of Cypriot laws of equity.
10 THE PRESIDENT: And the beneficial ownership, you would say
11 assignability would be barred or transfer would be
12 barred because of the personal nature?
13 A. Because there are personal characteristics that I have
14 been instructed were an important part of the original
15 agreement. Secondly, because there is the provision of
16 Serbian law that I had been asked before which, as
17 I said, that was the instruction I had on its
18 interpretation, so it's a question of Serbian law, its
19 determination; and the third point was that because on
20 the basis of article 23 of Cypriot contract law, to the
21 extent that this is a proper interpretation of the
22 provision of Serbian law, then the contract would be
23 void because it would defeat a provision of statute, and
24 it would be contrary to public policy. So these are the
25 three grounds on which I relied for my conclusion on

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01 what you just said.
02 THE PRESIDENT: Thank you. I think that covers my points.
03 No clarification issues? Then that ends your
04 examination, Professor Emilianides, thank you very much
05 for being available this afternoon.
06 A. Thank you very much as well.
07 THE PRESIDENT: Goodbye. You may leave the meeting.
08 Fine, that ends our day, if I understand what you
09 agreed yesterday, is that right? No particular points
10 to be raised before we adjourn until Monday? So you
11 know what the programme is on Monday, and I think you
12 also know what the programme is on Tuesday.
13 I wish you all a very good end of the afternoon, and
14 a nice Sunday, even if there will be some work to be
15 done, I assume.
16 Good, thank you very much. See you on Monday
17 morning.
18 (4.39 pm)
19 (The hearing adjourned until 9.00 am
20 on Monday, 19th July 2021)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

Respondent

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Mr Baiju Vasani
Prof Marcelo G. Kohen

Assistant to the Tribunal:
Rahul Donde

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Interpreters:

Milena Maric
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Hearing Location:

Peace Palace, The Hague

PAGE 1 (08:58)

01 Monday, 19th July 2021
02 (8.58 am)
03 PROFESSOR THOMAS PAPADOPOULOS (called)
04 THE PRESIDENT: Everybody is ready, I think. Good morning
05 to everyone, I hope you had a good Sunday with at least
06 some rest, and we are ready to start the seventh day of
07 this hearing.
08 I see that Professor Papadopoulos is already online.
09 Is there anything we need to address before we turn to
10 him?
11 MR ANWAY: Not for Claimants, thank you.
12 PROFESSOR DJUNDIC: No, Mme President.
13 THE PRESIDENT: Professor Papadopoulos, do you hear me?
14 THE WITNESS: Yes, I can hear you very clearly.
15 THE PRESIDENT: Excellent, we hear you too. Good morning,
16 and thank you for being with us. You are Thomas
17 Papadopoulos?
18 THE WITNESS: Yes.
19 THE PRESIDENT: You are a lecturer at the University of
20 Cyprus, is that right?
21 THE WITNESS: Yes, I am Assistant Professor of Business Law
22 at the University of Cyprus.
23 THE PRESIDENT: Fine. You have provided two expert reports
24 in this arbitration, the first one dated 18th April
25 2019, and the second one 24th January 2020, is that

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01 right?
02 THE WITNESS: Yes, that is correct.
03 THE PRESIDENT: Do you have your expert reports with you
04 there?
05 THE WITNESS: Yes, I have the documents here opened in my
06 PC.
07 THE PRESIDENT: Are these clean unannotated copies?
08 THE WITNESS: Yes, they are clean copies.
09 THE PRESIDENT: Are you alone in the room from which you
10 testify?
11 THE WITNESS: Yes, I am alone in the room, nobody else is
12 here.
13 THE PRESIDENT: And you have no access to information
14 sources or communication channels other than the video
15 platform that we use now?
16 THE WITNESS: Exactly, I don't have anything else apart from
17 this platform.
18 THE PRESIDENT: Excellent. So as we go along, you may be
19 shown documents, they will appear on your screen.
20 THE WITNESS: Okay.
21 THE PRESIDENT: If you want to see more of the document, if
22 you wish us to scroll up or down, you will just let us
23 know.
24 THE WITNESS: Okay, thank you.
25 THE PRESIDENT: Fine. You are heard as an expert; as an

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01 expert you are under a duty to make all the statements
02 in accordance with your sincere belief. Have you
03 received a copy of the expert declaration?
04 THE WITNESS: Yes, I have it here.
05 THE PRESIDENT: Good. Can you read it aloud into the
06 record, please?
07 THE WITNESS: Yes. Expert declaration. I solemnly declare
08 upon my honour and conscience that my statement will be
09 in accordance with my sincere belief.
10 THE PRESIDENT: Fine, thank you very much. So I will turn
11 to Respondent's counsel for introductory questions
12 first.
13 PROFESSOR DJUNDIC: Thank you, Mme President.
14 Direct examination by PROFESSOR DJUNDIC
15 Q. Good morning, Professor Papadopoulos.
16 A. Good morning.
17 Q. I would like you to comment on the argument raised by
18 Mr Georgiades in his reports that the seat and
19 registered office are used interchangeably in Cyprus
20 company law. So to prove that, in his third report, in
21 paragraph 3.6, Mr Georgiades noted that there are
22 certain cases in Cyprus company law where different
23 terms are used to denote something with the same
24 meaning, that is that the Greek words onoma and eponymia
25 are used interchangeably to denote the name of a

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01 company. And the words simvoulos and diefthintis to
02 denote a company director.
03 A. Yes, with regard to the Greek words diefthintis and
04 simvoulos, Article 57 of Cyprus Company Law, which
05 transposes the second company law directive, puts these
06 two terms one next to the other, which indicates clearly
07 that they have a different meaning. The word
08 diefthintis means managing director, CEO of a company,
09 while the word simvoulos means, let's say, simple
10 director, just a simple member of the board of the
11 company.
12 So the argument of Mr Georgiades in his report
13 fails, because Cyprus legislature uses these two words
14 with a different meaning.
15 With regard to the terms onoma and eponymia in
16 Articles 4 and 351 of the Cyprus Company Law, these two
17 terms have exactly the same meaning. They mean
18 labelling, distinguishing, characterising a legal person
19 and the fact that the words onoma and eponymia have the
20 same meaning is undisputed.
21 Q. Thank you. In his third report, paragraph 3.4,
22 Mr Georgiades argues that the company which moves its
23 registered office from another country to Cyprus is not
24 being reincorporated in Cyprus, which means that the
25 place of incorporation and registered office may not

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01 coincide; would you like to comment on that?
02 A. I disagree with this view. We have Article 354F of the
03 Cyprus Company Law which regulates the effects of
04 registration of a company having transferred its
05 registered office from a foreign country to Cyprus.
06 Article 354F is a provision which states clearly that
07 the company in question, from the date of the entry into
08 force of the temporary certificate of continuation
09 issued by the Register of Companies is considered to be
10 incorporated pursuant to this law.
11 In other words, a company is incorporated in
12 accordance with Cyprus Companies Law when it receives
13 the temporary certificate of incorporation. This is
14 a specific process called reincorporation, which comes
15 together with the transfer of the registered office.
16 The process of reincorporation is a process of
17 cross-border conversion. This means that the foreign
18 company is being converted into a Cyprus company with
19 a continuation of its legal personality. This also
20 means that here we have a change of applicable company
21 law. The company stops being subjected to foreign
22 company law and starts being subjected to Cyprus Company
23 Law. Hence, companies following the process of Articles
24 354B to 354I continuing in Cyprus must have a registered
25 office in Cyprus because they are considered to be

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01 domestic companies, and so Cyprus Company Law starts
02 applying to them.
03 PROFESSOR DJUNDIC: Thank you, Professor Papadopoulos.
04 I have no further questions, Mme President.
05 THE PRESIDENT: Thank you. Mr Anyway, please.
06 Cross-examination by MR ANWAY
07 Q. Good morning, Professor Papadopoulos, my name is Stephen
08 Anyway, I am counsel to Claimants in this arbitration and
09 will be asking you some questions about your expert
10 report today. I would ask that you listen to my
11 questions very carefully, most of my questions are
12 answerable with a yes or no answer, and particularly
13 because you are testifying by video I would ask you to
14 allow me to fully finish my question before you start
15 your answer so we don't speak over each other.
16 I would like to first spend a little time
17 understanding the corporate registration in Cyprus. If
18 we could turn to CE-500, Article 3, this is the
19 Companies Act, and Article 3, if we can turn to it --
20 let me just ask the question. The basic provision
21 states that persons associated for any lawful purpose
22 may, by subscribing their names to a memorandum of
23 association, and otherwise complying with the
24 requirements of the law in respect of registration, form
25 an incorporated company with limited liability, correct?

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01 A. Yes, this is Article 3.
02 Q. Section 15, and again we can take you to it if necessary
03 but I don't think it's necessary, provides for company
04 creation to be certified by the registrar on
05 registration of the memorandum and articles of
06 association, correct?
07 A. Yes, this is Article 15.
08 Q. You don't dispute that Sembi complied with these
09 requirements, correct?
10 A. From the information that I have, it is not refuting
11 these provisions.
12 Q. You don't dispute the authenticity of the company
13 register of Sembi which is on the record as CE-053?
14 I can take you to it if you like, but I don't think it's
15 necessary. You don't dispute the authenticity?
16 A. Can I have a look at it, please?
17 Q. Of course. CE-053, if we could pull it up, please.
18 A. Could you scroll and magnify a little bit, maximise,
19 because it's not visible?
20 Q. You took no issue with this document in your expert
21 reports, did you, sir?
22 A. No, I didn't.
23 Q. And you don't dispute -- I am sorry?
24 A. It looks lawful, yes.
25 Q. You don't dispute Sembi's articles of association which

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01 are on the record as CE-866? We can take you to that
02 document as well if you would like.
03 A. Yes, please. Can I have a look at it?
04 Q. Let's pull up CE-866. Again, same question: nowhere in
05 your expert reports did you take any issue with this
06 document, correct?
07 A. I didn't.
08 Q. Let's turn back to the Companies Law, section 102.
09 CE-120, section 102. Again, the question is fairly
10 simple: as I understand it, under section 102 of the
11 Companies Law, all companies incorporated in Cyprus must
12 have a registered office in Cyprus, is that correct?
13 A. Yes, from the time that the company is incorporated,
14 must have a registered office in Cyprus. The registered
15 office and the incorporation go hand in hand, it's
16 a prerequisite.
17 Q. You don't dispute that Sembi has a registered office in
18 Cyprus, correct?
19 A. From the information that I have, I cannot comment on
20 this, I cannot dispute this, from the information
21 I have.
22 Q. You don't dispute Sembi's certificate of registered
23 office which is on the record as CE-054? We can pull
24 that up if you would like to see it.
25 A. Yes, can I have a look at it, please?

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01 Q. Absolutely.
02 A. Can you go a little bit up? Certificate, just a moment,
03 a little bit down.
04 Q. I will represent to you, sir, this is after Sembi moved
05 its offices.
06 A. Yes, thank you.
07 Q. But again, you don't dispute the authenticity of this
08 document either?
09 A. From the information that I have, I cannot dispute this.
10 Q. Am I correct that a registered office can be maintained
11 at any place in Cyprus irrespective of the existence or
12 type of the physical premises at that place, or the
13 nature and extent of the company's rights to use the
14 premises?
15 A. With regard to the requirements of registered office,
16 first of all we are talking about the free areas of the
17 Republic of Cyprus. With regard to the unlawfully
18 occupied areas of North Cyprus by Turkey, then we have
19 special provisions. Moreover, there are specific
20 requirements in law which state that, for example,
21 outside of the registered office of a company, we must
22 have a label with the name of the company, but pretty
23 much there are no other specific conditions about the
24 premises. I mean, what kind of building should be.
25 There are also provisions that in the registered office

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01 of a company in Cyprus, certain registers must be kept,
02 certain corporate information must be kept there.
03 Q. We will come on to that in just a moment. You agree
04 that the registered office of a company in Cyprus does
05 not have to be the head office or the principal place of
06 business of a company, correct?
07 A. Cyprus is an incorporation theory jurisdiction, so there
08 is no requirement that the registered office and the
09 seat must coincide within the same place. However,
10 Cyprus is a mixed legal system, where the notion of seat
11 is recognised in parallel of course with the existence
12 of the incorporation theory system that Cyprus adopts,
13 so in a mixed legal system like Cyprus, a continental
14 law notion such as seat is used by Cyprus legislature in
15 parallel with the registered office which is the
16 connecting factor in incorporation theory systems.
17 Q. Professor, I am a bit short on time given how much
18 material we have. My question was actually quite
19 simple. You agree that the registered office of
20 a company does not have to be the head office or the
21 place of business of a company? I think your answer was
22 yes.
23 A. Yes, registered office and seat are two different
24 notions with different meanings.
25 Q. Do you agree that Cypriot courts in deciding their

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01 jurisdiction have concluded that all that is necessary
02 for jurisdiction is that the defendant have a registered
03 office in Cyprus?
04 A. With regard to jurisdiction, we have the Brussels
05 Convention, I can comment on Article 63 of the Brussels
06 Regulation, where we have three specific connecting
07 factors. We have the registered office, the statutory
08 seat, as the Brussels Convention mentions this, but also
09 we have the head office and the place of business as
10 factors that provide jurisdiction.
11 Q. Professor, I would again ask you to focus just on my
12 question. We will be going to that Brussels Regulation
13 later. My question is: all that is necessary for
14 jurisdiction is that a company have a registered office
15 in Cyprus, is that correct?
16 A. From the case law of the Supreme Court of Cyprus, there
17 are cases that require the existence of a registered
18 office there. Nevertheless, in the Serbia-Cyprus BIT,
19 the jurisdiction is provided with regard to the notion
20 of seat, which is different --
21 THE PRESIDENT: Professor Papadopoulos, I am sorry to
22 interrupt you, but I think it would be good if you could
23 just focus on the question. The question was not on the
24 BIT, the question was just: is it sufficient for
25 a Cyprus court to assess jurisdiction that there is

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01 a registered office in Cyprus? And I understand you to
02 say yes.
03 A. Yes.
04 THE PRESIDENT: But maybe it's better if you confirm it.
05 A. Yes, I confirm it, that it is yes, it is registered
06 office.
07 THE PRESIDENT: Thank you.
08 MR ANWAY: Thank you, Mme President.
09 In fact, it's common that companies in Cyprus,
10 whether belonging to local or foreign business persons,
11 designate registered offices which are neither their
12 head office nor their places of business; that's common?
13 And again, just a yes or no answer.
14 A. Yes, it's common.
15 Q. In Cyprus, it's common for companies to designate the
16 address of a law firm or accounting firm, or of another
17 service provider, as the company's registered office;
18 it's common?
19 A. Yes, it's common, and there is also a specific statute
20 for these companies offering administrative services of
21 how they are going to offer these administrative
22 services to such companies. But yes, this is common.
23 Q. And it's common in Cyprus for companies to maintain the
24 necessary books and registers of the company at that
25 address, yes or no?

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01 A. Yes, as far as this address of the law firm is the
02 address of the registered office, yes, it is common.
03 Q. Again, I can take you to all these different legal
04 provisions but I think all of these points will not be
05 disputed. Number one, you would agree that one of the
06 most important functions of the registered office is
07 that documents may be served upon a company at the
08 address of that office, that's from section 372 of the
09 Companies Law, correct?
10 A. Yes, I agree that it is a place where the correspondence
11 and the notices are served, is the main function of the
12 registered office.
13 Q. A company with a registered office in Cyprus must keep
14 at the registered office the registration of debenture
15 holders, that's section 83, correct?
16 A. Yes.
17 Q. And every instrument creating any charge requiring
18 registration or any mortgage requiring or recording,
19 that's section 99, that must also be kept at the
20 registered office, correct?
21 A. Yes.
22 Q. A register of the members of the company, that's section
23 105, that too must be kept at the registered office,
24 correct?
25 A. Yes, register of members also.

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01 Q. And a book containing the minutes of proceedings of any
02 general meetings, that's from section 140, yes?
03 A. Yes, this corporate information must be kept there.
04 Q. And the books of account, that's section 141, correct?
05 A. Can I have a look at 141, please, is it possible?
06 Q. Sure, let's pull up CE-120.
07 A. In order to confirm.
08 Q. It says the books of account --
09 A. Yes, they can be kept also there.
10 Q. Finally, the register of its directors and secretaries,
11 that's section 192, correct?
12 A. 192, can I have a look at it, please, to make sure
13 again?
14 Q. Sure, same document, 192.
15 A. Yes.
16 Q. Cyprus law imposes fines for non-compliance with some of
17 these requirements, correct?
18 A. Yes, it's possible if a company violates some rules to
19 be stricken off the Register of Companies, if it
20 violates such rules. Or fines maybe.
21 Q. Let's turn now to CE-054, and scroll down to the address
22 listed there. You do not dispute, sir, that that is in
23 fact a real address, correct?
24 A. From the information that I have, I don't know this
25 place, I don't know where it is, but I cannot dispute

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01 it.
02 Q. You also don't dispute, it sounds like because you don't
03 know, that this address is in fact at a commercial
04 building? You don't dispute that?
05 A. I don't know this. I don't know this, so I cannot say.
06 I cannot comment on this, because I don't know.
07 Q. And you don't dispute that Sembi has had a physical
08 office in Cyprus since it was incorporated in 2007,
09 correct?
10 A. The Register of Companies does not perform any
11 examination of the information submitted by the
12 companies.
13 Q. Professor, that wasn't my question. I'll ask it again.
14 My question was: you don't dispute that Sembi has had
15 a physical office in Cyprus since its incorporation in
16 2007? I didn't ask about what the registrar performs --
17 A. Yes, I cannot dispute this, but I would like to add that
18 the Register of Companies does not check the information
19 submitted to him, whether the physical premises exist,
20 or it is an imaginary place, or if there is a wrong
21 address.
22 Q. Professor --
23 A. But I don't dispute it.
24 Q. -- unlike Claimants' expert in this case, Mr Georgiades,
25 you did not make a site visit to the registered office?

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01 A. Excuse me, can you repeat?
02 Q. Unlike Claimants' Cyprus law expert in this arbitration,
03 you did not make a site visit to Sembi's registered
04 office, correct?
05 A. No, I did not.
06 Q. So you offer no testimony to this Tribunal about the
07 actual office at all, whether it was accessible, who was
08 there, what materials were kept, you don't offer any
09 testimony about those matters?
10 A. No, I don't offer any testimony on these matters.
11 Q. If we turn to Mr Georgiades' first expert report,
12 paragraph 2.14.
13 You don't dispute that Sembi's name was on the front
14 of the building as shown on this picture?
15 A. If this picture is correct or true, I cannot dispute it,
16 because I see.
17 Q. And I will represent to you, sir, that Serbia in this
18 arbitration has never raised a question about when this
19 sign was put up but I take it from your answers that you
20 have no reason to doubt that the name has been up on the
21 front of the building since well before this
22 arbitration?
23 MS MIHAJ: Mme President, I have to object.
24 Professor Papadopoulos is not a witness of fact but the
25 expert witness so I am not sure that these are questions

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01 proper for Professor Papadopoulos.
02 THE PRESIDENT: Yes, this is on the border between fact and
03 law really, because it is a factual question, but it is
04 obviously linked to the legal requirements.
05 Professor Papadopoulos, I understand that you have
06 not gone to this address at Prodomos -- I don't
07 remember the exact name.
08 A. Never. I have never been there.
09 THE PRESIDENT: So you have never been there. Do you know
10 the company HLB?
11 A. No, I don't know this company.
12 THE PRESIDENT: And you don't know Aims either?
13 A. The aims of this company, what does it mean?
14 THE PRESIDENT: No, the name that is on the sign.
15 A. Oh, the name. No, Aims, I have no idea.
16 THE PRESIDENT: So you have no way of knowing whether the
17 Sembi name has been there or has not been there, neither
18 do you know for how long?
19 A. I don't know. I don't know this thing.
20 THE PRESIDENT: Thank you.
21 MR ANWAY: I have just one final question on this topic,
22 sir. You don't dispute that Sembi's registered office
23 complies with all aspects of Cyprus law, you don't take
24 issue with any legal aspect?
25 A. I cannot give a positive answer, because I have not

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01 visited the registered office of this company.
02 Q. Of course, you make the argument that the term "seat"
03 under Cyprus law means something more than simply the
04 registered office, and instead means the place of
05 effective management and control. In fact, this is not
06 the first time you have made such an argument to an
07 investment treaty tribunal, correct? You made the same
08 argument to the Mera v Serbia tribunal.
09 A. Yes, I did the same statement in the Mera v Serbia
10 arbitration.
11 Q. Let me take you to that decision, CLA-22. We can see
12 from the front of the award who the tribunal members
13 were: Dr von Segesser, Bernardo Cremades and Yves
14 Fortier, and if we turn to page 11 we will see your name
15 at the bottom as one of the testifying experts for
16 Serbia.
17 I think you already agreed but just to confirm, you
18 made the same argument to that tribunal that you're now
19 making to this Tribunal, correct?
20 A. Yes, I supported the same view that seat and registered
21 office have a different meaning in Cyprus Companies Law.
22 Q. In fact, the tribunal, although it doesn't identify you
23 by name, summarises your argument at paragraph 79 -- in
24 fact, before that, but 79 I think is probably the most
25 succinct articulation of your position. If you could

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01 just confirm that's the position that you offered to
02 this tribunal?
03 A. Can I take a look at it, please, a little bit? Can you
04 maximise it a little bit? Because it is not visible.
05 Just paragraph 79, okay. (Pause).
06 Yes, pretty much this paragraph summarises my
07 opinion.
08 Q. Then on the next page we see the heading "The Tribunal's
09 findings", just above paragraph 84, and in fact the
10 tribunal rejected the argument that you made to them on
11 this issue, correct?
12 A. Yes.
13 Q. It rejected the position unanimously, correct?
14 A. Yes.
15 Q. We can see, starting at paragraph 87:
16 "The Arbitral Tribunal finds it difficult to accept
17 the Respondent's position that the term 'seat' is
18 ordinarily understood in international law to convey the
19 place of effective management, ie where decisions are
20 effectively made."
21 But the tribunal then goes on to talk about the
22 issue under municipal law, and if we could scroll to
23 paragraph 90, the tribunal held:
24 "The concept of a 'seat' of a legal entity remains
25 essentially a municipal law concept derived from civil

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01 law tradition and is foreign to Cypriot law which is
02 rooted in English common law. As confirmed by the
03 Claimant's legal expert, former Attorney General of
04 Cyprus ... Cypriot law 'does not recognise any notion
05 equivalent to the French ... concept ... or the German
06 ... concept of 'real or effective seat'. [The Attorney
07 General] goes on to propose that 'instead, Cypriot law
08 adopts the so-called "incorporation" approach to
09 determining a company's [law]', and that as a result
10 'a company "seated" in Cyprus is one that is
11 incorporated in Cyprus and maintains a registered office
12 in the Republic'.
13 Paragraph 91 then says:
14 "The ... Tribunal considers this approach of
15 defining the term seat to be fitting in the present
16 case."
17 I will just read one more passage, and this is on
18 the top of the next page, 24:
19 "In this sense, "seat" means the seat of the legal
20 person, the registered office, the physical location of
21 a company where it can be visited, where service can be
22 made'. The Arbitral Tribunal therefore accepts that the
23 meaning of the term 'seat' must be understood to have
24 been a reference to an actual location, place or
25 address. Thus, in the Arbitral Tribunal's view the

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01 equivalent of this condition under Cypriot law is the
02 registered office of an entity."
03 Sir, the tribunal then goes down, if we could scroll
04 down just a bit, and cites an earlier decision, another
05 investment treaty tribunal that has also faced this same
06 issue under the same treaty, and it's the tribunal in
07 what we call the CEAC case. Are you familiar with that
08 case as well?
09 A. Yes.
10 Q. In that case, the tribunal took a different approach, it
11 took a more expansive view of what "seat" meant under
12 the treaty, correct?
13 A. Yes.
14 Q. Professor Park dissented to that decision, I am sure you
15 are aware, in fact he is referenced in this paragraph as
16 well.
17 A. Yes, he had a different view.
18 Q. And the additional requirements that other tribunal
19 found are listed in paragraph 94, and I would just like
20 to go through them with you. It is on these criteria
21 that I will be asking you questions.
22 A. Yes.
23 Q. I will read this language into the record. So the
24 tribunal in the Mera case says, paragraph 94:
25 "The Arbitral Tribunal does not accept the

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01 'requirements' established by the majority in CEAC. The
02 additional conditions applied by the majority in the
03 CEAC case went beyond assessment of the confirmation of
04 a registered office by the relevant authorities, to also
05 include inquiry into: (i) the existence of physical
06 premises, (ii) a lease or licence to use the premises,
07 (iii) accessibility of the premises for at least two
08 hours per day, (iv) the keeping of books and registers,
09 and (v) the company's name affixed to the outside of the
10 building. The present Arbitral Tribunal agrees with the
11 position taken by Professor ... Park in CEAC, that this
12 test 'finds no support in either domestic or
13 international law' and that the 'adoption of that
14 standard would require arbitrators to assume a
15 policy-making mission in excess of their authority."
16 The tribunal goes on, and I will come back to those
17 factors in just one moment, if we scroll to the next
18 paragraph, to say:
19 "In any event, even if the ... Tribunal were to
20 accept the test established by the majority in CEAC,
21 these requirements are considered to be fulfilled in the
22 present case ..."
23 If we scroll back up to the paragraph that I just
24 read, 94, my question to you is: even if this Tribunal
25 applied the more expansive holding of the CEAC tribunal,

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01 the heightened standard for a seat under the Treaty, do
02 you dispute that Sembi satisfies every single one of
03 these five requirements?
04 PROFESSOR DJUNDIC: Mme President, I must object. I was
05 under the impression and we agreed that
06 Professor Papadopoulos is not going to give his opinion
07 on issues of international law.
08 MR ANWAY: My question is more whether he takes issue as
09 a matter of his knowledge of the facts in this case that
10 all of these requirements are satisfied by Sembi. If he
11 takes issue with any of them.
12 THE PRESIDENT: Where do these requirements come from? From
13 Cyprus law, the two hours a day accessibility? I think
14 so, but you know it better.
15 MR ANWAY: These are the requirements that the CEAC tribunal
16 found to apply.
17 THE PRESIDENT: But the CEAC tribunal has not invented these
18 requirements.
19 MR ANWAY: Well, we can turn to the CEAC case in a moment.
20 I think I have made the point --
21 THE PRESIDENT: I think it is correct that
22 Professor Papadopoulos does not testify on international
23 law issues. He is here as an expert of Cyprus law, so
24 whatever your question is, it should be aiming at Cyprus
25 law.

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01 MR ANWAY: Why don't we then turn to paragraph 11 of your
02 first expert report? You state, in paragraph 11:
03 "In line with the above, there are two main theories
04 on the recognition of a company as having valid legal
05 personality: the real seat theory and the incorporation
06 theory."
07 As I understand it, you acknowledge that some
08 countries, particularly civil law countries, have a real
09 seat concept, whereas other countries, particularly
10 common law countries, have simply an incorporating
11 theory concept, correct?
12 A. Yes.
13 Q. If we turn to paragraph 8, and I think you have already
14 said this but just to confirm, you state that Cyprus
15 adopts the incorporation theory and then you go on at
16 the end of the paragraph to say that it's not absolute
17 in form.
18 A. Cyprus as a mixed legal system does not adopt a pure
19 incorporation theory jurisdiction. It adopts the
20 incorporation theory jurisdiction, but not in a pure
21 form.
22 Q. You would agree with me, Professor Papadopoulos, that
23 the Cyprus courts follow stare decisis?
24 A. The legal precedent, you mean?
25 Q. Yes.

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01 A. According to the Constitution of Cyprus and the Law for
02 Administration of Justice of 1960, only cases before
03 1960 -- the Cypriot courts are bound by common law cases
04 before 1960. After 1960, after the independence of
05 Cyprus, they are not bound by these legal precedents,
06 strictly speaking, so they can differentiate, because
07 after 1960, Cyprus moved from a pure common law
08 jurisdiction which was due to the fact that it was
09 a colony, to a mixed legal system through the adoption
10 of various continental law statutes and notions,
11 approaches, et cetera.
12 Q. You acknowledge that the Cyprus Companies Law was based
13 on the English Companies Law of 1948?
14 A. The source of this law, the initial text, was quite
15 similar with the 1948 English Companies Act. Since
16 then, we had significant differentiation through the
17 years. Cyprus legislature did not follow all the
18 amendments made by the English legislature, for example
19 the directors' duties are not codified there, and
20 various other things, so pretty much Cyprus Companies
21 Law followed, let's say, an autonomous way, an
22 autonomous trend after the independence of 1960, with
23 regard to company law.
24 Q. But you don't dispute that the Cyprus Companies Law was
25 based on the English Companies Law of 1948, that's

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01 certainly its legal --
02 A. The source? Yes, the source of this legislation is the
03 English Companies Act 1948, like in all British colonies
04 back then, almost all.
05 Q. You were a country expert in a final report issued by
06 the European Commission called the "Study on the law
07 applicable to companies", correct?
08 A. Yes.
09 Q. That study canvassed the European Member States and how
10 each Member State determines if a company is a company
11 of that Member State, correct?
12 A. You are talking about -- can you repeat the question,
13 please? Because it was not clear.
14 Q. Well, the purpose of the study was to determine if
15 a company is in fact a company of a particular Member
16 State?
17 A. No, the purpose was the private international law of
18 companies, and more specifically, the law applicable to
19 companies, this specific topic.
20 Q. Well, let's take a look at the document then. It's
21 RE-452. It looks from pages 4 and 5 that this report
22 was published in 2016, does that sound right?
23 A. As far as I remember, yes, it was published then.
24 Q. It's a fairly recent document?
25 A. Yes.

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01 Q. On page 8 we can see your name, under "Greece"?
02 A. Yes.
03 Q. Are you familiar with the experts for Cyprus? One of
04 them is Christiana Markou.
05 A. She was one of my former colleagues at the European
06 University of Cyprus but I don't have any personal --
07 I don't know her any more than being a colleague of
08 mine, a former colleague of mine, because now I am at
09 the University of Cyprus.
10 Q. My understanding is she is now a professor, in fact she
11 teaches at the same law school as Professor Emilianides
12 who we talked to on Saturday, is that your understanding
13 as well?
14 A. No, Christiana Markou is assistant professor or
15 lecturer, I don't remember, at the European University
16 of Cyprus. Professor Emilianides is rector and
17 professor at the University of Nicosia. These two are
18 private universities. I am teaching at the State
19 University of Cyprus.
20 Q. Let's turn to two aspects of the report, the first is on
21 page 55. And while we are going there, let me just ask
22 you, as I understand this report it noted how some
23 countries use a real seat test while others simply use
24 an incorporation test, do you recall that?
25 A. Yes, this is a generic categorisation but there are also

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01 some mixed situations, it is not -- this is a generic
02 category, but there are some countries which are mixing
03 these two theories or they are applying other theories
04 with different criteria, it depends.
05 Q. So I have up on the screen page 55, and I'm going to
06 start reading from the word "however" in the middle of
07 the paragraph:
08 "However, a strict application of the 'real seat'
09 theory for incorporations (and re-incorporations) in
10 intra-EU scenarios would not be in compliance with the
11 freedom of establishment. Still, there may be
12 'remnants' of the real seat theory in some Member
13 States, which might variously refer to the location of
14 the administrative office or other fact-based
15 criterions, in order to mitigate certain effects of a
16 'pure' incorporation theory."
17 And then they go on and say:
18 "We can code the level of 'purity' of the
19 incorporation theory as follows:
20 "A country gets a '1' if a connecting factor based
21 upon the incorporation theory is clearly formulated in
22 legislation or through judge-made law (ie in a way that
23 everyone, even non-experts, can grasp it) and no
24 exceptions are provided (ie no additional connecting
25 factors based upon the location of a company's real

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01 seat)."
02 They then say:
03 "The score '2/3' denotes either (i) the situation
04 that a connecting factor based upon the incorporation
05 theory is clearly formulated but that this criterion is
06 subject to exceptions, or (ii) that legal experts can
07 identify that the country follows a connecting factor
08 based upon the incorporation theory and no exceptions
09 are provided, but non-experts are uncertain about this
10 position. The score '1/3' refers to the previous
11 scenario (ii) but exceptions to the incorporation theory
12 clearly exist. Finally, '0' is about to the scenario
13 where even legal experts cannot agree or cannot identify
14 that the country follows a connecting factor based upon
15 the incorporation theory.
16 "In addition, in some Member States, rules of
17 substantive company law contain requirements for
18 companies to establish or maintain a specific connection
19 to the territory of the Member State. This was coded as
20 follows:
21 "A country gets '1' if domestically incorporated
22 companies do not have to have their headquarters or any
23 other fact-based criteria on the domestic territory;
24 a country gets 1/2 if domestic companies should have
25 some factors on the domestic territory but this rule is

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01 uncertain; it gets '0' otherwise."
02 So based on this description, if someone receives
03 a 1, it is the purest form of the state's incorporation
04 theory, and if we scroll down to table 6, let's first
05 take a look at what Greece received as a score, you see
06 they received a 1/3 on the first analysis, the pureness
07 of incorporation theory under private international law;
08 and in the second category they got a 0, on whether the
09 substantive law is free from real seat elements. But if
10 we look up at Cyprus, sir, we see that Cyprus received
11 the purest form on both issues, the pureness of the
12 incorporation theory under private international law,
13 and the highest score in terms of the substantive
14 company law being free from real seat elements, do you
15 see that?
16 A. Yes, and I disagree with this position, and I can
17 justify this if you would like to ask me.
18 Q. You recognise that this conclusion reached in this
19 report is directly contrary to the testimony you're
20 giving the tribunal, yes?
21 A. First of all, let me explain, it is not directly
22 opposite because I accept that Cyprus is an
23 incorporation theory jurisdiction. It remains an
24 incorporation theory jurisdiction, but it recognises
25 also the existence of the notion of seat, and this is

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01 because Cyprus is a mixed legal system where a common
02 law notion like registered office and the civil law
03 notion like seat can co-exist harmoniously, and there
04 are other areas of law which provide this harmonious
05 co-existence of civil law and common law notions. For
06 example, the old law of foundations and associations,
07 which are legal persons, it was based on continental
08 law, while the rest of the corporate legislation in
09 Cyprus is based on old English statutes.
10 Q. Sir, my question was whether this finding was
11 inconsistent with the testimony you are giving before
12 the Tribunal. I understand you have your reasons for
13 the positions that you have given to the Tribunal, but
14 I would respectfully submit that your position before
15 the Tribunal is that the word "seat" means some sort of
16 real seat of effective management and control when we
17 see here in the second column Cyprus is receiving
18 a score that states its substantive company law is free
19 from real seat elements, that's the language of the
20 finding.
21 A. The professor for -- this report was prepared on the
22 basis of a questionnaire. Each national expert,
23 academic or practitioner, could give its own view, and
24 then this is, of course, processed by the co-ordinators
25 of this study. So this is the opinion I guess of

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01 Ms Markou. I disagree with this opinion. I think
02 Ms Markou did not elaborate on this provision, for what
03 I have seen, she has not taken into account comparative
04 studies or a more, let's say, overarching view of Cyprus
05 company law, so what I can say is that I disagree with
06 this opinion, and I can justify this.
07 To make a long story short, I think Ms Markou did
08 not consider very carefully the mixed jurisdiction
09 characteristics of Cyprus company law.
10 Q. Let's turn to page 107 of this document to review the
11 second aspect that I think is relevant, page 107, and
12 the paragraph that begins "Table 2":
13 "Table 2 [below, which I'll take you to in a moment]
14 summarises, first, the effective residence requirements
15 (if any) in all Member States, understood as any
16 requirement ranging from a mere business address to the
17 principal place of business of the company (columns (2)
18 and (3)) ... Finally, we inquire whether commercial
19 registers scrutinise in practice upon incorporation or
20 on an ongoing basis that the company is in compliance
21 with the substantive requirements of the state of
22 incorporation ..."
23 If we look down to table 2, and again, let's go to
24 Greece first, just to show the contrast --
25 A. Yes, Cyprus and Greece are two different jurisdictions,

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01 completely two different. Cyprus is influenced --
02 Q. Sir, I will ask you the question about this in a moment.
03 If we scroll up so we can see the heading on the table?
04 We see, in that second column "Residence/real seat
05 requirement for national companies", we see Greece has:
06 "Real seat relevant for most companies ..."
07 A. Could you maximise it, because it is a little bit
08 blurred. Is it possible to? Now it is clear.
09 Q. So again, focused on that second column, it talks about:
10 "Residence/real seat requirement for [national]
11 companies ..."
12 We see that Greece is listed as having real seat
13 requirements, and then the other columns go on to
14 explain the details of the requirements and consequences
15 if they are not met. If we scroll up to Cyprus, and
16 again so we can see the heading, the same heading,
17 "Residence real seat requirement for national
18 companies", if we scroll down, we will see it says:
19 "No. Other than the registered office, there are no
20 additional requirements of a physical connection between
21 the company's operations and Cyprus."
22 Professor Papadopoulos, this report reflects none of
23 the arguments that you're making in your expert reports
24 to this Tribunal, correct?
25 A. Correct, because I disagree with these findings, and

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01 first of all I would like to clarify something here in
02 this light, it says that "no additional requirements of
03 a physical connection". Registered office is, according
04 to article 102, the physical place where the
05 correspondence is delivered. Of course, this must be
06 clarified here, but I disagree with this statement
07 because the text of the Cyprus Companies Law uses the
08 term "seat", the term "seat" was introduced for the
09 first time in 2002 at the pre-accession period of Cyprus
10 to the EU, and for a very long period of time, 16 years,
11 in several amending laws, the Cypriot legislature
12 inserted the term "seat" into Cyprus Companies Law. If
13 this notion means nothing or if it is the same, if it
14 has the same meaning as registered office, then this
15 would be against legal certainty.
16 Of course, it would be a big disadvantage for Cyprus
17 to make such confusion. If, for a very long period of
18 time, the Cypriot legislature would probably have
19 identified this, and it would have corrected, but there
20 is no mistake, the Cypriot legislature had the intention
21 to use the term "seat" with a completely different
22 meaning. How else can I explain the fact that for 16
23 years, in several amending laws, the legislature is
24 visiting again and again provisions and is inserting the
25 term "seat"?

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01 Q. Professor, you note that this term "seat" was introduced
02 for the first time in 2000, and in fact why don't we
03 turn, in fairness to you, to paragraph 18 of your first
04 expert report. You state in 18:
05 "Notably, Cyprus joined the EU in 2004 while the
06 amendment introducing the term seat for the first time
07 was adopted in 2000 ..."
08 I would suggest to you that the Cyprus courts and
09 parliament used that word before 2000, and in fact I'll
10 just take you to two examples of it. Let's first turn
11 to CE-121. This is a judicial decision from a Cyprus
12 court, where we can see it's dated 1994, and if we
13 scroll down, the translated part shows that the court
14 was referring to the registered office as the seat of
15 the company back in 1994.
16 A. No, I think I disagree with this, if you ask me, I can
17 have a look at the extract and explain you, because
18 I have seen this case before. First of all, this is
19 a case, the legislature started using it from 2000, and
20 I can explain that in this case, the notion of seat and
21 registered office have a different meaning.
22 Q. You don't dispute, sir --
23 A. Can I explain you -- just a moment, please? It says:
24 "The Applicants are a limited liability Company,
25 incorporated ..."

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01 What does "incorporated" mean? We have article 102
02 which states that the registered office is
03 a prerequisite for incorporation, so here, seat means
04 the effective management and financial control, because
05 in the same extract we have the term "seat" and
06 "incorporated". Incorporation means registration,
07 registered office.
08 Q. Let's turn to CE-501. This was a law passed in 1999, or
09 an amendment passed in 1999, so it pre-dates 2000.
10 I know you commented on this provision in your report.
11 A. Yes.
12 Q. But as we heard from Claimants' legal expert on
13 Saturday, this provision was enacted as a result of the
14 Turkish invasion of Cyprus in 1974, when a number of
15 companies became dormant when they were in the occupied
16 territory, and so in 1999, as I understand it, the
17 Parliament passed this amendment which effectively
18 lifted the obligation on those companies to be making
19 certain filings of financial statements and the like.
20 You can see that this provision specifically refers
21 to "seat or place of business". This had nothing to do
22 with EU accession, did it, sir?
23 A. First of all, Cyprus started its preparation for
24 accession to the EU since 1999. This was the first
25 point. Secondly, I would like to add that it says:

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01 "The basic law is amended by adding at the end the
02 following special provision."
03 So this is a provision that is annexed at the end,
04 it is not an article of Cyprus Companies Law amended.
05 With regard to this provision, it concerns companies
06 with links to the north part of Cyprus, which is
07 unlawfully occupied by Turkey since 1974, and it tries
08 to protect these companies and remove some burdens that
09 corporate legislation imposes on them. So it uses --
10 okay.
11 Q. Let's turn to CE-850.
12 A. Is it a new question, a new exhibit? Because I would
13 like to add something to the previous one about the use
14 of seat, these three connecting factors. Is it possible
15 to go back a little bit and explain it?
16 Q. If we could please turn to Article 63 of this
17 document --
18 THE PRESIDENT: I think Professor Papadopoulos wanted to --
19 A. Can we go back?
20 MR ANWAY: To go back to the prior document?
21 A. Yes, please.
22 THE PRESIDENT: I understood he wanted to go back to the
23 prior exhibit.
24 A. Yes, please.
25 THE PRESIDENT: Can I just ask a clarification about this

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01 prior exhibit which was CE-501. It says "seat or place
02 of business", do you understand these to be synonymous?
03 A. No, it is different, because the seat is the place of --
04 it's a larger notion, it's the place of effective
05 management and financial control. The place of business
06 is the place of the activities, it's a shorter notion,
07 and the whole of the property. So the Cypriot
08 legislature used these three connecting factors in order
09 to expand the protection of this provision and catch as
10 more as possible of these companies which are, let's
11 say, trapped in the occupied part of the north of
12 Cyprus.
13 It says here that companies that were registered, so
14 companies that were registered as companies with
15 registered office at the north of Cyprus, this is the
16 address where correspondence goes, and this is the
17 address of the registered office, and in addition to
18 that, we also have seat, place of business or property
19 in the North.
20 THE PRESIDENT: Thank you.
21 A. That is what I wanted to explain.
22 THE PRESIDENT: Thank you.
23 MR ANWAY: If we could turn now to CE-850? I'll represent
24 to you, sir, this is the Brussels Regulation on
25 jurisdiction and the recognition and enforcement of

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01 judgments in civil and commercial matters. This is from
02 2012, so this is well after Cyprus joined the EU,
03 correct?
04 A. Yes.
05 Q. If we turn to Article 63, it says:
06 "For the purposes of this Regulation, a company or
07 other legal person or association of natural or legal
08 persons is domiciled at the place where it has its:
09 "(a) statutory seat;
10 "(b) central administration; or.
11 "(c) principal place of business."
12 Then it goes on to say in article 2:
13 "For the purposes of Ireland, Cyprus and the United
14 Kingdom, 'statutory seat' means the registered office
15 or, where there is no such office anywhere, the place of
16 incorporation or, where there is no such place anywhere,
17 the place under the law of which the formation took
18 place."
19 So here we see, in sub-section 2, the three common
20 law jurisdictions in the EU, and this regulation was
21 clear that what determines whether a company is
22 domiciled is not the principal place of business for
23 these three countries, but rather, the statutory seat
24 which it says means registered office, correct?
25 A. No, statutory seat is a term different from the notion

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01 of seat. Statutory seat and seat are different. And
02 I can procure some proof of this from the area of
03 company law, because this is an instrument of civil
04 procedure. We have the European Company Statute, the
05 regulation of European companies, the Societas Europaea
06 which uses again in the English text the term "statutory
07 seat". When the Cypriot legislature in the national
08 regulations facilitating the implementation of the
09 European company law regulation used the term
10 "registered office" as corresponding to the term
11 "statutory seat", so you give me a civil procedural
12 instrument, I am explaining to you, in the context of
13 a company law instrument, that the term "statutory seat"
14 in European regulation were implemented in Cyprus as
15 "registered office". And the term "seat" is the head
16 office.
17 Q. But sir, you see in section 2, when it specifically
18 refers to the three common law jurisdictions, that it
19 does not use the option listed in 1(c), principal place
20 of business.
21 A. Cyprus is a mixed --
22 Q. Whether or not you distinguish between statutory seat
23 and real seat, the fact of the matter remains that
24 sub-section 2 does not refer to the principal place of
25 business when referring to the three common law

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01 jurisdictions within the European Union.
02 A. This is a civil procedure instrument. I am explaining
03 to you in the context of another EU law instrument from
04 the area of company law, such as the European Company
05 Statute, that the Cypriot legislature transposed the
06 same term, statutory seat, from a European company law
07 instrument as registered office. I have referred in my
08 report also to European company law regulations and also
09 to the implementation in Cyprus of the directive
10 regarding the participation of employees in the board of
11 European companies, and even in this text, in the
12 national law implementing the directive accompanying the
13 European Company Statute for the participation of
14 employees, Cypriot legislature again transposes the term
15 "statutory seat" as "registered office", and "head
16 office" means "seat".
17 Q. Professor Papadopoulos --
18 A. If we look -- last sentence. If we look at various
19 other instruments, tax law, insolvency law, whatever,
20 insurance law, banking law, we are going to see
21 different notions, statutory seat, seat, head office,
22 actual centre of administration, place of business
23 operation, used with different notions. We are focusing
24 on company law.
25 Q. Professor Papadopoulos, there are six provisions in the

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01 Cyprus Companies Act that use the word "seat", and you
02 cite them. Mr Georgiades has testified, and I know you
03 are familiar with his position, that those provisions
04 say nothing about effective management or control, and
05 make perfect sense if one just interchanges the word
06 "seat" for "registered office" and while I don't have
07 time to go through all six, let me just go through one.
08 Let me pull it up as CE-499. I direct your attention to
09 section 354K.
10 What's striking about this particular provision,
11 which is one of the instances you rely on where the word
12 "seat" appears, is that the title of the provision says
13 "Transfer of Registered Office of Companies to and from
14 the Republic", and then the provisions to which that
15 relates, down below you see in (c):
16 "The date on which it is proposed to establish the
17 seat of the company in the particular approved country
18 or jurisdiction."
19 Plainly when you have the title using "registered
20 office" and then the provision which specifically talks
21 about the date on which the transfer will occur, it
22 refers to "seat", the legislature is using those terms
23 interchangeably.
24 A. No, he does not use interchangeably. First of all, the
25 Cypriot legislature would have never used a term at the

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01 title with a same meaning with a different term in the
02 main text, because this would be absurd, and against
03 legal certainty. So this proof -- please let me to
04 finish. "Registered office" is used with a different
05 meaning at the heading, and at the main text "seat" has
06 a different meaning, clearly. That is why the Cypriot
07 legislature uses this. And I have in mind that in his
08 report Mr Georgiades said that this is poor drafting,
09 but it's not poor drafting because this provision is
10 very important for Cyprus, because it attracts
11 reincorporations. So the Cypriot legislature paid much
12 attention to this provision and drafted it very
13 carefully, because how a foreign company is going to be
14 reincorporated in Cyprus if there are such kind of vague
15 points? It is clear, registered office in the heading
16 has a different meaning; seat at this provision, 354K,
17 has a different meaning.
18 Q. Let me test what you just said, which is the legislature
19 would never use different words to mean the same thing,
20 and let's turn -- it's the same document, just above it,
21 in fact -- to section 347(2)(a)(ii), and you see in the
22 last sub-section, (ii):
23 "In the case of a legal person, its name and
24 registered or principal office."
25 Here, the legislature used the term "principal

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01 office" to refer to the main office, and so if your
02 theory were correct, including that the legislature
03 always uses consistent words, they would have used the
04 term "seat" here, but they didn't.
05 A. First of all, principal office might have a different
06 meaning here. We can discuss this, of course.
07 Registered office and principal office are again two
08 different notions. Of course, when the Cypriot
09 legislature uses two different terms, according to
10 a textual interpretation, it means different things.
11 A textual interpretation is the safest method, because
12 in Cyprus we do not have travaux préparatoires, we don't
13 have explanatory memoranda, it's Cyprus's mode of
14 jurisdiction and unfortunately there are no resources to
15 support this thing, so they have different meaning.
16 Q. Both you and Mr Georgiades cite to the English
17 translation of the Greek language original of the
18 Companies Act and I understand that in some instances
19 the word "seat" is translated into "head office" but
20 there are other times where it is transferred as
21 "registered office". But my only question to you is:
22 you acknowledge, do you not, that in general, official
23 translations in foreign languages do not substitute the
24 statutory text drafted and published in the official
25 language of the state; you agree with that, correct?

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01 A. I agree that the original text is the text in the
 02 national language, the Greek language, but in the
 03 context of an international arbitration, any kind of
 04 materials like an official translation provided by an
 05 official public law body can help us, because as I have
 06 cited in my report, the office of the Law Commission of
 07 the Republic of Cyprus is responsible for providing
 08 official translations and consolidations of law to the
 09 ministries and other authorities of the Republic of
 10 Cyprus.
 11 Q. I would like to turn to my last topic now, which is what
 12 Claimants' legal expert has described as a lack of
 13 support for your position, and if we could turn to
 14 paragraph 14 of your second report, please? You say:
 15 "Hence, there are no references to authorities in my
 16 report, because there are no authorities in the
 17 bibliography of Cyprus company law with regard to the
 18 interpretation of the notions of seat and registered
 19 office."
 20 A. Yes.
 21 Q. I just want to be clear, you acknowledge that you have
 22 no authorities saying that Cyprus law distinguishes
 23 between "seat" and "registered office", correct?
 24 A. With regard to this specific issue that I am examining
 25 in my report, with regard to the specific topic, there

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01 are no papers as far as I know which scrutinise this
 02 issue and provide an answer.
 03 Q. You admit that you have no authorities saying that
 04 Cyprus law distinguishes between procedural and
 05 substantive company law, correct?
 06 A. It is an inherent -- yes, I agree that there are no
 07 authorities supporting this. An inherent problem of
 08 Cyprus law is the lack of authorities. This is because
 09 the first law school was set up in Cyprus only in 2006.
 10 Until this time, Cypriot lawyers were educated abroad,
 11 in Greece or in England or elsewhere, so there was no
 12 academic community, there were no university law schools
 13 which could provide articles, papers, monographs, topics
 14 discussing these issues. There were only publications
 15 written by professionals, by practitioners, which were
 16 quite superficial in their approach. You can imagine
 17 that this is an inherent problem, the lack of
 18 authorities, and we are called to interpret these
 19 provisions in the light of the lack of these doctrinal
 20 works.
 21 Q. You have no authorities saying that Cyprus law defines
 22 seat as the place of effective management and control,
 23 correct?
 24 A. I used, of course, some -- because there are no specific
 25 doctrinal works which provide an answer to this specific

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01 issue with regard specifically to Cyprus law, so
 02 I referred to the national bibliography in order to find
 03 a definition and support this, and in the light of the
 04 fact that Cyprus is a mixed legal system, I tried to use
 05 an EU comparative law bibliography which would help me
 06 to provide a definition for the notion of seat.
 07 Q. And you have no authority saying that Cyprus law applies
 08 the real seat test either, do you?
 09 A. No, I don't have any authorities. In the absence of
 10 a bibliography and travaux préparatoires, I am using
 11 a textual interpretation and see that Cyprus legislature
 12 is using this as the seat and I try to interpret it
 13 accordingly on the basis of the thorough analysis that
 14 I did in my expert report.
 15 MR ANWAY: Mme President, I have no further questions.
 16 THE PRESIDENT: Thank you. Any questions in re-direct,
 17 Professor Djundic?
 18 PROFESSOR DJUNDIC: Only one, Mme President.
 19 Re-direct examination by PROFESSOR DJUNDIC
 20 Q. Professor Papadopoulos, you were asked earlier by
 21 Claimants' counsel whether it is common in Cyprus that
 22 companies designate addresses of accounting firms as
 23 their registered office, do you remember?
 24 A. Yes, I remember.
 25 Q. Is it also common in Cyprus that sometimes these

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01 accounting firms are administrating hundreds or even
 02 sometimes thousands of companies?
 03 A. Exactly. Most of these companies are administering and
 04 offering administrative services to dozens, hundreds,
 05 sometimes thousands of companies. They are
 06 professionals, and they are doing this job, offering
 07 registered office and services to these dozens of
 08 companies.
 09 Q. So those accounting firms, they are not putting up on
 10 their office buildings labels of all of companies that
 11 they administer?
 12 A. Yes, this is impossible. For example, a large auditing
 13 firm administering thousands of companies, it is
 14 impossible to put labels outside for every company.
 15 Q. Do you maybe know how they decide which company's label
 16 to put at the office building? And if you don't know
 17 this, it's perfectly fine.
 18 A. I don't know. This may be if it is a best customer, if
 19 it has paid an additional fee, I guess, if it put some
 20 pressure on them, but I don't know actually, I can't
 21 give an answer.
 22 PROFESSOR DJUNDIC: Thank you. No further questions,
 23 Mme President.
 24 THE PRESIDENT: Thank you. Do my colleagues have questions?
 25 Questions from the TRIBUNAL

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01 THE PRESIDENT: Professor Papadopoulos, I ask myself whether
02 the word "seat" in and of itself is not somehow
03 misleading, because when you use "seat", one doesn't
04 know whether you mean the statutory, which you could
05 also call the corporate seat, or the real seat in the
06 sense of the effective place of business activities.
07 What would you say to this?
08 A. Taking into account that Cyprus Companies Law uses the
09 term "registered office", and in parallel uses also the
10 notion of "seat", I conclude from my analysis that seat
11 is the place of effective management and financial
12 control, otherwise --
13 THE PRESIDENT: Yes, can I ask you why you conclude this?
14 Because one could also think that registered office is
15 simply a terminology from common law, and seat is
16 a terminology from civil law, and therefore they are not
17 different. What would you say to this?
18 A. I would say that this -- I had a look at the national
19 bibliography, due to the lack of Cypriot bibliography
20 and Cypriot cases defining this term and I found out
21 that the most appropriate definition which is adjusted
22 to the needs of Cyprus as a mixed legal system is the
23 definition that I provided. I had a look at the
24 national bibliography, I had a look at the monograph of
25 Biermeyer, professor from Maastricht University, who is

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01 an authority in the area of corporate mobility and runs
02 various EU projects on this area. And I found that the
03 definition provided there is the most appropriate for
04 Cyprus as a mixed legal system and as a country in
05 which, in its company law statute, we have simultaneous
06 use of these two terms.
07 THE PRESIDENT: Now you lost me. What is the most
08 appropriate definition that you refer to?
09 A. Is the definition of effective management and financial
10 control. I concluded that "seat" means effective
11 management and financial control, because it is adjusted
12 more to the text of Cyprus Companies Law.
13 THE PRESIDENT: And this you established on what basis, can
14 you say this again?
15 A. Because first of all, the text itself uses these two
16 different terms, and secondly, Cyprus is a mixed legal
17 system, introducing constantly civil law notions, such
18 as the notion of seat.
19 THE PRESIDENT: Good, thank you. I had another question
20 that arose when you gave your answers about section
21 354K, that is the section of the Cyprus Companies Law
22 about transfer of registered office, and then the title
23 says "transfer of registered office" but the provision
24 itself uses the word "seat". And you are saying when it
25 uses the word "seat", that means place of effective

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01 management, but that would then mean that you cannot
02 transfer a foreign corporation into Cyprus unless you
03 transfer the effective management, it would not be
04 enough to transfer the registered office. Is that
05 right?
06 A. No, this is a provision which -- Cyprus remains an
07 incorporation theory jurisdiction, and it is possible,
08 a foreign company, to transfer its registered office
09 only in Cyprus, and keep the seat outside Cyprus. This
10 provision talks about information that should be
11 provided to the authorities.
12 THE PRESIDENT: So you can transfer your company into
13 Cyprus, making it therefore a Cyprus company, and keep
14 what you call the seat and what we, to avoid
15 misunderstanding, would now call effective management,
16 abroad?
17 A. Exactly, yes. It is possible to do this because Cyprus
18 remains an incorporation theory jurisdiction, and of
19 course it is possible to do this, and it happens quite
20 common in practice.
21 THE PRESIDENT: Thank you. I have no further questions, no
22 clarifications, so that ends your examination,
23 Professor Papadopoulos, thank you very much for your
24 assistance this morning. Now you can leave the Zoom
25 meeting if you so wish.

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01 A. Just a small sentence. I have also written an article
02 on reincorporation in Cyprus law, published in the
03 International Journal of Law and Management, so I am
04 explaining this position more extensively there.
05 THE PRESIDENT: Thank you. Goodbye.
06 Is this a good time to have a 15-minute break, and
07 then we go over to Mr Grzesik, and we are sorry, this
08 was a mistake that they were labelled as legal experts,
09 obviously they are not legal experts. So I understand
10 they will make presentations. Good.
11 (10.22 am)
12 (A short break)
13 (10.36 am)
14 MR KRZYSZTOF GRZESIK (called)
15 THE PRESIDENT: Mr Grzesik, good morning. You are Krzysztof
16 Grzesik?
17 THE WITNESS: Yes.
18 THE PRESIDENT: You are a property consultant established in
19 Warsaw and you have your own practice called Polish
20 Properties?
21 THE WITNESS: That's correct.
22 THE PRESIDENT: You have provided one expert report, dated
23 3rd October 2019?
24 THE WITNESS: Yes.
25 THE PRESIDENT: You are heard as an expert witness; as an

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01 expert witness, you are under a duty to make statements
02 only in accordance with your sincere belief. Can I ask
03 you to read the expert declaration, please.
04 THE WITNESS: I solemnly declare upon my honour and
05 conscience that my statement will be in accordance with
06 my sincere belief.
07 THE PRESIDENT: Thank you. To whom do I give the floor, for
08 direct questions? Actually, it is not direct questions,
09 I should give you the floor, sir, for your presentation.
10 And you remember that you have 30 minutes at a maximum.
11 THE WITNESS: 15 minutes.
12 THE PRESIDENT: 15?
13 MR PEKAR: This is an internal constraint.
14 THE PRESIDENT: Now you know what they did to you, yes.
15 Please go ahead.
16 THE WITNESS: Mme President, members of the Tribunal, I will
17 do my best to present the salient points of my expert
18 report in the next 15 minutes, and if we can have the
19 next slide [2] by way of introduction, my name is
20 Krzysztof Grzesik, I am a chartered surveyor and
21 recognised European valuer and I have been practising
22 valuation in Poland for the last 30 years. That said,
23 I have also been engaged in valuation work throughout
24 Europe, the United Kingdom, Poland, countries in Central
25 and Eastern Europe and I have been involved with the

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01 Serbian valuation profession since 2013, when I was
02 invited to co-author the Serbian National Valuation
03 Standards, and I also advised the Serbian Ministry of
04 Finance in connection with the development of valuer
05 licensing in Serbia, which was finally implemented in
06 2017.
07 The purpose of this presentation [slide 3] is to
08 focus on the disputed issues concerning the assessment
09 of the market value of BD Agro construction land in
10 Zones A, B and C. This is the area which is worth some
11 85% of the total value, hence my focus on this land.
12 I will start with reading what I consider the most
13 important sentence within the valuation profession, and
14 that is the definition of market value.
15 Market value is:
16 "The estimated amount for which the asset should
17 exchange on the valuation date between a willing buyer
18 and a willing seller in an arm's length transaction
19 after proper marketing wherein the parties had each
20 acted knowledgeably, prudently and without being under
21 compulsion."
22 So that is the definition of market value, and in
23 the interpretation sections of both international and
24 European valuation standards it is set out:
25 "Market value is measured as the most probable price

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01 reasonably obtainable in the market ... It is the best
02 price reasonably obtainable by the seller and the most
03 advantageous price reasonably obtainable by the buyer."
04 I emphasise "the best price reasonably obtainable",
05 "the most advantageous price reasonably obtainable".
06 What those words mean is that this is not only about an
07 arithmetic or mathematical conclusion. To arrive at the
08 best price reasonably obtainable requires also valuer
09 judgment, experienced valuer judgment, and of course
10 mathematics and arithmetic plays an important part, but
11 only as a tool. So this is not about statistics, this
12 is not about medians or averages.
13 Whilst on the subject of valuation standards,
14 throughout the various reports that you have before you
15 there have been a lot of contentions about one valuation
16 being in line with international valuation standards,
17 another valuation not being compliant. What I would say
18 is this: there are three recognised international
19 valuation standards in Europe. They are the
20 International Valuation Standards, the European
21 Valuation Standards and the standards published by the
22 Royal Institution of Chartered Surveyors.
23 Each one of those standards has a different
24 emphasis, so whilst we can say in general that we are
25 working in line with internationally recognised

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01 valuation standards it's impossible that we can be
02 consistent with each one of those standards at the same
03 time.
04 We have to remember that there are different
05 sections within these standards. What they have in
06 common is a section where there is an outline of the
07 different valuation concepts, definitions, such as
08 market value, fair value, investment value; and those
09 definitions have been around now for at least 30 years,
10 so they are common to all standards.
11 What these standards also have are sections which
12 indicate how a valuer should behave when undertaking
13 a valuation. For example, he should avoid conflicts of
14 interest, he should ensure that before he undertakes
15 a valuation, he has the instructions in writing.
16 The valuation standards also include a section on
17 methodology. Now, methodology describes the typical
18 methods used by the valuation profession worldwide, and
19 the standards on methodology, they are descriptive and
20 not prescriptive. In other words, it's not a cookbook,
21 it's not a rulebook telling valuers how he must
22 undertake a valuation. So it's very important to
23 distinguish, when we talk about international valuation
24 standards, it's very important to distinguish that they
25 do have different sections and those sections are more

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01 prescriptive, less prescriptive, but generally,
02 internationally recognised valuation standards are
03 guidance; high principled guidance to valuers. They are
04 not legislation.
05 If we go to the next slide [4], this is a table
06 which summarises the main valuation issues in dispute
07 between my valuation, which is in the left-hand column,
08 and the valuation of the Respondent's expert witness,
09 Danijela Ilic, and you will see on the separate rows the
10 areas of dispute. One area of dispute, I am pleased to
11 say, has been solved; we have agreed that Zones A, B and
12 C have an area of 2,794,554 m2. And then when we come
13 to valuation approach, both myself and Danijela Ilic
14 apply what we call the comparative approach, which is
15 based on valuing the subject property by reference to
16 sale prices of other comparable properties in the area
17 at around the time of valuation.
18 In this particular case, the actual sale prices,
19 which is really the basis of the comparative approach,
20 have been very scarce, and so both Danijela Ilic and
21 I had to rely on other secondary evidence, if you like,
22 so I have relied on the evidence of valuations in
23 expropriation cases, and I will come to deal with that
24 in the later slide; whereas Danijela Ilic has relied on
25 asking prices listed by various estate agencies on the

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01 internet. So that is the difference between us there.
02 As a result, I have valued Zones A, B and C at
03 €30/m2, and Danijela Ilic has valued them at €21/m2 and
04 then she has deducted 30%, which I understand is for the
05 large size of the site, to arrive at a rate of €14.7/m2.
06 Another area of dispute is in respect of what we
07 call the conversion fee. Because certain parts of
08 this -- well, the whole of this site is agricultural
09 which has been turned into industrial or business use,
10 parts of that site are under Serbian law subject to
11 what's known as a conversion fee, which is based on 50%
12 of the value of the agricultural land.
13 So I have calculated the conversion fee using
14 a revised area of 1.634 million m2 at an agricultural
15 value of €1.85, and I have taken 50% of that to arrive
16 at a conversion fee of €1.5 million.
17 On the other hand, Danijela Ilic has a slightly
18 larger area. She has applied an agricultural value of
19 €3.4/m2, that's 50%, so her conversion fee is just over
20 €2.9 million.
21 I should point out that that although Danijela Ilic
22 applies an agricultural value of €3.4, in her main
23 valuation she has adopted an agricultural value of €1/m2
24 so I can't understand why the difference but there is
25 that difference.

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01 When we look at the total market value from all of
02 that, I arrive at a revised market value of €82,325,000,
03 and Danijela Ilic has arrived at a valuation for Zones
04 A, B and C of just over €39 million.
05 I mentioned that my comparative approach to
06 valuation has been based on the evidence of land
07 valuations in an area called Batajnica for expropriation
08 purposes [slide 5]. If you look at the aerial view on
09 the right-hand side of this slide, you will see
10 Batajnica there up to the north, and you will note that
11 this is an area which is quite close both to Zones A, B
12 and C of the BD Agro land, and also they are more or
13 less equidistant to Belgrade.
14 The nature of these properties, originally
15 agricultural, for development, they require extensive
16 investment in infrastructural works, so from
17 a development point of view, in my opinion, both sites
18 would carry similar values.
19 Over the years, the authorities have been acquiring
20 various sites in Batajnica for the purposes of
21 developing what's called an intermodal transportation
22 hub and logistics centre, and you will see on the
23 right-hand side aerial view, those areas which I have
24 edged in red indicate the sites which have been
25 expropriated for the purposes of developing this

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01 intermodal centre and you will see the prices at which
02 they have been expropriated, so they range between
03 €28/m2 to €37/m2.
04 One of the criticisms of my reliance on this
05 evidence is that it's based on valuations post the
06 valuation date. It's based on valuations from 2016.
07 However, I would contend that this evidence is
08 permissible because at the time when the actual
09 valuations were being carried out, the tax assessors,
10 the assessors who would have undertaken a valuation,
11 would have had regard to evidence at around the time of
12 valuation. They would have undoubtedly had regard to
13 evidence from 2014 to 2015, so on that basis, I contend
14 that this evidence is admissible.
15 However, there is a fallback here because there were
16 also acquisitions in 2013, and the 2013 acquisitions are
17 shown coloured blue. So you will see all the arrows
18 pointing to the blue areas, they were all acquired in
19 2013, or the valuations were in 2013, at €27/m2.
20 I would also add that this is more than just third
21 party valuation, these are valuations which resulted in
22 transactions. They resulted in the landowners being
23 expropriated at these valuations, and of course, if the
24 landowners were not satisfied with the valuations on
25 offer they were entitled to appeal and try and either

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01 negotiate or seek higher valuations in court.
02 So that is my evidence supporting €30/m2, on the
03 basis of transactions ranging from €27 to €37/m2.
04 Then if we go to the next slide [6] this is the
05 approach of Danijela Ilic, who relies on asking prices,
06 and this is the list of her properties which were put on
07 the market, and as far as I am aware, she found this
08 information from the internet, from estate agencies' web
09 pages, and the rates vary from €12.47, which is item 2,
10 to item 4, with €23.95.
11 I have some problem with this set of comparables
12 because from our fact checking exercise, for example,
13 item 1, we have not been able to determine the exact
14 location of the property referred to; number 2 is
15 agricultural land with no regulation plan in place, so
16 that is an agricultural value; number 3 again, we have
17 not been able to determine the exact location of the
18 property; number 4 equally we have not been able to
19 determine the exact location of the property; number 5
20 we know, it's in an industrial zone.
21 So the problem I would have with these set of asking
22 prices is that because the actual properties were
23 undetermined, the locations were undetermined, it would
24 be very difficult to carry out the necessary thorough
25 analysis required in order to accept asking prices as

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01 evidence in a comparative approach valuation.
02 That said, if we go to the next slide, you will see,
03 this is in Danijela Ilic's report, she did actually
04 identify two actual transaction prices, the highest type
05 of evidence which a valuer could hope for, and item 1
06 here was a sale of two land plots at €33.95/m2 and
07 Surcin in Dobanovci, €28.4.
08 What is particularly relevant here is item 2 is
09 a site which is actually adjacent to the BD Agro land,
10 and therefore I can't understand why this comparable
11 transaction was rejected. I would have thought it's
12 highly relevant, it's right next to the BD Agro farm.
13 So that is the evidence of Danijela Ilic, and then
14 there is one more item of dispute. As I mentioned
15 earlier, Danijela Ilic arrived at a value of €21/m2 and
16 then she deducted 30%, and I understand from that
17 sentence -- which I don't fully understand [slide 8] but
18 the gist of it is she has deducted 30% for the size of
19 the site as a reflection, she says, of her experience in
20 valuation of land.
21 If that is the case, I have to say I take the
22 complete opposite view, and from my experience, the
23 subject property presents an attractive opportunity for
24 any international developer to acquire a large, readily
25 assembled site for development, and that developer, in

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01 doing so, would save the need for several years of
02 problematic land assembly.
03 Such a large area of land would undoubtedly in my
04 view attract top end developers, they would be seeking
05 economies of scale, they would have financial muscle,
06 they would prove attractive to the financing banks who
07 are only too ready -- on the lookout for large chunks of
08 property to lend upon.
09 Indeed, there is a justification for saying with
10 such a readily available large site there may be
11 justification for a premium.
12 I have taken the conservative approach, I have not
13 speculated about the size of such a premium, but what
14 I am absolutely sure about is that there is no
15 justification for a 30% deduction, and if I can go back
16 to illustrate this point, if I can go back to slide 5,
17 which was the aerial views, you will see, this
18 demonstrates the point. Here we have Zone A, Zone B and
19 C, one large tract of land available for development.
20 Of course, it is not available for development just yet,
21 because there needs to be a lot of infrastructure works,
22 a lot of investment still needs to go in there to make
23 those sites available for development, but it is
24 reflected in the price.
25 On the other hand, if we look at the Batajnica land,

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01 here we have a desired future development of a logistics
02 centre, but the authorities have had to assemble that
03 land plot by plot by plot, year after year after year,
04 so it has taken several years for the authorities to
05 assemble the land needed for that intermodal
06 transportation hub. You will see that in 2013, they
07 were undertaking valuations, and it's only today, almost
08 ten years later, that they are now able, having
09 assembled much of this land, they are only now able to
10 start the development. So it's a huge disadvantage,
11 I believe, to look at individual small plots of land and
12 not fail to recognise that if this land in Batajnica had
13 been one huge tract of land, it would have been more
14 valuable. That is my contention.
15 I believe that was my last slide -- no, the last
16 slide [9] is a table of comparison of all the
17 valuations. I mentioned to you that I have focused
18 largely on the valuation of the construction land in A,
19 B and C at the €82,325,000, but there is also other
20 construction land which I have valued at just over
21 €3.5 million, against Danijela Ilic's valuation of
22 €1.3 million. There is also agricultural land, which
23 I have valued at €10 million, and Danijela Ilic at
24 €6.3 million. So you can see a vast difference between
25 us, so I am nearly at €96 million, as against Danijela's

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01 nearly €47 million.
02 That completes my opening presentation,
03 Mme President.
04 THE PRESIDENT: Thank you. Can I give you the floor now,
05 Dr Djeric?
06 DR DJERIC: Thank you, Mme President.
07 Cross-examination by DR DJERIC
08 Q. Good morning, Mr Grzesik.
09 A. Good morning.
10 Q. My name is Vladimir Djeric, I am counsel for Respondent,
11 and I am going to ask you a few questions about your
12 report and about your presentation. Let me start with
13 the following: you wrote your report at the time there
14 was a second round of submissions in this arbitration,
15 and then there was a third round but we didn't see a new
16 report from you, so are you familiar with what happened
17 in this case after your report?
18 A. After my report, I understand there were further
19 reports, I didn't have any more involvement after my
20 report, but I do understand there were further reports,
21 and I do know that Danijela Ilic did have a second
22 report, and I have had the benefit of seeing that
23 report. But it was a report which I understand was more
24 directed at commenting on Dr Richard Hern's valuation.
25 Q. Have you seen the following report from Dr Hern, his

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01 third report?
02 A. I haven't read it, no.
03 Q. Have you seen Dr Hern's second report which was filed in
04 parallel with your report?
05 A. I would have seen that, yes, I believe.
06 Q. If we take a look at paragraph 1 of your report, it sets
07 out your instructions, right?
08 A. That's correct.
09 Q. Oh, we don't have the screen. If you could just wait a
10 second so everybody can see that ... If a technician
11 could help us? If we take a look at your instructions,
12 as I see it here, you confirmed that you had the
13 instructions to "review and opine" on Dr Hern's report,
14 and on Mr Cowan's report. You also were supposed to
15 give an opinion on the market values, right?
16 A. The development of my report ended up me giving an
17 opinion on the market values, yes.
18 Q. And today you did the same thing, so is this an opinion,
19 do you really opine here, or you provide your valuation?
20 A. The valuation is an opinion.
21 Q. Yes, but is this a proper valuation that you have
22 provided us with?
23 A. Yes.
24 Q. If we can go now to paragraph 3.1 of your report? It
25 sets out the evidence that you have seen.

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01 A. Yes.
02 Q. Would you agree that most of the documents that you
03 mentioned here are valuation reports of other people?
04 A. Yes.
05 Q. There are two regulation plans, one is for Batajnica,
06 the other Surcin, you can see 3.1.21 and 3.1.22. You
07 have it on the screen as well, if you wish to look at
08 the screen.
09 Does this mean that you did not by yourself search
10 for and look into comparable transactions, asking
11 prices, other usual information that is used in
12 valuations?
13 A. I was very fortunate in that I started this case by
14 being instructed to opine other valuations, including
15 Dr Richard Hern's, and I found that the research that
16 Dr Hern carried out was quite detailed, so therefore,
17 when subsequently moving on to expressing my own opinion
18 of the market value, I was able to rely on much of the
19 evidence which had already been researched by Dr Richard
20 Hern and those helping him in the information gathering
21 stage of the valuation.
22 Having said that, I did visit the subject property,
23 particularly Zones A, B and C, I did an inspection, and
24 also I toured the surrounding area. So I have
25 familiarised myself with the evidence that was already

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01 there.
02 Q. I take it that you did not only -- I mean, from what you
03 have said, you did not only read and refer to Dr Hern's
04 report, you also looked into the evidence on which the
05 report is based, and to which the report refers, is that
06 correct?
07 A. I had regard to it, yes.
08 Q. But you did not collect that evidence by yourself?
09 A. No, I did not collect that evidence by myself.
10 Q. Actually, I now see that you mention some of the
11 evidence that Dr Hern also mentions in this list of the
12 evidence that you rely upon, but you don't mention
13 everything. This is a selection, I would say, or not?
14 A. What we have to remember is Dr Hern provided a valuation
15 which is a range. I then moved from there to provide
16 a valuation of one expression of an opinion at the
17 valuation date, which is the market value, so that being
18 the case, I largely relied on the evidence that helped
19 me arrive at the market value at the date of valuation.
20 Not all the evidence which was provided in Dr Hern's
21 report I believe was relevant to my opinion of the value
22 as at the date of valuation. For example, there was
23 some evidence of transactions which happened many years
24 ago which I felt wasn't relevant to the date in October
25 2015.

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01 Q. So you are saying that in this part dealing with the
02 evidence that you discussed, and which is called "Nature
03 and sources of information", you put in the evidence
04 that is directly relevant for your report, whilst the
05 other evidence you did not put in but consulted?
06 A. Well, I expressed my opinion of Dr Hern's report in
07 general, but then moved on to express my own opinion of
08 the market value at the date of valuation, and in
09 expressing that opinion, I had regard to the evidence
10 which I thought was relevant.
11 Q. But did you put that evidence that you thought was
12 relevant for your opinion in section 3?
13 A. Well -- in section 3? I think section 3 contains all
14 the material including expert report of Dr Richard Hern,
15 so most of the evidence that I relied on was actually in
16 the expert report of Dr Richard Hern. So it's there.
17 Q. So when you refer there to Dr Richard Hern, you refer
18 also to all the evidence that Dr Richard Hern is using?
19 A. I refer to his whole report, but when I come to
20 expressing my own opinion, I do set out in my report
21 that evidence upon which I have relied upon in order to
22 arrive at the market value.
23 Q. Thank you. You have mentioned that today, but let me
24 just go back to that for a second, at paragraph 5.11 of
25 your report you state that Dr Hern's report was "in line

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01 with internationally recognized valuation standards",
02 the only exception being that "it has expressed a range
03 of market values instead of [an opinion] on a single
04 market value", is that correct?
05 A. Correct.
06 Q. Why do you think your report was necessary when
07 Dr Hern's report was in line with internationally
08 recognised valuation standards?
09 A. Well, for the reason I have made clear in
10 paragraph 5.11, that I believe whilst the methodology
11 which he employed was in line with international
12 valuation standards, one thing missing, which was an
13 expression of the opinion of value as at the valuation
14 date. Dr Hern provided a range; as a real estate
15 valuer, I have become accustomed to the need to provide
16 a single valuation at the date of valuation, and that is
17 why I explained that I had to go further and provide an
18 opinion at the date of valuation.
19 Q. We all know obviously that the figure is one of the most
20 important things in a valuation, the number that you
21 arrive at, right?
22 A. Yes.
23 Q. And then you are saying actually that Dr Hern was not in
24 compliance with international standards concerning the
25 figure, but you still say that he was in compliance?

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01 A. I am saying that with the exception --
02 Q. But it is a quite big exception, I would submit to you.
03 A. Nevertheless, it is an exception. Having reviewed
04 Dr Hern's report, I considered it that it was very well
05 researched, the argumentation, I believed, was
06 convincing, with the exception that Dr Hern provided
07 a range, whereas, as a real estate valuer, I am
08 accustomed to providing a single figure at the date of
09 valuation, and that, I believe, is --
10 Q. We understand that, but I am just saying --
11 A. I can't say that because --
12 Q. Would you agree that it is a big exception?
13 A. I can't say that because Dr Hern has provided a range
14 that effectively crosses out everything else and he has
15 not complied with international valuation standards.
16 I am saying that he was compliant, with the exception
17 that international valuation standards would require,
18 under the definition of market value, a single figure.
19 Q. Thank you. Would it surprise you if I tell you --
20 actually, it would not surprise you, because you have
21 read his report, his subsequent reports, that he still
22 has not provided us with a single figure in his
23 subsequent reports?
24 A. Well, I am not surprised by that, because I in effect
25 was instructed to provide a single figure. What

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01 instructions Dr Hern had in connection with his second
02 report I was not a party to, so he would have complied
03 with a set of instructions in arriving at his second
04 report, so clearly he may not have been instructed to
05 arrive at a single figure. I suspect that's because the
06 parties had already received such an opinion from me.
07 Q. Well, we don't know about that, and we will see
08 tomorrow. In your report, and that is, for example,
09 paragraph 6.6, you chose not to rely on the Confineks
10 report, is that correct?
11 A. Yes.
12 Q. At paragraph 6.5 of your report, you say that the best
13 valuation evidence of Dr Hern's lower bound is "BD Agro
14 transactions ..."
15 A. For the lower bound.
16 Q. "... of 20 to 23 Eur"; is that correct?
17 A. Yes, I have taken a quote from Dr Hern's report.
18 Q. Well, in the one but next paragraph, paragraph 6.7, you
19 quote, "I ... hasten to add" that they carry "little
20 evidentiary weight" because they are too old, is that
21 correct?
22 A. We are talking about comparable transactions which
23 occurred eight years ago or something like that, was
24 that the right --
25 Q. Exactly, but these are the transactions that are

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01 mentioned in paragraph 6.5 of your report.
02 A. Yes.
03 Q. And then you hasten to add that they are too old?
04 A. They are too old for me to have had regard to in
05 arriving at my single figure at the date of valuation.
06 Q. Yes, correct. So you also disregard them as well, and
07 then you quote Hern in paragraph 6.4 of your report,
08 a little bit before, and you quote what he defines as
09 the basis for his lower bound valuation, and the first
10 source is the Serbian Tax Authorities for calculating
11 property taxes, and we will return to that in a second.
12 Then he confirms this price that he arrived at as
13 a lower bound by saying that it is "broadly consistent"
14 with the Confineks valuation and the evidence from
15 BD Agro's transactions, is that correct?
16 A. That's what he says, yes.
17 Q. So we have just seen that you have effectively
18 disregarded two of the three sources for Dr Hern's lower
19 bound, you disregarded Confineks and you disregarded old
20 BD Agro transactions, is that correct?
21 A. That's correct, because --
22 Q. Thank you. I mean, you explain that in your report why.
23 Then what we are left with are the tax assessments which
24 Dr Hern calls the valuation of BD Agro's land as
25 determined by the Serbian Tax Authorities.

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01 A. Which paragraph?
02 Q. That is paragraph 6.4 of your report, quoting
03 paragraph 89 of Dr Hern's first report.
04 A. Yes, effectively --
05 Q. Please do read.
06 A. For calculating property taxes, yes.
07 Q. Then actually these assessments of Serbian Tax
08 Authorities for calculating property taxes, you don't
09 deal there, where you deal with the rest of Dr Hern's
10 sources, you deal with them a little bit later, that is
11 paragraph 6.13 of your report. Could you just take
12 a look at 6.13?
13 A. Yes, I see this.
14 Q. It seems to me that you didn't want to be too hard on
15 Dr Hern, so you didn't criticise him immediately but
16 a couple of paragraphs afterwards, but that's only my
17 impression.
18 If one reads your analysis in 6.13, one concludes
19 that these are, first, not valuations of BD Agro's land,
20 as Dr Hern calls them, but what you call a "mass
21 appraisal ... without regard to the unique
22 characteristics of individual properties", and then you
23 say that this carries "little evidentiary weight", is
24 that correct?
25 A. That's correct.

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01 Q. So you have effectively removed the third or actually
02 the main source of Dr Hern's lower bound valuation, so
03 there is nothing left to support his lower bound price,
04 I would suggest to you.
05 A. I am not supporting Dr Hern's lower bound, I am
06 supporting my -- having reviewed his valuation, I came
07 to the opinion that he was entitled to come to the range
08 of values that he did, but then moved further and said:
09 in order to arrive at the single figure at the date of
10 valuation, this is the evidence that I consider we
11 should have regard to. And certainly at that stage
12 I would have rejected tax assessments, because I don't
13 think they are relevant for arriving at a valuation at
14 a single point in time.
15 Q. Okay, clear. That was quite clear, but I would just
16 remind you that you were tasked to review and opine on
17 the expert report of Dr Richard Hern, and that is at the
18 very beginning of your report, so you reviewed -- and
19 this is why I am asking --
20 A. How do you use that evidence to arrive at a single
21 figure at the date of valuation? Certainly I would have
22 been tougher on him, in the sense that I would have said
23 he shouldn't have relied on that evidence, that evidence
24 or that evidence at the date of valuation. As it is,
25 I was opining on his range of values, and as such, I can

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01 understand why he applied the evidence that he did, but
02 it's not the evidence that I would necessarily have
03 relied upon in order to arrive at the single figure
04 which I did.
05 Q. Thank you. Our task was actually here to see how you
06 reviewed Dr Hern's valuation, and so I wanted you to
07 deal with the lower bound valuation, and its sources.
08 So I think that was clear enough, that there is nothing
09 left with, but let's go to the upper bound price of
10 Dr Hern.
11 It is based on two sources; one is valuation by
12 Mr Mrgud and others are comparative transactions
13 evidence, and I am just looking to your report, that is,
14 I believe, paragraph 6.9, do you see that?
15 A. Yes.
16 Q. Let's see what is Mr Mrgud saying. Or actually, what
17 are you saying about Mr Mrgud, sorry. At
18 paragraph 6.10, you say that Mr Mrgud's valuation "might
19 be criticised somewhat for being based on asking prices"
20 but then you say it is a common practice among Serbian
21 valuers, right?
22 A. Right.
23 Q. Because it's difficult to obtain evidence elsewhere,
24 right?
25 A. Right.

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01 Q. First, let me ask you: is it really that difficult to
02 seek for prices -- are you familiar with the fact that
03 information on transactions, on the real estate
04 transactions in Serbia, is available on the internet
05 through the Serbian Geodetic Authority?
06 A. Yes, I am familiar with that. I am not sure that it is
07 necessarily 100% accurate but I am also aware that it is
08 the common practice amongst Serbian valuers to use
09 asking prices.
10 Q. Right, but did Mr Mrgud consult the database of the
11 Republic Cadaster or the Republic Geodetic Authority?
12 A. No, he used the evidence of asking prices.
13 Q. So he went straight to asking prices, correct?
14 A. I assume so, yes.
15 Q. Let's take a look at his report, CE-175. If we can go
16 at the very beginning -- it is a 15-page report, it's
17 relatively short. Can we go just to the very beginning
18 of the report and just flip through it to see what is
19 there. So there is "Introduction", and then "Subject of
20 valuation", and then there is a list of land, zoning,
21 market characteristics, and then we stop at the "Method
22 of valuation of land".
23 Could we have the highlighted part from:
24 "The procedure applied in the valuation ..."
25 And then also the next paragraph, you have it on the

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01 screen highlighted, if it's easier for you.
02 I assume you have read Mr Mrgud's report when you
03 were preparing for --
04 A. Originally, yes.
05 Q. Yes, okay. Can you read this, and especially the second
06 paragraph, and can you tell me, do you understand this?
07 A. We are talking about the sentence which begins:
08 "The comparative method was applied to the stock
09 exchange data on the trends in the market value ..."
10 I assume that means the movement of market prices
11 over a period of time.
12 Q. But what is the stock exchange data? And I can assure
13 you that it is not a mistake in translation.
14 A. I would imagine that he had regard to statistics which
15 maybe the stock exchange would have issued on trends.
16 That said --
17 Q. You think that there are such statistics in Serbia?
18 A. Well, there are statistics in Serbia.
19 Q. There are, but is there actually a publication on the
20 stock exchange dealing with the prices of real estate?
21 A. I don't know.
22 Q. And you don't see a source for that?
23 A. I don't see a source for that, no.
24 Q. Does it look somewhat strange that he refers to the
25 stock exchange there?

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01 A. I would say that in terms of his valuation itself,
02 I would find that that particular reference to stock
03 exchange data on trends would not have affected the
04 valuation itself.
05 Q. Thank you. Okay, let's go to the main source that
06 Mr Mrgud is using for his valuation, and that is the
07 next section, 5.2. It is called "Comparative method",
08 and if we can see the table, please, the whole table on
09 the screen, it is on two pages -- oh, it cannot fit.
10 Can you tell us what is the date -- these are the
11 advertisements, right, for the selling of property. Can
12 you tell us the dates of the advertisements that
13 Mr Mrgud is referring to?
14 A. It doesn't seem that he has put the dates in, or I can't
15 see which column -- there seem to be no dates.
16 Q. So we don't know actually when these advertisements were
17 placed?
18 A. No, we don't.
19 Q. It could be ten years ago, five years ago, three years
20 ago, we don't know that, okay?
21 A. Right.
22 Q. If we can go now to Exhibit CE-512, and go to page 28,
23 and if you can please highlight standard 5.6.1, I think
24 that this is quite familiar to you, I would say. This
25 is the discussion of the valuation date.

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01 A. Mm.
02 Q. It says that it should reflect:
03 "The valuation amount will reflect the actual market
04 state and circumstances at the effective valuation date,
05 not at a past or future date."
06 Does it say that?
07 A. Yes.
08 Q. So we would say that Mr Mrgud's transactions are of
09 quite limited use, because we don't have any idea about
10 the time when these advertisements were posted, correct?
11 A. That's correct. I mean, I can only assume that because
12 he was instructed to value in 2015, that he would have
13 relied on evidence from around that time.
14 Q. But you assume that, you don't know that.
15 A. I don't know that.
16 Q. Can we go back to Mr Mrgud's report, please?
17 Mr Grzesik, you see these five transactions and this
18 table. Are you not a little bit concerned that it is on
19 the basis of this undated small table that Mr Mrgud
20 comes up with a valuation of no less than €87 million
21 for the land in Zones A, B and C? Don't you think that
22 one who would read that would deserve something more to
23 accept this amount, this figure, as a reliable one?
24 A. Certainly, if you are relying on asking prices, then as
25 much information as possible is needed, because asking

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01 prices are the lowest level of evidence that you can use
02 in a valuation.
03 Q. Thank you. So this was one of the sources of Dr Hern's
04 upper bound price, and the main source.
05 A. Yes.
06 Q. Dr Hern also says that his upper bound price is
07 consistent with his comparable transactions evidence,
08 and if we go to Hern first report, paragraph 64, table
09 3.3, we will see what he provides there. This is what
10 he provides, you have seen that obviously, these are
11 transactions spanning for six years, and the price is
12 spanning from €15 to €88, so it is hard to figure out
13 where is the consistency between Mr Mrgud's report on
14 the one hand and this range of prices that Dr Hern
15 invokes, is that correct?
16 A. Well, it's not the way you're presenting it, because
17 it's not €15 to €88, it's different ranges in different
18 years. So for example, when we look at the -- the range
19 is €15-23, which is the transactions in 2008 and 2009;
20 and then the €88 falls within the range 2012-2014 Zemun
21 transactions, and of course Zemun is a different area,
22 so they won't necessarily be comparable.
23 Q. If we look at Pazova transactions and Batajnica market
24 value assessment, that is from 2013 to 2016, which is
25 quite --

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01 A. Yes.
02 Q. -- around the valuation date and the range is still from
03 €20-37.
04 A. €28-37, yes.
05 Q. No, €20-37. Pazova transactions lower bound is €20. So
06 you have still a range which is relatively wide, right?
07 A. Yes, this is all the evidence upon which --
08 Q. This is Dr Hern.
09 A. Yes, but this is the evidence that Dr Hern put into his
10 research, the pot, so it's all there, and from that he
11 made certain deductions about his lower bound and his
12 upper bound, so it's not as if he, for example, relied
13 on Zemun transactions at €88, this is simply the
14 accumulation of all the evidence that was there for him
15 to analyse and to consider. So it's not as if he's
16 having to find a value between €15 and €88, these are
17 all different ranges depending on the areas and the
18 dates.
19 Q. Mr Grzesik, I will put to you that you are a very
20 charitable interpreter of his report. Let's go and see
21 what the report says, and if we can look at
22 paragraph 89.B of Dr Hern's report, where he sets out
23 the sources of his upper bound price:
24 "The upper bound of €30/m² is based on the weighted
25 average price used in Mr Mrgud's valuation ..."

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01 We know that. Then he says:
02 "[It] is also consistent with the comparable
03 transactions evidence, which ranges from 20 to 37
04 EUR/m²."
05 A. Yes.
06 Q. So I put to you that this includes both Pazova and
07 Batajnica transactions because this is the range exactly
08 from both Batajnica and Pazova transactions. It is not
09 much of a consistency because it's such a wide range,
10 would you agree?
11 A. It's a wide range.
12 Q. Thank you.
13 A. But that is also the view of Dr Hern.
14 Q. So now let's move to your report, and to what you call
15 highly relevant assessments of land in Batajnica, and
16 you have mentioned that today. If we move to
17 paragraph 6.12 of your report -- okay, you say that they
18 are highly relevant there, we have done that.
19 Okay, 6.14, sorry, you provide two main reasons, if
20 I may summarise your point of view, and probably that
21 was -- I think that it was also today in your
22 presentation. You provide two reasons why you find
23 these Batajnica assessments to be relevant and to be
24 basis for the valuation. One reason is that they are
25 close to the valuation date; and another reason is that

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01 the sites in Batajnica are a similar distance from
02 Belgrade Zones A, B and C, and other things are also
03 relatively equal.
04 A. Yes. More or less, yes. I am not saying they are
05 exactly equidistant --
06 Q. Sure, they cannot be exactly.
07 A. Yes.
08 Q. Let's start with this last point. At paragraph 6.16,
09 you say that both Zones A, B and C and Batajnica have
10 "all required development plans in place", is that
11 correct?
12 A. Yes.
13 Q. And then in the footnote, you refer to CE-521, that is
14 the detailed regulation plan for Batajnica.
15 A. Yes.
16 Q. And then to CE-143, that is a general regulation plan
17 for A, B, C Zone.
18 A. Yes.
19 Q. You say you have read both of these plans, at the
20 beginning of your report.
21 A. When I did my report.
22 Q. You did. Have you read them recently perhaps?
23 A. Not recently, but I read them during the report stage.
24 Q. Are you familiar with the differences between detailed
25 regulation plans and general regulation plans in Serbia?

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01 A. Well, I am not a planning expert, I am not
02 a construction expert, but my understanding is that
03 where you have a detailed relation, in some instances
04 you then require -- when you have a general plan, in
05 some instances you are then required to provide
06 a detailed regulation, and in particular when you
07 require provision of infrastructure, and those sort of
08 elements. So there is a difference, yes.
09 Q. There is a difference, and the general plan needs to be
10 a little bit specified, implemented through a detailed
11 regulation plan, is that what you are saying?
12 A. My understanding is this, that if you have a general
13 regulation plan, there may be, in certain respects, the
14 need to provide a more detailed regulation plan, and
15 that detailed regulation plan can be provided for by the
16 investor, but I don't see -- well, there is
17 a difference, but I don't see a huge difference in terms
18 of assessing the value of the properties, the additional
19 requirement of a detailed regulation.
20 Q. Well, do you agree that a certain period of time is
21 necessary to have detail if there is a general plan, so
22 there is a certain amount of time that is necessary to
23 develop a detailed plan, and to adopt it?
24 A. Indeed, and I think that this certain period of time
25 would coincide -- if you imagine that you have an

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01 investor purchasing the site, and particularly sites
02 without infrastructure, they would then need perhaps
03 several years in order to work up all sorts of things
04 such as the architectural plans, the detailed
05 regulations, and that would all coincide in the same
06 period. So I don't see too much of a disadvantage where
07 you don't have that detailed regulation plan.
08 Q. And then obviously the investor may be suggesting the
09 detailed plan, but it is adopted by the authorities, so
10 you have to wait --
11 A. Yes, but --
12 MR PEKAR: Mme President, I object, now we are getting into
13 areas of several misrepresentations made by counsel for
14 Serbia. These questions also relate to Serbian
15 regulation of construction, which is not the area of
16 expertise of Mr Grzesik. And just to tell you what the
17 misrepresentation is, that it's been constantly
18 suggested by counsel for Serbia that there was a need
19 for a detailed regulation plan in the area regulated by
20 the general regulation plan in Dobanovci which, as
21 counsel for Serbia knows, is contested by the Claimants.
22 DR DJERIC: Exactly, I know, but I would just say that
23 Mr Grzesik is saying at paragraph 6.16 of his report
24 that both locations have "all required development plans
25 in place", and then he quotes these two, and my question

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01 was to compare these two and see whether that is on the
02 same level -- whether they are the same, and whether
03 they are all required -- so the expert is saying that
04 all required regulations are in place, and I'm testing
05 that assertion, so there is nothing misleading there.
06 MR PEKAR: No, it's in the questions you are asking, because
07 you know very well the position is that from the
08 perspective of Serbian law, a general regulation plan
09 and a detailed regulation plan are equivalent in the
10 sense that this is all which is needed for construction
11 on these pieces of land.
12 THE PRESIDENT: Yes, I must say that I had questions on
13 this, because it was unclear to me in what stage the
14 land was, in terms of development, and what else was
15 needed and how much time this would take.
16 Either you are familiar with these topics, and then
17 you can give me some explanations, or you are not
18 familiar, and then we don't ask you, and there is no
19 problem, because you are a valuation expert here.
20 A. I think what I can say is that Zones A, B and C were
21 under the regulation plan -- that was land which was
22 suitable for the development of industrial and business
23 uses. However, in order to get to those uses, a lot
24 more work needs to be done in terms of provision of
25 infrastructure, in terms of provision of roads, in terms

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01 of the whole planning procedure, so any developer buying
02 this site would be fully aware of the enormous amount of
03 work that still needed to be done to enable these sites
04 to be put in a situation where you could start
05 development.
06 And this is the same for -- it took several years in
07 Batajnica to get to the point where today they can start
08 developing, and equally, anyone who bought Zones A, B
09 and C at the date of valuation would be aware that this
10 is not something that tomorrow you can bring in the
11 diggers and start developing. No, you need to go
12 through the whole -- a lot of planning procedures need
13 to be put in place, you need to get architects,
14 engineers, infrastructure, and when I talk about what's
15 permissible, at this stage I am talking about what the
16 land is zoned for.
17 So any developer buying Zones A, B and C would know,
18 well, eventually I will be able to put up a logistics
19 centre here, offices or whatever, but not at the date
20 I buy them, and that, I believe, is the same position in
21 all the comparables that have been relied upon in this
22 case.
23 THE PRESIDENT: So in other words, you say that this is
24 reflected in the price? I think you said so expressly
25 in your presentation.

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01 A. Counsel for the Respondent showed a table showing Zemun
02 at €88; there we see sites which are far more advanced
03 in the development stage, hence the larger figure of
04 €88, so what we are dealing with here are sites which
05 have a long way to go before they can become developed.
06 THE PRESIDENT: Thank you, that is clear.
07 DR DJERIC: Let's compare the sites further.
08 Paragraph 6.16, you also say that:
09 "The expropriated sites [that is Batajnica] are
10 close to the Belgrade Bypass, they are not connected to
11 it and lack connection to any main services."
12 Correct?
13 A. Yes.
14 Q. This is actually almost verbatim of what Mr Markicevic
15 says at his third witness statement, at paragraph 105,
16 and you actually, I think, quote Mr Markicevic to that
17 effect, but let's see what Mr Markicevic says. You have
18 read his statement, I assume?
19 A. I haven't read his statement but a lot of the factual
20 information upon which our reports are based comes from
21 much of the work that he did on the ground.
22 Q. Sure, but Mr Markicevic is not a real estate expert.
23 A. No.
24 Q. He is a witness --
25 A. But I rely on the factual research that has been carried

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01 out.
02 Q. Are you aware that Mr Markicevic is in the management of
03 one of the Claimants, a director in one of the
04 Claimants?
05 A. Yes.
06 Q. Can we look at paragraph 105, and the sentence is
07 highlighted. We don't see any source for this
08 statement, right?
09 Okay, can we move back to your paragraph 6.17, which
10 is the next paragraph. You take up the same theme but
11 you change the wording a little bit about Batajnica
12 plots, and if you see, in the first sentence, you say:
13 "... well away from any road except for dirt access
14 roads for agricultural vehicles."
15 Do you see that?
16 A. This is 6.17, yes.
17 Q. 6.17, ending with footnote 55, and in footnote 55 you
18 again refer to Mr Markicevic, paragraph 106.
19 A. Mm.
20 Q. Here we see Mr Markicevic, paragraph 106, it is almost
21 verbatim, a little bit changed, and also we don't see
22 any footnote there, any source there, right?
23 A. Yes.
24 Q. So he does not provide any footnote, any reference or
25 any photograph or documentary material, is that correct?

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01 A. Well, I have relied on his evidence insofar as his
02 factual fact-finding for the purposes of this valuation.
03 Much of the groundwork has been carried out by him.
04 Q. So you as a valuer rely on the groundwork and factual
05 research done by the person who basically commissioned
06 your work or your valuation?
07 A. Well, I was commissioned by counsel.
08 Q. Okay, who were commissioned by the Claimants.
09 A. But I treated all that -- I found it as a very detailed
10 amount of research which was undertaken, and there was
11 no reason for me not to rely on that.
12 Q. Let's go to paragraph 6.17, last sentence, which says:
13 "Additionally, Zones A, B and C are considerably
14 closer in proximity to the E70 highway than the
15 Batajnica land plots."
16 A. Yes.
17 Q. And then in footnote 56, again, reference to
18 Mr Markicevic.
19 A. Yes.
20 Q. Can we see Mr Markicevic? Thank you, 107. And actually
21 Mr Markicevic is at 107 providing a map, and not
22 a statement, so you relied on the map, or you relied on
23 his statement --
24 A. Well, if you look at the map below, you can see where
25 the Belgrade Bypass is, and you can also see where the

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01 E70 highway is, just to the north of Zone A, so that was
02 a factual statement.
03 Q. Sure, let me just tell you that actually what you were
04 transferring verbatim from his statement is
05 paragraph 107, so it's put verbally at paragraph 107,
06 what I just have said.
07 But let's look at the map. Or actually, let's look
08 at what Mr Markicevic is saying at 106:
09 "... considerably closer ... to the E70 highway than
10 the Batajnica land plots."
11 And again, no source. Then you have a map. Let's
12 look at the map. Let's remind us, the upper map is
13 Batajnica, the lower map is Batajnica and Zones A, B and
14 C aerial view.
15 A. Mm.
16 Q. You say that A, B, C Zone is considerably closer than
17 Batajnica land to highway E70, that is true. Everyone
18 who lives in this part of the world, in this city, knows
19 where is highway E70, and it is where you put it, it is
20 on the screen, there is a description on the screen.
21 Mr Grzesik, is there another highway?
22 A. I have referred to the Belgrade Bypass, I have referred
23 to the E70, I have also referred to the planned Sremska
24 Gazela road so you will have to help me if there is
25 another highway.

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01 Q. I'll help you. There is the famous Europe route called
02 E75, which goes north/south, and Belgrade Bypass is part
03 of that route, so it's actually a highway. And if you
04 are not correct, you can look at Dr Hern's first report,
05 paragraph 69, and he confirms that there.
06 A. Okay.
07 Q. Yes, you see the last sentence of Dr Hern's
08 paragraph 69. Batajnica region lies next to the E75
09 road, while BD Agro would have to rely on the Sremska
10 Gazela, which obviously has not been constructed.
11 If you go back to the map, please, it does not seem
12 that Batajnica is "well away from any roads", as
13 Mr Markicevic says, and you accept, so to say,
14 uncritically. You can even see on this photograph, you
15 can see the highway, you can even see the cars on the
16 highway.
17 A. Except it's not --
18 Q. Now let's take a look at the lower part, at Zones A, B,
19 C. Does it not appear to you that the E70 highway which
20 you mentioned is relatively further from Zones A, B, C
21 than the highway E75, which is right next to Batajnica
22 land?
23 A. It is further away.
24 Q. Thank you very much. Have you visited the Batajnica
25 plots?

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01 A. What I did is when I did the tour of Zones A, B and C,
02 we also did a tour of the surrounding area, including
03 Batajnica.
04 Q. Right, but you have not noticed this that we today have
05 discussed, that it's just right next to the highway?
06 A. Obviously I would have noticed that, but we didn't go on
07 to the actual plots themselves, but toured the area.
08 Q. Thank you. Okay, let's move then to paragraph 69 of
09 Dr Hern's report. We have already seen that. You see
10 this sentence that we have already mentioned as evidence
11 that the Batajnica region is next to E75, and you see
12 how it's formulated, with the "however", and there is
13 a clear reservation by Dr Hern that BD Agro would have
14 to rely on the Sremska Gazela for connection.
15 A. Yes.
16 Q. Do you see that? And then you nevertheless, having
17 studied Dr Hern's report, and Mr Markicevic's statement,
18 chose to rely on Mr Markicevic, correct?
19 A. Well, it's not that I didn't rely on anything which
20 Dr Hern said, I simply inserted that as a statement of
21 fact.
22 Q. Thank you. Okay, now let's consider your second reason
23 why you find Batajnica land assessments as the best
24 evidence, in your view, in support of valuation of Zones
25 A, B, C. At paragraph 6.15 of your report, you state:

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01 "... the assessments of the value of the Batajnica
02 properties were completed by the Serbian Tax Authority
03 in November 2015 and are close in time to the valuation
04 date of Zones A, B and C of 21st October 2015."
05 Is that correct?
06 A. That's correct.
07 Q. In this regard, you refer, in footnote 51, which is
08 attached to this statement, to Dr Hern's first report,
09 paragraph 71.
10 A. Yes.
11 Q. If we go to Dr Hern's first report, paragraph 71, you
12 actually see that in paragraph 71 Dr Hern writes about
13 what you call mass appraisals of land that you have
14 rejected as valuable evidence, et cetera.
15 A. Mm.
16 Q. Is that correct?
17 A. That's correct, yes.
18 Q. So the footnote is wrong, right?
19 A. The reference to November 2005, I must admit, may have
20 been incorrect, because that November 2015 I think
21 actually does relate to the mass appraisals. So there
22 I would admit that perhaps the November 2015 date is not
23 precise.
24 Q. And it's completely different evidence, right?
25 A. It's not mass appraisal, it's valuations for

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01 expropriation.
02 Q. Can we go now back to Mr Grzesik's report? At
03 paragraph 6.15, you said:
04 "... the assessments of the value of the Batajnica
05 properties were completed by the Serbian Tax Authority
06 in November 2015 and are close in time to the valuation
07 date ..."
08 So November 2015 should be stricken out, right? Am
09 I correct?
10 A. I think to be safe, yes.
11 Q. Let's look at the real underlying source of the
12 Batajnica tax assessments with the help of Dr Hern's
13 first report. That is at paragraph 64, table 3.3 of
14 Dr Hern's first report, but it's a big table, that's
15 just for the reference. We can go to paragraph 191 of
16 his report. There, in an annex he develops his
17 analysis.
18 There Dr Hern refers in a footnote to three
19 exhibits, that is CE-159, CE-160 and CE-161. You can
20 take a look at these exhibits in your bundle, and my
21 colleague will prepare them for you.
22 A. I have CE-159.
23 Q. CE-159, CE-160 and CE-161. This is what you call the
24 best evidence?
25 A. In the context of all the evidence.

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01 Q. But that is the evidence for the Batajnica transactions?
02 A. Yes, it's the best evidence in the context of the
03 evidence available.
04 Q. Thank you. Can you confirm the dates of these
05 assessments?
06 A. So if we look at CE-159, it's March 17th 2016. June 8th
07 2016.
08 Q. Thank you.
09 A. And August 26th 2016.
10 Q. Right. Mr Grzesik, how do we know when these
11 assessments were made? Have they been made at the dates
12 that are on the documents?
13 A. No, they would have been ready by the dates on the
14 document, but in my evidence, what I said is that the
15 assessments, albeit they were made in 2016, would almost
16 certainly have had regard to market evidence in 2015,
17 perhaps 2014.
18 Q. Are you sure?
19 A. As an experienced valuer, I would suggest that almost
20 certainly amongst the comparables that the tax assessors
21 would have had regard to, they would have looked at what
22 was happening in 2015, unless -- they may have had some
23 fresh evidence in 2016, I don't know, but I'm just --
24 Q. So if you draft a document like this, and you are the
25 Serbian Tax Authority, and you do it in August, that is

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01 eight months into a year, that is a lot?
02 A. But let's suppose I'm valuing in August 2016. Almost
03 certainly I would look to -- bearing in mind comparable
04 evidence is not easy to find, so you try and make the
05 most of the evidence you can find, let's say, in the
06 last two years.
07 Q. Yes, but you would do as an independent valuer, and this
08 is Serbian Tax Authorities that makes their assessment,
09 and do we know how do they make their assessments?
10 A. Well, they are obliged to arrive at the market value,
11 that's stated in the law.
12 Q. Exactly. But do we know actually how they actually made
13 this assessment, let's say in August 2016?
14 A. I would assume that they would follow the procedures for
15 undertaking a valuation to arrive at a market value, and
16 that they would be competent in doing so, and that they
17 would -- I would imagine that they would rely on
18 historic evidence.
19 Q. Right, but you don't know what exact historic
20 evidence --
21 A. No, I don't know exactly --
22 Q. And you don't know actual time of the transactions that
23 they used for their assessment?
24 A. No.
25 Q. Thank you. If we can go back to Exhibit CE-512, and if

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01 we can remind ourselves what it says, you remember what
02 we said here, 5.6.1, Mr Grzesik:
03 "The valuation amount will reflect the actual market
04 state and circumstances at the effective valuation date,
05 not at a past or future date."
06 A. Yes.
07 Q. Correct?
08 A. The valuation will reflect the actual market state and
09 circumstances at the effective valuation date.
10 Q. Please just give me a second. If we can go to page 56
11 of the same document, it is also a standard, called
12 "Supporting the valuation", and it says in the second
13 sentence:
14 "The quality of the valuation will, in part, rely on
15 the quality of the information used to prepare it and so
16 the valuer will need to verify any sources and the date
17 of that information."
18 Is that what the standard says?
19 A. Yes.
20 Q. Thank you. Let's move to the bankruptcy proceedings
21 that you also commented upon in your report, and you
22 compare the bankruptcy sale, the sale in the bankruptcy
23 proceedings, with the market sale, correct?
24 A. Yes.
25 Q. At paragraph 16.23 of your report, you summarise what

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01 you say were the flaws of the actual bankruptcy
02 proceedings, correct?
03 A. Yes, the summary in the table.
04 Q. And again, I note you refer to Mr Markicevic's third
05 witness statement, is that correct?
06 A. Can you -- this is footnote 119, yes?
07 Q. Okay. And then, on the basis of what Mr Markicevic
08 says, you make conclusions such as that this type of
09 process of sale would attract "disbelief and suspicion"?
10 A. That's my quote.
11 Q. Yes, exactly. But on the basis of Mr Markicevic's
12 evidence, right?
13 A. No, I --
14 Q. And then you say it "creates perception".
15 A. No, on the basis of the whole process which I have
16 outlined in my report about the proper marketing
17 process, when you go through, paragraph by paragraph,
18 all the shortcomings of the bankruptcy proceedings, you
19 can't fail to conclude what I have concluded at the end,
20 so that's entirely my own view.
21 Q. But did you independently check what Mr Markicevic
22 states at paragraphs 131 to 134 of his third witness
23 statement to which you refer?
24 A. At the time, I would have done so.
25 Q. You have independently checked that? Are you confirming

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01 that?
02 A. All the material in the footnotes I would have checked
03 at the time of writing this report. I haven't gone back
04 to --
05 Q. It's not my question, maybe I was not precise enough,
06 sorry for that. I understand that you have read
07 Mr Markicevic's statement at the time you wrote your
08 report, but did you check the actual factual allegations
09 made by Mr Markicevic?
10 A. I would have treated them in good faith.
11 Q. You consider yourself a bit of an expert of Serbian real
12 estate, would you say that?
13 A. Well, I wouldn't --
14 Q. You have spent some time there.
15 A. I wouldn't describe myself as a bit of an expert.
16 Q. You are an expert then?
17 A. I would describe myself as being knowledgeable on
18 valuation practice in Serbia.
19 Q. Okay, great, thank you. At paragraph 134 of his third
20 witness statement, Mr Markicevic complains that there
21 was a strike of the cadaster, of the land registration,
22 and he could not check the ownership of the land.
23 A. Mm.
24 Q. Do you see that?
25 A. Yes.

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01 Q. You then refer to that. Are you familiar with the fact
02 that in Serbia, ownership can be easily checked on the
03 internet site of the cadaster office?
04 A. I am familiar with that, yes.
05 Q. So does this sound credible for you, that Mr Markicevic
06 says, "Well, I could not do anything, everything was
07 closed", he even puts a picture there --
08 MR PEKAR: Objection, this is a misrepresentation of
09 Mr Markicevic's testimony. He didn't say he couldn't do
10 anything.
11 DR DJERIC: I can quote Mr Markicevic's testimony, I just
12 want counsel for claimant not now to give an answer for
13 Mr Grzesik because he did that last time, thank you.
14 THE PRESIDENT: I think what matters for us is to what
15 extent, when you refer to Mr Markicevic, you have
16 checked not only what Mr Markicevic himself expresses
17 but also the facts which he alleges.
18 A. In terms of the facts of the bankruptcy proceedings, the
19 auction, then I didn't carry out any verification work
20 myself. I relied on the information that I was provided
21 with, and then drew conclusions from the process on the
22 basis of the evidence that I saw before me.
23 THE PRESIDENT: As it was described to you?
24 A. I didn't verify it. Yes.
25 THE PRESIDENT: And with respect to the cadaster, you said

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01 before that you know that you can check ownership
02 online, is that what you said?
03 A. Yes, but I didn't do so in this case because I was asked
04 to opine on the process of marketing, rather than having
05 to verify the various facts presented in the procedure,
06 so I didn't see that as being down to -- part of my
07 role.
08 THE PRESIDENT: Thank you.
09 DR DJERIC: Thank you, Mme President. I have no further
10 questions.
11 THE PRESIDENT: Good, thank you.
12 MR PEKAR: Thank you, Mme President, yes.
13 Re-direct examination by MR PEKAR
14 Q. Mr Grzesik, let's just follow up on this last topic. Do
15 you know, Mr Grzesik, whether the information included
16 in the online version of the Serbian land cadaster is
17 legally binding?
18 A. Whether it is legally binding or not, I can't answer
19 that question.
20 Q. Do you know how often the online version of the
21 information is updated?
22 A. From experience in other countries, I would imagine
23 several months.
24 Q. Do you know, Mr Grzesik, whether it is customary that
25 a buyer of real estate in Serbia would rely on the

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01 online version or would go for the actual extract from
02 the cadaster in paper form?
03 A. I think in carrying out his due diligence on such
04 a complex land, he wouldn't rely on the internet.
05 Q. Mr Grzesik, do you still have your presentation in front
06 of you?
07 A. Yes.
08 Q. Could we please go to the map of the Batajnica land?
09 You were asked, I believe, about the expropriations
10 which are marked in red, correct?
11 A. Yes.
12 Q. You were not asked about these which are marked in blue,
13 correct?
14 A. No.
15 Q. Could you please comment on these which are marked in
16 blue?
17 A. As you know, I mentioned that I derived my evidence on
18 the basis of the 2016 valuations for expropriations, but
19 as a fallback, I have also, on this aerial view, shown
20 the sites expropriated in 2013, or certainly valued for
21 expropriation in 2013, and I would suggest they show
22 a figure of €27/m2 which seems to be consistent with
23 what was happening several years later, so I think
24 certainly as a fallback, there is this evidence of the
25 2013 valuations.

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01 Q. What we are showing on screen is not the picture that --
02 THE PRESIDENT: I understand we are looking at the
03 presentation page 5, and I think you did mention during
04 your presentation that the blue values confirmed your
05 finding from the red ones.
06 A. Yes, they set a floor, because of course I valued at €30
07 and I believe that €30 in 2015 is right, even if one has
08 regard to €27 in 2013.
09 MR PEKAR: Now if we look at, for example, the one red land
10 plot marked at €37/m², in the middle, more or less --
11 A. €37, yes.
12 Q. Does it appear to be connected to an existing road?
13 A. It doesn't seem to be connected to an existing road.
14 I am not sure about whether there are dirt tracks there,
15 or field roads, bearing in mind it's agricultural land,
16 but the acquisition, the blue line, do suggest that
17 these plots were being acquired for road building.
18 Q. Do these land plots seem to have connection to services?
19 A. No, not as far as I'm aware.
20 Q. Now I would like you to comment on the detailed
21 regulation plan for Batajnica. CE-521. What is the
22 date of this document?
23 A. 23rd June 2015.
24 Q. So that would be after the 2013 expropriations, correct?
25 A. Yes.

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01 Q. Now I would ask you to go to -- on the second page of
02 the English translation, we have point 3, "Legal and
03 planning basis", there. Could you please tell me
04 whether there is any general regulation plan included?
05 A. This is starting with "Legal and planning basis", yes?
06 Q. Correct. Is there any general regulation plan listed --
07 A. "Extract from ... Comprehensive Plan for Belgrade forms
08 ... plan documentation".
09 General regulation plan, I am trying to -- I don't
10 see one.
11 MR PEKAR: Thank you. No further questions, Mme President.
12 THE PRESIDENT: Thank you. Any questions from my
13 colleagues? Yes, please.
14 Questions from the TRIBUNAL
15 PROFESSOR KOHEN: Thank you, Mme President. Dzien dobry.
16 A. Dzien dobry.
17 PROFESSOR KOHEN: In your presentation, you put on screen
18 a table of transaction prices of comparable properties
19 rejected by Ms Ilic.
20 A. Yes.
21 PROFESSOR KOHEN: There were two items on Surcin Dobanovci,
22 and the second one, it is mentioned "Adjacent to
23 BD Agro".
24 A. Yes.
25 PROFESSOR KOHEN: Did you try to locate --

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01 A. Yes, we have got the location, I think it's in one of
02 the exhibits, the location of that plot is shown.
03 PROFESSOR KOHEN: Do you remember which one?
04 MR PEKAR: We will try to find the exhibit and put it on the
05 screen.
06 PROFESSOR KOHEN: If you remember, we take the photograph
07 map you put also on the screen --
08 A. This is slide 5, yes?
09 MR PEKAR: So we are now showing RE-540. If you prefer to
10 have this on the screen, we can put it on the screen as
11 well.
12 PROFESSOR KOHEN: Yes.
13 MR PEKAR: So you prefer we look at the map?
14 PROFESSOR KOHEN: I would like to ask Mr Grzesik if he can
15 identify in the map.
16 A. I think we need a bigger -- this is a better scale.
17 PROFESSOR KOHEN: If this is better?
18 A. And you can see the two locations are identified, and
19 the location adjacent to the farm you can see on the
20 left-hand side, and it adjoins the BD Agro land farm.
21 THE PRESIDENT: I am sorry, maybe I missed something, but
22 have we identified this map?
23 MR PEKAR: This is from RE-540.
24 THE PRESIDENT: Does it have a number within RE-540?
25 MR PEKAR: Yes, this is Respondent's Exhibit RE-540.

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01 THE PRESIDENT: It's just a map? No, it's a longer
02 document.
03 MR PEKAR: "Information from Real Estate Price Register".
04 THE PRESIDENT: My question was unclear. Are there other
05 maps in this document so we need to identify it?
06 MR PEKAR: It is on page 3 of this document.
07 PROFESSOR KOHEN: Thank you, Mme President.
08 THE PRESIDENT: Mr Grzesik, Ms Ilic makes a number of
09 comments on the basis for your valuations, but I think
10 they go more to Dr Hern's report in the end than to
11 yours, so I am not going into those.
12 Let me just ask one question. Looking at your
13 report about the valuation of the agricultural land, in
14 10.1, so you took Dr Hern's range and then you narrowed
15 it down. But then somehow you were stuck, if
16 I understand it correctly, at a range from 0.8 to 2.9
17 and then you just took the middle of these figures.
18 I was asking myself whether that is a proper
19 valuation process to just split the difference in half,
20 because it looks a little arbitrary to me?
21 A. Well, it looks like that. The problem here is that the
22 valuation of agricultural land is actually very
23 problematic, because I think both myself and Danijela
24 Ilic found that there is a huge range, as indeed shown
25 here, and so the question then is, what do you do with

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01 that huge range? Unless you look at each specific
02 comparable sale and analyse each one individually, it's
03 very difficult to come to a conclusion, well, what is
04 the value? And this is why I suppose I have taken the
05 easy way out, I have taken the midpoint, but in all
06 honesty I couldn't think of any other way of finding the
07 acceptable value there. I accept it's not ideal, but
08 unusually here, the ranges of agricultural values, even
09 the ones that Danijela Ilic has, are quite substantial,
10 and it's very difficult for any valuer to make sense of
11 that, so this is why I have taken the midpoint on this.
12 THE PRESIDENT: Is this an approach that other valuers would
13 share?
14 A. I think it would be a similar approach that other
15 valuers have taken. I have taken effectively the
16 average, Danijela Ilic has taken what she calls the
17 median, and I would certainly criticise her use of the
18 median, because, coming back to my definition of market
19 value, and the interpretation of market value, market
20 value is the best price reasonably obtained in the
21 market. Now, the best price reasonably obtained in the
22 market is certainly not a median, and it's not
23 necessarily an average, but when a valuer is faced with
24 a number of what he calls comparable properties, and
25 they have a relatively wide range, if he can't

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01 understand why that range is so wide, typically the
02 valuers will resort to the average, and that is what
03 I have done here. But I agree it is not --
04 THE PRESIDENT: And you rule out the median because you
05 think it's wrong to exclude the extremes, is that
06 what --
07 A. No, I think when you apply averages, you do look at the
08 range of comparables and ask yourself, well, are there
09 any comparables in this database which are so extreme,
10 one way or another, that actually they don't fall within
11 the pattern, so you do reject them, and then you arrive
12 at an average. If you look at -- Danijela Ilic has
13 arrived at €6.3 million on the basis of median. If you
14 actually look at her average prices, take her
15 calculations of averages, and had she employed averages,
16 she would have arrived at over €12 million, so the
17 difference between using a median and an average is
18 €6 million, and I don't have an answer to this. It is
19 very problematic, the evidence is so diverse that I'm
20 afraid the best I could do in the circumstances is take
21 the average. But then again, when you look at the range
22 which is from €0.8 to over €3, €4, €5, then I don't
23 think a figure below €2/m² seems excessive in the
24 circumstances, but this is the part of the report which
25 I found most problematic.

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01 THE PRESIDENT: Thank you. No clarifications?
02 DR DJERIC: No, Mme President.
03 THE PRESIDENT: Then thank you very much, Mr Grzesik, for
04 your answers, this completes your examination.
05 A. Thank you.
06 THE PRESIDENT: We can now take the lunch break, until 1.30,
07 is that fine?
08 MR PEKAR: This is fine.
09 THE PRESIDENT: Good.
10 (12.29 pm)
11 (Adjourned until 1.30 pm)
12 (1.30 pm)
13 MS DANIJELA ILIC (called)
14 THE PRESIDENT: Good afternoon, Ms Ilic.
15 THE WITNESS: Good afternoon, Mme President.
16 THE PRESIDENT: You will testify in Serbian, right?
17 THE WITNESS: (Interpreted) Yes.
18 THE PRESIDENT: Now I am ready. Can you please confirm to
19 us that you are Danijela Ilic?
20 THE WITNESS: (Interpreted) Yes.
21 THE PRESIDENT: You are engaged in two valuation companies,
22 one is Sarufo and the other one is Millennial
23 Consultancy, is that right?
24 THE WITNESS: (Interpreted) Yes.
25 THE PRESIDENT: You have provided us with two expert reports

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01 in this arbitration, the first one of 23rd January 2020,
02 and the second one of 16th March 2020?
03 THE WITNESS: (Interpreted) Yes, that's right.
04 THE PRESIDENT: You are heard as an expert witness and you
05 know that I will now ask you to read the expert
06 declaration into the record, it should be on the table
07 in front of you.
08 THE WITNESS: (Declaration not interpreted)
09 THE PRESIDENT: We didn't get the interpretation.
10 THE INTERPRETER: I apologise, I read it on the Serbian
11 channel, sorry.
12 THE PRESIDENT: So we know that you have now solemnly
13 declared that you will make all your statements in
14 accordance with your sincere belief, is that right?
15 THE WITNESS: (Interpreted) That's right.
16 THE PRESIDENT: Good, then I will turn first to Dr Djeric?
17 DR DJERIC: Thank you, Mme President. Ms Ilic will have
18 a presentation, so I will leave the floor to Ms Ilic,
19 and she will obviously have a PowerPoint presentation as
20 well. Thank you.
21 THE WITNESS: (Interpreted) Thank you. Good afternoon,
22 Mme President, and all of you present here. Once again,
23 my name is Danijela Ilic, I am a professional valuer and
24 an adviser in the area of real estate. The two reports
25 that I made, that we just mentioned, had as their main

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01 topics, the first one included an analysis and critical
02 analysis of the valuation made by Dr Hern that concerned
03 the valuation of land of BD Agro; and second, an
04 analysis and critical commentary of Mr Grzesik's
05 valuation.

06 My second task was to give my own valuation as of
07 21st October 2015, and in the presentation to follow,
08 when I speak of the date of valuation, that will be that
09 date.

10 My presentation today consists of two parts. In the
11 first part, I will briefly present my valuation, the
12 methods I used, with a focus on the sources of market
13 information that I used; and in the second part, I will
14 comment on the key disagreements between my reports and
15 those by Dr Hern and Mr Grzesik.

16 To start with my valuation, for the purposes of
17 valuation, and in order to determine the cadastral
18 parcels owned by BD Agro on the date of valuation,
19 I used the documentation submitted, among other things
20 the valuation reports of other persons, primarily
21 relying on the Confineks report of December 2015.

22 After that, I carried out an inspection on
23 20th December 2019 wherever I had access from a public
24 road, although my reports were made in 2020, and the
25 effective date of valuation is 2015, and inspection was

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01 necessary in order for the valuer to get acquainted with
02 the subject of valuation, with the location and the
03 environment; after that, I identified the real estate by
04 first identifying the type of land in question, whether
05 it was construction, agricultural or forest land, then
06 I read the ownership from the documentation that was
07 available, and identified the size of the parcels in
08 each of the cadastral municipalities.

09 I also used eCadaastre to get information on the size
10 of the parcels and I cross-checked the information, all
11 the information available in the valuations made by
12 other persons, because they did valuations before the
13 date of 21st October 2015, and Confineks, for instance,
14 in their report of December 2015, said that they had
15 access to all the lists of real estate from the cadaster
16 before the valuation date, and I also had a list of the
17 main assets that included the cadastral parcels owned by
18 BD Agro.

19 In order to identify the size, the area in Zones A,
20 B, C, given that those were also parts of the parcels
21 included in this zone, the zone doesn't always include
22 entire parcels but also their parts, I also used the
23 detailed regulation plan, both its textual and graphic
24 parts, precisely for the reason that parts were included
25 there.

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01 I also used the portal GeoSrbija which is a public
02 service, that's the geographic information system for
03 the purpose of management of spatial data, that's
04 satellite image of a space where digital techniques were
05 used to include the boundaries of parcels. GeoSrbija
06 also has tools that are available, and that is drawing
07 lines and measurement of lengths and drawing and
08 measurement of polygons on this very portal, Geo-Serbia,
09 which is what I used.

10 eCadaastre is a publicly accessible service, and
11 anyone can get access there to data on land and
12 structures.

13 I have to stress that it's sometimes updated on
14 a daily basis, sometimes on a three-day basis, and
15 sometimes it might happen that it's a longer period. In
16 this case, for instance, it would be extremely
17 impractical and very expensive to use lists of real
18 estate that came printed out from the E-cadaster because
19 that's a time-consuming and expensive process. I would
20 like to stress here, that information in eCadaastre
21 corresponds to the printed information from the cadaster
22 to 99%. I know this from my experience. When you work
23 for banks, before we go to the location we read it out
24 from the cadaster and only after we do an inspection, we
25 receive a copy of the list from the client. In my

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01 professional experience, it's never happened that those
02 don't coincide.

03 I transferred the boundaries from the graphic part
04 of the detailed regulation plan to the portal of
05 GeoSrbija. Given the limited time I will not describe
06 this in detail but here on the slides, you can see, and
07 you can also see it in my second expert report, an exact
08 description of how I did this work, but of course I am
09 at your disposal for any questions regarding the
10 technique of measurement.

11 When it comes to the valuation approach, I used the
12 comparable approach, that is the market approach as it
13 is called in International Valuation Standards, IVS. It
14 gives an indication of value by comparing the subject
15 asset or land with identical or similar land for which
16 price information is available, so recent transactions.

17 If we don't have such information, then the second
18 choice of a valuer in line with the IVS standards are
19 advertised prices. Of course, I used both where
20 necessary, and I made adequate adjustments. There are
21 no two identical pieces of real estate, so in our work,
22 when using the comparable approach, adjustments are
23 necessary.

24 In order to value a large number of cadastral
25 parcels, that's a portfolio of cadastral parcels, in

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01 each of the cadastral municipalities, I assumed that the
02 value of the portfolio of parcels is equal to a sum of
03 the values of individual parcels, and in order to be
04 more efficient in valuation and what's common in
05 valuation of a portfolio of cadastral parcels,
06 I prepared representative samples.
07 When preparing the representative samples for each
08 of the cadastral municipalities, I had a list of the
09 parcels owned by BD Agro on the valuation date.
10 I looked at the sizes and classes, that is types of
11 land, in each of the cadastral municipalities.
12 I calculated the median of the area, and the scope of
13 the class for each of the cadastral municipalities, and
14 this is how I got a representative sample.
15 Further, I researched the historical information on
16 the prices, because this is the first choice of a valuer
17 when doing the comparable approach, and those are the
18 prices of transactions.
19 For this, I used the database of the Republic
20 Geodetic Authority, and when that wasn't available, when
21 it didn't exist, or where I considered them inadequate,
22 then I turned to advertised prices.
23 The difference between the representative sample of
24 the BD Agro land and the representative sample of land
25 that was advertised or subject to a transaction

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01 I adjusted through the price of the representative
02 sample of the land that was sold.
03 When it comes to the valuation of construction land
04 in Dobanovci, first of all, I researched the database of
05 the Republic Geodetic Authority, and in the period 2014
06 to 2015, there were only 13 sales that were registered.
07 I have to say that the authority has to enter all the
08 agreements on sale. There were only 13 of those. There
09 were advertised prices in that period, so there was more
10 supply than there were transactions in Dobanovci at the
11 time.
12 Of all the transactions that were registered,
13 I eliminated 11 cases of sale for several reasons. Some
14 of the reasons were that the location was not comparable
15 to the land owned by BD Agro; then some of them happened
16 after the valuation date, but I have to stress that all
17 11 of those that I eliminated, I believe that they were
18 quite a lot below my final valuation.
19 You will see it in my first report, and I saw that
20 that map was shown just a while ago, I looked at the
21 other two transactions, and concluded that in terms of
22 the location and infrastructure, and in terms of access
23 from the road, they were not appropriate to be compared
24 to the BD Agro land in Dobanovci, especially in Zones A,
25 B, C.

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01 Then I looked at advertised prices and looked at ads
02 from 2013, 2014 and 2015. I paid attention to the
03 description of the land that was advertised to be sold,
04 and paid attention to it being sufficiently comparable
05 to the case of BD Agro Dobanovci.
06 I looked at construction land and agricultural land
07 in the construction and industrial zones.
08 Since those were advertised prices, and not realised
09 transactions, at the very beginning I had a 10% downward
10 correction, given the willingness of the seller to
11 negotiate the sale. Then I prepared a representative
12 sample of the BD Agro land, and got the median size, and
13 also the representative sample of the asking prices, and
14 I got the median size of the area, and then the median
15 price.
16 By comparing two representative samples, I made
17 a correction of 30% downward in order to reflect the
18 difference between the existence of infrastructure of
19 the land advertised for sale and access to roads that
20 was mentioned in the ad.
21 And the BD Agro land in Zones A, B, C had nothing of
22 that on the valuation date. The value of the portfolio
23 of the cadastral municipalities in Dobanovci it was
24 assumed was equal to the sum of the value of individual
25 cadastral parcels.

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01 [Slide 12] Here, you can see the results of my two
02 reports. On the left-hand side, you have a table from
03 the first report, where I covered all the cadastral
04 parcels registered as owned by BD Agro, on the valuation
05 date; and on the right-hand side is my alternative
06 calculation, because I was instructed by the counsel of
07 the Respondent to eliminate certain parcels according to
08 the list submitted, where the bankruptcy trustee had
09 established that the ownership was disputed on the
10 valuation date but they were nevertheless registered as
11 owned by BD Agro, which is what I did.
12 In the second part of my presentation, I will focus
13 on the key discrepancies between my report and the
14 reports of Dr Hern and Mr Grzesik, and I will start off
15 from the establishment of the size of the land.
16 Although I was informed that Dr Hern and Mr Grzesik too
17 accepted my calculation of the size of the land in Zones
18 A, B and C, so the size on the valuation date is
19 279 hectares. Dr Hern started from an assumption that
20 all the land in Zones A, B, C is owned by BD Agro, and
21 he started from the size presented in the textual part
22 of the detailed regulation plan of 396 hectares, and he
23 deducted that figure by the size of the parcels sold by
24 BD Agro after 2008 when the general regulation plan was
25 adopted.

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01 The general regulation plan does not include the
02 data on the parts of the plots or parcels that were
03 included in Zones A, B, C so that for the purpose of
04 a valuation, the best way and the closest way to
05 establish the size of Zones A, B, C is to use the
06 graphic part of the detailed regulation plan of the
07 general regulation and of GeoSrbija, as I have already
08 described earlier.
09 Mr Grzesik, I must say, did not list in his report
10 the methodology on which he has established the size of
11 Zones A, B, C. Another major discrepancy between my
12 report and the reports of Dr Hern and Mr Grzesik are in
13 the impact of the potential for development, and its
14 impact on the market value of the land in Zones A, B, C.
15 This zone is located 30km away from Belgrade and 10km
16 away from the airport, and it is close to E70 highway
17 and E75 highway. However, it is not directly accessible
18 to them from these highways, but through the
19 intermunicipal road Sremska Gazela, the road that has
20 not been completed to this date.
21 The general regulation plan says that this land is
22 intended for commercial and industrial construction, so
23 at first sight, this may look like a good investment,
24 and the general regulation plan, although it describes
25 where one can build this or that type of construction in

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01 the Zone A, B, C, it does not allow anyone to start
02 a construction on this land; why? Because in G.3
03 section, where it says "Implementation Stages", there is
04 an explicit note which says that the construction may
05 not begin until the primary infrastructure has been
06 built, including road infrastructure, that's
07 Sremska Gazela, with all the planned crossroads, as well
08 as until the entire sewage system and water supply
09 system and gas grid has been put in place, as well as
10 the power stations and so on.
11 So without this, one cannot count on a reasonably
12 near period of time into the future when one can hope to
13 start construction.
14 I have taken all this into account in my report.
15 I have selected comparable values, I have actually made
16 adjustments to these comparable values, I have taken
17 into account the perception of an average buyer or
18 developer and all the risks that impact the development.
19 So every developer is interested into how long one
20 has to wait for the primary infrastructure, if there is
21 no such infrastructure in place at the moment, and when
22 one can start construction.
23 However, Dr Hern and Mr Grzesik did not take this
24 into account. They feel that the key factor that has an
25 impact on the value of the land in Zones A, B, C is the

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01 potential for development and the location advantage.
02 However, the vital issues to any developer that I have
03 just described were not taken into account, and it is
04 these issues that are the key issues based on which the
05 developer offers a price for such land.
06 The next discrepancy between our reports, I would
07 call it a deficiency in the reports of Dr Hern and
08 Mr Grzesik, is the fact that their opinion relies on
09 information that they had not obtained through
10 investigation of the market itself, they had not done
11 such investigation on the valuation date.
12 Instead, they solely rely, for example Dr Hern
13 relies entirely on the results of valuations conducted
14 by other valuers, without having verified such
15 valuations, and without assessing the credibility of
16 such valuations. They simply overtake the results of
17 other people's work.
18 Both Dr Hern and Mr Grzesik rely, in preparing their
19 valuations, on the valuations by tax authorities, and
20 that is not the same thing as the valuation of property.
21 The documents that the tax authorities issue are not
22 transparent enough for any valuer to do a proper
23 verification and to do a proper assessment of the
24 credibility.
25 Among the information they used, some came after the

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01 valuation date, and some were quite obsolete. RICS is
02 a technical document no. 26 from 2012, so the document
03 is RICS IP, it is on comparable evidence in property
04 valuation.
05 Here it says that the assessments by tax authorities
06 are done for taxation purposes, and they are undertaken
07 in accordance with the laws governing that area, and the
08 regulations that they are given, and they are not the
09 same as market valuation that is done by a valuer, in
10 line with internationally recognised standards. For
11 that reason, the result of a tax assessment conducted by
12 a tax authority is not the same as the market value
13 established by a qualified valuer in line with
14 internationally recognised standards.
15 In Serbia, there is an instruction on how to assess
16 tax for transfer of property. We have it in the
17 evidence. Among other things, this instruction tells us
18 how we should value land, and the same instruction is
19 used for valuation of land for the purposes of
20 expropriation. For example, this instruction says that
21 a tax authority does not do the exact inspection, they
22 do a desktop analysis; if, for example, in a land parcel
23 there is a power line, this has an impact on -- and if
24 that has an impact on the market value, the
25 tax authority will not know about this, because they

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01 never go to visit the site. So practically, the
02 physical characteristics are not compared, although in
03 this instruction one can use corrective factors such as,
04 for example, location, vicinity of the road,
05 infrastructure, urban settlements, the vicinity to the
06 urban settlements, and so on.
07 What is important is that the tax authority uses
08 its previous tax assessments for comparison, and not
09 sale prices or advertised prices. It also says here
10 that corrections or adjustments made by the Tax
11 Authority can go within the range of 10% below or as
12 much as 50%, for example.
13 On the other hand, a qualified valuer, in
14 international standards, nowhere does it say how much
15 a valuer can go up or down. It is a matter of their
16 professional judgment. They use their local knowledge
17 and their own experience as a valuer.
18 Of course, Dr Hern and Mr Grzesik rely on this kind
19 of documentation. As we will see in a minute, we will
20 see what documents there are that actually were used for
21 the comparable values.
22 What we have on the screen [slide 19] is the Tax
23 Authority document, CE-162, and we see here, at the top,
24 that the Tax Authority is using its previous
25 assessments, there is no mention of the sale price.

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01 Also, the Tax Authority never adjusts something for
02 size, and it is absolutely pointless that 50 m2 has the
03 same valuation as 486 m2.
04 In this slide [20], we can see Exhibit CE-163 which
05 shows that there is an empty slot in the line called
06 "Agreed Price", there is no mention of the transparency
07 of the assessment. There is no description of the
08 corrective factors used, or whether any corrective
09 factors were used. All we have is this RSD 6,000, which
10 is the assessment.
11 I have just mentioned that this instruction on how
12 real estate transfer property tax is established, the
13 same is used for expropriation, in line with the
14 Expropriation Law, Article 42. So in practice, that
15 assessment is not based on the market -- it is not
16 a market assessment, nor does it express market value.
17 Now I would like to focus in greater detail on this
18 key evidence, CE-160, that Mr Grzesik relies on as the
19 best evidence, and Dr Hern forms the upward limit
20 according to the Confineks results -- sorry, according
21 to the result from Mrgud report, but also supports his
22 findings with this document.
23 This is tax assessment by Tax Authority requested by
24 the Construction Land directorate of the City of
25 Belgrade relating to a very important, strategically

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01 important project that is developed by the Republic of
02 Serbia, it is intermodal terminal and logistic centre in
03 Batajnica, so this is the assessment of over 150
04 parcels, and I must tell you right now that in the
05 picture on the right that comes from the report of
06 Mr Grzesik [slide 22], not all parcels are entered here
07 that are located in all the documents that are listed
08 here. For the purposes of the scope of the plan of
09 intermodal terminal, the state here has practically
10 expropriated more, and why this is important, I'll tell
11 you later.
12 In the picture on the left, we can see that the
13 distance is 15 or over 15km, the distance between these
14 Zones A, B, C and the land assessed by the Tax
15 Authority, so the distance is over 15km.
16 In the picture on the right, Mr Grzesik says this is
17 close to the Belgrade Roundabout, this highway A1, the
18 official name, but he missed to mark a very important
19 thing here, namely to say that the scope is bordered by
20 a railroad, which is of vital importance to intermodal
21 terminals. You can also see that in the immediate
22 vicinity of Batajnica and the Šangaj settlement.
23 So this land has no problem with the primary
24 infrastructure. Far from it. The vicinity of the
25 railroad is for fact and Batajnica settlement in the

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01 vicinity of the highway, all of this is shown here.
02 Intermodal terminals are so-called dry ports that
03 serve for the transshipment of terminal goods for
04 warehousing and subsequent transport to distributors,
05 and this is of vital importance for the Republic of
06 Serbia, so it was adopted in 2015, and I must say that
07 in 2017 and 2018, the negotiations were already underway
08 on the selection of the bidder, on the developer, and
09 the funding was through the IPA funds.
10 At that time, the plan was adopted in 2015, and
11 until the beginning of construction in 2020, preparatory
12 activities had already been taken.
13 If we were to compare this with the land in Zones A,
14 B, C, which had the general regulation plan in 2008,
15 which did not allow one to build until this day, and
16 I have visited this site recently, I have visited Zones
17 A, B, C, there is no mention of any development going on
18 there, so what's needed is for detailed regulation plans
19 to be adopted.
20 Sremska Gazela bridge, the plan is part of the
21 detailed regulation plan, it was adopted in 2011. All
22 the primary and this major infrastructure -- it must
23 rely on detailed regulation plans.
24 THE PRESIDENT: Sorry to interrupt you, but you have gone
25 over the 30 minutes, and so -- no, you can of course

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01 finish and conclude, I see that you are almost at the
02 end, but you should know that you need to wrap up.
03 THE WITNESS: (Interpreted) Thank you. So by way of
04 a conclusion, Dr Hern and Mr Grzesik did not do their
05 valuations in line with internationally recognised
06 standards, and they relied on data that were indirect,
07 and that could not be verified adequately, and they
08 could not assess their credibility to an extent that is
09 required for their opinions to be based on them.
10 So I believe their valued amounts are not realistic,
11 and do not correspond to the market values, and this
12 ends my presentation.
13 THE PRESIDENT: Thank you. Yes, please.
14 Cross-examination by MR PEKAR
15 Q. Thank you, Mme President. Good afternoon, Mrs Ilic.
16 A. Hello.
17 Q. Ms Ilic, my name is Rostislav Pekar, I am one of the
18 representatives or counsel to the Claimants, and I will
19 ask you a few questions regarding your two expert
20 reports, your presentation, and also a few documents
21 that you referred to.
22 I will do my best, Ms Ilic, to formulate my
23 questions as clearly as I can, and most of my questions,
24 if not all, I believe, can be answered by a simple yes
25 or no, and I would be very grateful if you could try to

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01 answer by a simple yes or no, if it is appropriate.
02 Are we in agreement?
03 A. (Interpreted) Yes.
04 Q. I would like to start with your first expert report, in
05 paragraph 2.4 of your first expert report, and we will
06 show that on the screen, and you may also consult the
07 hard copy that you have in front of you. You note that
08 since 1998, you have been "engaged in valuation of real
09 estate mainly for the purpose of disputes and
10 privatization of socially and state-owned companies".
11 Can you see that?
12 A. (Interpreted) Yes, I can see that.
13 Q. Who hired you for valuation of real estate for the
14 purpose of privatization of socially and state-owned
15 companies?
16 A. (Interpreted) I was part of a team of forensic experts,
17 court experts, and we were always recruited by the
18 Privatization Agency. I think that was the name of the
19 agency at the time, because we had several changes of
20 the name of the institution, but at the time, I think
21 the name was Privatization Agency.
22 Q. Would it be fair to say that you worked on assignments
23 from the Privatization Agency from 1998 until 2014/15?
24 A. (Interpreted) No.
25 Q. So in which years did you work for the Privatization

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01 Agency?
02 A. (Interpreted) I have never been an employee of the
03 Privatization Agency. As I said, I have been hired
04 within a team, as a part of a team, and teams were
05 mostly managed by foreign consultants. Specifically
06 when it comes to me, let me share an example.
07 Rothschild Consultancy --
08 Q. Ms Ilic, this is not at all what I asked you. I asked
09 you to tell me the years when you were hired to work for
10 the Privatization Agency, and if you intend to put a lot
11 of emphasis on the specific words used, like "work"
12 versus "hire", then we might switch into English,
13 actually that would save us potential translation
14 issues.
15 A. (Interpreted) Okay, I feel more at ease speaking in
16 Serbian. So in 2005, I started working at the EFG Bank
17 and back then I was not allowed to do any external work.
18 Q. Ms Ilic, I was not asking when you did not work, but
19 I was asking you when you did work. Could you please
20 answer my question?
21 A. (Interpreted) I cannot remember exactly, but in the
22 period up to 2005, I was hired as a court expert because
23 only court experts were allowed to do valuations having
24 such a purpose.
25 Q. So you were hired on assignments from the Privatization

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01 Agency between 1998 to 2005, correct?
02 A. (Interpreted) I would say it's incorrect. Unfortunately
03 it's not correct, because the privatizations started
04 only once the government was changed in Serbia, after
05 2000, let's say 2001/2002, that's when it started, the
06 privatization process.
07 Q. So then why did you refer to 1998 in your paragraph 2.4?
08 DR DJERIC: Mme President, I think that --
09 THE PRESIDENT: This is an important question for us, we
10 need to assess also the independence of this expert, and
11 I don't remember reading in her reports that she had
12 been previously working for the Privatization Agency, so
13 I am not saying it is a problem but it would be nice to
14 have transparency.
15 I understand that you are saying you were part of
16 a team that worked on valuations for the Privatization
17 Agency from 2000 to 2005, is that right, or did
18 I misunderstand?
19 A. (Interpreted) We could say from 2000 until 2005, yes, we
20 could say it is so.
21 DR DJERIC: Mme President, if I may, the witness started to
22 explain the nature of her engagement with the
23 Privatization Agency which you found interesting to
24 note, and then she was cut off by Mr Pekar when she
25 mentioned Rothschilds Fund, so maybe if she could say

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01 the nature -- so she was not hired by the Agency, she
02 was hired by external consultants of the Agency.
03 THE PRESIDENT: Yes, whatever it is, please tell us now what
04 your relationship was then with the Privatization
05 Agency.
06 A. (Interpreted) I don't have any direct links with them
07 whatsoever. I was never hired directly by them. As
08 I said, there would be a tender announced by the
09 Privatization Agency, and for the needs of those tender
10 I had some engagements. Local companies were not really
11 able to win such tenders. I worked on big projects,
12 those were foreign consultancy companies -- yes, please,
13 I am sorry.
14 THE PRESIDENT: Who paid your fees?
15 A. (Interpreted) The consultancy, the consultancy firm for
16 which I was working, but it was ultimately for the needs
17 of the Privatization Agency.
18 THE PRESIDENT: Thank you, that is clear.
19 MR PEKAR: Ms Ilic, did you have any similar engagements for
20 the benefit of the Privatization Agency at any time
21 after 2005?
22 A. (Interpreted) No.
23 Q. Did you have at any time after 2005 any engagements for
24 any Serbian public institutions, any ministries, any
25 agencies other than the Privatization Agency?

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01 A. (Interpreted) You know what, there's a lot of experience
02 in my background, so yes, I did valuations for tax
03 authorities. I have been hired in the capacity of
04 consultant to deliver lectures at the level of local
05 governments. I do hold a lot of lectures on the topic
06 of property valuation, because I am the President of the
07 National Valuers Association. So it is quite a lot of
08 experience, I am referring to more than 20 years of
09 experience now, and now to tell you specific examples of
10 when I was hired and where, if you want to ask me to
11 respond to the question whether I applied to tenders
12 announced by public companies or ministries, no, the
13 answer is not. I have two small family companies and we
14 do not apply to such tenders.
15 Q. In which years did you prepare tax assessments?
16 A. (Interpreted) I could not remember now.
17 Q. Did you prepare any tax assessment this year, or any of
18 your companies?
19 A. (Interpreted) No.
20 Q. Last year?
21 A. (Interpreted) I did not. I am not the owner of these
22 companies, however I am not the director either, I am an
23 employee in the position of a senior valuer, so I am not
24 sure what all of the things that the companies were
25 engaged in, but personally I was not engaged to provide

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01 such a service.
02 Q. So if we look at paragraph 1.15 of your report, you
03 state there that you have no connection with any of the
04 parties other than as said below, can you see that? At
05 1.15 of your first report.
06 A. (Interpreted) Could you show it, please, on the screen?
07 Because the letters here in front of me are a bit small
08 for me.
09 Q. Sorry, it is not in 1.15 actually. Do you have an
10 independence declaration in your report, Ms Ilic?
11 A. (Interpreted) Naturally, yes.
12 Q. Here you state:
13 "... I have no conflict of interest of any kind with
14 any of the Parties, their legal advisers and the
15 Arbitral Tribunal ..."
16 Correct? You do not disclose any of your work --
17 A. (Interpreted) It's correct.
18 Q. You do not disclose any of your direct or indirect
19 assignments for the benefit of the Privatization Agency,
20 you do not disclose the fact that you, or the firms that
21 you own, have been preparing tax assessments, it's not
22 included in this declaration, is it?
23 A. (Interpreted) Yes, it's not included because I do not
24 find any of that to be relevant, because this refers to
25 me, this document bears my signature, this is my

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01 declaration, not the declaration or the signature of the
02 director of the company, so I am making the declaration
03 that I didn't do personally any assessments. The
04 company for which I am working has nothing to do with my
05 signature attesting to my independence in this case.
06 THE PRESIDENT: Can I just ask a question, because I am
07 a little confused. I understood you to say before that
08 you had done valuations for the tax authorities, but you
09 did not remember in what year, and you have not done one
10 this year. Is this you or is this someone else in your
11 company?
12 A. (Interpreted) I was referring to myself. Myself.
13 THE PRESIDENT: Thank you.
14 MR PEKAR: Now I would like you to turn to paragraph 9.79 of
15 your first expert report, please. There you state, in
16 sub-paragraph four actually, a little bit further down:
17 "Only adoption of Detailed Regulation Plan provides
18 legal conditions to start development."
19 Can you see that?
20 A. (Interpreted) Yes, it's the one marked in yellow now on
21 the screen, okay.
22 Q. Is it your testimony that the land covered by the
23 general regulation plan of BD Agro Dobanovci could not
24 be developed until a detailed regulation plan is adopted
25 for the same land?

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01 A. (Interpreted) As I said a while ago, for example, the
02 road Sremska Gazela, which goes through A, B, C, most of
03 it goes through A, B, C --
04 Q. Sorry to interrupt --
05 A. (Interpreted) Please don't interrupt me, I have to
06 complete, because it's really relevant to your
07 questions. So the detailed regulation plan for primary
08 infrastructure, and this is Sremska Gazela road, which
09 goes throughout the entire Zone, was adopted in 2011.
10 I have not seen in my professional practice primary
11 infrastructure being built without a detailed regulation
12 plan, so substations have a detailed regulation plan, so
13 without primary infrastructure for which detailed
14 regulation plans have not been adopted, and this relates
15 to Zones A, B, C, you can simply not start development.
16 THE PRESIDENT: So actually, I understood your answer to be
17 yes?
18 A. (Interpreted) Yes.
19 THE PRESIDENT: So you could have said yes, right? And then
20 if you think the yes is not understandable without an
21 explanation, then you give the explanation, but we
22 simply need to have a better way of proceeding here,
23 because otherwise we don't really understand your
24 evidence.
25 MR PEKAR: Thank you, Mme President.

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01 My question though related to the same land, to the
02 land plots which are identified in the general
03 regulation plan, these are land plots on which Sremska
04 Gazela is not to be built; do these same land plots
05 require to have a document called detailed regulation
06 plan before construction can be started on these land
07 plots? A detailed regulation plan for these land plots,
08 not a detailed regulation plan for Sremska Gazela.
09 A. (Interpreted) Maybe not a detailed regulation plan as
10 such, but what they need to have is urban designs, urban
11 development designs. Naturally, the law on construction
12 is not decisive whether it needs to be an urban
13 development design or another type of planning document.
14 Seeing that we are referring to lack of primary
15 infrastructure, it could happen, but nobody knows this
16 for sure, that at some point in the future a detailed
17 plan might be required, some form of zoning or urban
18 development document would certainly be requested,
19 primarily because cadastral parcels are not formed.
20 This is still agricultural land, these are still -- I am
21 sorry, the construction plots are not formed, these are
22 cadastral parcels, this is agricultural land which are
23 partially in the zone, so they need to be split, after
24 that they need to be merged, which means that various
25 reparcelling and new parcelling designs would have to be

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01 developed, et cetera, et cetera.
02 So on the basis of this document, the general
03 regulation plan, you cannot begin development.
04 Q. So do I understand correctly that with respect, the
05 answer to my specific question, which was very precise
06 and detailed -- sorry, and related to detailed
07 regulation plan for the same land plots, leaving aside
08 infrastructure, the answer actually is no, this document
09 is not needed for the land plots?
10 A. (Interpreted) I cannot respond in that way to this
11 question. According to my opinion, it would be needed,
12 but however, I am not an urban development expert.
13 However, the law also does not stipulate in details the
14 exact point in time when it's needed. These are
15 framework things when you need the detailed or general
16 regulation plan, so the general regulation plan for
17 Zones A, B, C is actually a private initiative by
18 BD Agro, the state was not of the opinion that the time
19 was right for development there, because there was no
20 primary infrastructure there.
21 So I am of the opinion that this was a private
22 initiative -- well, I don't know for which reasons, but
23 when primary infrastructure is lacking, you cannot start
24 development.
25 Q. Ms Ilic, you also mentioned reparcelling, and the need

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01 for the reparcelling to be properly documented. Would
02 you agree with me that such a document is prepared by
03 the investor, by the owner of the land, who wishes to
04 change the borders of its parcels?
05 A. (Interpreted) Certainly by the buyer, somebody who wants
06 to buy a certain portion will be developing reparcelling
07 design. It could also be done by the owner. If the
08 owner wishes to sell them as finished construction
09 plots, it can be done by the owner. It doesn't have to
10 be done exclusively by the buyer.
11 Q. If the new borders of the new parcels are in accordance
12 with the general regulation plan, the cadastral
13 authority will approve the reshaping of the parcels,
14 correct?
15 A. (Interpreted) I am not an expert on urban planning, this
16 is the work of urban planning experts, so the entire
17 procedure regarding the approval of the reparcelling
18 designs is not something that falls under my competence.
19 Q. In your second expert report, paragraph 2.89, you
20 referred to the conditions which are set out in the
21 general regulation plan, correct? And you also
22 displayed these conditions on the screen during your
23 presentation today.
24 My question is the following: all these conditions
25 relate to the construction of the Sremska Gazela road,

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01 don't they?
02 A. (Interpreted) The conditions listed in paragraph 2.89,
03 only the first one of them has to do with Sremska Gazela
04 and the accompanying crossroads. The others apply to
05 the other infrastructure, that's main water supply,
06 sewage collector, rainwater sewage collector, gas grid,
07 as well as telecom installations, and electrical
08 installations. The general regulation plan gives in
09 detail for each type of infrastructure what's necessary,
10 and requests further elaboration through a planning
11 document.
12 Q. Well, Ms Ilic, there is not a word about further
13 elaboration, correct?
14 A. (Interpreted) Not in this paragraph, but in the general
15 regulation plan --
16 Q. Thank you. Could you please focus on the second bullet
17 point? It says:
18 "Entire infrastructure corridor in profile of the
19 road 'Sremska Gazela'; main water supply, collector
20 sewage, rainwater sewage collector, gas grid of the
21 Republic of Serbia, telecom cabling ..."
22 Can you see that? So this will be built at the same
23 time when the road is built, will it not?
24 A. (Interpreted) In this part, yes, but this primary
25 infrastructure and the major infrastructure that has to

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01 do with the main water supply, regional infrastructure,
02 intermunicipality infrastructure, we cannot look at this
03 part in isolation. Yes, in this part it will be built
04 alongside the profile of Sremska Gazela, but here we are
05 talking about intermunicipality infrastructure.
06 Q. And the detailed regulation plan for the entire Sremska
07 Gazela construction was adopted in 2011 you said during
08 your presentation, do I remember well?
09 A. (Interpreted) Yes.
10 Q. This section G.3, "Stages in realisation", actually does
11 not relate to any conditions linked to intra-communities
12 infrastructure and so on, does it?
13 A. (Interpreted) In this section, G.3, it doesn't talk
14 about it, but I stress here again that it's explicitly
15 stated in the textual part of the general regulation
16 plan, in section B.3. I think it's B.3. These are now
17 too many documents to know just off the top of my head.
18 Q. Let's look at the document, we will put it up on the
19 screen, but before we -- actually, we will look at G.3
20 then. [CE-143]
21 You said B.3, so let's go to B.3.
22 A. It's there.
23 DR DJERIC: Can we give the witness a paper copy of the
24 plan?
25 MR PEKAR: No, we do not have that because she actually does

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01 not refer to that anywhere in her reports.
02 DR DJERIC: Can I give the witness a copy of the plan,
03 please?
04 THE PRESIDENT: Yes.
05 A. (Interpreted) Unfortunately, this is too small a print.
06 MR PEKAR: So could we go to G.3 then? It is derived from
07 the Serbian alphabet:
08 "G.3. Implementation stages."
09 Can we agree that actually, what you reprinted in
10 your report and also presented this morning is all there
11 is with respect to conditions to be met?
12 A. (Interpreted) It mentions the conditions where
13 construction plots are formed out of parts of cadastral
14 parcels. Lower tier plans have to be made, be it urban
15 development design, or reparcellation design, which is
16 part of an urban development design.
17 Q. Could you tell me where in G.3 you see that?
18 A. (Interpreted) Not in G.3, it's mentioned in the
19 document. G.3 has to do only with the implementation
20 stages.
21 Q. And you repeated today that there is now not a dispute
22 that the construction land in Zones A, B and C, you
23 calculated the total area of that land to be
24 279 hectares, correct?
25 A. (Interpreted) Yes, correct.

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01 Q. Then you used that entire area to calculate the price of
02 the total of the construction land by multiplying
03 279 hectares by your price per square metre, correct?
04 A. (Interpreted) I made a valuation of the construction
05 land in Dobanovci, and before that, in my report I had
06 explained why I didn't treat Zones A, B, C separately
07 from other construction land in Dobanovci. My valuation
08 had to do with the entire construction land in
09 Dobanovci.
10 Q. If we go to 9.1, which is at the end of your chapter 1,
11 surprisingly, in the first report, the total area of
12 construction land in Dobanovci that you include in your
13 calculation is approximately 285 hectares, correct?
14 A. (Interpreted) Yes.
15 Q. And that's the sum of 279 hectares for A, B, C and
16 approximately 6 hectares for the farm and the buildings
17 there.
18 A. (Interpreted) For the land, I valued the land.
19 Q. I meant the land occupied by the buildings. And you
20 made that calculation personally, did you?
21 A. (Interpreted) Yes, I did.
22 Q. In the second report, you were asked to prepare an
23 alternative valuation which excludes certain land that
24 was included in the 279 hectares in your first
25 valuation, correct?

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01 A. (Interpreted) Yes, correct.
02 Q. Does that alternative valuation replace your valuation
03 in the first report?
04 A. (Interpreted) Those are my two valuations. The second
05 valuation, as I said, was done upon the instructions
06 from the counsel of the Respondent. So that was not
07 a new valuation, but an alternative calculation, because
08 I didn't change the unit values in the valuation,
09 I simply used the list submitted to me by the
10 Respondent.
11 Q. So your first valuation is still valid, and in addition
12 to it, you also offered another alternative valuation in
13 the second report, is that a fair summary?
14 A. (Interpreted) Yes, it was requested by the Respondent,
15 yes.
16 Q. Did you independently assess the reasonableness of the
17 instruction to exclude certain land in the alternative
18 valuation?
19 A. (Interpreted) No, it wasn't in my area of work.
20 I received instructions from the counsel of the
21 Respondent, and I acted upon those. I didn't go into
22 the legal basis of that. Neither did I receive any
23 information on the legal basis.
24 Q. Would you then agree with me generally that to be
25 relevant for valuation, the reasons for exclusion must

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01 exist as of the valuation date?
02 A. (Interpreted) Of course. In any case, they need to
03 precede the valuation date. I wouldn't discuss this at
04 all, because this is not my domain. I wouldn't enter
05 a discussion regarding the legal basis for excluding
06 these parcels. I acted upon the instructions from
07 counsel of the Respondent. I received a list of parcels
08 for which the bankruptcy trustee had established that
09 the ownership was disputed, and this is how I acted.
10 This is an alternative calculation. I wouldn't say this
11 is fresh valuation, this is only an alternative
12 calculation, where some parcels were left out, as per
13 the instructions received from counsel of the
14 Respondent.
15 Q. Let us now focus on the price per square metre that you
16 propose for the construction land in Dobanovci. Please
17 turn to paragraph 9.89 of your first expert report, and
18 you note there that you identified 13 actual
19 transactions with construction land in Dobanovci,
20 correct?
21 A. (Interpreted) Yes, correct, that is what was in the
22 register of the Republic Geodetic Authority.
23 Q. Are these 13 transactions described in your report by
24 the land plot number, the size of the land, the price
25 per square metre, and the date of the transactions?

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01 A. (Interpreted) No, I gave a map, a picture, this is what
02 we get as an excerpt from the Republic Geodetic
03 Authority. I didn't provide this information, because
04 I didn't rely on it.
05 Q. So you excluded 11 of these transactions without
06 providing any detailed information other than the map in
07 figure 34, this is right on the following page of your
08 report, is that correct?
09 A. (Interpreted) Yes, that's correct.
10 Q. You did not explain in your report how exactly the
11 location of these parcels makes them incomparable, did
12 you?
13 A. (Interpreted) No, I didn't do it explicitly. This
14 information is publicly accessible on the website of the
15 Republic Geodetic Authority, and in my presentation
16 I already said that I eliminated them, because some of
17 them were after the valuation date, some had extremely
18 low values, one of them was questionable, and I called
19 the real estate cadaster to ask what currency that was
20 in, and they told me that the agreement had not been
21 entered correctly, and that I shouldn't take into
22 account this information. Some were not adequate in
23 terms of the location, yes.
24 Q. Actually, there may be mistakes in the database, right?
25 A. (Interpreted) When it seems to me that a piece of

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01 information that I get from the Republic Geodetic
02 Authority is illogical, or that something is not okay,
03 that it's an outlier, or that it's incomplete, then
04 I call them and we have this possibility to directly
05 communicate with the persons responsible for the
06 database. We have this possibility as professional
07 valuers. And then they enter the agreement, and explain
08 it to us, what it's about.
09 Q. But you did not deem it necessary to share any of this
10 with the Tribunal or the Claimants in your expert
11 report, did you?
12 A. (Interpreted) I didn't select those for my comparators.
13 In the second cadastral municipalities, you can see
14 there were more than 300 transactions. I have to be
15 consistent in my work. If I enter it for one cadastral
16 municipality, then I would have to enter the 300 from
17 the other one. That would be inconsistent.
18 I did not rely on them in my discussion. I simply
19 took over the information from the Republic Geodetic
20 Authority and I looked at two pieces of information in
21 my valuation, and these are shown on the map.
22 Q. Yes, we will come to it. Would you just agree with me
23 that on the basis of my naked eye observation, which is
24 all I am left with, for example numbers 12, 9, they all
25 seem to be located in an industrial zone at the

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01 outskirts of Dobanovci, correct?
02 A. (Interpreted) Yes, they are very close to the parts of
03 the urban land where there is infrastructure and access
04 from the roads, yes.
05 Q. In paragraph 9.90, you explained that after eliminating
06 these 11 transactions, actual transactions, due to their
07 location, you also eliminated the remaining two
08 transactions since they are located near urbanised
09 residential areas, correct?
10 A. (Interpreted) Yes.
11 Q. We have established that in the first step you
12 eliminated 11 out of 13 because they were not
13 comparable, correct, due to their location?
14 A. (Interpreted) No, what I said in my presentation was
15 that I looked at different factors too. I said that
16 three or four, I think, were after the valuation date,
17 and that most of those that I had discarded had lower
18 prices, some had extremely lower prices, much lower than
19 my assessment, and one wasn't clear enough, and I called
20 the cadaster to check. So it was not based on location
21 only.
22 Q. Yes, but in 9.89, the only characteristic that you
23 mention is location, is it not?
24 A. (Interpreted) Yes. Yes.
25 Q. In any event, the remaining two transactions which

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01 survived the first step were comparable, were they not?
02 A. (Interpreted) These two transactions that I looked at
03 were not comparable with BD Agro land in Zones A, B, C
04 and remaining construction parcels, because they had
05 direct access from the road. For example, the one
06 marked as A is located next to a hall, so it has full
07 access to the infrastructure, it has access from the
08 road, the picture shows this is asphalt road, so
09 I thought they were not comparable -- in my opinion,
10 they were not comparable.
11 Q. So we also have the transaction marked with a C, can you
12 see it? On the left side of the picture.
13 A. (Interpreted) Yes.
14 Q. Do you maintain, Ms Ilic, that this is close to
15 a residential area?
16 A. (Interpreted) Let me see. One uses this road to get to
17 BD Agro farm, and there, there are a lot of residential
18 facilities. Whether this was legal construction or not,
19 I don't know, I would rather not comment. But yes, at
20 the very entrance to the farm there are residential
21 facilities. On both sides of this road there are
22 residential facilities.
23 Q. If we just look in greater detail, so would you agree
24 with me, the north and west of point C, there are
25 fields?

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01 A. (Interpreted) Yes.
02 Q. Across the street to the east, we can see some pretty
03 substantial roofs which definitely do not belong to
04 residential buildings, would you agree with that?
05 A. (Interpreted) Yes.
06 Q. And south, we have the complex of the farm, don't we?
07 A. (Interpreted) Yes.
08 Q. Now let's turn to appendix 2.6 of your first report, and
09 more specifically, let's go to page 25 of the appendix.
10 There you provide more detailed information on the two
11 transactions that we have just looked at, correct?
12 A. (Interpreted) Yes, that is correct.
13 Q. So the land that you said was close to an asphalt road
14 in the eastern part of the picture that we had is the
15 one which here is marked as number 1, correct?
16 A. (Interpreted) Yes.
17 Q. It sold in August 2015 for €33, almost €34/m², correct?
18 A. (Interpreted) Yes, correct.
19 Q. The another one in the western part, left side of the
20 map, which is close to the farm, sold in July 2015 for
21 €28.40, correct?
22 A. (Interpreted) That is correct.
23 Q. Now in paragraph 9.80 of your first report, you state
24 that it is appropriate to use the same comparables for
25 the valuation of the land in Zones A, B and C and to the

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01 land of the farm, correct?
02 A. (Interpreted) Yes, correct.
03 Q. Let's now go to paragraph 9.91 and 9.92 of your report.
04 Do I understand correctly from these paragraphs that
05 instead of relying on the 2 or 13 actual transactions,
06 you relied on five asking prices for construction land
07 in Dobanovci?
08 A. (Interpreted) I don't know what you mean by saying
09 instead. I explained why I rejected those.
10 Q. What I want to establish right now is that you relied on
11 five asking prices for construction land in Dobanovci,
12 correct?
13 A. (Interpreted) That's correct, five advertised prices.
14 Q. We can't see that from table 22 actually, that there
15 were only five asking prices, but we can see it from
16 appendix 2.6, page 28. Ms Ilic, do you provide a map
17 showing where the respective land is located?
18 A. (Interpreted) No, I did not include a map. However, in
19 the advertisements there is always a map, so when an ad
20 comes out, the real estate agent profession is well
21 regulated in our country by law, and they have to
22 strictly observe the way in which advertisements are
23 placed. As a result, maps are always part of ads, but
24 this is data from my private database, these are
25 historic data, where I preserved the picture of the

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01 advertisement as well as the text from the same ad, but
02 definitely they are located in Dobanovci cadastral
03 municipality, with one exception with its location in
04 Batajnica.
05 Q. Ms Ilic, we have just seen that you were very picky when
06 it came to actual transactions, and you showed great
07 sensitivity to the exact location within Dobanovci, when
08 it came to these actual transactions. Isn't it
09 inconsistent then to accept asking prices, only five of
10 them actually, and one of them not even in Surcin,
11 without looking at the specific location of the land
12 covered by these asking prices?
13 A. (Interpreted) The question was whether it was
14 inconsistent, can you please --
15 Q. Yes, I will summarise myself. Was it consistent for you
16 not to look at the specific locations of the land
17 covered by the asking prices, even though you had been
18 very sensitive to the specific location of the land
19 subject to the actual transactions that you identified?
20 A. (Interpreted) Thank you. No, I felt that for the
21 correction of the two samples to be more than 50%, had
22 I taken these into account, as you could see in the
23 picture, one is located next to the asphalt road, with
24 all the infrastructure provided, it is land that can't
25 be compared with BD Agro land; if I were to do

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01 corrections or adjustments over 50%, which is what
02 Mr Grzesik said in his report, if we do over 50% of
03 adjustments, then it is not a comparable value.
04 So I did not take the two transactions into account,
05 because in that case, I would have had to do over 50% of
06 adjustments.
07 Q. If I understand correctly, the answer to my question is
08 "No, I was not consistent", right?
09 THE INTERPRETER: The interpreter apologises, did counsel
10 say "No, I was not consistent" or "I was not
11 inconsistent", sorry?
12 A. (Interpreted) The two --
13 THE INTERPRETER: The interpreter apologises, I tried to
14 make sure I heard you correctly, sorry, if we can go
15 back, please?
16 MR PEKAR: I will ask my question again. You excluded
17 actual transactions on the basis of specific locations,
18 you did not look at the specific locations for asking
19 prices, and you maintain that this is a consistent
20 approach; do I understand that correctly?
21 A. (Interpreted) I must say that you are putting the words
22 in my mouth that I did not say. These two examples,
23 these two transaction samples included in my map,
24 because of the access to road, and because of the
25 infrastructure, had been rejected because I would have

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01 had to adjust them by over 50% because of the access to
02 road, to the asphalt road, that you could see, one of
03 them is lying directly next to the land, and next to the
04 hall, the big construction, full infrastructure, full
05 access to the road. So it had been rejected because my
06 adjustment would have had to be over 50%. It is marked
07 as A in this picture. So can you see the asphalt road,
08 from Marsala Tita road? It's the main one going right
09 through Dobanovci. Also, sample C, item 2, has direct
10 access from the asphalt road and the infrastructure.
11 Q. So C has access from the asphalt road, which also
12 connects the farmland -- I mean, the land of the farm,
13 I should say, right? The farm is actually on the same
14 road, Ulica Ive Lole Ribara, isn't it?
15 A. (Interpreted) I would like to clarify something here.
16 The land, or other construction land, as it's called,
17 I can't remember off the top of my head, but it's around
18 15 hectares. We are talking about A, B, C Zone, which
19 has 279 hectares. The land of the farm as I explained
20 in my report is around 15 hectares, yes, that part has
21 infrastructure, has everything, but if you compare it
22 with the entire land of 279 hectares in Zone A, B, C,
23 which doesn't even have access from the asphalt road, or
24 in some points I just could not physically access the
25 land, because it was just a meadow, a cornfield or wheat

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01 field.
02 Q. Ms Ilic, what do you think is better from the
03 developmental potential for the purposes of building,
04 for example, large warehouses, logistical centres,
05 industrial complexes, et cetera; an access from a small
06 municipal road, or future access from Sremska Gazela?
07 A. (Interpreted) Yes, one day, when it's developed, it
08 would be an intermunicipal road, then naturally that
09 would make a better access, because the road would be
10 a major road. That's why it's of course important that
11 you have more or less direct access.
12 Q. Are you aware, Ms Ilic, of the fact that in 2014, the
13 City of Belgrade allocated first money for the
14 construction, or the preparatory works for the
15 construction of Sremska Gazela, and first expropriations
16 were already started?
17 A. (Interpreted) The funds invested you are talking about?
18 I don't know. I could see in the documentation
19 somewhere, somewhere it says that the City of Belgrade
20 budgeted this, but this does not mean that this budget
21 allocation went to this investment. Serbia has in its
22 territory works going on in different locations ever
23 since the government changed in 2012, so there has been
24 intense development activity, so I don't know whether
25 what was planned in the budget had eventually

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01 effectuated but based on the evidence you show here,
02 I can see that the expropriation of property was done in
03 Progari for Sremska Gazela road.
04 Q. Are you aware, Ms Ilic actually, that this asphalt road,
05 which is here named as Ulica Ive Lole Ribara, then
06 extends to Zones B and C?
07 A. (Interpreted) Yes, it does not extend to the entire
08 zones. It goes partly through the farmland, but not
09 until the end of the plot.
10 DR DJERIC: If our colleagues could show the map of Zones A,
11 B, C, please, and not only this little excerpt, thank
12 you.
13 MR PEKAR: I don't know if we have such a degree of detail,
14 but we will look.
15 We do not have a comparable level of detail but the
16 witness responded and I don't think you are raising an
17 objection, are you?
18 DR DJERIC: No objection.
19 MR PEKAR: Let's now look at CE-516.
20 THE PRESIDENT: Mr Pekar, before you go there, as long as
21 you are on the same topic, that's fine; once you get to
22 a different topic, maybe it would be a good time to take
23 a break, because as you see, we have been going an hour
24 40, which is fine, we can still continue a little, it is
25 just so you know --

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01 MR PEKAR: Ten minutes would be fine? Thank you,
02 Mme President.
03 Let's look at document CE-516, this is the
04 International Valuation Standards from 2013. Please,
05 I would like you to turn to paragraph 57, page 24, which
06 addresses, among others, also the use of asking prices,
07 correct?
08 A. (Interpreted) Yes.
09 Q. I will wait for the document to be on the screen for
10 everybody. It states that the asking prices can only be
11 used if the relevance of this information is clearly
12 established and critically analysed, correct?
13 A. (Interpreted) Yes, correct.
14 Q. Ms Ilic, do you believe that you provided a critical
15 analysis of the asking prices given that you did not
16 indicate where the land is located?
17 A. (Interpreted) It is certainly relevant, it's located in
18 Dobanovci, in the cadastral municipality that was
19 covered by me, so Dobanovci includes very relevant land,
20 if you are going to discuss the relevance, then I would
21 say yes, it is.
22 Q. Now I will show you Serbia's submission on quantum, it's
23 paragraph 68. At the end of that paragraph, Serbia
24 says:
25 "It seems that the only plausible explanation for

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01 Dr Hern's approach and reliance on indirect information
02 is that an analysis based on actual land sales would
03 yield far lower prices, as demonstrated in Ms Ilic's
04 valuation."
05 Can you see that?
06 A. (Answer not interpreted)
07 Q. Ms Ilic, did you rely on actual transactions to assess
08 the value of construction land in Dobanovci?
09 A. (Interpreted) I did not, but I have taken them into
10 consideration. Step one, if you can go IVS paragraphs
11 56 and 57 --
12 Q. Ms Ilic, this is cross-examination, this is not
13 a lecture. If Dr Djeric believes --
14 DR DJERIC: Could you please let the witness at least
15 finish?
16 MR PEKAR: No, this is not an answer to my question. You
17 will have the re-direct, Dr Djeric.
18 Therefore, let's look now at what Dr Hern said,
19 first report, paragraph 89.
20 In 89B, Dr Hern sets the upper bound of his
21 valuation at €30/m2, correct?
22 A. (Interpreted) Yes, correct.
23 Q. And the two actual sale transactions that you included
24 for Dobanovci in 2015 were one at €28.4 and the other
25 one at €34, do you recall that?

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01 A. (Interpreted) I am sorry, I am trying to understand how
02 are you connecting Dr Hern's upper bound -- could you
03 rephrase this question, or repeat it, please?
04 Q. You may also wish to -- since you have the benefit of
05 having -- you also have the hard copy of your report,
06 and you may wish to consult annex 2.6, page 25.
07 PROFESSOR KOHEN: Could you put it on the screen, please?
08 MR PEKAR: I can put it on the screen. But then we will
09 have to remember 30. It's either/or, Professor Kohen.
10 But maybe 30 is easier to remember.
11 So the price, as we see there, is almost €34 and
12 €28.4 for the actual transactions in Dobanovci, correct?
13 A. (Interpreted) Correct, it is correct. These are the
14 registered prices.
15 Q. So Dr Hern's upper bound is lower than the registered
16 price for transaction 1 or A, and only slightly higher
17 than the registered price for transaction 2/B, correct?
18 A. (Interpreted) Yes, it is correct, but how does this
19 relate to my valuation? Where does that question lead?
20 Because these are two sales transactions that I rejected
21 because of direct access to asphalt and infrastructure,
22 I do not see the purpose of you comparing the data
23 I have discarded with Dr Hern's valuation, can you
24 explain?
25 Q. Ms Ilic, it is for the Tribunal to decide on this, and

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01 I will give the Tribunal the benefit of the break.
02 THE PRESIDENT: The Tribunal will assess this. We have your
03 answer.
04 MR PEKAR: Apologises, Mme President, I spoke over you,
05 I think it is a good time to break.
06 THE PRESIDENT: Good, that is fine. Let me just try and see
07 where we stand and how we will go forward. Do you have
08 an approximate indication of the time you still need?
09 MR PEKAR: I am more than halfway through, and I will have
10 a much better understanding after the break.
11 THE PRESIDENT: So that would be -- assume it's maybe --
12 we'll end around 4.00 or 4.30.
13 MR PEKAR: Definitely before 4.30, I would expect rather
14 around 4.00.
15 THE PRESIDENT: But then there may be re-direct, there may
16 be questions by the Tribunal.
17 We are just trying to think ahead about the damages
18 experts. How much time will you need tomorrow for the
19 damages experts? Do you have an indication on your part
20 of the cross-examination time?
21 MR PEKAR: That will depend on the length of answers.
22 THE PRESIDENT: Yes, I can appreciate that.
23 MR PEKAR: A speedy one would be one hour and 15 minutes,
24 I think.
25 THE PRESIDENT: And how is it on your side?

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01 DR DJERIC: We are not sure, probably two hours.
02 THE PRESIDENT: About two hours.
03 DR DJERIC: But we have still enough time, unlike the other
04 side.
05 THE PRESIDENT: That I know, I am just trying to figure out,
06 plus of course there is the presentations, right?
07 The reason for asking is that we have time, we can
08 finish without problem in the course of the day
09 tomorrow. If we can, the Tribunal would like to have
10 some time in the course of the afternoon for internal
11 discussions, informal and preliminary of course, because
12 this is before we have your post-hearing briefs, but
13 still it is at the time when we will have heard all the
14 evidence, and that is why I am trying to assess around
15 what time we will end tomorrow. Is something like 3.00
16 reasonable?
17 MS MIHAJ: Mme President, I think that we can calculate that
18 having in mind the time that is left for Claimants and
19 the time that is left for the Respondent after today, it
20 would be easy to calculate.
21 THE PRESIDENT: It was easy, yes, but we are not at the end
22 of the day yet, so that is why I am trying to make some
23 advance work. The reason for asking this is do we want
24 to start with Dr Hern today, depending on when we end
25 now; is this a possibility, or not?

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01 DR DJERIC: We don't have anything against Dr Hern providing
02 his presentation today but we are not in a situation to
03 do the cross.
04 MR PEKAR: I believed that we discussed that on Friday,
05 Mme President, and I understood that you would prefer to
06 always have the pairs of witnesses on the same day.
07 THE PRESIDENT: Yes, that's right, absolutely. Maybe we
08 take the break now, and then we see where we get today,
09 and take it from there.
10 DR DJERIC: Mme President, you didn't warn the witness.
11 THE PRESIDENT: I did not admonish the witness. Yes, do you
12 understand when I speak English? I should please ask
13 you not to speak to anyone during the break.
14 THE WITNESS: Yes, that is fine.
15 THE PRESIDENT: Thank you.
16 (3.20 pm)
17 (A short break)
18 (3.37 pm)
19 THE PRESIDENT: Ms Ilic, are you ready to continue? Before
20 I give you the floor back, Mr Pekar, I should just
21 mention that the PCA counsel who helps us and watches
22 the video thinks that she saw yourself standing up and
23 walking out of the room with your phone next to the ear,
24 so I would just like to make sure you have not spoken to
25 anyone during the break about your testimony or the

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01 evidence or the case.
02 THE WITNESS: Thank you, I didn't use my mobile phone.
03 THE PRESIDENT: Fine, so that must have been something else.
04 Now I have raised it, this doubt is cleared. Excellent,
05 Mr Pekar, please.
06 MR PEKAR: Thank you, Mme President.
07 Ms Ilic, I would kindly refer you to your slide --
08 it is not numbered but it states "Valuation of BD Agro
09 construction land in Dobanovci", that is perhaps
10 something like the 10th slide. Yes, that is the one
11 I have. Are you with me?
12 Here you refer to a 30% downward adjustment that you
13 applied to the valuation of BD Agro's construction land
14 in Dobanovci. Here, on this slide, you say that this is
15 "for the difference between characteristics of BD Agro
16 representative sample and representative comparable
17 (availability of the infrastructure and access to the
18 roads, see also RE-540)."
19 Correct?
20 A. Right.
21 Q. When reading your report, I had the impression that you
22 originally applied this 30% discount on the basis of the
23 median size of the individual land plots comprising the
24 land BD Agro owns in Zones A, B and C, do I recall
25 correctly?

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01 A. For the valuation of Dobanovci construction land,
02 I didn't apply adjustment for the size. This is not
03 adjustment for the size, if I understand your question
04 correctly. For other cadastral municipalities, for
05 other land yes, but here, in Dobanovci, it was not
06 adjustment for the size.
07 THE PRESIDENT: You are of course free to speak English.
08 DR DJERIC: We just thought that Ms Ilic would be more
09 comfortable -- she said she is more comfortable with
10 Serbian.
11 THE PRESIDENT: That is what I understood and I think you
12 didn't do it on purpose, you just switched. What do you
13 prefer to continue?
14 A. (Interpreted) In Serbian. Thank you.
15 MR PEKAR: Please refer to paragraph 9.1 of your first
16 report. There you state, I will read it out loud:
17 "When comparing construction land sale transactions
18 with construction land in Dobanovci, owned by BD Agro,
19 I used representative (median) transacted size and
20 median price (euros/m2). Given that median size of
21 BD Agro construction land cadastral parcels in Dobanovci
22 is 17,372 m2 and median transacted size of construction
23 land is 30,000 m2 with a median price of 21eur/m2,
24 I apply downward adjustment of 30% as a reflection of my
25 experience in valuation of land."

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01 Do I now understand correctly that the first I don't
02 know how many sentences -- so the last sentence actually
03 is not connected with the previous sentences in 9.1?
04 A. (Interpreted) It is correct, the last sentence, it says
05 I applied an adjustment of 30% as a reflection of my
06 experience in valuation of land. This relates to the
07 existence of infrastructure and access road.
08 Q. So you apply no discount or bonus or premium, I should
09 have said, based on the size of land, do you?
10 A. (Interpreted) No, I was of the opinion here, since this
11 is construction land, that this is a median, approximate
12 median size.
13 Q. Could I please refer you to -- that will be the
14 penultimate of your slides, the one which discusses
15 CE-160 tax assessment Batajnica land? Please focus on
16 the land plots which are shown there as expropriated at
17 €37/m2, right in the middle of the picture. Can you see
18 any roads or infrastructure there?
19 A. (Interpreted) So the ones which are marked as a group of
20 parcels are there, although I have to say, these are not
21 all of the parcels which were the subject of this
22 valuation. Many more were covered, 150 or more than
23 that, so I do not know what was the logic of Mr Grzesik
24 when he grouped only a part of parcels which were
25 valued in this way. So a document of a tax authority

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01 cannot be properly checked because if we were to see all
02 of the parcels valued by the tax administration, we
03 would see that there is no reason whatsoever why would
04 a parcel which is close to this area would have another
05 assessed value. So I cannot establish what is the exact
06 way in which the tax administration carried out this
07 valuation. I do not see such data. This is an example
08 of an untransparent procedure by the Tax Authority, and
09 which is used for market valuation purposes. It
10 probably suffices for expropriation, because it is in
11 line with the law.
12 However, for the needs of market valuation, I cannot
13 discuss on this piece of data in terms of how accurate
14 it is, why did Tax Administration make an assessment of
15 €32? If we could have an image of all of the parcels
16 assessed by the Tax Authority, you would see that there
17 is no line of logic there. So I would never use this
18 piece of data, because I cannot check if it's accurate
19 or not.
20 Q. Ms Ilic, my question was completely different. My
21 question was: can you see any roads or infrastructure
22 leading to the plots of land marked as expropriated at
23 €37/m2? Can you see any roads or infrastructure leading
24 to these land plots?
25 A. (Interpreted) Yes, naturally I do, but Mr Grzesik did

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01 not mark them, so the ones which have been assessed by
02 the Tax Authority as €28, these parcels are public land
03 in radial position, uncategorised roads, all of these
04 are dirt roads. But Mr Grzesik did not mark it as such.
05 On this occasion, the railway land was assessed, but
06 it's not marked in the assessment, so there is a railway
07 line above. Unfortunately, such an incomplete image is
08 not adequate for me to provide much commentary or to
09 confirm that it is correct or not, because I lack
10 sufficient information to do that.
11 Q. Ms Ilic, do you agree with me that the €37/m2 price is
12 how much Serbia is willing to pay for such land, as we
13 see on this picture?
14 A. (Interpreted) Yes, because it's a document developed by
15 the Tax Authority, done for expropriation purposes, in
16 line with the law.
17 Q. Now I would kindly ask you to go to paragraph 4.52 of
18 your first report. There you criticise Dr Hern for
19 comparing BD Agro land with land fully equipped with
20 infrastructure and access to the public road, with
21 respect to document CE-163. Can you see that?
22 A. (Interpreted) Yes, I can.
23 Q. Then right above the picture, you state that the value
24 of such land was assessed by the tax authorities as
25 €51/m2, can you see that?

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01 A. (Interpreted) Yes, I can.
02 Q. Now if we can use our technology to split the screen,
03 I don't know if that is possible, I would also show you
04 paragraph 88 of Dr Hern's first expert report. Let's
05 leave it this way.
06 There, in table 3.4, you can see that the comparable
07 transactions that Dr Hern uses state prices between €20
08 and €37/m2, can you see that?
09 A. (Interpreted) I can see the document, yes.
10 Q. Therefore, would you agree with me that he did not use
11 the transaction at €51/m2 as his comparable?
12 A. (Interpreted) Yes, he dismissed that one, the comparison
13 to Stara Pazova and Nova Pazova.
14 Q. Thank you. I then have a question about -- because you
15 stated that you are the owner of two companies which do
16 valuations in Serbia, do I recall correctly?
17 A. (Interpreted) No, I am an employee in two companies.
18 Q. How many employees do these companies have?
19 A. (Interpreted) Now due to COVID, I don't know.
20 Sarufo d.o.o., I think they have five employees, but
21 because of the situation with COVID, I really don't know
22 if there have been any changes. Millennial has two
23 employees.
24 Q. Is your husband and daughter among the employees of
25 these companies?

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01 A. (Interpreted) Yes, correct, they are the directors of
02 each of the companies. I said that these were family
03 companies, yes.
04 MR PEKAR: Thank you, Mme President. No further questions.
05 THE PRESIDENT: Thank you. Dr Djeric?
06 DR DJERIC: Thank you, Mme President. I will have a couple
07 of questions.
08 Re-direct examination by DR DJERIC
09 Q. The question was asked at the beginning about Ms Ilic's
10 involvement in tax assessments conducted by the Serbian
11 Tax Authority. Could she say whether that was the tax
12 assessment by the company or by herself personally?
13 THE PRESIDENT: I think she answered my question by saying
14 it was by herself.
15 DR DJERIC: Okay, sorry.
16 THE PRESIDENT: But if I misunderstood, you will, of course,
17 say so.
18 A. (Interpreted) It was for the purposes of the Tax
19 Administration, I have to correct myself. The latest
20 valuation I did for the purposes of the Tax
21 Administration, I was hired by a client who wasn't happy
22 with the assessed value, the value assessed by the Tax
23 Administration. Those were annual taxes on real estate.
24 And the client hired me, and I did checks of the Tax
25 Authority document that he submitted to me, and I had to

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01 contact the tax administration and ask them based on
02 which sale transactions they had done their assessment,
03 so practically, it was for the tax administration, but
04 not --
05 DR DJERIC: Now, Mrs Ilic, we have probably a slight
06 misunderstanding. Now I will rephrase the question so
07 you can answer it even more precisely than you said.
08 Now it's more clear but let's try to be even clearer.
09 Have you been hired by the Tax Authority of Serbia?
10 A. (Interpreted) No, I haven't.
11 Q. So I can assume that you have not received any payments
12 from the Tax Authority of Serbia?
13 MR PEKAR: Mme President, I believe that we should keep to
14 the rule that leading questions are not supposed to be
15 asked on re-direct.
16 THE PRESIDENT: Let me ask this, so we have clarity on this.
17 I thought before listening to you that you have acted
18 for the tax authorities in respect of tax assessment
19 valuations. Now you mention that the latest involvement
20 in a tax assessment was not for the tax authorities, but
21 for a client of yours, who had an issue with the tax
22 authorities. Did you, on other occasions, act for the
23 tax authorities?
24 A. (Interpreted) No, I did not. I was always hired by
25 clients but for tax purposes, whether it was a tax or an

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01 assessment done by the Tax Administration. For
02 instance, conversion of the right to use to the right of
03 property, this activity started with conversions of
04 construction land to the right of property. Quite a lot
05 of clients hired me for this purpose.
06 THE PRESIDENT: We are not really interested in the actual
07 topic. We are interested in who was the client. Did
08 you ever have the tax authorities as your client?
09 I think that is what we would like to know.
10 A. (Interpreted) No, never. I was never paid by the Tax
11 Administration.
12 THE PRESIDENT: Thank you.
13 DR DJERIC: Thank you. I have just one more question, and
14 that relates to the point where Ms Ilic was cut off by
15 my colleague, Mr Pekar, so I will use the opportunity to
16 get her a chance to finish what she wanted to say, and
17 the question was, if I am paraphrasing it correctly,
18 whether she used real transactions and why she didn't
19 use real transactions in her valuation, and then she
20 started by saying, "Well, step one", and she refers to
21 IVS 56 and 57, and if she could finish and explain that
22 part, what she used and what was the sequence of steps?
23 Thank you.
24 A. (Interpreted) Thank you. If I may just get on screen
25 IVS --

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01 Q. It is Exhibit CE-516, page 24.
02 A. (Interpreted) Yes, correct. In the entire valuation of
03 the BD Agro lands, in different cadastral
04 municipalities, I always first used the sale prices, the
05 prices of transaction, from the database of the Republic
06 Geodetic Authority, that's an organised database on
07 realised transactions. My first source always sale
08 prices from agreements.
09 And this is in line with IVS standards, and here, in
10 paragraph 57, it says that you first look at prices
11 achieved in sale transactions, and if you don't have
12 those, or if those are perhaps not adequate, then you
13 use asking prices, of course with a critical analysis of
14 the asking prices. And further, this paragraph talks of
15 valuers using adjustments in order to first reflect the
16 difference in the transaction itself, whether it's
17 a market-based transaction or not, and what the
18 circumstances were, or whether it was perhaps an asking
19 price, and not a realised transaction.
20 And further on, it says there are adjustments for
21 physical characteristics, economic, et cetera. That's
22 what I wanted to say.
23 DR DJERIC: Thank you, Ms Ilic.
24 THE PRESIDENT: Any further questions?
25 DR DJERIC: No further questions, thank you very much.

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01 THE PRESIDENT: Do my colleagues have questions? Yes.
02 Questions from the TRIBUNAL
03 PROFESSOR KOHEN: Good afternoon, Mme Ilic.
04 A. (Interpreted) Good afternoon.
05 PROFESSOR KOHEN: Is it possible to put on the screen figure
06 35, any of the parties? 35 of the first report. It is
07 the image with the two properties that were not included
08 in the analysis.
09 Here we see A and C. My question is the following:
10 what would have been the impact of including C in your
11 valuation? Is it clear?
12 A. (Interpreted) Yes, it is clear. Here, you have access
13 directly from the asphalt road. Here we have
14 infrastructure, and the correction here would be around
15 50%.
16 PROFESSOR KOHEN: It would be 50% more than -- my point is,
17 you made a final valuation, an amount, and my question
18 is what would have been the impact in the amount of your
19 valuation if you would have included this property shown
20 as C, that is the point.
21 A. (Interpreted) Any correction of 50% would be an
22 inadequate comparator. I simply believed that these
23 were not adequate comparators for the BD Agro land.
24 I am here not talking about the farm, but I am talking
25 about those covered by the general regulation plan.

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01 They had dirt roads.
02 PROFESSOR KOHEN: I understood your reasoning, the question
03 was just about the impact. I wanted to know just what
04 would have been the impact, if you would have included.
05 Thank you.
06 A. (Interpreted) I cannot tell you this now. I would have
07 definitely made a bigger adjustment than the one done
08 for the asking prices because the advertised information
09 on land that was offered on sale included agricultural
10 land in the construction zone that had access to roads,
11 et cetera. And for all of the advertised land, there
12 was proximity to roads or access from roads, and here,
13 we can see direct access from an asphalt road, and the
14 parcel A is next to a hall, and probably the owner asked
15 for it to get an expansion, because there was
16 infrastructure there, electricity, water, sewage, so
17 they are not comparable.
18 PROFESSOR KOHEN: No more questions, Mme President.
19 THE PRESIDENT: Thank you. Could we please show on the
20 screen Mr Grzesik's presentation on page 4? Thank you.
21 So this is the table of the different divergences in
22 your valuations. You agree with the divergences?
23 I mean, you agree that these are correctly restated
24 here?
25 A. (Interpreted) Yes, I do. There are large divergences,

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01 not only the result of the valuation, but generally in
02 the discussion of the evidence, and the checks of the
03 data that the opinion relies on, there are huge
04 divergences.
05 THE PRESIDENT: Yes, but are there important divergency
06 topics that are not listed on this table?
07 A. (Interpreted) In my presentation I presented our key
08 disagreements if we eliminate the calculation of the
09 size of land in Zones A, B, C, because Dr Hern accepted
10 my calculation.
11 THE PRESIDENT: Yes, because you criticised him in your
12 presentation, but to me he had agreed to your size
13 calculation. So that is not a problem any more. Do we
14 agree?
15 A. (Interpreted) Yes, that is no longer a problem. We can
16 disregard that.
17 THE PRESIDENT: Is there something that is not on his chart
18 that you consider an important divergence?
19 A. (Interpreted) On the left-hand side, Mr Grzesik put his
20 estimated value, and on the right-hand side, he gives my
21 valuation in the brackets as if it were not a valuation.
22 This is not correct. 21 is only one step in my
23 valuation. After comparing my representative sample for
24 Zone A, B, C of BD Agro, and the representative sample
25 of the advertised sale of land, my valuation is €14.7

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01 and I don't know why it's not on an equal footing with
02 his estimate, because it's not €21, it's €14.7.
03 THE PRESIDENT: But I mean, the €14.7 is written here, it
04 says €21 less 30%, so do you -- we have it here.
05 A. (Interpreted) Yes, I can see it, but it's given in
06 brackets, as if it were not my estimate. I don't know
07 why his estimate is given as a figure that he got --
08 THE PRESIDENT: Point taken. We will disregard the bracket.
09 On the conversion fee, Mr Grzesik said that you
10 have -- I understand that you are both of the view that
11 the diversion fee is based on 50% of the agricultural
12 land price, and then he noted, and I would like you to
13 comment on this, that when here you have calculated this
14 by €3.4/m², while in your own valuation of agricultural
15 land, it was €1/m². First of all, is it correct that
16 you have two different values for this price? And if
17 so, why?
18 A. (Interpreted) This is not an assessment, this is
19 a simulation of the determination of the fee in a way in
20 which a tax authority would normally do it. In my
21 report, in the annex, under "Conversion fee" subtitle,
22 I explain the procedure step by step, so the authority
23 that has to do the assessment of this conversion fee is
24 the Tax Authority. How do they do it? They take from
25 the previous year the assessment they made for tax

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01 purposes, the annual taxation calculations, and of
02 course, if I am to simulate this procedure and arrive at
03 what the realistic figure would be, I would then go and
04 check what tax was assessed. There is a table I would
05 need to look at which shows the prices in individual
06 zones that were determined by the Tax Authority for the
07 previous year, so for 2014, the €3.4 is the price of
08 agricultural land in the zone in which BD Agro land was
09 located.
10 So the correct simulation of this fee -- this is not
11 something we are assessing, the Tax Authority does so,
12 in real life. So I mentioned that in my annex, and what
13 is done is that you take the price for the zone, for the
14 previous year, and you use 50% of this price for
15 agricultural land, so the price in the zone for
16 agricultural land is €3.4.
17 And this is the best I could do to simulate the
18 procedure that would normally be taken by the Tax
19 Authority, that is, of local self-government which has
20 the authority to determine the conversion fee for the
21 conversion from agricultural land to construction land.
22 So it is not my assessed market value.
23 THE PRESIDENT: No, I understand that, but my question was
24 going a bit beyond that. When it then comes not to the
25 calculation of the conversion fee, but the calculation

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01 of the agricultural land price, would you not, being in
02 the same area, have to take the same price for the same
03 time?
04 A. (Interpreted) The City of Belgrade issues once a year
05 a decision on the prices in respective zones, and these
06 are the prices that we are using for these purposes, for
07 determining the conversion fee. I explained that in my
08 first report, in an annex.
09 THE PRESIDENT: Can we go to the -- maybe I misunderstand
10 something, but I would like to clarify this. Can we go
11 to the valuation of the agricultural land, not the
12 construction land, that you make. Where do I find this
13 in your report? So you have the review of Mr Grzesik's
14 valuation of the agricultural land, that is page 44, and
15 is yours right there too? Let me see. You probably
16 know your report better than I do actually. Can you
17 help me and tell me where you have valued the
18 agricultural land?
19 A. (Interpreted) For Dobanovci, is that what you are asking
20 about?
21 THE PRESIDENT: Yes.
22 A. (Interpreted) Here it is. Page 115, sorry, this is
23 valuation of construction land.
24 DR DJERIC: If I may help, maybe it's page 111?
25 A. (Interpreted) That is correct. Sorry, 112.

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01 THE PRESIDENT: And here, the price per square metre is €1,
02 right?
03 A. (Interpreted) Yes, correct.
04 THE PRESIDENT: So why is it €1 here and €3.4 when we
05 calculate the conversion fee?
06 A. (Interpreted) I need to explain this. Here, we are
07 talking about determination of a fee, which in real life
08 is done by a tax authority, by the local self-government
09 body. And I explained, in my addition to the annex, an
10 explanation/description of how this is done. They take
11 the price of agricultural land in this particular zone,
12 and they use 50% of that price.
13 THE PRESIDENT: Yes, but the price itself doesn't change, or
14 is the price different for the conversion fee than for
15 something else? If I go and I buy the land, the price
16 is so much; if I calculate the conversion fee based on
17 the price of the land, why is it different?
18 A. (Interpreted) The law says that should be so. We have
19 description in the law how conversion fees are
20 determined. We have the law on planning and building,
21 and the law on agricultural land, and in my report,
22 I refer to these two laws. That amount is not something
23 I'm determining. If I want to do a conversion today of
24 my agricultural land into construction land, I will not
25 hire a valuer to do this, I will go instead to the local

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01 authority, where the Tax Authority will determine the
02 fee, based on the price in the zone where the land is
03 located for the previous year.
04 THE PRESIDENT: So the price that the Tax Authority would
05 establish would have no relationship with the market
06 value of that land?
07 A. (Interpreted) That's the price in the zone that they say
08 is market price, that's what I was trying to explain.
09 This is what the Tax Authority is doing. And they do so
10 for different taxation purposes, for expropriation as
11 well, which is not the same as the market assessment.
12 It is done on the basis of a number of laws, and that is
13 why in my report, in the appendix, I describe the
14 procedure in which this fee is determined, so that's all
15 in line with the relevant legislation, and again, it is
16 done by a local self-government body, namely the tax
17 authority from the respective local self-government
18 unit.
19 THE PRESIDENT: If the tax authorities, that's not
20 specifically related to that but to your general
21 criticism of taking into account tax authority
22 assessments, are their assessments generally higher or
23 lower than what you would say is the fair market value?
24 A. (Interpreted) A tax authority does this for the purpose
25 of filling the budget, and that is true of all the

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01 countries, not just Serbia. So when speaking about the
02 real estate tax, yes, these are higher values. When it
03 comes to the transfer of absolute rights, as you could
04 see for yourself, the deduction is 10%, and then there
05 is no limit for the increase for the higher band, so if
06 I come with a contract to show that I have bought some
07 land at €100,000, they can say, "Oh no, you did not buy
08 it for €100,000, you bought it for €150,000", regardless
09 of me having this contract showing the contract price.
10 So every tax authority regulates these things the
11 way they think fit. That's my personal opinion, of
12 course.
13 THE PRESIDENT: And when the state sets expropriation
14 prices, would it put it above market value?
15 A. (Interpreted) Let me tell you, it all depends. In
16 accordance with the instruction I mentioned, on the
17 determination of tax for the transfer of absolute
18 rights, the same document is used for expropriation
19 purposes, and then the Tax Authority does not visit the
20 site, they do the assessment based on previous
21 assessments, not on the basis of the sales agreement or
22 contract, but on the basis of previous assessments.
23 If, in their local government unit, they have not
24 had any transactions, then according to this
25 instruction, they have the right to look elsewhere, to

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01 find some established assessments conducted by other tax
02 authorities, or normally the bordering municipalities.
03 This needn't be relevant at all for the assessment of
04 the value of land within the boundaries of their
05 municipality.
06 So this is very often a value that does not
07 correspond to the market value, and I am now talking
08 about the market value as defined in international
09 regulations, but there is legal basis for what they do.
10 THE PRESIDENT: Can we look at page 15 of your presentation?
11 It is entitled "The concept of market evidence and
12 relevant valuation standards".
13 Yes, I have calculated that as 15, but I may be
14 wrong, because I am working from the printed version
15 that has no numbers. Yes, this is it.
16 There you mentioned that Dr Hern relies on third
17 party valuations, and that is not acceptable. It seems
18 to me that you rely on the Confineks report, that's
19 a third party valuation as well, isn't it?
20 A. (Interpreted) Yes, I rely on it, but just for the
21 purpose of defining the land, the cadaster parcels, that
22 was in ownership of BD Agro on the valuation date.
23 I had no other way of getting this. The data in
24 eCadastre are now relevant for the present time and to
25 be able to have data on the quantity and number of the

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01 parcels that are subject to the valuation, I used
02 the December Confineks report, the December 2015 report,
03 because the report said that they had made a table based
04 on the title deeds from the cadaster and they indicate
05 the numbers of these title deeds, and on top of that,
06 they mention that they had the inventory list which is
07 the list of fixed assets, where we have a list of
08 cadaster plots, or actually the plots that were owned by
09 BD Agro before the valuation date, or immediately before
10 the valuation date.
11 So that's the only purpose for which I used this
12 report, because I had no other way of obtaining this
13 data.
14 THE PRESIDENT: Thank you. I have no further questions. If
15 there are no requests for clarification, that ends your
16 examination, Ms Ilic. Thanks for your assistance.
17 A. (Interpreted) Thank you.
18 THE PRESIDENT: So now it is 4.25. Do you wish to end here?
19 MR PEKAR: Yes, Dr Hern is not ready with his opening
20 presentation.
21 THE PRESIDENT: Yes, I can understand that. Fine, then we
22 will hear the two damages experts tomorrow as we had
23 said on Saturday. Is there anything we should think of
24 in preparation for tomorrow?
25 MR PEKAR: Nothing on our part.

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- 01 THE PRESIDENT: You are aware of the time that is left --
02 I mean, you will be aware soon of the time that is left
03 on both sides.
04 Good. Have a good evening then.
05 (4.26 pm)
06 (The hearing adjourned until 9.00 am the following day)

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**RAND INVESTMENTS LTD
WILLIAM ARCHIBALD RAND
KATHLEEN ELIZABETH RAND
ALLISON RUTH RAND
ROBERT HARRY LEANDER RAND
and SEMBI INVESTMENT LTD**

Claimants

-v-

REPUBLIC OF SERBIA

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Mr Baiju Vasani
Prof Marcelo G. Kohen

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Hearing Location:

Peace Palace, The Hague

PAGE 1 (09:00)

01 Tuesday, 20th July 2021
02 (9.00 am)
03 THE PRESIDENT: Are we ready to start? Dr Hern, are you
04 ready?
05 MR PEKAR: Yes, Mme President, we have one housekeeping
06 matter we would like to raise. We wanted to appraise
07 the Tribunal that last week, Mr Obradovic's acquittal in
08 the land swap case was confirmed by the appellate court.
09 We reached out yesterday to our colleagues with respect
10 to whether or not the parties should be filing that
11 decision into the record, we understand that it's a very
12 short deadline before the last day of the hearing, so we
13 will wait for their position; however, the fact remains
14 that the acquittal is now final.
15 THE PRESIDENT: Thank you. Any comments on your side?
16 DR DJERIC: Yes, Mme President. We duly received Claimants'
17 email yesterday evening, we were busy with other things.
18 We have to check out this document, and see what it is,
19 and then we will be able to provide our position on the
20 exceptionality, relevance, et cetera, so this is the
21 first step. We will do that in due course, after the
22 hearing.
23 Perhaps if we have a point of housekeeping, we could
24 also say a few words about something that was raised
25 a couple of days ago in Mr Markicevic's testimony, and

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01 apparently also deals with Serbian courts.
02 This was the police inquiry at the domicile of
03 Mr Markicevic. You might recall that he stated that
04 on July 13th 2021, the police had looked for Mr Broshko
05 at the address of Mr Markicevic's Belgrade apartment,
06 that is transcript page 3 of that day, that was the
07 second day. According to the information and documents
08 that we have, Mr Broshko is a director in one of Serbian
09 companies called Maple Leaf Investments Limited company,
10 he has a registered address at Mr Markicevic's apartment
11 in Belgrade.
12 The Serbian company that Mr Broshko is a director of
13 failed to submit mandatory financial reports so they
14 were charged with what we call in Serbian privredni
15 prestup which is a financial offence before the
16 Commercial Court in Belgrade in August 2019.
17 Since Mr Broshko failed to show up at the hearing in
18 this case that was held in December 2019, the Commercial
19 Court then made enquiries with the police, and then made
20 new enquiries recently, and the police then went to the
21 registered address of Mr Broshko, who conduct a field
22 check on his registered address, and determine whether
23 Mr Broshko is present there. So this is the information
24 that we have. Thank you.
25 THE PRESIDENT: Is there any comment on the Claimants' side?

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01 MR PEKAR: No comments.
02 THE PRESIDENT: Thank you. Good, that is all noted. And
03 now I think we are all ready to hear the damages
04 experts, to start with Day 8 of this hearing.
05 DR RICHARD HERN (called)
06 Dr Hern, good morning.
07 THE WITNESS: Good morning.
08 THE PRESIDENT: You confirm that you are Richard Hern from
09 NERA Consulting?
10 THE WITNESS: That's correct.
11 THE PRESIDENT: Where you are a managing director?
12 THE WITNESS: That's right.
13 THE PRESIDENT: You have submitted three expert reports of
14 16th January 2019, 3rd October 2019, 6th March 2020?
15 THE WITNESS: That's correct.
16 THE PRESIDENT: You are heard as an expert witness, and
17 I will ask you to now read the expert declaration,
18 please.
19 THE WITNESS: Yes. I solemnly declare upon my honour and
20 conscience that my statement will be in accordance with
21 my sincere belief.
22 THE PRESIDENT: Thank you. Now you have a maximum of 30
23 minutes, subject to any restrictions from the Claimants,
24 at least that is the time allocation from the Tribunal,
25 for your presentation.

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01 THE WITNESS: Thank you very much, Mme President, and good
02 morning to everybody here.
03 If I could move to slide 2, please, I have quite
04 a few slides to get through, I propose to go through
05 them quite quickly, happy to stop at any point, of
06 course, but most of the slides cover issues in my three
07 reports, but of course we have had the benefit of
08 hearing testimony during the course of yesterday in
09 particular, and there are some new issues that I will
10 comment on in the course of these slides too.
11 In terms of the agenda, briefly to cover my
12 background, my conclusions, what I see as the key areas
13 of disagreement in terms of valuation between myself and
14 the Respondent's experts, Ms Ilic and Mr Cowan, and then
15 to talk briefly about analysis that we undertook on bank
16 transactions, as set out in my third report.
17 To the next slide, please [3]. Briefly in terms of
18 my background and experience, I am a managing director
19 at NERA Economic Consulting which is a large
20 international firm of professional economists. I have
21 over 25 years of experience as a professional economist,
22 before that I was a teacher at university, and have
23 a PhD in economics.
24 The focus of my work is on valuation of assets and
25 businesses, particularly in the context of disputes.

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01 I have acted as an expert witness in many international
02 arbitration cases, BIT cases and commercial disputes.
03 I am fortunate to be in Who's Who Legal for leading
04 expert witnesses for arbitration and quantum and I have
05 published on a variety of valuation matters.
06 I highlight here one particular paper on the use of
07 market or comparables approaches which I think is
08 particularly relevant in the context of this dispute.
09 In terms of my conclusions [slide 4], you will see
10 in my third report my valuation of €96.3 million to
11 €124.1 million for BD Agro's total asset value. I have
12 updated that valuation recognising that there are issues
13 concerning the size of BD Agro's land, and that updated
14 valuation in terms of the asset value of the business is
15 now €94.1 million to €121.2 million. I will make
16 a comment now that whilst my reports set out a range for
17 the asset and indeed the equity valuation, having had
18 the benefit of looking at more recent evidence on these
19 issues, I am tending towards the conclusion that the
20 best evidence for the valuation is towards the top end
21 of that range, so I wanted to highlight that now, and
22 I will talk about that as we go through the
23 presentation.
24 I think that certainly if I start by focusing on the
25 issue of the construction land, which is the most

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01 material issue in terms of the overall valuation of
02 BD Agro's assets, and particularly the construction land
03 in Zones A, B and C which is what was discussed
04 principally yesterday, where there is a regulation plan
05 for those zones, where that regulation plan sets out the
06 ability to use that land for construction purposes
07 [slide 5], I believe in general that Mr Cowan, the
08 principal expert for the Respondent, broadly agrees with
09 my valuation approach based on recent transaction
10 evidence, other evidence provided by tax authorities,
11 and other valuations prepared by third parties, and
12 indeed Mr Cowan notes that in his first report.
13 Just to highlight to you where this land is
14 [slide 6] and I apologise, this is perhaps not the
15 easiest map but it's nevertheless the map that's on
16 record, but I wanted to highlight visually where this
17 land is, and principally with respect to the E70
18 highway, which is a very important strategic highway
19 connecting right across Europe.
20 BD Agro's construction land A, B and C you can see
21 on this graph lies right next to BD Agro's farm, and
22 there is the Sremska Gazela road that is being planned
23 and indeed funds have been allocated by the municipality
24 to develop that road that goes straight through the
25 BD Agro land, A, B and C. It goes straight through the

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01 middle of B, and it goes down the sides of A and C
02 respectively. So the land, with its general regulation
03 plan that allows for development of that land with no
04 obvious impediments, is my understanding, with the funds
05 allocated to the development of the road, and indeed
06 land has already been expropriated to develop that road,
07 in essence becomes quite valuable land, much more
08 valuable land than it was as agricultural land, and that
09 is the principal reason why, in terms of my overall
10 valuation of the assets of the business, this land has
11 a very material impact.
12 If I could move on to the next slide, please [7].
13 I have undertaken a number of different approaches to
14 assess a valuation for this land, I believe Mr Grzesik
15 is broadly consistent with the approaches that I have
16 taken and considers them to be best practice in terms of
17 his experience as a property valuer.
18 But I relied on what I considered to be the best
19 market evidence available for assessing the valuation of
20 that land, and that market evidence comprised of
21 a number of things: first of all, we had some direct
22 evidence on transactions for exactly this land, albeit
23 dated back to 2008 and 2009, but we did have some
24 transaction data. I still consider that to be relevant,
25 because it's exactly the land that we're talking about

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01 here, even if it is a little bit dated.
02 I then looked more broadly at other land around the
03 A, B, C area, other land that was either agricultural
04 land but had a similar regulation plan for development
05 of that land for construction purposes, or other land
06 that was in the process of being developed, and I'll
07 talk about that a little bit later, but that was other
08 evidence of similar types of land.
09 I then looked at evidence from authorities in Serbia
10 on how they had valued that land, and/or similar land,
11 and I found that the Serbian Tax Authority provided
12 valuations of that land for property tax purposes, but
13 also similar valuations for expropriation purposes, and
14 I consider both of them, especially the latter, for
15 expropriation purposes, for similar land, like
16 Mr Grzesik does, to be especially relevant.
17 I also looked at other third party valuations and
18 assessed the competency and the transparency of the
19 information in those reports as further evidence.
20 You can see on this slide [7] the summary of my
21 conclusions. I think it is important to recognise that
22 particularly with land like this, we don't have
23 first-class evidence, I would say, of very precise
24 valuations, it's not like we can just look at a register
25 of very similar land for very similar dates and identify

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01 exact comparators.

02 I think it's important to recognise that there is
03 a range of different types of evidence that need to be
04 considered and that was the reason why I presented in my
05 first report a range for the valuation of this land, and
06 that range was €22-30/m² and as I say that drew on all
07 of the evidence that I just talked about.

08 On slide [8] you can see here a visual perspective
09 on some of the comparator land that I looked at and we
10 talked yesterday, or Mr Grzesik did in some detail,
11 about the Batajnica land.

12 On this slide, we have a visual perspective of land
13 that I consider to be comparable land, where there is
14 transaction data available, or other market value
15 assessments, and that land was identified through
16 research undertaken by me and my team and other people
17 that we talked to in Serbia, again focusing on land that
18 was similar to the BD Agro A, B, C land, in terms of it
19 being agricultural land but with a development plan or
20 a regulation plan to develop that land, a similar
21 location outside of the city, and also importantly,
22 because of the Sremska Gazela road, with similar access
23 to transportation systems. So you can see, I think this
24 is quite a good figure to see, BD Agro's land is very
25 close to the E70 highway, which is a major strategic

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01 route out of Belgrade; the other land there, the
02 Dobanovci land, the Batajnica land, is also very close
03 to the other highways coming out of the city.

04 So for a variety of reasons, we identified this as
05 similar land and we had transaction data available to
06 identify comparator transaction prices.

07 Mr Grzesik, his testimony yesterday I think broadly
08 concluded that the approach that I took was, I think in
09 his words, a good one, and he thought that there should
10 be particular emphasis on the Batajnica properties,
11 where there is direct data on expropriation prices paid
12 by the Serbian authorities for acquisition of that land
13 [slide 9]. I didn't have the opportunity to comment in
14 any of my reports on Mr Grzesik's conclusions but having
15 had the benefit of hearing his testimony, I am inclined
16 also to agree that this is also amongst the best
17 evidence that we have on the fair market valuation of
18 BD Agro's land, A, B and C, for the same reasons I think
19 that Mr Grzesik talked about, which are that the land is
20 currently agricultural land but it has a development
21 plan for development for construction purposes, it's
22 very close to major highways like BD Agro's land, A, B,
23 C, it's close to the railway, and so is BD Agro's land,
24 and it's a large plot of land that potentially has
25 similar strategic uses in terms of voids, intermodal hub

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01 development and other industrial purposes. So
02 I consider that, like Mr Grzesik, this is amongst the
03 best, if not the best evidence that we have on the
04 valuation of A, B, C land, with one exception, and I'll
05 talk about that a bit later.

06 So that is the construction land A, B, C. The
07 second big part of BD Agro's business is the farm
08 business, and the farm business is BD Agro's farm
09 buildings, the infrastructure for dairy farm and
10 milking, and growth of the herd [slide 10], and then all
11 the agricultural land that is associated with that.

12 I have taken two different approaches, I considered
13 them to be complementary approaches, to valuation of
14 this aspect of the business. First of all, I look at
15 what I call the discounted cashflow model, it's
16 obviously a very standard model for valuation. I think
17 this is appropriate in this context because there is
18 a clear business plan going forwards for the business,
19 investment has been undertaken already into the
20 infrastructure needed to run the business, the
21 reorganisation plan, as far as I understand, was
22 approved by the majority of creditors at the time of
23 expropriation, I will talk a little bit about that
24 later, but basically speaking, a business is only worth
25 the cashflows that it will generate, and therefore, it's

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01 important to look at a DCF model, because the DCF model
02 tells us what the projected cashflows are for that
03 business.

04 Based on the reorganisation plan, my team and I did
05 what I think is a critical review of that plan, we
06 looked at the projections of revenues, operating costs
07 and capex going forwards, we valued that business on
08 a free cashflow basis and discounted at a cost of
09 capital to reflect Serbian country risk and other
10 business risks, and we arrived at a valuation of around
11 €32 million to €37 million.

12 I then cross-checked that valuation against what
13 I call an asset-based valuation approach [slide 11], so
14 that's another way to value a business like this, and
15 what this essentially says is if we just looked at the
16 assets on the books of the business and take account of
17 respective market values for those assets, then we can
18 use an asset-based valuation to value the business, and
19 you can see here that on an asset-based valuation, we
20 actually arrive at a very similar valuation range,
21 €31 million to €43 million, whereas the DCF on the
22 previous page was €32 million to €37 million.

23 In the context of an expropriation, I think that
24 there is particular rationale for an asset-based
25 approach too, because obviously an asset-based approach

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01 says if the assets are expropriated, what would it cost
02 the entity, BD Agro, to replace those assets, the
03 identical assets, in a comparable location? We can
04 obviously assess that by looking at the replacement cost
05 of the assets on the books, which is the building, the
06 equipment and the herd, and then we value the
07 agricultural land as the replacement cost of the
08 agricultural land as if the business had to start up
09 again somewhere else.

10 So I think particularly in the context of an
11 expropriation, an asset-based valuation approach has
12 obvious merit.

13 On slide 12, I put these valuations together, and
14 I then deduct capital gains tax, based on deferred tax
15 liabilities on the book, I then deduct the liabilities
16 on the accounts at the time, and I arrive at a total
17 equity valuation for the business of €51 million to
18 €78 million.

19 In terms of issues of disagreement between myself
20 and the Respondent's experts [slide 13], I think there
21 are probably four. One is the valuation of the
22 construction land, one is whether BD Agro should be
23 valued as a going concern or not, one is the valuation
24 of the agricultural land, and then the fourth is how
25 should we treat the issue of disputed land.

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01 I don't have an opinion on the fourth, I think that
02 is principally a legal issue, but I do have an opinion
03 on the first three.

04 On slide 14, Ms Ilic talked yesterday and does so
05 throughout her report about my evidence being supposedly
06 inconsistent with International Valuation Standards.
07 I strongly contest that. I think that the International
08 Valuation Standards are broadly guidelines, and there
09 are many of them around the world by international
10 authorities and national authorities too, they are
11 broadly guidelines but I think that they give particular
12 emphasis to looking at market evidence of transactions
13 in this type of circumstance, and I think that is very
14 much consistent with my approach, and indeed the
15 evidence I have already talked you through.

16 On slide 15, I note that Mr Grzesik agrees with me,
17 he considers that my approach is indeed a classic, in
18 his words, comparative market approach in the context of
19 his experience as a property valuer, and follows
20 International Valuation Standards.

21 By contrast, I think the evidence that we have heard
22 from Ms Ilic [slide 16] I think contrasts with many
23 elements of International Valuation Standards, and we
24 heard yesterday that Ms Ilic has concluded her valuation
25 based on asking prices of land that nobody, as far as

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01 I am aware, has been able to identify on the record in
02 terms of its location and comparability to BD Agro's
03 land. So in terms of International Valuation Standards,
04 I think every valuer, including Ms Ilic, I think, agrees
05 that asking prices are not as good as direct transaction
06 evidence, they are only asking prices, but perhaps even
07 more importantly, we need to understand exactly where
08 these comparator asking prices are located in order to
09 be able to assess whether they are truly comparable or
10 not, and we simply don't have that evidence on the
11 record from Ms Ilic, all we have is websites, but if you
12 go to those websites, you can't see these asking prices.

13 Having said that, and this is something that I was
14 also not able to respond to in my reports because it
15 came too late, but I think Ms Ilic did identify some
16 transaction evidence that is indeed very relevant, and
17 we talked a bit about this yesterday, but there are two
18 particular transactions that Ms Ilic identified for very
19 similar land to BD Agro's land; indeed that land, for
20 one of the transactions, is located right next to
21 BD Agro's farm, and you can see here on slide 17 the
22 transaction of €28.4/m² at a very similar date to the
23 date we are talking about here in 2015, and the land is
24 located right next to BD Agro's farm, where the road
25 that passes past that transaction goes into BD Agro's

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01 farm and then connects to Zones A, B and C.

02 So there was discussion yesterday about this asphalt
03 road next to the transaction of €28.4 making it more
04 valuable, but you can see here that that road actually
05 extends into the BD Agro complex, it's then joined by
06 dirt roads, and it then connects to the Sremska Gazela,
07 and I think Mr Grzesik agrees with this, when we look at
08 the BD Agro land, it's much bigger land. It can be used
09 for a much bigger industrial purpose, it can be used for
10 development of a much bigger complex for intermodal hub
11 development, it's also right on the Sremska Gazela
12 planned road, so it offers actually a much better
13 potential connection out of Belgrade for development of
14 that land for industrial purposes. So as Mr Grzesik
15 said yesterday, actually, there are very good reasons
16 why this land, the A, B, C land, actually has the
17 potential to be even more valuable than the €28.4/m²
18 land.

19 So in terms of the issue of the evidence between
20 myself and the Respondent, I think Mr Grzesik is broadly
21 consistent with my evidence, I think Ms Ilic says that
22 she is not, but actually the evidence that she includes
23 in her report actually I think does show a strong degree
24 of consistency with my valuation because I have just
25 talked about the €28.4/m² valuation as being very

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01 consistent with the top end of my valuation range, and
02 that's on slide 18.
03 Moving to the second issue of disagreement, which
04 is: should BD Agro be valued as a going concern? In
05 summary, I think it should be, it was not bankrupt at
06 the time of expropriation [slide 19], the reorganisation
07 plan in my view is credible. I don't think it's
08 relevant to look at the previous performance of the
09 business, because it's been affected obviously by the
10 amount of investment that's been undertaken, and there
11 are obvious issues with Serbia's potential involvement
12 with those investment incentives.
13 But basically, as I said, a business is only worth
14 the cashflows that it will generate, and there's no
15 reason not to consider a DCF approach.
16 BD Agro's creditors, as I note on slide 20, the
17 majority of them did approve the reorganisation plan,
18 and believed that that plan was credible, and I notice
19 that some of those creditors are very knowledgeable
20 creditors involved in the dairy business in Serbia,
21 Imlek in particular is the biggest producer of dairy
22 products, so if Imlek didn't think the reorganisation
23 plan was credible, there's big question marks about why
24 it decided to approve it.
25 On slide 21, I just noted the issue around the

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01 approval, the final approval of this reorganisation
02 plan. I might not have the time to go through this in
03 detail with you, but the conclusion I wanted to
04 highlight was that even if we take the Respondent's
05 minimum valuation of assets, this is a minimum valuation
06 with the bankruptcy sale discount, even if we take that
07 valuation, that valuation is above the combined value of
08 the class A creditors at the time of expropriation.
09 So the implication of that is that there's no
10 reason, based on that valuation, to think that the
11 reorganisation plan would not have been approved because
12 even their valuation is above the combined value of the
13 class A creditors.
14 As I said, I did with my team do a detailed --
15 I didn't just take the reorganisation plan as given, we
16 did do a detailed review of that plan, and we did look
17 at the historical performance, particularly from 2013
18 and 2014, and note that there had been a significant
19 improvement with the change of new management at that
20 time [slide 22], you can see the revenues per herd
21 increasing substantially with that new management, and
22 indeed, in some aspects, the projections looked quite
23 conservative, and you can see that particularly from the
24 top left-hand graph there, where the forecasts of
25 revenues per herd are indeed a little bit lower than

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01 what they managed to achieve in the two years before
02 that plan.
03 On slide 23, I wanted to highlight just the issue
04 around the valuation of agricultural land, and again,
05 it's an issue with Ms Ilic's data, she presents data in
06 her appendix that actually shows that the valuation of
07 this land lies substantially above the valuation that
08 she has come up with, so average land in Dobanovci, on
09 a median basis, even on a median basis, which is what
10 she prefers, I prefer an average, because it takes
11 account of the variety of prices much better, but even
12 on a median basis, it's much higher than the valuation
13 that she has come up with, and on an average basis, €3.4
14 compared to €1/m2.
15 Again, that evidence is a reason why I think, based
16 on this new evidence, the valuation of agricultural land
17 is also right at the top end of the range that
18 I presented in my reports, so this is new evidence
19 presented by Ms Ilic, but I think when you look in more
20 detail at that, that supports the valuation right at the
21 top end of my original range for this agricultural land.
22 I am aware I am getting close to my time limit, but
23 I have included some slides that I thought might be
24 helpful just to summarise the bank transaction evidence
25 that my team and I looked at in my third report

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01 [slide 24]. This was to respond to evidence presented
02 by Mr Cowan on inflows and outflows between BD Agro
03 companies and Mr Obradovic.
04 I looked slightly more broadly at the evidence
05 submitted by Mr Cowan and included other Serbian
06 companies also beneficially owned by Mr Rand. It was
07 a very extensive process to go through thousands of
08 transactions. I admit that not all of those
09 transactions are perfectly categorised, this is
10 obviously not our issue, but we did our best to identify
11 the inflows and outflows between the various different
12 companies.
13 Slides 25 and 26 provide a little bit more detail on
14 that process, and [27] as well, but broadly speaking, my
15 conclusion, which is identified on slide [28], is that
16 through the process that we went through, we identified
17 a difference of RSD 50 million between the amount paid
18 by BD Agro and the amount received by BD Agro across the
19 different entities, and that was a much lower difference
20 than was identified by Mr Cowan.
21 More recently, when we tried to identify exactly why
22 that difference has arisen, we identified three years in
23 particular, 2006, 2007 and 2010, where there were
24 significant differences, there were similarities in all
25 of the other years, but only differences in those three

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01 years, but because Mr Cowan didn't provide his
02 calculations, we weren't able to identify the precise
03 reasons for that.
04 But broadly speaking, there wasn't a huge
05 difference, and it's very possible that our analysis
06 didn't capture all of those transactions, because of the
07 way they were categorised in the bank statements.
08 I think I am at the end of my presentation. My
09 final slide [29] simply calculates how the equity value
10 calculation that I presented is then apportioned across
11 the different ownership categories, ownership classes
12 and names of the business, and then we have an estimate
13 of an appropriate pre-award interest in the overall
14 calculation of damages.
15 THE PRESIDENT: Thank you. Can I turn to Respondent's
16 counsel? Dr Djerić?
17 DR DJERIC: Yes, thank you, Mme President.
18 Cross-examination by DR DJERIC
19 Q. Good morning, Dr Hern, my name is Vladimir Djerić,
20 counsel for Respondent, and I am going to ask you some
21 questions today.
22 A. Good morning.
23 Q. My colleague will present you with the bundle, and she
24 will help you with it, but the bundle is also
25 electronic, the documents will appear on the screen.

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01 I actually thought I would not deal with the land
02 valuation today, I thought we have sort of completed
03 that discussion yesterday with Mr Grzesik thoroughly,
04 but I see that you had this, and we will have to ask you
05 a couple of questions about that, and I would ask my
06 colleagues to put up the presentation on the screen, if
07 it's not there, so we can go a little bit back to your
08 presentation, and to what you were saying today, this
09 morning.
10 In the meantime, let me just ask you, so at the end
11 of the day, which valuation do you use, your own or
12 Mr Grzesik's?
13 A. They are complementary, they both take account of the
14 same evidence. I consider Mr Grzesik's input to be
15 extremely valuable, he has quite clearly got a lot of
16 experience directly in property valuation. So
17 therefore, I have taken account of his inputs into
18 forming what I would consider to be a more refined view
19 of my valuation, but as I say, it's not just
20 Mr Grzesik's inputs that I have also taken account of,
21 it's also the additional evidence that we have seen from
22 Ms Ilic's data that she has provided, and at the end of
23 the day, my valuation is my valuation, but it takes
24 account of these additional what I consider to be
25 important new pieces of information.

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01 Q. So it was your valuation at the end of the day, thank
02 you. Now we have mentioned a lot here the famous Zones
03 A, B, C. When you were doing your reports and your
04 valuation, did you visit and inspect Zones A, B, C, when
05 you were preparing the valuation?
06 A. Did I visit any what, sorry?
07 Q. Zones A, B, C.
08 A. Yes, I went there three years ago, I think, now, we went
09 to the outside of the farm complex, it wasn't open to us
10 obviously, because it's owned by somebody else now, but
11 we went to the outside of the farm complex, we toured
12 around the area, we took a helicopter actually across
13 all of the land that was owned by BD Agro, or previously
14 owned by BD Agro, and that helicopter went over the
15 areas that we have identified in my presentation also as
16 comparable areas, so we were able to see visually the
17 layout of the land and the infrastructure.
18 Q. I actually don't remember seeing that in your report.
19 Is there a note about that in your report, about this
20 helicopter trip, about visiting the land?
21 A. I don't remember putting that in my report.
22 Q. I don't remember either. Thank you.
23 A. That is not something I would typically put into
24 a valuation report.
25 Q. But yesterday, we were discussing a lot the question of

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01 the visits to the property, and that there is an
02 international valuation standard on valuation of
03 property expressly stipulating that the valuer should
04 inspect the property, and that is usually in the report,
05 and Mr Grzesik has a line about that, but okay, so be
06 it.
07 A. I don't think that is the case actually. I would
08 contest that. There is a lot of things that any valuer
09 goes through in terms of valuing a business, from
10 visiting sites to looking at relevant data. I think at
11 the end of the day, the valuation report has to be
12 succinct and focus on the material issues important to
13 the valuation, not through all the details of all the
14 processes that every valuer goes through.
15 Q. Can we now go to slide 8 of your presentation today?
16 I believe that you said something there, that the A, B,
17 C zone is about 1km away from the highway, did I get
18 that right, on the basis of this picture?
19 A. Yes, the top part of the A, B, C zone, so the highest
20 part of that green circle I believe is -- I don't know
21 whether it's precisely 1km, but it's in the region of
22 a kilometre or two.
23 Q. You measured that?
24 A. Did I personally measure that? No, but I have asked
25 that question, and we have tried to look at maps to

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01 precisely identify that, and that's the conclusion that
02 we have come to.
03 Q. Right, but we don't see your sources, we don't see your
04 process, the method, how you measured that kilometre?
05 A. Well, maybe not, but you have asked me a question, how
06 far is it away, and I'm telling you that I think it's
07 a kilometre or two from the top.
08 Q. Right, so that's your personal assessment, you would
09 say, at the moment, right, at least?
10 A. Yes.
11 Q. Let's move to slide 17, please. This shows the upper
12 part that you were mentioning. So it is a relatively
13 small part which is so close to the highway, right?
14 A. Which highway are you referring to?
15 Q. I don't know, you tell me. The one that is 1km from
16 Zone A that you mentioned. And B and C.
17 A. So you have the E70 highway that goes across the top
18 right of that picture, and the top part of that highway
19 is in the region of a kilometre away, but the most
20 important thing here is that all three of those zones
21 are connecting to the Sremska Gazela planned road which
22 has already been partially developed and funds
23 allocated, so whether it's 1km from the top or 2km, it's
24 not actually that important, because you can see that
25 each of the zones needs to then connect to the Sremska

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01 Gazela in order to reach the highway.
02 Q. And Sremska Gazela is this yellow vertical line that
03 goes through the centre of the slide, is that correct?
04 A. Yes, correct.
05 Q. Has Sremska Gazela been built?
06 A. Well, partially.
07 Q. The part that goes through Zones A, B, C?
08 A. No, correct, that's correct. Funds have been allocated
09 for the development of that road, but as far as
10 I understand even today, that road has not yet been
11 built, but it was, as I said, noted from 2008 onwards
12 that it was going to be built, and funds were allocated
13 for that development.
14 Q. We will come back to that particular issue. You said
15 that parts of it were expropriated; do you know which
16 parts were expropriated, and when they were
17 expropriated?
18 A. Parts of what?
19 Q. Of the land in the zone that is required for the
20 construction of the Sremska Gazela that is going
21 supposedly one day to connect it to the highway.
22 A. No, I don't identify exactly those parts on this
23 diagram, no.
24 Q. But you think some parts were expropriated?
25 A. I believe that's the case, yes.

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01 Q. In Zones A, B, C?
02 A. No, I didn't say that. I said some parts of land, and
03 I think it's agricultural land, for the development of
04 that road, were expropriated.
05 Q. Can you tell us whether it's the parts next to the
06 highway, or the parts on the bottom of the picture, that
07 were expropriated?
08 A. I can't tell you precisely where they are, but as
09 I said, I think it's basically agricultural land on the
10 Sremska Gazela road.
11 Q. But you put that into your presentation, and did not
12 provide any source, so we should --
13 A. Well, I think it's discussed in my reports.
14 Q. Please take us to the exact reference.
15 A. I think it's also discussed in Mr Markicevic's witness
16 statement too. If you go to paragraph 108 of my first
17 report it says the upper bound, so this is the valuation
18 I arrived at for agricultural land, so I used data on
19 price paid for expropriations of land for the building
20 of the Sremska Gazela road and the average price paid
21 was €2.9/m² for that land.
22 Q. So it's quite low in comparison to the price you put for
23 the Zones A, B, C land, through which the Sremska Gazela
24 road will also go?
25 A. This is agricultural land.

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01 Q. Zones A, B, C, is it agricultural?
02 A. No, it's not at Zone A, B, C, this is agricultural --
03 I think I have said that three times now, this is
04 agricultural land outside of Zones A, B, C.
05 Q. If you take a look at table 3.8 above the paragraph that
06 you were quoting, is this the Sremska Gazela
07 expropriations that you mentioned in the table?
08 A. Yes.
09 Q. That was in 2011 and 2012, right?
10 A. I believe so, yes.
11 Q. And the valuation date is?
12 A. The valuation date is 2015.
13 Q. So there were no further expropriations for three years?
14 A. I can't confirm that actually because some of the
15 data --
16 Q. But based on your report?
17 A. Some of the data is not easily available to us, I can't
18 confirm that, but I do know based on the evidence we
19 have looked at that there were expropriations in 2011
20 and 2012.
21 Q. Then you speak about Batajnica transactions, and you say
22 that the Batajnica transactions are amongst the best or
23 the best evidence that we have for the fair market
24 valuation, that was what you said, I wrote it down.
25 A. I think amongst the best, coupled with, as I said, the

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01 new evidence presented by Ms Ilic on the transaction
02 right next to BD Agro's farm complex.
03 Q. But you never said that in three of your reports that we
04 have?
05 A. Do you want to take me to the paragraph?
06 Q. Yes, that is your first report, paragraph 69, you
07 consider these transactions, you even have slight
08 reservation there, and you never say it's the best
09 evidence, you never say that it's even the evidence that
10 should be used, is that correct?
11 A. No.
12 Q. Where do you say that this evidence should be used?
13 A. Because you can see that in table 3.3, this is the
14 evidence that I considered to be evidence for comparable
15 land, on page 26, and you can see clearly --
16 Q. Which?
17 A. Table 3.3. You can see clearly that I include the
18 Batajnica market value assessments.
19 Q. Yes, indeed, but you --
20 A. In that table.
21 Q. You also include Zemun transactions for €43-88/m2, did
22 you use these transactions as well?
23 A. It depends on your meaning of the word "used".
24 Q. Really, okay. So tell --
25 A. If I can take you to my conclusions, this is the

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01 evidence that I considered was relevant, and I think as
02 a valuer, it's important to present evidence that
03 supports the final conclusion that you arrived at, even
04 if the numbers are higher or lower. So to take as an
05 example Zemun, and you say I don't use Zemun, I don't
06 use Zemun directly, but Zemun is supportive because what
07 Zemun is telling me is that for fully developed land
08 that's gone further than just the general regulation
09 plan, it's in a more developed state, the valuations are
10 higher. And I use that as informative for my final
11 conclusions but in terms of the most direct evidence,
12 the best evidence that I considered at the time of this
13 report, you can see here the comparable transactions
14 have a range of €20-37, right? And that €37 comes
15 directly from the Batajnica market value assessments, so
16 it's directly in my conclusions in table 34 as amongst
17 the best evidence in my report.
18 Q. But you don't say it's the best evidence, right?
19 A. No, because as I say, my views on that issue, and I did
20 try to say that in the presentation, my views on what
21 the best evidence is have changed a little bit during
22 the course of the arbitration.
23 Q. Sure, but have they changed whilst you were writing the
24 second or third report, or have changed between your
25 third report and now?

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01 A. A little bit of both. So in my third report, and I'll
02 take you to that actually, in my third report, if
03 I could highlight figure 2.3, which is page 26, this
04 data actually wasn't available to us at the time of my
05 first report. We knew about it, we did the research
06 about it, but when we then went to source the data, it
07 had disappeared from the website.
08 We were able to, in my third report, and this is the
09 evidence that you were asking about, the Batajnica
10 transactions, or the expropriations, that wasn't
11 available at my first report but it was available at my
12 third report, and we were able to identify all the plots
13 in Batajnica that had been expropriated by the Serbian
14 authorities, and the prices that were paid for those
15 expropriations, and this actually included some
16 additional evidence that wasn't in my first report.
17 Q. Can we stop there. But is it correct or fair to say
18 that in that part of the report that you took us here,
19 that part of the third report, you are actually
20 discussing the issue whether these Tax Authority
21 assessments are market evidence or not? You're not
22 discussing which of your transactions that you referred
23 to was the best evidence. So this is practically
24 irrelevant for our discussion.
25 A. No, absolutely not irrelevant, because it provides a lot

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01 more data than was available at the time of my first
02 report, and in terms of what's relevant, I think what
03 we're trying to do is identify the best comparable
04 transactions, and this data, as I say, wasn't directly
05 available at the time of my first report, but it was at
06 the time of my third report --
07 Q. Dr Hern, the Batajnica transactions that Mr Grzesik
08 refers to, they were not only available but quoted in
09 your first report, is that correct?
10 A. Not precisely actually, no. So if you go back to my --
11 Q. Dr Hern, let me take you to your first report.
12 A. Paragraph 69 of my first report said that they were
13 market value assessments, so at this stage, we knew
14 about the exhibits, so these are exhibits from the Tax
15 Authority that says what the market value of this land
16 was, so we knew about that, and you can see there the
17 range of €28-37, but only at the time of my third report
18 did we know that those market value assessments were
19 used for expropriations.
20 So as I say, this figure 2.3 in my third report was
21 not available to us in my first report, so we didn't
22 know at that time how the market value assessments had
23 then been used for the expropriations. And quite
24 clearly that's very important because if they have
25 actually been used for expropriations, they become

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01 elevated in terms of a reference point for any
02 valuation.
03 Q. Dr Hern, just one more question, and we are moving on.
04 You didn't know at that time that they were used for
05 expropriations, but Mr Grzesik said they were used for
06 expropriations, so that was at the time of your second
07 report.
08 A. Yes, but Mr --
09 Q. So this is a little bit contradictory.
10 A. No, it's not contradictory. The time of my first report
11 was January 2019, right? Mr Grzesik did a report a year
12 later, so what's included in Mr Grzesik's report doesn't
13 mean that it was available to me, a year earlier, and
14 I can tell you, it wasn't. It was only a year later
15 that this data was available from the Belgrade Land
16 Development website, so it was only at the same time
17 that Mr Grzesik did his analysis, and I didn't know what
18 Mr Grzesik was going to say, by the way, it was only at
19 the same time that he did his analysis that we found
20 this additional information. As I say, I am also
21 forming my view on the relevance of this information
22 based on the new data that's arisen, but also
23 Mr Grzesik's own analysis of that information too, and
24 both things are important to me when I'm thinking now
25 about the relevance of that data.

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01 Q. So let's take you, and I promise we will finish with the
02 Batajnica transaction, to CE-159. That is the exact
03 exhibit that you use, one of the exhibits for the
04 Batajnica transactions that you use in your first
05 report.
06 A. Okay.
07 Q. If we look at the bottom of page 1, and you can read the
08 last paragraph, starting with:
09 "Since the aforementioned cadastral parcels ... are
10 development land planned for construction of an
11 intermodal terminal and Logistics Center Batajnica with
12 roadways ..."
13 Doesn't that tell you this is expropriation?
14 A. If you look at the same page, it says a valuation of
15 RSD 3,500 to RSD 4,500 so that page itself doesn't tell
16 us the precise price that was paid for individual plots,
17 so that information on the precise price for the
18 individual plots was only available a year later at the
19 time of my third report, which is CE-888.
20 Q. Thank you very much. Now let's move to a connected
21 issue or topic. One of the main points of dispute
22 between you and Ms Ilic and Mr Cowan is the development
23 potential of Zones A, B, C, right? Well, in sum, she
24 says it lacks infrastructure, detailed development plan,
25 you disagree with her.

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01 Now let's see what you say about the development
02 potential. At paragraphs 57 and 58 of your first
03 report, you say that there was a plan for Sremska Gazela
04 in 2008, and an update in 2012, right?
05 A. Mm.
06 Q. And then you give us a map. If you go to paragraph 60,
07 you give us evidence of development potential there, in
08 addition to the adopted plans that you discuss in
09 paragraph 58.
10 A. Yes.
11 Q. And then, if you look at paragraph 60, we have evidence
12 from 2017:
13 "... further funds were allocated for expropriations
14 of land for the construction of Sremska Gazela."
15 But we can disregard that because that is 2017, and
16 it's two years after the valuation date, correct?
17 A. Well, I don't know whether you -- what do you mean by
18 disregard it? I think it's further evidence of the
19 development potential of that land.
20 Q. But it's not direct evidence, because it's hindsight,
21 right? It's after the valuation date, two years.
22 A. Well, it depends on how strictly you want to not use
23 hindsight, and I personally think that there are some
24 areas where hindsight can be used, but that's a matter
25 of opinion.

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01 Q. There are certainly, but well, in this valuation,
02 probably not, right?
03 But let's say it's a confirmation of your argument,
04 we can put it that way. I mean, at least in your view,
05 right? And then you have the expropriations that you
06 mentioned and we mentioned from 2011 and 2012, that's
07 already three or four years before the valuation date,
08 correct?
09 A. I am sorry, what reference --
10 Q. The last sentence, sorry.
11 A. Yes, okay, that's what we just talked about.
12 Q. That's three or four years before the valuation date.
13 So what we are left with is 2014, and the evidence that
14 you give about the 2014 budget of the City of Belgrade
15 intended for the development and lease of development
16 land, and you say that it is budget allocated funds for
17 expropriations of land related to the construction of
18 the Sremska Gazela, is that correct?
19 A. That is my understanding, yes.
20 Q. Then you give us a footnote there, there is a source,
21 and one source is Exhibit CE-151, so let's see what's
22 your source for this statement about 2014, which was
23 left standing there as evidence of the development
24 potential.
25 Can we go, please, the reference is to number B/1.2,

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01 at page 7 of the English translation, do you see that?
02 It's on the screen.
03 A. Mm.
04 Q. Could you please tell us where does it say here that the
05 funds were allocated for the expropriation of Zones A,
06 B, C?
07 A. You just have a table of figures there, so ...
08 Q. Sorry?
09 A. All I can see is numbers you're showing me there. Can
10 I see the rest of the document?
11 Q. You see the explanation which is on the left-hand side,
12 the left column, and it's highlighted, so if you could
13 please take us to 1.2, or whatever you refer to here.
14 It's not a huge text, you can quickly go through it.
15 A. What is the exhibit, CE-151?
16 Q. CE-151, which is a reference in your footnote 42 to your
17 paragraph 60 of your first report as evidence of the
18 fact that the 2014 budget has allocated funds for
19 expropriation of land related to the construction of
20 Sremska Gazela.
21 A. I am not sure whether you want me to go through the
22 whole document?
23 Q. I want to see the reference that you have made and to
24 tell us, how does it support your statement in your
25 report? So that is page 7. B/1.2. Or you can look at

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01 the whole of page 7, as far as I am concerned.
02 A. Well, you see funds allocated to roads, right? As the
03 title.
04 Q. Yes, I do.
05 A. And then you see an amount that goes across, right?
06 Q. And I see that there is --
07 A. My understanding is that a portion, if not all of this
08 amount, is associated with the Sremska Gazela. Based
09 just on this page, it's correct, I can't see a reference
10 to Sremska Gazela.
11 Q. Okay, thank you.
12 A. But I believe this is also described in Mr Markicevic's
13 witness statement --
14 Q. Well, let's go to the statement and see what it says
15 there. So again we go to Mr Markicevic's statement,
16 that is his second witness statement, paragraphs 128 to
17 129. Can we see the footnote, please, of 128?
18 Does he say there that he talked to Mr Vujic and
19 that from that conversation he understood that in 2014,
20 the City of Belgrade had allocated further funds for
21 expropriations related to Sremska Gazela, and this is
22 exactly what you almost verbatim copy in your report,
23 right?
24 And then he says that he discussed this issue with
25 Mr Vujic over the phone, who sent him then an email

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01 attaching the document showing the planned investments,
02 right?
03 A. Mm.
04 Q. That is footnote 110. So let's go and see what was that
05 email [CE-338]. Did you check that email?
06 A. I think we did look at it, yes.
07 Q. It really says:
08 "Page 18 -- beginning of construction of new
09 facilities."
10 But it again does not mention Zones A, B, C, it
11 mentions "commercial zone Highway Novi Beograd, Zemun
12 and Surcin" which are not less than three municipalities
13 in the City of Belgrade.
14 A. Mm.
15 Q. That doesn't provide support to your statement, does it?
16 A. Well, I don't know what other roadways in that zone
17 would have been discussed as part of this, but honestly
18 I think that you would have -- I wasn't here, didn't
19 have the benefit of your discussions with Mr Markicevic
20 on this.
21 Q. We didn't ask Mr Markicevic anything about it, I'm just
22 referring you to the statement that you used. I'm not
23 using anything else.
24 A. Then I think you should ask him, as opposed to me. We
25 were of the understanding that there wasn't any

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01 ambiguity about the funds being allocated to that road,
02 but if it's your contention that there is ambiguity,
03 then I think you would be better to ask him about that.
04 Q. Right, but can we clarify now, have you been instructed
05 to assume that there was money allocated in the 2014
06 budget, or you came to that conclusion on the basis of
07 evidence that you reviewed?
08 A. That was our understanding on the basis of discussions
09 and to be honest, it is three or four years ago that we
10 had these discussions, so I'm not going to try to
11 describe exactly how we formed that view, but they were
12 formed on the view of discussions that we had with
13 Mr Markicevic at the time and evidence that we looked
14 at, so I honestly can't be more precise than that at
15 this point.
16 Q. Are you aware that Mr Markicevic is a director in one of
17 the Claimants?
18 A. Yes, of course I am aware of that.
19 Q. Thank you. Let's go back to paragraph 60 of your
20 report, just to remember what you said about the
21 development potential of Zones A, B, C and the 2014
22 budget.
23 Let me just take you to one question that I forgot
24 to ask. In your first report, and I understand that you
25 somewhat changed your valuation and your sources, but in

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01 your first report, at paragraph 89B, if we can go there,
02 you say that your upper bound price, and this is the
03 price that you actually now leave as the only one, is
04 based on the weighted average price used in Mr Mrgud's
05 valuation, is that correct? You say that there.
06 A. Well, I also have a second sentence there in that
07 paragraph --
08 Q. I know.
09 A. -- that says that's consistent with the comparable
10 transaction evidence which we have just talked about.
11 Q. But your primary evidence in this report, for the price
12 of €30, was Mr Mrgud?
13 A. No, I don't say primary.
14 Q. But you say it first, Mrgud, and put it in a separate
15 sentence, is that correct?
16 A. I don't think you can read from just the order in which
17 I write the sentences what's primary and what's
18 secondary, and maybe I could have written this more
19 clearly, but the upper bound of €30 takes account of
20 Mr Mrgud's valuation, but it also takes account of the
21 evidence from the comparable transactions, which also
22 suggests a number around €30.
23 Q. Thank you, Dr Hern. I am not going to make you read
24 your report again, to quote it.
25 Let's go now to the next topic, and that is

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01 actually -- it is not the next topic, it is
02 a continuation of this one. Paragraph 60 of your first
03 report again -- no, sorry, I had to jump a little bit
04 from question to question, because we had this
05 presentation today. Let's go to Exhibit CE-101, that is
06 BD Agro's March 2015 pre-pack reorganisation plan,
07 page 79. It is page 79 of the English, 174 of the
08 document itself.
09 Can you read that, please?
10 A. Yes, which bit?
11 Q. The note.
12 A. (Pause). Mm.
13 Q. Is it correct that BD Agro's management, headed by
14 Mr Markicevic, the same one you quoted, BD Agro's
15 management is talking about "multi-year period" to
16 complete "previous activities" to prepare the land for
17 selling, and does this multi-year period tell us
18 something about the development potential of the A, B, C
19 land?
20 A. I am sorry, I don't understand your question, can you
21 say that again?
22 Q. Is this note, and its reference to a multi-year period
23 that is required to sort out certain things --
24 A. Yes.
25 Q. Is this statement relevant for your assessment of the

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01 development potential of Zones A, B, C?
02 A. Not unless you -- I mean, I don't see that it's
03 relevant, but maybe I am not understanding your
04 question.
05 Q. Well, it says:
06 "To commence with the sale of that land, it is
07 necessary to perform a series of previous actions and
08 investments of funds for the purpose of regulating
09 property relations, re-allotment of parcels and achieve
10 compliance with the general regulation plan and
11 so-forth."
12 A. Right.
13 Q. "The expected duration of these previous activities is
14 uncertain, but it is certainly a multi-year period,
15 which significantly reduces the likelihood of collecting
16 receivables by selling this immovable property."
17 So is this relevant for your assessment of the
18 development potential of Zones A, B, C?
19 A. Again, I don't see that. All I see is what you have
20 just said, which is in this plan it says "to commence
21 with the sale of that land", so some or part of A, B, C,
22 it's necessary to -- you go through a series of actions,
23 re-allotment of parcels, make sure that land is sold off
24 in the proper way, and presumably what it's saying, but
25 you have to read through the lines a little bit, is that

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01 this could take some time, to do that and to find the
02 right buyer for that land, it could be a multi-year
03 period. But in terms of your question, does this affect
04 the development potential of the land, the development
05 potential is by definition what the land can be used for
06 in future, so the fact that it takes some time to do
07 this, in my view, doesn't affect the development
08 potential of that land, if that's the question you are
09 asking me.
10 Q. Does this affect your valuation, let me put it this way?
11 A. No, not directly, because the valuation of the land
12 under a fair market value framework is the price that
13 would be paid for that land by a willing buyer to
14 a willing seller and it's not dependent on the exact
15 time at which that transaction takes place. Having said
16 that, of course the fact that the land is not fully
17 developed, right? It's not the same land as, for
18 example, we see in Zemun, which is fully developed
19 land --
20 Q. Or Batajnica.
21 A. No, not Batajnica. Batajnica is also agricultural land
22 with a regulation plan. It's still agricultural land in
23 Batajnica, with a regulation plan, so it's the same
24 issue in Batajnica, but Zemun, it's much more developed,
25 so the fact that this land in A, B, C and Batajnica 2

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01 has to go through that process of being developed
02 obviously makes it a little bit less valuable, if that's
03 your question, than land that is fully developed.
04 Q. Thank you. Can we go now to Exhibit CE-511, page 18?
05 That is a valuation that was prepared soon -- well,
06 after the valuation date, and it's not used for that
07 purpose, by Mr Bodolo during the bankruptcy proceedings.
08 At page 18, let's just look at the end of the last
09 but one paragraph, do you see that? He says that it
10 would be necessary to raise approximately
11 €100 million -- that is the one unfinished paragraph,
12 sorry, probably the last line in the document -- that it
13 would be necessary to raise approximately €100 million
14 for infrastructure investments in Zones A, B, C.
15 A. Mm.
16 Q. He says that this raises a lot of uncertainty concerning
17 the start and completion of this project, is that
18 correct? And then if we can turn to the next page, he
19 outlines, from the middle of the page downwards,
20 a number of factors that should be taken into
21 consideration in the valuation, and read that but I will
22 just summarise, it is uncertain timeline of completion
23 of the zone, a long time to fill out the zone with
24 investments, the fact that there are other industrial
25 zones in the vicinity, which are already there and not

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01 completed and not fully used, do you see that?
02 A. Yes, I do see that.
03 Q. Did you take this or these factors into account when
04 assessing the development potential and value of the
05 Zones A, B, C?
06 A. Well, indirectly, yes. I mean, we didn't refer to this
07 gentleman's report at the time and this is just
08 obviously his opinion, but indirectly, we are, I am
09 taking into account these factors, and this comes back
10 to the market approach that we're using. I am
11 identifying land that is either exactly the same ideally
12 or very similar land that also has to go through these
13 types of processes before it's fully developed and fully
14 completed for any particular industrial use, and that's
15 why we're focusing on the Batajnica land, for example,
16 because that is also agricultural land with a regulation
17 plan but it's not fully developed, it also has to do
18 exactly these things that Mr Bodola is highlighting.
19 I'm not necessarily agreeing with his words --
20 Q. Dr Hern, would you agree that the Batajnica land was
21 expropriated for the development of infrastructure of
22 national importance, this intermodal terminal, railway,
23 things like that, so this is something probably a little
24 bit different in terms of the development and potentials
25 of development, and now we hear Mr Bodola mentioning

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01 €100 million to develop this land, to put it on the
02 market.
03 A. With respect, I think you are mixing two things here.
04 One is the €100 million which is needed to develop the
05 land, so if you want to compare that €100 million with
06 Batajnica, you would have to provide me with a similar
07 figure for Batajnica. But what I am trying to say to
08 you is that in my view, the Batajnica land has to go
09 through the same types of development processes.
10 Q. I understand that.
11 A. And that therefore -- sorry, please let me finish.
12 Therefore, the price that is being paid for that land,
13 and/or similar agricultural land with a regulation plan,
14 becomes highly relevant for the market price of this
15 land, even if this gentleman is right that a lot of
16 money still needs to be spent on this land before it's
17 fully usable. But those are two different issues,
18 right? What we are trying to establish is the market
19 value for the land in its present state, and we have to
20 look at other comparable evidence, and I don't agree
21 with you that the Batajnica land is not comparable.
22 Q. But would you agree that development of the Batajnica
23 land will come from the public money and the development
24 of the Zones A, B, C will come from the private money,
25 if you agree to that, do you agree with that?

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01 A. Well, not necessarily, no. The development of A, B, C
02 is now owned by the public.
03 Q. But then it's land that is developed for the purpose of
04 intermodal terminal, railway, things like that, it's
05 major national infrastructure --
06 A. But with respect, that doesn't change the market value
07 of that land.
08 MR PEKAR: Dr Djerić, if I may, where do we have evidence
09 for the fact that all of the Batajnica land is developed
10 for these purposes? I don't recall having it seen that
11 on the record.
12 DR DJERIC: We have the detailed regulation plan for
13 Batajnica, and we have testimony of Ms Ilic yesterday,
14 so we can refer the witness to that --
15 MR PEKAR: Yes, please refer the witness to Ms Ilic's
16 testimony, because I do not recall her saying that all
17 of the Batajnica land will be developed with public
18 money, that's not my recollection.
19 DR DJERIC: We are not going to go into this issue. We can
20 take you through the detailed plan for Batajnica, but
21 let's not waste a lot of time.
22 THE PRESIDENT: But we should just be clear on the questions
23 we ask.
24 DR DJERIC: Okay, this is --
25 THE PRESIDENT: Before you make an assumption and say if the

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01 Batajnica development is publicly funded entirely, as
02 opposed to A, B, C, that must come from private funds,
03 then does it affect the valuation.
04 DR DJERIC: Yes, my mistake, sorry.
05 So let's speak about that, on that assumption.
06 A. I am happy to work on that assumption, if you would like
07 me to.
08 Q. So there is an assumption that the development of the
09 Batajnica land will be publicly funded, and the
10 development of the Zones A, B, C will be privately
11 funded. So would that make a difference in your
12 valuation, and you using the Batajnica land?
13 A. No, I don't think so. And I have thought about this
14 quite a bit. But let me take you to my thought process
15 for why not. What we're trying to do is to establish
16 the market value of the land. I think we agreed with
17 that, the market value of BD Agro's A, B, C land.
18 It becomes relevant then to look at other
19 transactions where market value has been used, or is
20 directly used in those transactions. Now, we know that
21 the Batajnica expropriations, and you had already shown
22 me the exhibit, the Batajnica expropriations expressly
23 say that they are based on a market value assessment of
24 that land.
25 So we know that the price that was paid, and okay,

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01 let's just assume it has been paid by the public
02 authorities, they haven't yet bought all of that land,
03 as far as I understand, but the price that they are
04 required to pay is the market value, and by definition,
05 market means what's paid in a free market. It's not the
06 price that's paid by a public authority based on
07 whatever the public authority wants to pay, so it
08 reflects the market price.
09 The only reason why that price is not relevant is if
10 there is any reason to think that the public authority
11 has paid a premium for that land, or a discount. But
12 based on what they are required to do, they are required
13 to pay a market price, and I have no evidence to think
14 that they haven't paid a market price. In fact, if
15 anything, they would probably be incentivised to pay
16 lower than market, and to see if there is an appeal, so
17 an expropriation price possibly becomes a lower bound on
18 what a reasonable market price is.
19 Q. Thank you. Let's move to your second report,
20 paragraph 87, let's start there. Generally speaking, in
21 your debate with Mr Cowan, you criticise his invoking of
22 earlier business plans of BD Agro from 2006 and 2011,
23 right? When he is saying that the reorganisation
24 business plan will not work, and then comparing it with
25 2006 and 2011 plans, you criticise him for invoking

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01 these plans, is that correct?
02 A. Broadly speaking, I think the conclusions that he
03 reaches, and I am paraphrasing him a little bit, but
04 I think he reaches the conclusions that because BD Agro
05 has not been able to implement this reorganisation plan
06 or a form of it historically, that that means that they
07 can't do it going forwards, and I think he is wrong to
08 reach that conclusion by itself, because -- you know,
09 for a number of reasons. One is the only business plan
10 that we understand the business actually tried to
11 implement was the 2006 business plan, but there were
12 particular issues around diseases that affected the cows
13 over that period.
14 Q. Please stop there, I have a question about that. So you
15 actually state, and that's what was my next point, that
16 one of the things was the slaughter of the almost entire
17 herd of BD Agro in early 2007, due to leukosis, right?
18 That is paragraph 87, third sentence.
19 A. Right.
20 Q. Then you state that it was hard to replace the
21 slaughtered herd because of the blue tongue disease in
22 Europe, right?
23 A. Mm.
24 Q. So these are all some unusual situations, right? Like
25 the outbreak of a disease, things like that.

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01 A. Mm.
02 Q. But would you agree that unpredictable developments and
03 instability on the market that this causes, they are not
04 unheard of, right? We had the 2008 global crisis, we
05 have now the COVID pandemic, right? So my question to
06 you is actually, does your analysis of the credibility
07 of the pre-pack plan take into account the possibility
08 of market turmoils like this one, that happen every
09 couple of years?
10 A. I think it's a good question, how to take account of
11 these unusual type of events. I think that -- that's
12 obviously quite difficult to do in any business plan,
13 it's obviously difficult to plan for COVID, and most
14 businesses don't put a business plan that assumes
15 a COVID scenario, so there are obviously some
16 exceptional events that can affect any business.
17 But I think the job of any valuer is to look at the
18 credibility of the business plan in a more normal
19 economic environment, a more normal business
20 environment.
21 Q. But Mr Cowan --
22 A. Sorry, because you have asked me a question.
23 Q. Okay, sorry.
24 A. And to understand that there is some headroom there,
25 right? It's not overly optimistic, to take account of

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01 what could happen to that business. So the way I look
02 at it is typically to make sure that the projections are
03 not obviously inconsistent with historical improvements,
04 not obviously inconsistent with capacity, take account
05 of a reasonable timeline to do the investments, and as
06 I say, when we looked at the projections in the business
07 plan, we thought that in many ways they might be a
08 little bit conservative. So in that respect, what
09 you're trying to do as a valuer is to come up with a P50
10 scenario, a best expected scenario, recognising that the
11 business could do better. But also there could be
12 events that make the business do worse too. You can't
13 project everything.
14 Q. Sorry, I asked you a simple question: did you take into
15 account the possibility of various turmoils that
16 could --
17 A. I am answering your question.
18 Q. Refer me to where you --
19 A. I am answering your question, because what I'm saying is
20 that the projections are effectively an expected
21 projection, taking account of both upsides and
22 downsides. So that's always the case when you do a DCF
23 projection, you only have one projection for the
24 business, and what you're trying to do is to come up
25 with a best expected projection that recognises upsides

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01 and downsides.
02 Q. Dr Hern, we have here an agricultural business, right?
03 A. Yes.
04 Q. I would say, or would you agree that the agricultural
05 business is particularly vulnerable to various whims of
06 nature, so to say, and also the whims of the markets?
07 A. Well, I don't know particularly, but all businesses have
08 vulnerabilities, but it is an agricultural business, and
09 clearly, from its history, there have been times when
10 it's clearly been vulnerable to issues like disease, for
11 example, clearly.
12 Q. Dr Hern, are you an expert in the agricultural business?
13 Do you consider yourself an expert in the agricultural
14 business?
15 A. Not specifically, but I have valued a range of different
16 businesses across my experience.
17 Q. Is it correct that you actually based your valuation on
18 the 100% implementation of BD Agro's plan in the
19 reorganisation proposal?
20 A. We considered that the basic projections in that plan
21 were very reasonable. It wasn't 100% projection, we
22 actually assumed some additional capex that wasn't in
23 the plan, associated with an irrigation system, but we
24 assumed that the basic projections in the plan were very
25 reasonable, yes.

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01 Q. Did you take into account that the farm never operated
02 at 50% of its capacity for a decade, and that in two
03 years prior to the PPRP it operated only with 10%
04 capacity? And I think you mentioned that even in your
05 second report, paragraph 235.
06 A. Paragraph, sorry, what?
07 Q. 235.
08 A. Of course we knew that, and of course that's a key
09 reason why the business hasn't been positive in terms of
10 its cashflows. This type of business, it's an economies
11 of scale business, the investment had been undertaken
12 into the basic infrastructure of the business, the
13 buildings, the milking facilities, but the investment
14 had not been undertaken into the herd, and of course, as
15 a result of that, they were way off maximum capacity,
16 but the valuation of a business is about what the
17 business can achieve, not what it has achieved.
18 Q. So your assumption is that on the basis of the
19 investment that was supposedly expected, the farm would
20 achieve maximum capacity as per the business plan?
21 A. Well, we looked at the investment that had been
22 undertaken at the time of privatization, and that was
23 quite considerable, into the basic infrastructure for
24 the business, and what was missing in our view for the
25 business to become fully operational was investment into

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01 the herd, and we then looked at what was forecast about
02 that investment, we cross-checked the assumptions that
03 they made in terms of prices that they would need to pay
04 for new herd, and you can see that in paragraph 250 of
05 my report, and there were no reasons -- they had
06 received offer prices from a number of different
07 companies to purchase new herd.
08 So based on that, you have a business that has all
09 the infrastructure, it's missing the cows, they know
10 what they need to pay to get those cows. There's no
11 reason in my view to say that this business could not be
12 operating at a high capacity in the near future. It has
13 the land, but there were obvious reasons why it wasn't
14 doing the investment, up until 2015.
15 Q. You say that all this could have been achieved in two
16 years, or less than two years, if I understand well
17 paragraph 237 of your second report, is that correct?
18 And please give us a short answer because we are
19 a little bit running out of time.
20 A. What could all be achieved? What are you referring to?
21 Q. The full capacity of the farm and the implementation of
22 the plan. You said it would be delayed until 2016.
23 A. Yes.
24 Q. So that's it, right.
25 A. The plan would be fully implemented, but the plan

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01 assumes a staging of investment into cows over two or
02 three years, I can't remember the exact profile, but
03 we're not assuming that they just go out and buy 6,000
04 cows on day one, there's a staging of investment that's
05 been undertaken.
06 Q. So your testimony is that the plan and the capacity
07 would be achieved in two or three years as per the plan?
08 A. I would have to look at -- in fact actually my slides,
09 you can probably see that on my slides.
10 DR DJERIC: Actually in the meantime, I can say that I was
11 wrong to say that we don't have time, we do have
12 sufficient time, but we can make a break, Mme President,
13 when you see fit.
14 THE PRESIDENT: Yes, I was about to interrupt you in two
15 minutes from now, but let's answer this question, and
16 then you finish this topic?
17 A. If I can just take you briefly to slide [10] you can see
18 here the projections for revenues going forwards and
19 capex going forwards, and you can see that the
20 projections of revenues start to increase from
21 implementation, and then they ramp up in each year,
22 2016, 2017, 2018, 2019, and they are ramping up based on
23 the investment that's been undertaken in the cows,
24 starting with 2016, then 2017, 2018, and 2016 also
25 includes investment into an irrigation system too but

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01 the plan is reasonable, I think, in terms of it's
02 assuming gradual investment into the new herd, that
03 investment will be expected to bring revenues from milk
04 production over time. As I say, they actually had
05 offers for all the cows that they needed on day one, so
06 it's conservative in that respect, it's not assuming, go
07 out and buy all the cows on day one, it's assuming
08 a ramping up over two or three years.
09 DR DJERIC: And then just the last question for this block:
10 what in your opinion would be the consequence of not
11 fulfilling the plan?
12 A. Do you want me to answer that now?
13 Q. For the company. Yes.
14 A. Clearly it's possible that the plan didn't work, it's
15 possible, of course, and that's actually why -- by the
16 way, that's possible for any business, right? Any
17 business has a plan, it's possible that that plan
18 doesn't work. That doesn't mean that the business is
19 not valuable at a point in time, all it's saying is in
20 the future, it's possible the business could go
21 bankrupt, right? So that's possible for any business.
22 But just to maybe elaborate on that answer here,
23 that I think is also important why the asset-based
24 valuation approach is relevant, because what the
25 asset-based valuation approach is essentially saying is

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01 even if you valued this business on its parts, on its
02 agricultural land, on the value of the buildings, the
03 value of the equipment, the value of the herd, you're
04 not actually assuming that the business is going to
05 operate, you're just valuing the business on its
06 components, what valuation would that produce?
07 And that's the second approach that I talked you
08 through, which effectively assumes that the business
09 sells off the agricultural land, it sells off the herd,
10 and it sells off the buildings and the equipment, and on
11 that basis, that is the fallback option that this
12 business has. It's probably fortunate compared to many
13 other businesses that if it doesn't work, it can just
14 sell the land and the herd.
15 So you actually have two different ways of valuing
16 this business that are complementary; one assumes it
17 continues and it becomes a profitable going concern, and
18 the other valuation assumes actually the business just
19 decides to sell off the land and the herd and the value
20 comes from those sales.
21 Q. Dr Hern, can we just focus a little bit here? You are
22 very well acquainted with the business performance of
23 the company.
24 A. Yes.
25 Q. Let's assume that the pre-pack reorganisation plan was

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01 not adopted, and never readopted, there is no pre-pack
02 reorganisation plan; that there are no measures, no
03 termination of the contract. What happens in your
04 opinion with BD Agro?
05 A. I mean, with respect, you're dealing with a
06 counterfactual scenario that I can't say obviously for
07 sure what happens. As far as I know -- what we're
08 trying to do is value the business in October 2015. At
09 that point, in my view, the business was a going
10 concern, the creditors had approved the plan. As I say,
11 it's possible -- obviously there is a range of
12 possibilities from that point onwards; the business
13 could do very well, achieve more than its profits, the
14 plan could not be approved. Obviously there's
15 a possibility that if it's not approved, the assets
16 could just be sold.
17 Q. For the end can we just put on the screen CE-310, and
18 see what Mr Markicevic said about that? And we can
19 finish there. That is his letter to the Canadian
20 Embassy, end of 2014. It says:
21 "The company is at a point where it cannot continue
22 as a going concern without successfully completing
23 a pre-pack restructuring of its debt ..."
24 A. Sorry, what date is this document?
25 Q. That is Mr Markicevic's letter to the Canadian Embassy.

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01 A. What date, please?
02 MR PEKAR: Dr Djeric, are you representing that what
03 Mr Markicevic wrote here was subject to the assumptions
04 that you stated a while ago, which is that there would
05 be no termination of the agreement, I assume release of
06 the pledge, et cetera?
07 DR DJERIC: Well, I would say that these assumptions are
08 flowing from Mr Markicevic's letter, and the sentence
09 that he is putting there. "The company cannot" --
10 MR PEKAR: Which assumptions do you have in mind?
11 THE PRESIDENT: We would need the date, please.
12 18th December 2013.
13 DR DJERIC: 18th December 2013, so when the restructuring
14 was about to be ...
15 Thank you, we can make a break at this point,
16 Mme President.
17 THE PRESIDENT: Was that a question?
18 A. I am not sure what the question was.
19 DR DJERIC: When you read what Mr Markicevic says there, and
20 we were discussing the alternative scenario, do you --
21 A. But isn't --
22 Q. This is what you had in mind, right?
23 A. No.
24 Q. As an alternative scenario, if there is no
25 reorganisation plan. Do you agree with what

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01 Mr Markicevic says, what happens if there is no
02 reorganisation plan, or do you not agree?
03 A. I mean, the highlighted text there says to me that in
04 2013, Mr Markicevic was saying that the company is at
05 a point where it cannot continue without restructuring
06 of its debt, so that was Mr Markicevic's view at that
07 point in 2013. To be honest, I am not sure what your
08 question is to me.
09 Q. My question was, do you agree with this statement of
10 Mr Markicevic supposing there is no reorganisation --
11 A. I don't have a view on Mr Markicevic's statement in
12 2013.
13 DR DJERIC: Thank you very much. Mme President, we can --
14 THE PRESIDENT: Yes. This is a good time for a break.
15 Let's take 15 minutes.
16 Dr Hern, you know the rule that you are not supposed
17 to speak during the break. Thank you.
18 (10.46 am)
19 (A short break)
20 (11.00 am)
21 DR DJERIC: Let's move to paragraph 76 of your second
22 report, where you talk about the support of the
23 creditors, and you say, in the middle of that paragraph:
24 "The creditors' approval is even more relevant given
25 that the creditors included a number of companies that

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01 were either suppliers or customers of BD Agro ... were
02 very familiar with BD Agro's business, and were
03 therefore in a position to assess the credibility of the
04 projections."
05 You refer here to Mr Markicevic, in footnote 42. Is
06 this your conclusion or it's Mr Markicevic's conclusion
07 that you are just adopting?
08 A. No, well, the statement is my conclusion, that statement
09 is my conclusion, but what I'm saying there is that in
10 order to assess the credibility of the pre-pack, I think
11 it's very relevant that first of all the majority of
12 creditors, including the banks, have approved it, but
13 also that businesses that fundamentally should
14 understand BD Agro's farm and milk production business,
15 and were also creditors to the business, had also
16 approved. So my understanding is that Imlek, which is
17 one of the creditors for the business, in particular,
18 that's the biggest producer of dairy products, had
19 approved the pre-pack, as well as two other dairy
20 producers; Mlekara Šabac and Somboled were also part of
21 the approval in the following statement.
22 Q. Thank you, that is exactly what the paragraph says. My
23 question is if this is your assessment, why would you
24 need to put a footnote to Mr Markicevic? If we can take
25 a look at Mr Markicevic's third witness statement,

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01 paragraph 38, it is almost identical. He speaks of
02 feasibility, you speak of credibility, things like that.
03 Were you not in a position to make that assessment by
04 yourself?
05 A. I think it is important to also -- that assessment is
06 made, I'm making the assessment by myself that the
07 creditors' approval is relevant for my assessment of the
08 credibility of the business plan but Mr Markicevic gives
09 more details, a little bit more background on the
10 business, that I also think is relevant to reference.
11 Q. Thank you. Let us see these creditors, and before we
12 proceed to the creditors, Dr Hern, can we agree that in
13 the bankruptcy in Serbia, speaking specifically of the
14 bankruptcy of BD Agro, bankruptcy proceedings, there
15 were different classes of creditors, right?
16 A. Well, that is my understanding but I don't think
17 I present evidence on that.
18 Q. I will put to you that there is class A, which are
19 secured creditors, and there is class D, which is
20 non-secured creditors, and we can see that in the
21 reorganisation plan, Exhibit CE-101, page 6. Yes, it is
22 the very beginning of the plan. The plan, I don't have
23 even to put it to you, you can read it, class A
24 creditors, secured creditors, class D creditors,
25 unsecured, and there is B and C which we are not

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01 interested, they get everything what they have and they
02 are not important for the discussion at the moment.
03 Take a look at the same exhibit, page 33, that is
04 class A. So this is the structure of A class claims,
05 and the first two are Nova Agrobanka and Banca Intesa,
06 and we will come back to them. Actually, let's discuss
07 something that you have mentioned in your PowerPoint
08 presentation. We know that there was a big position on
09 the position of Banca Intesa in this class, do you agree
10 with that?
11 A. Yes.
12 Q. You said that Agrobanka would be privileged under the
13 reorganisation plan, right? You mentioned that in your
14 presentation, is that correct?
15 A. I don't think I say those words, but I mean --
16 Q. Forgive me if I didn't convey, but you can tell us, what
17 is your thinking about the relationship between the
18 Agrobanka and Intesa?
19 A. They are clearly both class A creditors, right?
20 Q. Right.
21 A. My understanding is that Banca Intesa had prior pledges
22 over Agrobanka. But my understanding is that Agrobanka
23 had voted to approve the pre-pack, and Intesa had voted
24 not to approve the pre-pack.
25 Q. Yes, and are you aware of the fact that Intesa has

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01 challenged the valuation of BD Agro and of the land that
02 was the basis for the pre-pack, right?
03 A. Yes, I am aware of that.
04 Q. And Intesa submitted its own valuation under which it
05 would be the only or the majority secured creditor, are
06 you aware of that?
07 A. Yes, I am aware of that.
08 Q. Are you aware of the fact that the Commercial Appellate
09 Court in Belgrade vacated or annulled the decision on
10 reorganisation and returned it to the lower court?
11 A. On the basis that there were inconsistent valuations for
12 the business?
13 Q. Yes.
14 A. Yes, I am aware of that.
15 Q. Let me put it this way: do you agree that this meant
16 that there would be a new valuation of BD Agro?
17 A. Well, I don't know whether there would be a new one.
18 I don't know the exact process that would have evolved
19 at that point, whether there would be a new one, or
20 whether one of the valuations would have been deemed to
21 be more relevant than the other one. So I don't know
22 about that process.
23 Q. But you would also agree that there was a possibility
24 that a valuation favouring Intesa could have been
25 adopted?

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01 A. Well, presumably there is a possibility that a new
02 valuation could have been commissioned, and that new
03 valuation could have come up with a number -- if that is
04 the question you are asking me, could have come up with
05 a number that was more consistent with Intesa,
06 presumably that is a possibility.
07 Q. Thank you. All right, now let's move to these other
08 creditors. You mentioned Imlek, I believe, right? And
09 we see Imlek there at number 5.
10 A. Yes.
11 Q. So these are secured creditors, secured claims. You see
12 the value of Imlek's claim, that's Serbian dinars.
13 A. RSD 3.7 million.
14 Q. Could you roughly tell us what would that be in euros?
15 A. Well, you divide it by 120.
16 Q. So?
17 A. You will have to tell me that, I can't do that in my
18 head.
19 Q. Can we agree that it is less than, let's say, €30,000?
20 A. €30,000?
21 Q. Yes.
22 A. If that's the maths, then that's the maths.
23 Q. Now if we go to class D, that is at page 40 on the same
24 document, and if we find Imlek there, can you tell us
25 what is the value of the claim in Serbian dinars?

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01 A. 355 million, including interest.
02 Q. Okay, we will not do the math now, but we know that we
03 can divide it by 120.
04 A. Yes.
05 Q. So it's a relatively big sum, in millions of euros at
06 least?
07 A. It's a bigger number, yes.
08 Q. In class D, we also have, if you go to number 4, Mlekara
09 Šabac, that's dairy Šabac, and Somboled, this is another
10 dairy producer, that is number 9.
11 A. Yes.
12 Q. They have smaller but still relatively relevant claims,
13 right? Somboled is how much?
14 A. 19 million.
15 Q. And Šabac is?
16 A. What number is that?
17 Q. 67 million, I would say. Number 4.
18 A. Yes, 67 million, or 68.
19 Q. Would you agree that there would be a different
20 percentage of recovery in the bankruptcy scenario and in
21 the scenario of the adopted reorganisation plan?
22 A. Yes.
23 Q. If we can go to page 79, and that is where the company
24 is providing us with their estimate, you see that for
25 class D, in case of reorganisation, it should recover

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01 100% of its claim with reprogramming, do you see that?
02 A. Mm.
03 Q. You see that the class D in the case of bankruptcy would
04 recover 15% only of its claim, is that correct?
05 A. That's what it says. I don't know the context -- is
06 this a precise number, or just an estimate?
07 Q. Well, that's an estimate coming from BD Agro.
08 A. Right.
09 Q. In the bankruptcy scenario, class D, all these dairy
10 producers that you said were supporting the plan, and
11 the support was important, in the bankruptcy scenario,
12 they would recover 15%, whilst in the reorganisation
13 scenario, they would recover 100%, with reprogramming.
14 Does that look like a strong incentive to you that they
15 actually go for reorganisation and not for bankruptcy?
16 A. Well, if they thought the business was definitely going
17 to fail, then they would go for the bankruptcy, even in
18 class D. If they thought the business had a decent
19 chance of producing cashflows and returns over time,
20 then they are obviously incentivised to vote for the
21 reorganisation plan, so they have incentives in both
22 directions.
23 Q. Thank you. Let's then review some facts relevant for
24 the standing of BD Agro in 2015. I am going to ask you
25 a couple of questions, and if you agree, you can say

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01 "agree" or "I don't know" and then if you don't agree,
02 we will go to the document.
03 A. Okay.
04 Q. So we don't lose much time on that, it's pretty simple.
05 Are you aware that BD Agro's business account was
06 blocked continuously since 8th March 2013, and until the
07 valuation date?
08 A. I am aware that there was some issues around that,
09 I can't confirm those dates, but yes.
10 Q. Okay, let's see Exhibit CE-321, and that is page 8. Do
11 you see the second paragraph under the table:
12 "... the Company's business account was blocked
13 under the enforced collection procedure on March 8th
14 2013 and has remained continuously blocked ever since."
15 So please remember that.
16 A. Mm.
17 Q. Do you know that -- or I put to you that insolvency of
18 longer than 30 days is a reason for bankruptcy under
19 Serbian law, so if you please just --
20 A. That's a legal issue, and I don't have an opinion on
21 that.
22 Q. Can I refer the Tribunal to Exhibit RE-445, that is the
23 Bankruptcy Law, Article 11.
24 Let's see Exhibit RE-489, that is BD Agro's
25 auditors, page 6, at the bottom, that is where they give

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01 their opinion.
02 A. Could you zoom that in, please?
03 Q. Do you see the second paragraph:
04 "The mentioned fact indicates existence of
05 uncertainty about Company ability to continue business
06 operations in line with the Going Concern principle ..."
07 So the auditors say:
08 "... for that reason we cannot provide statement on
09 the business continuity principle."
10 Do you see that?
11 A. I do see that. What's the date of this document,
12 please?
13 THE PRESIDENT: Sorry, which year is this annual report?
14 DR DJERIC: Yes, we will go to that. March 2014.
15 A. So that's March 2014.
16 THE PRESIDENT: So it's the 2013 report?
17 DR DJERIC: Yes.
18 THE PRESIDENT: Is it an annual report? Maybe you can
19 just --
20 DR DJERIC: Yes.
21 A. So that's the auditor's report for the financial year
22 2013.
23 Q. Yes I know, but I just want you to take account of that,
24 and then you are aware, we mentioned Banca Intesa, you
25 are aware that they, as a first class creditor,

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01 requested opening of the bankruptcy proceedings, the
02 bankruptcy of BD Agro, are you aware of that?
03 A. I am aware of that, yes.
04 Q. Then BD Agro have the Commercial Court adopting the
05 reorganisation plan, and then Banca Intesa and some
06 other creditors appeal, and their appeal is adopted and
07 the matter returned for trial, is that correct?
08 A. That's broadly -- I mean, I have to trust you on the
09 facts but that is broadly speaking my understanding.
10 Q. If you take a look at CE-358, that's the decision of the
11 court, and it was on 30th September. Yes, September
12 30th, received on October 7th. So that's all before the
13 valuation date, right?
14 A. Well, some of it is a lot before, right? So the
15 auditor's report, for example, is two years before that.
16 Q. But this is the factual matrix -- sorry, my colleague
17 Mr Pekar has something to say? No, okay.
18 I am just putting this all to you so we have, so to
19 say, the factual matrix on the table, some things are
20 a little bit older, some things are right before the
21 valuation date, but let's suppose now hypothetically
22 there were no measures on 21st October 2015, no
23 termination of the contract, and the events continued to
24 unfold without contract termination, okay?
25 So we had this decision of the court.

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01 A. Yes.
02 Q. So we have no pre-pack reorganisation in place, at least
03 not yet, right?
04 A. Mm.
05 Q. BD Agro's accounts are blocked, right?
06 A. Mm.
07 MR PEKAR: Misrepresentation.
08 DR DJERIC: I think that we established that its bank
09 accounts were blocked.
10 MR PEKAR: At that time they were not, due to the filing of
11 the pre-pack.
12 DR DJERIC: I am not saying that -- they were blocked as
13 a matter of fact. I am not saying why they were
14 blocked.
15 MR PEKAR: No, they were not blocked as a result, because
16 one of the legal features of filing a pre-pack and
17 having it under approval before Serbian courts is that
18 the accounts are unblocked.
19 DR DJERIC: Okay, we will check that.
20 So we have a situation, there is no pre-pack, there
21 is huge debt, there are concerns about BD Agro's --
22 MR PEKAR: Again, what is it "no pre-pack"? The pre-pack
23 was still there, it was under approval.
24 THE PRESIDENT: I think we need to be precise if we make
25 assumptions. Now I understand the bank accounts had

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01 been blocked since the date in 2013, and then due to the
02 filing of the pre-pack plan, they were lifted. Then we
03 have the court decision of 30th September 2015, that's
04 a court of appeal decision that rejects the approval and
05 remands to the lower court, so I understand that the
06 proceedings are still pending, is that right? They are
07 back in the lower court.
08 DR DJERIC: At that moment, yes. So there is no pre-pack.
09 THE PRESIDENT: No, there is no pre-pack approved at that
10 time. There is a request that is still pending.
11 DR DJERIC: Exactly, but there is no pre-pack approved --
12 MR PEKAR: To be precise, there is no pre-pack approved by
13 the court. The creditors' approval has not been
14 invalidated. There was first the creditors' approval in
15 June and then it was --
16 DR DJERIC: At least let me put it this way: at that point
17 in time, the fate of the pre-pack is uncertain, right?
18 THE PRESIDENT: At least you can say undecided.
19 DR DJERIC: Or undecided.
20 THE PRESIDENT: Undecided.
21 DR DJERIC: Okay, we can say undecided. And the court asked
22 BD Agro to do a number of things, including a new
23 valuation, we discussed that a little bit earlier.
24 In your opinion as an expert on valuations, how long
25 would it take to prepare a new valuation of the land and

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01 the company, if the court requested such a valuation?
02 A. Well, I think a matter of -- a few months at most,
03 I would say.
04 Q. A few months, and then you agree that the court would
05 have to take and consider the valuation, submissions of
06 the parties, take some decision, correct?
07 A. Well, I mean, you're asking me to opine on what the
08 court would do, I don't think I can opine on that --
09 Q. But is that a reasonable assumption, that the court
10 would have to discuss and see the papers, and then take
11 a decision?
12 MR PEKAR: Objection, Mme President, this is a question
13 about Serbian court proceedings.
14 THE PRESIDENT: Yes. You can put an assumption, and then
15 ask whether --
16 DR DJERIC: I am putting an assumption that it would take
17 a few months, and you said it would take a few months,
18 a couple of months --
19 A. At most would be my estimate, yes.
20 Q. So we are speaking here of October, that is probably we
21 are already in 2016, I submit to you. In your opinion,
22 would the company be able to continue as a going concern
23 in these circumstances for the next three to six months
24 after the valuation date?
25 THE PRESIDENT: That is asked on the basis of the latest

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01 auditor's report, which is not the one we have seen,
02 I understand. Or on what basis do you ask --
03 DR DJERIC: That is asked on the basis of Dr Hern's
04 professional opinion as a valuer who has had insight
05 into all financial documents of BD Agro that are
06 relevant at that moment.
07 THE PRESIDENT: On the basis of his knowledge of the
08 financials of the company.
09 MR PEKAR: Mme President, if I may, in the meantime, so
10 there was no expropriation, or was there an
11 expropriation?
12 THE PRESIDENT: I understand that in the hypothesis, there
13 is no termination.
14 DR DJERIC: No termination.
15 MR PEKAR: And the pledge on shares has been lifted or not?
16 DR DJERIC: No. All the other things remain, except for the
17 termination.
18 MR PEKAR: So basically the limbo that we have been in
19 before continues.
20 DR DJERIC: Mr Pekar, when you get your turn, you will put
21 on your own assumptions.
22 MR PEKAR: I just want to clarify the assumptions before the
23 witness is asked to answer to them.
24 DR DJERIC: Okay, let's put it this way. There is no
25 termination, the situation is as described, I put to you

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01 that in the next three to six months there is no adopted
02 pre-pack plan. Would BD Agro be able to continue as
03 a going concern on the basis of the knowledge you have?
04 A. It's very difficult for me to answer that question.
05 Quite clearly it would depend on the working capital of
06 the business at that point in time, the access that the
07 business could have to new capital through bank
08 facilities, the access that the business could have to
09 shareholder investment, if it was short of capital.
10 But the higher level point I would make is that
11 there clearly were creditors that supported the
12 pre-pack, and there's therefore good reason for those
13 creditors -- if it's a matter of a few weeks or a few
14 months before the fate of the pre-pack was decided,
15 there's clearly reason to think that the creditors would
16 have been interested to make sure that the business can
17 continue for that period, and if not the creditors, then
18 potentially the shareholders -- that is a very detailed
19 question of what might happen to the business over
20 a period of weeks and months, and with respect, I don't
21 think that that's relevant for me in saying, what is the
22 fair market value of the business at the date in
23 October? At the date in October, the business is not
24 bankrupt.
25 MR VASANI: Can I ask a clarification, please, and we can

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01 make a hypothetical if you want. If you assume
02 a company has core business and non-core assets, and
03 assume the non-core assets are valuable but the core
04 business is underwater, would the going concern take
05 into account the valuable assets or you would only look
06 at the business, in terms of whether the business is
07 a going concern?
08 A. I mean, fundamentally, what we're trying to do here is
09 value the business as a whole, right? To the extent,
10 for example, that the business could sell some land to
11 continue to fund the farm business, that's clearly
12 relevant to the business as a whole, and the valuation
13 of the business as a whole, and that's obviously --
14 I didn't mention that, because that would potentially
15 take some time to do properly. It wouldn't be obvious
16 to me that that's the thing that they would be trying to
17 do if the delay is just a few weeks, for example,
18 because it may take time to get that cash, but
19 obviously, if the delay continues, the fact that the
20 business does have land and other assets is obviously
21 a way to finance the business, yes.
22 MR VASANI: So it would also depend on how quickly you could
23 liquidise --
24 A. Absolutely, you wouldn't want to potentially sell off
25 the land in a fire sale or a distress sale, so you would

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01 normally be exploring other sources of financing first.
02 DR DJERIC: Thank you. So let's keep these facts that we
03 have discussed in mind, and assumptions, and if we could
04 go now to a very general point, that is paragraphs 60
05 and 61 of your second report, and if I summarise well,
06 and you will obviously correct me, at paragraph 60 you
07 quote how Claimants define fair market value, and then
08 you approve of that, and you say the definition is
09 consistent with standard definitions and you quote
10 Kantor at paragraph 61. Do you see that?
11 A. Yes.
12 Q. Claimants' definition mentions the parties with
13 "reasonable knowledge of the facts", right?
14 A. Mm.
15 Q. And Kantor's definition also speaks about, a little bit
16 differently, about the parties that "had each acted
17 knowledgeably, prudently and without compulsion".
18 A. Mm.
19 Q. Dr Hern, what would a knowledgeable buyer, a buyer with
20 a reasonable knowledge of the facts, some of which we
21 discussed now, what such a buyer would know in the
22 situation of BD Agro? Would it know about the decision
23 of the court, and the vacating of the lower court
24 decision on the adoption of reorganisation?
25 A. A buyer that does their due diligence would, of course,

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01 know about these important legal issues, correct.
02 Q. Right, and it would also look into the financial
03 situation of BD Agro?
04 A. Yes.
05 Q. Then my question to you is: would a buyer with the
06 knowledge of these facts think -- a knowledgeable buyer,
07 think of lowering the price of the company and of its
08 land on 21st October 2015, because he would know all
09 these facts?
10 A. Well, a knowledgeable buyer would always want to get the
11 best price.
12 Q. Right.
13 A. There are two parts to this, there are two parts to the
14 fair market value, and one is the willing seller, and
15 the willing seller would also be looking to get the best
16 price.
17 Q. Right, but --
18 A. Just to follow up on your question, what that implies is
19 that if these are simply obstacles to go through before
20 the reorganisation plan is implemented, then the seller
21 is not a willing seller until those obstacles have been
22 passed through. Just to emphasise, there's two parts to
23 this equation.
24 Q. Well, as you have seen, the date of the court decision,
25 and if you call that an obstacle to go through, as you

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01 said, that was just before the valuation date, and so
02 let's assume, we are on 20th October 2015, a day before
03 the valuation date, and the knowledgeable buyer knows
04 there is the decision, and we will forget about the
05 willing seller at the moment, but you have to consider
06 both sides, so a knowledgeable buyer would take all this
07 into account, right?
08 A. Well, I think I have agreed with you that --
09 Q. Did you factor that into your valuation?
10 A. Well, yes.
11 Q. The knowledgeable buyer?
12 A. Yes, because as I said, the valuation also has to take
13 into account that the seller also has to be a willing
14 seller, right? And it therefore follows that if the
15 seller believes that the value of the business is the
16 cashflows of this business, then the seller only becomes
17 willing to sell at a price above those cashflows, right?
18 DR DJERIC: Thank you, Dr Hern.
19 Mme President, I would now pass the baton, so to
20 say, to my colleague, Senka Mihaj, who is another area
21 of inquiry. Thank you.
22 MS MIHAJ: Mme President, before I start with the questions
23 for Dr Hern, I would like to clarify the issue that was
24 raised a few minutes ago that concerns the blockage of
25 BD Agro's accounts. So I would like, for the benefit of

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01 the Tribunal but also my colleagues, to point to
02 Respondent's Exhibit RE-563, and that is actually the
03 document from the National Bank of Serbia that contains
04 the number of days of illiquidity for BD Agro, and there
05 you will see, that is on the second page in the PDF
06 document, you will see that from 8th March 2013 until
07 7th September 2016, the BD Agro accounts were blocked.
08 So that is the period in which the pre-pack
09 reorganisation plan were filed and discussed. And of
10 course it goes without saying that simply requesting the
11 pre-pack plan to be adopted by the court cannot unblock
12 the accounts. Adopting the pre-pack plan is another
13 topic.
14 THE PRESIDENT: Yes, I think you can certainly make
15 submissions on this later, unless it is directly related
16 to a question --
17 MS MIHAJ: It is not, I just wanted to clarify the issue
18 that came up here.
19 THE PRESIDENT: But if it is not, this is noted, but the
20 Claimants will certainly want to address this in
21 submissions.
22 MS MIHAJ: I just wanted to clarify, I am sorry for taking
23 your time.
24 Cross-examination by MS MIHAJ
25 Q. Good afternoon, Dr Hern. My name is Senka Mihaj, and

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01 I am also counsel for the Respondent.
02 A. Hello.
03 Q. I would like to discuss with you some other topics.
04 A. Mm.
05 Q. First, could we please turn to Claimants' Exhibit
06 CE-656, and that is the annual financial statements of
07 Sembi for the year 2009. Please go to page 7, and here
08 we see the data for two different years, 2008 and 2009,
09 can you see that? Would you please mark? Page 7 of the
10 document, I'm not sure whether it is page 7 of the PDF
11 document. Yes, that is it, thank you.
12 Dr Hern, is it usual for financial statements to
13 show data from the current and the previous year as it
14 is shown here?
15 A. Yes, it's very common.
16 Q. And the data for the previous year, which is here 2008,
17 should it correspond to the financial statement for that
18 year, for the previous year, generally speaking?
19 A. Yes.
20 Q. So when we look under "Assets", there is a mention of
21 "investments in subsidiaries", you will see, do you see
22 that?
23 A. Yes.
24 Q. Could you please explain to us, according to your
25 understanding, what would this signify, is it the value

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01 of the shareholding in the subsidiary, or is it the
02 amount of investment made in the subsidiary?
03 A. Well, I think the way it's written, it's the amount of
04 investment made, but I would have to have a look at the
05 notes to see that.
06 Q. Do we have maybe the notes? Yes, we have notes to the
07 financial statements, and this is page 14 of the
08 document, not PDF page. I think that we also have that
09 document in our bundle, would you please show to
10 Dr Hern. Maybe it would be easier if he could have the
11 hard copy of this document, CE-656.
12 A. The notes say that the balance as of
13 1st January/31st December was €11.28 million and that
14 the additions were €11.28 million.
15 Q. Dr Hern, would you please just say, on which page are
16 you now?
17 A. Page 15. So the additions in 2008 were €11.28 million
18 and then the balance as of 1st January, presumably
19 that's end 2009, is €11.28 million.
20 Q. Does this help you to answer my question what investment
21 in subsidiaries signifies, is it the value of the
22 shareholding in the subsidiary, or is it the amount of
23 investments made in the subsidiary?
24 A. To be honest, I would have to have a closer look at this
25 document to answer that question properly. I haven't

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01 analysed this before, so I am not going to give you an
02 answer to that.
03 Q. I understood that you should find this document in notes
04 to the financial statements?
05 A. Yes, I know, but I don't want to give you an answer to
06 that until I have had a chance to -- this is not part of
07 my analysis, so I can't say exactly how the accounts
08 were recorded.
09 THE PRESIDENT: I think we have to live with this answer,
10 because it's true that it's not in the expert reports,
11 and if Dr Hern has not studied this before, it is not
12 obvious from the face at least of what we have seen.
13 MR VASANI: Maybe on page 11 -- and I live with your answer,
14 Mme President, but maybe, I don't know if that -- where
15 it says "Payment for purchase of investments in
16 subsidiaries", if that gives any more clarity? Sorry,
17 PDF 11, internal page 9.
18 A. Yes, that gives clarity to the extent that is a cashflow
19 that's been made in the year 2008 for purchase of
20 investments, and that's then been reflected in the
21 balance sheet at the subsequent year, but that's all
22 I can say based on that, I think.
23 MS MIHAJ: Thank you.
24 If this amount should represent the amount of
25 investments made in subsidiaries, according to your

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01 understanding of these financial statements, when was
02 this €11.2 million invested? Was it in 2009 or in 2008?
03 A. Well, it looks like it was invested in 2008, based on
04 the cashflow statement.
05 Q. Just a second, I am sorry. (Pause).
06 Can you please go now to Exhibit CE-420? These are
07 the annual financial statements of Sembi for the year
08 2008, and please go to page 6 of that document.
09 MR PEKAR: Mme President, may I intervene?
10 THE PRESIDENT: Yes.
11 MR PEKAR: I would just like to ask my colleagues whether
12 they are also going to show the corrected financial
13 statements for 2008. The issue here is that the
14 financial statements for 2008 were corrected, and these
15 are the uncorrected ones.
16 THE PRESIDENT: So maybe out of fairness to the expert, we
17 should show the corrected one.
18 MS MIHAJ: No problem, Mme President. Would you please
19 refer to the number of the document of the corrected
20 financial statements?
21 MR PEKAR: It will take me some time.
22 MS MIHAJ: Then we will go back to this, and I will go
23 further --
24 THE PRESIDENT: We can come back to this, yes.
25 MS MIHAJ: Can we go now to Exhibit CE-420, page 6? There

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01 we also have the same information, assets, you can see
02 it on the screen, would you please mark the "investments
03 in subsidiaries" and it says €15.6 million, do you see
04 that?
05 A. Yes.
06 Q. It seems that what was stated in the 2008 financial
07 statement does not fit in with the 2009 financial
08 statement when it comes to the amount of investments in
09 subsidiaries in 2008. There is a gross difference of,
10 I would say, €4.4 million; would you say that this is
11 strange?
12 THE PRESIDENT: We would have to check which subsidiary, of
13 course, and then look again at the notes to see what the
14 cashflows are.
15 MR PEKAR: Mme President, I think that this is a matter for
16 submissions and not for cross-examination of an expert
17 who has never seen the financial statements. Look,
18 there is no problem with this, we corrected the
19 financial statements, we are looking for it. I don't
20 know if they are in the record in this arbitration or if
21 they are just filed in Cyprus, that's one thing I do not
22 know right now. But if there is a discrepancy,
23 definitely yes, there is a discrepancy, and I think we
24 explained that in our submissions.
25 MS MIHAJ: Mme President, I would say that it is relevant.

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01 First of all, Dr Hern, he has more than several
02 references in his reports on Sembi's beneficial
03 ownership, and as we know, Claimants are stating that
04 beneficial ownership was recorded in Sembi's financial
05 statements, so I think that these are not irrelevant
06 issues and documents to be discussed with Dr Hern.
07 THE PRESIDENT: Yes, of course, and Dr Hern apportioned the
08 claims to the different claimants, and that is where
09 there is a link, but --
10 MS MIHAJ: I am sorry, Mme President, I will not push
11 Dr Hern to go into details and questions he cannot
12 answer, I am just asking about the financial statements
13 and to see, as an expert, his professional opinion about
14 the numbers that are there.
15 THE PRESIDENT: You can be an expert, but if you have not
16 studied something, you may not know what the answer is.
17 MS MIHAJ: I have no problem, these are not big documents.
18 THE PRESIDENT: Would it not make more sense to go to the
19 reports of Dr Hern and see where he speaks about Sembi,
20 and ask him questions in this connection?
21 MS MIHAJ: Well, as I understand, for example, in
22 paragraph 166 of his first report, he mentioned Sembi's
23 75% interest in BD Agro's equity, and this is something
24 that is recorded in financial statements.
25 MR VASANI: But that is an instruction.

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01 THE PRESIDENT: He says "I have been instructed".
02 MS MIHAJ: Okay, I understand.
03 THE PRESIDENT: So he is not supposed to check or
04 substantiate his instructions. You can challenge the
05 instruction, of course, that's a matter of submission,
06 but Dr Hern cannot justify his instruction, or at least
07 he is not expected to.
08 MS MIHAJ: Okay, Mme President, my question was whether
09 Dr Hern has any explanation for this discrepancy between
10 2008 and 2009 financial statements. If the Tribunal is
11 of the opinion that that is not to the benefit of the
12 Tribunal, I will move forward, no problem.
13 THE PRESIDENT: I think you can certainly explain this in
14 submissions, but since Dr Hern has not looked into this,
15 I don't think his assistance would be very helpful to
16 us.
17 MS MIHAJ: I will move forward, thank you. I would now have
18 a few questions concerning your analysis of bank
19 accounts, and that is your third report, point 3.3.1.
20 You actually stated here that this is the analysis of
21 bank transactions with Mr Obradovic and Serbian
22 companies beneficially owned by Mr Rand, but as
23 I understood actually this part does not concern only
24 bank transactions, as you stated here, is that correct?
25 So my point is that maybe the name of this section is

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01 not proper.
02 A. I think you are right, it mostly focuses on the bank
03 transactions, but there are other flows between BD Agro
04 and Mr Obradovic and associated companies that I was
05 also instructed to take into account, and that's
06 described in paragraph 126. But you are right, the
07 heading should actually say "and other flows".
08 Q. According to your analysis of bank accounts, the balance
09 between Mr Obradovic and BD Agro is around
10 RSD 88 million in favour of Mr Obradovic, and we can see
11 that from table 3.3, first row; that is correct,
12 I think, yes?
13 A. For the first row, yes. For the first row, bank
14 statement transactions, that's correct.
15 Q. Thank you. So it says about 88 million, if my math is
16 correct.
17 A. For the bank statements, but there is also then the
18 direct payments, correct.
19 Q. So in other words, according to bank statements, BD Agro
20 paid to Mr Obradovic RSD 88 million more than it
21 received through bank accounts from Mr Obradovic?
22 A. Well, that is my conclusion based on what I would say is
23 a high level analysis of -- well, it's a detailed
24 analysis but I have been clear that it's almost
25 impossible to identify the nature of every single

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01 transaction, but that is what it looks like to me, yes.
02 Q. Well, when it comes to the nature of transactions, let
03 me say that I understood that you have been instructed
04 on what to include and what to exclude from your search
05 of bank transactions, you were given key words, bank
06 account number, you received instructions of how to
07 interpret the transactions, codes, and so on, is that
08 correct?
09 A. Well, it was a bit of both actually. We did a lot of
10 analysis ourselves, and we identified what we thought
11 were the right key words to search for, so I did that
12 analysis myself, with my team, based on the key words
13 associated with Mr Obradovic and/or the other companies,
14 we then identified the bank accounts that they appeared
15 to be associated with, and we did searches on those.
16 There were additional instructions, though, you're
17 right, in terms of how to interpret particular bank
18 accounts or particular statements, so we did take some
19 instructions on that, so it was a combination of
20 analysis ourselves and some particular instructions
21 where we were uncertain about exact bank accounts.
22 Q. I must say that I am a little bit surprised now, because
23 according to your third report, I understood that all
24 you have done is identify the long list of transactions,
25 and that all other instructions actually were given by

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01 Claimants to you. When it comes to key words,
02 et cetera, you will see from paragraphs 124 to 125, 126,
03 you always stress that you have been given instructions
04 by the Claimants, but let it be as it is.
05 Could we please go to paragraph 126 of your third
06 report, and there you said that you have:
07 "... also been instructed to include in [your]
08 analysis additional transactions which are not reflected
09 in the bank statements ... but which represented money
10 flows between BD Agro and Mr Obradovic and associated
11 companies ..."
12 A. Correct.
13 Q. Then you list these additional transactions and in point
14 A, you said that you were instructed to include:
15 "Direct payments to BD Agro suppliers by
16 Mr Obradovic of" just over RSD 75 million, do you see
17 that?
18 A. Yes.
19 Q. Dr Hern, did you come to this amount by yourself or were
20 you just presented with the number by Claimants?
21 A. No, this was given to me as a specific instruction.
22 Q. And you did not check that number?
23 A. I did not have the information to be able to check that.
24 Q. Thank you. So we are still on paragraph 126. Can we go
25 to point B. So you said that you were also instructed

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01 to include as an inflow from Inex the amount of
02 RSD 114 million, so did you come to this amount by
03 yourself, or were you just presented with the number by
04 Claimants?
05 A. The same is true, we did not have the information to
06 check that, we were given that information as an
07 instruction from counsel.
08 Q. Then I suppose when I submit to you that this result is
09 in fact several million dinars lower, that would not
10 surprise you, because you didn't check that amount?
11 A. As I say, it was given to us as an instruction.
12 Q. Thank you. Let us now see Respondent's Exhibit RE-145.
13 Article 5 of that agreement says that the parties agree
14 that on 16th May 2006 and then again on 22nd May the
15 Buyer, which is Mr Obradovic, lend to the Seller, and
16 that would be BD Agro, RSD 7.5 million.
17 THE PRESIDENT: You would need to somehow identify this
18 document, with the date, what it is.
19 MS MIHAJ: The date of that document, just a second.
20 THE PRESIDENT: It's 14th February 2007.
21 MS MIHAJ: That's right. That is a contract for assignment
22 of immovable property, and we will come to the purpose
23 of that document just in a second.
24 THE PRESIDENT: It's just that the expert needs to know what
25 he is asked about.

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01 MS MIHAJ: Of course he will. So there are two payments of
02 RSD 17.5 million each and they amount to about
03 RSD 35 million in total, is that correct?
04 A. That looks right, yes.
05 Q. What amount would be required to set off the claim,
06 would it be RSD 35 million?
07 A. That would appear to be right, yes.
08 Q. So in other words, if this amount is set off against the
09 purchase price of the land, then the price of the land
10 must also be RSD 35 million?
11 A. If the purchase price reflects the full value then it
12 would do, yes.
13 Q. If we go again to paragraph 126 of your third expert
14 report, but now point C, you will see that you
15 nevertheless offset this claim of Mr Obradovic of
16 RSD 35 million against the purchase price of BD Agro's
17 land of RSD 31.8 million.
18 A. Mm.
19 Q. So my question is again: was this amount of
20 RSD 31.8 million presented to you by Claimants?
21 A. Yes, we were given that number as an instruction.
22 Q. Would you say that this actually creates the impression
23 that the inflow from BD Agro to Mr Obradovic was about
24 RSD 3 million lower than if you have used RSD 35 million
25 to settle --

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01 A. As a matter of maths, that's right, yes.
02 Q. Can we go now to paragraph 123 of Dr Hern's third
03 report? So you were also instructed to include into
04 your analysis the transactions between BD Agro and
05 certain Serbian companies?
06 A. Yes.
07 Q. Beneficially owned by Mr Rand. So these alleged
08 beneficially owned companies, were you presented with
09 any documents showing that these transactions are
10 relevant for the bank transactions calculation dealing
11 with the shareholder loans provided by Mr Obradovic to
12 BD Agro?
13 A. I don't recall being given any documents to verify that.
14 I believe that this was again just an instruction --
15 Q. To include these transactions in the calculation of
16 shareholder loans?
17 A. Yes.
18 Q. Thank you. So in any event, in table, again, that is
19 table 3.3 of your third report, we see that according to
20 your calculation of transactions between BD Agro and
21 associated companies, net balance in favour of BD Agro
22 is about RSD 5.7 million, is that correct? We will have
23 it highlighted. I think that it is RSD 5.7 million.
24 A. RSD 5.7 million more is paid out, right?
25 Q. In favour of BD Agro, yes, I understand like that.

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01 A. Right, there's more paid out, correct.
02 Q. But is it fair to assume that instructions that you
03 received from Claimants, and which you mention in all
04 these paragraphs, 124, 126, heavily impacted your
05 analysis and therefore the result of the analysis, would
06 you say that this is fair to say?
07 A. Yes, I think we were pretty clear in this section that
08 we had taken instructions on what transactions to
09 analyse. This analysis was essentially a forensic
10 mathematical exercise, and I don't form a view on
11 whether these are all the right transactions to be
12 analysing.
13 Q. I understand. And speaking of that, were you maybe
14 informed by Claimants that according to BD Agro's
15 undisputed analytical cards, as of 2019, related
16 companies that you also mention in your report still owe
17 to BD Agro about RSD 19 million?
18 A. No, I am not aware of that.
19 Q. That is actually in great contradiction with your result
20 of RSD 5.7 million but I now understand why. Are you
21 maybe aware that all other six privatized companies that
22 you of course refer to in your report, that they are
23 all, let's say, financially destroyed, they are either
24 bankrupt or their accounts are blocked or they are
25 liquidated due to financial reasons, were you informed

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01 about that? And these are all companies allegedly owned
02 by Mr Rand.
03 A. No, I was not informed about that, and I have no opinion
04 of that. As I say, this section is essentially
05 a mathematical forensic analysis of data, and I am not
06 opining on the correctness of the analysis -- sorry, the
07 correctness of the methodology for the purpose of the
08 analysis.
09 Q. Understood. Can you go, please, to Claimants'
10 Rejoinder, page 62?
11 MR PEKAR: Respondent's?
12 MS MIHAJ: No, it is Rejoinder on Jurisdiction, I am sorry
13 not to be precise.
14 There is a chart there, if you could see it. The
15 first four rows of this chart were based on your third
16 expert report, I would say, but the last three rows were
17 not included in your expert report. Do you agree with
18 that? You see the "Outstanding receivables towards Inex
19 and Crveni Signal", "Crveni Signal's repayment of
20 BD Agro's loan", and "Mr Rand's receivables"; that was
21 not included in your report, this data, is that right?
22 A. I think that is right. The first four were not based on
23 my report, because we were given instructions in my
24 report, but the numbers are consistent, correct, yes.
25 Q. Clear enough. Were you ever asked by Claimants to

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01 include any of the payments from these last three rows
02 into your analysis?
03 A. I don't believe so.
04 Q. Fair enough, thank you. One last thing I would say, and
05 that is again, so you were instructed to treat all
06 payments made by Mr Obradovic to BD Agro under code 221
07 as a shareholder loan, is that correct? And that you
08 can see, of course, in your third expert report,
09 paragraph 125.A.i.
10 A. Yes, that was an instruction, that's correct.
11 Q. Would it be fair to assume that without Claimants'
12 instruction, payments under the code 221 would not be
13 included in your calculation as shareholder loans?
14 A. Yes, so this appeared to be a mislabelling. 221,
15 I think, didn't correspond directly to shareholder
16 loans, it corresponded to sales of goods and services,
17 and we then asked the question whether that was the
18 correct labelling, and we were told that Mr Obradovic
19 did not purchase goods and services and that those
20 transactions related to loans, so that was why that was
21 reclassified.
22 Q. Have Claimants provided maybe any document showing that
23 payments under code 221 that were described as payments
24 for goods and services were in fact shareholder loans?
25 A. No, at least I don't recall them doing that.

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01 Q. Do you maybe know what is the total amount of the
02 payments under the code 221?
03 A. No, but it's in the spreadsheet that I supplied, CE-889.
04 Q. Yes, it is. Maybe we can look at that spreadsheet. You
05 have actually provided the Excel sheet.
06 A. Correct.
07 Q. Can we go, please, to the Excel sheet? That is of
08 course Excel table, so we have Claimants' Exhibit CE-889
09 is delivered at both PDF document and Excel sheet
10 prepared by, as I understood, Dr Hern. And that is the
11 spreadsheet of bank transactions between Mr Obradovic
12 and BD Agro, and we will have to use filters, I hope you
13 don't mind, and please check whether we do it correctly.
14 So if we filter out just the transactions for 2006, and
15 then sum up the inflows and outflows for 2006 alone, we
16 should see that BD Agro received from Mr Obradovic total
17 of RSD 333 million. I am sorry, I am too fast.
18 MR PEKAR: Mme President, before we continue in this
19 exercise, I am again asking myself if this is really
20 something which relates to Dr Hern's expertise, or he is
21 simply put in the role of an eyewitness to calculations
22 made by the opposing counsel.
23 THE PRESIDENT: I am not sure, who prepared this Excel
24 sheet?
25 MS MIHAJ: Dr Hern.

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01 A. We did.
02 THE PRESIDENT: So I think you can ask him questions about
03 his spreadsheet, yes.
04 MR PEKAR: The thing is that it's not about the spreadsheet,
05 but about the operations with the spreadsheet.
06 Obviously he can be asked as many questions about the
07 spreadsheet as it stands, but I am not sure that it is
08 very helpful to attempt to sort documents like that, but
09 fine, maybe he can be given a computer for him to
10 perform it.
11 THE PRESIDENT: Let's see, I don't even know where the
12 questions go, so let's listen to the questions.
13 MS MIHAJ: Mme President, this is all related to code 221
14 and of course that was addressed in Dr Hern's report,
15 I am using the chart prepared by Dr Hern, so thank you.
16 THE PRESIDENT: So that is fine.
17 MS MIHAJ: We filter out transactions for 2006, and then sum
18 up the inflows and outflows for 2006 alone, and we will
19 see that BD Agro received from Mr Obradovic total of
20 about RSD 333 million, while it paid to him about
21 RSD 15 million, is that correct, Dr Hern?
22 A. Yes, I mean, I can see the numbers that you have shown
23 me. I can't say for myself whether that's absolutely
24 correct, because I can't see everything that goes into
25 that calculation.

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01 MR PEKAR: Mme President, just to make sure we understand,
02 because what is there now is code numbers 282, and
03 I think we were speaking about code number 221, so
04 I think that illustrates the difficulty I was pointing
05 to.
06 MS MIHAJ: We are talking about the payments -- we did, we
07 included all code numbers, including code 221.
08 THE PRESIDENT: So this is not specifically related to 221,
09 it's all the code numbers that we find in 125.A.i.
10 MS MIHAJ: And including the code 221, but Mme President, of
11 course Dr Hern also included other codes from this chart
12 he prepared, so this is only the payments made between
13 Mr Obradovic and BD Agro. This is of course the part of
14 Dr Hern's third report, I am not sure what is --
15 THE PRESIDENT: Yes, I understand that.
16 Dr Hern, do you refer to CE-889?
17 MS MIHAJ: He prepared it.
18 A. Yes, in paragraph 126, in the table, this spreadsheet
19 was used to calculate the numbers in that table.
20 THE PRESIDENT: Yes, thank you.
21 MS MIHAJ: May I proceed?
22 THE PRESIDENT: Yes, please.
23 MS MIHAJ: Thank you. According to this exhibit that you
24 provided, BD Agro received from Mr Obradovic almost
25 RSD 3,020 million more than it paid?

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01 A. Yes, assuming that calculation has been done right,
02 that's what the data shows.
03 Q. Thank you, and we are on the same topic, just another
04 exhibit. Can we go now to CE-819? These are financial
05 statements for BD Agro for 2006. Please go to page 15.
06 That is page 4 of the PDF document. There we can see
07 a column with the name of Mr Obradovic, this is within
08 the table named "Short-term financial liabilities".
09 Could you please explain to us what these numbers
10 for Mr Obradovic signify? Is it the amount of BD Agro's
11 debt towards Mr Obradovic?
12 A. I am sorry, what page are we looking at here?
13 Q. That is page 4 of PDF document, and it says page 15 on
14 the document.
15 THE PRESIDENT: Can we show the top of the table?
16 MS MIHAJ: Yes, of course. Please go up.
17 THE PRESIDENT: Can you enlarge now, so we see what the
18 columns are?
19 A. I think that is the notes to the actual accounts.
20 Sorry, you were just taking me to the notes page of an
21 account, right? What is the line you are asking me to
22 look at? "Short-term financial liabilities".
23 MS MIHAJ: The fourth page of that document and it says on
24 the bottom "Page: 15 of 34". Here you have "Others ...
25 Djura Obradovic".

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01 A. Yes.
02 Q. Do you see numbers for Mr Obradovic?
03 A. Yes.
04 Q. Would you explain to us what this number shows?
05 A. The numbers say 309,841 at end year 2006, and then
06 41,000 at end year 2005.
07 Q. So as I understand it, during 2006, the debt of BD Agro
08 towards Mr Obradovic enlarged for RSD 270 million, is
09 that a correct understanding?
10 A. Yes, that looks like that's right, based on these
11 accounts.
12 Q. Thank you. So according to financial statements for
13 2006, BD Agro's debt towards Mr Obradovic enlarged for
14 RSD 270 million.
15 A. Mm.
16 Q. And we just have seen from the exhibit which refers to
17 bank transactions -- that the bank transactions state
18 that BD Agro received from Mr Obradovic RSD 320 million,
19 so it is about RSD 50 million difference.
20 A. Mm.
21 Q. Would it surprise you if I submit to you that this
22 RSD 50 million actually relates to payments under the
23 code 221? If you wish, we can again go to --
24 A. I have no view on that. As I say, this was basically
25 a mathematical exercise by me to calculate these

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01 numbers, but we could go to code 221 and see the numbers
02 if you would like.
03 Q. Let me rephrase my question. You were not aware that at
04 the time, in 2006, actually BD Agro did not record all
05 payments of Mr Obradovic under the code 221 as
06 shareholder loan?
07 A. That was what we were instructed to assume, yes.
08 MS MIHAJ: Thank you. May I have one second, please?
09 THE PRESIDENT: Sure.
10 MS MIHAJ: Thank you, Dr Hern, I have no further questions.
11 Thank you, Mme President.
12 THE PRESIDENT: Thank you. Any questions in re-direct
13 examination, Mr Pekar?
14 MR PEKAR: Yes.
15 Re-direct examination by MR PEKAR
16 Q. First, you were, Dr Hern, generally asked now at the end
17 to compare cashflows and balance sheet items, correct?
18 A. Yes.
19 Q. Can a liability be incurred without an underlying
20 cashflow between the debtor and the creditor?
21 A. Yes.
22 Q. Similarly, can a liability be repaid without an
23 underlying cashflow between a debtor and a creditor?
24 A. Yes, but you are asking for accounting input, and --
25 yes.

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01 Q. Can we get very far if we just compare items on --
02 I would say isolated items, like one line on the balance
03 sheet, with cashflows?
04 A. Well, it's very difficult, because you don't know what
05 else is going on.
06 Q. Dr Hern, you were also asked, and this was document
07 CE-101, it's part 4.2.1, it should be the table of
08 creditors in class A.
09 A. Yes.
10 Q. You were getting a few questions about the impact that
11 valuation of BD Agro's assets may have had on the
12 balance of power, if I may say so, within class A.
13 A. Mm.
14 Q. I believe this is also a topic that you addressed during
15 your opening presentation.
16 A. Yes.
17 Q. Could you perhaps more explain in greater detail on the
18 relationship between the balance of power and the
19 valuation of assets of BD Agro?
20 THE PRESIDENT: Is this about slide 21?
21 A. Yes.
22 THE PRESIDENT: Because you went very fast over this slide,
23 and it would be helpful if you can give more explanation
24 about it.
25 A. Could we put the slide on the screen, please? Slide 21.

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01 I apologise for going quickly through this, but
02 first of all, the slide at the bottom shows my
03 understanding of the class A creditor loans and the
04 percentage allocation across the different creditors, my
05 understanding also is that Banca Intesa has the prior
06 pledge on the assets, has the most secure loans on the
07 assets, and the purpose of this slide was to really try
08 to indicate the relationship between the loans
09 associated with the class A creditors, which in euro
10 terms is about €21 million, and the value of the assets,
11 both in my scenario and also in the Claimants' scenario.
12 So you can see in my scenario, or in my analysis,
13 the value of the assets is in the region of 94-121,
14 I believe it is probably better assessed towards the top
15 end of that range, so clearly in my scenario the value
16 of the assets is way above the value of the class A
17 creditors, but even for the Respondent's valuation, and
18 what I have tried to do is to present Mr Cowan's
19 valuation here, and you can see Mr Cowan's different
20 valuations, depending on what scenario he looks at, but
21 even Mr Cowan's valuation of total assets, before we
22 deduct other liabilities, is significantly higher than
23 the 21 million, and the point of that analysis was to
24 indicate that in the event that the court determined
25 a new valuation of the assets, it seems to me that even

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01 in the Respondent's case of valuation that the valuation
02 of those assets would be well above the creditors'
03 valuation. And the reason why that is relevant is
04 because -- and I will just give you a scenario.
05 Let's say the valuation of the business, of the
06 assets, was determined to be €10 million, that's well
07 below the €21 million for the creditors, and in that
08 scenario, because Banca Intesa has prior claim on the
09 assets, it becomes the senior voter on the
10 reorganisation plan. So in that scenario it seemed to
11 me that yes, Banca Intesa would have the right to
12 potentially disapprove the reorganisation plan, but it
13 didn't seem to me that that scenario was realistic,
14 because even in the Respondent's world, the valuation of
15 the assets was well above the senior A creditors' debt.
16 So even in their world, it seemed to me that their
17 valuation would not lead to a disapproval of the
18 reorganisation plan, and it would not lead to Banca
19 Intesa having the majority vote on that reorganisation
20 plan.
21 MR PEKAR: No further questions.
22 THE PRESIDENT: Do my co-arbitrators have questions? Yes,
23 please.
24 Questions from the TRIBUNAL
25 MR VASANI: Good afternoon.

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01 A. Good afternoon.
02 MR VASANI: If you didn't have the 2015 reorganisation plan,
03 so in the hypothetical let's say that didn't exist,
04 would you have still undertaken a DCF valuation?
05 A. I mean, good question. You would have to think, what
06 would there have been at that point instead, and we
07 don't know, I don't know that, but clearly the
08 reorganisation plan was, in effect, a business plan for
09 the company going forwards. If there was no
10 reorganisation plan, then we would have had to look at,
11 well, what other plans existed for the company. And if
12 there were no obvious plans for the company to continue
13 as a going concern, then it would be difficult, I think,
14 to then say that a DCF is a relevant model to use.
15 That then, in my view, means that probably you're
16 putting more weight on a valuation that assumes the
17 business would be sold off, which is effectively -- but
18 in a sense that's effectively the other way that
19 I valued the business anyway, because I valued the
20 business based on the value of the agricultural land,
21 plus the value of the farm assets, plus the value of the
22 herd. So in a sense, that is the other way to value the
23 business if there's no credible business plan associated
24 with the business going forwards.
25 MR VASANI: So looking at the business plan and looking

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01 forward rather than backwards, how would this be any
02 different from, let's say, a start-up dairy operation,
03 if at all?
04 A. I mean, I think a start-up business requires in my view
05 more certainty about the viability of the business, to
06 the extent that typically, a start-up business hasn't
07 undertaken the capital investments, for example,
08 necessary to build the capacity of the business.
09 Typically in a start-up stage, you have got a business
10 plan often, and we see lots of examples of this in
11 disputes, you have a business plan, you have an idea,
12 maybe you have a patent, right? But a start-up is
13 typically defined as you haven't done the investments
14 necessarily to realise the revenues.
15 I don't think that -- you know, this business to me
16 is not a start-up business, principally because the
17 investments have been undertaken, the investments into
18 the infrastructure, the milking facilities, crucially
19 the land, the farm, that's all there. The farm has been
20 operating, but it's clearly been operating at
21 substantially below capacity, it's been operating at
22 10%.
23 So this business to me is not a start-up, but it's
24 a business that hasn't generated its potential, for
25 various different reasons, but the fact that it's done

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01 it -- you know, it's done the majority of the
02 investments, the fact that it has been producing, it's
03 got suppliers, it's got contracts in place, it's much
04 more than a start-up, and you're very much at the stage
05 where you have historic cashflows. The big difference
06 is determining what is the reasonable potential of the
07 business going forwards, to realise the potential of the
08 investments.
09 MR VASANI: Is it unusual that the value of the assets
10 individually in one way could be higher than a DCF value
11 of the same assets, is that unusual?
12 A. I mean, not really actually. I mean, in a competitive
13 market, that's exactly what you would expect, because
14 you make the investment, and then you get the investment
15 back, discounted at the cost of capital, and the two
16 numbers, in a competitive market, are broadly similar.
17 So it's not unusual, actually, it's exactly what you
18 would expect.
19 MR VASANI: But then if you would be looking at highest and
20 best use of the assets, would the difference in the
21 valuation between those two methodologies matter?
22 A. A little bit. I mean, obviously if you invest the
23 capital and you don't expect to get all of that back in
24 the DCF, then your investment is net present value
25 negative. I think what we're dealing with here is

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01 a business plan that looks a little conservative, in
02 many ways, in terms of its revenue projections, it's got
03 a pretty high discount rate associated with Serbian
04 country risk, so it's generating the cashflows, they are
05 being discounted pretty strongly to today's prices, and
06 the valuation is pretty much bang in line with the value
07 of the investments. Where you create value, of course,
08 is if you can grow the business even more than what's
09 projected, but I think the fact that the two are the
10 same also recognises the fact that the agricultural land
11 is itself quite valuable.
12 MR VASANI: If I am a hypothetical buyer, and I am thinking
13 aloud here, but obviously if I am buying a business,
14 debt is good, because it's not my -- well, it's a risk
15 from the business, not necessarily mine, but when I put
16 in equity, that's my money; would I not sell the land in
17 the business in order to fund at least my -- in other
18 words, I wouldn't put any equity in, I would sell the
19 non-core land to fund my equity portion, and then
20 I could bring in the debt, would that not make sense
21 from a business perspective?
22 A. I guess it depends what other options you have with your
23 capital. Certainly you can see logic for that here, but
24 on the other side of the coin, here it's -- if
25 everything continued as the investors expected, then you

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01 have the potential for that land to be worth much more
02 in the future if the Sremska Gazela road was developed
03 as it was intended, for example, and an urban
04 development plan put in place for that land, then the
05 land could increase quite substantially quite quickly.
06 So it's a strategic decision, I would say, on use of
07 capital.
08 MR VASANI: But in your DCF model, all financing was
09 external, correct?
10 A. Correct. It's not appropriate -- you know, the DCF
11 model is essentially a free cashflow model, you're just
12 looking at the revenues and the operating costs and the
13 capex for the business, and in the first couple of years
14 it's slightly negative, and that assumes that there
15 would need to be some investment from somewhere but in
16 my view, that's not really that relevant, because so
17 long as the overall cashflows of the business are
18 positive, then that says that the business should
19 attract investment, and whether it comes from the
20 shareholder or it comes from the sale of land, or it
21 comes from a bank, it's not a factor that really gets
22 taken into account in a DCF model.
23 MR VASANI: Thank you. Mme President, no more questions.
24 PROFESSOR KOHEN: Good afternoon, Dr Hern.
25 At this very late stage of this morning, or rather

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01 afternoon, I would just raise a very, very general
02 question. Dr Hern, if you have to make a very general
03 comment about the difference between the price paid for
04 the privatization and the amount of the valuation, what
05 would you say?
06 A. The price that was paid was in 2005, I think, and there
07 were further investments after that, so obviously a lot
08 has happened since the privatization, there has been all
09 the investment undertaken into the farm itself and then
10 there has been the development of the general regulation
11 plan for the construction land that we have been talking
12 about, the land A, B, C, to develop that land for
13 construction purposes.
14 So all of that, and obviously the farm has been
15 operating too, over time, but all of that is a factor
16 that's obviously not taken into account properly in the
17 price paid.
18 So for that reason, I haven't looked at the price
19 paid as a reference point here for the valuation,
20 because of the substantial amount of time that's passed,
21 the investment that's been undertaken, and the other
22 factors that have affected the valuation of the land
23 over that period.
24 So for my valuation, obviously when you are looking
25 at a fair market value, you are looking at a valuation

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01 at a particular point in time, which here is 2015, and
02 to me the relevant information to look at is the
03 relevant information at that point in time as far as
04 possible about what the market price is for the assets
05 of the business at that point in time.
06 PROFESSOR KOHEN: Thank you.
07 THE PRESIDENT: Thank you. I would like to understand to
08 what extent you scrutinised the reorganisation plan, and
09 to what extent you are just taking it as it is.
10 I understand you say it is conservative, and you also
11 say it is consistent with the performance of prior
12 years, which I understand to be the performance per
13 unit, and so the difference, because prior years were
14 loss-making, the reason why the business becomes
15 profitable under that plan is simply the increase of the
16 herd?
17 A. Yes, essentially, Mme President, I think that's right.
18 Just in terms of the sort of scrutiny that we gave to
19 the plan, I think that's set out in one of my
20 appendices, so the appendix to my second report.
21 THE PRESIDENT: Yes.
22 A. Broadly speaking, in terms of what's driving the
23 improved profitability, this is essentially a business
24 of economies of scale. You make the investment into all
25 the milking facilities, and into the land especially,

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01 and naturally, unless you have the cows, the business is
02 not going to be profitable because the profitability of
03 the business comes from, in essence, the sale of milk,
04 plus also the sale of some of the cows for meat
05 purposes, et cetera. So clearly you have got a business
06 here with assets, but not the critical asset, which is
07 the cows.
08 So what we did then, when scrutinising the plan, was
09 to look at, on a unit basis, because we didn't have the
10 capacity, we just had some cows, were the revenues per
11 herd or per milking cow consistent with what has been
12 achieved in the past, and the same for operating costs,
13 what was the general trend per unit, so did it look
14 reasonable on a unit basis, and therefore when we
15 assumed it would increase in size, did it look
16 reasonable on a higher capacity?
17 Obviously the things to look at there are
18 principally the revenues per herd, the operating cost of
19 the farm and then the capital costs. Those are the big
20 driving factors. So paragraph 238, you can see that the
21 revenues per herd were about RSD 200,000 up until about
22 2012, but then we understand the business had new
23 management, Mr Markicevic was employed and he brought in
24 two new managers of the business, Mr Wood and a local
25 gentleman, they improved the performance, you can see

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01 that, that's also described in various witness
02 statements, but basically you can see that from what
03 happened to the farm, you can see that in 2013 and 2014
04 the revenues per herd improved dramatically.
05 What I did with my team was then to look at the
06 forecasts going forwards, and did they look consistent
07 with how the business was performing? And actually,
08 they are about 20-30% lower going forwards, so that was
09 the basis of my conclusion, well, they look very
10 reasonable, if not conservative, going forwards.
11 Then we did essentially the same exercise with
12 operating costs. Operating costs had trended upwards,
13 but that's natural if you haven't got a big enough herd.
14 Obviously as the herd increases, you would expect those
15 operating costs to be spread over more cows essentially
16 and that's exactly what we saw going forwards. So for
17 similar reasons, the operating costs looked reasonable.
18 We looked in more detail at the wage costs
19 forecasts, we saw similar relationships between what had
20 happened historically and what was projected going
21 forwards, and then crucially, and this is important, we
22 looked at what was being assumed about the new
23 investment for the cows. They had an assumption in the
24 business plan of, I think, €1,800 per pregnant heifer,
25 we then looked at all the offer prices that they had

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01 received from tenders for heifers, we looked at whether
02 it was feasible for them to get the heifers as quickly
03 as they were forecast and actually one of the suppliers
04 was offering all the cows already upfront, so there
05 didn't seem to be a supply problem in getting the cows,
06 and in fact, the business plan assumed that they would
07 get it over two or three years, rather than buying it
08 all at once.

09 So I think from a high level, that was the broad
10 methodology that we looked at, and then as I say, the
11 fact that the business plan had been checked by the
12 various creditors, including the dairy producers --

13 THE PRESIDENT: Yes, you have said that already.

14 A. -- also gave it credibility.

15 THE PRESIDENT: Do I understand correctly that this is
16 somehow summarised graphically in your slide 22?

17 A. Yes.

18 THE PRESIDENT: Now of course, one of the issues that we
19 will face is whether -- if we get to damages, whether we
20 use DCF or asset-based. It's unusual, of course, to use
21 a DCF for a business that has a track record of losses
22 in investment arbitration. Now I understand that you
23 are saying yes, here, but we have a business plan going
24 forward that looks reasonable. Is it not more common --
25 that's a different question maybe, but if you have

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01 comments on DCF versus asset-based in this context you
02 may make them, of course, as well.

03 Is it not more common for farming businesses to use
04 asset-based valuations rather than DCF? And maybe the
05 last thing I would like to say before you answer is that
06 reading your reports, I thought that asset-based was
07 more like a cross-check, and listening to you today, on
08 at least two occasions you emphasised the importance of
09 the asset-based valuation, so does that mean that you
10 are not entirely sure that DCF is the right way here?

11 A. Good questions, and they are not super-easy to answer,
12 but let me have a go. I think generally speaking, what
13 I would say as a valuator is it's important to look at
14 the valuation of a business typically from different
15 perspectives.

16 Fundamentally, any business is only worth the
17 cashflows that the business generates.

18 THE PRESIDENT: You said this several times before.

19 A. So therefore, from a valuation perspective, the
20 cashflows that the business can generate are crucially
21 important for the value of the business, but of course,
22 here we're dealing actually with a slightly unusual
23 situation of the business can generate cashflows through
24 the operation of the farm, but it can also generate
25 cashflows from the sale of the land, and that's not

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01 always true, of course. Many businesses don't have
02 very -- the assets of the business are not always
03 tangible, they're often in brand value or intangible
04 assets, and therefore, it's very difficult to use an
05 asset-based approach in that circumstance.

06 Here, it's much more straightforward to use an
07 asset-based valuation, but that asset-based valuation is
08 in itself a form of DCF, because what it assumes is that
09 the business would effectively sell the assets, and the
10 cashflows would be realised through a process of
11 selling, rather than operation of the farm.

12 So I say that because I think what I always ask
13 myself when I do a valuation is: why am I getting
14 a difference, if I am, between different valuation
15 approaches? And sometimes you do, because you have got
16 assets in the intangibles or the brand value or
17 something like that, but where I think valuers have more
18 comfort is if they can reconcile the valuation from
19 different approaches, and I think that's what we have
20 got here. We have got a valuation of the business based
21 on an income-based approach or a DCF approach, but the
22 business could also be sold off, parcel by parcel, in
23 agricultural land and the assets sold, and both
24 valuations are telling us, broadly speaking, for the
25 farm, that the numbers look pretty similar.

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01 So I think you are right in the sense that in my
02 reports, I did present the asset-based as a cross-check,
03 because I think fundamentally a business should be
04 looked at from a cashflow perspective, but actually, in
05 many ways, they are one and the same -- they are two
06 different sides of the same coin here, because you can
07 operate the business in different ways, or you can
08 realise value from the business in different ways.

09 THE PRESIDENT: That is a more specific question. You
10 remember the discussion about the development of
11 Batajnica -- I always abbreviate Bata, so I don't know
12 how it looks later! But the development of this land
13 was funded by public budget, this was an assumption, and
14 the A, B, C land was funded privately.

15 And then you said that this makes no difference in
16 terms of the market value, because what you are trying
17 to establish is the market value of A, B, C, for that
18 you look for comparative valuations of similar land, and
19 the Batajnica documents refer to market value, and so
20 you thought, "I can take this", but of course, the
21 question that in my mind still remains is: what about
22 the market -- you have looked at the market value of the
23 Batajnica land and you thought, this I can use, but the
24 fact that then the A, B, C land must be developed at the
25 cost of the buyer, does that not mean that you cannot

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01 transpose this market value -- or you can transpose this
02 market value, but afterwards somehow you need to account
03 for the fact that the development cost comes in
04 deduction for the A, B, C land?

05 A. No, because the Batajnica land also needs the same
06 development costs associated with it, so that's also
07 agricultural land that was purchased, with a regulation
08 plan, and after that point, there still needs to be
09 development costs to convert that land into whatever
10 industrial use or commercial use it's going to be used
11 for.

12 So for that reason, assuming a market price was paid
13 for that land, which it should have been, that makes it
14 comparable in my view to the market value of the A, B, C
15 land, because both land is in exactly the same state at
16 that point in time. I.e. the purchase price that has been
17 paid for by the public authority does not include any
18 investment costs associated with it, it's just the
19 purchase price for the land.

20 THE PRESIDENT: I suppose I have to think further about
21 this. Let me see what else I have. We discussed the
22 reorganisation plan, we discussed the DCF.

23 This is a specific question. In the interest rates
24 you mentioned two possibilities, and one is EURIBOR,
25 that's the LIBOR for euros, right?

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01 A. Mm.

02 THE PRESIDENT: But LIBOR will be disactivated, or not
03 quoted any more, relatively soon, if I'm not mistaken.
04 What rate should one consider then, the replacement rate
05 of LIBOR?

06 A. Very good question. This was an instruction to me to
07 use EURIBOR, so it's difficult for me to say what should
08 be used instead in that scenario, but I think logically
09 the replacement --

10 THE PRESIDENT: There is a comparable rate that will
11 replace --

12 A. Logically the replacement, yes.

13 THE PRESIDENT: Okay, thank you.

14 A. Mme President, you also asked about whether it was
15 unusual to use a DCF for a company that was not
16 profitable.

17 THE PRESIDENT: From other valuations I have seen I had this
18 impression, specifically for farms, but do you have a
19 view on that?

20 A. Yes, my perspective on this is that I think it is
21 unusual to use it for a start-up operation that is not
22 yet producing revenues, a start-up operation being an
23 idea, a business plan, but not yet producing revenues.

24 I don't think it's unusual to use it for a company
25 that's not positive profitability, but more for

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01 a company -- you know, particularly a company that has
02 done the investments needed to become profitable,
03 because there are many disputes where as a result of
04 what's happened in the course of the dispute possibly,
05 the company is not profitable, and that's often
06 a trigger for the dispute, of course.

07 So my perspective is that a DCF -- it is very
08 relevant for a company, especially a company that has
09 been operating, has done the investments, there have
10 been cashflows; whether it's positive or not I think is
11 much less relevant, particularly when you take into
12 account the different factors that could have occurred
13 that are part of the potential claim. So that would be
14 my distinction.

15 THE PRESIDENT: Thank you. No clarifications on either
16 side?

17 MR PEKAR: I don't know, Mme President, if you want me to
18 touch Batajnica again and its comparability?

19 THE PRESIDENT: Sorry?

20 MR PEKAR: Should we again ask about Batajnica and its
21 comparability? I think I have a question which might
22 clarify Dr Hern's thinking.

23 THE PRESIDENT: I have heard the answer to my question, I am
24 not entirely sure it does answer the doubts I have.

25 MR PEKAR: That is why I thought I would get another try.

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01 THE PRESIDENT: But that could be debated later, unless you
02 have a specific question.

03 Further re-direct examination by MR PEKAR

04 Q. Dr Hern, you were asked to consider the Batajnica land
05 where the state is expropriating land plots that it will
06 further develop, correct?

07 A. Yes.

08 Q. In BD Agro you are considering a scenario where
09 a private investor, or potentially even the state, but
10 let's assume a private investor, would buy the land that
11 it will subsequently develop, correct?

12 A. Yes.

13 Q. Could you please try again to explain why you think
14 there is no difference maybe due to the fact that the
15 state is the buyer in Batajnica?

16 DR DJERIC: Mme President, what is the clarification in the
17 question? I would be glad to hear.

18 THE PRESIDENT: Let me ask my question. It may sound silly
19 to you, but if I buy a house and there's no access to
20 the road, I have to build the road, so to me the market
21 value of this house is diminished by the cost I have to
22 build the road.

23 A. Absolutely, absolutely.

24 THE PRESIDENT: So why does it not apply here?

25 A. So the same is true for Batajnica and BD Agro's land.

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01 Batajnica is also land that is, when it was
02 expropriated, land that did not have full connection,
03 roads --
04 THE PRESIDENT: And therefore it has the same deduction --
05 A. It has the same issue, exactly right.
06 THE PRESIDENT: -- when the state buys it.
07 A. Yes, that's right. At a high level my view is both land
08 is primarily agricultural land -- it is agricultural
09 land, with a development plan to build the road, to do
10 infrastructure, to have an urban development plan, but
11 the land in its current state is the same.
12 THE PRESIDENT: So if the state expropriates my house, it
13 will pay a reduced market value by the fact that I have
14 not built the road?
15 A. Absolutely.
16 THE PRESIDENT: That is clear, thank you.
17 DR DJERIC: Just a short clarification. We are talking
18 about Batajnica expropriations and so forth.
19 Further cross-examination by DR DJERIC
20 Q. Can the expert just specify, when he mentions
21 expropriations, what was the date of the expropriations?
22 A. If you go to my third report --
23 Q. Are these the expropriations that we discussed?
24 A. Figure 2.3 of my third report, they show the
25 expropriations over the period from 2013, January 2013

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01 to --
02 Q. Could you just give us a page?
03 A. Yes, sorry, page 26. So you can see there
04 expropriations of different plots of land from January
05 2013 where the price that was paid then was 27, to,
06 I think the last one is August 2016 of 32, but other
07 ones are slightly higher, at 37.
08 Q. Can you confirm that it was 2013 and 2016?
09 A. Over that period, yes.
10 Q. Is it over that period or at this particular point?
11 A. There were obviously different dates for the different
12 plots.
13 THE PRESIDENT: We can look at this later and you can make
14 submissions if you want.
15 A. What you are probably getting at is that these come
16 after the valuation dates, but they are based on the
17 market value which is assessed based on transactions
18 before the price that was paid, so in my view it's still
19 relevant.
20 THE PRESIDENT: That is a different discussion, it's the
21 timing of the valuations.
22 DR DJERIC: We are going to that.
23 THE PRESIDENT: Good. So if there is nothing further, then
24 we can close your examination, Dr Hern, thank you very
25 much for your assistance.

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01 A. Thank you, Mme President.
02 THE PRESIDENT: We will now take the lunch break and resume
03 at 2.00, with Mr Cowan?
04 MR PEKAR: Perfect.
05 (1.02 pm)
06 (Adjourned until 2.00 pm)
07 (2.00 pm)
08 MR SANDY COWAN (called)
09 THE PRESIDENT: I hope everybody had a good lunch, and now
10 we are ready to hear Mr Cowan. Good afternoon.
11 THE WITNESS: Good afternoon.
12 THE PRESIDENT: You are Sandy Cowan?
13 THE WITNESS: Yes.
14 THE PRESIDENT: You are a director at Grant Thornton?
15 THE WITNESS: If I can make a correction there, I am now
16 partner at Mazars. In June of this year, I moved to
17 Mazars.
18 THE PRESIDENT: You are now a partner of Mazars?
19 THE WITNESS: Yes.
20 THE PRESIDENT: Good, thank you. But you have the same
21 activity at Mazars like you had previously?
22 THE WITNESS: That is correct.
23 THE PRESIDENT: You have filed three expert reports of
24 19th April 2019, 24th January 2020, and 16th March 2020,
25 is that right?

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01 THE WITNESS: That is correct.
02 THE PRESIDENT: You are heard as an expert witness, I would
03 like to ask you to read the expert declaration now into
04 the record.
05 THE WITNESS: I solemnly declare upon my honour and
06 conscience that my statement will be in accordance with
07 my sincere belief.
08 THE PRESIDENT: I understand you have a presentation, we
09 received the slides, and as you know, you have 30
10 minutes.
11 THE WITNESS: Thank you. I don't have any instructions to
12 be less as well.
13 Members of the Tribunal, Mme President, thank you
14 for giving me this opportunity to present my findings.
15 [Slide 2] I have been instructed by legal counsel for
16 the Respondent, the Republic of Serbia, to provide
17 expert evidence in this matter. My expert evidence
18 concerns the valuation of BD Agro at valuation date
19 21st October 2015. I have also been instructed to
20 analyse bank transactions between BD Agro and
21 Mr Obradovic. I will present my valuation followed by
22 my analysis of the bank transactions.
23 [Slide 3] I have prepared my valuations under two
24 scenarios to account for the distressed nature of the
25 business. The first scenario is a bankruptcy valuation,

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01 which assumes that the pre-pack plan was not accepted
02 and BD Agro then went into bankruptcy, or was sold as
03 a bankrupt business. My second valuation is under
04 a going concern scenario, on the assumption that the
05 pre-pack plan was accepted, and the business continued
06 to operate.
07 I have prepared two further valuations, again, under
08 the above scenarios, but assuming that the Dobanovci
09 development land has an area of only 164 square hectares
10 which is based on the report of Mr Bodolo who refers to
11 contested land. My methodology for both the full land
12 area and the contested land area is the same throughout
13 this presentation.
14 On this slide [4] I have a summary of Dr Hern's
15 valuations and my valuations. I haven't had a chance to
16 update Dr Hern's valuations taking into consideration
17 the new numbers that were presented today. They are
18 approximately similar, and I don't think the changes
19 will really affect what is seen here.
20 Dr Hern values total assets between €97 million and
21 €127 million, and values liabilities at between
22 €44 million and €46 million, valuing 100% of the shares
23 in BD Agro, on 21st October, between €53 million and
24 €81 million.
25 In my all land scenario, I value total assets at

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01 €74 million, and then after discount, €37 million or
02 €74 million. And total liabilities are between
03 €57 million and €54 million, which gives me a value for
04 100% of the shares of BD Agro would be either negative
05 €20 million or positive €14 million.
06 Excluding the contested land, my total asset value
07 after discount is either €27 million or €54 million,
08 liabilities of €53 million or €50 million, giving
09 a value of 100% of the shares of between
10 negative €26 million and €3 million.
11 On the next slide [5], I pictorially show this in
12 a chart with two additions, namely being the acquisition
13 price of €7.9 million in October 2005, and the sale
14 price as of bankruptcy in April 2019 of €13 million.
15 This just demonstrates the different values that are
16 available here.
17 The main areas of difference between Dr Hern's
18 valuations and my bankruptcy valuation are the value of
19 the surplus land [slide 6]. Dr Hern valued the surplus
20 land at between €90 million and €66 million, whereas I
21 rely on Ms Ilic, who valued the land at €42 million.
22 There was a difference of approximately €48 million or
23 €24 million.
24 Dr Hern did not produce a scenario under bankruptcy,
25 and therefore, he does not apply a discount to account

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01 for BD Agro being in a bankruptcy process. It is
02 typical to apply a discount to represent the impact on
03 value of undertaking the sales process of a distressed
04 business. The 50% discount is supported by the actual
05 discount on the sale of BD Agro, and also supported by
06 evidence in the March 2015 pre-pack plan.
07 Again, as Dr Hern did not apply the bankruptcy
08 scenario, he does not account for bankruptcy costs,
09 although he disputes the bankruptcy costs that I used in
10 my valuation.
11 In line with World Bank guidelines, I estimated
12 bankruptcy costs at 20% of BD Agro's discounted asset
13 value, which led to a difference of €7.4 million. In
14 the absence of any better information on the valuation
15 date, I stick with a discount of 20%.
16 Other areas of difference between myself and Dr Hern
17 relate to the conversion fee, capital gains tax and
18 redundancy payments. The above points are the key areas
19 of difference.
20 [Slide 7] The main areas of difference between
21 Dr Hern's valuation and my going concern valuation are
22 again the value of the surplus land, and the same
23 figures are used, and then the distress discount of 30%.
24 Dr Hern does not apply any discount to account for
25 BD Agro's financial distress. In my view, a discount is

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01 appropriate to reflect that a willing buyer would factor
02 into any price negotiations that BD Agro had been
03 a loss-making business for the prior nine years, had
04 significant operational and financial issues and was on
05 the verge of bankruptcy.
06 The figure of 30% is a matter of judgment, and it
07 represents the significant operational and financial
08 difficulties faced by BD Agro. And in my view, a seller
09 would also take that interest consideration when
10 negotiating any value for the shares. Again, the other
11 areas of difference are the main conversion fee, capital
12 gains tax and redundancy payment.
13 [Slide 8] Ultimately, the key area of difference
14 between Dr Hern and myself was whether or not BD Agro
15 was a going concern at the valuation date.
16 International Valuation Standards defines going concern
17 as "a business enterprise that is expected to continue
18 operations for the foreseeable future". At the
19 valuation date, BD Agro had submitted two pre-pack
20 reorganisation plans to the Commercial Court in Belgrade
21 that had been sent back to the lower court by the date
22 of valuation.
23 Banca Intesa had filed a request for the opening of
24 bankruptcy proceedings against BD Agro. BD Agro's bank
25 accounts had been blocked since 2013. BD Agro entered

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01 into bankruptcy proceedings ten months later, in August
02 2016. Based on that evidence, whether or not BD Agro
03 could have continued operating for the foreseeable
04 future is doubtful.

05 Kantor further notes that a "business is only
06 a going concern if it has a record of several years of
07 profitability" which allows establishment of
08 forward-looking compensation "with reasonable
09 certainty".

10 As I will show overleaf on the chart, BD Agro had no
11 years of profitability, it was consistently loss-making
12 from 2006 to 2014.

13 Further, the auditor's report of the BD Agro
14 31st December 2013 financial statements expressed
15 "uncertainty about [the company's] ability to continue
16 business operations in line with the Going Concern
17 principle, unless it obtains additional net revolving
18 assets for business activities". So 18 months prior to
19 valuation date the auditor already had concerns about
20 BD Agro's ability to continue as a going concern.

21 Mr Markicevic himself notes that:

22 "The company is at a point where it cannot continue
23 as a going concern without successfully completing
24 a pre-pack restructuring of its debt to allow for an
25 orderly repayment and having its accounts unblocked."

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01 At the valuation date, the pre-pack plan had been
02 sent back to the lower court, there was no certainty at
03 that point in time whether it would be accepted or not,
04 and therefore, if it was not accepted, the business
05 could not have continued as a going concern, according
06 to my interpretation of what Mr Markicevic says there.

07 Finally, the March pre-pack plan forecast figures
08 are unsupported, as they expected an immediate profit
09 from a business that in the prior nine years had not had
10 any profits whatsoever, and it was based on 100%
11 capacity of business that previously had only ever
12 operated at 50% capacity or herd capacity, and in the
13 last two prior years had been operating at approximately
14 10% of capacity.

15 Just a brief chart showing BD Agro's operational
16 performance throughout the period from privatization
17 [slide 9]. As can be seen, costs always outweighed
18 revenue throughout the entire period. In a number of
19 years, interest costs themselves and the loans
20 outweighed revenue, in 2010 and 2012 specifically.

21 As previously mentioned, my valuation approaches are
22 based on BD Agro being financially distressed
23 [slide 10], the bankruptcy scenario and the going
24 concern scenario. In my first report, I prepared
25 a single valuation and applied only a 30% distress

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01 discount to the asset values in the February 2016
02 Confineks report.

03 I updated my valuation approach further in my second
04 report to include both the bankruptcy scenario and the
05 going concern scenario.

06 [Slide 11] Justification for the 50% sales discount
07 under my bankruptcy is as follows. It is typical to
08 apply a discount to represent the difficulty of selling
09 a business in an insolvency process, marketing the
10 business or assets to potential investors, the lack of
11 time to do due diligence, difficulty in assessing the
12 land conversion and value, any risk to the buyers,
13 including lack of warranties a buyer could expect,
14 typically no warranties on the sale, and a limited buyer
15 pool.

16 The 50% discount is supported by the actual discount
17 the assets of the business were sold at on 9th April
18 2019, and the March pre-pack plan states itself that if
19 bankruptcy proceedings were launched then the company
20 could be sold at 50% lower than estimated value.

21 In my view, it would be necessary to also account
22 for any costs of bankruptcy and these should be
23 accounted for in any valuation. As previously
24 mentioned, the pre-pack plan suggests bankruptcy costs
25 can reach an average of 20% of the bankruptcy assets,

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01 and this is supported by Doing Business, a World Bank
02 organisation, which suggests the costs of bankruptcy in
03 Serbia on average cost 20%.

04 [Slide 12] The 30% distress discount under my going
05 concern scenario represents the impact on value of
06 undertaking a sales process of a distressed business.
07 I must emphasise, this isn't a forced sale under this
08 scenario, this is merely a willing buyer would factor
09 into price negotiations that BD Agro had been
10 loss-making, had significant operational financial
11 issues, and was on the verge of bankruptcy, but also
12 that a willing seller would accept a discounted sales
13 price rather than going to bankruptcy and potentially
14 receive nothing for their shares.

15 It also accounts for the fact that BD Agro was about
16 to go through a restructuring process if the going
17 concern scenario is followed, and there is no certainty
18 that any restructuring process would be successful.

19 The 30% is a rule of thumb discount, however I do
20 believe it's supported by the pre-pack plan, which
21 acknowledged the burdened property could be sold at
22 below market value with the approval of creditors and
23 unburdened property could be sold at not less than 70%
24 of market value.

25 When BD Agro had previously sold assets, land, it

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01 had been unable at times to realise the estimated
02 balance sheet value, for example agricultural land at
03 Novi Becej which sold in 2011 at 55% of its estimated
04 value.
05 Again, Doing Business, a World Bank organisation,
06 suggests that in bankruptcy, the recovery rate was only
07 34.5%, significantly in excess of 30%, so that would be
08 a 65.5% discount, so significantly in excess of the 30%
09 discount I apply in the going concern scenario.
10 In my view, applying a discount to a distressed
11 business is in accordance with the definition of fair
12 market value, which assumes that both parties have
13 a reasonable knowledge of relevant facts and therefore,
14 in a distressed situation, the prospective buyer would
15 have reasonable knowledge of the circumstances facing
16 the distressed seller, they would negotiate a lower than
17 market value price.
18 Other issues with my valuation [slide 13]. In my
19 second report, I included a €9.2 million provision for
20 court proceedings in my going concern valuation.
21 This provision had been based on contingent
22 liabilities and the notes to the 31st December 2015
23 financial statements, on the assumption that these
24 liabilities were separate from the related liabilities
25 on the balance sheet.

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01 Information subsequently came to light prior to my
02 third report that the €9 million of court proceedings
03 provision related to Banca Intesa had been double
04 counted in the 2014 and 2015 financial statements. The
05 financial statements appear to have been prepared
06 incorrectly and as such, the additional liability is not
07 required, and in my third report, I removed the court
08 proceedings provision.
09 Capital gains tax; in my second report, I calculated
10 an additional CGT liability of €5.7 million under
11 a going concern scenario. I must emphasise, I am not
12 a tax expert and this was an approximate calculation
13 with regard to potential CGT. CGT is required if there
14 is an increase in the asset value between purchase and
15 sale. Given the increase in land value that we have
16 seen under, in my scenario, Ms Ilic, and then under
17 Dr Hern's scenario, his own valuations, in my opinion it
18 is likely that there would have been a significant CGT
19 liability incurred above and beyond that which is
20 currently included in the balance sheet of €3.1 million.
21 I am not a tax expert, but I deem my calculation to
22 be more accurate than just relying on what the balance
23 was already in the balance sheet.
24 In conclusion [slide 14] BD Agro was not a going
25 concern at the date of valuation. It was in

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01 a bankruptcy process at the date of valuation. It never
02 made an operational profit. And under a bankruptcy
03 scenario, I value BD Agro at negative €20.2 million, ie
04 it had no value at the valuation date thus the
05 Claimants' damages are nil.
06 [Slide 15] Under a going concern scenario, I value
07 BD Agro at €13.8 million. I am instructed that Sembi's
08 proportion of the shares was subject to capital gains
09 tax of €0.2 million, as the Claimants' interest in
10 BD Agro was valued at €10.8 million.
11 I shall now discuss the bank transaction analysis
12 [slide 16]. Dr Hern and I approximately agree with
13 regard to the bank transactions. There is a high
14 outflow of funds going from BD Agro to Mr Obradovic in
15 the bank transaction loan balance, amounting to at least
16 RSD 88 million and potentially up to RSD 136 million.
17 The main differences between my bank transactions
18 analysis and Dr Hern's analysis result from different
19 instructions, particularly in relation to sales of goods
20 and services code 221 we heard about earlier.
21 Dr Hern has been instructed to include all of the
22 221 transactions, and I was instructed to only include
23 transactions under that code that specifically reference
24 the shareholder loan.
25 The difference relates to a number of transactions,

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01 but a significant proportion of the transaction relates
02 to the three below that I include to show the Tribunal.
03 The difference there comes up to RSD 50.5 million.
04 Without any appropriate additional documentation, I have
05 no basis to conclude that these additional transactions
06 should be included.
07 Dr Hern was also instructed to include a number of
08 other balances with regard to transactions between
09 Mr Obradovic and BD Agro and associated entities
10 [slide 17].
11 As I referred to previously with regard to the land
12 assignment, this relates to a loan made by Mr Obradovic
13 to BD Agro of RSD 35.5 million. The loan was offset by
14 the transfer of land. Dr Hern valued the land at
15 RSD 32 million; I deem it more appropriate to value the
16 land at the value of the loan that was provided.
17 Dr Hern included payments to suppliers. I have seen
18 no evidence to dispute the value of those payments.
19 Dr Hern was also instructed to analyse bank transactions
20 between associated companies and BD Agro.
21 Rather than rely on the bank transactions, I took
22 the outstanding balances between those associated
23 companies at the valuation date or near the valuation
24 date, to calculate at the end a final balancing figure
25 owed by the associated companies to BD Agro, so my

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01 balancing figure is approximately RSD 190 million
02 compared to Dr Hern's RSD 6 million.
03 In total, when examining the bank transactions
04 between BD Agro and Mr Obradovic, my analysis suggests
05 that Mr Obradovic owes BD Agro approximately
06 RSD 136 million [slide 18].
07 When taking into account additional transactions
08 between BD Agro and Mr Obradovic and transactions
09 between BD Agro and associated companies that Dr Hern
10 refers to, my analysis suggests Mr Obradovic owes
11 BD Agro RSD 285 million.
12 That concludes my presentation.
13 THE PRESIDENT: Thank you. Mr Pekar?
14 MR PEKAR: Thank you, Mme President.
15 Cross-examination by MR PEKAR
16 Q. Good afternoon, Mr Cowan, my name is Rostislav Pekar,
17 I am counsel for the Claimants and I will ask you a few
18 questions about your expert reports and certain
19 documents.
20 First, I would ask you to kindly go to
21 paragraph 2.28 of your first expert report, and you
22 explain there that you chose to rely on the Confineks
23 valuation because:
24 "... this was the basis for the asset values in the
25 31st December 2015 financial statements."

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01 Can you see that, sir?
02 A. Yes, I can.
03 Q. Was it your expert opinion at the time that the asset
04 values in the 31st December 2015 financial statement
05 were the most appropriate starting point for your
06 valuation?
07 A. At the point that I wrote the report, yes.
08 Q. Do I understand correctly from your answer that you no
09 longer think so?
10 A. The Confineks report was the information I had at the
11 time. I have since updated my valuation for a number of
12 different issues, including the land valuation prepared
13 by Ms Ilic.
14 Q. Well actually, that was my question, because you
15 prepared your first report on 19th April 2019, correct?
16 A. Correct.
17 Q. I was wondering what new information have you got since
18 19th April 2019 that has changed your opinion as to the
19 appropriateness of relying on the Confineks report?
20 A. Since then I have received the valuation report on land
21 of Ms Ilic, I have also received -- I think that is
22 probably the primary change in my valuation.
23 Q. Were you instructed to rely on Ms Ilic's valuation or
24 was it your own decision to rely on it?
25 A. I was instructed to rely on the valuation of Ms Ilic.

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01 Q. Did you independently assess the reasonableness of this
02 instruction?
03 A. I reviewed the report of Ms Ilic, and I considered, when
04 taking into account Dr Hern's land valuation, and
05 Mr Grzesik's land valuation, that Ms Ilic's land
06 valuation was appropriate to rely on in this situation,
07 yes.
08 Q. Well, here you refer to the valuations prepared by
09 Dr Hern and Mr Grzesik, but I think originally your
10 starting point was the Confineks valuation, was it not?
11 A. That is correct.
12 Q. So you independently came to the conclusion,
13 independently from the instruction you received, that
14 Ms Ilic's valuation was a better starting point than the
15 Confineks valuation, correct?
16 A. That is correct.
17 Q. When making that conclusion, did you take into account
18 the fact that Ms Ilic's valuation of the construction
19 land is based on asking prices for five land plots that
20 are not identified by their location?
21 A. I am not --
22 DR DJERIC: I am sorry, I have to object. It has not been
23 established that the five land plots for the asking
24 prices were not identified by the location, and if you
25 go to the relevant exhibit, you can see that. So you

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01 can assume that, or we can go to the exhibit and ask the
02 witness. Thank you.
03 MR PEKAR: Well, I believe I remember Ms Ilic's testimony
04 from yesterday.
05 DR DJERIC: You can be pointed to the exhibit if you wish.
06 MR PEKAR: Yes. We will find the exhibit. (Pause).
07 DR DJERIC: I am told it is RE-561.
08 MR PEKAR: So we will scroll it down for you. This is the
09 first one, can you see the location of the land plot
10 here?
11 A. Yes.
12 Q. Where is the location of the land plot?
13 A. I assume it's your red dot.
14 Q. Mr Cowan, have you been to Belgrade?
15 A. No, I haven't.
16 Q. This is in the centre of Belgrade.
17 DR DJERIC: I am sorry, again the picture clearly shows,
18 it's written "Location: Dobanovci Bypass, right side
19 coming from Belgrade, industrial zone", just the last
20 line, and it is a translation of the exhibit.
21 MR PEKAR: Sir, I was asking the witness where he thought --
22 he said he knew where the land plot was, I asked him
23 where it was, he pointed to the red dot, and I told him
24 that this is on the right bank of the Sava River which,
25 as you know very well, is in the centre of Belgrade.

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01 Okay, let's go to the other one. Mr Cowan, could
02 you tell me where this land plot is located?
03 A. I can't, other than reading the text that is on the
04 exhibit.
05 Q. Could we go to the next one? Can you tell me where this
06 one is located?
07 A. Again, I am relying on the translation.
08 Q. But did you -- well, the translation is not in the
09 record.
10 A. Sorry, could you repeat your question?
11 Q. Yes, the translation is not in the record, sir, so were
12 you shown a translation of that text at the time?
13 A. No, I wasn't.
14 Q. So I think we can --
15 THE PRESIDENT: I am sorry, why do you say the translation
16 is not in the record? I see "Land plot in industrial
17 zone" --
18 MR PEKAR: Oh, sorry. So you say:
19 "Land plot in industrial zone, near Nelt and Pepsi;
20 access from the dirt road, infrastructure close to the
21 plot; Highway is 7km from the plot."
22 So that allows you to locate the plot.
23 A. Yes.
24 Q. So you know where Pepsi and Nelt are located there?
25 A. I assume that someone other than myself could locate it

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01 from the text there. I am not a land expert, and I am
02 not an expert on Serbia.
03 Q. Could we go further down? So here we have:
04 "Land plot in industrial zone in Batajnica. Access
05 from the paved road. Infrastructure close to the plot
06 ... 24 eur/m2."
07 Again, can you tell the exact location of that land
08 plot?
09 A. I can't, no.
10 Q. Is there any other advertisement that we skipped? So
11 here we have:
12 "Construction land in industrial zone in Dobanovci.
13 Decision on change of use is obtained. Close to
14 industrial facilities ... 25 eur/m2."
15 A. Yes.
16 Q. So here you can determine the location, you believe?
17 A. I can't determine the location from the information
18 there.
19 Q. Thank you. Mr Cowan, do you agree with me that by
20 relying on Ms Ilic's valuation of the land rather than
21 the Confineks report, the starting point of your
22 valuation decreased by approximately €20 million to
23 €73.7 million?
24 A. I will trust you on the maths, so yes.
25 Q. And then in paragraph 6.41 of your second report, you

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01 set out a further valuation scenario where the starting
02 point of your analysis is that what you call the
03 development land is only 164 hectares, which reduces the
04 starting value -- well, correct?
05 A. Yes, correct.
06 Q. And that reduces the starting value of your analysis to
07 €55.9 million, correct?
08 A. Correct.
09 Q. Is that an alternative valuation or a replacement
10 valuation with respect to the previous one?
11 A. It's an alternative valuation, which takes into
12 consideration whether or not the contested land should
13 be included in the valuation of BD Agro.
14 Q. You prepared that valuation because you were instructed
15 to do so?
16 A. That is correct.
17 Q. Just if I recap, then your starting point decreased from
18 €96.2 million, based on Confineks, to €55.9 million in
19 this alternative scenario, and just based on Serbia's
20 instructions, correct?
21 A. Could you repeat the starting point, sorry?
22 Q. Yes, I believe that your starting point, based on
23 Confineks, was €96 million.
24 A. I believe that sounds correct, yes.
25 Q. We have put it on the screen, it's 8.20 of your first

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01 report.
02 A. Yes, correct.
03 Q. So by following the instructions, you decreased the
04 starting point by, I don't know, 45% approximately?
05 A. I trust your calculation.
06 Q. You shouldn't trust a lawyer!
07 Mr Cowan, does any of your valuations assess fair
08 market value?
09 A. Yes, the going concern valuation.
10 Q. Actually, were you instructed to assess fair market
11 value?
12 A. Not specifically. I was instructed to respond to
13 Dr Hern's reports.
14 Q. Is the use of bankruptcy discounts consistent with
15 assessment of fair market value of assets?
16 A. Which of my scenarios are you referring to?
17 Q. I am asking a general question. Is the use of
18 bankruptcy discounts consistent with assessment of fair
19 market value of assets?
20 A. I think it is accepted that if you have got a distressed
21 business, the fair market value or the market value of
22 the assets may be adjusted downwards by a discount due
23 to coming to a negotiation between willing buyer and
24 willing seller. Ultimately, the value of any business
25 is that negotiation between the willing buyer and the

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01 willing seller.
02 Q. I am not sure you answered my question. I am now asking
03 you about the fair market value of an asset.
04 A. Of an asset?
05 Q. Correct. Like a piece of land, for example. Does the
06 fair market value of a piece of land depend on the
07 financial condition of its owner?
08 A. I think it depends on the asset that you were valuing,
09 so if you were valuing a piece of land rather than
10 a business, as I was doing with BD Agro, would you apply
11 a discount? Again, it comes down to the situation of
12 the seller and the buyer, and the knowledge that was
13 shared between them, and any negotiated point. Where
14 I have come to with my discounts is that BD Agro was
15 a distressed business, and therefore, the seller, in
16 order to make the best recovery possible, would accept
17 a lower price, perhaps if it was sold bit part rather
18 than as a whole, and therefore a discount is under fair
19 market value when you are considering willing buyer and
20 willing seller.
21 Q. So I am not sure, is your answer yes or no?
22 A. It depends. I think it depends on certain circumstances
23 of the buyer and the seller and the asset that you are
24 selling.
25 Q. So I will just try to illustrate it with a hypothetical.

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01 Let's imagine that Google owns 1,000 m2 in a locality
02 where the fair market value of land is €30/m2. What is
03 the fair market value of that land plot?
04 A. I would suggest €30.
05 Q. €30,000?
06 A. €30,000.
07 Q. And now the same land plot is owned by a company which
08 is in bankruptcy already.
09 A. I would suggest that the land plot is worth less,
10 because of what its value is to the owner, and if you
11 were going to sell that -- fair market value is all
12 about reaching a price that would be agreeable to both
13 the willing buyer and the willing seller in full
14 knowledge of all the facts. If a buyer has the
15 opportunity to buy an asset from a distressed business,
16 it's not going to offer your €30,000 in that scenario
17 when it knows, if it waited six months, that business
18 would be in bankruptcy, and it could pay €15,000 for it.
19 So I think when you're looking at fair market value, it
20 is all about the negotiation, and the knowledge and the
21 facts of both the buyer and the seller, and the
22 knowledge and the facts that were available to all the
23 parties.
24 Q. So let's accept temporarily your interpretation. Google
25 steps in and buys the land plot for, let's say, €15,000,

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01 correct?
02 A. Yes.
03 Q. Are you fine with that scenario?
04 A. Yes.
05 Q. The moment Google became the owner of the land plot, the
06 fair market value of the land plot became €30,000,
07 correct?
08 A. It became sorry, what? Could you repeat that again,
09 please?
10 Q. The moment Google became the owner of that land plot,
11 the fair market value of that land plot became €30,000,
12 correct?
13 A. I would say yes, because of the situation that Google
14 was in, they would not look to sell the plot unless they
15 were made an offer that they deemed acceptable, so they
16 might deem that €16,000 was acceptable, they might deem
17 that €30,000 was acceptable.
18 Q. Correct. So Google has just made €15,000, right, on the
19 sale from bankruptcy?
20 A. Could you repeat the question, please?
21 Q. Yes, Google has just made €15,000 on the sale from
22 bankruptcy?
23 A. In your hypothetical, yes.
24 Q. Absolutely, this is purely hypothetical. Correct?
25 A. Correct.

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01 Q. Now imagine that their friends from Facebook also heard
02 about this bankruptcy sale, and they also want to make
03 €15,000. Wouldn't it be true that they will be bidding
04 against Google, up to the price of €30,000?
05 A. Are we going back to the starting point? Where do
06 Facebook come into it, please?
07 Q. I am just adding to my hypothetical, sir.
08 A. Would you mind giving me the facts of your hypothetical
09 again, so I don't --
10 Q. They are still the same. We have a bankrupt company
11 owning 1,000 m2, with a market value which would become
12 €30,000 if it's owned by Google, but according to you,
13 it's only €15,000 when it's owned by the bankrupt
14 company.
15 A. Okay.
16 Q. That land is put up for sale by the bankruptcy trustee,
17 and now we don't have only one bidder, Google, but we
18 have two, Facebook and Google, to make it more
19 complicated. Do you agree with me that the two bidders
20 would have all economic incentives actually to bid up to
21 the fair market value that the asset will have when they
22 own it?
23 A. They would bid up to the value that it was worth to
24 them, so it could be -- each of them has their own
25 approach, and their own requirements, and so they may

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01 bid up to €20,000 or €25,000 or €35,000, or they may not
02 want to get into a bidding war.
03 Q. Assume that they are willing buyers, please, to make it
04 closer to the definition of fair market value. Both of
05 them want to buy the asset.
06 A. So both of them want to buy the asset; again, it depends
07 on their requirements, what are they willing to pay? As
08 willing buyers, they both have their own individual
09 prerogatives in order to proceed, and so they may not be
10 willing to pay more than €16,000, or they may be willing
11 to go up to €30,000.
12 Q. Mr Cowan, can we agree that the definition of fair
13 market value simply does not work in this way?
14 A. In what way?
15 Q. In the way that it would look at the individual seller
16 and the individual buyer?
17 A. I don't think we can agree that. I think you have to
18 take into account the willing buyer and the willing
19 seller, the price that they are willing to negotiate.
20 Q. What does the use of the indefinite article in the
21 expression "a willing buyer and a willing seller" tell
22 you?
23 A. Could you explain the question again, please?
24 Q. Yes, what does the use of the indefinite article in the
25 expression "a willing buyer and a willing seller" tell

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01 you?
02 A. In terms of willing buyer and willing seller, they are
03 a hypothetical buyer and a hypothetical seller.
04 Q. Correct, so it's not the real actual seller, it's
05 a hypothetical buyer and a hypothetical seller, I agree
06 with that. So if we look at further elements of the
07 definition which you have in 7.16 of your first report,
08 would you agree with me that the elements of fair market
09 value are first of all this hypothetical seller and
10 hypothetical buyer, as we have just determined, that
11 they both must be willing, there should also be an arm's
12 length transaction, correct?
13 A. Correct.
14 Q. The price should be considered assuming proper
15 marketing, correct?
16 A. Correct.
17 Q. And assuming that each of these hypothetical parties
18 acted knowledgeably, prudently and without compulsion,
19 correct?
20 A. Correct.
21 Q. Sir, I put to you that this is completely, completely
22 different from factoring any distress factors, or any
23 discounts for bankruptcy scenario, because a bankruptcy
24 scenario is unavoidably linked to the specific identity
25 of the seller, is it not?

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01 A. I think you could still have a willing seller that was
02 in financial distress, so yes, we're talking about
03 a hypothetical buyer and a hypothetical seller, but the
04 hypothetical seller could still be under financial
05 distress.
06 Q. How does the financial distress of the owner affect the
07 value, the fair market value of the asset?
08 A. Ultimately, what you are attempting to achieve with fair
09 market value is to calculate the price that would be
10 acceptable between a buyer and a seller. What is it
11 worth to both those parties in terms of purchasing the
12 asset or selling the asset. And depending on the
13 individual situation of both the buyer and the seller,
14 that has a different value.
15 Q. So you are telling me basically that when -- I am
16 a state, I wish to expropriate land, I have an
17 obligation to pay fair market value for the land, okay?
18 There are two identical land plots just adjacent one to
19 another; one is owned by Google, the other one for
20 a bankrupt company. Are you telling me that I as the
21 state will have to pay a higher price to Google and
22 a lower price to the bankrupt company?
23 A. Sorry, could you repeat the question again?
24 Q. Yes. I am a state and I wish to expropriate land, two
25 plots of land, and they are identical, just adjacent to

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01 each other. One is owned by Google, the other one by
02 a bankrupt company. Are you telling me that I, as the
03 state, will have to buy a higher price for the
04 expropriation of the land owned by Google and a lower
05 price for the expropriation of the land owned by the
06 bankrupt company?
07 A. So you are suggesting that the expropriation should be
08 valued at fair market value?
09 Q. Correct.
10 A. And therefore whether or not the price would be
11 different between Google and the bankrupt seller?
12 Q. Correct.
13 A. For a specific asset, I believe you would pay the same
14 price.
15 Q. So now if you look at your table in 4.8 of your third
16 report, now let's focus on the third column:
17 "All land; my valuation bankruptcy scenario."
18 So you have non-farm land at 43, the number doesn't
19 matter so much. You have total assets at 73.7.
20 A. Yes.
21 Q. So if we just established that individual assets must be
22 sold at the same fair market value to a state that
23 wishes to expropriate them, would you agree with me that
24 there is absolutely no justification for applying a 50%
25 bankruptcy sale discount?

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01 A. When discussing market value, there is the market value
02 of a hypothetical sale but there's also the value in
03 use, which is covered by market value in accordance with
04 International Valuation Standards.
05 Q. Sir, all my questions relate to fair market value.
06 A. I appreciate that. And it's still covered by value in
07 use, and the value in use to the seller in this
08 situation, the discount is then valid. The reason
09 I included a discount in this situation is because at
10 the valuation date, we did not know whether or not
11 BD Agro was going to go into bankruptcy, given that the
12 court had rejected or returned to the lower court the
13 pre-pack plan, whether or not the conditions were going
14 to be met for the pre-pack plan. As we have seen, if
15 the pre-pack plan was not enacted --
16 Q. Sir, I am sorry to interrupt, but that was not my
17 question at all.
18 A. I believed I was explaining, but please ask your
19 question again.
20 Q. So here you list several assets, like development land,
21 other construction land, Novi Becej, agricultural land,
22 other fixed assets, current assets, deferred tax
23 assets -- that's probably not sellable -- farm assets.
24 So all of these are individual assets. Obviously they
25 are grouped here in categories, but these are individual

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01 assets.
02 A. Yes.
03 Q. The fair market value, I think we have established, of
04 individual assets does not depend on potential financial
05 distress of the seller; therefore my question is:
06 assuming that each of these assets are sold, which
07 I believe is what is assumed in a bankruptcy scenario,
08 why would any discount for a bankruptcy sale be
09 applicable?
10 A. We are not valuing the individual assets, we are valuing
11 the business of BD Agro, and therefore, it's part of the
12 total in terms of coming to the value of BD Agro in
13 a bankruptcy scenario.
14 Q. So you believe that in bankruptcy, somebody would be
15 buying the business of BD Agro as a whole from
16 bankruptcy, that is the scenario that you valued here?
17 A. To some extent that is what happened, I believe, correct
18 me if I am wrong.
19 Q. But wouldn't it then be more appropriate, given the
20 valuation rule that you should always assume the highest
21 possible price, wouldn't it be better then to sell the
22 individual assets and thus avoid the application of the
23 50% discount that you propose?
24 A. In a liquidation scenario you may sell on an asset by
25 asset basis in order to achieve the highest possible

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01 price. My understanding of performing this valuation at
02 the valuation date, we were valuing the business as
03 a whole, ie the shares at 21st October 2015, rather than
04 on an individual asset basis.
05 Q. The assets can be sold individually to obtain cash,
06 which will then be distributed to shareholders; that's
07 perfectly possible, is it not?
08 A. Yes.
09 Q. And if they are sold individually, the 50% discount will
10 not apply, will it?
11 A. In that scenario, no.
12 Q. So now, let's return to the Confineks report, please.
13 It's CE-172.
14 To save some trees we only have a portion of it
15 printed out. I would kindly ask you to look at the
16 summary page of the Confineks report. Here we go,
17 I think. It is page 23, but it is not 23 in the PDF.
18 A. I have it here.
19 Q. So here, Confineks concluded that the estimated value of
20 assets is €96 million, total estimated liability is
21 almost €40 million and therefore the estimated value of
22 capital was €56 million. Do you see that?
23 A. Yes.
24 Q. In 2.28, which you may look at -- leave that open, if
25 I may ask you, and then just open your first expert

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01 report. 2.28, you state:
02 "I have based my maximum valuation on the February
03 16th Confineks Report as this was the basis for the
04 asset values in the 31st December 2015 Financial
05 Statements."
06 A. Yes.
07 Q. Then you also state, in the same paragraph actually, you
08 explain that the financial statements were prepared on
09 a going concern basis, can you see that?
10 A. Yes.
11 Q. Do you know which entity controlled BD Agro at the time
12 when the 2015 financial statements were prepared and
13 approved?
14 A. I assume it was the Privatization Agency.
15 Q. Would it be fair to say that the Privatization Agency
16 agreed that BD Agro was a going concern at the end of
17 2015?
18 A. I believe it's more the preparation of the statements,
19 that's probably fair to say, yes. I would agree with
20 that.
21 Q. I don't understand. I believe that the financial
22 statements of a company need to be approved by the
23 shareholders, is that your understanding?
24 A. Yes, prepared by management and approved by the
25 shareholders.

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01 Q. If a shareholder does not believe that a company is
02 a going concern, why would the shareholder approve the
03 financial statements?
04 A. I agree.
05 Q. Actually, in 2.27, you explained, in the second
06 sentence, that you do not deem it appropriate to value
07 BD Agro as a going concern, in which case, using an
08 asset-based approach method is the most appropriate, do
09 you see that?
10 A. Yes.
11 Q. Would you agree with me that the asset-based approach is
12 exactly the one where you do not apply any discounts for
13 bankruptcy? If you want to determine fair market value.
14 A. Again, it comes back to -- it depends, the answer.
15 Going back to your earlier point, if you are going to
16 sell on an asset by asset basis, I would agree.
17 Q. Now let's touch briefly your analysis of the
18 transactions. Mr Cowan, what you looked at were
19 essentially money transfers from certain bank accounts,
20 correct?
21 A. Correct.
22 Q. Are you certain that these are all relevant bank
23 accounts?
24 A. I believe so. I received a list of bank accounts from
25 counsel, which I believe came from the National Bank of

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01 Serbia. Going through that list -- I then received bank
02 accounts which were associated with that list. As
03 I went through, not all of the bank accounts -- I did
04 not receive bank accounts for all of the bank accounts
05 on that list, and some of them didn't have any
06 transactions.
07 Following the submission of my second report, I have
08 also seen letters stating that all the bank accounts
09 available have been provided to myself.
10 So in summary, I don't believe there are any other
11 bank statements that I haven't seen.
12 Q. That you haven't -- there are any bank account
13 statements that you have not seen?
14 A. I don't believe so.
15 Q. Sorry, there are no bank account statements provided by
16 counsel for Serbia that you have not seen?
17 A. I don't believe there is -- yes, sorry. You go ahead
18 and ask the question you want to ask and I'll answer it.
19 Q. My point, I think, is simple: you were provided certain
20 bank account statements and maybe with the
21 representation that these are all bank account
22 statements that are available, and you relied on that
23 representation, correct?
24 A. That is correct.
25 Q. You do not have the means to check what is or is not on

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01 the accounts, correct?
02 A. That's correct.
03 Q. Can we agree, Mr Cowan, that a bank transfer of money in
04 principle does not allow me to know the legal label,
05 I would say, I need to put on that transfer, so a bank
06 account transfer does not allow me to say if that's
07 a repayment of a debt, if it is the making of a loan, if
08 it is payment for a purchase, if it is a donation, would
09 you agree with that?
10 A. It depends, because you can obviously put a description
11 when you make a bank transfer, describing what it is,
12 whether it's a purchase or a loan or a sale.
13 Q. I understand that your analysis is based on these
14 descriptions, and quite frankly that made me tremble,
15 because I am making wire transfers and I don't always
16 put the right description there, but okay.
17 Would you agree with me that the description is just
18 a code, an element which is maybe not even compulsory?
19 A. I would agree, yes.
20 Q. And that if I just click something else, I just click
21 something else, right? Well, if I want to -- my point
22 is the following: would you agree with me that if I want
23 to see the purpose why a certain transfer was made,
24 I should enquire further the description on the
25 transfer, and I should try to look, for example, whether

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01 there is an agreement to document it, I should try to
02 see if the parties can explain what happened, would you
03 agree with that?
04 A. I guess the starting point is to put the correct
05 description, but yes, you could also look for supporting
06 documentation for those bank transactions.
07 Q. Do you agree with me that a loan agreement can be made
08 orally?
09 A. I mean, I think that's a legal point, rather than
10 something for me.
11 Q. Do you agree with me that a loan agreement -- okay,
12 I will avoid the legal labels, but do you agree with me
13 that I may become a creditor of a company without
14 transferring any money to that company?
15 A. You could transfer other assets rather than money to
16 become a recovery, yes.
17 Q. What if I buy that company's debt?
18 A. I guess there is a transfer of funds if you buy
19 a company's debt.
20 Q. No, I said transferring money to that company.
21 A. But yes, you could -- yes.
22 Q. Because then I am transferring money to the original
23 recovery.
24 A. You are then the debt holder.
25 Q. Would you be able to see that through your analysis?

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01 A. Not if you have only looked at the bank transactions,
02 no.
03 Q. Similarly, I can be repaying a debt without transferring
04 money to the company?
05 A. Correct.
06 Q. And again, if there is no underlying money transfer then
07 this is not something which will be seen in your
08 analysis, will it?
09 A. No. It comes down to the cruel nature of financial
10 statements and accounts.
11 Q. There is one thing which somehow caught my attention in
12 appendix 3 to your second report. If you refer to point
13 3.4, you state there:
14 "I have not drawn any conclusions from my analyses
15 regarding the purpose of the transactions. My analyses
16 and output solely reflect summaries of factual
17 information set out in bank statements."
18 Can you see that?
19 A. Correct.
20 Q. Then in answer to question 1, actually you at the very
21 beginning of the table state "Loan transactions with
22 Mr Obradovic", can you see that?
23 A. Correct.
24 Q. But isn't the fact that you are labelling these
25 transactions as loans drawing off conclusions from your

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01 analysis?
02 A. My understanding from the factual information I looked
03 at was that there were loan transactions there.
04 Q. No, but sir, a while ago I was asking you about whether
05 a loan can be made orally, and you said "I'm not
06 a lawyer", and I fully respect that, so the basis for
07 you saying that these are loan transactions is just the
08 description of the transfer in the bank payment order?
09 A. I was instructed to review the transactions between
10 BD Agro and Mr Obradovic. I believe the title is just
11 a descriptor. It could just say "transactions with" --
12 perhaps it should not say "loan", it should say
13 "transactions with Mr Obradovic".
14 Q. I think it stems from what we have just discussed, that
15 there could be -- because "transaction" to me is not
16 really a money transfer, I am a lawyer, I see that as
17 the creation of an obligation or potentially repayment
18 of a monetary obligation.
19 So there could be such loan transactions with
20 Mr Obradovic that would not show in your analysis at
21 all?
22 A. That's correct.
23 MR PEKAR: No further questions, Mme President.
24 THE PRESIDENT: Thank you. Any questions in re-direct?
25 DR DJERIC: Yes, please, two short questions.

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01 Re-direct examination by DR DJERIC
02 Q. The first question concerns the hypothetical with the
03 expropriation, the expropriated land from Google or from
04 another company in bankruptcy. Just a question for you
05 is: do we have a willing buyer and a willing seller from
06 the definition of fair market value in an expropriation
07 situation?
08 A. No, because it's a forced seller.
09 Q. Thank you. Now moving to the transactions, tell me, do
10 you have any reason to believe that you were not
11 provided with all bank accounts of BD Agro used in the
12 relevant period of time?
13 A. No, I do not.
14 Q. Thank you. One more question: is it usual in your
15 experience that a company conducts bank transactions
16 without supporting written documentation?
17 A. No, it's not. I would expect supporting documentation
18 for bank transactions.
19 DR DJERIC: Thank you. That is all.
20 THE PRESIDENT: That was fast. No questions, no questions.
21 Let me see whether I have questions left for you,
22 Mr Cowan.
23 Questions from the TRIBUNAL
24 THE PRESIDENT: Can you go to your second report, page 15,
25 paragraphs 3.30 and 3.31?

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01 A. Yes.
02 THE PRESIDENT: It's a question that I have asked myself
03 already, the actual question on this paragraph comes,
04 but before that, are you equating going concern with
05 DCF?
06 A. Yes and no I think is probably -- so I'll explain my
07 answer. A business that is not a going concern I don't
08 think you should use DCF with, I think it should be on
09 an asset basis.
10 THE PRESIDENT: But do you agree that you could value
11 a going concern with other methods than DCF?
12 A. Absolutely.
13 THE PRESIDENT: Like comparative transactions, or
14 asset-based?
15 A. Yes.
16 THE PRESIDENT: Yes, good. And then in 3.30 and 3.31, you
17 have quotes from Professor Damodaran. Are these only in
18 respect with DCF valuations?
19 A. Yes. Professor Damodaran --
20 THE PRESIDENT: So that does not apply to an asset-based
21 valuation?
22 A. These quotes do not, no.
23 THE PRESIDENT: And the distress discount does not apply to
24 an asset-based valuation?
25 A. These quotes don't reflect --

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01 THE PRESIDENT: These quotes, yes, from reading them, yes,
02 but it seems that you are speaking here about a discount
03 at entity level.
04 A. Yes.
05 THE PRESIDENT: And then you quote statements relating only
06 to DCF valuation. Now, are you saying that the discount
07 only applies to a DCF valuation, or does the discount
08 also apply to an asset-based valuation?
09 A. The discount could also apply to an asset-based
10 valuation.
11 THE PRESIDENT: And how do you justify this?
12 A. It is a difficult one to justify which is why I have
13 applied my rule of thumb of 30%. Based on the situation
14 of the business, is how I analysed it and justified it.
15 The empirical evidence is difficult to support the
16 discount. I have read on Kantor and also Pratt, both
17 apply discounts for a distressed business, a going
18 concern that is under financial distress, they do
19 mention they would also apply a discount on an
20 asset-based method.
21 THE PRESIDENT: But that will still comply with the
22 definition of fair market value that implies buyer and
23 seller who are not under compulsion?
24 A. Yes, it comes down to acting knowledgeably, that a buyer
25 would be aware of the situation that the seller was in.

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01 They are both still willing, because there is a reason
02 to agree to a price to sell, that the seller needs to
03 sell and the buyer wants to buy, but they would come to
04 a price that was negotiated, and that's where the
05 discount comes in, that the value of the individual
06 assets -- or the value of the whole is less than if you
07 sold the individual assets.
08 THE PRESIDENT: So did I understand you correctly before, in
09 answer to a question you said that the discount only
10 applies to the valuation of the business as a whole, as
11 opposed to valuing parts, or did I misunderstand that?
12 A. I think I would have to look at the transcript, but
13 I believe that's what I said, that if you were valuing
14 a business on a liquidation basis, you typically value
15 on an asset by asset basis, and then, as counsel
16 suggested, you would sell each asset individually,
17 whereas if you are -- what I have performed here is
18 a valuation of BD Agro as a whole, and I have deemed
19 that a willing buyer would look at it in the whole and
20 offer a discount to the seller in order to proceed with
21 the transaction.
22 THE PRESIDENT: That is about the principle of the discount,
23 but then the level of this discount, can you explain
24 better why you come to 30%? I know you are saying this
25 is a matter of judgment, but then one exercises judgment

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01 in consideration of a number of factors, otherwise it
02 becomes arbitrary, so how do you justify your 30%?
03 A. Well, I deemed 50% was too high, and in a bankruptcy
04 Doing Business suggests 65.5% recovery rate so I deemed
05 that to be too high. 30% to some extent was derived
06 from the pre-pack plan in March, where management
07 accepted that they would be willing to sell unencumbered
08 assets at 70% of their market value, hence the 30%
09 discount.
10 THE PRESIDENT: Let me see whether I had other questions.
11 I was looking at the areas of disagreement that
12 Dr Hern mentioned this morning in his presentation on
13 page 13, but it seems to -- and I wanted to make sure
14 that you have a chance to address those, but I think you
15 have addressed all of it.
16 The exclusion of contested land or disputed land,
17 that you did on the basis of an instruction?
18 A. That is correct.
19 THE PRESIDENT: I am sure I will find this in your reports,
20 I will have to check them again, but the total
21 liabilities are different between Dr Hern and yourself,
22 right?
23 A. Correct.
24 THE PRESIDENT: Do I understand it correctly that one of the
25 reasons is the bankruptcy costs of 7.4?

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01 A. Yes, that's correct.
02 THE PRESIDENT: But that's not the only one, that is
03 about -- what page is it? It's one of the pages of your
04 slides shows that.
05 A. There is capital gains tax, which is the difference
06 between --
07 THE PRESIDENT: And the other difference is the capital
08 gains tax?
09 A. That is the other, and also the conversion fee.
10 I believe those are the main --
11 THE PRESIDENT: The conversion fee is computed differently.
12 A. Yes.
13 THE PRESIDENT: In your bankruptcy scenario, you have the
14 50% sales discount, which is something different from
15 the 30 that we discussed before, right?
16 A. Yes.
17 THE PRESIDENT: And then you have the 20% bankruptcy costs,
18 is this --
19 A. Correct.
20 THE PRESIDENT: This is cumulative?
21 A. Yes, the 20% is based on the discount --
22 THE PRESIDENT: And is the cost somehow included in the
23 discount, the figure of 50%, or does it come in
24 addition?
25 A. I have calculated the 7.4 on the basis of the total

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01 assets after discount.
02 THE PRESIDENT: Yes, so somehow -- yes, good. That is all
03 I had -- no, maybe I should ask you, just for equal
04 treatment, the question I asked Dr Hern about LIBOR.
05 You heard it?
06 A. I think it's whatever it ends up being replaced with,
07 I would agree with Dr Hern that I would assume there is
08 going to be some replacement for LIBOR, and then that
09 would be appropriate.
10 THE PRESIDENT: That seems more a lawyer's concern than an
11 economist's concern, about the disappearance of LIBOR.
12 A. Yes.
13 THE PRESIDENT: Fine. I have no further questions. Then
14 that ends your examination, Mr Cowan, thank you very
15 much.
16 A. Thank you.
17 THE PRESIDENT: This almost ends our hearing, not completely
18 yet. The Tribunal's suggestion would be that it
19 explains how it sees further steps now, and if needed,
20 we can then take a short break for you to consider this,
21 and then conclude, is that fine?
22 MR PEKAR: This is fine, yes.
23 THE PRESIDENT: Because I wasn't sure whether we should take
24 a break now, but I think we can do this, and it makes
25 more sense to take a break thereafter.

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01 THE PRESIDENT: The immediate next steps is transcript
02 corrections, that is settled in Procedural Order No. 1,
03 paragraph 24(3). We have agreed for agreed corrections
04 30 days after the receipt of the transcript or the
05 recording, whichever is later, to be entered by the
06 court reporters. The agreed corrections. If there are
07 disagreements about corrections, then the Tribunal will
08 rule.
09 Then thereafter, the next step is the post-hearing
10 briefs, and we have already provided for the principle
11 but we need now to set the practicalities, and the
12 Tribunal of course will listen to whatever you have in
13 mind, but we would like to make a proposal and then you
14 can react, that will be more efficient.
15 We had in mind two rounds of simultaneous briefs,
16 the second one a very concise, limited rebuttal brief.
17 Just in case the other party says things which you
18 didn't anticipate, you would get a chance to reply.
19 The time limits would be for you to say what you
20 like, or agree among yourselves.
21 The content; we thought that the post-hearing briefs
22 should comment on the evidence gathered during these
23 hearing days, and place it in the context of your
24 overall case, and we have focused a lot on national law
25 these last days, on Serbian law, on Cypriot law, on

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01 British Columbia law, but of course now this must all be
02 reframed in the Treaty framework.
03 When commenting on the evidence, you will of course
04 put the emphasis on whatever you consider is most
05 appropriate to further your case. There is one point
06 though that we would be particularly interested in your
07 commenting on, is the evidence of Mr Milošević and
08 Dr Radović in connection more specifically with contract
09 law, termination, waiver of breach, significant breach,
10 essential obligation, accessory obligation, and these
11 types of issues.
12 Then we would also think that the purpose is not to
13 repeat your earlier submissions. Your earlier
14 submissions were extremely thorough and extensive, and
15 the idea is not at all to repeat this exercise, but
16 obviously, you can include cross-references whenever
17 that seems a good idea.
18 We thought it might be good to have some page
19 limitations for this exercise, and just to have a basis
20 for discussion, we would imagine 100 pages for the first
21 brief, and something like 40 for the second one, thereby
22 we just want to show that the second one is clearly
23 a more limited one.
24 No new exhibits, no new legal authorities; if there
25 is absolutely something you think you need to file, then

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01 please ask for leave from the Tribunal.
02 That is for the post-hearing briefs. And then the
03 third next step is costs statements, and we would think
04 that we do not need costs submissions with explanations
05 or why you should be awarded costs and the other party
06 should bear the costs because we know the reasons for
07 allocation of costs, but we would rather expect costs
08 statements, itemised by category of costs, without
09 supporting documentation, except of course if the
10 Tribunal or the other party so requests. A reasonable
11 time limit would probably be something like three weeks
12 after the second post-hearing brief.
13 Then it would be up to the Tribunal to deliberate,
14 and we cannot rule out that there may be questions that
15 arise as we work further on the record, we don't expect
16 it right now, but one never knows, if there are
17 questions, there would be specific questions that can be
18 answered in writing.
19 Then we will proceed to issuing an award. We are
20 certainly aware of the importance of issuing an award
21 within reasonable time after the post-hearing briefs,
22 but at the same time, it is true that this is
23 a substantial case, with many issues that are complex
24 and they are both factual and legal, so we will need
25 time to do justice to the wealth of submissions and

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01 evidence, so it will be really premature and not serious
02 to give you now a time indication, but if you wish, we
03 can do this at some later stage, when we are more
04 advanced.
05 So this is what we wanted to say about the next
06 steps. I don't know whether you want to react just on
07 the spot, or whether you want to consult within your
08 teams, up to you.
09 MS MIHAJ: I think that the parties should, I think, consult
10 between each other.
11 THE PRESIDENT: Yes, I think that is reasonable. Is this
12 agreed?
13 MR PEKAR: Yes, it is agreed. I believe the only item is
14 the dates, and I think that ten minutes should be
15 sufficient to figure out the dates.
16 THE PRESIDENT: You may have questions on what we said and
17 require clarification. Should we take 10 minutes now,
18 or do you need more?
19 MR PEKAR: 10 minutes is fine.
20 MS MIHAJ: 15, please.
21 THE PRESIDENT: Good, let's take 15 minutes then.
22 (3.26 pm)
23 (A short break)
24 (3.50 pm)
25 THE PRESIDENT: We are ready to listen. Who takes the

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01 floor?
02 MR PEKAR: Mme President, apologies for having you wait so
03 long. I am not an M&A lawyer and it showed.
04 So we agreed that the first round should be filed on
05 27th September, that is a Monday, if that is agreeable
06 to the Tribunal, and the second round on 22nd October,
07 which is a Friday.
08 THE PRESIDENT: Fine?
09 MS MIHAJ: Yes, of course.
10 THE PRESIDENT: Is there anything else among the suggestions
11 of the Tribunal -- all the other suggestions of the
12 Tribunal are agreed, do I understand that?
13 MS MIHAJ: Yes, they are agreed.
14 THE PRESIDENT: No need for clarifications or other
15 comments? No.
16 Then I should ask you whether there are any general
17 comments about the proceedings, about the hearing,
18 questions, complaints that you wish to raise; if so,
19 this is the time to complain.
20 MR PEKAR: No, Mme President, we wish to thank the Tribunal
21 for the conduct of this proceeding and for the record we
22 confirm that we have strictly no objections to the
23 procedure.
24 THE PRESIDENT: Thank you.
25 MS MIHAJ: Neither do Respondent, so thank you.

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01 THE PRESIDENT: Thank you. Then it remains for me to thank
02 all those who contributed to this hearing: the court
03 reporter of course, we don't see her, but she has been
04 here all the time, very diligently; the interpreters,
05 who are still here, and for whose work we are grateful;
06 the PCA for hosting us and co-ordinating the logistics
07 with ICSID, and also the ICSID Secretary.
08 And we would like to thank the party representatives
09 for sitting here very long hours, with a lot of
10 patience, but at the same time, with your presence
11 showing to us that this is a case that matters to you.
12 That is important to us.
13 Thanks also to counsel, of course, for very
14 professional conduct of this arbitration, not only the
15 hearing but also the written submissions, and in
16 addition for the very friendly co-operation. We very
17 much appreciated it, because it allows us to focus on
18 the dispute and on the issues and not being distracted
19 by procedural skirmishes, so that is very much
20 appreciated.
21 And that allows me now to close. It has been some
22 time since I have closed an in-person hearing, when
23 I could not wish safe travels to everyone. We will not
24 shake hands, as we usually would do at the end of the
25 hearing, for good reasons, but we were pleased to hear

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01 that the test results that came back were all negative,
02 and we made actually history, because for a long time
03 there hasn't been a hearing in-person in this place. So
04 I wish everyone safe travels, a little rest, and we
05 thank you for your co-operation. I close this hearing.
06 Goodbye to everyone.
07 (3.54 pm)
08 (The hearing concluded)

A

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