

<p style="text-align: right;">Pages 528 - 781</p> <p style="text-align: center;">INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES</p> <p style="text-align: center;">ICSID Case No ARB/16/8 between</p> <hr/> <p style="text-align: center;">ZBIGNIEW PIOTR GROT AND OTHERS Claimants</p> <p style="text-align: center;">- v -</p> <p style="text-align: center;">REPUBLIC OF MOLDOVA Respondent</p> <hr/> <p style="text-align: center;">The Arbitral Tribunal The Hon L Yves Fortier CC, OQ, QC - Arbitrator Professor Dr Rolf Knieper - Arbitrator Professor Philippe Sands - President</p> <hr/> <p style="text-align: center;">HEARING VIENNA, AUSTRIA Wednesday, 13 December 2017</p> <hr/>	<p style="text-align: right;">528</p> <p style="text-align: right;">LIST OF PARTICIPANTS</p> <p>On behalf of Claimants:</p> <p>TODD ALLEN WELLS THEODORE GLEASON COREN HINKLE ANDREW ASTUNO LUCIA CRACIUNEANU GIEDRE STASIUNAITE</p> <p>GLEASON WELLS The Colorado Building 1615 California Street, Suite 616 Denver, CO 80202 United States of America todd.wells@gleasonwells.com ted.gleason@gleasonwells.com coren.hinkle@gleasonwells.com</p> <p>Also present from the parties:</p> <p>ZBIGNIEW PIOTR GROT, Claimant</p> <p>WITNESSES:</p> <p>ZBIGNIEW PIOTR GROT VALERIU BERIL</p> <p>EXPERTS:</p> <p>ROGER GLADEI, Gladei & Assoc DAN NICOARA, Gladei & Assoc MIHAIL RURAC, Agricultural expert ANDREI GUMOVSCI, Agricultural expert LARS WIECHEN, Deloitte</p>
<p style="text-align: right;">529</p> <p style="text-align: center;">LIST OF PARTICIPANTS</p> <p>The Tribunal:</p> <p>The President:</p> <p>PROFESSOR PHILIPPE SANDS</p> <p>Matrix Chambers Gray's Inn London WC1R 5LN United Kingdom philippesands@matrixlaw.co.uk philippesands@me.com Co-Arbitrators:</p> <p>THE HON L YVES FORTIER CC, OQ, QC</p> <p>Cabinet Yves Fortier 1 Place Ville Marie, Suite 2822 Montréal, Quebec H3B 4R4 Canada yves.fortier@yfortier.ca</p> <p>PROFESSOR DR ROLF KNiePER</p> <p>c/o Atelier Correia 7, place de la République 21210 Saulieu France rolf.knieper@gmail.com</p> <p>ICSID Scretariat:</p> <p>MS FRAUKE NITSCHKE, Secretary of the Tribunal</p> <p>Assistant to the President of the Tribunal:</p> <p>MS LEA MAIN-KLINGST</p> <p>Court Reporters:</p> <p>MS ANN LLOYD MS DIANA BURDEN</p> <p>Interpreters:</p> <p>MS DANIELA CORINA IONESCU MS SILVIA STATESCU MS LELIA GALIS</p>	<p style="text-align: right;">531</p> <p style="text-align: center;">LIST OF PARTICIPANTS</p> <p>On behalf of Respondent:</p> <p>LEON KOPECKY CHRISTOPH LINDINGER VICTORIA PERNT ANISSA ACHAIBOU FELIX SCHNEIDER</p> <p>SCHÖNHERR RECHTSANWÄLTE GMBH Schottenring 19 1010 Vienna Republic of Austria l.kopecky@schoenherr.eu c.lindinger@schoenherr.eu v.pernt@schoenherr.eu</p> <p>ANNA CUSNIR (remotely) ANDRIAN GUZUN</p> <p>SCHÖNHERR MOLDOVA Alexandru cel Bun 51 Chisinau 2012 Republic of Moldova a.cusnir@schoenherr.eu a.guzun@schoenherr.eu</p> <p>EXPERTS:</p> <p>PROFESSOR VIOREL RUSU, Legal expert MICHAEL PEER, KPMG MARTIN KOZAK, KPMG</p>

<p style="text-align: center;">INDEX</p> <p>MIHAIL RURAC and ANDREI GUMOVSKI continued. 533</p> <p>Re-examination by Claimant 541</p> <p>Questions by the Arbitral Tribunal 552</p> <p>Re-examination by Claimant 582</p> <p>LARS WIECHEN 584</p> <p>Examination by Claimants 585</p> <p>Cross-examination by Respondent 605</p> <p>Re-examination by Claimants 632</p> <p>Questions by the Arbitral Tribunal 635</p> <p>MICHAEL PEER 639</p> <p>Examination by Respondent 639</p> <p>Cross-examination by Claimant 659</p> <p>Re-examination by Respondent 679</p> <p>LARS WIECHEN and MICHAEL PEER 680</p> <p>Questions by the Arbitral Tribunal 680</p> <p>Re-examination by Claimant 712</p> <p>Closing submission by Claimant 720</p> <p>Closing Submission by Respondent 752</p> <p>Closing remarks and future timetable 774</p>	<p style="text-align: right;">532</p> <p>1 MR GLEASON: First and foremost, I want to</p> <p>2 be completely transparent about this. Last night</p> <p>3 unfortunately Mr Rurac had a hotel reservation</p> <p>4 problem. He arrived and there was no room available</p> <p>5 for him, so he did communicate with our team about</p> <p>6 this particular issue. I wanted to be fully</p> <p>7 transparent about this. We have discussed this with</p> <p>8 the Respondent. The email communications are</p> <p>9 available upon request, just to get that on the</p> <p>10 record that that did happen unfortunately, but we</p> <p>11 found him a place to stay, so all is well that ends</p> <p>12 well.</p> <p>13 THE PRESIDENT: He didn't sleep in the</p> <p>14 street?</p> <p>15 MR GLEASON: I don't think so. I haven't</p> <p>16 talked to him today.</p> <p>17 THE PRESIDENT: You didn't sleep in the</p> <p>18 street?</p> <p>19 MR RURAC: No.</p> <p>20 THE PRESIDENT: Respondent, do you have a</p> <p>21 reaction?</p> <p>22 MR KOPECKY: No problem.</p> <p>23 THE PRESIDENT: I express my gratitude to</p> <p>24 Claimant for its transparency and Respondent for</p> <p>25 flexibility and decency. I hope you got a good</p>
<p style="text-align: right;">533</p> <p>1 (9.32 am Wednesday, 13 December 2017)</p> <p>2 MIHAIL RURAC and ANDREI GUMOVSKI, continued.</p> <p>3 THE PRESIDENT: Good morning, everybody.</p> <p>4 I hope everyone had a fine evening. I hope you got</p> <p>5 to enjoy Vienna last night. We are so sorry to have</p> <p>6 kept you overnight, but it is very important and we</p> <p>7 are grateful for you being back with us. We</p> <p>8 continue with your cross-examination, there will</p> <p>9 then be some re-direct and the Tribunal may well</p> <p>10 have a few questions for you.</p> <p>11 Just before we start, a couple of</p> <p>12 housekeeping matters. The only outstanding issue</p> <p>13 that I have is new titles for CH-7 and CH-8</p> <p>14 MR GLEASON: I have those documents for</p> <p>15 you right here. I am happy to pass those out to you</p> <p>16 and to opposing counsel. (Same handed)</p> <p>17 THE PRESIDENT: We have revised copies of</p> <p>18 CH-7 and CH-8 with new headline. CH-7, table 4</p> <p>19 Recommended fertilizers dosage and price considered</p> <p>20 to achieve average yields in Floresti, and CH-8,</p> <p>21 table 5, Plant protection products used and related</p> <p>22 price to achieve average yields in Floresti</p> <p>23 Thank you very much. That is entered and</p> <p>24 in on the record.</p> <p>25 Claimant?</p>	<p style="text-align: right;">535</p> <p>1 night's sleep wherever you slept.</p> <p>2 MR GLEASON: There are a couple of other</p> <p>3 issues for the record. I will let Mr Kopecky have</p> <p>4 his say on this issue as well, but one is related to</p> <p>5 the translation of C-94. Respondent had provided</p> <p>6 their updated version of the translation and we have</p> <p>7 looked at it and we agree, so there is agreement on</p> <p>8 that particular issue.</p> <p>9 THE PRESIDENT: Could that be submitted as</p> <p>10 C-94 Rev? There is agreement on a revised</p> <p>11 translation of C-94. Just for information, have you</p> <p>12 just translated additional parts or the whole?</p> <p>13 MR GLEASON: Additional parts.</p> <p>14 THE PRESIDENT: Is it marked clearly which</p> <p>15 are the additional bits?</p> <p>16 MR GLEASON: It is red-lined.</p> <p>17 THE PRESIDENT: Excellent. Thank you very</p> <p>18 much. We will have copies of those, will we? Or is</p> <p>19 it on the hyperlink straightaway?</p> <p>20 MR GLEASON: In the course of the day.</p> <p>21 There are a few more exhibits we would</p> <p>22 like to formally introduce to the record which have</p> <p>23 been formally discussed. We would like to make sure</p> <p>24 they are formally put on the record. It is C-142,</p> <p>25 C-143, C-144 and C-145. These are documents</p>

<p>1 pertaining to issues concerning Moldovan agriculture 2 which were raised in Michael Peer's report. Thus, 3 we believe they are responsive to Mr Peer's report. 4 I have discussed this with Mr Kopecky and I turn the 5 word over to him. 6 THE PRESIDENT: Mr Kopecky? 7 MR KOPECKY: We agree with that with the 8 exception of C-144, which is a video. As far as 9 I understood, it concerns beets. Mr Grot didn't 10 farm beets. 11 THE PRESIDENT: Beet as in beetroot? 12 Maybe it is not beetroot. It is sugar. 13 MR KOPECKY: Mr Grot did not farm beets. 14 It is not responsive per se to the report of Mr Peer 15 and therefore we object to it being on the record. 16 THE PRESIDENT: What is the timing? This 17 is likely to come in this morning so we need to take 18 a decision pretty much straightaway, because 19 Claimant is planning to rely on C-144, which is a 20 video, did you say? 21 MR GLEASON: We are discussing a video of 22 former Prime Minister Vlad Filat in the year 2011 23 meeting with local agricultural producers, sure, in 24 the context of sugar beets, the overall general 25 underreporting of yields in the agricultural</p>	<p>1 that the statement does represent the broader trend 2 of underreporting of yields in Moldovan agriculture 3 as recognised by the Prime Minister 4 THE PRESIDENT: Could we have a moment to 5 confer so we can take a decision now. 6 (The Tribunal conferred off the record) 7 THE PRESIDENT: In the interests of just 8 taking a speedy decision our feeling is we take the 9 point of Respondent that it may relate to a crop 10 that is not directly in issue, but since it is 11 broadly responsive to a matter that is addressed in 12 Mr Peer's report, and against the background that it 13 is perhaps unlikely that this single document will 14 form the basis for the decision that will be taken 15 at some point, our inclination is to let it in, but 16 under reserve, I would say, that if upon viewing it 17 we discover that indeed Respondent is right, that it 18 bears no relation to the subject that is being 19 discussed, then we will revisit our inclination. 20 The decision is, with that reserve, we 21 admit it for the purpose of the next phase of the 22 arbitration and the hearing of the quantum experts, 23 but you are free, Respondent, to make your points as 24 to the weight to be given to this newly introduced 25 document in due course and we will listen to those</p>
<p>1 industry. It is a video but we have a transcript in 2 Romanian with an English translation. It is just 3 additional support for this – 4 THE PRESIDENT: Your reason for tendering 5 it is it goes to the question of the underreporting 6 by agricultural producers of their total annual 7 production? That is the rationale for introducing 8 it? 9 MR GLEASON: Yes. That is the rationale. 10 It is just additional support for the proposition 11 that there is widespread underreporting of 12 agricultural yields. 13 THE PRESIDENT: Although I have read 14 Mr Peer's report, I have to confess I haven't 15 memorised it, but I do recall it does address that 16 question of underreporting, does it not? 17 MR KOPECKY: With respect to the crops 18 that Mr Grot planted, not beets. It is a different 19 product. 20 THE PRESIDENT: Is it Claimant's position 21 that C-144 does or does not relate only to beets, or 22 does it go more broadly? 23 MR GLEASON: The statement was given in 24 the context of a conversation with sugar beet 25 producers, that is true, but Claimants would submit</p>	<p>1 arguments. 2 Very good. Any other questions from 3 Claimant? 4 MR GLEASON: No not at this time. 5 THE PRESIDENT: Respondent? 6 MR KOPECKY: Just one point of order. We 7 discussed this with counsel for Claimants just 8 before the hearing. The final report of Mr Wiechen 9 was submitted to us just after midnight this 10 morning, and therefore without any further 11 commenting on that, we agreed with Claimants that 12 Mr Peer will be given additional time in his 13 presentation to address that. We spoke of 15 14 minutes extra, but the general consensus, because we 15 are good on time, is just to let them speak as long 16 as they need to get everything they need to get on 17 record, on record. 18 THE PRESIDENT: Just to understand, I have 19 not seen this new document. I think we have not 20 seen this, so we are not in a position to know what 21 its contents are or are not, so subject to that and 22 reserve to that, are you saying that the parties are 23 agreed that this can be introduced but you would 24 like more time to be able to address the new 25 document?</p>

<p>1 MR KOPECKY: We had agreed more time 2 already. 3 THE PRESIDENT: You have agreed more time. 4 The only thing I am hesitating slightly about it is 5 it is completely open-ended. 6 MR KOPECKY: We said 15 minutes and if we 7 runs over by a minute or two that will be 8 acceptable. 9 THE PRESIDENT: The Tribunal will be 10 flexible on that. If that is the agreement of the 11 parties, then the record shows that that new -- what 12 are we calling it? 13 MR GLEASON: It is just the presentation 14 that Mr Wiechen will be using. Unfortunately there 15 was a last minute change, we could say, to the 16 presentation, so we encouraged Mr Wiechen, pursuant 17 to discussions yesterday, to get the presentation 18 over to Respondent by lunchtime, he worked hard to 19 do that, but in reviewing his work he said "I need 20 to fix something", so that is what he did yesterday. 21 THE PRESIDENT: On that basis that 22 document is in and you will have sufficient time to 23 be able to address the document 24 MR KOPECKY: Thank you. 25 THE PRESIDENT: Any other issues from</p>	<p>1 yesterday, he does not speak English, but Mr Rurac, 2 we normally communicate in English, right? 3 MR RURAC: Sure, yes. 4 MR GLEASON: So you understand the parts 5 of the reports which were shown to you yesterday 6 which were in English? 7 MR RURAC: Yes, of course. 8 MR GLEASON: If you are working with 9 Mr Gumovschi on a project, and something is in 10 English, you would explain it to him? 11 MR RURAC: Yes, of course. 12 MR GLEASON: Now you worked closely with 13 the team from Deloitte in Bucharest, correct? 14 THE PRESIDENT: If you could maybe 15 question slightly less leading? 16 MR GLEASON: Sure. No problem. 17 Who did you work with to create this 18 report? 19 MR RURAC: I worked with Deloitte experts, 20 Marius and Athena. Marius and Athena from Deloitte. 21 MR GLEASON: These are the Marius and 22 Athena that you mentioned yesterday, correct? 23 MR RURAC: Yes. The same people. 24 MR GLEASON: Where do they work? I want 25 to confirm this point.</p>
<p>1 Claimant or Respondent? No? Excellent. 2 Ms Pernt, back to you for the continuation 3 of the cross-examination. 4 MS PERNT: Thank you. Upon reflection 5 I have no further questions. Thank you. 6 THE PRESIDENT: Thank you, Ms Pernt. 7 Claimant? 8 MR GLEASON: We will have a few questions. 9 It will not be very long. 10 Re-examination by Claimant 11 MR GLEASON: Good morning. 12 MR RURAC: Good morning. 13 MR GLEASON: We can talk again. That is 14 just to preserve the integrity of these proceedings 15 and I do hope you understand and I do thank you very 16 much for your tolerance of these procedures and 17 staying this unforeseen extra time here in Vienna. 18 I think both sides appreciate it very much, as do 19 the Tribunal, so thank you. 20 I just want to confirm that the 21 translations are okay, that you are hearing 22 everything I say? Do you understand me? 23 MR RURAC: Yes. 24 MR GUMOVSKI: Yes, everything is fine. 25 MR GLEASON: As Mr Gumovschi explained</p>	<p>1 MR RURAC: They work for Deloitte, 2 Bucharest. 3 MR GLEASON: I would just like to look at 4 some of the parts of your original Romanian reports 5 which were in English. This should only take a 6 minute. This is your original report, the Romanian 7 version. As Ms Pernt pointed out yesterday, there 8 are some paragraphs in English. I would like to 9 focus on paragraph 4 to begin, and I would like to 10 read that paragraph, if I may. It says, "I confirm 11 that I have no conflict of interest relating to any 12 of the parties in this matter". 13 Do you agree with that? 14 MR RURAC: Yes. 15 MR GLEASON: Mr Gumovschi, do you agree 16 with that? 17 MR GUMOVSKI: Yes. 18 MR GLEASON: I would like to look at 19 paragraph 5. "I understand that my overriding duty 20 is to assist the Arbitral Tribunal on matters within 21 my expertise and that this duty overrides any 22 obligation to Laguardia or its legal advisers". 23 Do you agree with that? 24 MR RURAC: Yes. 25 MR GUMOVSKI: Yes.</p>

<p>1 MR GLEASON: And, finally, paragraph 6, 2 "I have made clear which facts and matters referred 3 to in this report are within my own knowledge and 4 which are not. Those that are within my own 5 knowledge I confirm to be true. The opinions I have 6 expressed represent my true and complete 7 professional opinions on the matters to which they 8 refer". 9 Do you agree with that? 10 MR RURAC: Yes. 11 MR GUMOVSCI: Yes, of course. 12 MR GLEASON: Did you agree with all these 13 statements on the date that you submitted your 14 report? 15 MR RURAC: Yes, of course. 16 MR GUMOVSCI: Certainly. 17 MR GLEASON: We are almost done with this 18 part. I would also like to turn to the very end of 19 your reports, paragraphs 46 and 47. Again these are 20 paragraphs which are in English. I want to read 21 these paragraphs and confirm whether you understand 22 or not. Paragraph 46 says, "I confirm that, at the 23 time of providing this expert report, I consider it 24 to be accurate and constitute my true professional 25 opinion".</p>	<p>1 to confirm and ask you the question whether you 2 worked together to provide your own joint 3 independent analysis of Laguardia's operations? 4 MR RURAC: Yes. 5 MR GUMOVSCI: Yes, certainly. 6 MR GLEASON: I would like to talk about 7 the Visoca centre for a minute. Let me turn to the 8 relevant paragraph in your report. I will use the 9 English version for this part. In paragraph 30 of 10 your expert report you state that "the harvest in 11 the testing sectors is by 20 per cent on average 12 higher than the harvest on the farmers' lands". 13 What farmers' lands are you referring to 14 in paragraph 30? 15 MR RURAC: This is a statement I will say 16 in English. This is a scientific statement. It is 17 in a science community there is a lot of 18 information, a lot of data, that confirms that the 19 yield in science plots are higher than in farmers' 20 plots. This is a common world in science. 21 MR GLEASON: It is a common what? 22 MR RURAC: It is a common science 23 information. It is not something concerning 24 Moldova. 25 MR GLEASON: You are not comparing the</p>
<p>1 Do you agree with that? 2 MR RURAC: Yes. 3 MR GUMOVSCI: Yes. 4 MR GLEASON: Paragraph 47. "I confirm 5 that if, subsequently, I consider this opinion 6 requires any correction, modification or 7 qualification, I will notify the parties to this 8 arbitration and the Sole Arbitrator" – although we 9 have three arbitrators in this case – "forthwith". 10 Do you agree with that? 11 MR RURAC: Yes. 12 MR GUMOVSCI: Yes. 13 MR GLEASON: And you agreed with both 14 paragraphs 46 and 47 at the time you submitted this 15 report? 16 MR RURAC: Yes, of course. 17 MR GUMOVSCI: Yes. 18 MR GLEASON: Now I am sure you did not 19 expect to spend so much time talking about the 20 English language when you came to Vienna and I am 21 sure you expected to talk a lot about farming, so 22 I would like to do some of that just for a few 23 minutes. The rest of the report, other than the 24 paragraphs in English on the first page and 25 paragraphs 46 and 47, is in Romanian. I just want</p>	<p>1 state centre to Moldovan averages? 2 MR RURAC: No. 3 MR GLEASON: What are you comparing the 4 state centre to? 5 MR RURAC: Both. 6 MR GLEASON: You can answer either in 7 Romanian or in English, it is your choice. 8 MR RURAC: When we had the data from 9 Floresti with small yields in productions, we are 10 farmers, so we know what productions the farmers 11 had, and we needed arguments to show how that yield 12 could be adjusted, and scientific literature enabled 13 us to say that the test fields yielded 20 per cent 14 on average higher crops than the fields of the 15 farmers. 16 MR GLEASON: But the question is which 17 farmers? 20 per cent better than which farmers? 18 The average Moldovan farmer or the worldwide – 19 MR RURAC: No, not just the Moldovan 20 farmers. In order to determine the productive 21 potential of the hybrids we used various approaches 22 and research works are being conducted. The 23 conclusion of that is that the potential of a hybrid 24 can be achieved only when there are enough 25 fertilizers, there is enough water supply, and the</p>

<p>1 Visoca centre was not irrigated. This made us think 2 that the Visoca centre could not yield the maximum 3 production. 4 In addition to that, Visoca did not apply 5 phytosanitary products, so perhaps the production 6 there could be under-evaluated. In order to plan 7 the yield for Laguardia we needed to collect several 8 points of view in order to draw a final conclusion. 9 MR GLEASON: Just to confirm, the 10 20 per cent higher than average that you refer to in 11 this paragraph does not refer to 20 per cent higher 12 than Moldovan averages, but rather worldwide 13 averages? Is that fair to say? 14 MR RURAC: Yes, right. Farmers worldwide. 15 MR GLEASON: I would like to turn to the 16 next paragraph 31. Actually, before we move on, 17 I would like to ask Mr Gumovschi if you agree with 18 what Mr Rurac just said. Do you agree with what 19 your colleague has just said? 20 MR GUMOVSKI: Yes, I agree with what he 21 said. 22 MR GLEASON: I would like to look at the 23 next paragraph, paragraph 31. The Visoca centre, 24 you say does not use pesticides or plant protection 25 products, but Laguardia uses pesticides. Is that an</p>	<p>1 and that is why we left a minus 20 per cent compared 2 to Visoca, because we understand that that is 3 possible there. 4 MR GLEASON: And you agree, Mr Gumovschi? 5 MR GUMOVSKI: Yes, I do agree. 6 MR GLEASON: How did you arrive at that 7 20 per cent figure? 8 MR RURAC: It is not my number. 9 MR GLEASON: Whose number is it? Is it 10 your professional opinion? 11 MR RURAC: No, it is not my professional 12 opinion. Several authors declared that this is the 13 median. 14 MR GLEASON: This is a number that you 15 took from literature? 16 MR RURAC: Yes. 17 MR GLEASON: Then you also include a 18 15 per cent reduction for corn from the Visoca 19 centre number. Can you explain how you got that 20 15 per cent number? 21 MR RURAC: The corn in Moldova normally 22 does not get aggressive pests or diseases, and that 23 is why, even though there was in Visoca no use of 24 pesticides, that means that, because of what 25 I mentioned before, that would have no impact on the</p>
<p>1 accurate understanding of what your report says? 2 MR RURAC: Yes, of course. 3 MR GLEASON: If Laguardia uses pesticides 4 and pesticides normally would provide for a higher 5 yield, why did you calculate yields for Laguardia 6 which are equal to the Visoca centre which does not 7 use pesticides? Maybe you can explain your 8 methodology. 9 MR RURAC: I want you to repeat? 10 MR GLEASON: Maybe there was a translation 11 problem. In your report it says that Laguardia uses 12 pesticides and the Visoca centre does not use 13 pesticides, and normally, you say, pesticides lead 14 to higher yields, correct? 15 MR RURAC: Yes. 16 MR GLEASON: If Laguardia uses pesticides 17 but the Visoca centre does not use pesticides, why 18 did you not calculate Laguardia's yields to be 19 higher than the Visoca centre? Why did you 20 calculate them to be equal? Can you explain? 21 MR RURAC: Yes, of course I can. In 22 Visoca the processing takes part on small plots of 23 land, so that the surfaces are very small, 50 to 100 24 square metres. That means that even under such 25 conditions the crops are higher. We explained that,</p>	<p>1 crops. 2 MR GLEASON: But a similar question to the 3 one I asked you to the 20 per cent question. Where 4 did you get that number, that 15 per cent? 5 MR RURAC: This 15 per cent was not 6 calculated by myself. These are the commonly used 7 percentages. 8 MR GLEASON: Are you confident in these 9 numbers? 10 MR RURAC: Yes. 11 MR GLEASON: I just have one last 12 question. You guys are almost done. 13 I would like to turn to table 7, very 14 quickly. 15 THE PRESIDENT: Old or new? 16 MR GLEASON: The old table 7 in the 17 original report. Thank you for your clarification. 18 Although I don't think there is a new table 7. 19 There is a new table 4, 5 and 6. My apologies 20 This table 7 is rent payments which were, 21 as the source says, presumably calculated from the 22 Laguardia lease agreements. How did you calculate 23 these numbers? 24 MR RURAC: These are the data that are 25 captured by the contract, these are the payments for</p>

<p>1 the lease. There is a 6 per cent adjustment for 2 inflation. 3 MR GLEASON: And you agree with that, 4 Mr Gumovschi? 5 MR GUMOVSKI: Yes, I do agree. That is 6 how we calculated. We took out the average figure 7 for inflation and we calculated this rent every year 8 and we added the inflation 9 MR GLEASON: Yesterday you were talking 10 about the lease agreements with Ms Pernt and you 11 said we never saw the contracts, so I want to know 12 how did you arrive at these numbers? You have to 13 have this number from somewhere, where did you get 14 it? Not the inflation rate, but the actual numbers? 15 MR RURAC: We had the data from Deloitte. 16 MR GLEASON: I have no further questions. 17 Thank you very much. 18 THE PRESIDENT: Thank you, Mr Gleason. 19 I think there may be questions from the Tribunal. 20 Questions by the Arbitral Tribunal 21 MR FORTIER: Thank you, Mr Chairman. 22 Gentlemen, you are both graduates of the 23 Agricultural State University of Moldova, you are 24 both agronomists, and you both have PhDs in 25 Agricultural Sciences and Associate Professor. That</p>	<p>1 expert reports as agronomists? 2 MR RURAC: Yes, I did. Yes, of course. 3 MR FORTIER: Do you farm land yourselves? 4 Starting with Mr Gumovschi, do you farm land in 5 Moldova? 6 MR GUMOVSKI: Honestly, if I am honest 7 with you, I did a lot after I graduated. I was a 8 chief agronomist and afterwards I was leading a 9 section in an agricultural college and I worked as 10 an agronomist. This was a very prosperous farm, and 11 there there was like a school or a university team. 12 We had 1200 ha and I was a deputy director there. 13 I was heading, monitoring and managing all the 14 processes. The students would work with their hands 15 and would practise everything from sowing, 16 processing the fields and harvesting. That is how 17 we were training them. I have to say I am very 18 proud that some of those graduates have done very 19 well and they are now developing the agriculture of 20 Moldova. 21 MR FORTIER: Very good. 22 And you, Mr Rurac, have you ever farmed 23 land in Moldova and, if so, have you been 24 successful? 25 MR RURAC: I remember when I was working</p>
<p>1 is very impressive. Have you ever done this sort of 2 work for other clients in your experience? One 3 after the other. Mr Gumovschi? 4 MR GUMOVSKI: I acted when there were 5 some differences between a German company called 6 Europlant and the farmers, and there I acted as an 7 expert to prove that the potatoes were infected by 8 the farmer because the seeds were not brought from 9 Germany. Otherwise, if there were some differences 10 or disputes between the firms, between the inputs or 11 between the seeds that were sown in various fields, 12 and that there were problems and issues amongst 13 them, I would do an expertise and explain 14 scientifically what the correct result would be. I 15 was just trying to be fair. 16 MR FORTIER: And you were acting as an 17 expert? 18 MR GUMOVSKI: Yes, I was acting as an 19 expert then. 20 MR FORTIER: And you, Mr Rurac? 21 MR RURAC: Yes, of course, I acted as an 22 expert. I taught the experts how they have to 23 calculate all sorts of things. I have never been 24 before a Tribunal. 25 MR FORTIER: No, but you have prepared</p>	<p>1 in the co-horse in the tobacco fields, I started 2 together with my siblings when I was six. 3 Afterwards, of course, we didn't have any land, we 4 didn't own any land. I have been with the 5 university for 25 years. There was always research 6 and consultancy work. In the last two years I was a 7 Dean of the faculty. I left the administrative 8 duties and I am working part time in agrobusiness. 9 I am even closer to the farmers and the producers, 10 and had I written the report now it probably would 11 have been different. I am convinced that Moldovan 12 farmers make more money. 13 MR FORTIER: If you were doing the report 14 now in what way would it be different? You have 15 opened that door: I have to step in! 16 MR RURAC: Moldovan farmers take advantage 17 of the existing legislation. We have very fertile 18 lands in Moldova. They use less fertilizers and yet 19 they have good yields, good crops. 20 MR FORTIER: So Moldovan lands are very 21 fertile. They produce, if well managed, good crops. 22 Would you say it was a good idea for Mr Grot to 23 invest in farming when he did in Moldova? 24 MR RURAC: Absolutely, yes. 25 PROFESSOR KNIEPER: I am sorry to</p>

<p>1 interrupt, but I was a little bit surprised about 2 what you say now because, when I read your report, 3 in particular paragraph 27, I have the impression 4 that this paragraph 27 contradicts completely what 5 you say right now. 6 Do we have the Romanian version? 7 Paragraph 27 says, "Currently most of the arable 8 surface is poor and very poorly provided with ..." 9 and then all kinds of things. 10 MR FORTIER: The witness said if I had to 11 write it today, it would be different. That is why 12 I ... 13 PROFESSOR KNIEPER: That is true but it is 14 strange that the quality of the land changes. 15 MR FORTIER: Very well, I will continue, 16 if I may, Mr Chairman, with my questions. 17 MR GLEASON: Can the witness perhaps 18 respond to that? 19 THE PRESIDENT: Professor Knieper just put 20 a question to you on paragraph 27, so it would be 21 sensible just to hear your response as to why the 22 apparent contradiction between what you just told 23 Mr Fortier that land was good, but as 24 Professor Knieper says in paragraph 27 you say land 25 is poor. Could you explain what your position is?</p>	<p>1 in Europe the average is 45 kilograms. In other 2 countries, in western countries, they even add 160 3 fertilizers as an average. Our soils are rich but 4 the farmers get the crops due to the humus 5 percentage that is contained in the soil. 6 The problem is phosphorous, and I have 7 that in paragraph 26. Our soils have a low content 8 of phosphorous which is why these fertilizers need 9 to be introduced. If Mr Grot had followed our 10 recommendation his yields would have been very high, 11 even higher than the ones in Visoca 12 MR FORTIER: So it was a good investment 13 for Mr Grot? 14 MR GUMOVSKI: Yes. It would have been a 15 very good investment for Mr Grot. He was an example 16 for other farmers as well, because he had the 17 technology, he had representatives there, and his 18 technology had a higher performance, and then if he 19 had used the fertilizers and the plant protection 20 measures, he would have had fairly high crops. 21 MR FORTIER: I have one question. I need 22 to be told how this score is performed. 23 In paragraph 16 you see there you have 24 reliability score 75, reliability score 66. How are 25 we to understand the way these scores are arrived</p>
<p>1 MR GLEASON: Can I ask them to read 2 paragraph 27 first? 3 MR RURAC: I can read all that. Yes. 4 Normally according to science there is 5 a big problem, namely the problem with the loss of 6 fertility of the soil, but in practice we see that 7 the farmers get big crops, and they are increasing 8 every year. In Moldova no one is leaving the plots 9 of land. Everybody wants more land. Everybody 10 wants to be in agrobusiness, because 80 per cent 11 from the soil are chernozem soils which are the most 12 fertile soils in the world. 13 MR FORTIER: Would you like to comment on 14 that, Mr Gumovski? Do you agree with Mr Rurac? 15 Would you like to expand? 16 MR GUMOVSKI: I agree with what he said 17 but I would like to add something. Normally Moldova 18 soils come from the Steppes. Mr Grot comes from 19 there where he rented this land. But I would like 20 to add something. In 1991, for example, when we 21 transitioned from the collective farms and we 22 divided the lands, had we then introduced, we said 23 36 kilograms of fertilizers, nitrogen and phosphate, 24 there were only 19 kilograms added to the fields the 25 next year -- this is an average for 1 ha -- whereas</p>	<p>1 at? Either one of you; the one who knows! 2 MR RURAC: This is soil description. It 3 is just the quality of the soil. It is not our 4 data. It is average data. 5 MR FORTIER: Coming from where? 6 MR RURAC: From the soils of Moldova. It 7 is a book, it is a monogram, it is a study. It is a 8 specialised study on agrochemicals. 9 MR FORTIER: These are not your numbers? 10 These are numbers that you have picked up? 11 MR RURAC: Yes, that is right. 12 MR FORTIER: And you have inserted them in 13 your report? 14 MR RURAC: Yes. 15 MS CRACIUNEANU: Mr Gumovski actually 16 mentioned that he took this data from the Institute 17 of Agronomists and Scientific Institute of Agronomy, 18 and the translation was not so clear about this. 19 MR FORTIER: How would you get a score of 20 100? 21 MS CRACIUNEANU: He didn't hear the 22 translation. 23 MR FORTIER: My question is simple. How 24 would you arrive at a reliability score of 100? 25 MR GUMOVSKI: How we would get to one</p>

<p>1 hundred percent? I am sorry the translation is not 2 clear. 3 This reliability can be done in the 4 following way: First of all, organic fertilizers 5 have to be used in order to form the structure and 6 the humus of the soil. Then there needs to be 7 mineral fertilizers that I have mentioned recently. 8 Until 1991, we always used for a hectare 9 of arable land up to 5 tons. During these last 10 years when we carried out research there were used 11 only 40-50 kg for 1 ha of arable land. Why? 12 Because the firms disappeared, the cows went back to 13 the village, the cattle numbers decreased, so the 14 fertilizers were thrown away in ditches, so we had 15 problems with medium, with the protection of the 16 medium because there was pollution in the water, in 17 the fountains. 80 per cent of the fountain water is 18 polluted, and it is not drinkable water. 19 Mr Grot I believe intended to include all 20 these scientific recommendations and to introduce 21 also organic fertilizers, vegetable waste, as 22 I said, which was used to feed the animals, or they 23 were just burnt. I believe he would have introduced 24 mineral and organic fertilizers, and he would have 25 used advanced current technology so that the</p>	<p>1 the sidelines. 2 MS CRACIUNEANU: It is not an answer. It 3 is a lack of translation. He said "I don't think it 4 has a foreign capital because it is a limited ..." 5 THE INTERPRETER: Yes, that was 6 translated. I heard that. 7 MR FORTIER: Mr Gumovschi, do you know the 8 company? 9 MR GUMOVSKI: I have heard about this 10 company on the media, the television. I haven't 11 been there, I haven't visited. I don't know the 12 results. There is not much I can say about them. 13 PROFESSOR KNEIPER: After your first 14 answers I was a little bit confused about these 15 parts in English in your report. My question is 16 very simple: did you write the English parts or were 17 they sent to you and you integrated them after 18 having understood what was said in the English parts 19 of your report? 20 MR RURAC: We integrated our part. 21 PROFESSOR KNEIPER: So it was sent by 22 somebody? 23 MR RURAC: We worked with Deloitte. We 24 made or formulated the paragraphs. The English part 25 we needed to have translated so we asked them to</p>
<p>1 reliability could have reached up to 100. I think 2 it would have been very good, and it would have been 3 a benchmark, an example, for other farmers to 4 follow. 5 MR FORTIER: Thank you very much. 6 Do you know the company Bio-Alianta? 7 MR RURAC: I know. 8 MR GUMOVSKI: Just a little bit. 9 MR FORTIER: What do you know? 10 MR RURAC: I know that in Balti in 11 Floresti there is an agricultural company called 12 Bio-Alianta. 13 MR FORTIER: It is a Moldovan company? 14 MR RURAC: From what I know it is a 15 limited company. I don't think it has foreign 16 capital. 17 MR FORTIER: What do you know about it, 18 Mr Rurac? 19 MR RURAC: I know that this company has 4 20 or 6,000 ha. I know that this company is quite 21 mechanised. I visited this company with my work in 22 agrobusiness, so I have seen this company. 23 MR FORTIER: Mr Gumovschi? 24 MS CRACIUNEANU: Can I add? 25 MR FORTIER: I don't want an answer from</p>	<p>1 give it to us so that we could put it in our report. 2 There are some things we don't have. The agronomy 3 part I know, but the other part I don't know, but it 4 is our part. 5 PROFESSOR KNEIPER: This is not really my 6 point of interest. What I am interested in actually 7 is that in your report, and Mr Gumovschi you 8 impressively repeated this just now, you described 9 the investments of Laguardia and Mr Grot as 10 hypothetical investments. You said right now he 11 would have used this and he would have done that and 12 he would have improved. When you talk about 13 "Laguardia's operations" or "Laguardia's yields, 14 "Laguardia's production", "Laguardia's performance", 15 you always talk about possible production and 16 performance and yields. You never looked into the 17 reality of Laguardia's business. Is that correct? 18 MR GUMOVSKI: In general in our agronomy 19 science and practice you have to know that from a 20 small plot of land where all the nutrients have been 21 extracted, there is a period of two or three years 22 that is needed in order to reach a certain 23 potential. There needs to be fertilizers introduced 24 in the first year that needs to be processed in a 25 scientific way, a conservative scientific American</p>

<p>1 way which is now being used in our country, and then 2 two or three years later it could get these 3 particular crops we that mentioned. So what we 4 calculated is what the crops would have been during 5 the first two or three years and there was a 6 forecast for these two years. 7 For the future had he used these 8 technologies, then the forecast would have been 9 higher. Had our forecast covered five or six years, 10 then the crops would have been calculated at a 11 higher level. 12 I would like to tell you this, that the 13 famous agronomist member of the academy, Dimtri 14 Bereshnikov (?), he said that the mistakes of 15 agronomists sometimes could be remedied by the 16 introduction of fertilizers. I believe and my 17 forecast is that other elements besides the 18 fertilizers could have been introduced in Mr Grot's 19 enterprise. 20 PROFESSOR KNIEPER: So if you had been his 21 adviser you would have advised him scientifically to 22 use technology and fertilizers and pesticides, and 23 under these conditions he would then have made 24 better yields, better productivity, but the question 25 is it is only under these hypotheses that you work.</p>	<p>1 Moldova again had a loss of 1,250,000,000 USD 2 because of the drought. The district of Soroca 3 Floresti were affected to a lesser extent by 4 drought. We researched the studies, we compared 5 data that were given by the state, the state data 6 from Soroca, and the data coming from Floresti, 7 because they are located in the same geographical 8 area. By using these data that we retrieved from 9 the institute and the data that we obtained locally, 10 we noticed what it was and we wrote about this in 11 the report, but drought affected these two districts 12 less. It was the autumn of 2011 when the cereals, 13 the grains, were quite dry. Wheat, for instance. 14 PROFESSOR KNIEPER: But I didn't really 15 understand completely because you are talking here 16 in your report, as I understood, about hypothetical 17 production. How, then, did you reflect the reality 18 of the drought into this hypothetical production? 19 I simply want to understand how you did that? 20 MR GUMOVSKI: Scientifically and from the 21 documentary point of view we took data from the 22 State Commission of Visoca, and the average figures 23 from the two districts, from Soroca and from 24 Floresti. We took the average figures and then we 25 calculated further on from the scientific point of</p>
<p>1 It is not the real business of Laguardia that you 2 describe. You describe a possible scenario which 3 could have happened if everything had gone right. 4 Is that correct? 5 MR GUMOVSKI: Yes. It is true. 6 PROFESSOR KNIEPER: Thank you very much. 7 For me that is important 8 My next and last question goes to the same 9 direction. We were told in the submissions that in, 10 I think, 2012 there was an exceptional drought in 11 Moldova. Is that reflected somewhere, this reality 12 of an exceptional drought in Moldova? 13 I know that at the beginning of your 14 report you talk about climatic conditions, but then 15 when I looked into the figures I didn't find 16 anything which would make reference to this 17 exceptional drought which brought Laguardia into 18 difficulties in 2012. Did you integrate the reality 19 of the climatic conditions of 2012 into your report 20 or not? 21 MR GUMOVSKI: In general, in 2007 and 22 2012, we faced the biggest drought in Eastern 23 Europe. The Republic of Moldova in 2007, as regards 24 agriculture, underwent losses of 1 billion USD. 25 In 2012, agriculture in the Republic of</p>	<p>1 view the agricultural yield, and we mentioned that 2 in the report. 3 PROFESSOR KNIEPER: Can you take me to one 4 of these tables where you can explain to me where 5 this is reflected in your tables? 6 MR GUMOVSKI: These are the data in 7 English. In table 2, in 2012, 2011 and in 2014 you 8 have the figures. The average figures for the crops 9 sunflower, corn, wheat, soya and rape, and data from 10 the testing and experimental centres of Soroca, the 11 average figures for the district of Floresti. The 12 average figures are also ranged for Soroca. From 13 these figures we calculated the crops, the harvest, 14 within the range of 2011 to 2014 for Laguardia. 15 You may notice that we did that per plant 16 that is sunflower, corn, wheat, soya, so you can see 17 that the figures are equal or similar to the figures 18 of the State Institute of Visoca. In the sunflower 19 or in other grains, such as soya or rape, we took up 20 the figures from Visoca. 21 Just a couple of minutes ago my colleague 22 mentioned why is this the situation. Because for 23 smaller areas the harvest is bigger than the crop on 24 bigger areas. You can see on the last row where 25 everything is in bold the figures and compare them,</p>

<p>1 the annual harvest. 568 2 PROFESSOR KNIEPER: But these figures that 10:39 3 you have put here as planned, hypothetical figures 4 for Laguardia are identical to the figures of 5 Visoca, except for the maize. Is that correct? 6 MR GUMOVSKI: Yes. 7 PROFESSOR KNIEPER: What I do not see is 8 any effect of climatic extreme conditions, but that 9 cannot be extrapolated from these figures? Or is it 10 my fault not to understand it? 11 MR GUMOVSKI: Drought effects are visible 12 for some crops in Floresti for the average figures. 13 If you look at soya, for instance, soya requires a 14 lot of humidity, so the average figure is 0.53. In 15 Soroca it was a bit higher, 1.15, while in Visoca it 16 was 2.2, 2.08. 17 What we did was to take average figures 18 for several years, because in Moldova in the past 19 out of five, one year was a drought year, but now it 20 so happens that there are two years that have 21 climatic droughty periods of time, so what we did 22 was to take over the average figures for several 23 years. 24 PROFESSOR KNIEPER: Thank you very much. 25 THE PRESIDENT: I just have a couple of</p>	<p>1 MR RURAC: Yes. 570 2 THE PRESIDENT: I would find it helpful -- 10:43 3 not today but in due course -- to have a copy of 4 that original publication in full to be able to 5 ascertain exactly what this information provides. 6 Let me explain why: I am not a farmer, 7 I am just a lawyer, but I assume that the cost of 8 farming an area will depend on a number of 9 variables, including the size being farmed. We 10 learn constantly about cost benefits of farming very 11 large farms, so we are dealing here with a total 12 area of 2830 ha. I appreciate it is spread over 13 three areas, and we have also had evidence that it 14 is in different parcels, so it is not necessarily a 15 single, easily harvestable space. 16 Am I right in thinking that the average 17 cost per hectare of farming an area of nearly 3000 18 ha is going to be less, and significantly less, than 19 farming an area of 25 ha per hectare? Is that 20 correct? 21 MR RURAC: Yes, it is correct, but it also 22 depends on the technology to be used for the 25 ha 23 area or for the much bigger area. 24 THE PRESIDENT: Mr Fortier makes a point 25 that in asking to see the underlying document it is</p>
<p>1 questions. Could I take you to table 6 at page 14 569 2 in the report? At the bottom of table 6 you have a 10:41 3 source: Costs tariffs in agriculture, 2007. Could 4 you tell us what that is? 5 MR RURAC: This source is a guideline for 6 the farmers which was done by the Institute of 7 Statistics and Technology. They calculated maps 8 with all expenditures and costs for certain quoted 9 areas of arable land, et cetera, et cetera. So all 10 these figures are calculated according to 11 traditional technologies by use of multiple 12 technological procedures, or means, including Soviet 13 technology. 14 THE PRESIDENT: That is a local land 15 publication? 16 MR RURAC: Yes, this is a local 17 publication. 18 THE PRESIDENT: I see that what it does is 19 it comes up with a figure of the cost in USD per 20 hectare, for example. 21 MR RURAC: No, it is in lei. It is 22 transferred. It is converted into Moldovan lei. 23 THE PRESIDENT: The original document is 24 in lei and you have converted it into USD for the 25 purposes of this?</p>	<p>1 a request not to you, but in fact to the Claimant. 571 2 We do not need it today. 10:45 3 MR KOPECKY: Mr President, you see the 4 problem? We were never given this document before 5 the hearing and if it is given to the Tribunal after 6 the hearing -- 7 THE PRESIDENT: We will deal with that in 8 due course, but you had an opportunity -- this 9 document has been available for a long time-- you 10 had an opportunity to ask for the document. I am 11 just saying that I think the Tribunal will find it 12 helpful now. Let me explain why I am interested. 13 It may be that it is not necessary, but I am trying 14 to work out my logic here. 15 Going straight to the question, this cost 16 of mechanised works by year was originally in lei, 17 it has been converted into USD, it is produced in 18 2007. How do we know whether this relates to 19 average costs for a small area, 20-30 ha, or very 20 large areas of nearly 3000 ha? How do we know that? 21 MR RURAC: In the guidelines the figures 22 are given for small areas and for big areas. There 23 is a sort of gradient. In fact, there are three 24 types: small, medium-sized, and large-sized areas. 25 THE PRESIDENT: I have just done a very</p>

<p>1 rough calculation taking 2830 ha and taking an 2 average cost per year of 300 USD per ha, that is a 3 rough back-of-the-envelope average. That takes you 4 to a mechanised cost per year of about 840,000 USD. 5 That seems to be approximately the total 840,000 6 USD. 7 Could you tell us how that 840,000 is 8 allocated? How much of that is in relation to 9 capital cost of equipment, depreciating or 10 otherwise, rented, and how much is in relation to 11 the operating costs, diesel, petrol, whatever? How 12 does that 840,000 per annum break down? 13 MR RURAC: I can only say that the tariffs 14 indicated in the guidelines are exceedingly high, 15 exaggerated. We have technologies in Moldova which 16 use approximately up to 14 technological procedures, 17 or means, but we had no other solution for coping 18 with the farm areas besides the technology we had. 19 For instance, Semanatoaea, Great Plains, 20 sells grains without any prior farm works, so we had 21 no motivation to diminish the costs. 22 THE PRESIDENT: We have had evidence 23 before us that Laguardia and Mr Grot made capital 24 investments. In CEX-2, the report of Lars Wiechen, 25 we had evidence that there were capital investments,</p>	<p>1 machinery, and you have expressed a view on it. 2 Just for me to understand, how much equipment would 3 you need to engage in the sowing and harvesting of 4 2830 ha? 5 MR RURAC: 2800, you said? Sorry, sir? 6 THE PRESIDENT: If you go back to 7 paragraph 21 of your report, we have the areas 8 occupied by Laguardia, and at paragraph 21 you say 9 the total leased area is 2830 ha. My question is, 10 and I have explained that I am not a farmer, I have 11 no idea how much equipment you need, but you have 12 helpfully explained you need sowing equipment and 13 you need harvesting equipment. How much equipment 14 do you need? 15 MR RURAC: Mr President, we have three 16 different plantations. They refer to different 17 procedures of sowing and harvesting. When we 18 harvest wheat then we only harvest wheat. We don't 19 harvest sunflower. Sunflower comes in autumn. Do 20 you understand, sir? 21 THE PRESIDENT: Even I understand that! 22 My question is what is the total equipment you would 23 need to engage in this activity, these different 24 crops, over these areas? You told me you were given 25 a list. What did the list say in terms of the</p>
<p>1 costs for the acquisition of equipment and vehicles 2 necessary in the period 2009-2012 which came to 3 887,000 USD. That is the evidence before us. Did 4 you ask to see any information as to the equipment 5 that Laguardia had purchased for this farm? 6 MR RURAC: We received a list of the 7 equipment that Laguardia had. We saw the sowing 8 machines, the threshing machines, the equipments, 9 and I can confirm that for the respective area the 10 technical equipment was enough, the productivity was 11 enough, and the technology would cost at least 12 half -- 13 THE INTERPRETER: I don't understand what 14 "half" is. 15 THE PRESIDENT: I think we need some help 16 on what "half" means. We don't understand. 17 MR RURAC: If we hypothesise, if we refer 18 to the table -- wheat 313.84 -- what is calculated 19 here is a lot of procedures, a lot of traditional 20 technological procedures. Wheat, judging by the 21 present technology, costs -- that is the mechanical 22 equipment -- could cost or could imply two 23 procedures: sowing and harvesting. 24 THE PRESIDENT: Let's look at those two 25 procedures. You told us you were given a list of</p>	<p>1 technologies? 2 The reason I am asking is you say at 3 paragraph 43 -- but you don't give us information -- 4 "When the lands were leased, ICS Laguardia had a 5 high productivity agricultural technology". My 6 question is how do you know that? What did you see? 7 How are you able to express that opinion? 8 MR RURAC: In simple terms we looked. In 9 my case, agricultural farming, I looked at what they 10 had. They had a highly competent performing type of 11 technological -- 12 THE PRESIDENT: I would like details. 13 What did they have? 14 MR RURAC: I cannot recall everything. 15 There were three caterpillar combines. I don't 16 remember about tractors, two sowing machines, very 17 modern ones. Ploughs with discs. Highly performing 18 tools or mechanised equipment. We do not have 19 normative bases for that. That is why we used the 20 costs coming from the guidelines. 21 THE PRESIDENT: You have described three 22 caterpillars, two sowing machines, ploughs and other 23 equipment. Did you ever see any of that equipment? 24 Did you ever see that equipment for yourself? 25 MR RURAC: On the picture. As an</p>

<p>1 agronomist, I know them. I know what they are, so 576 2 I can say. 10:55</p> <p>3 THE PRESIDENT: You see, what you say at 4 paragraph 43 is that "Laguardia had a high 5 productivity agricultural technology". To be shown 6 a picture that indicates this is the technology they 7 were going to use is a different thing from knowing 8 that they actually had that available.</p> <p>9 What I am trying to get at is how -- you 10 have understood -- all you have seen is a 11 photograph. I can show you a photograph, this is my 12 caterpillar, but in fact I don't have one. You have 13 understood? Just showing you a photograph does not 14 establish that is what they actually had, not only 15 available to them in principle, but had purchased, 16 had brought to the land, and it was there about to 17 be used.</p> <p>18 MR RURAC: To me I understand that a 19 caterpillar combine is just for harvesting. It 20 cannot serve any other purpose. When I saw these 21 highly performing harvesting machines, of course if 22 they are not correctly used, not a good harvest can 23 be obtained. But we, as agronomists, what we think 24 is how to do well, how to obtain a good harvest, not 25 a bad harvest.</p>	<p>1 MR FORTIER: You said that you saw the 578 2 photos of this machinery on site. What site are you 10:58 3 referring to?</p> <p>4 MR RURAC: Pictures had been taken in a 5 certain place. We received them from Mr Grot's 6 representative in Moldova. We received those 7 pictures.</p> <p>8 MR FORTIER: And they were on the site on 9 some of the lots that he had leased. Is that 10 correct?</p> <p>11 MR RURAC: Yes, or even all. The whole 12 equipment. That is all the machinery. Because we 13 asked for the list of the technology, that is all 14 the technological equipment in order for us know all 15 the equipment in order to calculate the 16 mechanisation costs. But, as I said before, we 17 don't have a normative basis for that. That is why 18 we used the figures in the guideline.</p> <p>19 THE PRESIDENT: Did you visit the sites at 20 Cosernita, at Varvareuca and Rosietici?</p> <p>21 MR RURAC: No.</p> <p>22 THE PRESIDENT: Mr Gumovschi?</p> <p>23 MR GUMOVSKI: I was in Rosietici, but 24 I did not know exactly what lands they were, which 25 land was which, so to say. I went to Floresti and</p>
<p>1 THE PRESIDENT: I understand, but what 577 2 I am putting to you is that you never saw the 10:57 3 machines. You saw photographs of the machines?</p> <p>4 MR RURAC: Only in the picture.</p> <p>5 THE PRESIDENT: Did the picture show the 6 equipment present and ready to be used or being used 7 at the site? Or were they catalogue-type 8 photographs? I am just curious to know what you had 9 seen.</p> <p>10 MR RURAC: No. They were pictures taken 11 on site. They were not catalogue-type. It was a 12 list with all types; that is, these pictures were 13 followed by a list. They are not coming from a 14 catalogue.</p> <p>15 THE PRESIDENT: And, Claimant, do we have 16 that in evidence?</p> <p>17 MR GLEASON: No, we do not. The list and 18 the pictures?</p> <p>19 THE PRESIDENT: The list and the pictures 20 that was made available as the basis for the report?</p> <p>21 MR GLEASON: I don't believe that is on 22 record.</p> <p>23 THE PRESIDENT: We will confer, but we may 24 well have further requests in relation to that 25 issue.</p>	<p>1 to Soroca and to Visoca. As to the farmlands, 579 2 I just saw all the farmlands 11:00</p> <p>3 MR KOPECKY: Just a general note, I know 4 it is not exactly responsive to what has just been 5 said, but I think it needs to be clarified for the 6 public record of this hearing that there were 7 certain cut-off dates for putting in evidence, and 8 I do agree that Respondent did not put in a rebuttal 9 report. However, to put in evident was on Claimants 10 and we have been extremely liberal and flexible with 11 evidence being presented later on, before and during 12 this hearing, but I would strongly object to the 13 Tribunal asking for any evidence to be put in at or 14 after the hearing, even though Respondent did not 15 submit a rebuttal report here, because those are 16 unrelated issues and it is the issue of the burden 17 of proof.</p> <p>18 THE PRESIDENT: We take your point and it 19 is on the record. We will take it under advisement</p> <p>20 MR KOPECKY: Only for the record. Thank 21 you.</p> <p>22 THE PRESIDENT: You will be aware that in 23 2011 this project fell into difficulty, and in none 24 of these three areas -- Cosernita, Varvareuca, 25 Rosietici -- was there ever actually any harvesting.</p>

<p>1 What would happen, for example, to the harvesting 2 equipment that is said to have been purchased? Do 3 you just throw it away, or do you just sell it? 4 MR GUMOVSKI: What I know is that 5 Mr Grot's representative displayed them for sale to 6 be sold. That is what I know. How many machines 7 were sold we don't know. We have the list in our 8 computer, the pictures of where they had been 9 stored, these machines. We can leave that with you. 10 That is what we know. 11 THE PRESIDENT: Your testimony is that the 12 machinery that you had identified in photographs and 13 on lists was put up for sale. Do you know when it 14 was put up for sale? Do you recall? I realise it 15 is some years ago. Do you have a rough 16 recollection? 17 MR GUMOVSKI: It was one year and a half, 18 maybe two years before. At that time approximately 19 that we learnt about it, one and a half years back 20 or so. 21 THE PRESIDENT: Would it be possible, 22 having regard to practice in Moldova, to find out 23 what happened to this equipment? Is there a central 24 register, for example, of such equipment so we are 25 able to ascertain whether or not it was sold or</p>	<p>1 issue as to what the value of the equipment 2 presently is, how much of it was sold. Those are 3 open questions still. To generally claim that all 4 the equipment was sold pursuant to Respondent's 5 cited exhibit is an open issue in our minds 6 THE PRESIDENT: That is understood. The 7 purpose of my question was only we have these two 8 gentlemen with us, they are experts in this field, 9 they know how things work in Moldova in this domain, 10 I have no idea. I was trying to benefit and get a 11 sense of what equipment was available and what had 12 happened to it. I think we have taken that as far 13 as we can go. 14 I am very grateful to you. I don't know 15 whether there are questions from my colleagues, or 16 any follow up in relation to the Tribunal's 17 questions from the Claimant, very briefly? 18 MR GLEASON: If I may just ask a follow up 19 question. 20 Re-examination by Claimant 21 MR GLEASON: There was some concern about 22 the figures you used in table 2 not taking into 23 consideration a drought year. I would like to put 24 table 2 back up for you. You calculate these 25 numbers using a forward-looking approach. In other</p>
<p>1 whether it remains unsold? 2 MR GUMOVSKI: There is no such register 3 or evidence. It is only the selling companies, 4 those companies which sell the equipment and that 5 purchase new equipment who may have such lists, or 6 maybe the taxation agency would have this data. We 7 don't have such data. 8 MR FORTIER: I recall that the Respondent 9 talked specifically about the machinery in their 10 pleadings and they said they could not be claimed by 11 Mr Grot because they belonged to the company, right? 12 MR KOPECKY: Yes, and further there is 13 evidence on the record in the form of exhibits R-9 14 and R-11 that the equipment was sold and when it was 15 sold and to whom and under what conditions. 16 THE PRESIDENT: I appreciate that. 17 MR ASTUNO: If Claimants might respond? 18 THE PRESIDENT: I was trying to get from 19 the experts here, who have given expert opinion 20 including on aspects of equipment, what they know. 21 I appreciate that, I want to understand what they 22 know about this equipment and what happened to it. 23 I am grateful for your honest answers. 24 MR ASTUNO: Mr President, if we might also 25 be on the record on this point, it is still an open</p>	<p>1 words, you were asked to put yourself in the shoes 2 of Laguardia in 2011 and calculate the potential 3 yields looking forward from that point. Is that an 4 accurate description of what you were asked to do? 5 MR RURAC: Yes. 6 MR GLEASON: So you used the figures of 7 2007-2010 for the Floresti and Soroca average 8 yields, and 2006-2010 for the Visoca centre yield, 9 as the table clearly shows. 10 MR RURAC: Yes. 11 MR GLEASON: So those periods do take into 12 consideration drought conditions, true? 13 MR RURAC: Yes, of course. In 2007, when 14 average figures were obtained, that year was also 15 very droughty. It was a drought year. When we 16 planned and programmed everything, again, we did 17 take into consideration drought. The harvest for 18 sunflower 2.87, we can say that in a regular year 19 the harvest is even 4.5, but 2.85 is a year which 20 does include the drought year. 21 There are years when peasants, when 22 farmers, obtained even a harvest of 4.5, but the 23 2.85 reflects the fact that there was a drought 24 year. 25 THE INTERPRETER: Can I repeat what I said</p>

<p>1 to you to the gentlemen? (Pause) 584 2 Yes, they confirm. 11:08 3 MR GLEASON: Just to simply ask the 4 question, because it was a long answer, the 5 2007-2010 averages include at least one year of 6 drought conditions? 7 MR RURAC: Of course, yes. 8 MR GUMOVSKI: In average figures for 9 Floresti Soroca, 2007 was a drought year, and 10 2011-2014, this interval, 2012 was the drought year, 11 but here you have the average figures and the 12 average figures do include the drought year of 2012. 13 The same for Visoca. For 2007, again the figure is 14 an average one. 15 MR GLEASON: Thank you very much. 16 THE PRESIDENT: Gentlemen, I think we have 17 reached the end. We are very grateful to you for 18 making your time available and coming to Vienna. 19 Enjoy the rest of your visit here. You are now 20 released. 21 Let's take a 15 minute break to rearrange 22 the room. We will resume at 25 past 11 to hear 23 Mr Wiechen. 24 (Short break from 11.10 am to 11.28 am) 25 LARS WIECHEN</p>	<p>1 two types of damages: loss of investment value and 586 2 loss of business value. Further on, I would like to 10:30 3 comment upon the report filed by KPMG or Mr Peer. 4 MR ASTUNO: We will get to that. On the 5 screen right now is the slide that indicates the 6 loss of the initial investment costs that were paid 7 for by Mr Grot. Would you care to comment on the 8 valuation methodology insofar as you were able to 9 calculate and arrive at this number of approximately 10 798,000 USD? 11 MR WIECHEN: First of all, I would like to 12 make a comment that I made a small revision to my 13 initial calculations because I excluded all 14 operating expenses which would have been necessary 15 to start up the farming operations. I did it first 16 for simplicity reasons and to be more conservative, 17 not to confuse operating expenses with capital 18 expenditure. Capital expenditures is kind of 19 exclusive for the investment in fixed assets, and we 20 excluded the operating expenses from my original 21 calculation. 22 MR ASTUNO: Thank you. As we can see 23 here, for fiscal years 2009 and 2010 there are 24 denominated amounts. How were those numbers 25 justified?</p>
<p>1 THE PRESIDENT: Mr Wiechen, welcome. My 585 2 name is Philippe Sands. I have the privilege to 10:28 3 chair this Tribunal. I sit with Mr Fortier and 4 Professor Knieper. 5 Could you begin by simply reading out the 6 declaration in front of you? 7 MR WIECHEN: I solemnly declare upon my 8 honour and conscience that my statement will be in 9 accordance with my sincere belief 10 THE PRESIDENT: Thank you. Welcome to 11 this proceedings. I think we will begin with 12 presentations, questions, introductory statement or 13 a mix of all of the above, and Mr Astuno will 14 commence. 15 MR ASTUNO: Thank you, Mr President. 16 Examination by Claimants 17 MR ASTUNO: Mr Wiechen, thank you for 18 being with us here today. Could you start by 19 briefly explaining this presentation that is now 20 appearing on screen, CH-9? 21 MR WIECHEN: This presentation basically 22 provides just a brief background of myself, of what 23 I have been asked to do. That means to provide an 24 independent, objective assessment of potential 25 damages incurred to Mr Grot. I calculated basically</p>	<p>1 MR WIECHEN: Basically what we did was we 587 2 had a field team travelling to Moldova and 10:31 3 identifying or verifying the existence of the 4 equipment. Secondly, from an accounting point of 5 view, we investigated their fixed asset registers, 6 basically the financial statements of Laguardia, and 7 looked for entries in the fixed asset register which 8 are investments for the years 2009 and 2010. We 9 cross-referenced the financial entries with custom 10 documents to ensure that only the equipment which 11 has been contributed by the company before 12 September 2010 are included in our calculations. 13 MR ASTUNO: Thank you. My next question 14 pertains to a request on allocation of damages that 15 Claimants have filed in this case. You do not need 16 to know about the details of that but I wanted to 17 put that on the record before I make this question. 18 What do the financial records indicate 19 insofar as who was the party that paid for this 20 equipment and vehicles? 21 MR WIECHEN: We made an analysis of 22 pertaining documents, like copies of bills of sale, 23 sales invoices and certificates of transfer, which 24 clearly evidenced that either Mr Grot or one of his 25 wholly-owned companies have bought the equipment and</p>

<p>1 that this equipment has been transferred to the capital of the Moldovan entity, Laguardia SRL.</p> <p>3 MR ASTUNO: I now want to turn our attention to the forward-looking damages analysis that was applied by both experts in this case.</p> <p>6 Would you care to comment why you believe that a forward-looking lost profits analysis was justified in this matter?</p> <p>9 MR WIECHEN: Considering this investment, I would not classify it as a newly-established business due to the fact that we had accounting records proving that Mr Grot ran quite successfully farming operations in Poland. We have been provided with documentation from his accountants which prove that he generated net or profit margins even close to 50 per cent in Poland, and secondly, even if you analyse the financial statements of Laguardia SRL, you see that 2010 was quite a successful year where the company also had a profit margin I think even above 30 per cent, which made me reasonably believe that Mr Grot is a capable businessman in agriculture.</p> <p>23 Secondly, we consulted with agricultural experts and, based on our discussions with the agricultural experts, and they have decades of</p>	<p>1 don't have any inventories, and it was too simplified and also incorporating the criticism from KPMG's report I concluded that working capital is indeed a very, very important variable in calculating a DCF, so this was an omission I regret, yes.</p> <p>7 MR ASTUNO: That has now been correctly calculated, just to be clear, and that has been updated as of today?</p> <p>10 MR WIECHEN: Yes.</p> <p>11 MR ASTUNO: I would now like to, first of all, identify this slide. If you could just identify what this number represents, particularly the number that is highlighted [slide 13]</p> <p>15 MR WIECHEN: Basically we calculated potential damages for each location separately based on an income approach, applying the discounted cash flow method separately for each location. What you can see here is basically the sum of potential damages resulting from each location summing up in 2.75 million USD.</p> <p>22 MR ASTUNO: That does not account for interest. Is that correct?</p> <p>24 MR WIECHEN: Correct (slide 15)</p> <p>25 MR ASTUNO: Regarding pre-judgment</p>
<p>1 experience in agriculture in Moldova, I felt reasonably satisfied in applying a forward-looking DCF analysis in this case.</p> <p>4 MR ASTUNO: To be clear you worked alongside the local agricultural experts, they forecasted the damages in this case on an ex ante basis. Is that correct?</p> <p>8 MR WIECHEN: Yes.</p> <p>9 MR ASTUNO: And as of the year 2010? Approximately the valuation date</p> <p>11 MR WIECHEN: The valuation date which is clearly stated in our reports was February 2011 for the location Cosernita, and 10 March for the locations in Varvareuca and Rosietici</p> <p>15 MR ASTUNO: Thank you. I now would like to turn to an issue that was raised by Respondent's expert report in that report and that pertains to one of the variables that is part of the stated DCF calculation known as a change in working capital</p> <p>20 Can you explain our current insertion of this variable and how that came to be.</p> <p>22 MR WIECHEN: Basically in my First Expert Report I took a too simplified assumption that this business would run on a pure cash basis, that you sell immediately your products at harvest date, you</p>	<p>1 interest, could you explain to the Tribunal why you thought it was appropriate to apply the weighted average cost of capital?</p> <p>4 MR WIECHEN: Basically one important component to take into consideration when talking about pre-award interest rates is the element of opportunity costs and especially in an investor case like this on hand, I believe that an investor should be at minimum be rewarded for the opportunity cost of capital which is basically the next best alternative which has been foregone.</p> <p>12 MR ASTUNO: Thank you. I now direct the parties and the Tribunal's attention to the slides in our presentation which updates the numbers after applying pre-judgment interest.</p> <p>16 Mr Wiechen, I now would like to discuss in particular the expert report prepared by Mr Michael Peer on behalf of the Respondent in this matter. Before we get into any specifics, would you care to generally summarise your impressions of this report and some of the main points you would like to address today?</p> <p>23 MR WIECHEN: Basically one fundamental misunderstanding I have seen in Mr Peer's report is basically that Mr Peer used several times hindsight.</p>

<p>1 That means he used many times information which 2 became known or knowledgeable after the valuation 3 date. 4 I would like to highlight at this point 5 that we performed an ex ante analysis. This 6 analysis requires that we take only into 7 consideration that information known or 8 knowledgeable until the valuation date, or the date 9 of injury which is equal to the valuation date. 10 MR ASTUNO: Was there a difference in 11 methodology in regards to where information was 12 derived from, especially as it pertains to costs? 13 MR WIECHEN: If you refer to underlying 14 information, for example, if you refer to the 15 agricultural report, for instance, although this 16 report has been dated 5 January 2017, it only took 17 into consideration information which has been 18 available as of the date of revocation of lease 19 agreements in the respective locations. 20 MR ASTUNO: I would like to discuss your 21 collaboration a bit with the local agricultural 22 experts who just testified. Can you explain why you 23 believe it is more reliable to rely on the input of 24 local experts when conducting a business valuation? 25 MR WIECHEN: I believe that agriculture is</p>	<p>1 Would you care to describe how he relied upon their 2 work for some of the inputs, but not all? 3 MR WIECHEN: Analysing Mr Peer's 4 assumptions, I have not seen the consistency in 5 applying the yields, that means tons per hectare, 6 for each crop. Sometimes he uses national averages 7 from one area, then national averages from the other 8 area, and sometimes he uses the expert numbers 9 One of the overriding principles applied 10 in business valuation is to be consistent in the 11 source from which you derive your information. 12 I have not read any substantiation for the 13 assumptions Mr Peer took as regards the yields per 14 crop. 15 MR ASTUNO: Do you think there is a 16 difference between being an expert in valuation and 17 being an expert in the specific company or industry 18 that is being valued? 19 MR WIECHEN: There is a huge difference. 20 MR ASTUNO: Can you explain how that 21 difference affects the credibility of Mr Peer's 22 report insofar as he does not rely upon a local 23 expert, for yields as least? 24 MR WIECHEN: Apparently, as I have used 25 the inputs from the agricultural experts, I strongly</p>
<p>1 a very specific and particular business, and that 2 pretty much depends on the location. You cannot 3 simply copy and paste from one country to another. 4 You cannot even copy and paste from one district to 5 the other in a country. I think it is of utmost 6 importance to have the input of local experts for 7 agriculture, and Mr Rurac and Mr Gumovschi have 8 decades of experience in this case. 9 I discussed, or the team discussed, with 10 the two experts and we gained reasonable certainty 11 as regards to the quality of the information 12 provided by them, and we relied on the information 13 provided by those experts. 14 MR ASTUNO: Would you care to contrast 15 that methodology to the one employed by Mr Peer? 16 MR WIECHEN: In principle, Mr Peer applied 17 a very extensive benchmarking analysis using 18 guideline companies which are stocklisted entities 19 operating in different countries, operating 20 different business models, some of them are even 21 traders or have different business models, rather 22 than the production and sale of agricultural 23 products. 24 MR ASTUNO: I want to ask about Mr Peer's 25 reliance on the local experts for costs and revenue.</p>	<p>1 believe that this is the right methodology rather 2 than relying on averages from Moldovan statistics 3 which are basically, as we learn from the 4 agricultural experts, not one hundred percent 5 reliable. 6 MR ASTUNO: And isn't it true, though, 7 that Mr Peer did rely upon the local experts for 8 cost assumptions? 9 THE PRESIDENT: I think if you could 10 rephrase the question and continue with -- I think 11 you recognised it was leading. 12 MR ASTUNO: Would you please explain the 13 methodology that Mr Peer used when calculating 14 Laguardia's costs? 15 MR WIECHEN: Mr Peer actually used the 16 operating costs which have been used also in 17 Deloitte's report. 18 MR ASTUNO: Would you care to comment on 19 the assumption that the costs would remain as 20 predicted by the local experts, but at the same time 21 the yields would be used based on national average 22 data? 23 MR WIECHEN: It is a matter of fact that 24 costs and revenues are directly and positively 25 correlated, so that means especially on the case in</p>

<p>1 hand, using more input factors with higher cost will 2 directly lead to higher revenues 3 MR ASTUNO: Thank you. I would now like 4 to focus on the emphasis the KPMG report places on 5 guideline companies. 6 First of all, can you explain where these 7 guideline companies are derived? Where KPMG found 8 this information? 9 MR WIECHEN: Those guideline companies 10 Deloitte used for calculating the cost of capital, 11 particularly the beta factor and the debt to equity 12 ratio. 13 MR ASTUNO: Your reliance on these 14 companies, was that limited to the beta calculation? 15 MR WIECHEN: Beta and debt to equity, and 16 the cost of capital calculation. 17 MR ASTUNO: Did that comparison at all 18 relate to your calculation of projected revenue? 19 MR WIECHEN: No. 20 MR ASTUNO: Projected costs? 21 MR WIECHEN: No. 22 MR ASTUNO: Does Mr Peer, however, use 23 these guideline companies when discussing 24 profitability? 25 MR WIECHEN: He used those companies, as</p>	<p>1 Denmark, Russia. 2 MR ASTUNO: And the industries that these 3 companies operate in? 4 MR WIECHEN: They are different. 5 MR ASTUNO: Do any one of these companies 6 represent the cost structure in the specific 7 business model that Laguardia had in place as of 8 2010? 9 MR WIECHEN: No. 10 (Slide 21) 11 MR ASTUNO: I would like to turn our 12 attention to the next slide regarding some conflicts 13 or disagreements that the two respective expert 14 reports had. What is being assessed generally on 15 this slide, Mr Wiechen? 16 MR WIECHEN: This is basically a 17 methodical error or calculation error Mr Peer did. 18 He did not deduct the appreciation to arrive at his 19 operating profit, namely the EBITDA, but he added 20 the depreciation expenses to derive at the 21 discounted cash flows which somehow is an adjustment 22 or creates a positive cash inflow with no economic 23 basis. 24 MR ASTUNO: Thank you. Could you please 25 briefly describe Mr Peer's calculation of income tax</p>
<p>1 you can see on this slide (20) to make a 2 profitability analysis. 3 MR ASTUNO: Do you think that was a 4 reasonable approach? 5 MR WIECHEN: I think this does not provide 6 a value added for the valuation of the business. 7 MR ASTUNO: Is that related to the fact 8 that the valuation study is done on an ex ante 9 basis? 10 MR WIECHEN: As to the profit margins, as 11 we can see on this slide 20 are also historical 12 ones, it is not a violation of the ex ante approach. 13 The point I would like to make on this slide is 14 basically if you just look for the standard 15 deviation of those two margins, gross and EBITDA 16 margins, you can see that it is immense. There is a 17 big variety from margins for the gross margin from 18 52 to minus 37 per cent, which indicates that those 19 averages derived cannot be reliable. Because at the 20 end of the day they are not directly comparable 21 companies. Those are stock listed companies. 22 MR ASTUNO: Would you care to comment 23 where these companies are located geographically? 24 MR WIECHEN: In several countries, as you 25 can see: Germany, Ukraine, Bulgaria, Croatia,</p>	<p>1 in this calculation? 2 MR WIECHEN: As you can see, the operating 3 profit is negative, so the business is loss-making. 4 Then Mr Peer deducted taxes from this amount which 5 basically is a positive impact, that means minus 6 plus minus makes plus, and implies it is a business 7 which actually saved money by paying taxes, so the 8 right amount of taxes would be zero, because you 9 don't pay taxes on negative results, right? You 10 need profits to pay taxes. 11 MR ASTUNO: To be clear, under Mr Peer's 12 analysis, Laguardia was cash negative, or had 13 negative earnings. Is that the case? 14 MR WIECHEN: The earnings are negative in 15 this. 16 MR ASTUNO: Could you briefly describe, in 17 your experience, is it common to see a historically 18 profitable enterprise suddenly then begin to incur 19 negative earnings without making any adjustment to 20 its cost structure? 21 MR WIECHEN: (Shrugged) 22 MR ASTUNO: Is that common for you to see 23 in your experience? Is that common for you to see 24 companies that are historically profitable begin to 25 incur negative earnings without any changes to its</p>

<p>1 cost structure? 600 10:52</p> <p>2 MR WIECHEN: Rarely the case.</p> <p>3 MR ASTUNO: I know it is very technical,</p> <p>4 but would you care to describe some of the primary</p> <p>5 issues that you found in Mr Peer's calculation of</p> <p>6 the net working capital variable?</p> <p>7 MR WIECHEN: Working capital, as we</p> <p>8 previously acknowledged, is an important factor to</p> <p>9 consider when applying a discounted cash flow</p> <p>10 method. These are basically data derived from table</p> <p>11 F2 in the KPMG report.</p> <p>12 If you just look at this table (slide 23)</p> <p>13 there is one line popping up into the eye of the</p> <p>14 educated reader which is basically the inventory</p> <p>15 balance, which is much, much bigger than the trades</p> <p>16 receivable balance, which is usually not the case.</p> <p>17 Here Mr Peer did a calculation error because he</p> <p>18 calculated the inventory balance by using revenues</p> <p>19 and multiplying the revenues with the days inventory</p> <p>20 outstanding. He should have multiplied the cost of</p> <p>21 goods sold or direct input costs and multiplied them</p> <p>22 by the days inventory outstanding, so this led to a</p> <p>23 complete overestimation of inventory and a</p> <p>24 significant downward adjustment to potential</p> <p>25 cash flow.</p>	<p>1 To be clear there is an errata that was 602 10:55</p> <p>2 prepared by Mr Peer recently submitted to you. Were</p> <p>3 any of these aforementioned issues cured?</p> <p>4 MR WIECHEN: The working capital issues?</p> <p>5 No.</p> <p>6 MR ASTUNO: The assumption that the costs</p> <p>7 would remain high and the yield inputs would remain</p> <p>8 average?</p> <p>9 MR WIECHEN: No.</p> <p>10 MR FORTIER: Where is that in your paper</p> <p>11 submission? What you have just underlined as being</p> <p>12 one of the most severe errors made by Mr Peer.</p> <p>13 MR WIECHEN: It is on page 24.</p> <p>14 MR FORTIER: Thank you. We can read it</p> <p>15 for ourselves.</p> <p>16 MR ASTUNO: Thank you. I believe we might</p> <p>17 have a couple of remaining minutes, Mr Wiechen.</p> <p>18 Would you care to defend why you believe the</p> <p>19 weighted average cost of capital is the correct</p> <p>20 discount rate to apply in this matter?</p> <p>21 MR WIECHEN: One of the elemental steps in</p> <p>22 performing a business valuation in general is to set</p> <p>23 a standard of value. That means the question value</p> <p>24 to whom? I believe that the standard fair market</p> <p>25 value is the most frequent standard of value used in</p>
<p>1 MR ASTUNO: Would you now care to describe 601 10:53</p> <p>2 an issue or issues that you discovered in reviewing</p> <p>3 Mr Peer's calculation of the discount rate?</p> <p>4 MR WIECHEN: If you don't mind, I would</p> <p>5 like to continue with the working capital because</p> <p>6 I believe this is very important for the Tribunal to</p> <p>7 see.</p> <p>8 MR ASTUNO: Of course. If I may ask</p> <p>9 Ms Nitschke, what is my time?</p> <p>10 Perhaps a note for the record, if the</p> <p>11 Tribunal could review the particular analysis</p> <p>12 regarding the working capital? I am afraid we don't</p> <p>13 have time to review this analysis further.</p> <p>14 MR WIECHEN: Honestly, I want to help, and</p> <p>15 this is a significant valuation error here, because</p> <p>16 although Mr Peer has calculated the working capital</p> <p>17 as outlined in the previous slide, he does not apply</p> <p>18 the working capital and changes of working capital</p> <p>19 in his own DCF calculation, because he uses the</p> <p>20 operating expenses of the following year as working</p> <p>21 capital balance, which leads to a complete</p> <p>22 understatement of cashflows. This is a capital</p> <p>23 mistake, I think even the biggest in the entire</p> <p>24 report of Mr Peer.</p> <p>25 MR ASTUNO: Thank you, Mr Wiechen.</p>	<p>1 business valuation and also in the context of loss 603 10:56</p> <p>2 of business value calculations</p> <p>3 This standard of fair market value implies</p> <p>4 that we are talking here about a price between</p> <p>5 knowledgeable willing partners in an arm's length</p> <p>6 transaction which are engaged to transfer business</p> <p>7 in between themselves, and those hypothetical market</p> <p>8 participants would strive to optimise the capital</p> <p>9 structure, and on the other hand this would also</p> <p>10 maximise the business value. That capital is</p> <p>11 usually less expensive than equity capital. That</p> <p>12 means you would induce more debt into your company</p> <p>13 until you reached the minimum point which maximises</p> <p>14 the business value, and this is the reason why we</p> <p>15 use an optimal capital structure, that means the</p> <p>16 weighted average capital structure of debt and</p> <p>17 equity.</p> <p>18 MR ASTUNO: Thank you. I understand that</p> <p>19 you have a lot of experience in collaborating and</p> <p>20 working alongside local experts. Would you care to</p> <p>21 comment on your particular experience working with</p> <p>22 Mr Rurac and Mr Gumovschi, and just to generally</p> <p>23 describe how you perceive the reliability and</p> <p>24 accuracy of their data and their reports?</p> <p>25 MR WIECHEN: I had a very good</p>

<p>1 collaboration with the two agricultural experts. 604 10:58</p> <p>2 I am reasonably satisfied with all the input data</p> <p>3 I received from them on areas where I am not an</p> <p>4 expert – I am not an agricultural expert – and</p> <p>5 yes, it was a fruitful collaboration.</p> <p>6 MR ASTUNO: I apologise we have limited</p> <p>7 time, but thank you for being here and for your</p> <p>8 presentation. I believe there will be some further</p> <p>9 questions. Thank you.</p> <p>10 THE PRESIDENT: Mr Kopecky?</p> <p>11 MR KOPECKY: Thank you.</p> <p>12 PROFESSOR KNIEPER: Mr Wiechen, I have one</p> <p>13 technical question. I worked with your initial</p> <p>14 report. When you go to page 8 of your initial</p> <p>15 report you have the capital expenditure. There is a</p> <p>16 table, table No 1. This table No 1 talks about</p> <p>17 equipment and vehicles for fiscal year 9 and 10. In</p> <p>18 your new report the figures do not match. Why is</p> <p>19 that? It cannot be that you excluded the operating</p> <p>20 expenses because that is a different line. When you</p> <p>21 look up on table --</p> <p>22 MR WIECHEN: I do not have my original</p> <p>23 report here.</p> <p>24 PROFESSOR KNIEPER: Perhaps with your</p> <p>25 permission, we can hand it to you. (Same handed)</p>	<p>1 1-16, it is effectively a new report, and only pages 606 11:03</p> <p>2 17 and following are in fact a reaction to Mr Peer's</p> <p>3 report. I understand we agreed for an extension on</p> <p>4 time, but I would like to put it on record that this</p> <p>5 was done without Tribunal approval because there</p> <p>6 was, as you yesterday clarified, Mr President, only</p> <p>7 a reservation on that and not an allowance to submit</p> <p>8 a new report.</p> <p>9 THE PRESIDENT: Let's proceed.</p> <p>10 MR KOPECKY: Just a point of order.</p> <p>11 Good morning, Mr Wiechen. Before we start</p> <p>12 with specific questions I would like to tell you, as</p> <p>13 you have heard, we received your new report ten</p> <p>14 hours ago, so many of my questions will be</p> <p>15 pertaining to your original report and if your</p> <p>16 answer would be "I have addressed this in the</p> <p>17 supplemental report", just bear with me, we will get</p> <p>18 there, and if I do not get there you will be able to</p> <p>19 clarify. I only worked with what I had and that was</p> <p>20 your original report.</p> <p>21 MR WIECHEN: So the report filed at the</p> <p>22 beginning of the year?</p> <p>23 MR KOPECKY: Correct.</p> <p>24 MR WIECHEN: Okay.</p> <p>25 MR FORTIER: To be clear, that is the</p>
<p>1 I simply want to know why? 605 11:00</p> <p>2 MR WIECHEN: It is different.</p> <p>3 PROFESSOR KNIEPER: How does that come?</p> <p>4 MR WIECHEN: First of all, there was not</p> <p>5 the exclusion of operating expenses.</p> <p>6 PROFESSOR KNIEPER: That comes later.</p> <p>7 MR WIECHEN: But you are referring to the</p> <p>8 first line?</p> <p>9 PROFESSOR KNIEPER: Yes.</p> <p>10 MR WIECHEN: This was basically an</p> <p>11 additional recalculation of the initial investment</p> <p>12 costs. We revisited our analysis when again, after</p> <p>13 filing the initial report, we went again through the</p> <p>14 fixed asset registers of the company, identified</p> <p>15 again, and this is the reason why we have these</p> <p>16 differences in the numbers.</p> <p>17 PROFESSOR KNIEPER: Slightly lower?</p> <p>18 MR WIECHEN: Yes, they are slightly lower.</p> <p>19 PROFESSOR KNIEPER: Thank you.</p> <p>20 Cross-examination by Respondent</p> <p>21 MR KOPECKY: Good morning, Dr Wiechen.</p> <p>22 Before I get to you, I would like to address one</p> <p>23 point of order. I understand that the Tribunal</p> <p>24 reserved but did not allow that a supplementary</p> <p>25 report be filed. If we look at this report, pages</p>	<p>1 16 January 2017 report, right? 607 11:04</p> <p>2 MR KOPECKY: 16 January, correct.</p> <p>3 MR ASTUNO: Would it be okay to approach</p> <p>4 Mr Wiechen with a copy of that report for the</p> <p>5 purposes of this line of questioning?</p> <p>6 MR KOPECKY: He must have it.</p> <p>7 THE PRESIDENT: Absolutely. (Same handed)</p> <p>8 MR KOPECKY: I would like to turn to table</p> <p>9 1 in that report on page 8, which is the alleged</p> <p>10 actual investment cost, and there I would like to</p> <p>11 turn to Capex, which you indicated for the first</p> <p>12 four years being 09, 10, 11 and 12 as 451,711,</p> <p>13 389,528, 204, and 46,032. If I may turn you to</p> <p>14 paragraph 18 of your First Report, which is on</p> <p>15 page 5, you say that "Deloitte team members have</p> <p>16 visited the Republic of Moldova (Floresti district)</p> <p>17 where they have inspected the equipment, (ie</p> <p>18 tractors and machines), and had discussions with the</p> <p>19 local administrator of Laguardia SRL".</p> <p>20 Could you confirm that those assets were</p> <p>21 still owned by Laguardia, meaning under Claimant's</p> <p>22 control? Is that your expert assertion?</p> <p>23 MR WIECHEN: This is not an assertion</p> <p>24 I can make. I am not in a position to comment on</p> <p>25 the legal ownership of the equipment. My working</p>

<p>1 assumption was that Mr Grot did not have physical control over the assets. 608 11:06</p> <p>2</p> <p>3 MR KOPECKY: Yet they are included in the report. I would like you to explain where you note that the Claimants still own these assets for which they purportedly claim value? Because they own these assets still, as we have just established, so where do you indicate that in your report?</p> <p>4</p> <p>5 MR ASTUNO: Pardon me. I don't believe we have established ownership or entitlement to assets or anything along those lines. I believe that is an open issue.</p> <p>6</p> <p>7 MR KOPECKY: Well, that is a conflicting position. Who has them now?</p> <p>8</p> <p>9 THE PRESIDENT: We have noted your objection, Mr Astuno. Why don't you continue with the questioning, but be particularly careful not to put words into the mouth of the expert in the sense of making questions which are premised on a matter which is not addressed. I have paragraph 18 in front of me. It doesn't actually say anything in terms about who owns what and who has title.</p> <p>10</p> <p>11 MR KOPECKY: I apologise for that. We have not established that with you or in your report. We had established that before.</p>	<p>1 was not part of your mandate to explore that. Is that correct? 610 11:08</p> <p>2</p> <p>3 MR WIECHEN: This is correct.</p> <p>4</p> <p>5 MR KOPECKY: Is it also correct that you did not include any evidence, any of those documents just mentioned, with your expert report? You said you reviewed them but they are not included with your report.</p> <p>6</p> <p>7 MR WIECHEN: We filed the financial statements of Laguardia. We filed the fixed asset register, so all necessary accounting records.</p> <p>8</p> <p>9 MR KOPECKY: Mr Wiechen, are you aware that the portion of the machinery owned by Laguardia was contributed to another company, Laguardia Agribusiness Ltd's share capital?</p> <p>10</p> <p>11 MR ASTUNO: Mr President, I thought we just established --</p> <p>12</p> <p>13 MR KOPECKY: It is just a question. I will put a document to him later on.</p> <p>14</p> <p>15 THE PRESIDENT: Why don't you put the document to him now?</p> <p>16</p> <p>17 MR KOPECKY: I want to know if he knows of it before I show him the document</p> <p>18</p> <p>19 THE PRESIDENT: Frame the question very neutrally, if you could.</p>
<p>1 The question would be how you made sure you covered all assets that were purchased for the Capex claimed by Claimants? 609 11:07</p> <p>2</p> <p>3 MR WIECHEN: What we first did, as I explained also in the course of my presentation, is that we analysed the accounting records of Laguardia, especially the fixed asset register. We crosschecked those entries in the fixed asset register with other documents like customs documents, and achieved from an accounting point of view reasonable certainty as regards the existence of those assets based on the accounting records</p> <p>4</p> <p>5 THE PRESIDENT: Reasonable certainty they had been purchased?</p> <p>6</p> <p>7 MR WIECHEN: They have been purchased.</p> <p>8</p> <p>9 THE PRESIDENT: But no expression of you as to what has happened to them subsequently?</p> <p>10</p> <p>11 MR WIECHEN: I have not investigated what has happened with these assets, so this is not my expertise. I look in the accounts and I have found those assets in the accounting books.</p> <p>12</p> <p>13 THE PRESIDENT: It is not a critique. I want to be very clear that you are testifying your expert opinion as to the acquisition of assets. You don't know what happened to them subsequently, it</p>	<p>1 MR KOPECKY: Do you know whether a portion of the machinery owned by Laguardia was contributed to Laguardia Agrobusiness Ltd's share capital? 611 11:10</p> <p>2</p> <p>3 MR WIECHEN: At the present moment I do not recall this alleged transaction</p> <p>4</p> <p>5 MR GLEASON: Can I ask what document? Is it an exhibit in this case?</p> <p>6</p> <p>7 MR KOPECKY: Exhibit R-9.</p> <p>8</p> <p>9 THE PRESIDENT: Why don't we put it up and show it? He is entitled to see it.</p> <p>10</p> <p>11 MR KOPECKY: It is coming. (Displayed)</p> <p>12</p> <p>13 I appreciate you won't be able to read all of this, but if we scroll through it and if we go to the list of assets here, it mentions -- on the first page -- sprinklers, disc harrows, harvesters of certain brands, truck-lift Volvo, and so on and so forth, so a lot of machinery that was contributed by a foreign invested enterprise, Laguardia Ltd, to Laguardia Agrobusiness. I appreciate you cannot evaluate the legal quality of this document. I wanted to ask whether you were aware that this contribution took place on 28 November 2012? Were you told that this happened?</p> <p>14</p> <p>15 MR WIECHEN: As I see the date of 28 November 2012, I have not taken this document</p>

<p>1 into consideration in my analysis because, as I also 612 2 explained at the very beginning, I performed an 11:12 3 ex ante analysis. That means taking into 4 consideration only information which was known and 5 knowledgeable to me until the date of the alleged 6 breach of the respective agricultural lease 7 agreements. 8 MR KOPECKY: I would expect nothing else! 9 Were you aware that Laguardia SRL's 10 investment in this newly-founded company, Laguardia 11 Agrobusiness, was later sold to a third party (R-11 12 displayed). You are not invited to comment on this 13 from a legal point of view, but simply if you are 14 aware of the fact that the Laguardia Agrobusiness 15 interest was sold on 12 July 2013? 16 MR WIECHEN: I recognise the document, 17 what is written there, but, again, it does not 18 pertain to the analysis I have performed. This is 19 something which in the valuation world we would 20 consider hindsight, using information which should 21 not have been used, having a specific valuation 22 date, and our valuation date was clearly identified. 23 MR KOPECKY: I understand and I am not 24 addressing that. I am addressing two questions on 25 this: how you inspected machines that were sold on</p>	<p>1 direct personal knowledge. You did not participate 614 2 in -- 11:15 3 MR WIECHEN: I was not in Moldova. I was 4 never in Moldova but it is customary. 5 THE PRESIDENT: It is not a critique at 6 all. I am trying to ascertain what happened. 7 MR GLEASON: If there are questions about 8 the ownership of this equipment, these exhibits 9 could have easily been used to ask questions of 10 Mr Grot, who would have actually perhaps knowledge 11 of this. Mr Wiechen has no knowledge of this. 12 MR KOPECKY: I am not asking about the 13 ownership. I am asking about -- 14 MR GLEASON: It is unclear what your line 15 of questioning is. 16 THE PRESIDENT: Proceed. 17 MR KOPECKY: Thank you. I think the 18 President just took the words out of my mouth. That 19 means I can move on to my next question. 20 Would you concur that the value of assets 21 sold in theory should be taken into account when 22 discussing the allegedly lost investment into those 23 assets? 24 MR WIECHEN: Could you please rephrase? 25 MR KOPECKY: When you sell assets, do you</p>
<p>1 in 2013 when preparing your report in what I presume 613 2 was 2016 and 2017? They were no longer, according 11:13 3 to this, with Claimants, so how did you inspect 4 them, as you say in paragraph 18 of your report? 5 MR WIECHEN: In my report I have not filed 6 a statement of completeness for machinery and 7 equipment. Even in the financial world of auditing, 8 financial statements, you do not do a physical count 9 of all the assets a company owns. You do it 10 basically on a sample basis. I considered it for 11 the analysis I have performed sufficient evidence to 12 physically confirm the existence of certain 13 machinery and equipment which should have been used 14 within the operations of Mr Grot. 15 THE PRESIDENT: Could you just clarify on 16 paragraph 18, you don't say "you" visited the 17 Republic of Moldova, and "you" inspected the 18 equipment. You say "Deloitte team members". Is it 19 persons other than yourself? 20 MR WIECHEN: This is correct. We usually 21 work in teams. We had a project team of people. 22 There was a director of my team and manager of my 23 team physically in Moldova who identified the 24 assets. 25 THE PRESIDENT: But you have no first-hand</p>	<p>1 have to take the sale into account when you discuss 615 2 the loss of investment pertaining to those assets? 11:16 3 You have assets listed here and they may have been 4 sold. I am not saying you need to opine on whether 5 they have been, but had they been sold and had this 6 information been made available to you, you would 7 have taken it into account no doubt. Would it have 8 any impact on the valuation of the lost investment 9 concerning those assets? 10 MR WIECHEN: I think we are running again 11 into a legal issue here. If I just assume that I am 12 the owner of assets, if I have control over the 13 assets, I am still the owner and I sell the assets 14 at a certain point in time I would probably sell 15 them most evidently at a loss because they have 16 depreciated, they are used, but I don't know what -- 17 THE PRESIDENT: I think we understand you 18 very clearly. Your report expresses your opinion as 19 to the value of the asset at the point the business 20 was going to start operating in 2010, what had been 21 acquired. You are not expressing any view as to who 22 owns what now or what was lost? 23 MR WIECHEN: I was never asked. 24 THE PRESIDENT: And you have been very 25 clear about that.</p>

<p>1 MR WIECHEN: Okay. 616 11:18</p> <p>2 MR KOPECKY: I understand that in your new</p> <p>3 updated report, and bear with me if I make a mistake</p> <p>4 because I literally got it ten hours ago, you</p> <p>5 limited the damages to a portion of the investment</p> <p>6 to fixed assets, and that brings the number of</p> <p>7 451,000 for the first year down to 402,000. Is that</p> <p>8 correct?</p> <p>9 MR WIECHEN: Yes.</p> <p>10 MR KOPECKY: That was based on a detailed</p> <p>11 review, as you said this morning?</p> <p>12 MR WIECHEN: Yes.</p> <p>13 MR KOPECKY: Can you tell me when that</p> <p>14 detailed review happened?</p> <p>15 MR WIECHEN: It was a couple of weeks ago</p> <p>16 when we started preparing for the actual hearing?</p> <p>17 MR KOPECKY: Anything more specific?</p> <p>18 MR WIECHEN: No. I cannot tell you a</p> <p>19 specific date.</p> <p>20 MR KOPECKY: Did you do the review?</p> <p>21 MR WIECHEN: I did the review together</p> <p>22 with my team.</p> <p>23 MR KOPECKY: My second of seven issues is</p> <p>24 your reliance on the agricultural expert figures.</p> <p>25 We already have that. You state in paragraph 51 of</p>	<p>1 experts as per paragraph 59 of your First Report. 618 11:20</p> <p>2 That is the first sentence. Indirect costs. We</p> <p>3 heard you were quite familiar with the agricultural</p> <p>4 expert report. Do you have it in front of you</p> <p>5 MR ASTUNO: I am happy to provide him a</p> <p>6 copy.</p> <p>7 MR KOPECKY: Thank you. (Same handed)</p> <p>8 Can you show us where in the report the</p> <p>9 agricultural experts mention indirect costs? Take</p> <p>10 all the time you need, literally.</p> <p>11 Maybe as a small point of order, can he</p> <p>12 also be given a clean copy of his report, because</p> <p>13 his copy includes handwritten notes and we don't</p> <p>14 like that.</p> <p>15 MR ASTUNO: With all due respect, you are</p> <p>16 now questioning. I was prepared for my examination</p> <p>17 of the witness.</p> <p>18 MR KOPECKY: I mean his report. The</p> <p>19 PowerPoint slide has comments on it and I think we</p> <p>20 established yesterday that that is not acceptable in</p> <p>21 these proceedings.</p> <p>22 THE PRESIDENT: I think we have a clean</p> <p>23 copy, so if the secretary could hand that up and</p> <p>24 replace it, that would be very good. (Handed)</p> <p>25 MR ASTUNO: The only notation was CH-9.</p>
<p>1 your original report that "within the information 617 11:19</p> <p>2 gathering process for the purpose of the valuation</p> <p>3 analysis using the income approach, I have relied</p> <p>4 upon operating assumptions provided by management</p> <p>5 and by the agricultural experts".</p> <p>6 I would like you to point me -- and take</p> <p>7 all the time you need -- to assumptions that were</p> <p>8 taken from management and not from the agricultural</p> <p>9 expert report in your original report? Because</p> <p>10 I only see the agricultural report cited and not</p> <p>11 management and, if management is cited, it is not</p> <p>12 clear which information had been provided by it?</p> <p>13 MR WIECHEN: Basically, as you can see, if</p> <p>14 you take the agricultural report by itself, you</p> <p>15 could have easily remodeled what we have done in the</p> <p>16 Deloitte report. Basically we relied to the most</p> <p>17 significant extent on the agricultural reports. We</p> <p>18 also discussed with the local accountant and</p> <p>19 administrator, but to achieve the highest level of</p> <p>20 objectivity it is always better to talk to a neutral</p> <p>21 party rather than to the management of the company,</p> <p>22 which may be biased.</p> <p>23 MR KOPECKY: Your reliance on the</p> <p>24 agricultural expert report included the indirect</p> <p>25 costs per hectare estimated by the agricultural</p>	<p>1 MR KOPECKY: Yes, of course. And maybe 619 11:22</p> <p>2 the First Report as well, because I see notes there</p> <p>3 as well. I know it is a hassle.</p> <p>4 MR ASTUNO: Again, that was my version of</p> <p>5 the report I was making notes on.</p> <p>6 MR GLEASON: Do you happen to have a copy?</p> <p>7 MR KOPECKY: We do.</p> <p>8 (Documents handed to witness)</p> <p>9 MR WIECHEN: So this is my report?</p> <p>10 MR KOPECKY: Yes.</p> <p>11 MR WIECHEN: But you are now referring to</p> <p>12 the agricultural report which is still missing here</p> <p>13 on my desk.</p> <p>14 MR KOPECKY: You need that too? I have</p> <p>15 that too. Just a second. (Same handed to witness)</p> <p>16 The question was whether you could show us</p> <p>17 where in the report the agricultural experts mention</p> <p>18 indirect costs?</p> <p>19 MR WIECHEN: Without staying here for the</p> <p>20 next 20 minutes, I believe that you have not found</p> <p>21 the reference to the indirect costs in the</p> <p>22 agricultural report.</p> <p>23 MR KOPECKY: Yes.</p> <p>24 MR WIECHEN: But you also see that there</p> <p>25 was a reference to Moldovan National Statistics</p>

<p>1 which have been used. The information used by the 2 agricultural experts and by us have another source, 3 basically the Moldovan National Statistics. 4 MR KOPECKY: I am completely aware of 5 transient sources, but can we agree it does not 6 mention indirect costs? Because you referenced the 7 report. You didn't reference the sources. You 8 referenced the report. You didn't say that you 9 reviewed those sources yourself, you say you 10 reviewed the report and used the indirect costs. 11 You didn't say or write in your report that you 12 looked at those other sources which they used? 13 MR WIECHEN: I acknowledged a formal 14 inconsistency, but as we said and also discussed, we 15 worked actually together with the agricultural 16 experts, so when it came up that is an omission in 17 the report, right. Yes. 18 MR KOPECKY: Thank you. To the third of 19 my seven issues on the performance margins. We just 20 established that you relied on the agricultural 21 expert report, and used it as an input for a 22 substantial part of the income statement, including 23 the revenues, direct costs and, as we have now 24 established, indirect costs. Did you perform any 25 benchmarking of the performance to real existing</p>	<p>1 anything else, and you yourself have not done any 2 comparison. 3 MR WIECHEN: Yes. At the end of the day, 4 if you do two valuations, using averages 5 benchmarking to peer companies is many, many times 6 the method of last resort if you don't have anything 7 else or something which brings more evidential 8 method to you, you sometimes need to rely on data 9 from guideline companies which are not really 10 comparable. This is what we also have done for the 11 cost of capital. 12 I would like to underscore the fact that, 13 due to the late filing of Mr Peer's report, we did 14 not have time to look for other alternative methods 15 for calculating the cost of capital. This is why 16 we, for simplicity reasons, used the working capital 17 data from Mr Peer's report. 18 MR KOPECKY: But you would agree that it 19 is inconsistent to use these companies for one 20 aspect and not for another? 21 MR WIECHEN: No, I don't agree with this 22 statement. 23 MR FORTIER: What is your answer to the 24 question, though? You criticised Mr Peer's 25 benchmarking selection, correct, as we saw earlier?</p>
<p>1 businesses? 2 MR WIECHEN: I rather doubt that they are 3 real existing, perfectly comparable entities to 4 Laguardia. 5 MR KOPECKY: Not perfectly comparable. 6 Any. I understand that Mr Peer's may not be 7 perfectly comparable, but they are still any, and 8 I am asking whether you provided any? 9 MR WIECHEN: I still believe that if you 10 refer to the guideline companies as mentioned in our 11 report merely to the cost of capital and the 12 entities which Mr Peer used for his very extensive 13 benchmarking analysis, I conclude again that I do 14 not consider these companies comparable to 15 Laguardia. 16 MR KOPECKY: I don't disagree with that, 17 but you said that. I disagree with the statement 18 but I do not disagree that you said that and it is 19 on record, but you did not compare any companies 20 yourself? None? Because you stated earlier that 21 you were using them for deriving working capital 22 just during direct, and you consider those companies 23 usable for this aspect, but not for profit margins. 24 I wonder how that works together? Because you are 25 using Mr Peer's companies for something, not for</p>	<p>1 MR WIECHEN: Yes. 2 MR FORTIER: But did you do yourself any 3 benchmarking? Did you assess the performance of 4 real existing businesses? Do the benchmarking 5 exercise? 6 MR WIECHEN: What we did, for example, 7 these are the companies we identified in our report 8 for the cost of capital calculation. We are looking 9 for, and we had no other choice rather than to look 10 for other publicly-listed entities operating in the 11 agricultural sector, and this was the best we found. 12 We also looked, when doing our valuation analysis, 13 at certain financial key parameters of those 14 companies but, as they are not comparable, they do 15 not help us. 16 This peer or benchmarking analysis does 17 not somehow influence any of Mr Peer's calculations. 18 It is definitely a useful tool you would use in case 19 of having really established businesses and 20 established industries on a more developed market – 21 I am a big proponent of the market approach of 22 benchmarking – when those data are available, but 23 in Moldova you cannot even extract financial 24 statements from the commercial registry. They do 25 not even need to file them. In Romania at least</p>

<p>1 I could have relied on these sources, but the basis 2 of information was not perfect.</p> <p>3 MR FORTIER: I understand. In fact, 4 because of reasons you have given, you did not do 5 this benchmarking analysis?</p> <p>6 MR WIECHEN: We did not put it in the 7 report, but it was part of our working analysis, but 8 it does not help.</p> <p>9 MR FORTIER: I understand that. Thank you 10 for your answer.</p> <p>11 PROFESSOR KNIEPER: Can I ask one 12 question, perhaps? I do not know whether it is a 13 consistent question even, but you said at the 14 beginning that you used the DCF method because you 15 compared Laguardia's exercise with Mr Grot's 16 businesses that he had in Poland. Isn't that also 17 not a kind of benchmarking? Because the Polish 18 environment is completely different.</p> <p>19 MR WIECHEN: Yes.</p> <p>20 PROFESSOR KNIEPER: Is it benchmarking to 21 a certain extent, even if the capital owner is 22 perhaps identical?</p> <p>23 MR WIECHEN: No. The analysis of 24 Mr Grot's operations in Poland was basically for me 25 sufficient evidence to verify Mr Grot's capability</p>	<p>1 your report, page 18 and 19, paragraph 62, your 2 depreciation estimate table 7(a), (b), (c), and here 3 if you look at depreciation it is quite a low 4 number. If you add them up, it is never more 5 than -- and please forgive my math -- 22,000 per 6 year. If we look at what we had earlier, namely 7 fixed assets of 887,000, this would mean 8 depreciation over 40 years. 40 years' depreciation 9 time. My question is, is this a useful time to 10 expect for those assets?</p> <p>11 MR WIECHEN: No. There's probably one 12 misunderstanding here. If you look in our DCF 13 calculation you will not see a direct Capex and a 14 significant amount at the beginning of the 15 projection period. What we assumed is that the 16 existing equipment was already in place. On this 17 basis we calculated the depreciation based on 18 agricultural guidance for depreciation, and what we 19 assumed in our model -- and this makes sense to 20 me -- is to assume only maintenance depreciation. 21 So just to keep the assets ongoing like they are, 22 because we had a limited lifetime, or assumed a 23 limited lifetime of the business for only four 24 years.</p> <p>25 What we would usually do in a business</p>
<p>1 of running farming businesses. If you have an owner 2 or an investor or a project owner who is really 3 knowledgeable in an industry, you can derive a 4 conclusion that this person would most probably also 5 run good businesses in other locations rather than 6 in the location where he has already achieved the 7 results.</p> <p>8 PROFESSOR KNIEPER: So you didn't use the 9 data of the Polish --</p> <p>10 MR WIECHEN: No. It was purely for me to 11 obtain assurance as regards the quality of Mr Grot's 12 management capabilities.</p> <p>13 PROFESSOR KNIEPER: Thank you.</p> <p>14 MR KOPECKY: To the fourth of my seven 15 issues, which concerns Capex and depreciation. You 16 told us earlier that you had a list of assets, and 17 that would allow you to correctly calculate 18 depreciation expenses for the fixed assets of 19 Laguardia, but you have not calculated depreciation 20 for fixed assets of Laguardia.</p> <p>21 MR WIECHEN: No. We calculated 22 depreciation of fixed assets.</p> <p>23 MR KOPECKY: Fixed assets as well?</p> <p>24 MR WIECHEN: Fixed assets, yes.</p> <p>25 MR KOPECKY: So if we look at table 7 in</p>	<p>1 valuation with a going concern, the business was 2 running to eternity or infinity, you would assume 3 this cash outflow at the very beginning, you would 4 depreciate the Capex at the very beginning, and 5 should the business terminate at a certain point in 6 time, you would sell the equipment at the residual 7 value. This is something we have deliberately not 8 done because the assets were already in place and we 9 considered as depreciation only maintenance 10 expenditure, no additional Capex, no new machines, 11 no new plant or whatever you use on a farm.</p> <p>12 MR KOPECKY: No renewal? Nothing?</p> <p>13 MR WIECHEN: No renewal. Maintenance.</p> <p>14 MR KOPECKY: The fifth of my seven 15 questions concerns working capital. I would like 16 you to confirm what you said in paragraph 61 of your 17 report, namely that the allegedly expropriated 18 business was purely equity financed. If you look at 19 paragraph 61, page 18, it says, "I assumed that 20 Mr Grot would have run his business relying solely 21 upon equity". You confirm that? That is the 22 assumption? Equity only?</p> <p>23 MR WIECHEN: This was the situation as of 24 the date of the alleged breaches. So it was just 25 equity, what Mr Grot invested into this company.</p>

<p>1 MR KOPECKY: Could you confirm that you 2 also use the assumption stated in paragraph 53 of 3 your report, namely that the entire production was 4 assumed to be entirely sold at harvest time? 5 MR WIECHEN: This paragraph is one of our 6 corrections which does not hold true, which we 7 corrected in the updated version in the presentation 8 of today. This does not hold true. 9 MR KOPECKY: I wanted to confirm that 10 contradiction. So the new report is correct? 11 MR WIECHEN: Yes. 12 MR KOPECKY: And there the capital 13 calculations take into account that Laguardia would 14 operate similarly to the comparable companies? 15 MR WIECHEN: I can confirm that for 16 simplicity reasons we took the KPMG data, Mr Peer's 17 data, on working capital to calculate our working 18 capital. 19 MR KOPECKY: How did you reflect those new 20 assumptions in your working capital calculations? 21 MR WIECHEN: Basically we were applying 22 textbook formulas for deriving the balances of trade 23 receivables, inventories and trade payables, and we 24 had the days outstanding from Mr Peer's report, and 25 did accordingly a correct calculation of working</p>	<p>1 financing, so a reasonable investor would put 2 additional debt into the company to minimise the 3 cost of capital, so then we arrive at an optimal 4 capital structure which is basically one hundred 5 percent in alignment with the standard of fair 6 market value which has been applied throughout our 7 analysis. 8 MR KOPECKY: I am really confused now. 9 You say that you worked with the assumption that it 10 was fully equity financed, yet you calculate WACC 11 based on a debt to equity ratio of 25.9. How does 12 that match? Maybe it is just my ignorance but I do 13 not understand how can you use both assumptions in 14 one report? 15 MR WIECHEN: They are two assumptions 16 which do not pertain together. The first assumption 17 about the equity financing of Mr Grot was that 18 everything which was brought into this company 19 through one of Mr Grot's subsidiaries and by himself 20 was completely entirely equity financed. If you 21 would run this business reasonably, I would pretty 22 much assume that you would also take into account 23 debt financing because it is much cheaper than 24 equity financing. It is just logical, if my cost of 25 capital decrease, my company value increases. A</p>
<p>1 capital, which is at the very beginning a cash 2 outflow and then the cash impacted only the changes 3 in working capital for the rest of the projection 4 period. 5 MR KOPECKY: If I may take you to table 12 6 of your report, page 31 and 32(a) and (b), WACC 7 estimation, and there, Mr Wiechen, you used a 8 debt:equity ratio of comparable companies at 9 25.9 per cent. I am relying on total debt/market 10 equity selected, so that is a comparator. There the 11 ratio assumed is 25.9. I understand that some of 12 that has been superseded by the presentation that we 13 got ten and a half hours ago now, but I wonder, when 14 you wrote your First Report, you assumed fully 15 equity financed undertaking, so your observations 16 here on page 31 do not match your assumptions, do 17 they, because that would be zero? 18 MR WIECHEN: No, no, it is a different 19 story. The assumption I made in the text is that 20 the current business of Mr Grot was equity financed, 21 right? So what is going to be in the future I don't 22 know. A reasonable investor for sure would have not 23 pertained this sole equity financing because bank 24 financing is readily available even in Moldova. The 25 costs of debt financing are much lower than equity</p>	<p>1 reasonable investor would do this step. 2 I want to emphasise this, because what we 3 have done here is a business valuation and we are 4 omitting in many, many documents I have seen certain 5 principles at the very beginning and this is a 6 standard market value and fair market value is 7 indisputably the right standard of value. It is not 8 an investment value from the perspective of Mr Grot 9 MR KOPECKY: That is my point. You 10 assumed something else. Because Mr Grot did 11 something else, then you assumed already then, 12 because if he equity-financed, and your forward look 13 is debt to equity 25.9 financed, it doesn't go 14 together, does it? We have the facts from 2010 and 15 2011 as of the valuation date and there was no debt. 16 MR WIECHEN: Until then there was no debt, 17 yes, but to run the business in the future it would 18 be reasonable to change the capital structure 19 according to an optimum 20 MR KOPECKY: You were told that this would 21 happen? 22 MR WIECHEN: No. I think this is 23 reasonable to believe. 24 Just one comment I would like to make to 25 the Tribunal: I believe these discussion as regards</p>

<p>1 the cost of capital, equity, or WACC is somehow a 2 discussion which is a very subjective. I would like 3 to underscore that I am doing business valuations 4 for 16 years and there is no right or wrong. 5 Valuation is and still will be all the time somehow 6 a disputable excise. There is no right or wrong. 7 THE PRESIDENT: An art, not a science. 8 MR WIECHEN: Exactly, yes. 9 MR FORTIER: Not like the law! 10 MR KOPECKY: Indeed. That is where 11 I stop. Thank you Mr Wiechen 12 THE PRESIDENT: Thank you, Mr Kopecky. 13 I think we will give you a chance to come back and 14 then the Tribunal will have a few questions. 15 Mr Astuno? 16 Re-examination by Claimants 17 MR ASTUNO: Thank you. Mr Wiechen, hello 18 again. I would like to start by making a note for 19 the record actually. There were several conclusory 20 remarks made by Mr Kopecky during the previous 21 witness examination that indicated conclusions as to 22 -- 23 THE PRESIDENT: We have got that point. 24 You really don't need to waste your time on that. 25 We have really understood as a Tribunal what</p>	<p>1 By the CFO, Mr Tcaci, who was the previous 2 administrator. 3 MR ASTUNO: Were you in contact with their 4 accountants? 5 MR WIECHEN: Yes. 6 MR ASTUNO: This voluminous amount of 7 material was the source of your calculations for the 8 initial costs, including vehicles and equipment? 9 MR WIECHEN: Yes. 10 MR ASTUNO: Just two follow up points. 11 One, I want to emphasise again, or allow you to 12 emphasise again, why was it so difficult to do a 13 benchmarking analysis in the country of Moldova? 14 MR WIECHEN: Because it is a very specific 15 country. Agriculture is in general a very, very 16 specific business. 17 MR ASTUNO: Would that explain, then, why 18 a pure DCF calculation is again the most appropriate 19 methodology to apply here? 20 MR WIECHEN: Yes, I confirm that. 21 MR ASTUNO: Would that also again 22 highlight why Mr Peer's comparison to other 23 countries and companies operating in other countries 24 would be an unreliable comparison? 25 MR WIECHEN: I think this benchmarking</p>
<p>1 Mr Wiechen is saying. 2 MR ASTUNO: Thank you, Mr President. 3 There were discussions, Mr Wiechen, about 4 how you validated your calculations for the initial 5 costs, namely equipment and vehicles, and I now open 6 up appendix 4 to your report. Do these exhibits 7 clarify – 8 THE PRESIDENT: Which page? 9 MR ASTUNO: Page 34 of his January 2017 10 report. Can you describe briefly what these 11 exhibits mean, particularly exhibit 1 and 2, and 12 whether this was the source of the calculations you 13 made as to initial costs? 14 MR WIECHEN: I confirm that these have 15 been the sources for the calculation of the initial 16 investment costs. 17 MR ASTUNO: For the benefit of the parties 18 and the Tribunal, I want to scroll down very quickly 19 here. Can you explain or verify that there is quite 20 a large volume of documentation that you were 21 provided? 22 MR WIECHEN: Indeed. In print. 23 MR ASTUNO: And these were provided to you 24 by who, again? 25 MR WIECHEN: By the company, Laguardia.</p>	<p>1 analysis is useless because we are not talking about 2 comparable companies, otherwise I would have 3 included it in my report as well, because we also 4 had the data. 5 MR ASTUNO: Thank you. One final question 6 regarding Professor Knieper's point regarding your 7 valuation of the Polish accounting records. Your 8 evaluation of those records did not in any way 9 impact your calculation of the DCF inputs. Is that 10 right? 11 MR WIECHEN: No. 12 MR ASTUNO: It just was evidence of why, 13 again, a forward-looking damages analysis would be 14 appropriate here? 15 MR WIECHEN: Yes. 16 MR ASTUNO: Did Mr Peer also apply a 17 forward-looking lost profits analysis? 18 MR WIECHEN: Yes. 19 MR ASTUNO: Thank you. Nothing further. 20 Questions by the Arbitral Tribunal 21 PROFESSOR KNEIPER: I have a very short 22 question. Simply to know, you calculate the damages 23 going until August 2014. Were you told by your 24 client to use this year and not go into the question 25 of whether the leases were still valid? Or was that</p>

<p>1 not -- 636 11:54</p> <p>2 MR WIECHEN: Let's say a reasonability</p> <p>3 assessment as regards the projection period is also</p> <p>4 part of our work, but, again, it is a legal issue to</p> <p>5 decide upon the duration of the lease agreements</p> <p>6 We have seen the agreements, we knew it was a three</p> <p>7 plus one. You could speculate as regards the</p> <p>8 probability of even renewing the lease agreements</p> <p>9 after the four years, so what we have done was to</p> <p>10 stay conservative with the four years and not</p> <p>11 somehow inflating a potential business value The</p> <p>12 more you go into the future, the more uncertainty</p> <p>13 appears. One of the main purposes of our DCF</p> <p>14 analysis was to obtain reasonable certainty as</p> <p>15 regards the loss of business value</p> <p>16 PROFESSOR KNIEPER: That is clear, but you</p> <p>17 made your own judgment on the issue of whether these</p> <p>18 lease contracts were valid for four years or three</p> <p>19 years? It was your own evaluation? You were not</p> <p>20 asked to simply accept the four years, but you said</p> <p>21 we look into the lease agreements and then we see it</p> <p>22 was four years.</p> <p>23 MR WIECHEN: No, for me it was reasonable</p> <p>24 to believe that these leases would have been</p> <p>25 extended for one year, three plus one, but at the</p>	<p>1 MR GLEASON: I think both sides would 638 11:57</p> <p>2 appreciate some time to prepare for closings.</p> <p>3 THE PRESIDENT: It is in your hands. The</p> <p>4 longer you use with Mr Peer, the less you will have</p> <p>5 for preparation; it is as simple as that.</p> <p>6 We know from life that the longer a direct</p> <p>7 is, the longer the cross is going to be, so it is</p> <p>8 really in your hands. It may be in the end, having</p> <p>9 regard to the needs of our court reporters, there is</p> <p>10 no time for preparation of the closing. You are</p> <p>11 here, you stand up, you make your arguments and that</p> <p>12 is how it goes. I am not saying we are going to</p> <p>13 impose that on you, but it is in your hands.</p> <p>14 I have from Mr Fortier a suggestion.</p> <p>15 Would you prefer to start now and get the</p> <p>16 exam-in-chief done and you can then break for lunch</p> <p>17 and we will then proceed?</p> <p>18 MR KOPECKY: No. An hour lunch with their</p> <p>19 expert between direct and cross?</p> <p>20 THE PRESIDENT: That has been happening</p> <p>21 over the last couple of days.</p> <p>22 MR KOPECKY: With sequestration?</p> <p>23 THE PRESIDENT: Yes. We will now start</p> <p>24 with Mr Peer. And in the meantime, Mr Wiechen, you</p> <p>25 are to have no communication with anybody. You may</p>
<p>1 end of the day this is an assumption which basically 637 11:56</p> <p>2 we reconfirmed also with counsel, because these are</p> <p>3 legal as aspects, I cannot really comment on that,</p> <p>4 but to me as a professional, not being a lawyer,</p> <p>5 I am not a specialist, it sounded reasonable to</p> <p>6 assume four years because it is very, very</p> <p>7 conservative, taking into consideration potential</p> <p>8 renewal after four years.</p> <p>9 THE PRESIDENT: We now will move to</p> <p>10 Mr Peer, but probably the sensible thing is to have</p> <p>11 a short lunch break. How long do you expect on</p> <p>12 direct?</p> <p>13 MR KOPECKY: 30 minutes.</p> <p>14 THE PRESIDENT: We are going to get into</p> <p>15 time difficulties. With that you can expect that</p> <p>16 the cross will grow exponentially. We have read</p> <p>17 everything, we have had his report, and I would</p> <p>18 invite both parties to be really efficient in their</p> <p>19 questioning if we want to finish in a reasonable</p> <p>20 time. We have all the time in the world for tonight</p> <p>21 but we do have court reporters who have limits and I</p> <p>22 think we will stretch their patience, so I think the</p> <p>23 Tribunal simply invites you to be as efficient as</p> <p>24 you can, as you have been with Mr Wiechen, on the</p> <p>25 questioning.</p>	<p>1 walk around, but no communication. 639 12:00</p> <p>2 MICHAEL PEER</p> <p>3 THE PRESIDENT: Mr Peer, welcome.</p> <p>4 I welcome you. I am Philippe Sands, chair of this</p> <p>5 Tribunal. To my right is Mr Fortier and to my left</p> <p>6 Professor Knieper. Do you have an expert</p> <p>7 declaration in front of you?</p> <p>8 MR PEER: I do.</p> <p>9 THE PRESIDENT: Could you read it, please?</p> <p>10 (Declaration read)</p> <p>11 Mr Kopecky?</p> <p>12 Examination by Respondent</p> <p>13 MR KOPECKY: Mr Peer, please go ahead.</p> <p>14 MR PEER: Thank you. Let me start by</p> <p>15 apologising for having to issue an erratum. It is</p> <p>16 not my normal process. I have done it about three</p> <p>17 times in the last ten years of doing this work and</p> <p>18 I do apologise for all the difficulties and extra</p> <p>19 work that costs and causes.</p> <p>20 I have received an updated report from</p> <p>21 Deloitte late yesterday afternoon, and a third</p> <p>22 version at some time a little after midnight, so the</p> <p>23 sands are shifting under my feet as I tried to</p> <p>24 prepare this report and this presentation. I will</p> <p>25 take Professor Sands' comments on board and try and</p>

<p>1 be as quick and succinct as I can, but I am going to 2 try and adapt as much as I can to accommodate some 3 of the changes.</p> <p>4 Deloitte's has pointed out one error in my 5 report that was not dealt with by my errata, and 6 I will deal with that, and they have also noted one 7 error that came into my errata, and again I do 8 apologise for that. We have been under significant 9 pressure to try and produce some of these documents, 10 and it is an excuse, not a reason.</p> <p>11 THE PRESIDENT: If I had only made three 12 errors in ten years, I would be thrilled!</p> <p>13 MR PEER: Three errors that I was asked to 14 correct!</p> <p>15 Let me start with a high level view of 16 what this claim is.</p> <p>17 This claim is actually primarily interest 18 on what are relatively small actual alleged damages. 19 The reasons for that I will get into a little bit 20 later, but let me look at the two categories of 21 alleged damages here. The first is that there is an 22 alleged loss of an initial investment of some 23 currently 800,000 USD now that some of the 24 investments that were made post the alleged breach 25 have been dropped off the claim.</p>	<p>640 12:04</p> <p>1 outflow of cash at the beginning of the period in 2 the discounted cash flow, and that the residual 3 value of these assets that could have been recouped 4 at the end of the three or four year period, as 5 appropriate, should have been included as a cash 6 inflow at the end of the discounted cash flow. They 7 should not be claimed by themselves independently. 8 I will leave it to you in respect of the 9 DCF calculation itself as to whether it is based on 10 sufficiently reliable information for you to base a 11 damages award on it, but what I want to focus on is 12 the reliance of Deloitte on the agricultural 13 experts' input.</p> <p>14 We have had some discussion already today 15 about the lack of benchmarking by Deloitte and the 16 reasonability of the benchmarking that I performed. 17 The difficulty that I have here is that Deloitte 18 identified what it considered to be comparable 19 companies. It relied upon those companies in 20 determining various factors in its calculation and 21 yet it now tells me they are not sufficiently 22 comparable companies in order to compare the 23 profitability of those companies. I really don't 24 see how we can have it both ways. Either they are 25 comparable companies and we can consider them in all</p> <p>642 12:07</p>
<p>1 I have two concerns with this claim. The 2 first is that these assets appear still to be owned 3 or under the control of the Claimants. As we have 4 just heard, Deloitte was able to inspect these 5 assets and therefore presumably there was some 6 control to allow access to be able to inspect them 7 so I am aware that this is a disputed issue but in 8 terms of whether these assets are lost, I am not 9 clear on that at this point.</p> <p>10 The second issue I have here is that these 11 assets were required to generate the cashflows that 12 form the second part of the damages claim, and 13 therefore while these assets can be claimed for if 14 they have been lost, and what should be claimed for 15 is actually the loss, so if there was a sale and 16 there were some proceeds, then only the difference 17 between the original investment value and the 18 proceeds that were obtained should be claimed for 19 with some adjustment for time, value of money and 20 things like that, but these should not be claimed in 21 conjunction with the lost cashflows, because these 22 assets were required to generate those lost 23 cashflows.</p> <p>24 What should have happened is that this 25 investment should have been accounted for as an</p> <p>641 12:06</p>	<p>1 aspects of their operations to be comparable, or 2 they are not comparable and we can't use them and we 3 have to go and find some other approach and 4 methodology.</p> <p>5 So, when I looked at the results of the 6 calculations prepared by Deloitte, it appeared to me 7 that the profitability of Mr Grot's purported 8 operations seemed to be significantly overstated, 9 and I will come back to that point in a moment.</p> <p>10 (Slide 3)</p> <p>11 The other big concern I have about the 12 reliance on the agricultural experts' report is the 13 granularity of that report. What we appear and what 14 I understand from the testimony yesterday and this 15 morning is that what the agricultural experts have 16 actually produced is an estimate of the average 17 yield that Mr Grot's operations would obtain over a 18 5-year period. That is not saying what it would be 19 in year 1, and in fact we have heard this morning 20 that it would take two to three years to 21 reconstitute the soil, and therefore the yields in 22 years 1, 2 and 3 would be lower than later on in the 23 period.</p> <p>24 We have also heard that it is the 25 agricultural experts' expectation that, by the end</p> <p>643 12:09</p>

<p>1 of the 5-year period, Mr Grot's operations would 2 exceed the performance of the test centre by 3 20 per cent.</p> <p>4 What I believe we are seeing is that, in 5 fact, the yields in years 1 and 2 would be below 6 that average that is being used to calculate the 7 profitability of Mr Grot's operations, and years 4 8 and 5 would be higher than that average, ie, over 9 the 5-year period they would average out to the 10 figures that have been set out in the agricultural 11 experts' report.</p> <p>12 If that is the case, what that means is 13 that we don't know what the agricultural experts 14 believe the yields would be in the first few years 15 of the operations, or in fact any of the years of 16 the operation. We only know what they think it will 17 average out to over the five years.</p> <p>18 From the DCF perspective, this is a very 19 difficult situation, because if we don't get the 20 yields in the first few years, we need additional 21 cash flow because we still have to pay for all the 22 extra fertilizers and pesticides that are needing to 23 be put onto the fields to reconstitute or 24 rehabilitate the land.</p> <p>25 They were not generating the yields to</p>	<p>644 12:11</p>	<p>1 that the Deloitte report uses different discounting 2 factors when the alleged date of breach is different 3 between February and March 2011, so a difference of 4 about one month between the two. That just 5 highlights for you the sensitivity of the 6 discounting and the DCF to monthly changes in the 7 cash flow. What really should be happening here 8 because of the way in which this business operates, 9 is you should be monthly predicting the cash 10 outflows and cash inflows of this business</p> <p>11 As I understand this business, there is an 12 element of cash coming in some time midsummer, 13 June/July time from the winter wheat, I believe that 14 is about 10 per cent of the overall cashflows, and 15 then the rest only comes in according to the 16 assumption made by Deloitte when the rest of the 17 harvest is sold when it is harvested, which would be 18 August or September, possibly October, depending on 19 the crops. So this isn't a business where you have 20 a regular cash flow. I will come back to that in a 21 moment as well.</p> <p>22 (Slide 4)</p> <p>23 One point I want to address here is that 24 there has been a number of suggestions that I have 25 also performed a discounted cash flow calculation.</p>	<p>646 12:14</p>
<p>1 recover that investment in the initial period, in 2 the first year or two, so this has an increase in 3 the working capital requirements, this has an impact 4 on the DCF calculation, and therefore at the moment 5 we need, I believe, based on what I have heard so 6 far, significantly greater granularity in terms of 7 the projections prepared by the agricultural 8 experts.</p> <p>9 I think this is backed up when we look at 10 what Mr Grot said, that Bio-Alianta was able to 11 harvest from the 140 ha that they planted with 12 winter wheat. He says they were able to get 13 200 tons of winter wheat from that 140 ha. That is 14 around 1.4 tons per ha versus the over 4 tons that 15 the agricultural experts estimate should have been 16 achievable.</p> <p>17 The other issue here of course is that 18 these yields are expected to be averaging over a 19 5-year period. Now, the lease contracts were for 20 three plus one. The Deloitte calculations are over 21 a 4-year period, so it is not even certain that the 22 investment into the pesticides and fertilizers would 23 actually be recovered in the period that Mr Grot has 24 use of this land.</p> <p>25 The other point I want to make here is</p>	<p>645 12:12</p>	<p>1 I have made it very clear in my report that if 2 I don't specifically comment upon an element of the 3 Deloitte report it does not mean that I agree with 4 it. The fact is I have amended the Deloitte 5 methodology and calculation: I have not prepared my 6 own.</p> <p>7 The other thing we have already discussed 8 is that Deloitte does not do any validation of its 9 model. We have talked about that already.</p> <p>10 There is a suggestion that the operations 11 in the south of Moldova that Mr Grot was operating 12 had a profitability of about 45 per cent gross 13 margin. I believe those are based on the 2010 14 financial statements that are presented in my 15 report; certainly at least that shows a gross margin 16 of about 45 per cent. I would point out that that 17 is on the combined business, but there is an element 18 of a consulting or services business in there, so 19 there are two divisions.</p> <p>20 If you look solely at the growing 21 business, it has a gross margin of 23 per cent only, 22 and if you then provide for the indirect costs, that 23 drops down to slightly over 1 per cent, so I don't 24 believe that there is a historical 45 per cent gross 25 margin on this business.</p>	<p>647 12:15</p>

<p>1 (Slide 5) 648 12:17</p> <p>2 Coming back to the cashflows, as I said</p> <p>3 there is no regular pattern here. What I believe</p> <p>4 would have happened is there would have been cash</p> <p>5 going out throughout the year and that cash would</p> <p>6 only have been recouped on sale of the product, or</p> <p>7 the harvest. While I presented in my report a</p> <p>8 standard calculation of the working capital as noted</p> <p>9 by Deloitte, I did not use that calculation because</p> <p>10 I didn't think it was appropriate. I didn't think</p> <p>11 that that actually modelled the cashflows that this</p> <p>12 business was going to incur.</p> <p>13 This business was going to have to put out</p> <p>14 money throughout the year, and it was only going to</p> <p>15 recoup that at year end, and that is why I also</p> <p>16 don't believe it is appropriate to use midyear</p> <p>17 discounting, as Deloitte has done, because there was</p> <p>18 no possibility that this company would be able to</p> <p>19 pay out cash or dividends to the shareholders except</p> <p>20 at year end. So what we are trying to value here is</p> <p>21 not a company, as referred to many times by Lars in</p> <p>22 his testimony, but we are actually trying to</p> <p>23 quantify damages, and there is a significant</p> <p>24 difference there. This is the amount of money that</p> <p>25 Mr Grot and his associated entities would have</p>	<p>1 expectations as at the date of the alleged breach, 650 12:20</p> <p>2 but prepared by people who were not holding those</p> <p>3 expectations at the time. This is not a business</p> <p>4 plan that has been prepared by Mr Grot; this is a</p> <p>5 business plan effectively prepared by the</p> <p>6 agricultural experts who were not involved in the</p> <p>7 business at that point in time.</p> <p>8 (Slide 6)</p> <p>9 Moving on, I am not sure, now, who has</p> <p>10 prepared the projections of the prices and of the</p> <p>11 costs that this business would incur. I know that</p> <p>12 the agricultural experts provide the values that are</p> <p>13 in USD, but I also note that the Deloitte</p> <p>14 presentation, certainly the one that I received</p> <p>15 yesterday, very clearly said that they had received</p> <p>16 the values from the agricultural experts in Moldovan</p> <p>17 lei, and that Deloitte had then applied an inflation</p> <p>18 rate to it and then applied a foreign exchange rate</p> <p>19 to those inflated values.</p> <p>20 What they applied in the way of the</p> <p>21 foreign exchange rate is an historical rate as at</p> <p>22 the date of the alleged breach. I believe that is a</p> <p>23 fundamental methodology error. The foreign exchange</p> <p>24 rates that ought to have been applied to the prices</p> <p>25 in years after 2011 should have been the foreign</p>
<p>1 received from this operation, and therefore that is 649 12:19</p> <p>2 what we need to try and discount and actually model.</p> <p>3 I have taken on board some of Deloitte's</p> <p>4 comments about my working capital calculation.</p> <p>5 I had previously had about 1.9 million as the</p> <p>6 working capital requirement. I have revised my</p> <p>7 calculations. I believe that would now be closer to</p> <p>8 1.4 million.</p> <p>9 But I go back to the point that I have</p> <p>10 been accused of not fully understanding the ex ante</p> <p>11 approach. I can assure you that I fully grasp the</p> <p>12 ex ante approach. My difficulty is that there is no</p> <p>13 contemporaneous business plan prepared by Mr Grot or</p> <p>14 management of Laguardia on the record.</p> <p>15 What we have is a business projection</p> <p>16 prepared using information from the date of the</p> <p>17 alleged breach, prepared by the agricultural</p> <p>18 experts, and I find it very difficult to both assume</p> <p>19 that Mr Grot would commit to investing probably in</p> <p>20 excess of 2 million USD into a farming operation in</p> <p>21 Moldova with no business plan, or that he would get</p> <p>22 financing for that from a financial institution</p> <p>23 without presenting a business plan, but, secondly,</p> <p>24 that the effective business plan we now have has</p> <p>25 been prepared in 2017, although trying to use</p>	<p>1 exchange rate in those years. Unfortunately those 651 12:22</p> <p>2 are not available in an ex ante approach and</p> <p>3 therefore the entire approach cannot be used.</p> <p>4 What I believe should have been done is</p> <p>5 that the calculations should have been prepared in</p> <p>6 Moldovan lei; that those results should have been</p> <p>7 discounted using an appropriate discount rate to the</p> <p>8 date of the alleged breach, at which point they</p> <p>9 could be converted using a known exchange rate to</p> <p>10 USD, and pre-award interest could be applied to that</p> <p>11 USD figure, again using an appropriate interest rate</p> <p>12 that would be linked to the USD that it denominated</p> <p>13 in.</p> <p>14 I want to make it clear here that these</p> <p>15 prices are inflation indexed prices. They are not</p> <p>16 based on some market expectation as to future</p> <p>17 prices, so they are not derived from future trading</p> <p>18 commodities and things like that in the various</p> <p>19 products.</p> <p>20 Obviously I was also provided the</p> <p>21 additional estimates by the agricultural experts as</p> <p>22 to what the costs would have been had the yields</p> <p>23 that I used been the appropriate yields. I pointed</p> <p>24 out in my original report that I had no basis on</p> <p>25 which to adjust the costs. It was a black box to</p>

<p>1 me. I wasn't able to go into that and modify 2 things. What I have now been provided is what the 3 agricultural experts believe the costs would have 4 been to generate the yields that I selected and used 5 in my calculations.</p> <p>6 I note that the original calculations 7 where there was going to be pesticides and 8 fertilizers used generated an EBIT margin of some 9 35 per cent. The figures that I have now been 10 provided generate an EBIT margin closer to 11 50 per cent. I do not know and I cannot understand 12 how that can be the case, and therefore I have not 13 proceeded any further with those calculations 14 because I don't understand how they fit together. 15 They don't seem reasonable to me so I have not 16 completed any further calculations using those 17 updated figures.</p> <p>18 There has been a lot of discussion here 19 about Capex versus maintenance. I think it is fair 20 to say that I don't agree with the approach that 21 Deloitte has set out. I believe that you do need to 22 provide for Capex in this calculation, and I don't 23 believe that merely providing for maintenance of the 24 assets is sufficient. There should be a provision 25 for Capex and capital replacement in this process</p>	<p>652 12:24</p>	<p>1 Given that this is the primary basis of the higher 2 yields, I struggle with that.</p> <p>3 Deloitte did point out an error in my 4 erratum in respect of my Capex. They are quite 5 right, there was a mathematical error there. The 6 outcome of that is insignificant. It simply 7 increases the negativity of the cashflows so it 8 doesn't have an impact.</p> <p>9 One last point is obviously the 10 depreciation that Deloitte uses is not disclosed 11 separately in the agricultural experts' report. As 12 I say, it is a bit of a black box. There is a 13 mechanicalised cost that includes wear and tear, 14 which I understand to be depreciation, but it is not 15 set out anywhere separately. Again, I struggle, as 16 I think the Tribunal has indicated through one of 17 its questions, to understand what is in those 18 mechanical costs and how to consider those.</p> <p>19 (Slide 8)</p> <p>20 If we turn to the pre-award interest, we 21 have discussed already the issue of how the discount 22 rate was arrived at. I have no particular issues 23 with the methodology. What I do have are some 24 concerns about individual and specific issues in 25 respect of this case.</p>	<p>654 12:27</p>
<p>1 (Slide 7)</p> <p>2 The other concern I have here is that, as 3 I understand the secret source of Mr Grot here, and 4 why he is going to be more successful than any of 5 the other farmers, is that he is going to deploy 6 technology. I understand that technology comes from 7 two sources: one is equipment and the other is 8 deployment of fertilizers and pesticides, or plant 9 protection. I used the term "pesticides". Like 10 most of the people in the room, I am not a farmer. 11 I understand there are some other plant protection 12 devices beyond pesticides, but I am not sure exactly 13 what those are.</p> <p>14 When I look at what the capital 15 expenditures would be for this business, given that 16 it was supposed to be a technology-based business, 17 I am somewhat surprised to see the very low figures 18 when I compare them again to -- and subject to the 19 criticism of Deloitte -- their chosen comparable 20 companies. I have looked at their comparable 21 companies, I have seen how much Capex they are 22 expending, I have looked at what Deloitte believes 23 should be the Capex, or rather the maintenance as 24 I understand it now, and I see that this is 25 exceptionally low compared to the other companies.</p>	<p>653 12:26</p>	<p>1 The first is obviously the assumption that 2 there was to be equity financing only. We have now 3 heard that there was an undisclosed assumption that 4 that equity financing would be foregone and that 5 there would be a standard industry norm of 6 debt:equity ratios.</p> <p>7 That causes a problem because there is no 8 provision within Deloitte's discounted cash flow 9 calculation to repay those debilities. If they were 10 going to say there were debts they need to provide 11 for those. Alternatively, we stick with the 12 assumption that there is equity only and that 13 obviously maximises the cashflows to Mr Grot and his 14 related companies, but with that comes a consequence 15 and that consequence is that we do not here evaluate 16 business, we value cashflows that are alleged to be 17 the source of damages, and therefore we need to take 18 into account Mr Grot's decision to wholly finance 19 his business through equity.</p> <p>20 Again, Deloitte has correctly pointed out 21 that the change in debt to equity to full equity 22 financing would change the beta within the WACC. 23 That has a less than 1 per cent impact on the 24 ultimate discount rate that I used, but yes, that is 25 correct, it would need to be taken into account.</p>	<p>655 12:29</p>

<p>1 I note that (slide 8) Deloitte has said 2 that it does not feel there is a need to assume any 3 additional risk in relation to the cashflows that it 4 has projected. I note that deep in its appendices 5 in its original report Deloitte did state that it 6 considered whether an additional risk factor needed 7 to be taken into account, and because it considered 8 the agricultural experts' projections to be 9 conservative, it felt there was no need for that 10 additional risk. 11 This is where we get into the application 12 of the pre-award interest. Deloitte equates the 13 WACC to being the appropriate interest rate. 14 I believe that is an inappropriate approach in that 15 it tries to say that the cost of financing this 16 business is the same as the cost of investing in the 17 business, and obviously debt financing is 18 significantly less costly than equity, and we have 19 heard that already. 20 My perspective is that you, as a Tribunal, 21 are going to set an award at a point in time. There 22 is no risk to the Claimants as to the value of that 23 award at that point in time. Therefore, they have 24 not borne the investment risk to that point, so they 25 have not invested some money ten years ago and had</p>	<p>1 underreporting of yields by the farmers in Moldova. 2 There has been a lot of discussion about a 3 supposed tax that I have imposed upon loss-making 4 operations that I have predicted or projected. 5 Nothing could be further from the truth. 6 What I have done is I have calculated a 7 tax shield and I have added it back to the cashflows 8 from the loss-making operation. I have done so on 9 the assumption that the other business divisions 10 within Laguardia would be profitable and would be 11 able to benefit from the losses generated by the 12 agricultural business or the produce growing 13 business. 14 The last point is I understand that the 15 Claimants have asked for the award to be paid 16 directly to Mr Grot or the Laguardia US-based 17 entity, so both of these are US-based entities. 18 I don't believe that it would be appropriate, based 19 on the information and calculation before you right 20 now, to do so. The reason is that the damages and 21 the cashflows have been calculated at the Moldovan 22 level. If you were then to pay that sum of money 23 directly to a US entity you would circumvent any of 24 the tax and other legal legislation that would 25 govern the payment between the Moldovan entity and</p>
<p>1 the chance of it disappearing entirely. They are 2 going to be given a sum of money as at the date of 3 your award, so they have not borne any risk in 4 between those two dates, the date of the alleged 5 breach and the award date, and therefore the only 6 risk that they need to be compensated for is the 7 risk-free rate of return or the time value of money. 8 I believe that since this is calculated in 9 USD the appropriate risk-free rate is associated 10 with the USD which is the treasury bills, and my 11 preference is for a one-year treasury bill because 12 if you go beyond that you get into additional 13 interest for illiquidity, which would not be the 14 case here. 15 (Slide 9) 16 Just to wrap up, there is some recently 17 submitted evidence that suggests that there was 18 underreporting of revenues in Moldova, or yields 19 rather. I shouldn't say "revenue". The source 20 itself makes it very clear that this is on the basis 21 of a survey of some small farms, not any of the 22 large farms, and we have heard this morning that 23 small patches, small farms, have higher yields than 24 large farms, so I don't believe that this report in 25 any way substantiates a rumour that there is</p>	<p>1 the US legal entity. 2 That ends my presentation. 3 THE PRESIDENT: Mr Peer, thank you very 4 much for your efficiency. I think we will now break 5 for 45 minutes for lunch. I am just going to read 6 into the record document RH-3, presentation of the 7 expert, Michael Peer, just given. RH-2 is the 8 errata to the expert report, dated 13 November 2017 9 also by Mr Peer. It is the errata to the report of 10 13 November, but this document is dated 10 December. 11 The errata to the original report is of 13 November. 12 Mr Peer, you too are sequestered for the 13 luncheon. You can talk to Mr Wiechen, if you want, 14 but I hope you will not talk to anyone else. We 15 will see you back here at quarter past two to carry 16 on for cross-examination by Claimants, and there may 17 be some re-direct, and then at that point we would 18 like the two of you to sit together and we may have 19 questions for you both. 20 Thank you. 21 (Luncheon adjournment from 1.37 pm to 2.16 pm) 22 THE PRESIDENT: Mr Astuno, over to you. 23 Cross-examination by Claimant 24 MR ASTUNO: Mr Peer, we would like to ask 25 you a few questions referring to your presentation,</p>

<p>1 first. I note that you began your presentation 2 earlier discussing this notion of equipment that 3 still purportedly is owned by Claimants, is that 4 correct? 5 MR PEER: I recall saying that the 6 equipment is in dispute as to its ownership but that 7 the claim for it could only be for the actual loss 8 of that equipment. 9 MR ASTUNO: So you agree it is a question 10 that does not have a clear answer. Do you agree? 11 MR PEER: I have no opinion as to the 12 ownership of it. 13 MR ASTUNO: But nevertheless you state 14 here that approximately 83 per cent is still owned? 15 The second bullet point of your presentation. 16 THE PRESIDENT: What page of the 17 presentation? 18 MR ASTUNO: The first page. 19 MR PEER: Slide 2 of my presentation. 20 Those are the calculations that I have seen in the 21 financial statements. Now I appreciate that there 22 has been some movement and some transfers. I don't 23 know who owns the equipment. 24 MR ASTUNO: Movement and transfers. Could 25 movement and transfers likely impact that</p>	<p>660 1 to be incorrect, that would be yet another reason 2 why this approximation is unreliable. Is that true? 3 MR PEER: If there has been an ownership 4 transfer, I am not aware of it. 5 MR ASTUNO: I understand that point 6 generally, but my question was specifically as it 7 pertains to that transfer to Laguardia Agrobusiness, 8 if we are operate under the assumption or we learned 9 that Mr Grot was not the one hundred percent owner 10 of the Laguardia Agrobusiness, that would be another 11 reason why this number is unreliable. Would you 12 agree with that assessment? 13 MR PEER: Again, the issue here is what is 14 the damage to Mr Grot? If he has sold that company 15 then he will have been compensated for these assets. 16 MR ASTUNO: I am speaking specifically to 17 the transfer to the Laguardia Agrobusiness. Just to 18 confirm, you assumed when you made this 19 approximation that Mr Grot the one hundred per cent 20 owner of Laguardia Agrobusiness? 21 MR PEER: That was my premise of the 22 calculation. 23 MR ASTUNO: That is fine. There was 24 mention of multiple business divisions in your 25 report and one of the primary reasons for that</p> <p>662 13:19</p>
<p>1 calculation of 887,000? Is that possible, in other 2 words? Is it possible that movements and transfers 3 would mean that this number is not a reliable 4 number? 5 MR PEER: It may well be that that is not 6 a reliable number. I revert to my point that the 7 issue here is more that the claim can't be for those 8 assets until they have been lost 9 MR ASTUNO: Unless, of course, they are no 10 longer in the control of my client? 11 MR PEER: Again, if they have been lost 12 then they can be claimed for, except to the extent 13 that they cannot be claimed in conjunction with the 14 DCF calculation. 15 MR ASTUNO: This approximation, this 16 calculation, too, was largely dependent on a 17 corporation document that Mr Kopecky put up with the 18 transfer to regarding Laguardia Agrobusiness. Do 19 you recall that document that was shown? 20 MR PEER: I do. 21 MR ASTUNO: When you made this 22 approximation, did you assume that Mr Grot was the 23 sole owner of Laguardia Agrobusiness? 24 MR PEER: I did. 25 MR ASTUNO: If that assumption was proven</p> <p>661 13:17</p>	<p>1 assessment of yours pertained to a 2010 servicing 2 agreement. Do you recall reference to this 3 agreement? 4 MR PEER: I do not. The premise of that 5 is actually the detail in the financial statements 6 that were provided to me as an attachment to the 7 Deloitte report, where it actually shows 8 segmentation of the revenue earned by the business. 9 MR ASTUNO: Those financial statements 10 that you refer to – that is table 2 of your report, 11 is that correct? 12 MR PEER: That is correct. 13 MR ASTUNO: Those financial statements you 14 are referring to years 2011, 2012, 2013 and 2014 15 Is that correct? 16 MR PEER: 2010 as well. 17 MR ASTUNO: We start at 2010, but when you 18 are looking at revenue generated from the sale of 19 merchandise, that begins in 2011. Is that right? 20 MR PEER: Merchandise is 2011. Sales is 21 2010. 22 MR ASTUNO: Let me go back to that 23 merchandise point. Do you agree that any revenue 24 that was attained from the sale of merchandise 25 occurred after the valuation date?</p> <p>663 13:20</p>

<p>1 MR PEER: It occurred after the alleged 664 2 breach date assumed by Deloitte, yes. 13:21 3 MR ASTUNO: Also the valuation date of 4 your revised DCF calculation. Is that correct? 5 MR PEER: Again, all I have is the annual 6 financials so -- 7 MR ASTUNO: Mr Peer, you prepared a 8 revised -- 9 MR PEER: Let me finish my answer. The 10 assumed valuation date, or the alleged breach date, 11 is the beginning of 2011, February or March. I have 12 financials that show results for all of 2011. 13 I will take your point, if you wish to put 14 it to me, that that business did not start operating 15 until after the alleged breach in 2011, but I have 16 no knowledge of that. 17 MR ASTUNO: So you would agree that all of 18 that information from after the date of taking, as 19 you phrased it, would be information on an ex post 20 basis? Information that we now know to be true at 21 this point in time? 22 MR PEER: Again, I don't use the term of 23 the taking. You are putting words in my mouth 24 there and I will revert that I don't know whether 25 that business started before or after.</p>	<p>1 MR ASTUNO: That correction, to be clear, 666 2 would be one of terminology. It would not be one of 13:23 3 actual revenue number. 4 MR PEER: Well, the financial statements 5 very clearly have a segmentation, so if that 6 segmentation is incorrect, the financial statements 7 themselves would have to be corrected. 8 MR ASTUNO: We are only talking about the 9 correction of the term "servicing", we are not 10 talking about the correction of the actual number. 11 Is that right? 12 MR PEER: Again, no, because the figure is 13 beside the term, so if the term is incorrect, then 14 the figure would be -- it is a chicken and egg -- 15 you put the number beside what you think it is in 16 terms of revenue. If you are saying that has now 17 been incorrectly classified, then the financial 18 statements ought to be updated 19 MR ASTUNO: Moving on, there was reference 20 in your presentation to the alleged 200 tons of 21 winter wheat that were sold in 2010. Do you recall 22 that? 23 MR PEER: I do. It is on slide 3 of my 24 presentation. 25 MR ASTUNO: You use that as a point of</p>
<p>1 MR ASTUNO: But, as of 2010, there was no 665 2 revenue input for the sale of merchandise. Is that 13:22 3 correct? 4 MR PEER: There was none declared in the 5 financial statements, correct. 6 MR ASTUNO: Going back to the idea of 7 Laguardia acting as a servicer, you have assumed 8 when you look at the revenue statement from 2010, 9 haven't you assumed that the servicing arrangements 10 meant that Laguardia was not attaining revenue from 11 the sale of agricultural products? 12 MR PEER: Well, it is certainly separates 13 in the financial statements from the activity that 14 it declares for the sale of agricultural production 15 MR ASTUNO: If you were to learn or if you 16 were to be told that there might have been some 17 confusion as to what that term exactly meant, and 18 again that term would be "servicing", if you were to 19 be told that that term "servicing" did actually 20 equal the sale of agricultural products, would that 21 change your assessment? 22 MR PEER: Well, if the financial 23 statements that have been produced are incorrect, 24 then if there are corrections to them, I will 25 reflect that in my calculations, certainly.</p>	<p>1 comparative data to Laguardia's projected 667 2 profitability. Is that right? 13:24 3 MR PEER: Not particularly. What I have 4 put it in here for is that obviously we have heard 5 and, as I understand it, there is a growth in the 6 yield over a 5-year period, and the premise is that 7 the starting point would be lower than the average, 8 and that seems to be supported by the fact that the 9 winter wheat was only 1.4, which is significantly 10 lower than the 5-year average that is predicted by 11 the agricultural experts. 12 MR ASTUNO: You have assumed, then, that 13 what was produced was only 200 tons. To make that 14 calculation and that assessment, you have assumed 15 that only 200 tons of winter wheat were produced on 16 140 ha that year? 17 MR PEER: That is the estimate provided by 18 Mr Grot. I have no basis on which to consider that 19 to be inaccurate. 20 MR ASTUNO: That was an estimate that you 21 found in Mr Grot's witness statement. Is that 22 correct? 23 MR PEER: That is correct. 24 MR ASTUNO: When would the sale of that 25 winter wheat have occurred?</p>

<p>1 MR PEER: My understanding is that it 2 would have occurred some time in the middle of the 3 summer. June. 4 MR ASTUNO: Of what year? 5 MR PEER: If it had sown in 2010, it would 6 have been 2011. 7 MR ASTUNO: You are aware that in 2011 8 there was a serious dispute on these lands. You are 9 aware of that fact? 10 MR PEER: I am aware of that. 11 MR ASTUNO: Would you also agree that that 12 dispute, and the nature of the affairs that were 13 occurring on that land at that time between 14 Bio-Alianta, the government and Mr Grot's company, 15 might have impaired the productivity of those lands? 16 MR PEER: I have no ability to comment on 17 that. 18 MR ASTUNO: Do you generally agree with 19 the statement that an asset that is in dispute might 20 very well not be as productive or profitable as an 21 asset that is not in dispute? 22 MR PEER: Again, I can't generalise in 23 that manner. 24 MR ASTUNO: Do you recognise the fact that 25 the same source of data for 200 tons of winter wheat</p>	<p>1 MR ASTUNO: But in all fairness you don't 2 exactly know what Deloitte requested of my client, 3 just like you don't know what Respondent requested 4 from Claimant regarding this business plan. Is that 5 right? 6 MR PEER: No, I do not. 7 MR ASTUNO: So you would concede that 8 there likely is a business plan, but it is just not 9 on the record? 10 THE PRESIDENT: I think he has been pretty 11 clear in what he says. 12 MR ASTUNO: I now want to move on to what 13 in Claimants' mind is the most fundamental issue 14 that we have with your report, and that is your 15 source of information as to the cost structure of 16 Laguardia, and your source of information as to the 17 projected yields of Laguardia. 18 You earlier mentioned that you felt as 19 though you were in a black box. Is that not the 20 case that you were in a black box as to your ability 21 to project Laguardia's cost structure? Is that 22 right? 23 MR PEER: That is correct. I did not know 24 how the agricultural experts had arrived at their 25 cost structure, so I could not modify it based on</p>
<p>1 also contains information that would indicate that 2 the productivity of those lands could be seriously 3 impaired? 4 MR PEER: Again, I don't know whether the 5 productivity was impaired or not. I know that that 6 is what was stated to be harvested. 7 MR ASTUNO: You did read in that statement 8 that there was a serious dispute at the time on 9 these lands. Is that right? 10 MR PEER: I understand there was dispute 11 regarding the lands, yes. 12 MR ASTUNO: There were repeated assertions 13 by you that Laguardia lacked a business plan for its 14 operations as of 2010. You recall making these 15 assertions. Is that right? 16 MR PEER: My assertion is that there is no 17 business plan on the record. 18 MR ASTUNO: On the record? Your assertion 19 is that there is no business plan on the record? 20 MR PEER: The starting point of the 21 damages calculation that Deloitte prepared ought to 22 have been a contemporaneous business plan. Because 23 one was not provided to Deloitte, I assume there is 24 none available. I also am not aware of any business 25 plan having been submitted and been made available.</p>	<p>1 the modifications I made to the projected yields 2 MR ASTUNO: But at the same time you were 3 in a black box as to projecting yields. Is that 4 right? 5 MR PEER: The yield projections were 6 fairly straightforward and transparent in terms of 7 how the agricultural experts had prepared it. They 8 had said that they had considered the production 9 capacity at the test centre. It was only during the 10 testimony yesterday that I understood more about 11 what that projection actually was, ie, it was a 12 5-year average, not an expectation for each year. 13 But yes, I believe that I had more transparency as 14 to what they had actually projected in terms of the 15 yields. 16 MR ASTUNO: Do you feel now on the basis 17 of what you learned throughout these proceedings so 18 far that you have more transparency on the direct 19 correlation that costs and yields have to one 20 another in the agricultural industry? 21 MR PEER: I don't. I have a revised set 22 of figures, but I do not know how those figures were 23 derived. 24 MR ASTUNO: Do you know generally how 25 revenue figures correlate to costs in the</p>

<p>1 agricultural industry? 672 13:31</p> <p>2 MR PEER: Again, I am somewhat bemused at</p> <p>3 the moment because the new figures that we received</p> <p>4 yesterday --</p> <p>5 MR ASTUNO: I am not asking about that</p> <p>6 MR PEER: The new figures that we received</p> <p>7 yesterday from the agricultural experts suggest a</p> <p>8 greater profit margin if you do not apply pesticides</p> <p>9 and fertilizers. I am therefore confused as to how</p> <p>10 this relationship works.</p> <p>11 MR ASTUNO: You were confused about how</p> <p>12 this relationship works, but you still nevertheless</p> <p>13 revised yield projections in this case. Is that</p> <p>14 correct?</p> <p>15 MR PEER: I did revise the yield</p> <p>16 projections, yes.</p> <p>17 MR ASTUNO: You are by no means, neither</p> <p>18 am I, of course, but you are not an expert in</p> <p>19 agriculture. Is that right?</p> <p>20 MR PEER: I am not an expert in</p> <p>21 agriculture.</p> <p>22 MR ASTUNO: Despite none of us in the room</p> <p>23 perhaps right now being experts in agriculture --</p> <p>24 MR FORTIER: Mr Grot.</p> <p>25 MR ASTUNO: How can I forget? My</p>	<p>1 MR PEER: I do not value Laguardia. 674 13:33</p> <p>2 MR ASTUNO: But you created a revised</p> <p>3 discounted cash flow valuation for Laguardia.</p> <p>4 MR PEER: No. I prepared a revised</p> <p>5 discounted cash flow to firm which is an</p> <p>6 approximation of the damages to Mr Grot. I have not</p> <p>7 valued Laguardia.</p> <p>8 MR ASTUNO: You revised the projected</p> <p>9 revenues of Laguardia. Would you agree to that</p> <p>10 statement?</p> <p>11 MR PEER: I did revise the projected</p> <p>12 revenues, yes.</p> <p>13 MR ASTUNO: Despite not being an expert in</p> <p>14 the industry and just agreeing that there could be a</p> <p>15 correlation between costs and revenue?</p> <p>16 MR PEER: Without being an agricultural</p> <p>17 expert, yes.</p> <p>18 MR ASTUNO: If you don't mind me asking,</p> <p>19 did you ask your client if you could have the</p> <p>20 opportunity to collaborate with a local agricultural</p> <p>21 expert?</p> <p>22 MR PEER: I produced my report in under</p> <p>23 seven days. I did not have time to ask many</p> <p>24 questions.</p> <p>25 MR ASTUNO: I am impressed you were able</p>
<p>1 forgiveness, Mr Grot! Would you agree that what a 673 13:32</p> <p>2 farmer decides to spend in terms of his cost inputs</p> <p>3 directly affects what he can expect to receive in</p> <p>4 yields?</p> <p>5 MR PEER: I would expect that there is</p> <p>6 going to be some sort of correlation. That is the</p> <p>7 economics of it.</p> <p>8 MR ASTUNO: But there is no correlation</p> <p>9 done in your revision?</p> <p>10 MR PEER: As I said, I was unable to make</p> <p>11 that correlation and therefore unable to adjust the</p> <p>12 costs, and I am very straightforward about that.</p> <p>13 MR ASTUNO: Adjust the yields?</p> <p>14 MR PEER: I wasn't able to adjust the</p> <p>15 costs and I have been very forthright about that in</p> <p>16 my report.</p> <p>17 MR ASTUNO: Would you agree that an</p> <p>18 agricultural company that spends money on</p> <p>19 fertilizers, soil protectants and modern equipment</p> <p>20 could expect to achieve greater than average yields</p> <p>21 than a company that does not?</p> <p>22 MR PEER: I don't know.</p> <p>23 MR ASTUNO: But without knowing, and I can</p> <p>24 understand that you don't know because you are not</p> <p>25 an expert, you still nevertheless valued Laguardia</p>	<p>1 to produce that in under seven days. Do you think 675 13:34</p> <p>2 the credibility and reliability of your report would</p> <p>3 have been enhanced had you had the opportunity to</p> <p>4 collaborate with a local expert?</p> <p>5 MR PEER: I think that it would have been</p> <p>6 useful, yes, to have some discussions with a local</p> <p>7 agricultural expert.</p> <p>8 MR ASTUNO: In other words, it would have</p> <p>9 been more reliable?</p> <p>10 MR PEER: I don't know whether it would</p> <p>11 have been more reliable. It depends on what I did</p> <p>12 with the information I was given by them, but</p> <p>13 I think it would have been useful to corroborate</p> <p>14 with them.</p> <p>15 MR ASTUNO: It would have been more</p> <p>16 useful? You can agree to that.</p> <p>17 MR PEER: It would have been more useful</p> <p>18 for me, yes.</p> <p>19 MR ASTUNO: I want to discuss the</p> <p>20 reference to the guideline companies that Deloitte</p> <p>21 and Mr Wiechen prepared. That reference to the</p> <p>22 guideline companies did not impact its calculation</p> <p>23 of projected revenue and costs. Is that right?</p> <p>24 MR PEER: Are you meaning the comparable</p> <p>25 companies?</p>

<p>1 MR ASTUNO: Right, exactly. I can bring 2 them up. 676 13:35</p> <p>3 MR PEER: It is all right. It is just 4 terminology. As long as we are talking about the 5 same thing here.</p> <p>6 MR ASTUNO: Obviously the Tribunal has 7 seen this already, but the analysis that Deloitte 8 did of these comparable companies, isn't it true 9 that that had no impact on its projection of 10 Laguardia's revenue and costs?</p> <p>11 MR PEER: That is one of my criticisms, 12 that if they considered these to be comparable 13 companies, then they ought to have considered 14 whether the profitability of these companies was 15 similar to what they were projecting.</p> <p>16 MR ASTUNO: There is a difference, of 17 course, to being useful for the cost of capital 18 input, that calculation, versus a profitability 19 assessment. Would you agree?</p> <p>20 MR PEER: I don't. Either these companies 21 are comparable and you can then use them to estimate 22 what you think the numbers ought to be for your 23 subject company, or these companies are not 24 comparable, and therefore they are not usable. 25 I don't believe that you can pick and choose and say</p>	<p>1 MR PEER: Well, it is only credible if 678 13:37</p> <p>2 they are comparable companies. Deloitte has 3 considered them to be comparable companies and 4 I relied upon that assessment</p> <p>5 MR ASTUNO: Notwithstanding exactly how 6 that comparable analysis was done, you do concede 7 that none of those companies operate in the Moldovan 8 agricultural sector. Is that right?</p> <p>9 MR PEER: I believe that has been the 10 evidence put forward to the Tribunal today, yes.</p> <p>11 MR ASTUNO: In fact, none of those 12 companies even operate in Moldova?</p> <p>13 MR PEER: I am not sure of that. 14 I believe they may have operated there as well as 15 elsewhere, but I leave it to you if you want to put 16 it to me that they didn't operate there.</p> <p>17 MR ASTUNO: Mr Peer, do you believe that 18 information that is attained to match the unique 19 company's specific details of a company is important 20 when you evaluate that company's projected revenue?</p> <p>21 MR PEER: Indeed. If you are assessing 22 the value of the company, you need to consider the 23 specific circumstances of the company.</p> <p>24 MR ASTUNO: So, for instance, if a company 25 was more of a modern, technologically sophisticated</p>
<p>1 they are comparable for one purpose but not for 677 13:36</p> <p>2 others.</p> <p>3 MR ASTUNO: But you have compared the 4 estimated profitability of Laguardia to the 5 profitability of these companies, haven't you?</p> <p>6 MR PEER: I have done that, yes.</p> <p>7 MR ASTUNO: And you just said that that 8 would not be useful, or was I misinterpreting your 9 statement?</p> <p>10 MR PEER: No. Either Deloitte considers 11 these to be comparable companies in all aspects, or 12 they don't consider them to be comparable companies. 13 I do not believe that they can cherrypick and say 14 they are comparable for the purposes of determining 15 what the working capital ought to be, they are 16 comparable for determining what the beta ought to 17 be, they are comparable for determining what the 18 debt to equity ratio ought to be, but they are not 19 comparable for considering what the profitability 20 ought to be. I don't believe that that is 21 cherrypicking that can be allowed.</p> <p>22 MR ASTUNO: Any comparison that you made 23 of Laguardia to these companies as it pertains to 24 profitability would not be credible, then. Is that 25 right?</p>	<p>1 company, that would be something that you would take 679 13:38</p> <p>2 into consideration. Is that right?</p> <p>3 MR PEER: One of the factors you would 4 consider is what impact that being modern and 5 technologically sophisticated had on its cashflows, 6 as that is ultimately what you are looking at.</p> <p>7 MR ASTUNO: Mr President, there are a 8 number of other accounting issues that I could 9 pretend to be an expert on, I have done some 10 homework, but I believe it might be the best use of 11 our time now for Claimants to end their 12 cross-examination of Mr Peer. I would ask at this 13 point that any other differences in the calculation 14 of accounting inputs, we stand by the record and we 15 stand by our expert report.</p> <p>16 THE PRESIDENT: That is certainly 17 understood. Thank you very much. We hand back to 18 Mr Kopecky for any re-direct.</p> <p>19 Re-examination by Respondent</p> <p>20 MR KOPECKY: Just one question. In 21 Appendix E to your report did you project yields?</p> <p>22 MR PEER: No. In Appendix E I project the 23 actual revenue from the fields, not the yield 24 itself.</p> <p>25 MR KOPECKY: So a revenue is different</p>

<p>1 from a yield? 680 13:41</p> <p>2 MR PEER: It is different from yields.</p> <p>3 MR KOPECKY: Thank you.</p> <p>4 PROFESSOR KNIEPER: Excuse me, because you</p> <p>5 are not talking to experts. What is the difference</p> <p>6 between yield and revenue? I am sorry to ask these</p> <p>7 stupid questions but I simply don't know.</p> <p>8 MR PEER: The reason I didn't project the</p> <p>9 yields is that the yields and the price work</p> <p>10 together to generate the revenue, and I projected</p> <p>11 revenue rather than yields themselves because I was</p> <p>12 accepting of the fact that there is an interaction</p> <p>13 between the two.</p> <p>14 PROFESSOR KNIEPER: Thank you very much.</p> <p>15 THE PRESIDENT: We now ask Mr Lars Wiechen</p> <p>16 to come and join Mr Peer.</p> <p>17 LARS WIECHEN and MICHAEL PEER</p> <p>18 Questions by the Arbitral Tribunal</p> <p>19 PROFESSOR KNIEPER: I will try to form the</p> <p>20 question to the best of my intelligence, not being</p> <p>21 an expert in the field you are in, and at the same</p> <p>22 time confirming that I am full of admiration when</p> <p>23 I listen to people who talk about an ex ante</p> <p>24 approach of the past as if it were the future, and</p> <p>25 that is really fantastic. I am not cynical at all,</p>	<p>1 dream up everything – of course you don't dream up 682 13:45</p> <p>2 everything because you are scientific, you are</p> <p>3 educated, so you have literature, so you have</p> <p>4 figures and WACCs and all these kind of things, but</p> <p>5 for a simple mind like mine an income-based approach</p> <p>6 presupposes the existence of income over a certain</p> <p>7 period of time.</p> <p>8 If there were no other possibility to come</p> <p>9 to some kind of estimate of damages, I would say</p> <p>10 okay, we have to live with this uncertainty, but</p> <p>11 there are other possibilities to come to damage</p> <p>12 appreciation. My question is why did you both agree</p> <p>13 on a DCF, which means income-based evaluation of</p> <p>14 damages when there is also a possibility to assess</p> <p>15 damages based on asset evaluation, or comparable</p> <p>16 property evaluation? Because we have assets, we</p> <p>17 have financial statements, we have all this. Why</p> <p>18 did you choose under these circumstances of extreme</p> <p>19 uncertainty and non-maturity of business, the DCF</p> <p>20 method?</p> <p>21 I ask both of you, of course, but it is</p> <p>22 better to start with the Claimants' expert.</p> <p>23 MR WIECHEN: Maybe to clarify from the</p> <p>24 very beginning, what we performed was a business</p> <p>25 valuation of a business which indeed had a very</p>
<p>1 I am full of admiration, because I have problems 681 13:43</p> <p>2 predicting the future until Sunday, including my</p> <p>3 revenues. Well, until Sunday I am quite certain,</p> <p>4 but beyond that I don't know.</p> <p>5 There is some seriousness in my remark</p> <p>6 because I think many of the questions we have</p> <p>7 discussed here are due to the facts that in my</p> <p>8 knowledge this Laguardia never really took off the</p> <p>9 ground to become an established business, or have a</p> <p>10 mature activity in farming leased land in Moldova.</p> <p>11 Now, there are different methods to come</p> <p>12 to damage appreciations, and an incomebased method</p> <p>13 that you seem to agree upon, like a DCF method,</p> <p>14 presumes in my understanding that there has been</p> <p>15 income and I haven't seen any, except for -- if you</p> <p>16 take it as part of this whole parcel -- some</p> <p>17 production in the south of Moldova done by Laguardia</p> <p>18 before it moved to the north, and then perhaps --</p> <p>19 which I had not really looked into -- the other</p> <p>20 activities by Laguardia, which had nothing to do</p> <p>21 with this farming business, but for the rest no</p> <p>22 activity.</p> <p>23 Then, of course, an income-based approach</p> <p>24 like the DCF becomes extremely speculative, because</p> <p>25 you have to -- I was close to saying you have to</p>	<p>1 short history. But the value of the business is 683 13:46</p> <p>2 determined on the future earnings generation</p> <p>3 capability of the business. If you establish the</p> <p>4 value of the business you have to look into the</p> <p>5 future. You have to forecast the future. You have</p> <p>6 to make certain assumptions about what is going to</p> <p>7 happen in the future. This is the essence of all</p> <p>8 business valuations. Professor Knieper, believe me</p> <p>9 I have done in the last five years at least 150 of</p> <p>10 those.</p> <p>11 PROFESSOR KNIEPER: I believe you</p> <p>12 completely!</p> <p>13 MR WIECHEN: And due to the fact that the</p> <p>14 entire investment was lost, so there is actually no</p> <p>15 business any more, the company is currently under</p> <p>16 insolvency proceedings and special administration,</p> <p>17 so basically Mr Grot entirely lost the business</p> <p>18 factually at the date of revocation of the</p> <p>19 respective lease agreements.</p> <p>20 To come back to your initial question,</p> <p>21 yes, I agree, we have a degree of uncertainty, we</p> <p>22 have in all business valuations, and as an evaluator</p> <p>23 it is one of your basic tasks to reduce the</p> <p>24 complexity and uncertainty of future events based on</p> <p>25 the most reliable information you can get. This is,</p>

<p>1 for example, the reason why we worked closely 2 together with the agricultural experts, first of 3 all, because I am not an agricultural expert, and 4 secondly, to work with somebody who knows the 5 business, who knows the specifics of the Moldovan 6 agricultural environment, and who can assist us in 7 making reasonable assumptions as regards future 8 yields and future cost structures, future cashflows, 9 and help us to come up with a reliable estimate for 10 the value of the business as of the date of the 11 alleged breaches of contracts.</p> <p>12 PROFESSOR KNiePER: Before I get your 13 answer, to come back a little bit on what you said, 14 you said "the revocation of the leases". We heard 15 from the legal experts yesterday that these leases 16 were not revoked by deletion from the registry. We 17 also heard today there were all these assets still 18 there. There was no expropriation of assets of any 19 kind. You say that the investment was completely 20 lost. Is that a fair assumption of what happened?</p> <p>21 MR WIECHEN: This was one of my working 22 assumptions, but I cannot opine on any legal 23 aspects.</p> <p>24 PROFESSOR KNiePER: That was information 25 given to you by the client and you worked on this</p>	<p>1 for the prospective financial information. 2 However, as I said also previously in 3 direct and cross-examination, Mr Grot in this case 4 already proved his capabilities of running 5 agricultural businesses in Poland. This at least 6 gives me credibility as regards the management 7 capabilities and that Mr Grot is an expert in 8 agriculture. And, secondly, we have seen that 9 Laguardia, if you look just at the 2010 figures, had 10 a very profitable business in Stefan Voda. This 11 gave me, let's say, sufficient credibility as 12 regards the future profitable operations of 13 Laguardia.</p> <p>14 PROFESSOR KNiePER: Mr Peer?</p> <p>15 MR PEER: First, I will try to correct you 16 though. It is an assertion by Claimants' counsel 17 that I have agreed to the use of the DCF. I have 18 not.</p> <p>19 PROFESSOR KNiePER: That was in the 20 opening remarks of Claimants that you had agreed to 21 base your reports on the DCF method.</p> <p>22 MR PEER: Exactly. It is an assertion of 23 Claimants' counsel. I have not agreed to the DCF 24 calculation because I share your view that there is 25 an insufficient basis on which to make that DCF</p>
<p>1 assumption? 2 MR WIECHEN: Yes. 3 PROFESSOR KNiePER: Then you say in all 4 evaluation you have this uncertainty. Is that so? 5 Let us assume that an agricultural firm like 6 Laguardia had cultivated sunflower for ten years in 7 Moldova, and then you make an evaluation into the 8 future. I would say perfect -- I would not even ask 9 these questions -- but this is not there, so there 10 is a different degree of uncertainty. I think in an 11 income-based evaluation where no income had been 12 generated, the uncertainty becomes 13 disproportionately high to an evaluation of an 14 activity where you had a mature business activity. 15 Would you agree with that?</p> <p>16 MR WIECHEN: Coming back to your example, 17 if you have a history of several years of an 18 operating business, yes, indeed, this historical 19 financial analysis of a company is one of the main 20 ingredients in any business evaluation, but it gives 21 you a picture of what has happened in the past. 22 What has happened in the past, for sure you use this 23 information also to predict the future and having a 24 smaller period of historical information would to a 25 certain extent increase the degree of uncertainty</p>	<p>1 calculation. I think there is a big difference 2 between what we are doing here, which is valuing 3 damages, and you are awarding a sum of money to 4 somebody versus the valuation of a business.</p> <p>5 In the valuation of a business you have 6 two parties who can negotiate and the parties can 7 walk away from each other if they do not agree on 8 what the future cashflows of that business are and 9 what the value of those further cashflows are in 10 today's terms. That is not a possibility here. You 11 are going to award a sum of money that must be paid 12 between the parties, so there needs to be, in my 13 opinion, a greater level of certainty as to how you 14 base that calculation. I said in my opening I leave 15 it to you as to whether you feel there is a 16 sufficient basis and sufficient support for the 17 calculations that are before you. I will leave it 18 at that.</p> <p>19 PROFESSOR KNiePER: Thank you.</p> <p>20 MR FORTIER: I think everyone is agreed 21 that this is a very unusual situation. Mr Grot 22 really did not get his business off the ground, and 23 yet I accept the fact that he had machinery which 24 was going to be used to carry on his work as a 25 farmer. He had a history of successful ventures in</p>

<p>688 13:55</p> <p>1 Poland. He had done pretty well in Stefan Voda, as 2 was mentioned by one of you a short while ago, and 3 he had acquired these leases and then, however you 4 characterise it, his dream, which by then was more 5 than a dream, he had machinery on the ground, he had 6 paper which was worth in his mind, I think we can 7 recognise that it was worth money, it was certainly 8 part of his investment, and all this came to nought 9 I am not going to venture into the realm 10 of a Bilateral Investment Treaty and whether any 11 article in the treaty was breached, because his 12 dream evaporated in some very strange ways, as 13 I think we articulated a couple of days ago 14 I am assuming, and I appreciate Mr Peer 15 saying "I leave it to you". Of course it is up to 16 us, we are the adjudicators, but we need help, and 17 I am looking at the persons, the experts, whom 18 I think can help – I speak for myself obviously but 19 I know my colleagues pretty well and I think we are 20 all wrestling with the same – and again I am not 21 talking breaches of the BIT right now, I am talking 22 about Mr Grot made an investment, he had a plan, he 23 may not have written, as was said this morning, a 24 business plan as such with people versed in numbers 25 like yourselves who could have prepared a lovely,</p>	<p>690 14:00</p> <p>1 Great Britain, we are not in Canada. Moldova is 2 what it is, probably a beautiful country. I was 3 trying to convince my colleagues the other night 4 that we should go and visit Moldova in order to 5 satisfy our – 6 THE PRESIDENT: And we were convinced 7 MR FORTIER: I was making progress! 8 So I know you want to help us. You are 9 vastly experienced. I do not know if you have been 10 here since Monday morning Have you been here since 11 Monday morning? 12 MR WIECHEN: No. 13 MR PEER: I was here for Monday morning 14 and then I have stepped out for the intervening time 15 until this morning. 16 MR FORTIER: So you heard some of the 17 evidence of Mr Grot? 18 MR PEER: No, I only listened to 19 Claimants' opening. 20 MR FORTIER: It is unfortunate that you 21 did not have the benefit of Mr Grot and Mr Beril, 22 the only two factual witnesses. Because, you see, 23 one of the problems we have – and we have many – 24 is that the lawyers from Moldova in their wisdom – 25 and they are very wise – their game plan, their</p>
<p>689 13:58</p> <p>1 beautiful business plan that we would have 2 understood, but he had something of value which – 3 and I don't intend a pun when I say this – went up 4 in smoke. Again, we have to decide what was the 5 value that his business had. 6 It is not as if he owned a refinery and 7 the refinery was expropriated by the state and you 8 have some very expensive economists and experts who 9 come and give a valuation, and very often, as 10 arbitrators, we have to pin the tail on the donkey 11 and decide how much it is worth because you guys and 12 girls, the experts, don't always agree. 13 Here I have a sense – I have listened to 14 you, I am looking at you – that you are very 15 reasonable people, that you would like to help us. 16 All this is a lead-up to the question of whether it 17 is a DCF or comparable sales, one after the other, 18 can you tell us, first of all, whether Mr Grot's 19 business had value and how much was that value? 20 Mr Peer, you go so far as to say it is 21 nil. I read it. I don't accept that, and I don't 22 think you do either, having been with us for a few 23 hours. I think you acknowledge that Mr Grot was an 24 entrepreneur in a country called Moldova. We are 25 not in Austria, we are not in Germany, we are not in</p>	<p>691 14:02</p> <p>1 strategy was "we don't produce any witness from 2 Moldova. Nobody". In fact, we asked counsel at one 3 point on Monday a question where he said "my 4 understanding was I could not really get an answer 5 from my clients in Moldova", so that puts us in a 6 very difficult situation. 7 I speak for myself at the moment, but 8 I would love to have seen chairs of witnesses from 9 Moldova rather than empty chairs and theories and 10 cross-examination. What comes with 11 cross-examination of course is trying to belittle 12 the evidence of the Claimant. 13 How can you help us put a number, whether 14 it is a lei number or a dollar number, on the dream, 15 which was more than a dream? There were some hard 16 papers, some leases, which vanished as quickly as 17 they saw the light of day, which is why I wish you 18 had been here when Mr Grot testified. 19 How can you help us put a dollar value? 20 Whether or not the Respondent is responsible, that 21 is not what I am asking you to do – we will do 22 that – but how can you help us put a dollar value 23 on what Mr Grot lost? The business that he lost? 24 MR PEER: Perhaps if I can start on that? 25 MR FORTIER: Yes, if you would.</p>

<p>1 MR PEER: You are correct that I don't 2 believe that the cashflows from the business were 3 going to be negative, because Mr Grot would not have 4 continued in that vein. He would have made changes. 5 They are negative in my calculation because I could 6 not adjust the costs that were associated with the 7 lower yields. 8 I have been given updated figures that 9 don't make sense to me because they generate results 10 that are nonsensical to me, so I am not in a 11 position to give you what I think would be 12 sufficiently reliable cash flow projections for you 13 to prepare a damages calculation and to award 14 damages. 15 I think from my perspective the figures 16 that are generated by the Deloitte calculations are 17 unrealistically profitable. If I look solely at 18 what was happening in Stefan Voda, this was a 19 marginally profitable business, 1-2 per cent, and 20 the suggestion that it was going to be a 21 35-45 per cent profitable business does not sit with 22 me. 23 We could, if you were to instruct us, 24 continue to work together to try to come up with 25 some sort of DCF, a calculation that would be</p>	<p>1 calculation because he had all the information as 2 regards yields, prices, direct, indirect, operating 3 costs. We have a breakdown of kilograms, 4 fertilizers suggested to be used on the fields, so 5 this is something that could have been done by the 6 Respondents' expert. 7 Secondly, honestly I have done my best. 8 Out of all my experience of 16 years of business 9 evaluations -- sorry for repeating that -- to come 10 up with a reliable value of the business Mr Grot 11 lost with this investment, I did not exaggerate, 12 I am an independent expert. I was conservative on 13 almost all of my assumptions. I believe that if we 14 define the damages as loss of business value, I 15 believe that Mr Grot has lost approximately 16 2.7 million USD in 2011. 17 MR PEER: May I respond to that, very 18 briefly? I don't believe there is sufficient detail 19 within the agricultural experts' reports to prepare 20 a reliable DCF. I don't believe that I could have 21 adjusted and created a DCF based on that 22 information. 23 MR FORTIER: You looked at it carefully? 24 MR PEER: I looked at it very carefully 25 and I don't believe I could have adjusted it any</p>
<p>1 sufficiently reliable for you, but I think that 2 would be a long and costly exercise. I think that 3 the alternative, if you believe that there has been 4 a breach and you believe that the state is 5 responsible for that breach, would be to award some 6 form of return of the invested costs. 7 Now those currently are on the record at 8 around 800,000, but those would have to be lost 9 costs, and there is a dispute as to whether Mr Grot 10 continues to own those assets and whether those 11 assets have been disposed of and therefore whether 12 there is some compensation that Mr Grot has already 13 received from the disposal of those assets. So 14 again, as far as I am aware, there is insufficient 15 evidence before you in order to award damages based 16 on an invested cost. 17 MR FORTIER: Thank you, Mr Peer. And you, 18 sir? 19 MR WIECHEN: Thank you. I just want to 20 make an errata to what Mr Peer said. If you simply 21 look at the financial statements of Laguardia, the 22 2010 net income margin was 31 per cent and not close 23 to zero. Secondly, Mr Peer would have been able to 24 make a DCF calculation based on the report of the 25 agricultural experts, and then perform his own DCF</p>	<p>1 more than I have. I maintain that it isn't 2 sufficiently granular because it assumes an average 3 yield over five years rather than yield by year and 4 so forth, and costs associated with that 5 MR FORTIER: But here again it is the best 6 we have. Moldova has not produced an expert versed 7 in agronomy who would have attacked the agricultural 8 experts produced by the Claimants. 9 MR PEER: I understand that, but I also 10 understand burden of proof. 11 MR FORTIER: That is proof that is not 12 contradicted. You mean the level of proof, but be 13 that as it may. 14 Mr Wiechen, I heard Mr Peer say well, 15 maybe the two of us could retire and come up with a 16 report and a recommendation that could be of 17 assistance to you. Do you think he is hopeless, or 18 do you think that you could sit down and produce 19 some smoke that would come out of the chimney? 20 MR WIECHEN: What are you referring to? 21 Excuse me, please, to stand with Mr Peer and 22 rediscuss and try and find an objective way? 23 MR FORTIER: Yes. 24 MR WIECHEN: Both of us presented 25 objective ways. Again, you have all my input that</p>

<p>1 I can bring to the case. 696 14:12</p> <p>2 MR FORTIER: You do, and you have based</p> <p>3 your report on the expert report of the agricultural</p> <p>4 witnesses we heard this morning.</p> <p>5 On the other side we have a learned</p> <p>6 accountant from a very well known firm, KPMG, who</p> <p>7 says, "on the basis of what I have seen it is nil".</p> <p>8 I don't accept that. I think Mr Grot --</p> <p>9 I am using the singular, we have had a lot of those</p> <p>10 "I", "we" -- Mr Grot and the other two Claimants</p> <p>11 have lost a business that had value, and it is</p> <p>12 unfortunate that the two of you, who strike me as</p> <p>13 being very reasonable and knowledgeable accountants</p> <p>14 which we are not. As you heard from</p> <p>15 Professor Knieper and the Chairman, lawyers always</p> <p>16 have some issues with numbers. In this case it is</p> <p>17 not a question of comparing numbers because</p> <p>18 Mr Wiechen's number is contrasted by a nil.</p> <p>19 I will end my unusual line of questioning</p> <p>20 by saying what I said at the outset, that it is an</p> <p>21 unusual case, and I wish the two of you together</p> <p>22 could help us together more than you have. Thank</p> <p>23 you, Mr Chairman.</p> <p>24 THE PRESIDENT: Very briefly, I hope, a</p> <p>25 couple of questions.</p>	<p>1 I suppose what I am saying is would you 698 14:16</p> <p>2 not have assumed that an investor who prepares a</p> <p>3 business plan is an investor that may be perceived</p> <p>4 as having done some due diligence and have worked</p> <p>5 out in a reflective manner what the real prospects</p> <p>6 were, and an investor who has not does not fall into</p> <p>7 that category of investors?</p> <p>8 MR WIECHEN: I am convinced that Mr Grot</p> <p>9 made his own considerations and for sure he had a</p> <p>10 business plan in place, but not a formally</p> <p>11 documented business plan with 80 pages explaining</p> <p>12 all these separate line items.</p> <p>13 THE PRESIDENT: I didn't say anything</p> <p>14 about 80 pages. I just said a piece of paper that</p> <p>15 sets out, back-of-the-envelope stuff like the</p> <p>16 invasion of Iraq type of thing -- or not!</p> <p>17 Just a piece of paper, which could be one</p> <p>18 page, two or three pages, which just says right,</p> <p>19 this is what I'm going to do and this is why I think</p> <p>20 it can work. Would that have helped you? I am</p> <p>21 hearing you say that would have helped you but it</p> <p>22 wouldn't have bound you?</p> <p>23 MR WIECHEN: It would have helped me at</p> <p>24 the outset of my deliberations and work to be</p> <p>25 performed, but anyway to really bring up a fair</p>
<p>1 First, to both of you: would you have been 697 14:14</p> <p>2 materially assisted in your task if there had been</p> <p>3 in existence, and available to you, a business plan</p> <p>4 that had been prepared prior to this investment</p> <p>5 having been made which accorded with the kinds of</p> <p>6 quality standards you would expect?</p> <p>7 MR WIECHEN: Basically what we have done</p> <p>8 in our exercise, we constructed a business plan,</p> <p>9 based on which business plan --</p> <p>10 THE PRESIDENT: That wasn't my question.</p> <p>11 MR WIECHEN: If there had been a business</p> <p>12 plan prepared by Mr Grot or by some consultants to</p> <p>13 Mr Grot, indeed this would have been an information</p> <p>14 that we would have thoroughly analysed.</p> <p>15 However, given the standard of value and</p> <p>16 the context, I would have preferred to make my own</p> <p>17 estimates together with independent agricultural</p> <p>18 experts not to get biased by a business plan which</p> <p>19 was delivered by the Claimant</p> <p>20 THE PRESIDENT: Would you not assume that</p> <p>21 a Claimant, going through a due diligence exercise</p> <p>22 before making an investment of this size and of this</p> <p>23 value that is claimed, would have put some time and</p> <p>24 thought into working out how to make such an</p> <p>25 expenditure of monies?</p>	<p>1 value to the business I would have relied 699 14:17</p> <p>2 predominantly on independent specialised information</p> <p>3 like I have done in this exercise</p> <p>4 THE PRESIDENT: Mr Peer?</p> <p>5 MR PEER: With your caveats of a quality</p> <p>6 standard to it, absolutely, I think it would have</p> <p>7 been very useful to understand what Mr Grot was</p> <p>8 intending to do at the time in a contemporaneous</p> <p>9 manner, rather than what an agricultural expert</p> <p>10 perceives he ought to have done post fact.</p> <p>11 THE PRESIDENT: I want to follow on from</p> <p>12 Mr Fortier's question, and I know Mr Kopecky does</p> <p>13 not like it, which is entirely proper for him to</p> <p>14 express that view, it is not a critique at all, but</p> <p>15 to invite you to carry on the exercise that Mr</p> <p>16 Fortier did, but on the basis of certain</p> <p>17 assumptions, and they are nothing more than</p> <p>18 assumptions. They are just for the purpose of</p> <p>19 testing out intellectually how one would go about</p> <p>20 that exercise.</p> <p>21 Assume that amount of hardware was brought</p> <p>22 in, about 900,000 USD. Assume that leases were</p> <p>23 obtained which allowed 2830 ha to be farmed for four</p> <p>24 years.</p> <p>25 PROFESSOR KNEIPER: Three plus one.</p>

<p>1 THE PRESIDENT: Up to four years. We</p> <p>2 agree three plus one. Assume that those leases</p> <p>3 then, for whatever reason, right or wrong, and like</p> <p>4 Mr Fortier and Mr Knieper, I am making no</p> <p>5 assumptions about whether there was a violation of</p> <p>6 the BIT, purely for the exercise of accounting</p> <p>7 purposes, that those leases were somehow interfered</p> <p>8 with, ended, whatever, disappeared, as a consequence</p> <p>9 of which he is not able to engage in that farming</p> <p>10 activity, but he maintains full control of all the</p> <p>11 capital assets, the equipment, the caterpillars, the</p> <p>12 ploughs, and so on and so forth. And, a further</p> <p>13 assumption, there may be alternative farmlands</p> <p>14 available around, or not too far away. And a</p> <p>15 further assumption, I am just putting a caveat that</p> <p>16 this is not my view that this is or is not what</p> <p>17 happened, but there were no other reasons for him to</p> <p>18 require to leave in an expeditious manner; quit the</p> <p>19 country.</p> <p>20 In other words, what has essentially been</p> <p>21 "taken", and I use that not in a legal sense, what</p> <p>22 has disappeared is the ability to farm up to 2830 ha</p> <p>23 for a period of up to four years, possibly three</p> <p>24 plus one.</p> <p>25 Against the background of all of the</p>	<p>1 investment while it sits idle until such time as he</p> <p>2 is able to use it again</p> <p>3 THE PRESIDENT: Mr Wiechen, how would you</p> <p>4 go about doing it if you were not allowed to use</p> <p>5 DCF?</p> <p>6 MR WIECHEN: I would not have accepted an</p> <p>7 engagement of damage calculation.</p> <p>8 THE PRESIDENT: Let me help you briefly.</p> <p>9 I am not saying this is my view. Every case is</p> <p>10 particular or specific, but I am reading on my</p> <p>11 screen paragraph 604 of a recent award case called</p> <p>12 Bear Creek in which I sat and on which the Tribunal</p> <p>13 was unanimous in its view, although not unanimous in</p> <p>14 all other issues.</p> <p>15 "The project remained too speculative and</p> <p>16 uncertain to allow such a method to be utilised.</p> <p>17 Instead, the Tribunal concluded that the measure of</p> <p>18 damages should be made by reference to the amounts</p> <p>19 actually invested by Claimant".</p> <p>20 Let us assume the Tribunal approaches you</p> <p>21 in this case and the Tribunal says to you it is just</p> <p>22 too speculative. Are you saying to me truly you</p> <p>23 can't do it?</p> <p>24 MR WIECHEN: No, I think this would be a</p> <p>25 method of last resort which I do not consider would</p>
<p>1 uncertainties with regards to yields, benefits or</p> <p>2 not provided by plant protection methodologies, what</p> <p>3 alternative means to DCF exist to value that loss?</p> <p>4 Four years of farming those areas? Let's assume you</p> <p>5 are prohibited from using DCF. How would you value</p> <p>6 for us that loss?</p> <p>7 MR PEER: From my perspective I would then</p> <p>8 look at the cost of replacing those leases, because</p> <p>9 that is a cost that he has already incurred that he</p> <p>10 now has to re-incur, and I would look at the cost of</p> <p>11 his investment sitting idle for the period of time</p> <p>12 that it takes him to replace those leases.</p> <p>13 THE PRESIDENT: What about the time and</p> <p>14 energy he has expended in preparing the whole</p> <p>15 project and having it delayed by one year, or two</p> <p>16 years or three years?</p> <p>17 MR PEER: As I say, you would allow for</p> <p>18 the replacement of the work that he has done to get</p> <p>19 to that point, so the cost of getting those leases</p> <p>20 replaced and whether you value his time in that</p> <p>21 process is something you can discuss, or whether it</p> <p>22 is simply the cost that he pays lawyers, et cetera,</p> <p>23 to replace them, and also the cost of the equipment</p> <p>24 that he has sitting there idle, you would allow for</p> <p>25 an interest or a depreciation or something on that</p>	<p>1 compensate the Claimant in an appropriate manner if</p> <p>2 you find liability in this case. It would</p> <p>3 definitely understate the damages in this case</p> <p>4 THE PRESIDENT: So how would you do it?</p> <p>5 Assume you can't do DCF, there must be alternative</p> <p>6 means available, whether it is a variant of</p> <p>7 Mr Peer's approach, how would you go about valuing</p> <p>8 it if you had been told the Tribunal considers it to</p> <p>9 be too speculative?</p> <p>10 MR WIECHEN: In our specific case or in a</p> <p>11 general case?</p> <p>12 THE PRESIDENT: On the hypothetical facts</p> <p>13 that I have given you. We are telling you this is</p> <p>14 what has happened, this is what has gone wrong, this</p> <p>15 is what is lost, you can't use DCF. Tell us how</p> <p>16 much we should give Mr Grot?</p> <p>17 MR WIECHEN: I could not determine a fair</p> <p>18 amount. Basically I agree, if you just look at</p> <p>19 valuation theory, and sometimes if you don't have</p> <p>20 anything else you go back to costs, but initial</p> <p>21 costs or investments do not tell you anything about</p> <p>22 the real value of a business, because the value of a</p> <p>23 business is determined by its capability of</p> <p>24 generating future cashflows.</p> <p>25 THE PRESIDENT: I have been doing ICSID</p>

<p>1 cases for about 30 years, so I have spent a lot of 2 time reflecting on this. One of the things that one 3 learns is that it is possible to envisage situations 4 in which an investor in a particular country stands 5 to make very significant amounts of return on the 6 initial investment, precisely because the investor 7 is willing to take the risk, to not go into the UK, 8 not go into the United States, but to actually do 9 what the ICSID system was intended to do, create 10 incentives and take risks to go into places which 11 are not traditional places, perhaps to invest, and 12 that is an honourable and valuable thing to do and 13 I think we all accept that.</p> <p>14 But of course the downside of it is that 15 it is risky, so you have a sort of balancing 16 exercise to do. On the one hand, the risk of 17 success is the profits are tremendous compared to 18 other safer, more usual types of places, but if it 19 goes belly-up the pain is going to be greater, and 20 it raises a question which one could imagine that 21 one way of perceiving the ICSID system is the 22 question to what extent does it provide which in 23 English cricketing terms would be called "a 24 long-stop guarantee"? What is the function of 25 ICSID? What is the function of a BIT? Is it to</p>	<p>1 investment costs back. This does not make sense 2 economically.</p> <p>3 THE PRESIDENT: The person who invests in 4 Moldova knows that it is a more risky business than 5 investing in potentially some other places, so that 6 person, Mr Grot, has taken a punt, it might be said, 7 and you can't presumably expect to reimburse him as 8 one would in a place where the investment was less 9 risky. There has to be some means to take that into 10 account.</p> <p>11 I suppose the question I am asking you is 12 is there a way to do it? Is there a way to 13 compensate the initiative a potential investor like 14 Mr Grot has taken absent DCF? That is what I am 15 trying to explore. You are saying no. Mr Peer is 16 saying sort of. Please feel free to come back, 17 Mr Peer, at any point.</p> <p>18 I really want to push you on this because 19 I am having trouble assuming that there is no other 20 way apart from DCF. I understand that as a finance 21 accounting person there is a security in taking that 22 approach, but I am asking you to think out of the 23 box and think through the facts of a case like this, 24 where a reasonable, decent investor takes a punt in 25 a risky environment, but it is speculative to the</p>
<p>1 provide an absolute guarantee or is it to act 2 reasonably in the circumstances in accordance with 3 the assistance that people like you can give us to 4 working out what has truly been lost?</p> <p>5 That is what I think our questions are 6 really trying to work out in the circumstances. You 7 have said you could do it but you don't think that 8 would fairly value the loss that Mr Grot has 9 suffered, and I understand that, but I want to push 10 you a little bit further.</p> <p>11 Can you take a variation of Mr Peer's 12 approach which would lead to a result that you think 13 is right in the circumstances but which does not 14 make use of DCF?</p> <p>15 MR WIECHEN: If we are bound to historical 16 investment costs -- the value of the equipment, the 17 value of labour force, of other small investments 18 made to adding up all these numbers -- what we 19 cannot neglect in such kind of case is definitely a 20 return on investment. Nobody invests somewhere 21 without expecting any return. If you are just going 22 on the costs which actually occurred, we are 23 depriving actually the Claimant from earning 24 something on this investment. Nobody invests into 25 Moldova and expects to receive the initial</p>	<p>1 point that a reasonable Tribunal may say it is too 2 speculative for us to be able to use that 3 methodology. I am inviting you to reflect how does 4 a tribunal do justice?</p> <p>5 MR PEER: The scenario you have given us 6 is not that the investment is lost; the scenario you 7 have given us is that there is a delay in commencing 8 the operations.</p> <p>9 THE PRESIDENT: I am giving you a scenario 10 in which that investment is lost but there are 11 alternative new investments that could be made and 12 are available. In other words, the totality of the 13 total investment. I am not saying that is what 14 happened. We have evidentiary matters on Mr Grot's 15 belief that he needed to leave the country and we 16 will have to deal with that, but I am pushing you on 17 this sense of let's assume there was an alternative 18 where all this equipment, all this energy and all 19 this idealism could be put?</p> <p>20 MR PEER: I think it is important to note 21 that the investment vis-à-vis the leases you are 22 telling us is lost, but the equipment itself is not 23 lost.</p> <p>24 THE PRESIDENT: There is no allegation 25 that the equipment has been taken. In most cases</p>

<p>1 I have sat on the equipment disappears, the leases 2 are lost and the equipment has gone. As Mr Fortier 3 says, this is one of those really curious cases 4 where the leases has gone but the equipment remains. 5 That is very unusual. 6 MR PEER: Precisely. I wonder if that 7 helps Lars in his thinking? 8 PROFESSOR KNIEPER: Could I ask a 9 question? Mr Wiechen, you agree with me there are 10 several methods of calculating damages? This is 11 definitely not the only method to do it. 12 MR WIECHEN: It depends on the specific 13 case but in general, yes, I agree there are various 14 methods to calculate damages, yes 15 PROFESSOR KNIEPER: I would say under any 16 circumstances there are alternatives, and you say 17 there are cases where there is no alternative? I do 18 a little reading also because it is so complicated 19 but I have never read in a book on these kind of 20 evaluation of damages that the person says the only 21 way to come to a fair damage evaluation is the DCF. 22 I have never read that. You say it is so. 23 MR WIECHEN: It is for sure the most 24 credible way to determine damages in this specific 25 case.</p>	<p>1 the method. Hence, although income-based methods 2 have been accepted in principle, there has been a 3 decided preference by tribunals for an asset-based 4 method". 5 I insist "by tribunals" because you are 6 here to help us, as Mr Fortier says, but the 7 decision as to what method will be used, if we come 8 to damages, is with the Tribunal and not with the 9 expert. 10 If an expert says "if you tell me that we 11 will not allow DCF, I am out of the game", I would 12 find that too German! I am sorry, but you 13 understood the joke. We come from the same region. 14 MR WIECHEN: Yes. 100 kilometres. 15 PROFESSOR KNIEPER: That is the question. 16 There are alternative methods, and the very 17 convincing way of Professor Sands was try it out and 18 give us alternatives, and then we decide what is 19 right, if we come to this decision. 20 MR WIECHEN: It doesn't make sense to 21 express my opinion again, right? You just gave two 22 opportunities: either DCF, which may be too 23 speculative, or the net book value. But if you are 24 talking about net book value, this is an accounting 25 figure, and this again brings us back to the initial</p>
<p>1 PROFESSOR KNIEPER: I want to go to the 2 next point. We have a document, an informative 3 document, which had been introduced by Claimants. 4 These are the draft articles on responsibility of 5 states for international wrongful acts. You have 6 used this document for attribution, but there is 7 also a chapter on the evaluation of damages in this 8 very useful comment, and I will read you only one 9 sentence which goes in the direction of what we have 10 just heard on this case. It is in the comment, 11 page 103-104. There is a lengthy discussion on 12 different methods of evaluation of damages, and of 13 course this is already dated because it is from 14 2008, this document, and they say there are 15 different methods. There is one where you start 16 from the net book value, and then there are -- and 17 this is what I have learned -- if the business is 18 not a going concern, they say, a DCF method would be 19 "a range of inherently speculative elements, some of 20 which have a significant impact about the outcome, 21 like discount rates, currency fluctuations, 22 inflation figures, commodity prices, interest 23 rates", and these are all speculations about the 24 future. That is why they say, "this has led 25 tribunals to adopt a cautious approach to the use of</p>	<p>1 investment costs. 2 PROFESSOR KNIEPER: The Tribunal has to 3 decide which of the alternatives to choose, not the 4 expert. You understand? That is why we need help. 5 To have a sound basis for a decision, and this help 6 must come from both of you. 7 THE PRESIDENT: The problem is it is not 8 that we are not giving you another opportunity to 9 express your view. Put yourselves in our position. 10 If you tell us there is no other way, we put you in 11 a box which says well, he is not being very helpful, 12 so we will go to the other one, frankly because we 13 are looking for help, and an expert who tells us 14 "there is only one way" creates a difficulty for us 15 because we know from our experience between us of 16 probably over a hundred years of doing these cases 17 that there are always other ways. 18 We have heard from Mr Peer, so one last 19 opportunity for you to be persuaded by your 20 neighbour from 100 kilometres away. Feel free to 21 say no, that is not your thing, you do not want to 22 do that. 23 MR WIECHEN: I apologise for maybe not 24 being helpful to you, but I stick to my prior 25 statements.</p>

<p>1 THE PRESIDENT: Thank you very much. 712 14:37</p> <p>2 I have no more questions. I think it is fair to</p> <p>3 give the parties a brief opportunity to come back.</p> <p>4 Perhaps the way to do it is to each of their</p> <p>5 respective experts to give them a final chance.</p> <p>6 Claimant first?</p> <p>7 MR ASTUNO: Thank you, Mr President. May</p> <p>8 we confer?</p> <p>9 THE PRESIDENT: Absolutely. (Pause)</p> <p>10 Re-examination by Claimant</p> <p>11 MR ASTUNO: Mr Wiechen, and if Mr Peer</p> <p>12 wants to comment as well, I would appreciate his</p> <p>13 views on this question. There is obviously a lot of</p> <p>14 discussion about the speculative nature of</p> <p>15 Laguardia's profitability. Is it not the case,</p> <p>16 however, that given he was operating in a</p> <p>17 commodities industry, agriculture specifically, that</p> <p>18 there is a more reliable set of data and information</p> <p>19 and it is easier to predict future possible outcomes</p> <p>20 in this industry than it would be for other</p> <p>21 industries where outcomes, let's say, have much more</p> <p>22 variance in nature and unpredictability?</p> <p>23 MR WIECHEN: I think each valuation in</p> <p>24 various industries has somehow certain specifics and</p> <p>25 certain complexities. I cannot confirm that any</p>	<p>1 The price of grain is driven by supply and demand 714 14:43</p> <p>2 We are dealing with mother nature. We don't know</p> <p>3 what is going to happen in a given year.</p> <p>4 The prices we have used here are not</p> <p>5 futures. If we were dealing with futures, I might</p> <p>6 agree with you that there is some more</p> <p>7 predictability to the pricing structure, but that is</p> <p>8 not the basis on which we have prepared this</p> <p>9 calculation, or that Deloitte has prepared this</p> <p>10 calculation.</p> <p>11 MR ASTUNO: I would like to ask a question</p> <p>12 regarding the organised plan of action that Mr Grot</p> <p>13 in our view clearly had. The fact that over 2800 ha</p> <p>14 of land were leased and that specific crops had been</p> <p>15 planted, specific equipment has been procured that</p> <p>16 is directly related to those crops, certain people</p> <p>17 have been hired with levels of expertise that are</p> <p>18 specifically tailored to the crops at issue and the</p> <p>19 farming practices at issue, looking at all of that</p> <p>20 together, just in that time period, the first half</p> <p>21 of 2010, does that not indicate that Mr Grot was</p> <p>22 organised in his plan of action?</p> <p>23 MR WIECHEN: I think I have to repeat</p> <p>24 myself. I think Mr Grot is a very reasonable</p> <p>25 investor with a great track record in Poland, and</p>
<p>1 sector is, let's say, easier or more difficult to 713 14:41</p> <p>2 project, so every industry has certain specifics.</p> <p>3 MR ASTUNO: It is true, however, that when</p> <p>4 you forecast commodities prices, it is easier to do</p> <p>5 that than it would be to, say, forecast Bitcoin as</p> <p>6 an example by today's standards, or some</p> <p>7 technological industry that has less years behind it</p> <p>8 and more volatility?</p> <p>9 MR WIECHEN: I would say one factor which</p> <p>10 may be considered, let's say, in the agricultural</p> <p>11 sector, is the market by itself. I think one of the</p> <p>12 less risky parts in valuing agricultural companies</p> <p>13 is basically the market, because there is always the</p> <p>14 market for agricultural products, so there is no</p> <p>15 threat that the company will face at a certain point</p> <p>16 in time a complete lack of demand which may be the</p> <p>17 case for a technology firm.</p> <p>18 MR PEER: If I might comment on that,</p> <p>19 I think you are referring to your reference earlier</p> <p>20 that this is a de-risked commodity industry or</p> <p>21 sector. I think that was the terminology you used?</p> <p>22 MR ASTUNO: Yes.</p> <p>23 MR PEER: I am not sure that that is what</p> <p>24 we are dealing with here, because there is a great</p> <p>25 deal of volatility in the prices for this sector.</p>	<p>1 some successful operations in southeastern Moldova. 715 14:45</p> <p>2 There has not been a very formalised business plan</p> <p>3 but, again, I put certain credibility on these</p> <p>4 operations and I am satisfied with what I have seen</p> <p>5 and delivered by Mr Grot.</p> <p>6 MR ASTUNO: That is all we have,</p> <p>7 Mr President. Thank you.</p> <p>8 THE PRESIDENT: Thank you very much.</p> <p>9 Mr Kopecky? Any concluding questions for</p> <p>10 Mr Peer?</p> <p>11 MR KOPECKY: No, thank you.</p> <p>12 THE PRESIDENT: Very good. I really do</p> <p>13 want to express our deep appreciation to both of you</p> <p>14 for all the work you have done. We do recognise</p> <p>15 both of you very much as completely independent</p> <p>16 experts who have done a tremendous service to this</p> <p>17 Tribunal and that is what this system is about.</p> <p>18 I know my colleagues, just from the lunchtime</p> <p>19 conversation, have very much appreciated both of</p> <p>20 your reports and both sets of counsel for making you</p> <p>21 available to us. We have found it extremely helpful</p> <p>22 from both of you, and I want to thank you.</p> <p>23 You are now released. I think you are</p> <p>24 free. If you are desperate to hear more you are</p> <p>25 welcome to stay, or to explore Vienna.</p>

<p>1 We will now move to closing arguments. 716 14:46</p> <p>2 It is 3.46 pm, and we can go as long as</p> <p>3 you want. I think there is a desire to wrap up</p> <p>4 within a reasonable period. You are each allowed up</p> <p>5 to 60 minutes.</p> <p>6 Counsel, how long would you like now as a</p> <p>7 break to gather your thoughts? We have had a very</p> <p>8 interesting exchange now and we would benefit from</p> <p>9 your having a little moment to work out the</p> <p>10 exchanges that have taken place and thinking through</p> <p>11 your final words to us.</p> <p>12 This is me speaking personally, but I</p> <p>13 would reiterate that this is the moment where less</p> <p>14 truly is more. We are completely on top of the</p> <p>15 dossier. We do not need to hear repetition of</p> <p>16 anything that we have heard. What we really want</p> <p>17 from each of you is to reflect on the totality of</p> <p>18 what has happened on these three days, and with your</p> <p>19 respective brilliant advocacies, which can be very</p> <p>20 short -- it doesn't need to be very long --persuade</p> <p>21 us in one direction or the other direction. It is</p> <p>22 the crystallisation of the essential issues</p> <p>23 presented as persuasively as you can to us, what</p> <p>24 this case is really about, why respectively you are</p> <p>25 right and the other side is wrong and why we should</p>	<p>1 that there might be some other questions that the 718 14:49</p> <p>2 Tribunal --</p> <p>3 THE PRESIDENT: Would you like an</p> <p>4 opportunity to file something in writing, without</p> <p>5 prejudice to how long it may be or what the timings</p> <p>6 would be?</p> <p>7 MR ASTUNO: Yes, we want to preserve that</p> <p>8 right.</p> <p>9 THE PRESIDENT: No, not preserve the</p> <p>10 right. Do you want to do it? I am putting you on</p> <p>11 the spot. Because it will help you for what --</p> <p>12 Maybe you want a moment to reflect on it.</p> <p>13 PROFESSOR KNIEPER: Reflect on the</p> <p>14 closings and then part of this reflection is</p> <p>15 Post-Hearing Briefs.</p> <p>16 MR ASTUNO: Thank you, Professor.</p> <p>17 THE PRESIDENT: Respondent?</p> <p>18 MR KOPECKY: I don't know what to say yet</p> <p>19 because nothing has been said, but Respondent's</p> <p>20 position would be that what was filed today was a</p> <p>21 new report and the ineptness of DCF was effectively</p> <p>22 what Mr Peer set out in his first report. So there</p> <p>23 was this opportunity. Something was filed today</p> <p>24 which Mr Peer worked on all night, which everybody</p> <p>25 here appreciates, so I would be very careful with</p>
<p>1 lean in one direction rather than the other. 717 14:47</p> <p>2 That is not something that takes a huge</p> <p>3 amount of time. To the extent that we are limited</p> <p>4 by time at all, my instinct is for you to have a</p> <p>5 little longer to reflect on what you want to say and</p> <p>6 a little less time in actually saying it, but that</p> <p>7 is a matter for you.</p> <p>8 Claimant first: how long do you feel you</p> <p>9 need to prepare for your closing? (Pause)</p> <p>10 While you are thinking about it, we have</p> <p>11 not heard from you on any aspect relating to</p> <p>12 Post-Hearing Briefs yet and you may also want to</p> <p>13 reflect on that. It may be you don't want</p> <p>14 Post-Hearing Brief, it may be you want short, or</p> <p>15 very long. We have our own views on it but we want</p> <p>16 to listen to you.</p> <p>17 MR ASTUNO: We would mention in PO6, given</p> <p>18 the late filing of Mr Peer's report, that the</p> <p>19 Tribunal mentioned that if it deemed it necessary we</p> <p>20 would have the opportunity to file a Post-Hearing</p> <p>21 Brief. There has obviously been quite a dramatic</p> <p>22 exchange on damages questions in the last hour,</p> <p>23 especially insofar as it pertains to other valuation</p> <p>24 models that Mr Wiechen did not provide. We would</p> <p>25 want to reserve that right, then, because it appears</p>	<p>1 yet another submission on quantum which would 719 14:50</p> <p>2 provide yet another method of damage calculation,</p> <p>3 because, as is clear to everybody, we operate on a</p> <p>4 budget, and so does Mr Peer, so just getting him to</p> <p>5 actually answer that may take far longer than would</p> <p>6 be appropriate or necessary in this case, and there</p> <p>7 were now two reports of Claimants. I would like to</p> <p>8 put that on record, that there was an opportunity to</p> <p>9 correct, it was given by the Tribunal, and something</p> <p>10 was filed.</p> <p>11 MR ASTUNO: Just for the record, they were</p> <p>12 presentations. Mr Wiechen has not prepared a</p> <p>13 fundamentally new evaluation methodology or</p> <p>14 approach. There were slighted variables within the</p> <p>15 DCF calculation that were modified, but at this</p> <p>16 point I think it is important to reflect, as</p> <p>17 Professor Knieper has given us that opportunity and</p> <p>18 the Tribunal has agreed, so we will come back in due</p> <p>19 course.</p> <p>20 THE PRESIDENT: But what time do you want</p> <p>21 to start your closing? It is 4 o'clock. Shall we</p> <p>22 say 4.30 pm?</p> <p>23 MR ASTUNO: That is fine.</p> <p>24 THE PRESIDENT: For the Claimant, and then</p> <p>25 Respondent will follow straight on, and you each</p>

<p>1 have up to an hour, subject to the dispositions you 2 have heard, but you are entitled to up to that 3 amount of time, and if you feel you need it you will 4 not be punished in any way for using it. It really 5 is your call as to what you want to do. 6 (Short break from 3.52 pm to 4.24 pm) 7 THE PRESIDENT: Are we ready? Claimant is 8 ready, Respondent is ready. Mr Gleason? 9 Closing submission by Claimant 10 MR GLEASON: First, we would like to thank 11 everybody for the time and attention that they have 12 given to this matter. We would again repeat our 13 thanks to Schönherr for opening their doors and 14 welcoming us here for this proceeding. We thank the 15 Tribunal for their time and attention but also being 16 tolerant of our perhaps American style of presenting 17 our case. We do appreciate your tolerance on that. 18 Again, our thanks to everybody. It has been very 19 interesting over the last few days. 20 This is not a case about a boardroom or 21 some large business with multiple business divisions 22 or complicated business structure. This is a case 23 about a man, a farmer, a farmer actually with a 24 relatively simple business structure which, by all 25 accounts, should have been a success. We heard from</p>	<p>1 then I will hand it over to Mr Astuno for the final 2 issue. 3 I would like to begin with attribution. 4 As the opening laid out in greater detail, 5 this case concerns a series of attributable acts and 6 omissions which actually led to the destruction of 7 ICS Laguardia SRL. These acts and omissions, as 8 stated in the opening, stand on the record. In 9 fact, they have been bolstered by the testimony and 10 evidence that we have discussed over the last three 11 days. I am not going to readdress every single one 12 of the acts and omissions on the very long pattern 13 of state conduct, but I will attempt to highlight 14 those acts and omissions which were the subject of 15 the Tribunal's concern. 16 I would like to first look at the lease 17 termination notifications which were signed and 18 stamped by the mayors. We talked about this a lot. 19 In fact, Roger Gladei stated that this was "an 20 unqualified act of public authority". But it was 21 strange. In fact, everybody who talked about these 22 lease termination notifications said at a bare 23 minimum that they were strange, or unusual, or 24 curious. And the law is very clear. The mayors had 25 absolutely no authority to be involved in this</p>
<p>1 the agricultural experts this morning, the only 2 people who we have heard from other than fact 3 witnesses who know about Moldovan agriculture, they 4 said this morning this was a good idea. Mr Grot 5 should have made a lot of money. So what happened? 6 Why wasn't that the case? 7 Well, unfortunately, as has been the 8 subject of much of the discussion, his operations 9 were fully destroyed by a series of acts and 10 omissions of state actors for the benefit of a local 11 third party. These acts were all, at a minimum, 12 under the colour of authority. The record is clear 13 on this point. 14 Now we are going to talk about four 15 points. We took your advice to heart, we haven't 16 prepared a presentation or a PowerPoint. We just 17 have four point we would like to make. 18 We are going to discuss attribution. 19 We are goes to discuss the process of 20 lease execution. 21 We will talk about the realistic options 22 for local remedies. 23 And, naturally, we will discuss the 24 quantum. 25 I will take the first three issues and</p>	<p>1 private matter. 2 Professor Rusu said that he had never seen 3 anything like this in his life. Mr Gladei indicated 4 that these termination notifications, which were by 5 a public official, demonstrated an intent to do 6 something by a certain date. In this case that 7 something was to terminate valid lease rights of 8 Laguardia SRL for the benefit of a local third party 9 competitor. This is also confirmed by the written 10 record, for example, the statement of Ms Ivanis, it 11 is also confirmed by the conversations Mr Grot had 12 with President Zelenenco of the Floresti district, 13 as well as Vice President Rusu. 14 Multiple witnesses acknowledged that this 15 pattern of events, the termination, and then the 16 subsequent dispositions, indicate that something 17 else was going on here. 18 The timing is very interesting. This is 19 happening just before the spring planting season. 20 Also, interestingly, as described by Mr Grot, he had 21 learned from the customs authorities that the local 22 third party, Bio-Alianta, had recently acquired and 23 imported modern farming equipment. Thus, the 24 terminations occurred, the disposition were issued, 25 and the competitors' leases were signed and then</p>

<p>1 registered almost immediately. The record is clear 724 2 what the something else was. 16:37</p> <p>3 I would like to move on and talk about the</p> <p>4 dispositions a little bit more.</p> <p>5 There is no question that registration of</p> <p>6 leases is an act of public authority. There is also</p> <p>7 no question that the dispositions were issued as an</p> <p>8 exercise of public authority, but irregularities</p> <p>9 abound.</p> <p>10 Let's start with Roger Gladei's</p> <p>11 presentation. It was perhaps a point I am not sure</p> <p>12 if it was noted in great detail by the Tribunal, but</p> <p>13 the Claimants find it interesting that Roger Gladei</p> <p>14 actually started his presentation by showing that</p> <p>15 there were two versions of the dispositions in each</p> <p>16 village. There was one which was presumably used by</p> <p>17 Bio-Alianta to obtain ex parte injunctions, and we</p> <p>18 believe, although the record is not clear on</p> <p>19 notification, which I will get to, we believe that</p> <p>20 these are the ex parte injunctions that Laguardia</p> <p>21 ultimately received at the bear minimum, through the</p> <p>22 court proceedings concerning the injunctions, and</p> <p>23 there was also another one which was sent as part of</p> <p>24 a request made in the context of this arbitration;</p> <p>25 in other words, a request was made for these</p>	<p>1 were never properly communicated to anybody who was 726 2 affected by these dispositions, yet somehow these 16:40</p> <p>3 dispositions were used to deprive Laguardia of its</p> <p>4 rights.</p> <p>5 We will come back to this lack of</p> <p>6 notification and how it impeded Laguardia's ability</p> <p>7 to seek effective local remedies shortly.</p> <p>8 But I'm not done with the dispositions.</p> <p>9 I would like to talk about some of the content</p> <p>10 issues related to the dispositions. The hundreds of</p> <p>11 plots of lands, agricultural lands, are not</p> <p>12 described in any way by these dispositions. The</p> <p>13 owners of all these lands are not identified by</p> <p>14 these dispositions, and this is just frankly an</p> <p>15 unacceptable level of uncertainty for a mayoral act</p> <p>16 which has individual character and prejudiced</p> <p>17 hundreds and hundreds of people. This is especially</p> <p>18 considering that the mayor had no problem issuing</p> <p>19 hundreds of illegal lease termination notifications</p> <p>20 individually addressed to landowners on a single</p> <p>21 day.</p> <p>22 I would also like to point out that the</p> <p>23 mayors assisted the local third party competitor</p> <p>24 Bio-Alianta in various additional ways. We talked a</p> <p>25 little bit about how the mayor stood alongside, the</p>
<p>1 dispositions to be sent to the legal expert for 725 2 analysis, and the formatting of that disposition was 16:39</p> <p>3 actually different than the dispositions that</p> <p>4 Laguardia had in its possession. It is strange.</p> <p>5 There are differences between these documents, which</p> <p>6 is very curious, taking into consideration the</p> <p>7 issues concerning proper notification of these</p> <p>8 documents to Laguardia SRL.</p> <p>9 So I would like to turn to that</p> <p>10 notification issue. There are two problems with</p> <p>11 notification, as discussed by the Tribunal. There</p> <p>12 is no evidence that any of the landowners were ever</p> <p>13 provided with these disposition, and as was</p> <p>14 discussed at greater detail, there is no evidence</p> <p>15 that these dispositions were ever properly</p> <p>16 communicated to Laguardia SRL</p> <p>17 We know that Laguardia SRL did not become</p> <p>18 aware of these dispositions until they were used</p> <p>19 against him in ex parte injunction proceedings,</p> <p>20 which were filed again by that local third party</p> <p>21 competitor, Bio-Alianta.</p> <p>22 So not only was Laguardia prejudiced by</p> <p>23 these dispositions, but so were the landowners. In</p> <p>24 fact, the dispositions perhaps never even became</p> <p>25 effective, because as far as the record shows they</p>	<p>1 Mayor of Cosernita at a minimum, Bio-Alianta, how 727 2 the mayors blocked access of Laguardia to the 16:41</p> <p>3 fields, how the Mayor of Cosernita threatened</p> <p>4 Laguardia's employees, et cetera.</p> <p>5 Then we also heard from Mr Gladei that</p> <p>6 this went far beyond their normal roles as mayors,</p> <p>7 that this was not appropriate, not what normal</p> <p>8 mayors do. We also know that these mayors supported</p> <p>9 the Bio-Alianta civil lawsuits by filing witness</p> <p>10 statements, for example, in support of ex parte</p> <p>11 injunctions. We know that the mayors refused to</p> <p>12 issue leases, to return the leases and give copies</p> <p>13 of the dispositions to Laguardia so that it could</p> <p>14 adjudicate its rights. We also know that even when</p> <p>15 ex parte injunctions were lifted, mayors, at least</p> <p>16 the Mayor of Cosernita, failed to honour the court</p> <p>17 decision which lifted the injunction.</p> <p>18 There were other actors involved here.</p> <p>19 This case is not just about mayors and we will talk</p> <p>20 about those other actors in just a minute. But</p> <p>21 I just want to stop and acknowledge the role of</p> <p>22 mayors in Moldovan villages. In the written</p> <p>23 pleadings prior to this hearing, we heard about how</p> <p>24 Claimants attempted to inflate the role of the</p> <p>25 mayor. We have already discussed how it is Moldovan</p>

<p>1 law which says that mayors have a right of legal 2 obligations including to uphold international treaty 3 obligations, but perhaps it was Professor Rusu who 4 said it best: "mayors are second only to the church" 5 meaning not only do they have significant legal 6 authority, but also serious cultural authority. In 7 other words, when mayors instruct lower level 8 officials, and perhaps even landowners to do 9 something, they might just do it.</p> <p>10 But, like I said, this is not only about 11 mayors. There were higher level officials involved 12 as well, it is clear. Mr Rusu and Mr Zelenenco, the 13 Vice-President and President of the Floresti 14 district, admitted that they had received 15 instructions from above and you heard it from 16 Mr Grot himself, and Nina Ivanec admitted as much as 17 well, and again Nina Ivanec is the Mayor of 18 Varvareuca to remind everybody.</p> <p>19 We also heard about when Mr Grot's 20 colleague or contact, Valeriu Beril, set up a 21 meeting with a national official and a bribe was 22 solicited. We heard about, and it is on the record, 23 concerning the failure of prosecutors to take 24 Mr Grot's complaint seriously. We also know about 25 the co-ordination of the prosecutor and Bio-Alianta</p>	<p>728 16:43</p> <p>1 Laguardia in the lease execution process, then that 2 would be a private act.</p> <p>3 However, the experts agree that if there 4 was an instruction or pressure from a superior 5 official, it would be a different case entirely. So 6 what do we have here in this case?</p> <p>7 We first heard from Mr Grot, and he was at 8 the city halls, he was there, he was present, and he 9 saw Mr Zelenenco and Mr Rusu instruct the mayors to 10 assist Laguardia SRL with the process of lease 11 execution in addition to, of course, the subsequent 12 registration. This was a public act in the city 13 hall during working hours in a purely public 14 context.</p> <p>15 Then Mr Rusu, Mr Zelenenco, and the mayors 16 tell Mr Grot that everything is going fine. They 17 tell him to begin farming. Everything was going 18 well. They were begging him to start, so he 19 started.</p> <p>20 From September 2010 until December 2010, 21 Mr Grot was receiving assurances from the highest 22 level officials in Floresti, as well as the local 23 mayors, that the lease execution process, along with 24 the registration process, was proceeding as planned. 25 You heard Mr Grot say that he was</p> <p>730 16:45</p>
<p>1 in the third village, which was not discussed in 2 great detail at this hearing, but of course in the 3 village of Rosietici, and we know about the failure 4 of police to investigate when requested.</p> <p>5 I could go on, but I am not going to. The 6 record is very clear on these points. The written 7 submissions do go further. The Tribunal has 8 adequate information in front of them to make a 9 decision concerning attribution. I want to remind 10 the Tribunal one more time that this case is not 11 only about dispositions, but it is about a pattern 12 of state conduct.</p> <p>13 I would like to move on to my second point 14 and that is concerning the process of lease 15 execution.</p> <p>16 There was significant conversation 17 concerning whether the local cadastrals were acting 18 in a public context or in a private context during 19 the process of lease execution, prior to the 20 registration of the leases, but during the lease 21 execution process, principally in the fall of 2010.</p> <p>22 Let's start with what the experts said 23 about this process. Roger Gladei said that if the 24 cadastral agent in his free time has a private 25 agreement with Laguardia to separately assist</p> <p>729 16:44</p>	<p>1 receiving these assurances. This provided a higher 2 level of assurance than perhaps would normally be 3 expected in a country like Moldova. Perhaps it was 4 an unusual situation, but it appeared to be secure, 5 and perhaps less risky than normal situations.</p> <p>6 But then there is another question that 7 was talked about by the Tribunal, and it concerns 8 the fee which was paid by Mr Grot, and whether the 9 registration fees which were paid by Mr Grot affect 10 these assurances in the context of turning what was 11 otherwise a public act into a private act.</p> <p>12 Now, as a qualification, this question 13 from Claimants' perspective should only be relevant 14 for leases which were allegedly not validly 15 concluded, which is around -- the demonstrative that 16 Claimants presented shows the number -- ten per cent 17 of the leases. That is the qualification Claimants 18 would like to make concerning this argument</p> <p>19 But you heard Mr Grot. He was asked. He 20 said that he only paid a registration fee, and it is 21 very clear, and uncontroverted from the remainder of 22 the record, that any fee he paid was invoiced from 23 the mayor's office and wired directly to the mayor's 24 office and no other payments were made. So, in 25 other words, any payment made was made in a public</p> <p>731 16:47</p>

<p>1 context. 732 16:48</p> <p>2 You have also heard about Mr Grot's</p> <p>3 character from Mr Beril, as well as described in</p> <p>4 many of the written witness statements. He is an</p> <p>5 honest man and his very candid testimony in front of</p> <p>6 this Tribunal shows that. It was evidenced also in</p> <p>7 the context of this case by how he reacted when a</p> <p>8 national government official requested a bribe to</p> <p>9 solve all of his problems in Floresti. At that time</p> <p>10 his business was under attack, it was under siege.</p> <p>11 He was being threatened. You heard him talk about</p> <p>12 that meeting. All he had to do was pay the official</p> <p>13 and perhaps there would have been a solution. He</p> <p>14 refused.</p> <p>15 To summarise on this point, the entire act</p> <p>16 of facilitating the execution of the lease</p> <p>17 agreements by public cadastral agents was a public</p> <p>18 act. It was directed by higher level authorities;</p> <p>19 it was done in the context of a local mayor's</p> <p>20 office; it was at the office, presumably during</p> <p>21 business hours, and definitely directly related to</p> <p>22 cadastral activity; no special agreement was in</p> <p>23 place. Again, it was a public act.</p> <p>24 I would like to move on to my third point</p> <p>25 before I pass over to Mr Astuno, and that is</p>	<p>1 fact, they did appeal in this case concerning 734 16:51</p> <p>2 Disposition 1-A when the later State Chancellery</p> <p>3 case was in fact brought.</p> <p>4 Again, this is a time-sensitive farming</p> <p>5 situation, so keep in mind that if it takes one year</p> <p>6 to go through the Administrative Court procedure and</p> <p>7 obtain a judgment which is final and binding,</p> <p>8 because it is not appealed, given the context of the</p> <p>9 situation that means that two farming seasons would</p> <p>10 have already been lost. Mr Grot would have been</p> <p>11 able to bring the lawsuit when he was properly</p> <p>12 notified of the dispositions. We will get to that</p> <p>13 in one second. Let's imagine for the sake of</p> <p>14 argument that Mr Grot had been notified properly at</p> <p>15 some time in April 2011.</p> <p>16 Well, the 2010-2011 situation would not</p> <p>17 have been resolved, so farming season No.1 had been</p> <p>18 lost and farming season No.2 would have been lost</p> <p>19 because as the case was being adjudicated the next</p> <p>20 planting season arises and Mr Grot and the Claimants</p> <p>21 are not able to complete or even conduct their</p> <p>22 activities in that context.</p> <p>23 But, in reality, this situation would have</p> <p>24 been exacerbated by the insufficient notice</p> <p>25 surrounding the dispositions as the ability to</p>
<p>1 concerning the realistic options for local remedies. 733 16:49</p> <p>2 The legal experts suggested that there were actually</p> <p>3 three options for resolving this situation, so we</p> <p>4 need to examine these three options and see if any</p> <p>5 of these options would have actually led to any sort</p> <p>6 of meaningful resolution for Mr Grot and the</p> <p>7 Claimants.</p> <p>8 The three options which were identified</p> <p>9 appear to be the administrative courts, the</p> <p>10 State Chancellery, and actually going to the public</p> <p>11 authority such as the police. We also need to look</p> <p>12 at this in the context of the severity and urgency</p> <p>13 of the situation. We cannot forget that this is a</p> <p>14 farming investment and that time is a very essential</p> <p>15 ingredient to any farming project.</p> <p>16 Now, in Mr Gladei's view, as a</p> <p>17 practitioner of Moldovan law, and as agreed by</p> <p>18 Professor Rusu, the administrative courts would have</p> <p>19 taken some time, at a minimum a year. That is</p> <p>20 perhaps in Mr Gladei's estimation a best case</p> <p>21 scenario.</p> <p>22 Then we need to take into consideration</p> <p>23 the appeal procedure which would have been required</p> <p>24 to obtain a binding decision. It is very reasonable</p> <p>25 to believe that the mayors would have appealed. In</p>	<p>1 exercise his rights would have been blocked by this 735 16:52</p> <p>2 delay concerning proper notification of</p> <p>3 dispositions.</p> <p>4 To summarise on the Administrative Court</p> <p>5 procedures, that really was not an effective option</p> <p>6 for Mr Grot and the Claimants. It would not have</p> <p>7 provided any sort of meaningful resolution, not only</p> <p>8 concerning the dispositions, but concerning the</p> <p>9 holistic attack on his investment in Floresti.</p> <p>10 Let's talk about the State Chancellery.</p> <p>11 Now we know that the State Chancellery ultimately</p> <p>12 did bring a proceeding challenging Disposition 1-A.</p> <p>13 Now, Mr Grot tried to get the State Chancellery to</p> <p>14 act on its own, but ultimately required some police</p> <p>15 assistance to get the process going.</p> <p>16 I want to make it clear, the Claimants</p> <p>17 have never said that nobody, no public official in</p> <p>18 Moldova was ever willing to help-- there were many</p> <p>19 officials in Moldova who acted within the context of</p> <p>20 their normal duties -- that wasn't enough to save</p> <p>21 the investment in this case. There was a police</p> <p>22 officer who made a request to the State Chancellery,</p> <p>23 after Mr Grot had requested police assistance on one</p> <p>24 occasion -- one occasion of many, I might add-- and</p> <p>25 the State Chancellery ultimately took up the cause</p>

<p>1 and, as this Tribunal is very well aware, the 2 results of that State Chancellery challenge, 3 Disposition 1-A, led to court judgments invalidating 4 Disposition 1-A.</p> <p>5 But, again, the problem here is timing, 6 because the successful result concerning 7 Disposition 1-A -- remember, the proceedings started 8 in, if my memory serves me, May of 2012, and 9 ultimately was not resolved with a final binding 10 decision until January of 2015 -- and at that point 11 it was well past the expiration of the four-year 12 lease terms.</p> <p>13 Perhaps, given this urgency, and the 14 typical delays associated with going to court, not 15 only in the Republic of Moldova, but in many 16 countries, but specifically in this case in the 17 Republic of Moldova, perhaps going to the public 18 authorities was perhaps the best choice under this 19 circumstance.</p> <p>20 Now Mr Grot did try to go to many public 21 authorities as described in greater detail at 22 section 7K of the Reply Memorial, and he was 23 consistently ignored, and I am not going to go 24 through all of those again. They have been 25 sufficiently described in the written pleadings.</p>	<p>736 16:54</p> <p>1 no requirement legally under the BIT to seek local 2 remedy. And, again, the real situation, the reality 3 was that that there no realistic option for local 4 remedies that would have allowed Mr Grot to preserve 5 his investment in this case.</p> <p>6 With that, I will conclude my remarks and 7 I will let Mr Astuno continue. Thank you.</p> <p>8 THE PRESIDENT: Thank you, Mr Gleason. 9 Mr Astuno?</p> <p>10 MR ASTUNO: Thank you to my colleague. 11 Co-counsel, members of the Tribunal, to 12 briefly summarise the quantum issues that have 13 already been flushed out before us, I want to start 14 by saying to value Laguardia at the time of its 15 destruction one must first understand Mr Grot. 16 Laguardia was, after all, Mr Zbigniew Grot. The 17 business plan was him.</p> <p>18 I ask this Tribunal to look at his past 19 profitability in Poland as of the year 2010, his 20 present profitability in Moldova as of the year 21 2010, and, most importantly, above all, a certainty, 22 certainly a likelihood of future profitability at 23 the time that his investment was unlawfully taken 24 from him.</p> <p>25 The Stefan Voda experience, albeit a</p> <p>738 16:56</p>
<p>1 Was it reasonable at this 2 point, December 2012, for Mr Grot to actually leave 3 Moldova? That is the last question I would like to 4 discuss.</p> <p>5 Keep in mind that Mr Grot at this point in 6 time was terrified, and he had good reason to be 7 terrified. He was threatened. A violent act had 8 been carried out against him. He hired a bodyguard. 9 Could Mr Grot have just gone and farmed somewhere 10 else nearby right away? No, that wasn't a realistic 11 option for him, or for the Claimants.</p> <p>12 You heard from him. He was almost in 13 tears as he described how he just wanted to go back 14 home to Colorado and see his young son. So really 15 there was no local remedy to be found in the 16 Moldovan court system, despite Respondent's 17 arguments, it just wasn't a realistic option at 18 least to obtain a remedy which would allow Mr Grot 19 and the Claimants to preserve their investment in 20 this case.</p> <p>21 Claimants would like to make as a final 22 point on this issue that the arguments raised in 23 opening concerning the erroneous factual assumptions 24 that Respondent based its local remedies argument on 25 stand, as does its position that there is actually</p> <p>737 16:55</p>	<p>1 short-lived one, speaks for itself. It was a 2 farming operation that, left to his own devices, a 3 modest one moreover, 250 acres compared to 2830 ha 4 under lease in the Floresti region, generated a 5 profit of a margin of 40 per cent. Does that sample 6 size, if you will, not indicate the potential, the 7 likelihood at the very least, if not the certainty 8 of its future success?</p> <p>9 Let us refer again, or think back to the 10 testimony of Mr Beril, the former President of 11 Moldova coming before us, in a very poignant 12 testimony, I think we would all agree, mentioning 13 that this land was fallow for three years. It was 14 unthought of that it could be turned into 15 productivity, and this is a country that is 16 predominantly defined by its agricultural community 17 in this part of the economy.</p> <p>18 Yet Mr Grot defied expectations beyond 19 imagination. We heard that from the President of 20 this district himself, who wasn't his friend; 21 rather, he was someone who came to know and trust 22 and believe in Mr Grot and could attest to his 23 character, but most importantly, and for the 24 purposes of the portion of the analysis I am now 25 conducting, could attest to Laguardia's opportunity</p> <p>739 16:59</p>

<p>1 as to what lay ahead in the country of Moldova, and 2 that dream, as Mr Fortier described it, it certainly 3 was a dream to make an investment, to make an impact 4 for investment, to be successful, it became a 5 reality at that point. It still was a dream, of 6 course, and that dream would be living itself out 7 this very moment had the intervention not occurred, 8 but let us also recognise that it was a reality if 9 we would look at the actual data, if we look at the 10 numbers. It was a reality of success, the profits, 11 the history of Mr Grot's past operations. 12 Never once was there a year where 13 he didn't turn a profit, and on that basis we look 14 at the two quantum reports before us. One truly is 15 credible, backed up by locally validated data, and 16 the other is an empty chair. The other is a report 17 that sits on an empty chair and, despite the hard 18 work of Mr Peer and his expertise, he admitted to us 19 today that it is unworkable to value a business 20 without any local input, without a specific 21 understanding of the industry at issue, and his 22 report then has to be entirely dismissed. 23 We are looking, then, at another report 24 that albeit was challenged in terms of the 25 reliability and the history of profitability, but of</p>	<p>740 17:01</p> <p>1 I encourage this Tribunal to go back and look at the 2 actual financial statements for the years of 2011, 3 2012, 2013 and 2014. 4 Laguardia's business model was negative, 5 had negative earnings, and the mitigation efforts, 6 albeit they were attempted, clearly were not 7 successful and clearly cannot be taken into account 8 to offset at a bare minimum the initial investment 9 costs. 10 Then we must talk about what could have 11 been? What would have been the opportunity cost? 12 Because to reimburse initial costs seven years later 13 does not take into account seven years of an 14 otherwise dream, that we I think can fairly say 15 truly was a dream, being robbed from someone, 16 someone who is a trusting man, someone who did 17 nothing wrong, someone who only wanted to bring his 18 expertise and make a valuable investment. 19 On that basis we would stand by the 20 interest rate, the pre-judgment interest rate that 21 is put forth in our expert report, because it takes 22 into account the expected return of someone like 23 Mr Grot who would be willing to go to perhaps not 24 the most likely of places, but nevertheless a place 25 where the rule of law should be upheld and just</p> <p>742 17:04</p>
<p>1 the two I just implore this Tribunal to understand 2 it in terms of what is in front of it. Clearly one 3 is more credible than the other, if not much more 4 credible than the other and that is our valuation 5 approach. 6 I would end this discussion with a 7 question. Why would it be reasonable to think that 8 Mr Grot would have lost money for the first time in 9 his farming career? 10 Moving on to this discussion of if the 11 future cashflows cannot be awarded, initial costs at 12 a bare minimum would be reimbursed. To that point 13 we would add that there cannot be an offset, there 14 shouldn't even be a discussion of any sale of the 15 equipment because there were negative earnings in 16 every year when that equipment was beingsold, and 17 why were there negative earnings? If we look back 18 at the financial statements that were tabulated by 19 the Respondent's quantum expert in table 2 of his 20 report, because he was paying back interest on the 21 debt. He had obligations that resulted from the 22 destruction of his investment and those liabilities 23 exceeded any slight modest offset in revenue that 24 would have been achieved through the sale of 25 equipment. Sort of bare minimum then, and again</p> <p>741 17:02</p>	<p>1 compensation should be paid under the terms of the 2 treaty. 3 With that we complete our quantum 4 analysis. Thank you. 5 THE PRESIDENT: And your closing 6 submission, I take it? 7 MR ASTUNO: And our closing submission. 8 Thank you. 9 THE PRESIDENT: Can I ask whether either 10 of my colleagues have a question for you in relation 11 to any of that? 12 I just have one quick question since you 13 touched on it. What is the situation today as 14 regards any ownership, in whole or in part, that 15 Mr Grot has of the equipment that was brought to 16 Moldova back in 2010/2011? What is your position on 17 that? 18 MR ASTUNO: Mr President, we would begin 19 to answer that question by acknowledging that when 20 Mr Grot left his investment, when his leases were 21 taken from him he lost control over the entirety of 22 his investments, including his equipment, and any 23 transactions that subsequently occurred again do not 24 amount to liabilities that that company still faced. 25 There is a separate ownership structure</p> <p>743 17:05</p>

<p>1 that was put in place. Although the name remains 2 the same, Laguardia today is insolvent, as I believe 3 this Tribunal understands. Mr Grot's investment in 4 that equipment was too lost and, at the very least, 5 any sale of that merchandise again did not at all 6 compensate for losses that that company continued to 7 face.</p> <p>8 THE PRESIDENT: It is not quite what 9 I asked, and it was, if I may say, a slightly opaque 10 answer. We are just trying to work out what 11 happened to the equipment. Is it owned by --</p> <p>12 MR GLEASON: Unfortunately the situation 13 is not entirely clear. That is the simple fact of 14 the matter. Perhaps it could have been clarified 15 had this issue been raised as an issue by Respondent 16 prior to this hearing, and they had the chance to 17 raise the issue with Mr Grot, so I don't want to 18 speculate on the record concerning an issue which 19 I am not entirely sure about, but I can tell you 20 that Mr Grot is no longer an owner of the company 21 Laguardia Agrobusiness to which the Respondent 22 introduced an exhibit earlier today saying the 23 equipment was put into this company.</p> <p>24 THE PRESIDENT: Is that accurate that the 25 equipment was transferred to this company?</p>	<p>1 speaks for itself. The fact remains that Mr Grot is 2 not at this point in time an owner of Laguardia 3 Agrobusiness. I hesitate to tell you about my 4 conversations with Mr Grot about this issue which 5 happened in the context of an attorney-client 6 relationship --</p> <p>7 THE PRESIDENT: I am not asking you about 8 that.</p> <p>9 MR GLEASON: But the simple fact of the 10 matter is that this question could have been easily 11 resolved had they attempted to bring these documents 12 to Mr Grot's attention rather than Mr Wiechen's 13 attention. I am not sure why these exhibit which 14 touch on a factual matter weren't brought --</p> <p>15 THE PRESIDENT: Am I right in thinking 16 that the equipment identified in R-9 was transferred 17 to Laguardia Agrobusiness? That Mr Grot is no 18 longer an owner of Laguardia Agrobusiness, and that 19 in return a consideration was paid to him for the 20 sale of Laguardia Agrobusiness (R-11)</p> <p>21 MR GLEASON: I would also mention that 22 some of this equipment, and I don't have the exact 23 details and it wasn't introduced on the record 24 because again this is an issue that was raised very 25 late in this proceeding, some of this equipment was</p>
<p>1 MR GLEASON: Some of it.</p> <p>2 THE PRESIDENT: How much of it?</p> <p>3 MR GLEASON: I could not tell you off the 4 top of my head but I believe the record is clear on 5 that point. The document that was submitted by 6 Respondent today is a document that was provided by 7 Claimants in document production.</p> <p>8 THE PRESIDENT: And that is not disputed.</p> <p>9 MR GLEASON: There is no dispute 10 concerning the content of that document</p> <p>11 THE PRESIDENT: And what happened then to 12 Laguardia Agrobusiness? That was then sold in 13 accordance with R-13? Is that also an accurate 14 document?</p> <p>15 MR GLEASON: I don't remember off the top 16 of my head what R-13 is.</p> <p>17 MR ASTUNO: What was the date, please?</p> <p>18 MR KOPECKY: 28 November 2012.</p> <p>19 THE PRESIDENT: Is that transfer?</p> <p>20 MR KOPECKY: Yes. That is the 21 contribution in kind to Laguardia Agrobusiness.</p> <p>22 THE PRESIDENT: So are the contents of R-9 23 not disputed either in that equipment was 24 transferred to Laguardia Agrobusiness?</p> <p>25 MR GLEASON: All I can say is the document</p>	<p>1 seized at a certain point.</p> <p>2 MR FORTIER: It has been raised so it has 3 to be dealt with.</p> <p>4 MR GLEASON: Sure, and unfortunately the 5 problem that I am having in dealing with this issue 6 is that it was raised in a way that doesn't give us 7 an adequate opportunity to find the answers to these 8 questions. That is my problem here and that is why 9 I do raise an objection to the fashion in which this 10 information was brought into this proceeding.</p> <p>11 THE PRESIDENT: But you will understand 12 that we as mere members of a Tribunal have somehow 13 to work our way through the morass and do so 14 accurately, so if we were by any chance to get to 15 the point of a valuation we would need to have 16 answers to these questions because it would not be 17 right if either he continues to be the owner of this 18 equipment for him to be compensated for its loss. 19 Alternatively, if it were sold, for him to be 20 compensated again for, if you like, a value for 21 which presumably he received a consideration of some 22 sort.</p> <p>23 MR GLEASON: Fair enough. May I confer 24 for one moment with my colleague?</p> <p>25 MR KOPECKY: Maybe for the record, both</p>

<p>1 exhibit were submitted with a counter seven months 2 ago exactly.</p> <p>3 THE PRESIDENT: It is before us. We are 4 going to have to find a way to sort it out.</p> <p>5 MR ASTUNO: Mr President, believe me, we 6 share your desire in absolutely understanding 7 entirely the financial transparency of this 8 equipment issue and we would ask for the right to 9 submit at some point in the near future an audit, if 10 you will, a summary of exactly what was sold for 11 what, and we also would like to reserve the right in 12 that moment to make any argument that, whatever 13 compensation was received, still should be taken 14 into account in light of unsuccessful mitigation 15 efforts and other losses that Laguardia had incurred 16 on its balance sheet.</p> <p>17 THE PRESIDENT: We will take note of that 18 and we will decide in due course how to proceed, but 19 thank you. I think that extinguishes my interest in 20 that.</p> <p>21 MR GLEASON: Can I add one more point? 22 Unfortunately there is, because of the nature in 23 which Mr Grot had to flee from Moldova, there is 24 uncertainty concerning a fair amount of the 25 equipment, what happened to it. Some of it was</p>	<p>1 guess at this point I am interested in the facts, 2 because we didn't hear Mr Grot talk at all when he 3 was giving evidence about -- we saw that he was very 4 touched, these were not happy times that he spent in 5 Moldova -- but there is very little evidence before 6 us on which to rest a claim for moral damages.</p> <p>7 MR WELLS: In terms of the two pieces of 8 evidence, and you are right, there is a lot of 9 evidence that wasn't discussed in this hearing. For 10 example, Mr Ursu Veaceslav, his witness statement, 11 the bodyguard that Mr Grot hired, which is also 12 evidence of how scared he was.</p> <p>13 If you take a look at that witness 14 statement, you will see Mr Veaceslav talk about the 15 effects of these actions in the country. He 16 identified the timing, for example, of when Mr Grot 17 was affected by the conduct, and additionally you 18 can take a look at the witness statement of 19 Dr Zbylski, that is Mr Grot's physician in Colorado 20 Springs.</p> <p>21 I think one of the issues that was raised 22 in Respondent's memorial related to the fact that 23 Mr Grot had had in the past some serious problems 24 with anxiety and depression, or he had some -- not 25 serious problems -- but he had had problems in the</p>
<p>1 again seized in Civil Court proceedings and never 2 returned, stolen in other fashions, et cetera, 3 et cetera, so we would have to do some significant 4 research to get to the bottom of those issues, but 5 should the Tribunal find it necessary we would be 6 happy to engage in those efforts.</p> <p>7 MR FORTIER: The individual Claimant, 8 Mr Grot, is claiming moral damages. Is somebody 9 going to brief us on the moral damages that you are 10 claiming on behalf of Mr Grot?</p> <p>11 MR WELLS: It seems that the issue of 12 moral damages in investor state arbitration, 13 especially in ICSID cases, comes down to the 14 question of can an individual claim those damages? 15 There seems to be some deviation between whether an 16 individual investor can claim them versus a company, 17 the company itself should be awarded the 18 compensation. So we have made, I would say two 19 arguments: that it should either be awarded to 20 Mr Grot, or Laguardia USA as the holding company, 21 but they are alternative arguments.</p> <p>22 Would you like a submission on the facts 23 related to the moral damages, or is it more --</p> <p>24 MR FORTIER: I am familiar with the law, 25 the Desert Line v Yemen decision in particular. I</p>	<p>1 past with those issues, and that the conduct of the 2 Respondent essentially increased those problems, so 3 the depression and the anxiety increased. So we 4 would turn the Tribunal's attention to those pieces 5 of evidence.</p> <p>6 MR FORTIER: There were a number of 7 witnesses who provided statements who were not 8 examined. You know that they stand uncontradicted. 9 We haven't heard anything about them.</p> <p>10 MR WELLS: They do stand uncontradicted, 11 and we did submit -- which exhibit was?</p> <p>12 MR KOPECKY: But not uncontested.</p> <p>13 MR FORTIER: But you have not argued on 14 the basis of any of these statements, any of the 15 facts put on the record by those witnesses.</p> <p>16 MR WELLS: Those witness statements are in 17 the record, though.</p> <p>18 MR FORTIER: Yes.</p> <p>19 MR WELLS: In terms of the short duration 20 of these hearings, we would turn the Tribunal's 21 attention to those pieces of evidence, yes</p> <p>22 MR FORTIER: If, at the end of the day, we 23 will order Post-Hearing Briefs -- which we will 24 discuss later, as the Chairman said -- it will be in 25 your interest to remind us of the evidence of those</p>

<p>1 witnesses. 752 17:19</p> <p>2 MR WELLS: Thank you.</p> <p>3 THE PRESIDENT: Very good. Thank you very</p> <p>4 much, Claimant. That completes your closing and</p> <p>5 your oral submissions. Thank you for your brevity</p> <p>6 and efficiency. Respondent?</p> <p>7 Closing Submission by Respondent</p> <p>8 MR KOPECKY: Members of the Tribunal,</p> <p>9 esteemed colleagues, ladies and gentlemen, as I</p> <p>10 stated in my opening to which I refer and encourage</p> <p>11 the Tribunal to re-read, the issue here is whether</p> <p>12 the State is responsible for what happened to</p> <p>13 Mr Grot, not on supposition, not on speculation, but</p> <p>14 on facts and the evidence on record.</p> <p>15 The question is not if something now in</p> <p>16 retrospect appears strange; the question is whether</p> <p>17 the Republic of Moldova committed an internationally</p> <p>18 wrongful act; whether the BIT was breached.</p> <p>19 In my opening I stated the essential</p> <p>20 issues in dispute, and I agree with the Tribunal</p> <p>21 that there are really just a few and most have been</p> <p>22 resolved based on the record alone well before this</p> <p>23 hearing started. So I limit myself to the few</p> <p>24 issues that were left to be clarified at this</p> <p>25 hearing.</p>	<p>1 THE PRESIDENT: Can I make a suggestion 754 17:22</p> <p>2 that rather than have you read out all of the</p> <p>3 things, to save you the hassle, you can put it into</p> <p>4 the transcript as a footnote and that will save</p> <p>5 everyone a lot of time.</p> <p>6 MR KOPECKY: I will give it to the court</p> <p>7 reporter.</p> <p>8 THE PRESIDENT: And we can work it into</p> <p>9 the court record because that means at least that</p> <p>10 you do not have to read it. I do not think it makes</p> <p>11 any difference from the perspective of the</p> <p>12 Claimants. You didn't put in those references. If</p> <p>13 it is going to cause a problem, then carry on</p> <p>14 reading them into the record, but I was trying to be</p> <p>15 helpful here. If you want to read them into the</p> <p>16 record, that is your prerogative, but if it is going</p> <p>17 to cause a problem then let's carry on reading them</p> <p>18 in the record.</p> <p>19 MR GLEASON: The reason I object is just</p> <p>20 based on the characterisation of us just telling a</p> <p>21 story. It was based on the record.</p> <p>22 THE PRESIDENT: We are a grown-up</p> <p>23 Tribunal. It was simply trying to be helpful but</p> <p>24 why don't you carry on reading them into the record</p> <p>25 MR GLEASON: We will defer to the</p>
<p>1 But before I do this, let me say that 753 17:21</p> <p>2 sitting here and looking at Mr Grot, it gives me no</p> <p>3 pleasure to do this. I agree with Claimants that</p> <p>4 this is not a cliché BIT case of some multinational</p> <p>5 going against a South American state for bonds, and</p> <p>6 we are all very aware of this. But it is a BIT case</p> <p>7 and it must be pleaded and decided like a BIT case,</p> <p>8 and therefore I will not tell you a story like we</p> <p>9 just heard. What I will say I will support with a</p> <p>10 direct reference to evidence: name, date, page,</p> <p>11 paragraph, exhibit page.</p> <p>12 To get to my first point, and I have ten,</p> <p>13 so we will try to be brief.</p> <p>14 The factual record.</p> <p>15 The witnesses heard in this hearing</p> <p>16 provided important background to truly understand</p> <p>17 certain events that transpired in those three</p> <p>18 villages. Mr Gladei testified yesterday that</p> <p>19 Moldova is a collectivistic society with a</p> <p>20 collectivistic past (Gladei, Day 2, 433:9). From</p> <p>21 Professor Rusu and Mr Grot we learnt that villagers</p> <p>22 are elderly (Rusu, Day 2, 410:16).</p> <p>23 Poor, primitive (Grot, Day 1, 213:14) and</p> <p>24 that the villagers are often cheated (Rusu, Day 2,</p> <p>25 410:23). I apologise for these references --</p>	<p>1 Tribunal's wisdom on this point. 755 17:23</p> <p>2 MR KOPECKY: I continue reading them into</p> <p>3 the record. I apologise for that. There are not</p> <p>4 that many.</p> <p>5 The mayor plays an important role in the</p> <p>6 community and this is not a role under a law.</p> <p>7 Mayors of small villages have very limited authority</p> <p>8 but as Professor Rusu explains, they enjoy the trust</p> <p>9 of the population second only to the church, as we</p> <p>10 heard (Rusu, Day 2, 408:19) and villagers rely on</p> <p>11 the mayors to solve their collective problems.</p> <p>12 At the same time, the mayors and the civil</p> <p>13 servants are insufficiently literate. As</p> <p>14 Professor Rusu testified, the mayor is not an expert</p> <p>15 in justice. The level of competence of these</p> <p>16 authorities is not that high (Rusu, Day 2, 332:8).</p> <p>17 And Professor Rusu also said the renal</p> <p>18 Registrar has only technical knowledge, technical</p> <p>19 expertise relating to the character (Rusu, Day 2,</p> <p>20 332:11).</p> <p>21 Professor Rusu explained that for that</p> <p>22 reason City Hall decisions are often imperfect and</p> <p>23 contain reasonable errors (Rusu, Day 2, 407:15).</p> <p>24 That may look unusual for you as</p> <p>25 investors, for lawyers from advanced jurisdictions</p>

<p>1 and maybe even for some Moldovan lawyers practising 2 law in the capital, but not in a village of 300 3 souls. 4 Yet that does not show a thickening plot, 5 collusion or conspiracy, and much less does it show 6 a pattern of state conduct. Indeed, as in their 7 submission, Claimants in this hearing failed to 8 prove any conspiracy of public authorities, which 9 brings me to issue 2, namely that no conspiracy was 10 confirmed. 11 Mr Grot testifies in paragraph 8 of his 12 second witness statement that a conspiracy reached 13 up to the highest levels of government. He claims 14 to know this because Mr Beril told him, "in 15 July 2011 the Prime Minister himself was aware of 16 what was going on and that nothing would be done to 17 look into the matter", but Mr Beril did not 18 corroborate this statement at the hearing, despite 19 repeated questioning and clarification requests 20 (Beril, Day 1, 277:1,19, 278:10, and 279:1). 21 Mr Beril merely stated that "I am 22 convinced somewhat that [...] the Vice-Minister of 23 agriculture would have brought this to the attention 24 of the Prime Minister (Beril, Day 1, 279:10). 25 Mr Grot further testified in paragraph 7</p>	<p>1 The question is why so many villagers 2 would seek termination of their leases with 3 Laguardia at the same time in that manner? And 4 Mr Fortier correctly called this a case of empty 5 chairs, and I hope I need not say that this is not 6 counsel's strategy. 7 What seems strange to us is we will 8 explain taking into account the collectivistic 9 background, the character of Moldovan society and 10 the prominent factual role of the mayor. Villagers 11 often need and seek support of the mayor in solving 12 collective issues. In my opening that was 13 speculation. Now we have multiple Moldovan 14 witnesses corroborating this. 15 The witness, Mr Beril, is the former 16 President of the district of Stefan Voda, to correct 17 the closing of Claimants, not the President of the 18 entire country. He is a friend of Mr Grot (Beril, 19 Day 1, 285:1) and appearing as a witness he was 20 asked to explain this, but he could only speculate. 21 I think there is no other way (Beril, Day 1, 281:8). 22 Mr Beril saw these notices for the first 23 time (Beril, Day 1, 283:24). He was not in Floresti 24 or otherwise involved in Claimant's operation at the 25 time, (Beril, Day 1, 280:14) and he erroneously</p>
<p>1 of his second witness statement that it was very 2 clear that someone at a high level in the government 3 had decided Bio-Alianta would take over these lands. 4 At the hearing Mr Grot explained why this was so 5 clear to him. It is Mr Grot's knowledge of speaking 6 to people, doing some homework on the internet 7 (Grot, Day 1, 247:13). But the agricultural 8 experts, local Moldovans we had here clearly were no 9 such people, whilst familiar with Bio-Alianta, they 10 did not associate anything along the lines of 11 Mr Grot's accusation with that company, even when 12 repeatedly asked, and nor did Mr Beril, the first 13 two times he was asked about it (Beril, Day 1, 14 274:21 and 275:1). 15 So certainly there is no direct evidence 16 of conspiracy and neither can such conspiracy be 17 inferred from any of the documents on record. That 18 is my issue 3, the termination notices. 19 The hearing indeed permitted to clarify 20 any questions surrounding the termination notices 21 signed by Varvareuca landowners in February 2011 22 (C-95). But unlike Claimant stated in their 23 closing, these notices were not addressed from the 24 mayor to the villagers, they were addressed to one 25 party, Laguardia, the one lessee.</p>	<p>1 volunteers that the notices would be illegal just 2 because they were drafted in Russian. (Beril, Day 1, 3 281:15). He could only confirm that this was not 4 the official document (Beril Day 1, 284:1). Indeed, 5 it was a private notice for lessors to lessee, and 6 the President correctly noted that Mr Beril's 7 supposition is of "limited probative value". 8 (Professor Sands, Day 1, 281:5.) 9 Exhibit C-94, on the other hand, provides 10 some background here. There were complaints by 11 villagers unhappy at not being paid and their lands 12 not being processed. Those villagers sought to sign 13 or signed new leases with Bio-Alianta. They went to 14 the mayor for advice, as is customary. She 15 confirmed with the local council president, who told 16 her that -- first -- the existing contracts would 17 have to be terminated. That is evidence Claimants 18 put on record, and then the people signed these 19 terminations. 20 We do not know and do not want to further 21 speculate who provided that Russian template, but it 22 doesn't matter because we know it was the people who 23 approached the mayor, and indeed the mayor testified 24 in court that otherwise the people would rebel 25 (C-94).</p>

<p>1 The notifications were put in one envelope 760 17:30</p> <p>2 and sent to Laguardia to make sure that they all</p> <p>3 arrived, perhaps to save postage, a strange premise</p> <p>4 for us, I agree, but not for villagers living at or</p> <p>5 below the poverty line.</p> <p>6 The mayor's signature and stamp on these</p> <p>7 notifications did not have any legal implications.</p> <p>8 Mr Gladei, Claimants' expert, confirmed that it does</p> <p>9 not mean anything "that the mayor put a signature</p> <p>10 under any wording there" (Gladei, Day 2, 404:7) and</p> <p>11 Professor Rusu confirmed "this certification has no</p> <p>12 value" (Rusu, Day 2, 408:12).</p> <p>13 That is what the notices say, "for</p> <p>14 confirmation". A mayor is not a notary but who else</p> <p>15 to turn to in a village of 300 people?</p> <p>16 The next issue centres on an important</p> <p>17 clarification achieved in the course of the hearing</p> <p>18 regarding the differentiation between private and</p> <p>19 public domain.</p> <p>20 To issue No 4, the assistance by cadastral</p> <p>21 agents.</p> <p>22 Claimants reconfirmed in their opening</p> <p>23 Mr Grot's testimony of paragraph 14 of his first</p> <p>24 witness statement that the cadastral agents were</p> <p>25 paid a fee "in addition" to the registration fee</p>	<p>1 (Gladei, Day 2, 349:22), for instance, when it is 762 17:33</p> <p>2 not signed (Gladei, Day 2, 349:7) and, in any event</p> <p>3 irrespective of registration, non-opposability or</p> <p>4 unenforceability cannot be invoked by a party acting</p> <p>5 in bad faith (Rusu, Day 2, 328:8)</p> <p>6 Claimants, who had legal counsel, could</p> <p>7 enforce their rights against Bio-Alianta, despite</p> <p>8 the dispositions.</p> <p>9 Let's briefly summarise what we learnt</p> <p>10 about the dispositions, my issue 6.</p> <p>11 The leases filed by Laguardia to Cosernita</p> <p>12 and Varvareuca City Halls were non-compliant</p> <p>13 (CEX 1), hundreds were not signed(R-14), many</p> <p>14 contained erasures (R-15 and R-16). Many leases</p> <p>15 were signed by persons other than the landowners</p> <p>16 (R-19) and, just for the record, Respondent does not</p> <p>17 agree with Claimants' calculation in CH-2, but it</p> <p>18 need not be redone; it is simply a matter of</p> <p>19 counting the pages.</p> <p>20 A mayor who, as confirmed by Mr Gladei,</p> <p>21 shall exercise control over the register of</p> <p>22 agricultural leases had to take measure to correct</p> <p>23 errors in the register (Gladei, Day 2,</p> <p>24 439:6-440:16).</p> <p>25 Mr Gladei acknowledged that since the</p>
<p>1 (Grot, Day 1, 49:13) for helping "the landowner sign 761 17:32</p> <p>2 a contract (Grot, Day 1, 49:9).</p> <p>3 In their closing, however, Claimants</p> <p>4 referred to Mr Grot's amended testimony, that only</p> <p>5 the registration fee but no servicing fee was paid</p> <p>6 in their closing, but whether paid or not, the</p> <p>7 cadastral agents assistance provided to Mr Grot is</p> <p>8 not attributable to Respondent. The legal experts</p> <p>9 clarified that and agreed that the registrar may act</p> <p>10 in a private capacity to assist private parties in</p> <p>11 executing a contract (Rusu, Gladei, Day 2,</p> <p>12 353:23-356:14) but that is no exercise of public</p> <p>13 authority (Gladei, Day 2, 356:19)</p> <p>14 The second important example, my issue 5,</p> <p>15 the legal effect of the dispositions.</p> <p>16 Professor Rusu reconfirmed that registration serves</p> <p>17 a declaratory purpose and a purpose of publicity</p> <p>18 (Ruse, Day 2, 327:2-3) and primarily fiscal</p> <p>19 administration (Rusu, Day 2, 337:6). He reconfirmed</p> <p>20 that registration does not create nor affect the</p> <p>21 parties' rights (Prof Rusu, Day 2, 327:4). It does</p> <p>22 not affect the validity of the lease, and Mr Gladei</p> <p>23 concurs that an unregistered lease can remain valid</p> <p>24 (Gladei, Day 2, 351:15), and that the registration</p> <p>25 does not validate the otherwise invalid lease</p>	<p>1 mayor's duty to control is not a right, the mayor 763 17:35</p> <p>2 does not qualify as an aggrieved person and</p> <p>3 therefore may not challenge the possible erroneous</p> <p>4 registration of leases in court (Gladei, Day 2,</p> <p>5 437:24-441:4)</p> <p>6 That is why the mayors issue</p> <p>7 Disposition 1-A and 2, (C-31 and C-48) and to recall</p> <p>8 Disposition 2 was not based on the termination</p> <p>9 notices of the Varvareuca villagers. Disposition 2</p> <p>10 was not based on the termination notices.</p> <p>11 Both dispositions provide for the refusal</p> <p>12 "and" the deletion of registration of Laguardia</p> <p>13 leases. Both dispositions are complex acts which,</p> <p>14 according to Professor Rusu, are common in Moldova</p> <p>15 (Rusu, Day 2, 393:24). They are reasoned (in</p> <p>16 Romanian "motivata" – we have had a conversation</p> <p>17 about that) and they are based on a reasonable</p> <p>18 interpretation of the law (Rusu, Day 2, 332:13).</p> <p>19 It was simply not entirely clear under the</p> <p>20 law when exactly a refusal was still possible (Rusu,</p> <p>21 Day 2, 334:4).</p> <p>22 The dispositions concerned hundreds of</p> <p>23 people which they did not expressly identify, but</p> <p>24 there is no need to address them all. As</p> <p>25 Professor Rusu explained, refusal of registration</p>

<p>1 refers to the registration authority on the one 2 hand, and the lessee on the other (Rusu Day 2, 3 394:25-395:12) The lessee is the party obligated to 4 register the lease agreement under Article 10(5) of 5 the Law on Agricultural Lease. The Dispositions are 6 therefore addressed to the lessee, without 7 individualising each lessor. 8 The Dispositions were brought to 9 Laguardia's knowledge, which according to Mr Gladei 10 is the applicable standard (Gladei, Day 2, 11 448:17-18) 12 Once Laguardia became aware of the 13 Dispositions, it had to act in an active way to 14 defend its rights (Rusu, Day 2, 378:9). Mr Gladei 15 further acknowledged that, in any event, regardless 16 of how it was communicated, Disposition 1-A entered 17 into force (Gladei, Day 2, 448:17-18). 18 As Professor Rusu opined, there was no 19 obligation to send the Dispositions to the 20 Territorial Office of State Chancellery for review 21 of legality. The Law on Agricultural Lease does not 22 provide for such "delegation" of powers by the 23 state. 24 Mr Gladei further admitted that the notice 25 of remedy in Dispositions, while brief, sufficed to</p>	<p>764 17:36</p> <p>1 The first is exhibit C-33. Bio-Alianta 2 sought an injunction in the ex parte proceedings. 3 Bio-Alianta alleged that Laguardia's leases violated 4 the law and on that basis a temporary injunction was 5 granted -- a temporary injunction -- and it was soon 6 to be lifted as shown in the second relevant 7 exhibit, C-105. The Floresti District Court ruled 8 in favour of Claimants and annulled the injunction 9 in Cosernita. The pertinent facts and pleadings 10 were summarised by the court. 11 Those alone mention Disposition 1-A and 12 the registration in the following way: counsel for 13 Bio-Alianta had stated that, "lease contracts of the 14 landowners were not registered at the Mayor's Office 15 and by the Mayor's disposition their right was 16 forbidden". We had that in re-direct. 17 However, regardless of this, despite 18 Disposition 1-A, the court ruled in favour of 19 Claimants (cross-examination of Mr Gladei, Day 2, 20 446:18-448:20). In the opening I walked you through 21 the entire reasoning of the court in its decision 22 and from that it was apparent that only the civil 23 law relationship under the leases was relevant for 24 the court to annul the injunction -- only the civil 25 law relationship -- and Mr Gladei yesterday</p> <p>766 17:39</p>
<p>1 permit Mr Grot, who had legal counsel at the time, 2 to duly challenge Dispositions (Gladei, Day 2, 3 441:19-443:4). 4 One year after Disposition 1-A had been 5 issued, it was reviewed by the Territorial Office of 6 State Chancellery, and since the deadline for the 7 challenge was missed, the State Chancellery was not 8 obliged to review it. The review was triggered, as 9 we saw, by the Police Commissariat of Floresti, even 10 though, according to Professor Rusu, it was not on 11 the list of triggers under the law. (Prof Rusu, Day 12 2, 388:16-17): "the police is not in this category". 13 The Territorial Office of 14 State Chancellery filed its Statement of Claim (on 15 record as C-42) and by that time had found it 16 unlawful. 17 This was a strong signal to Claimants that 18 Respondent was on their side. Indeed, both 19 dispositions could have been annulled much sooner 20 and with suspensive effect, if only Laguardia tried 21 and challenged them in Administrative Court. 22 Issue 7. I would like to address the 23 injunctions and the available remedies. Two 24 exhibits are particularly relevant regarding the 25 Cosernita injunctions and the annulment thereof.</p> <p>765 17:38</p>	<p>1 confirmed that the courts' reasoning in that 2 decision did not mention Disposition 1-A or 3 registration (Gladei, Day 2, 452:20). 4 And that was only the first of many 5 instances in which Respondent's court system 6 supported Claimants, and indeed it is Respondent's 7 courts that are competent to address Mr Grot's 8 issues in Moldova. Mr Gladei confirmed: Disputes 9 among private parties are to be solved in common law 10 courts or former economic courts (Gladei, Day 2, 11 435:16-18). 12 Furthermore, ex parte interim relief is 13 available under Moldovan law, (Gladei, Day 2, 14 443:14) and, as the injunctions on the record show, 15 (exhibit C-033, C-034) such relief, if requested, is 16 issued efficiently and promptly annulled if 17 requested unduly. 18 Claimants simply failed to properly make 19 use of the available remedies against landowners and 20 their bad faith competitor. 21 That brings me to issue No 8, which is 22 that, sadly, regrettably instead of taking that 23 stretched hand, Mr Grot chose to take another route. 24 He did not continue legal proceedings in Moldova 25 (Grot, Day 1, 257:24). As Mr Grot clarified, his</p> <p>767 17:41</p>

<p>1 "good lawyer", Mr Nagacevski, advised him to 2 initiate investment arbitration instead (Grot, Day 3 1, 258:17) and so Mr Grot started preparing his BIT 4 claim already in 2012.</p> <p>5 Mr Grot had the impression that he could 6 not get justice in the courts of Moldova (Grot, Day 7 1, 260:13) and this impression, he explained, was 8 based on "what Mr Grot's then lawyers told him at 9 the time". His lawyers. (Grot Day 1, 260:17).</p> <p>10 And so Mr Grot left. With his eyes turned 11 to ICSID, he abandoned his investment. He assigned 12 certain rights. He confirmed that when he left he 13 had no idea what would happen to his investment and 14 that he was not interested to know (Grot, Day 1, 15 256:7)</p> <p>16 To sum up my previous eight points, 17 Respondent is not responsible.</p> <p>18 Point 9, expert evidence.</p> <p>19 Claimants failed to establish the damage 20 they claim to have incurred. When it comes to 21 quantum, our memory of the experts' very helpful 22 contributions hardly need refreshing. There is only 23 a few points to be highlighted regarding the basis 24 of Deloitte's approach.</p> <p>25 1. Deloitte insists on DCF, although</p> <p style="text-align: right;">768 17:42</p>	<p>1 agricultural report. The agronomists confirmed that 2 they had provided all the numbers (Gumovschi, Rurac 3 Day 2, 492:18) yet they also admitted that the data 4 in table 7 was provided by Marius and Athena in 5 Bucharest, a different country (Gumovschi, Day 2, 6 507:7) and the data that came from Deloitte (Rurac, 7 Day 3, 10:21) who in turn relied upon their data.</p> <p>8 Finally, as a result of that fruitful 9 collaboration among experts, it is not clear who 10 relied on whom. Deloitte insist that it is not an 11 agricultural expert. The data in table 4 of 12 Deloitte's report was taken from table 6 of the 13 agricultural report. However, somehow Deloitte's 14 report, that table, contains more information than 15 the agricultural reports provided.</p> <p>16 Apart from this fruitful collaboration, we 17 learned three important things. First, we learnt 18 that it would take two to three years to build up 19 the land. Thus, if at all, Claimants could not 20 possibly have achieved Visoca State Centre yields 21 until as of year 3. Moreover, the agronomists 22 testified their forecasts were applicable for the 23 first 2-3 years, and in paragraph 31 of their report 24 they explained such forecasts were the average of 25 five years.</p> <p style="text-align: right;">770 17:46</p>
<p>1 unsuitable in this case.</p> <p>2 2. Deloitte's report is based entirely on 3 the agricultural reports of Dr Rurac and 4 Dr Gumovschi, and that report was created in very 5 close co-operation.</p> <p>6 As the agronomists stated, they worked 7 with Deloitte on that report (Rurac, Day 3, 31:1) 8 and also Mr Wiechen confirmed that he was reasonably 9 satisfied with this fruitful collaboration (Wiechen, 10 Day 3, 20:2).</p> <p>11 As a result of that fruitful 12 collaboration, Deloitte and Claimants' counsel 13 provided plenty of supportive material (Gumovschi, 14 Day 2, 492:18; 493:1) but no such material was given 15 to Respondent or the Tribunal, and some was actually 16 circulated at or during this hearing.</p> <p>17 As a result of this fruitful 18 collaboration, it is unclear who truly provided, for 19 example, the final USD prices in the agricultural 20 report. The agronomists' testimony (Day 2, 498:25 - 21 499:6 and 499:16) directly contradicts today's slide 22 29 of Deloitte's presentation CH-9, a slide that was 23 sent to us this morning; very early this morning.</p> <p>24 As a result of that fruitful collaboration 25 it is unclear who actually provided the data in the</p> <p style="text-align: right;">769 17:44</p>	<p>1 Second, we learned that smaller areas have 2 higher yields than larger areas. The statistics 3 relied on regarding underreporting are for smaller 4 fields only. Thus, there is no substance for the 5 allegation that there is any underreporting.</p> <p>6 And third and finally, we learned that the 7 agronomists never saw the equipment that they assume 8 Laguardia would have used and they never visited the 9 lands in question and, as Mr Rurac honestly 10 admitted, they had no normative basis for their 11 calculation there.</p> <p>12 To conclude, despite fruitful 13 collaboration, Deloitte's calculations do not 14 convince.</p> <p>15 That brings me to my conclusion, point 10. 16 Members of the Tribunal, I really take absolutely no 17 pleasure in repeating the fact that Claimants' 18 investment was ill-set up and ill-managed. I wish 19 that in 2010 and 2011 Mr Grot had good advisers and 20 competent local lawyers. I wish the private parties 21 with whom he had contracted acted in good faith, as 22 Mr Grot, no doubt an honourable man, would have 23 deserved, and I wish that the many lawyers he had 24 paid good money would have enforced his rights 25 effectively.</p> <p style="text-align: right;">771 17:47</p>

<p>1 As has been set out in writing, the State 2 takes no pleasure in the failure of Mr Grot's 3 investment, but pleasure is not the issue here. The 4 issue here is whether the State can be blamed for 5 it, not on supposition, not on speculation, but on 6 hard facts and the evidence on record. 7 Members of the Tribunal, the answer is no. 8 Thank you. 9 THE PRESIDENT: Thank you very much. 10 I ask my colleagues whether they have any concluding 11 questions to you. No from Mr Fortier. 12 Professor Knieper? 13 PROFESSOR KNEPER: It is not really a 14 question. Could you provide us with a list of these 15 defect leases and how many they were? We only hear 16 "many" or not many. 17 MR KOPECKY: Respectfully, yes, because 18 the leases is four-page, you open the exhibit and 19 divide the number of pages by four. 20 MR FORTIER: To be fair, Mr Kopecky, to 21 you, since I posed the question to the Claimants, 22 what is your position on the moral damages in the 23 event that the Tribunal gets to damages? 24 I am looking at the statement of 25 Dr Zybski, Colorado Springs. That is witness</p>	<p>772 17:48</p> <p>1 both parties on what ideally, if anything, they 2 would like to happen next. It may be that we don't 3 decide it here and now because we will need an 4 opportunity to discuss that. 5 Is there a need for any further written 6 submissions, if any, including the question of cost 7 submissions? It would be helpful to hear from both 8 parties on those aspects. I do not know, 9 Mr Gleason, whether that is you who wanted to speak 10 on behalf of the Claimants? 11 MR GLEASON: I would like to confer with 12 my colleagues. 13 THE PRESIDENT: Absolutely. Let's take 14 five minutes so both sides can confer amongst 15 themselves. 16 (Short break from 5.53 pm to 6.01 pm) 17 Closing remarks and future timetable 18 THE PRESIDENT: Mr Gleason? 19 MR GLEASON: Claimants would like to make 20 a submission on costs, but concerning the timing we 21 would defer to the Tribunal's preference on the 22 nature of when that would be made. 23 Claimants are willing and happy to provide 24 any additional information requested by the 25 Tribunal, including information concerning</p> <p>774 17:52</p>
<p>1 statement CWS-11. "Mr Grot has described certain 2 events that occurred in Moldova, including physical 3 threats to his person, illegal actions by Moldovan 4 public officials, damage to his property, a death 5 threat, which gives rise to anxiety problems of 6 various degree and I have prescribed such medication 7 and his experience in Moldova that likely had a very 8 substantial effect on his quality of life". 9 MR KOPECKY: Mr Fortier, with all respect 10 I would not like to end on this note, so I am going 11 to refer to section 32 of Respondent's Rejoinder. 12 I would not like to discuss Mr Grot's personal 13 feeling as the last thing I do at this hearing 14 MR FORTIER: I understand. 15 THE PRESIDENT: I do express on behalf of 16 us all our gratitude for very fine closing 17 arguments, if I may say. Very to the point, very 18 efficient and really very helpful in concentrating 19 our minds on what you each respectively say, so 20 thank you very much for that. I personally found 21 that extremely useful on both sides and my 22 colleagues are nodding their assent. 23 That concludes our, if you like, formal 24 part of the proceedings. It remains to discuss what 25 happens next. I would like to hear briefly from</p> <p>773 17:51</p>	<p>1 equipment, which obviously has been the subject of 2 much discussion today, as well as perhaps moral 3 damages or any other issue that the Tribunal deems 4 necessary. 5 Concerning an additional report on damages 6 or quantum, Claimants are hesitant to go that route 7 for costs and efficiency reasons. Our preference -- 8 we would defer to the Tribunal as always on that 9 issue -- but we are not affirmatively requesting a 10 brief there. 11 THE PRESIDENT: Thank you. Mr Kopecky? 12 MR KOPECKY: As to costs Respondent's 13 preference would be a simple statement of costs, if 14 possible not on 1 January -- please do not worry, 15 that was a silly attempt at a joke -- and just a 16 clarification whether there should be submissions on 17 costs or a simple statement of costs from the 18 Tribunal. 19 Respondent sees no need for post-hearing 20 submissions. If so, then very short, just above 21 single digits, and certainly no new evidence. Thank 22 you. 23 THE PRESIDENT: Let me confer with my 24 colleagues. 25 (The Tribunal conferred)</p> <p>775 18:01</p>

<p>1 THE PRESIDENT: Thank you very much, both 2 parties. There is commonality on a 3 statement/submission. For our purposes I think what 4 we just need is a simple statement with a breakdown. 5 We do not need a long pleading on costs. We do not 6 want to put you to that. We would like a detailed 7 breakdown of the costs. 8 MR KOPECKY: You mean including billed 9 hours or just invoices? 10 THE PRESIDENT: Not each hour, but a 11 statement of the costs that have been incurred by 12 each side. We know that you are both making 13 requests for costs and so we have taken that, but 14 I don't think we need further submissions 15 MR KOPECKY: No proof of payment? It 16 comes up at times. 17 THE PRESIDENT: I don't think for this 18 point. Given the nature of this case, the sums 19 being requested, I don't think we would want to put 20 you to additional time and trouble to do that, and 21 I think a simple statement is absolutely fair 22 enough. 23 There is one question in relation to C-95 24 where there was one little line, the confirmation by 25 the Mayor, if we could just have an agreed text from</p>	<p>1 tightly, but we reserve our position on that at this 2 point. 3 There is the question of the date for the 4 cost statement. Frankly, there is no mad rush for 5 it. We can say the end of January. If you want to 6 do it earlier, that is absolutely fine. Let's say 7 by January 31. Obviously it is filed separately. 8 It does not get passed on to the other side, and we 9 then have them. 10 I think that covers absolutely everything. 11 Those of you who have done ICSID cases before will 12 know that this is the point where the Tribunal wants 13 to satisfy itself that the parties feel they have 14 had a fair hearing and have been treated 15 respectfully and have had adequate time in 16 accordance with the various Procedural Orders to 17 make all of the arguments and submissions they wish 18 to. Claimant? Are you comfortable that you have 19 been treated appropriately and fairly? 20 MR GLEASON: My colleague has made the 21 point that the request for allocation of costs does 22 hang out there, but otherwise he is satisfied, 23 I think we all are satisfied with the conduct of the 24 hearing, if that answers your question. 25 THE PRESIDENT: Thank you very much.</p>
<p>1 you on a rev C-95? 2 MR KOPECKY: The text has been agreed. 3 I think it is on record. 4 THE PRESIDENT: It was the mayor's 5 signature with the line that says -- 6 MR KOPECKY: No, sorry. I was referring 7 to C-94. 8 MR GLEASON: I think we can agree. 9 THE PRESIDENT: If you could email that by 10 the end of the week to Ms Nitschke that would be 11 excellent. 12 MR KOPECKY: So will we with C-94. That 13 was the confusion. 14 THE PRESIDENT: We have heard you both. 15 We are certainly not minded to ask you and we are 16 hearing the common position of the parties. There 17 is one possibility which is that we may, following 18 deliberation, make a request to you, and you both 19 have a chance to respond to it, for some further 20 information. We would keep it very narrowly 21 focused, give you an appropriate time, but not huge 22 amounts of time, and it would be very narrowly 23 dovetailed. We may not, but we want to reserve the 24 possibility of coming back to you with some request 25 for further information put very briefly and</p>	<p>1 Respondent? 2 MR KOPECKY: So is Respondent and would 3 like to extend particular thanks to the Tribunal? 4 THE PRESIDENT: Can I say, speaking 5 personally, I have really appreciated the way, for 6 the entirety of the proceedings, the very collegial, 7 genial, good natured and very professional way of 8 conducting the totality of this case, and that has 9 continued through this hearing. We have also really 10 appreciated your willingness to listen to us for our 11 sometimes not so subtle hints on how we would wish 12 you to proceed in terms of various issues. 13 I would -- again, I haven't even conferred 14 with my colleagues -- but if anyone is looking for a 15 self Christmas present, or some equivalent thing, 16 the book you may want to take a look at is a book by 17 I think he is now deceased, a very eminent 18 barrister called Richard Du Cann which is called 19 "The Art of the Advocate". It is just a really 20 useful guide. I don't want to impose a particular 21 cultural approach. Every community and legal 22 culture has its own way of doing these things, and 23 we all come to them with our cultural baggage, but 24 it provides at least one way of thinking about these 25 things. The chapters give you a sense of it:</p>

<p>1 Chapter 3: The essentials of advocacy. Chapter 6: 780 2 Cross-examination: aims, duties and dangers. 18:10 3 Chapter 8: The style of cross-examination. But it 4 is just a way of comparing notes. You will have in 5 your own legal systems your own way of dealing with 6 those things. It also has some terrific anecdotes 7 in it about major cockups in advocacy, none of which 8 have happened here, I should say, we have not got to 9 that situation, but it is quite an entertaining read 10 and it is published by Penguin Books. 11 That is all I wish to say. I thank you, 12 our interpreters, I thank my assistant Lea, I thank 13 the court reporters who have worked as always in 14 heroic conditions. We are deeply grateful. 15 I thank Frauke Nitschke, who is an 16 absolute pleasure to work with. I can tell you that 17 I have worked with many, many international 18 secretariats, they are all terrific but some are 19 more terrific than others, and amongst all of the 20 terrific ones Frauke is as good as it gets in terms 21 of an international secretariat and a real credit to 22 that community, and we, you may have noticed, have a 23 very good relationship as arbitrators, we have been 24 consensual on everything. We hope that will 25 continue, who knows, but there is every supposition</p>	
<p>1 that it will. I thank both of them. I am 781 2 privileged to call Yves and Rolf friends as well as 18:12 3 colleagues. It is an absolute pleasure and a 4 privilege to sit with them. I have really 5 appreciated the way you have approached this case. 6 The ball is now in our court. You have 7 given us everything that we need. It is now for us 8 to do our work. Thank you very much. Safe travels 9 back to wherever you are going. Not very far in 10 this case; a little bit further in this case. Happy 11 holiday season, Happy New Year, happy everything. 12 That closes the hearing. Thank you very 13 much. 14 (The hearing was closed at 6.12 pm) 15 16 17 18 19 20 21 22 23 24 25</p>	

<p>MR ASTUNO: [156] 581/16 581/23 585/14 585/16 586/3 586/21 587/12 588/2 589/3 589/8 589/14 590/6 590/10 590/21 590/24 591/11 592/9 592/19 593/13 593/23 594/14 594/19 595/5 595/11 595/17 596/2 596/12 596/16 596/19 596/21 597/2 597/6 597/21 598/1 598/4 598/10 598/23 599/10 599/15 599/21 600/2 600/25 601/7 601/24 602/5 602/15 603/17 604/5 607/2 608/8 610/15 618/4 618/14 618/24 619/3 632/16 633/1 633/8 633/16 633/22 634/2 634/5 634/9 634/16 634/20 635/4 635/11 635/15 635/18 659/23 660/8 660/12 660/17 660/23 661/8 661/14 661/20 661/24 662/4 662/15 662/22 663/8 663/12 663/16 663/21 664/2 664/6 664/16 664/25 665/5 665/14 665/25 666/7 666/18 666/24 667/11 667/19 667/23 668/3 668/6 668/10 668/17 668/23 669/6 669/11 669/17 669/25 670/6 670/11 671/1 671/15 671/23 672/4 672/10 672/16 672/21 672/24 673/7 673/12 673/16 673/22 674/1 674/7 674/12 674/17 674/24 675/7 675/14 675/18 675/25 676/5 676/15 677/2 677/6 677/21 678/4 678/10 678/16 678/23 679/6 712/6 712/10 713/2 713/21 714/10 715/5 717/16 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745/24 746/8 746/20 747/3 747/22 748/20 754/18 754/24 774/10 774/18 777/7 778/19</p> <p>MR GUMOVSKI: [32] 541/23 543/16 543/24 544/10 544/15 545/2 545/11 545/16 546/4 548/19 550/4 552/4 553/3 553/17 554/5 557/15 558/13 559/24 561/7 562/8 563/17 565/4 565/20 566/19 567/5 568/5 568/10 578/22 580/3 580/16 581/1 584/7</p> <p>MR KOPECKY: [92] 534/21 536/6 536/12 537/16 539/5 539/25 540/5 540/23 571/2 579/2 579/19 581/11 604/10 605/20 606/9 606/22 607/1 607/5 607/7 608/2 608/12 608/22 610/3 610/11 610/17 610/21 610/25 611/7 611/10 612/7</p>	<p>612/22 614/11 614/16 614/24 616/1 616/9 616/12 616/16 616/19 616/22 617/22 618/6 618/17 618/25 619/6 619/9 619/13 619/22 620/3 620/17 621/4 621/15 622/17 625/13 625/22 625/24 627/11 627/13 627/25 628/8 628/11 628/18 629/4 630/7 631/8 631/19 632/9 637/12 638/17 638/21 639/12 679/19 679/24 680/2 715/10 718/17 745/17 745/19 747/24 751/11 752/7 754/5 755/1 772/16 773/8 775/11 776/7 776/14 777/1 777/5 777/11 779/1</p> <p>MR PEER: [90] 639/7 639/13 640/12 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573/5 573/16 574/4 574/14 575/7 575/13 575/24 576/17 577/3 577/9 578/3 578/10 578/20 583/4 583/9 583/12 584/6</p> <p>MR WELLS: [6] 749/10 750/6 751/9 751/15 751/18 752/1</p> <p>MR WIECHEN: [143] 585/6 585/20 586/10 586/25 587/20 588/8 589/7 589/10 589/21 590/9 590/14 590/23 591/3 591/22 592/12 592/24 593/15 594/2 594/18 594/23 595/14 595/22 596/8 596/14 596/18 596/20 596/24 597/4 597/9 597/23 598/3 598/8 598/15 599/1 599/13 599/20 600/1 600/6 601/3 601/13 602/3 602/8 602/12 602/20 603/24 604/21 605/1 605/3 605/6 605/9 605/17 606/20 606/23 607/22 609/3 609/14 609/17 610/2 610/8 611/3 611/23 612/15 613/4 613/19 614/2 614/23 615/9 615/22 615/25 616/8 616/11 616/14 616/17 616/20 617/12 619/8 619/10 619/18 619/23 620/12 621/1 621/8 622/2 622/20 622/25 623/5 624/5 624/18 624/22 625/9 625/20 625/23 626/10 627/12 627/22 628/4 628/10 628/14 628/20 629/17 630/14 631/15 631/21 632/7 633/13 633/21 633/24 634/4 634/8 634/13 634/19 634/24 635/10 635/14 635/17 636/1 636/22 682/22 683/12 684/20 685/1 685/15 690/11 693/18 695/19 695/23 697/6 697/10 698/7 698/22 702/5 702/23 703/9 703/16 705/14</p>	<p>708/11 708/22 710/13 710/19 711/22 712/22 713/8 714/22</p> <p>MS CRACIUNEANU: [4] 559/14 559/20 561/23 562/1</p> <p>MS PERNT: [1] 541/3</p> <p>PROFESSOR KNIEPER: [43] 555/24 556/12 562/12 562/20 563/4 564/19 565/5 566/13 567/2 568/1 568/6 568/23 604/11 604/23 605/2 605/5 605/8 605/16 605/18 624/10 624/19 625/7 625/12 635/20 636/15 680/3 680/13 680/18 683/10 684/11 684/23 685/2 686/13 686/18 687/18 699/24 708/7 708/14 708/25 710/14 711/1 718/12 772/12</p> <p>THE INTERPRETER: [3] 562/4 573/12 583/24</p> <p>THE PRESIDENT: [158] 533/2 533/16 534/12 534/16 534/19 534/22 535/8 535/13 535/16 536/5 536/10 536/15 537/3 537/12 537/19 538/3 538/6 539/4 539/17 540/2 540/8 540/20 540/24 541/5 542/13 551/14 552/17 556/18 568/24 569/13 569/17 569/22 570/1 570/23 571/6 571/24 572/21 573/14 573/23 574/5 574/20 575/11 575/20 576/2 576/25 577/4 577/14 577/18 577/22 578/18 578/21 579/17 579/21 580/10 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<p>THE PRESIDENT:.... [48] 703/24 706/2 707/8 707/23 711/6 711/25 712/8 715/7 715/11 718/2 718/8 718/16 719/19 719/23 720/6 738/7 743/4 743/8 744/7 744/23 745/1 745/7 745/10 745/18 745/21 746/6 746/14 747/10 748/2 748/16 752/2 753/25 754/7 754/21 772/8 773/14 774/12 774/17 775/10 775/22 775/25 776/9 776/16 777/3 777/8 777/13 778/24 779/3</p> <hr/> <p>0</p> <p>0.53 [1] 568/14 033 [1] 767/15 034 [1] 767/15 09 [1] 607/12</p> <hr/> <p>1</p> <p>1 billion [1] 565/24 1 January [1] 775/14 1 per cent [2] 647/23 655/23 1,250,000,000 [1] 566/1 1-16 [1] 606/1 1-2 per cent [1] 692/19 1-A [1] 766/11 1.15 [1] 568/15 1.37 pm [1] 659/21 1.4 [1] 667/9 1.4 million [1] 649/8 1.4 tons [1] 645/14 1.9 million [1] 649/5 10 [4] 604/17 607/12 764/4 771/15 10 December [1] 659/10 10 March [1] 589/13 10 per cent [1] 646/14 100 [4] 549/23 559/20 559/24 561/1 100 kilometres [2] 710/14 711/20 1010 [1] 531/7 104 [1] 709/11 105 [1] 766/7 10:21 [1] 770/7 11 [6] 581/14 584/22 607/12 612/11 746/20 773/1 11.10 [1] 584/24 11.28 [1] 584/24 12 [2] 607/12 629/5 12 July 2013 [1]</p>	<p>612/15 1200 [1] 554/12 13 [5] 528/21 533/1 590/14 745/13 745/16 13 November [2] 659/10 659/11 13 November 2017 [1] 659/8 14 [4] 569/1 572/16 760/23 762/13 140 [3] 645/11 645/13 667/16 142 [1] 535/24 143 [1] 535/25 144 [4] 535/25 536/8 536/19 537/21 145 [1] 535/25 15 [5] 539/13 540/6 584/21 590/24 762/14 15 per cent [4] 550/18 550/20 551/4 551/5 150 [1] 683/9 16 [5] 558/23 606/1 632/4 694/8 762/14 16 January [1] 607/2 16 January 2017 [1] 607/1 160 [1] 558/2 1615 [1] 530/7 17 [2] 606/2 765/12 18 [9] 607/14 608/20 613/4 613/16 626/1 627/19 764/11 764/17 767/11 19 [3] 531/7 626/1 762/16 19 kilograms [1] 557/24 1991 [2] 557/20 560/8</p> <hr/> <p>2</p> <p>2 million [1] 649/20 2-3 [1] 770/23 2.08 [1] 568/16 2.16 pm [1] 659/21 2.2 [1] 568/16 2.7 million [1] 694/16 2.75 million [1] 590/21 2.85 [2] 583/19 583/23 2.87 [1] 583/18 20 [3] 597/1 597/11 619/20 20 per cent [9] 546/11 547/13 547/17 548/10 548/11 550/1 550/7 551/3 644/3 20-30 [1] 571/19 200 tons [5] 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