

IN ACCORDANCE WITH THE PROVISIONS OF
THE TREATY OF THE EURASIAN ECONOMIC UNION OF 29 MAY 2014
UNDER THE 2013 UNCITRAL ARBITRATION RULES

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In the Matter of Arbitration between:	:	
	:	
OOO MANOLIUM PROCESSING,	:	
	:	
Claimant,	:	PCA Case No.
	:	2018-06
and	:	
	:	
THE REPUBLIC OF BELARUS,	:	
	:	
Respondent.	:	
	:	Volume 1

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EVIDENTIARY HEARING

Monday, July 29, 2019

Peace Palace
Japanese Room
Carnegieplein 2
2517 KJ
The Hague, Netherlands

The hearing in the above-entitled matter convened
at 9:30 a.m. before:

MR. JUAN FERNÁNDEZ-ARMESTO, President

DR. STANIMIR A. ALEXANDROV, Co-Arbitrator

PROF. BRIGITTE STERN, Co-Arbitrator

Registry, Permanent Court of Arbitration:
 MS. EVGENIYA GORIATCHEVA, Senior Legal Counsel

Secretary to the Tribunal:
 MRS. KRYSTAL M. BAPTISTA

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P R O C E E D I N G S

1 PRESIDENT FERNÁNDEZ-ARMESTO: Good morning.
 2 This is the Hearing in the PCA Case
 3 Number 2018-06 between Manolium-Processing as Claimant and
 4 the Republic of Belarus. A very good morning to you.
 5 Let me start with a point of etiquette. Given
 6 it's the summertime, the heat of the day, and this
 7 beautiful room, which, of course, has no air-conditioning,
 8 I think it is appropriate and proper that gentlemen can
 9 take off their jackets, if they want. I have led the way.
 10 So, before starting, let us introduce the teams.
 11 I look first to Claimant, to Mr. Khvalei or Hanessian.
 12 MR. KHVALEI: Good morning, Mr. President and
 13 Mr. Alexandrov, Professor Stern. My name is Vladimir
 14 Khvalei. Claimant legal team today consists of myself; on
 15 my left side, Grant Hanessian; and farther to my left,
 16 Nicholas Kennedy.
 17 On my right side we have our associate of Moscow
 18 office, Ms. Alexandra Shmarko; on the far right side, Anna
 19 Maltseva. Then close to her, Mr. Aram Ekavyan, who is
 20 investor in this investment arbitration. Behind me, we
 21 have Lola Awobokun; and we have our Quantum Expert,
 22 Mr. Travis Taylor; and also, the gentleman who is late is
 23 our student intern, Konstantin Antonyuk.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank

09:37:14 1 much interest in attending this Hearing that we had many
 2 people, which I appreciate is many more than the Claimant.
 3 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank
 4 you very much.
 5 We also thank the Permanent Court of Arbitration,
 6 Evgeniy Goriatcheva, for all her good preparation.
 7 For this Hearing we have our Court Reporter, Dawn
 8 Larson, and we have, on whom we very much depend, our good
 9 Interpreters, Mr. Mikheyev and Mrs. Irina van Erkel.
 10 Very good. Is there any point of order?
 11 MR. KHVALEI: Not on the Claimant's side.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: And on the side of
 13 Respondent, of the Republic of Belarus?
 14 MS. ZAGONEK: Yes. Dear Members of the Tribunal,
 15 unfortunately, I do have a submission to make before we
 16 commence, and that's to do with the fact that, at 10 past
 17 9:00 on Saturday, pursuant to Paragraph 26 of the
 18 Procedural Order Number 2, the Claimant's counsel sent to
 19 us presentations for their Opening Submissions, consisting
 20 of 274 slides, divided into four presentations, in addition
 21 to their 30 slides for Quantum Experts' presentation.
 22 The Members of the Tribunal and everybody will
 23 remember that the Tribunal has given a maximum of
 24 three hours for this morning--for each Party for this
 25 morning's presentations, Opening Submissions. And it is my

09:35:21 1 you very much.
 2 And now I look for Respondent, who will be
 3 introducing the team.
 4 Mrs. Zagonek.
 5 MS. ZAGONEK: Thank you very much, Mr. President,
 6 Members of the Tribunal.
 7 On the White & Case team, we have myself, Julia
 8 Zagonek; on my left, William Grazebrook; on my right, David
 9 Goldberg, Oleg Volodin.
 10 And then I'll move--from the seats behind me,
 11 again, White & Case, Sushruta Chandraker; and then we have
 12 Kseniy Filipovich, from the Belarus firm REVERA. Then
 13 next to her--I'm sorry we're mixing--it's Mr. Alexander
 14 Sysoev, again, of White & Case; then we have Anna
 15 Anishevich of REVERA; Anastasiya Pavlychenko of REVERA;
 16 then we have Marina Zenkova of White & Case; and then
 17 Oksana Kotel of REVERA; and then we have Mr. Eduard
 18 Martymenko, who is the representative of the Respondent
 19 from the Ministry of Justice of the Republic of Belarus;
 20 next to him is Alexandr Goretsky of REVERA; then we have
 21 Pavel Boulatov of White & Case; and then we've got, from
 22 PwC, Expert Witness, which is Tatiana Rukhliada of PwC and
 23 Sirshar Qureshi of PwC.
 24 And I hope I haven't forgotten everyone.
 25 Apologies for such a numerous attendance, but there was so

09:38:46 1 submission that it is physically impossible to gallop
 2 through the 274 slides in 180 minutes.
 3 And that means that the Claimant either intends
 4 to ignore the directions of the Tribunal about the maximum
 5 time allowed for the Opening Submissions, or it does not
 6 intend to address all the slides this morning and intends
 7 for the Tribunal to read them at their leisure after the
 8 Hearing.
 9 I'm afraid neither situation is satisfactory or
 10 acceptable, but what is much more serious than the
 11 timekeeping is that, in its 274 slides, the Claimant has
 12 introduced over 60 new factual or Legal Arguments and
 13 referred, for the first time, to six new Legal Authorities
 14 in support of its new Submissions.
 15 So, effectively, the Claimant has prepared
 16 another round of Submissions, which it's now filing under
 17 the guise of demonstrative exhibits for the Opening. I can
 18 give you an example.
 19 In the Notice, the Claimant's position was that
 20 it had applied for an extension for land permit, and in
 21 support of that contention, he referred to Exhibit C-122,
 22 which is an entirely irrelevant document. It's a letter
 23 from Manolium-Engineering, asking the City of Minsk to
 24 provide land plot for the Investment Object. And it has
 25 nothing to do with the construction, with Application to

09:40:09 1 extend permits for the Communal Facilities.
 2 The Respondent's counsel, we wrote to the
 3 Claimant's counsel twice, on 23rd July and 25th July of
 4 last year. And you will find letters at R-155 and R-157.
 5 We've pointed out this and asked for the correct
 6 exhibits or appropriate amendments to Submissions to be
 7 made. The Claimant sent a cryptic response, saying that it
 8 will use the opportunity provided to make corrections to
 9 either paragraph or footnote of the Notice of Arbitration
 10 in its next Submission on the Merits.
 11 The next Submission on the Merits was the Reply,
 12 and in the Reply, the Claimant maintained its position set
 13 out in the Notice. And now, on Slide 46 of its fact
 14 presentation, he responds to the Respondent's position that
 15 Manolium-Engineering never applied for an extension for the
 16 right to use the land plot, which is the Submission made at
 17 Statement of Defence at Paragraph 467 to 472.
 18 The Claimant appears to be saying, for the first
 19 time, that there was no point in applying without extending
 20 the Investment Contract.
 21 I submit, Members of the Tribunal that, this is a
 22 material change in position. The Respondent has attempted
 23 to identify, in the short time available, the new
 24 Submissions, new Legal Arguments, and the Legal
 25 Authorities, and put them in a table for convenience. And

09:41:47 1 I would like to give that to the Tribunal and to the
 2 Claimant's counsel.
 3 At the Procedural Hearing on 1st of July, the
 4 Tribunal made it plain that nothing new was to appear on
 5 the slides and, hence, the Opening Submissions. It was on
 6 this basis that we've assumed everybody was preparing for
 7 today's Hearing, which is why the Respondent has submitted
 8 38 slides to use at its Opening and some 20 slides for the
 9 Expert's presentation.
 10 Ironically--and I hope the Tribunal remembers
 11 that from the Rejoinder--in breach of Paragraph 29 of the
 12 First Procedural Order of May of last year, the Claimant is
 13 doing now exactly what it did in the Reply: It's
 14 reformulating its Claim, some in their entirety; it's
 15 submitting a significant number of new arguments,
 16 introducing new factual obligations which were not in
 17 response of the Respondent's Defence but of its own
 18 volition.
 19 We've already drawn Tribunal's attention to that
 20 in the Rejoinder--that's at Paragraphs 2-17 of the
 21 Rejoinder--and also to the Claimant's apparent reservation
 22 of rights, at Paragraph 2 of the Reply, to introduce new
 23 positions, claims, and evidence. And we were wondering
 24 when that reservation was going to come to fruition. And
 25 we realized that it has come to fruition when we received

09:43:17 1 the slides on Saturday.
 2 So, having presented a much revised position in
 3 the Reply, which was not contrary to Tribunal's directions
 4 limited to responding to the issues raised in the Defence
 5 and which forced the Respondents to address the new
 6 allegations extensively in its final position, the
 7 Rejoinder, the Claimant, effectively, has carved out an
 8 opportunity to make further submissions on matters which
 9 should have been raised months ago when it submitted its
 10 Reply.
 11 So, effectively, the Reply in these Proceedings
 12 became the Statement of Claim, and the Rejoinder, the
 13 Defence. And the Claimants' presentation that we have
 14 received today, on 274 pages, its Reply. And the
 15 Respondent is left without a Rejoinder. So, it's in
 16 blatant disregard for the Tribunal's directions.
 17 The Claimant is, yet again, making new Legal
 18 Arguments, changing its position, and submitting new Legal
 19 Authorities. It is unacceptable, in the opinion of the
 20 Respondent, and denies the Respondent its rights to respond
 21 to the Claimant's case.
 22 The Respondent hasn't had time to consider, let
 23 alone, respond to these submissions made only 33, 34 hours
 24 ago. Accordingly, to allow the Claimant to introduce these
 25 without giving the Respondent an equal opportunity to deal

09:44:39 1 with the Claimant's renewed position would be, in our view,
 2 a clear and serious procedural irregularity and breach of
 3 due process, with all the usual consequences.
 4 The Claimant also presents in its slide pack a
 5 number of images which have never been previously provided
 6 in these Proceedings. A number of these appear to be
 7 random paragraphs of saunas, conference halls, clubs,
 8 stadiums, factories, and so on, none of which have anything
 9 to do with the dispute or with Belarus.
 10 Some photographs are of the Minsk Library, its
 11 stadium or Mr. Dolgov's other projects, which have never
 12 been previously provided. Whatever they are, they
 13 constitute new evidence. And we respectfully submit that
 14 the only purpose of these image is to give the Tribunal the
 15 impression that they're actually looking at genuine
 16 photographs of objects or matters that we've gathered here
 17 today to discuss.
 18 Members of the Tribunal, you will be well
 19 familiar with the requirement that Parties must be treated
 20 equally and fairly, and each Party has to be given
 21 opportunity, not only to present its case, but also to deal
 22 with that of its opponent. The 274 slides have all the
 23 qualities of a new Submission.
 24 In an ideal world, the Tribunal would exercise
 25 its important powers to sanction the Claimant for

09:46:02 1 persistently not complying with its orders and disallow the
 2 Claimant to use the 274-slide presentation altogether, or,
 3 at the very least, to strike out those slides which
 4 represent new evidence, new arguments, new submissions.
 5 This would restore equality vis-à-vis the Respondent.
 6 However, I'm certain that Mr. Khvalei will then
 7 start arguing that Claimant's rights will be affected and
 8 that he should be given an opportunity to present his case
 9 in a manner he considers appropriate. I don't know what
 10 Mr. Khvalei or Mr. Hanesian intend to do with 274 slides
 11 this morning. One thing is certain: They will not be
 12 physically able to use them as demonstrative exhibits,
 13 which is what was intended, as we understand, in the
 14 Procedural Order Number 2.
 15 We would be grateful the Tribunal's views on how
 16 the Tribunal proposes to deal with this hijacking by the
 17 Claimant of the Arbitration Proceedings, but should the
 18 Tribunal permit the Claimant to use its slides this morning
 19 and allow new submissions, arguments, Legal Authorities,
 20 and evidence to be considered as part of the Arbitration
 21 record, the Respondent reserves its rights to respond in
 22 full after the Hearing.
 23 And, in any event, the Respondent will be seeking
 24 the costs occasioned by the Claimant's obstructive conduct,
 25 regardless of the outcome was these Proceedings.

09:47:30 1 These are my Submissions.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank
 3 you very much.
 4 There are, I think, two separate issues in what
 5 you said: One is the charge of the cavalry, that they have
 6 274 slides to go through, three hours. That is really for
 7 counsel to see how they handle that and how they go through
 8 the stack of slides.
 9 The second question, that is a question of
 10 counsel. And I'm seeing that, more and more, the stacks of
 11 slides become bigger and bigger. And, yeah. But that
 12 is--at the end, it is a strategy of each counsel, and I
 13 don't think the Tribunal has much to say.
 14 The other is your argument that--and we have a
 15 new document which you have presented, and we must give it
 16 a number. This document is H-1, which is your list of new
 17 allegations. And it is divided, first, in fact--
 18 MS. ZAGONEK: It is divided in accordance to the
 19 Claimant's presentation. They sent us several separate
 20 files divided in such a way, and we have merely followed
 21 the division.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: And then
 23 jurisdiction and, presumably, it goes on to merits.
 24 So, your allegation, to summarize it, is--and
 25 quantum. I don't think you have numbered the individual

09:49:35 1 items, but it is quite--it's at least 15 pages--no, it's
 2 fine.
 3 MS. ZAGONEK: Yes.
 4 PRESIDENT FERNÁNDEZ-ARMESTO: I'm just leaving
 5 this for the record. 13 pages of allegations that there
 6 are new evidence and new facts.
 7 MS. ZAGONEK: If I may--I say, it's 60--we've
 8 calculated, actually. It's 60 new factual and Legal
 9 Arguments, 6-0, and six new Legal Authorities.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: And then you say
 11 "and six new Legal Authorities," and you say there are some
 12 photographs which are new. This is what I understood from
 13 your presentation.
 14 MS. ZAGONEK: Correct. They are on Page 5 of the
 15 table.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So, within
 17 this 60 are the--
 18 MS. ZAGONEK: Photographs.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: --the photographs.
 20 MS. ZAGONEK: Correct.
 21 PRESIDENT FERNÁNDEZ-ARMESTO: New photo of Mr.--
 22 MS. ZAGONEK: And four--apologies--it's two
 23 pages. It is--Page 4 and Page 5 are the visual aids.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: But the new
 25 photographs are on Page 5?

09:50:45 1 MS. ZAGONEK: No, both Page 4 and 5.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: 4 and 5. Okay.
 3 Exactly. So, these are the new photographs.
 4 But your actual petition--you are reserving your
 5 rights to make a full submission after the Hearing.
 6 That was your reservation of rights?
 7 MS. ZAGONEK: If the Tribunal permits the
 8 Claimant to allow new submission, arguments, Legal
 9 Authorities, and evidence to be considered part of the
 10 Arbitration record, if the Tribunal comes to that Decision,
 11 then, yes, I will have to reserve the right of the
 12 Respondent to respond.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 14 So, Mr. Khvalei, what do you say to Respondent's
 15 argument?
 16 MR. KHVALEI: Mr. President, first of all, with
 17 regard to the first allegations, it is not physically
 18 possible to go through all 274 slides, we will prove that
 19 it is possible. Okay. And I'll propose to end the
 20 discussion here on this point.
 21 On attempts of evaluation of arguments and
 22 because, if you look into the table, you'll see that, on
 23 many occasions where the Respondent is saying that we are
 24 introducing new evidence, it is not new evidence. They are
 25 saying that--for example, I refer to Page 6--for the first

09:52:19 1 time, the Claimant invokes Chevron v. Ecuador, as an
 2 Exhibit CL-34, in support of the allegation.
 3 So, from looking into this table, what I
 4 understand, it's not that we're introducing massive new
 5 Legal Authorities; it is, rather, that we are taking some
 6 new quotations or new evidence from the cases we already
 7 submitted.
 8 And, I submit, that we are perfectly allowed to
 9 do so. Whilst Legal Authorities are in a case file, I
 10 don't see any problem in quoting paragraph--others that are
 11 quoted previously.
 12 With regard to the photos, again, we have--it
 13 seems to me we have different presentation styles with
 14 Ms. Zagonek, because Ms. Zagonek prefers to have more
 15 formal presentation, while myself, I like to have it
 16 more- I like to visualize of what I'm saying.
 17 And I again submit, if the Parties are given 180
 18 minutes for Opening Statement, it is up to the Parties to
 19 decide how they are going to present their case. If I want
 20 to sing my case, if I'm going to dance my case, that's my
 21 right.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: Please not.
 23 MR. KHVALEI: Okay. If you say so.
 24 So, it's up to us how to present our case, and
 25 frankly speaking, I don't see any new evidence in President

09:53:52 1 playing hockey. I don't see evidence in the photo of
 2 National Library. The Respondent itself admitted there are
 3 many photos which are not relevant. If the photos are not
 4 relevant, fine. What is the problem?
 5 To finalize, the practical solution is we will
 6 kindly ask the Tribunal to let us prove that we are able to
 7 squeeze 180 minutes that is allocated for us for Opening
 8 Statement.
 9 Second, with regard to new evidence, I think it
 10 will be fair to the Respondent, if Respondent feels not
 11 being able to present its position with regard to allegedly
 12 new evidence, to give opportunity to the Respondent to
 13 comment on it in Post-Hearing Brief.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank
 15 you, Mr. Khvalei.
 16 A couple of questions. I think we agree the
 17 photographs were Page 5 and 6. Let us look at them.
 18 Mr. Chase with the President, Prokopanya,
 19 Sukalitsky, Pavlovsky, Baskin, two random photos, random
 20 cartoon, random made-up check. And maybe on Page 4, a
 21 photo of the National Gallery, of the conference hall,
 22 hardening shop, sauna, psychological release room, hockey
 23 world championship, the President playing hockey,
 24 Revolutionary Building, Belarusian roulette.
 25 These are photographs which are new which you

09:55:37 1 want to present to supplement your oral presentation, the
 2 way I understand.
 3 MR. KHVALEI: Yes, correct.
 4 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. And
 5 that was one question.
 6 And for you, when you say that there are six new
 7 Legal Authorities, would you agree with Mr. Khvalei that
 8 these new Legal Authorities, in fact, is that other parts
 9 of existing Legal Authorities are being referred to?
 10 MS. ZAGONEK: No. There are six new Legal
 11 Authorities. You can see them on Page 7. There are two
 12 new Legal Authorities on Page 8.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Which are--
 14 MS. ZAGONEK: Which have never been before
 15 referred to, and you can see that they do not have either
 16 "RL" or "CL" attached to them.
 17 PRESIDENT FERNÁNDEZ-ARMESTO: Well, that is Duke?
 18 MS. ZAGONEK: Duke, Micula and Romania,
 19 SGS/Pakistan.
 20 PRESIDENT FERNÁNDEZ-ARMESTO: Wait. Let's go
 21 slowly.
 22 Duke, Micula, yes?
 23 MS. ZAGONEK: Yes. Then over the page,
 24 SGS/Pakistan.
 25 PRESIDENT FERNÁNDEZ-ARMESTO: Okay.

09:56:57 1 MS. ZAGONEK: And then Kazena (phonetic) and
 2 Austria, Argentina.
 3 PRESIDENT FERNÁNDEZ-ARMESTO: Yes.
 4 MS. ZAGONEK: SGS/Paraguay.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Okay.
 6 MS. ZAGONEK: And I believe that is it for the
 7 new Authorities.
 8 As to the others, what Mr. Khvalei, or the
 9 Claimant's team, appears to have done is they have used,
 10 for the first time, exhibits that were either presented in
 11 the Notice or presented by the Respondent in support of
 12 completely different arguments to find additional arguments
 13 within those and, therefore, formed new positions in
 14 reliance of those, albeit, present in the Arbitration file
 15 Legal Authorities.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 17 So, what is really new is we have these
 18 photographs, and we have these six investment arbitration
 19 cases which had not been in the file. The rest is new
 20 arguments based on existing documents?
 21 MS. ZAGONEK: Correct. That's correct.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 23 Let me break, and you stay in. We come back.
 24 ARBITRATOR ALEXANDROV: Thank you, Mr. President.
 25 Before we break, two questions for Respondent: One is, has

09:58:27 1 this chart and your submission today--has that been raised
 2 with Claimant between Saturday and today, and has the chart
 3 been shown to them?
 4 MS. ZAGONEK: No.
 5 ARBITRATOR ALEXANDROV: And the second question,
 6 just taking one example, the photo of the President playing
 7 hockey, which is new, they did make the point in their
 8 written submissions that the President likes to play hockey
 9 sometimes, plays with the professionals. That was there.
 10 Is this disputed as a fact? What is the point of
 11 striking or not striking the photo?
 12 Does Respondent dispute the fact that the
 13 President of the Republic likes hockey and plays hockey
 14 with the professionals?
 15 Just taking this one example.
 16 MS. ZAGONEK: Sure. Thank you very much,
 17 Mr. Alexandrov.
 18 The President playing hockey is not disputed, but
 19 it is irrelevant for the purpose of these Proceedings. The
 20 Claimant had an opportunity to give everybody the pleasure
 21 of looking at a photograph of the President playing hockey
 22 earlier, if that's the point they wanted to make.
 23 But what I'm saying is a matter of general
 24 principle. And as I mentioned, a number of these
 25 photographs are random, and most are irrelevant. But when

09:59:48 1 we start looking, for example, at buildings, photographs of
 2 buildings which may have something to do with the Project
 3 and are actually not--or we have no idea what's the source
 4 of these photographs--these photographs are, therefore, a
 5 purpose.
 6 And if that purpose is to show the Tribunal that
 7 they are looking at something that we're discussing today
 8 or that they are photographs of objects that we're going to
 9 be discussing, that's not the case. They should have been
 10 presented earlier.
 11 ARBITRATOR ALEXANDROV: But we don't know that
 12 yet. They haven't made their presentation yet.
 13 MS. ZAGONEK: We don't know. We don't know.
 14 (Tribunal conferring outside of room.)
 15 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank
 16 you very much for waiting.
 17 Of course we take note of your reservation of
 18 rights, and we will cross that bridge when we come to it.
 19 As regards to the specific argument, the
 20 photographs, the photographs, ideally, they should be in
 21 the record. We will take them--at this stage, we will take
 22 them as pure allegation, allegation of fact. If Respondent
 23 wants to present other photographs in response to them,
 24 either in their presentation or in the next two weeks,
 25 that's, of course, perfectly admissible.

10:12:19 1 As regards to the cases, first of all, the cases
 2 which are in the record and to which now--and what now
 3 reference is made to other parts of the cases, cases are
 4 public. They are there. We all know them. We find that
 5 that is--it is--to a certain extent, it is unavoidable, and
 6 it is--it's--the sense that we meet all here is that we get
 7 a fresh view of the existing evidence. So, from that point
 8 of view, we don't find that there is any irregularity
 9 there.
 10 The reference to these new cases, there is a
 11 point there of fairness, that you were not aware that these
 12 cases were coming up. They came up--six cases came up on
 13 Saturday. I think we would rather--we have no idea what
 14 they relate to. Presumably, they are not very basic for
 15 your argumentation. I think that, from the point of view
 16 of fairness, it would be better if Claimant does not refer
 17 to them.
 18 If at the end of the Hearing any of the Parties
 19 feels that there are any legal materials, including any
 20 cases, which are really relevant for us adjudicating the
 21 case, there is always the opportunity of making an
 22 extraordinary request for evidence. And we would entertain
 23 any requests at the end of the Hearing saying, "SGS against
 24 Pakistan is really fundamental for this case, and we ask
 25 that it be introduced." We will then hear the other Party,

10:14:10 1 and we will decide.
 2 And I think that is the proper way of getting
 3 these cases into the file, if they are really important.
 4 With that, and without further ado, we give to
 5 the stack of 134 pages--
 6 MS. ZAGONEK: No. It's, I'm afraid, 274.
 7 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. 274 pages.
 8 And we give it the Number H-2, and we give Claimant the
 9 floor.
 10 OPENING STATEMENT BY COUNSEL FOR CLAIMANT
 11 MR. KHVALEI: Thank you very much, Mr. President.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: You will
 13 have--Mr. Khvalei, at some stage you will have to make a
 14 break.
 15 MR. KHVALEI: Yes, of course.
 16 Can you switch on the screen, please? Yes.
 17 I'll be making a presentation on factual side of
 18 the story for 1.5 hours, and then we'll have 15-minutes'
 19 break. And after the break, my colleagues, Grant Hanessian
 20 and Nick Kennedy, will continue on jurisdiction, merits,
 21 and quantum.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: And you are being,
 23 of course, interpreted into Russian, Mr. Khvalei.
 24 MR. KHVALEI: Sorry?
 25 PRESIDENT FERNÁNDEZ-ARMESTO: You are being

10:15:29 1 interpreted into Russian. So, you must bear in mind that
 2 you are not only being transcribed, but you are being
 3 interpreted. And I have given my promise to our
 4 interpreters that I will vigorously respect their right
 5 that people speak in an organized way so that it's possible
 6 to have a proper interpretation.
 7 MR. KHVALEI: Of course.
 8 The Project in case related to development and
 9 construction of a lucrative Investment Object in the center
 10 of Minsk. I'll be happy if the Tribunal would exclude the
 11 photo of Mr. Koniko(phonetic) representative and present a
 12 different one. The only purpose of the photo is to show
 13 the area where the new object is to be construed.
 14 And you see, highlighted in red area, this is in
 15 the middle of City of Minsk, just understand how lucrative
 16 the Project was.
 17 PRESIDENT FERNÁNDEZ-ARMESTO: Can you go back?
 18 Can you show exactly?
 19 MR. KHVALEI: This is red highlighted area in the
 20 middle.
 21 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Very good.
 22 MR. KHVALEI: And the story with the Project
 23 started in 24 April 2003, when Minsk City Executive
 24 Committee initiated the Tender. There are four companies
 25 which participated in the Tender. It is important to know

10:17:06 1 here that, according to the terms of the Tender, the amount
 2 of expected investments was no more than USD 15 million.
 3 As I said, four companies participated, and the
 4 proposal made by Manolium-Processing, which is Russian
 5 company, was the highest one. Manolium-Processing proposed
 6 USD 15 million and was announced as winner of the Tender.
 7 A couple of words about the structure of the
 8 Claimant and subsidiary company and the beneficial owner
 9 and investor.
 10 You see in the middle "Manolium-Processing."
 11 This is a company which won the Tender. However--I'll
 12 explain it later--Manolium-Processing established also a
 13 local company in Belarus called "Manolium-Engineering,"
 14 since Manolium-Engineering was a company which was directly
 15 involved in construction and getting all permits.
 16 Manolium-Engineering was presented by Andrey
 17 Dolgov, who is our factual witness. You'll see him
 18 tomorrow. Manolium-Processing and Manolium-Engineering is
 19 owned by Aram Ekavyan, sitting here behind me, through
 20 various companies registered in Cyprus and Isle of Man.
 21 A couple of words about the investor, because in
 22 this Arbitration, we had a lot of allegations that investor
 23 was not able to final this Project. It was lack of money.
 24 Just a couple of facts.
 25 In 2003, Forbes listed the Claimant in the list

10:18:52 1 of major nonpublic companies with revenues of approximately
 2 USD 200 million. In 2006, Mr. Ekavyan sold a stake in a
 3 Russian oil company for approximately USD 1 billion.
 4 Again, just to compare, when we are talking about
 5 finishing the construction of the port, we are talking
 6 about USD 3.5 million. Again, he sold it for
 7 USD 1 billion. It was the time when Mr. Dolgov says "We
 8 don't have money to invest in this Project. I'll talk
 9 about it later.
 10 And lately Mr. Ekavyan is still being a
 11 successful businessman. He is beneficial owner of the
 12 major salt-producing company, Russol, and co-owner of
 13 Russian Commercial Bank.
 14 So, what happened after the Tender on June 2003,
 15 the Claimant, the Minsk City Committee and
 16 Minsktrans- Minsktrans is a public company owned by Minsk
 17 City and which is responsibility for public transportation
 18 in City of Minsk. So, three parties signed the contract,
 19 and the Claimant was obliged, in three years, to invest no
 20 more than USD 15 million.
 21 There are three principle objects which were to
 22 be constructed. First, Trolley Depot, with a value of
 23 USD 6.8 million. This amount is important,
 24 USD 6.8 million. Motor Transport Base--this is basically a
 25 depot for buss. Not for trolleybuses but for buses--for

10:20:40 1 6 million, and also some other minor obligations. In
 2 addition to that, the Claimant was to invest USD 1 million
 3 to local municipal companies located in Minsk, which are
 4 loss-making. It was kind of obligation to make donation to
 5 loss-making municipal companies.
 6 In 2003, this obligation was changed to the
 7 payment of 1 million to construct the National Library.
 8 This is a disputed picture. I'm happy to take it out from
 9 evidence if Ms. Zagonek will dispute correctness of it or
 10 importance of it, just to show to the Tribunal how
 11 beautiful is the library.
 12 However, what is important to know about this
 13 library is the way how it was built, because it will give
 14 the Tribunal an idea what kind of respect to law has
 15 Belarusian President, Mr. Lukashenko, independence court
 16 system. Because there were not sufficient funds in the
 17 budget, it was decided that each Belarusian public official
 18 is to contribute his or her daily salary, voluntary, to the
 19 library. Every school child, 50 cents, and every manager,
 20 USD 15.
 21 So, every citizen in Belarus was to voluntarily
 22 contribute to the library, and the Tribunal will be
 23 surprised of one morning many people in Belarus found their
 24 balance on telecom bills reduced by certain amount in
 25 dollars. And this money was withdrawn for voluntary

10:22:26 1 construction of--voluntary donation to finish the library.
 2 This is not relevant, frankly, directly relevant
 3 to our case. And as I said, I will be happy to exclude it
 4 from evidence if the Respondent would insist.
 5 What the Claimant was to receive in exchange of
 6 building New Communal Facilities, as the Claimant would
 7 have acquired the right to design and construct the
 8 Investment Object. And the Claimant was expected to invest
 9 more than USD 80 million. The construction of the new
 10 project was to be completed by 2009, i.e., in six years,
 11 and the Project expected to generate 3,000, at least, jobs
 12 and 50 to \$100 million in taxes per year.
 13 This is the Investment Object. This is a design
 14 of the Investment Object which was to be built according to
 15 the Contract. This picture is on record, and I don't think
 16 that the Respondent will have any objections to it.
 17 (Comments off microphone.)
 18 MR. KHVALBEI: The Respondent takes in this
 19 arbitration a pretty interesting position that the
 20 President of Republic Belarus did not have any direct
 21 influence on the Project. The Respondent said it is
 22 "absurd to assume that the President of the Republic of
 23 Belarus would personally be involved in managing any such
 24 project."
 25 This is a pretty surprising statement taken into

10:24:12 1 account that the key witness of the Respondent,
 2 Mr. Akhramenko, said it is, therefore, entirely natural
 3 that the President, too, shall take an interest in the fate
 4 of a plot in the very center of the city. But it's not
 5 all. To prove involvement of President, we don't need
 6 witness statement of Mr. Akhramenko, frankly speaking.
 7 There is plenty how the President of Republic of Belarus
 8 was directly involved in this project.
 9 First of all, the library payment was approved by
 10 Belarus. The Project itself was approved by President on
 11 5th, November 2003. And before this approval, nothing
 12 happened in the Project. The Project was dark and the
 13 Respondent Witnesses confirmed it.
 14 On the 11 July 2006, the President of Republic of
 15 Belarus also approved important amendments to the
 16 investment concept.
 17 Also, as Respondent presented pretty interesting
 18 document, I'm going to talk about this document later. It
 19 is a letter from Minsk City counsel to the Government of
 20 the Republic of Belarus. This is R-140. Dates 29th of
 21 February 2016. In this document there are references to
 22 two instructions, formal instructions from the head of the
 23 State, i.e., President of Republic of Belarus, with regard
 24 to the project. And in one of the instructions--this is
 25 the second highlighted instruction, the President gave

10:25:56 1 instruction to monitor the situation and to defend the
 2 interest of the State at all times.
 3 Whatever it means, we will talk about it later.
 4 These two instructions were never presented to the
 5 Claimant. They were never public as well as this Minsk
 6 City internal meeting. Again, I'm going to talk about it
 7 later.
 8 And, finally, on 20, January 2017, the President
 9 of Republic of Belarus decided to transfer without
 10 consideration the New Communal Facility. So, the Decision
 11 on expropriation of New Communal Facilities were taken by
 12 the President of Republic of Belarus. This, by the way of
 13 decree, was held in secret until very late in this
 14 arbitration.
 15 So, I don't need to argue any more about personal
 16 involvement of President, but let me tell you a little bit
 17 about development of the Project. At the beginning of
 18 2004, the Claimant incorporated Belarusian company
 19 Manolium-Engineering. The reason for it was the winner of
 20 the Tender was Russian company. And for Russian company,
 21 it was difficult to operate in Belarus because for any
 22 payment, it needed permission from Central Bank of Russia.
 23 But not all. There were a lot of practical difficulties
 24 related to calculation of value-added tax, currency
 25 control. So, for all practical purposes, it will be easier

10:27:34 1 to have subsidiary, and 100 percent owned subsidiary
 2 Manolium-Engineering was created.
 3 However, Belarusian authorities said, well, your
 4 subsidiary is not entitled to develop this Project because
 5 they are not Party to the Contract. Technically they were
 6 correct, and then, of course, the Claimant asked to add
 7 Manolium-Engineering as one more Party to the Contract. In
 8 all other terms, the Contract would remain absolutely the
 9 same. We simply needed to add one more Party to the
 10 Contract to make it technically easier to implement the
 11 Contract.
 12 In December 2004, the Chairman of the Minsk City
 13 Executive Committee instructed his deputy to amend the
 14 Investment Contract and to include new Party, but it took
 15 almost three years, 2.5 years, to include new Parties to
 16 the Contract. Why? I explain you later, but this gives
 17 you an idea why the Project was stuck--one of the reasons
 18 why the Project was stuck for almost three years from the
 19 very beginning.
 20 The Respondent is saying, well, but you still
 21 were allowed to make a design of the new Depot, but you did
 22 not do it. It took you almost three years to do it, until
 23 20 March 2007. And I said, Pete, that it was very
 24 difficult to make the design for various reasons. First,
 25 the initial design of the Depot was to include a lot of

10:29:12 1 premises, which are not relevant to Trolley Depot. And
2 here was the photos which are irrelevant. I agree, they
3 are not relevant. This is just for purpose of
4 visualization. Again, I'll be happy to exclude them from
5 evidence. A conference called for 300 seats, forging and
6 hardening shop, steam baths, psychological release room.
7 Again, I'm skipping the photos to make it quick. I'm not
8 to rely them on evidence, and administrative building of
9 the Depot.

10 So, the Depot consistent of a lot of facilities
11 which was not really needed. At some point in time, Minsk
12 City and Strauss (phonetic) decided to change the design,
13 and they excluded it. But what is important, when we are
14 excluding certain facilities, you cannot do the design of
15 the Building, right, because you are changing the layout.

16 But it's not all. Under the Agreement of 31,
17 December 2003, the Minsk City was to make available land
18 plot for constructing of Motor Transport Base. This is the
19 second object to be built under the Contract. But the land
20 was occupied by the Ministry of Defence, by the company
21 belonging to the Ministry of Defence. Ministry of Defence
22 did not want to release it, so it was impossible to even
23 start design of it because Salento said, no, I do not want
24 to see this object on my territory.

25 And only in 2007, the Motor Transport Base was

10:32:31 1 for three years. But what happened in the meantime,
2 construction costs of office building rose significantly,
3 by 180 percent in U.S. dollars. This was a general trend.
4 The same happened in Russian market. The same happened in
5 Belarusian market because initially it was a crisis. As
6 you remember in 1998, and after the crisis, the price for
7 oil went up, and then everything went up, including
8 construction costs. So, it is extremely bad period of
9 time. So, if you missed this period of time, you are
10 facing a situation when you have to pay twice in U.S.
11 dollars or three times of what was initially planned.

12 At that time it was absolutely clear to everyone
13 that it would not be possible to perform the Contract. You
14 remember that under the original wording of the Investment
15 Contract, the investor was obliged to invest no more than
16 50 million, and for USD 50 million, investor was to build
17 Trolley Depot, bus station, and some other facilities. It
18 was absolutely impossible at that time.

19 So, in 2005, the Minsk Department of Internal
20 Affairs, which is the police, economic department related
21 to economic crimes, made a special investigation, and they
22 admitted that the amount of USD 50 million was taken out of
23 the blue, without detailed background status and without
24 proper review and without obtaining expert evidence, expert
25 advice from designers and Experts.

10:30:48 1 removed from a list of New Communal Facility to be built.
2 Also, the Contract for design was signed pretty late, and
3 one of the reasons was that everyone was waiting for
4 approval from the President of Republic of Belarus.
5 Nothing happens in Belarus without direct permission of
6 President, nothing important happens in Belarus without
7 direct permission of the President of the Republic of
8 Belarus. And if Respondent disagrees, the Respondent is
9 invited to comment.

10 Now, Pull Station. Pull Station is a part of
11 Trolley Depot. This is a building where you have various
12 electricity equipment, and this electricity equipment is
13 used to put power to the wires by which trolleybuses are
14 operated. So, this is a Pull Station. Pull Stations was
15 to be commissioned at no later than December 2008, but the
16 land plots were provided only on 30th of May 2008. So,
17 just six months before the completion. And the
18 construction permit was issued only in June. It was even
19 theoretical, not possible to build it in five months.

20 Depot as well was to be commissioned initially
21 until December of 2008, but land plots were not issued
22 until May 2007 and construction permit only in
23 October 2007.

24 So, there were various reasons mainly on
25 responsibility of the Respondent why the Project was stuck

10:34:18 1 It was very sad development. You would say,
2 well, how investors should care about it; right? Because
3 if an investor had an obligation to pay 15 million, once
4 investor pays 15 million, an investor could stop it as they
5 see it. Yes, in theory, it could be like this. But we
6 know that the land plots where the new Investment Object
7 was to be built was occupied by Trolley Depot. The whole
8 idea was to build a new one to remove the old Trolley Depot
9 to the new one, and then you could start building the
10 construction object. If you could not billed a new Depot,
11 the old Depot would not be release and you would be stuck.
12 You would be stuck, anyway. Minsk City will not give money
13 to build new Depot. Minsk City will blame U.S. investors
14 that you doing something wrong, and you will be dragging
15 out the Project. And this is what happened, they were
16 dragging out the Project because they did not want to admit
17 that they did not calculate properly the prices of the
18 tender.

19 At that time, just to give Tribunal an idea, the
20 Claimant has invested approximately 3 million, it's even
21 more than 3 million to the New Communal Facilities and
22 Investment Objects. Not necessarily to the construction,
23 but a lot of money was spent on design, on paying salaries
24 to director and to other stuff, to paying release. So,
25 with USD 3 million, at least, stuck in the Project, of

10:35:51 1 course, investor want to move forward with it.
 2 In 2005, Manolium sent a notice to Minsk City
 3 that it was going to suspend the work. In 2006 the
 4 Claimant asked assistant to the President of Belarus to
 5 assist in resolving this deadlock. And only after that
 6 Minsk City approached President of Republic of Belarus to
 7 approve amendments to the Contract, and in July 2006, the
 8 President approved amendments.
 9 What were the amendments? First of all,
 10 additional Party was added. This is what I explained.
 11 Secondly, the scope of construction was amended and
 12 reduced. Now there were only three objects to be built,
 13 Depot, Pull Station, and the road. Obligation to invest no
 14 more 15 million were replaced with obligation, no less than
 15 15 million.
 16 It was a difficult decision to be taken by the
 17 Claimant because it significantly aggravated the term of
 18 investment, but at the time the Claimant calculated what
 19 would be the cost of increase, and in the worst-case
 20 scenario, they calculated it will be 10, 15 percent of the
 21 amount of investment, i.e., 2.5 million, and they accepted
 22 it. So, this risk which they accepted, and the term for
 23 construction of New Communal Facility was extended until
 24 September 2008.
 25 And then the Parties signed additional agreement

10:37:40 1 and extend the term for completion on 3rd July 2009, and
 2 then later, in 2011, they again extended to 1st July 2011.
 3 So, the final date for completion was 1st July 2011, and it
 4 was never extended.
 5 Now, what were the reasons why the Project was
 6 not completed? What happened in 2007, 2011? As in every
 7 construction, there are several reasons, but we will name
 8 some of them which we believe are important reasons.
 9 You see here photo from Google maps. It's on the
 10 record. You will see highlighted in blue "Trolley Depot,"
 11 and you will see highlighted in red "Road." This is road
 12 on Gorodetskaya Street. This is access road which was
 13 needed to get access to Depot, the Trolley Depot.
 14 This is what was initially planned. But then at
 15 some point in time, Minsk City said: "Well, you need to
 16 extend the road." And you see the part highlighted in
 17 yellow, extension of this road. This extension was not
 18 needed at all to build Trolley Depot. What is the true
 19 reason? It is better to ask Minsk City. The rumors, I
 20 admit these are rumors, said that some high ranking KGB
 21 officers had personnel garages in a block of
 22 highlighted--you see this in yellow. So, they wanted the
 23 road to be extended to their personal garages to have easy
 24 access.
 25 It might be not true as the Respondent is now

10:39:27 1 saying, but there is no any other explanation why they ask
 2 us to extend the road. Why this important in terms of
 3 delay? Because this distance is not big. But you see
 4 forest here. There is a park. There is a park in the City
 5 of Minsk. And removing a park in every city is difficult
 6 task because you need to have much more permission than
 7 normally you build a road in a place where there is no
 8 forest or no park. And it, of course, caused significant
 9 delay for getting permits and to remove forest and so on
 10 and so forth. You see picture of July 2008, and you see
 11 the forest removed.
 12 The other problem was that Minsktrans approved
 13 the old Soviet Project for Trolley Depot. The Claimant
 14 proposed project based on a Czech design. This is a new
 15 European facility, but Minsktrans said, no, we are not
 16 familiar with the way how to build it in Europe. We would
 17 prefer our solid project, because everything which was done
 18 in Soviet Union was solid and reliable.
 19 The problem with this was that it was all sort of
 20 typical project for Trolley Depot. Some of the materials
 21 were not produced at all because Soviet Union ceased to
 22 exist for 20 years already, maybe less at that time.
 23 And there are also a lot of mistakes in the
 24 design, which required constant changes. The short reason
 25 was that in 2009, it was announced that Minsk will be

10:41:10 1 hosting ice hockey world championship. Again, if the
 2 Respondent against this photo, we are happy to remove it
 3 from evidence. There is nothing important here. This is
 4 not new argument. This argument in our submission. This
 5 is just photos.
 6 As well as there's no new argument of President
 7 of Republic of Belarus is playing ice hockey. This is,
 8 again, in our submission. I'll be happy to remove this
 9 photo from evidence.
 10 And, of course, he took it as a personal
 11 challenge to build all the facilities. And the Tribunal
 12 should be aware that the major construction and design
 13 companies in Belarus are still State-owned. There is no
 14 mass privatization that was in Russia. All state
 15 companies, especially building infrastructure, are
 16 State-owned. So, when you have a subcontractor, a
 17 State-owned company, and there is this instruction from
 18 President of Minsk City to put their resources to build
 19 another facility like stadium, they simply take off from
 20 the construction place and move to another place. And you
 21 have to do nothing with it because there is no place to
 22 complain.
 23 And in 2008, there's a Claimant,
 24 Manolium-Engineering, complained to Minsk City about it.
 25 It also complained in September 2010, that upon instruction

10:42:28 1 of Minsk City general contractor and some organization, we
 2 are moved to work on priority improvement facility, which
 3 is stadiums.
 4 This also delays in giving construction permits.
 5 Under the approved design, the time of construction was 25
 6 months, I think, or 26 months. But Gosstroy--Gosstroy is
 7 state agency responsible for issuing permits. They issued
 8 construction permits for shorter period of time than it was
 9 required by basic design. They explained that they gave
 10 for shorter period of time because the Contractor could
 11 not--or the investor as a Claimant could not present the
 12 Contract for the whole duration of the construction.
 13 And there's a good reason why we did not have the
 14 Contract for the whole duration of the Contract.
 15 Manolium-Engineering assumes the function of general
 16 contractor. So, it had only subcontractor for doing
 17 various pieces of work. And, of course, the first contract
 18 says the one who does S-work, then you have piles, and then
 19 you have, you know, concrete works and so on and so forth.
 20 So, you hire contractors gradually. You don't have
 21 contracts with all of them in two years.
 22 So, in the initial stage you have contracts with
 23 initial contractors, you come to Gosstroy saying, give me
 24 contract for two years. I give you permission for two. We
 25 don't have it. So, we have three months. Okay, I'll give

10:45:31 1 was only interested in Depot. We did not care, frankly,
 2 what will be in the Depot itself. It was Minsktrans who
 3 was interested together. So, whatever was between formally
 4 us and the designers were, in fact, between Minsktrans and
 5 designers. Minsktrans says, I need such and such
 6 facilities. Okay. And we formally instructed the designer
 7 to do it. So, they could say real legally we are
 8 responsible, yes, but the fact it was the Respondent
 9 responsibility in interest.
 10 With regard to subcontractors, which allegedly
 11 did not perform the work, the Respondents provided only one
 12 example. However, we checked the work done by the
 13 subcontractor, and despite of the letter, the subcontractor
 14 continued to perform the work at that time in the
 15 facilities.
 16 Finally, with regard to lack of money, just to
 17 remind you that in 2007, Mr. Ekavyan by himself and his
 18 affiliated companies sold the shares in the oil company and
 19 received USD 1 billion.
 20 The financing was conducted through loans
 21 provided by various companies affiliated with the Claimant.
 22 And here you see amount of the Loans. So, in 2002 and
 23 2009, when Mr. Dolgov was saying about lack of funding, in
 24 fact, amount of funds received by Manolium-Engineering was
 25 almost USD 7 million.

10:44:09 1 permission for three. In three months we have to apply
 2 again and again and again. It did not follow from the law.
 3 This is what Gosstroy did.
 4 And where the problem was, you have permission
 5 for three months, you have contractor, you start to build,
 6 then you find mistake in the design. You have to stop
 7 construction. You have to approve changes to the design,
 8 then construction permit expires. You cannot construct
 9 without it. Then you apply for new construction permit and
 10 it's gone. It requires a lot of resources and caused
 11 disruption and delay.
 12 Also Respondent is saying design was the
 13 Claimant's responsibility, first argument. Second, they
 14 are saying the subcontractors suspended performance of work
 15 because of lack of funding. And Mr. Dolgov admitted that
 16 the Claimant would not finance the Project. This is the
 17 main arguments I had from the Respondent, if I'm correct.
 18 However, with regards to the design, technically
 19 they are correct. Designers were working under the
 20 Contract from Manolium-Engineering, but, as a matter of
 21 fact, all of them were approved by Minsktrans
 22 Administrative Committee, the design was approved by
 23 Minsktrans, and designers were State-owned companies.
 24 So, again, for Tribunal to understand, the
 25 Claimant was not operating public transporter means. It

10:47:08 1 And what is interesting, at the time of
 2 termination, not extension of the Contract, to put it the
 3 right way, amount of funding was even higher in 2011. You
 4 will say, well--the Respondent is saying, well, this is a
 5 loans provided to Manolium-Engineering. This is not what
 6 you invested in the Project because you made some
 7 intercompany loans. You spent money on something else.
 8 No, but we have another interesting chart to show. This is
 9 a chart showing amount of investments made in the New
 10 Communal Facilities. This is based on the blue line Report
 11 of Ministry of Finance, and the brown line is State
 12 Registration and Cadastre Agency, which are almost the
 13 same.
 14 In their conclusion, they calculated not
 15 USD 25 million amount of loan, but only 19.4 for several
 16 reasons. We will talk about it later. But you will see
 17 more or less the numbers and the periods where there was a
 18 lot of construction, they match amount of loans which were
 19 provided to Manolium.
 20 Well, what happened next? On 1 July 2011, the
 21 temporary right to land plots were lapsed. On 1 July at
 22 the time for transfer of the New Communal Facility to the
 23 Respondent also expired. And on December 2011, the last
 24 construction permit for the Depot expired as well.
 25 What is worth mentioning here, you see that the

10:48:40 1 temporary right to the land expires on 1st July 2011, and
 2 construction permit expired on December 2011. Because
 3 Respondent has taken position, well, you never applied for
 4 land plot and you created new problems for yourself because
 5 without land plots you could not get construction permit.
 6 No, the reality is that Belarusian authorities sometimes
 7 issued construction permits even without land plots. I'll
 8 talk about it later.
 9 Now, the Claimant Manolium-Engineering on 1st
 10 July 2011 proposed to extend the deadline to not later than
 11 November 2011. The Claimant asked just for five months
 12 without any conditions. The Project which lasted from 2003
 13 to 2011, eight years, and the Claimant has just for five
 14 months to complete the Project. And Respondent did not
 15 accept it. In March 2012, the Claimant again proposed to
 16 extend the deadline to 1 July 2012. Again, this proposal
 17 was never accepted.
 18 On June 2012, Mr. Ekavyan, who is sitting behind
 19 me, proposed to invest on behalf of the Claimant an amount
 20 of USD 3.6 million. This was the amount calculated by
 21 Belarusian authorities. They said at that time, in order
 22 to complete facilities, we need USD 3.6 million.
 23 Mr. Ekavyan said, we are ready to final this amount, if
 24 it's final.
 25 Mr. Ekavyan asked for six months until 31st,

10:52:16 1 Minsk City owns all the land, why technically do you need
 2 right for temporary use of this land. You are simply
 3 contractor working on this land. You get construction
 4 permit, you finish, that's it. And the owner of the land
 5 remains the same.
 6 And the Belarusian regulation, formally you need
 7 to have rights of the land, but this rule was not always
 8 formally followed.
 9 What is important here is that we applied for
 10 construction permit. This is what exactly we needed on
 11 21st, April 2012, but Gosstroy--and Gosstroy is agency
 12 responsible for construction permit--refused to extend the
 13 construction permit because the Minsk City did not extend
 14 the construction deadline. So, the problem, at least
 15 formal reasons they voiced at this time, was that we do not
 16 give you a permit because Minsk City did not extend the
 17 construction deadline. And later on they again refused to
 18 give construction deadline because they said you did not
 19 present the full set of documents.
 20 This is pretty surprising because we were getting
 21 construction permits for--I think at that time for
 22 many years. We were submitting set of documents. We were
 23 receiving permission. And the first time the construction
 24 committee said, no, no, you did not present proper
 25 documents. We will not give you the construction permit.

10:50:36 1 December 2012, and he also ask guarantee from the
 2 Respondent that, in exchange, he will take title to land
 3 plots on a new Investment Object. The Respondent is
 4 saying, well, this was unacceptable proposal because, under
 5 the term of tender, the Claimant received right for
 6 50 years' lease, not title to the land.
 7 I submit to the Tribunal that technically there
 8 is not much difference. You have 50 years' lease or title
 9 to the land because the right you have with regard to the
 10 land is almost the same. The only difference is that it is
 11 more difficult to revoke title than terminate the Lease
 12 Agreement. Technically it is more difficult.
 13 So, the Claimant asked for more guarantees, and
 14 the Claimant asked for good reason, and Respondent said,
 15 no, no, this is not acceptable. I told already that the
 16 Claimant said--Respondent said the Claimant created the
 17 problem itself. The Claimant never applied for land
 18 permits. Without land permits, you could not get
 19 construction permits. Here I provide three examples, I
 20 don't want to waste time on it, where the construction
 21 permits were issued without land permits.
 22 So, as a matter of practice in Belarus, sometimes
 23 you could construct object without giving right to the
 24 land. And it's logical. If you are a contractor and you
 25 are building something, for example, for Minsk City, and

10:53:44 1 It was clear they were not interested in giving us
 2 construction permit.
 3 Respondent was also trying to create an
 4 impression that Manolium-Engineering was not experienced in
 5 construction. This is why we could not submit the required
 6 documents. So, we were naive or we were not diligent
 7 enough to present required documents. Just to remind the
 8 Tribunal, yes, indeed, Mr. Dolgov was not a construction
 9 engineer. But he had on his team previously Mr. [REDACTED], who
 10 was Head of Construction Department of Minsk City in
 11 2003-2010. Mr. [REDACTED] was in charge of construction in the
 12 City of Minsk before he joined Manolium-Engineering.
 13 As the next gentleman who replaced Mr. [REDACTED],
 14 Mr. Koroban was Director of construction department of
 15 District of Minsk, and before, Deputy Director for
 16 construction of Minsktrans. So, both people were
 17 extremely, extremely qualified in construction. They know.
 18 They knew, and I'm sure know now, what kind of documents
 19 needed to be presented to get permission.
 20 Yes. Now, what the Respondent said why it did
 21 not accept New Communal Facilities from the Claimant. They
 22 said the Claimant did not provide sufficient guarantees
 23 that it would finish it in time. We heard it many times,
 24 and I'm sure we will hear it today and later, is that
 25 Mr. Akhramenko said several times that Manolium failed to

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10:55:39 1 give further assurances to citizens that the Project will
2 be finished in time. Manolium provided little assurances
3 that the Project would be completed in time. Frankly
4 speaking, I am puzzled. I am puzzled what kind of
5 assurances they needed at that time.
6 They never said, all you have to present is
7 performance bond, you have to present parent company
8 guarantee, you have to present deposit. Nothing was voiced
9 specifically with regard to assurances. There is no
10 requirement in Investment Contract to provide assurances.
11 There is no assurances in the past where extensions were
12 granted. And I'll tell--
13 (Comments off microphone.)
14 MR. KHVALEI: At that time the Claimant invested
15 already USD 20 million, and was prepared to invest further
16 3.5 million. What kind of assure else the Respondent
17 needed?
18 This is, again, the chart which combines the loan
19 received by Manolium and, of course, countered by Ministry
20 of Finance and Registration & Cadastre Agency. Look at the
21 bar in 2011, how much money was invested in 2011, at the
22 time when the initial time lapse. So, they invested more
23 than USD 7 million. The works was accepted for almost USD
24 6 million. What kind of assurance do you need when the
25 investor is building and construction develops?

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10:57:22 1 Minsk City made a counterproposal. On 6th of
2 April 2012, it proposed to extend the time for completion
3 until 1 July 2012, less than three months. Is that okay?
4 If you need to finish, I'll give you less than three
5 months. What is interesting, it is stated is that, if the
6 Contract is terminated through the fault of
7 Manolium-Processing, i.e., we did not finish it on time,
8 Minsk City unilaterally terminated the Contract and
9 Communal Facilities should be transferred into the
10 municipal ownership of Minsk free of charge.
11 Basically what it said, I give you less than
12 three months. If you don't finish, you lose the right to
13 build new investment Project and you have no compensation
14 for New Communal Facilities. Just calculate: April, May,
15 June; all right? And you also need to get construction
16 permit and sometimes needed for it.
17 So, in essence they are giving only two months.
18 Just to give the Tribunal an idea about timing, Mr. Dolgov
19 proposed five months. Mr. Akhramenko proposed six months
20 to complete. Minsktrans in 2018 was granted 10 months to
21 complete the Depot construction.
22 But Minsk City gave less than three months. This
23 was, of course, mission impossible and what they proposed
24 was not acceptable at all. What is interesting, in
25 18 June 2012, they offered to sign the same addendum to

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10:59:04 1 Mr. Ekavyan leaving him two weeks to complete the Project.
2 They proposed Mr. Ekavyan to sign suicide document, I would
3 call it in this way, is that if he doesn't finish in two
4 weeks, he will lose everything, or whatever, three weeks.
5 Mr. Dolgov said in his Witness Statement only
6 insane person would accept such a situation. And the
7 Respondent said, no, no, no, by the way, Mr. Dolgov signed
8 similar Contract in Revolutionary Project, the Investment
9 Contract with Tekstur, and I have to talk about what's
10 about this Project.
11 This is a revolutionary building, the old
12 revolutionary building. It's not on record. I'm happy to
13 remove it from the record as well as the photo of how the
14 Revolutionary Street looks today. The only point I want to
15 make is that this is a lucrative place in a City of Minsk.
16 This is not under dispute in these proceedings.
17 This is just to explain what happened in the
18 minds of the Parties in 2008 and 2009 because this was a
19 time when Mr. Dolgov was telling we don't have money and
20 we're not going to invest more. Or he didn't say we are
21 not going to invest more but he rather said we don't have
22 money, we have financial crisis and so on and so forth.
23 So, this story is important to understand what
24 happened. Tekstur is a Company owned by Mr. Dolgov, and
25 they signed a Contract with Minsk City. There was an old

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11:00:41 1 building in a nice place, and the Contract was pretty
2 simple. There was some people living in this old building.
3 Minsk City said you buy apartments for these people, remove
4 them from the building, and you'll get this building for
5 renovation, and we will offset the price you pay for
6 apartments against the price of the building. This was the
7 essence of the Contract.
8 So, Mr. Dolgov did. It purchased new apartments
9 for half a million U.S. dollars, replaced all inhabitants
10 to new apartments, but the Respondent didn't transfer the
11 building. Respondent said, well, we need permission from
12 President, again coming back that nothing happens in
13 Belarus without President, although this condition was not
14 under Tender--or not under contract. They said no, but we
15 need permission.
16 Then Tekstur, again, asked to transfer the
17 building, and then in 2007 Minsk City said, well, we are
18 going to terminate the Contract. We don't like the way how
19 you, you know, communicate to us.
20 So, at the time when Tekstur invested already
21 half a million they said, well, we terminate the Contract,
22 you go passing, walk away. And then Minsk City started to
23 increase the price for the building. Initially the price
24 was half a million, so it was almost the same amount which
25 was invested by Tekstur, and then they increased five times

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11:02:11 1 to 200, 2.5 million and then reduced to 1.5 million. And
2 at the same time they informed Tekstur that they prepared
3 already a draft decision to withdraw the right to enforce
4 the Revolutionary Building, i.e., either you accept new
5 proposal or you'll get nothing.

6 At that time Mr. Dolgov had no choice because he
7 invested already money to sign the Contract under these
8 draconian terms, and the Contract provided exactly the
9 same. If their construction would not be finished on time,
10 you will get no compensation at all. Mr. Dolgov signed it.
11 It did not perform in time for various reasons, which are
12 outside of these proceedings, and lost completely its
13 investments.

14 So, Mr. Dolgov did it already once. Again, skip
15 the building how it looks, how it looks now, and this is
16 not relevant, picture of Russian roulette, but this is what
17 proposed to Mr. Dolgov. Now, traditional Russian roulette
18 you have one bullet out of six. In Belarusian roulette
19 there are six bullets. So, these were the terms proposed
20 to the investor. Now, whatever you'll do, you'll get dead.

21 Now, you ask what is the real reason why it was
22 so difficult to give extension for five months. I was
23 struggling to find answer for myself, frankly, until we
24 discover that, in fact, there was a hidden agenda and more
25 we developed it the more we are convinced that this was the

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11:05:44 1 them to their car. Invitation to the car in a situation
2 when KGB office was 300 meters from office of Manolium was
3 a threat because there are known stories in Belarus where
4 people disappeared after sitting in KGB cars.

5 So, Mr. Dolgov said no, no, I'm going to walk.
6 And they said no, we kindly invite you to sit and he had to
7 do it because there were several officers. And he was
8 interrogated in the office and KGB officers said to
9 Mr. Dolgov that he had "done great harm" to himself and
10 that he would have huge problems because of his meetings
11 with Andrey Sannikov, one of the opposition leaders.

12 The Respondent does not deny this event. The
13 Respondent says, well, it is not relevant. We don't see
14 how this is relevant to what happened, but I would expect
15 the Respondent to present minutes of interrogation of
16 Mr. Dolgov if it's not relevant but it is not presented.
17 There is no Witness from KGB saying no, no, we never
18 threatened him. So, they're only saying this is
19 irrelevant.

20 I will tell you it is relevant. The Claimant
21 called--not called but asked Elena Tonkacheva to be Expert
22 of Claimant on the independence of the Belarusian
23 judiciary. The Respondent decided not to call her, to
24 testify before this Tribunal. But I will tell you that
25 Ms. Tonkacheva herself is a vivid example of lack of

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11:04:03 1 real reason for not extension.

2 In December 2010, the elections of President of
3 Belarus were held. Mr. Lukashenko won with impressive
4 results of 72 percent, but European Parliament stated that
5 the elections were not in accordance to international
6 standards and called for new elections.

7 Then there was some movements in Belarus. A lot
8 of people went to the street. They disagreed with the
9 result of the voting, they asked for a new election, and
10 police was seriously and heavily involved in dissolving of
11 the people.

12 In December 2010, just to give you an idea, KGB
13 kidnapped one of the candidates for Presidency,
14 Mr. Neklyayev, from the hospital. All the oppositional
15 leaders were arrested and sentenced from two to six years
16 in prisons. A total of more than 600 people were detained
17 and 150 searches were conduct in the offices of the
18 companies. So, President of Belarus did not like what
19 happened, and apparently he instructed to penalize everyone
20 who was directly or indirectly involved.

21 In the spring 2011--and the date is important
22 here. You remember there is the term for completion ended
23 on 1st July 2011 and it was not extended when Manolium
24 asked. So, in spring 2011 KGB officers arrived at Office
25 of Mr. Dolgov, and they requested that Mr. Dolgov follow

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11:07:17 1 judicial independence in Belarus. She is Russian citizen.
2 She graduated from the Belarusian State University.

3 You know that I'm also from Belarus and I know
4 her personally. She graduated from Belarusian University.
5 She had her office, law office in Belarus. She's
6 well-known human right activist in Belarus. She has a
7 daughter graduating from Belarusian school. She, all her
8 life was in Belarus, and she was criminally sentenced and
9 sent out of Belarus for several years for repeated breach
10 of administrative laws in Belarus. And you know what her
11 repeated breaches of law? Speed limits.

12 So, traffic police found several cases where she
13 exceeded speed limits or parked her car in the wrong
14 places, and she was criminally sentenced for that and sent
15 out of Belarus. I submit to the Tribunal, you don't need
16 to hear Expert after hearing the story of the Expert.

17 In my presentation, we have a cases. I don't
18 want to repeat them. They are all on records where various
19 companies were invested money in Belarus and they were
20 deprived of their investments without any fair trial or
21 fair judgment. And, for example, Marat Novikov invested in
22 Belarusian confectionary, and then at some point of time
23 President of Belarus visited the confectioners, stated this
24 confectioner will be the property of the people and this
25 ended the story.

11:08:56 1 I don't want to repeat the story of investor.
 2 But I also want to tell a couple of example of
 3 famous Belarusian business people who were detained by KGB
 4 and they were released after the losses they alleged caused
 5 to the budget were paid. Again, I am happy to remove all
 6 the pictures, which Ms. Zagonek is saying are irrelevant,
 7 but the facts are on the records. Pictures can be removed.
 8 The pictures of the people.
 9 Again, to understand the role of KGB in the
 10 country, the way how it works, whenever Belarusian
 11 authorities suspect that somebody in Belarusian business is
 12 liable for damages to the State because of not paying taxes
 13 or doing some other violation, this one is detained by KGB
 14 and Special Commission is conducted and they evaluate what
 15 is the damage cost to the State. And when the person pays
 16 this damage, he or she is released from the jail. This is
 17 done not in the framework of court proceedings.
 18 This is like, you know, in Stalin times. These
 19 people sitting and they are saying, you breach the law, you
 20 have to pay USD 12 million. If you pay you will get out of
 21 the jail. And people have to pay. And I know sometimes
 22 there are people who did not pay and they are still in
 23 jail. And this is reason why Mr. Dolgov left Belarus and
 24 could not come there. Because I am sure that next day, or
 25 same day as he was in Belarus, he would be put in jail.

11:10:28 1 Now, let's come back to more formal and legal
 2 issues.
 3 Under the Contract Minsk City was obliged to
 4 accept Communal Facilities within one month either after
 5 signing Commission Act or State Registration of Communal
 6 Facilities. So, this obligation to accept title within one
 7 month after completion of the New Communal Facilities.
 8 Is it on record, Pull Station. It's not on
 9 record. Okay. I'm happy to remove it. This is Pull
 10 Station, how it looks like.
 11 On June 2010, this is before the deadline for
 12 completion, the Claimant completed work on a Pull Station
 13 and on 6th July 2010 Minsktrans accepted the Pull Station
 14 under the so-called "Gratuitous Use Agreement." This is a
 15 pretty interesting Convention. There is nothing in the
 16 Contract that says you could accept under Gratuitous Use
 17 Agreement. This is what happened. Minsktrans said I did
 18 not want to take title to it. By de facto I'll take it and
 19 use it for free. Okay. So, Minsktrans de facto accepted
 20 the Pull Station but did not accept formally title.
 21 Again and so, in July 2010, the Commission,
 22 including Minsk City and Minsktrans accepted the Pull
 23 Station for its operation. So, within months under the
 24 Contract they were to accept the title, but they refused.
 25 Manolium-Engineering asked to accept the title in

11:12:15 1 November 2010. Minsktrans says, well, we will accept title
 2 to it upon expiry of one year of its operation. There is
 3 nothing in the Contract which says that you can do it.
 4 And then, in July 2011, they bid against that,
 5 well, because of some defects we are not going to accept
 6 title. This is not the way how it operates in construction
 7 or investment business. If the building is completed, you
 8 have to accept title. If you have defects, you could hire
 9 contractors to cure it and then ask for damages or you
 10 could ask contractor to cure the damages, but you cannot
 11 refuse to take title, especially a situation where you're
 12 using it.
 13 This is nonsense. With regard to the Depot
 14 almost the same happened. Depot was finished not in time.
 15 A little bit late.
 16 On 14 November 2011, Manolium transferred
 17 administratively building and checkpoint. The Depot itself
 18 consist of three buildings, Administrative, Production
 19 Facilities, Checkpoint. So, Administrative Building was
 20 ready, Checkpoint was ready, Production Building was
 21 85 percent complete. But two of them were transferred to
 22 Minsktrans.
 23 This is a picture of Administrative Building. Is
 24 it? It is not on record? I can't remember. If it's not
 25 record, I'm happy to remove it.

11:13:44 1 But the road certainly in this picture is on
 2 record. This is a solid object. The works on the road
 3 were completed on July 1, 2011. You see the picture of
 4 29 May 2011 of the road. This is highlighted in red. You
 5 see the cars in the road. So, the road was fully in
 6 operation at that time. It was allowed for public
 7 transport to be used. Of course it couldn't be done
 8 without involvement of Minsk City Executive Committee, but
 9 despite of the fact--despite of the fact--they did not
 10 formally accept title to the road.
 11 Now, several times the Claimant tried to transfer
 12 New Communal Facilities in 2013, in 2014, in 2016. It is
 13 all on records, but Minsk Executive Committee all the time
 14 refused to accept.
 15 In September 2014, Economic Court of Minsk issued
 16 Decision to terminate the Investment Contract. On
 17 October 2014, Court of Appeal upheld, on 27th of
 18 January 2015, the Belarusian Supreme Court finally
 19 terminated the Investment Contract.
 20 At some point of time the Parties started to
 21 negotiate potential compensation for New Communal
 22 Facilities. Mr. Akhramenko said about it is that we did
 23 not exclude that some kind of compensation would be paid.
 24 Initially, Minsktrans evaluated in amount of
 25 USD 13.5 million. The Claimant, of course, did not accept

11:15:30 1 it because it was done one side, one side internal
 2 evaluation and asked for the audit from Polystandask to
 3 make evaluation. It came with 18.3 million.
 4 Minsk City did not accept it. They said no, no, it was
 5 done without our participation. Let's have State authority
 6 to evaluate it.
 7 In June 2015, the State Registration & Cadastre
 8 Agency, I mean, it was agreed by all Parties, valued the
 9 Claimant's expenses at the demand of USD 18.1 million.
 10 However, this evaluation did not- Minsk Executive Committee
 11 did not like it. And so, they ask the Government to
 12 instruct control and audit Office of the Ministry of
 13 Finance to make assessment of the cost of New Communal
 14 Facilities.
 15 Again, this assessment was made specifically for
 16 the purpose of potential acquisition of the New Communal
 17 Facilities from the Claimant, Minsk City asks the
 18 Government, Government instructs the Minister of Finance, a
 19 special department in charge of evaluating of construction
 20 to be accepted for State ownership, and this special
 21 department on 22nd--on 25th January--no, it was on
 22 22 February 2016, sorry, issued a Report.
 23 And first of all stated Manolium did not commit
 24 any violation in construction of New Communal Facilities,
 25 meaning that there was no breach of the design. So,

11:17:16 1 everything was built according to the design. Okay.
 2 They also confirmed previous evaluation in an
 3 amount 18.1 million. They said it was done correctly, but
 4 because not all expenses were included, new amount was
 5 released, USD 19.4 million. This is the amount which the
 6 Claimant seeks in this arbitration. We mentioned already
 7 that de facto we invested more in this Project. It is
 8 around USD 25 million because some amounts were spent on
 9 new investment objects on design. Some expenses were not
 10 included here like salary of Director, lease payments, and
 11 so on and so forth.
 12 So, we submit to the Tribunal this is the most
 13 conservative amount which could be in the current
 14 circumstances. Less than we invested, but we prepared to
 15 accept it in order to avoid discussions. We were
 16 surprised, actually, that in this arbitration the
 17 Respondent started to argue that its Department of Ministry
 18 of Finance instructed to make evaluation of an investment
 19 specifically for the purpose of compensation made a
 20 mistake. Frankly, first time I hear such kind of
 21 arguments, but this is what they did.
 22 Now, with regard to the land. Normally if you
 23 have--assuming that the Belarusian side is right, assuming
 24 that we delayed construction and assuming that they were
 25 entitled to terminate the Investment Contract. But still,

11:18:52 1 the New Communal Facilities were built; right? And we
 2 should be paid for it. And they evaluate it, \$19.4 million
 3 plus labor repayment, 1 million. So, we have to be paid
 4 for it because this was done for the use of Minsk City
 5 Executive Committee, but they decided not to. How? They
 6 invented the scheme, I'll call it "Belarusian know-how," if
 7 you want, although it is not "Belarusian know-how," it is
 8 many countries around the world, investments are
 9 expropriated through the taxes.
 10 Under the law, Minsk City should instruct Minsk
 11 Land Planning Committee to withdraw the land plots from
 12 Manolium within three days, from the Decision not to extend
 13 the right for the temporary use of the land plots. So, in
 14 the 1st July 2011, temporary and rightful land plot expired
 15 and then Minsk City should either extend the right or
 16 instruct its agency to take the land. It's logical; right?
 17 But Minsk City did not do either. It did not extend, it
 18 did not instruct.
 19 In June 2012, Manolium-Engineering asked Minsk
 20 City to formally accept the land plots because of
 21 nonextension of the investment Contract. Minsk City
 22 refused. Again, we're not talking about returning the land
 23 plots. Returning land plots doesn't mean physically return
 24 of land plots. It means we release the land plots.
 25 When we stop construction, there is nothing else

11:20:33 1 to be done there. The only thing which should be needed is
 2 to sign a paper. You see it and we sign a paper. This is
 3 formal return of the land plot. Because we did not occupy
 4 them. We did not need the land plots. Minsk City said,
 5 well, we cannot accept because you have uncompleted
 6 construction facility.
 7 This is, I think, the main argument which is
 8 voiced now by Respondent why it did not accept land plots
 9 in 2012. Because the uncompleted construction facilities.
 10 But we said, okay, but there are some facilities completed.
 11 Take it. Road. Take road. Take Administrative Building,
 12 Checkpoint. They said, no, no, no, we are not obliged to
 13 take in part under the Contract. Yes, indeed, the Contract
 14 says nothing whether you should accept in whole or part,
 15 but nothing prevented them from taking it. If they are
 16 using it. It's just logical.
 17 No, they said, no, no, we are not obliged to take
 18 it, in part. Why? Here I want to draw Tribunal to one
 19 important document. Can I--I'm going to refer to this
 20 document again and again, because I think this is key
 21 document in the Claimant case. This is a letter from the
 22 Minsk City Executive Committee to the Belarusian Government
 23 issued on 29 February 2016. This is R-140.
 24 First of all, in this interesting document, Minsk
 25 City says that Manolium has liability to the budget in the

11:22:09 1 amount of USD 19.6 million. It is interesting enough. You
 2 remember the evaluation done by Minister of Finance was on
 3 22nd February 2016, and they evaluated at 19.4. One week
 4 later, Minsk City said, oh, but you owe us more, 19.6.
 5 What is interesting, tax audit for land was made
 6 later. I'm going to talk about it. So, this amount
 7 appeared before tax audit was conducted. So, Minsk City
 8 already knew that Manolium owed them more than
 9 USD 19 million, and, therefore, from a Minsk City position,
 10 there is nothing to be paid to Manolium.
 11 There is also reference to instructions from Head
 12 of the State and also we say the main reason why they could
 13 not complete the New Communal Facilities is the investors'
 14 refusal to transfer incomplete facilities into municipal
 15 ownership. So, they are saying, well, this is the investor
 16 who did not want to transfer the facilities into municipal
 17 ownership, although, as I mentioned before, we offered it
 18 several times. They said no, no, no, investor does not
 19 want to transfer incomplete facilities to the city on
 20 acceptable terms and conditions. Interesting, huh?
 21 They did not say that we did not accept new
 22 Communal Facilities because they are not complete. They
 23 did not say we did not accept it because we are not obliged
 24 to do it, in part. They said, we did not accept it because
 25 the investor did not agree to transfer it on acceptable

11:24:07 1 terms and conditions. What are the acceptable terms and
 2 conditions?
 3 And, next paragraph, we consider it expedience to
 4 propose that investor transfers the Communal Facilities
 5 free of charge, which would release it from any additional
 6 expenses. So, basically, as they are saying to the
 7 Government, we propose that investor release it free of
 8 charge. This is the acceptable condition and then we will
 9 complete New Communal Facilities.
 10 What is more, it is stated if investors--should
 11 the investors disagree with the set of proposal, Minsk City
 12 Committee will order the investor to pay the amount of
 13 taxes for the use or occupation of the land plots and take
 14 measures to take out the incomplete facilities to the State
 15 revenue by enforcement.
 16 And there is also draft Report of administration
 17 of President, which is stated in clause, this Report has
 18 never been presented to the investor. It has never been
 19 presented to arbitration.
 20 There were two secret instructions which were
 21 still kept in secret, never released to the investor, never
 22 released to this Tribunal.
 23 What happened after that? Pretty quick, a couple
 24 of days later, Minsk City Land Committee under instruction
 25 of Minsk City Executive Committee initiated audit, and, on

11:25:35 1 18 March 2016, said that Manolium-Engineering unlawfully
 2 occupied it. So, the same Land Committee which should
 3 accept land when land rights were not extended said, well,
 4 you are lawful occupied it because we did not--it was not
 5 said, of course, but implied message--we did not accept the
 6 land and now you are liable for it because you lawfully
 7 occupied it.
 8 And then first-level court surprisingly took
 9 Decisions that Manolium-Engineering did not commit any
 10 offense, but this Decision was reversed on appeal, and
 11 four days later another judge on the Trial Court took right
 12 Decision and said Manolium unlawful occupied the land
 13 plots. Then on 17 May, the same day when the Trial Court
 14 took the Decision, a tax authority ordered to pay
 15 USD 1.1 million, and then it was increased to 13 million.
 16 Still not 19.
 17 Then, again, in September, Manolium asked to take
 18 the land plots back. Minsk Land Committee, again, refused
 19 and said since Manolium-Engineering still had its property
 20 located on the State land plots, well, if Minsk Planning
 21 Committee would be open and transparent, he should say,
 22 well, we do not accept because you don't want to give us
 23 for free. This was discussed by Minsk City council. But
 24 they said, no, no, because you have property located, we
 25 cannot accept it.

11:27:14 1 And then because the amount of evaluation did not
 2 match the amount of taxes, a special Department of
 3 President of Republic of Belarus made a new evaluation of
 4 13.8 million, and then, again, calculated taxes to
 5 17.2 million, and you see that the amount of taxes were
 6 always inconsistent, always just, the increasing every two
 7 to three months just to match the amount of investments.
 8 And then, finally, on 20th January 2017, by
 9 secret order of President of Republic of Belarus, New
 10 Communal Facilities were taken without consideration into
 11 ownership of Minsk property. Respondent, during the life
 12 of this arbitration, several times said, well, this order
 13 means nothing. This was just internal document. It was
 14 for internal use. You don't need to know about it. There
 15 is nothing important in it.
 16 Well, I'm surprised. Order of President of
 17 Republic of Belarus where Point 1 says to transfer without
 18 consideration into the ownership of Minsk property is not
 19 important? This is not the Decision taken to expropriate
 20 investments? I submit it is completely opposite.
 21 Now, after this order, there was a set off of
 22 value of New Communal Facilities against taxes. Then,
 23 again, taxes were calculated, of course, everything caused
 24 bankruptcy of Manolium-Engineering.
 25 On 1 December 2016, Minsk City Committee seized

11:28:58 1 the land plots where New Communal Facilities were located
 2 and then on 27 January, the New Communal Facilities were
 3 transferred to Minsktrans. Surprise. Surprise. The fact
 4 that the New Communal Facilities were not complete, that
 5 the land plots were still occupied by unfinished
 6 construction or that Minsktrans was not obliged to accept
 7 them by parts, all the arguments they voiced in responding
 8 to this arbitration were no longer an obstacle.
 9 No. It is not a problem. Why? Because they had
 10 a sufficient amount taxes to offset against the building.
 11 And my question is what prevented them to do the same in
 12 July of 2011 or July 2012? The buildings were the same.
 13 The land plots were the same. They could do the same.
 14 They did not want to do it because they needed time to
 15 allow to calculate land taxes and then get everything for
 16 free.
 17 This remind me the story--I'm happy to remove it
 18 from evidence. Imagine a situation where any Members of
 19 the Tribunal will leave The Hague and by mistake you leave
 20 notebook in your room. And then you come one week later to
 21 the same hotel and you will find out that your notebook is
 22 used by people at the reception. And you say, well, thank
 23 you very much for keeping my notebook.
 24 And they say, no, sorry, your notebook is now
 25 mine. You say why is it yours? Because they say you left

11:30:29 1 your notebook in the room and we had to provide you
 2 additional charges, right, for one week because you
 3 occupied the room. You have notebooks there. And then
 4 when the additional charges in the amount of notebook we
 5 set off the price of notebook against your charges. And
 6 you ask, well, but why you did not remove notebook one week
 7 before as you did it, you know, yesterday or today. They
 8 say, no, because it was your notebook. You occupied the
 9 room. We could not take it.
 10 This is--you cannot credibly, credibly say
 11 something like this with regard to taxes.
 12 Now, I'm going conclude soon.
 13 ARBITRATOR ALEXANDROV: Mr. Khvalei?
 14 MR. KHVALEI: Yes.
 15 ARBITRATOR ALEXANDROV: Can I just ask you about
 16 R-140, the document you distributed.
 17 MR. KHVALEI: Yeah.
 18 ARBITRATOR ALEXANDROV: It begins with the phrase
 19 "pursuant to instructions of the Council of Ministers to
 20 the Republic of Belarus, et cetera."
 21 MR. KHVALEI: Yeah.
 22 ARBITRATOR ALEXANDROV: Is this document on the
 23 record, the instruction of the Council of Ministers?
 24 MR. KHVALEI: No.
 25 ARBITRATOR ALEXANDROV: It is not.

11:31:24 1 MR. KHVALEI: No.
 2 ARBITRATOR ALEXANDROV: Thank you.
 3 MR. KHVALEI: Now, with regard to our ground for
 4 deprivation of the right to investment object, the
 5 Respondent is trying to present this case as construction
 6 dispute. They were trying to drag out to us to discussion
 7 of when we have to complete the Project, what were the
 8 delays, who is responsible for delay.
 9 I submit to the Tribunal this is not relevant.
 10 We are not here considering construction disputes. We are
 11 considering here investment dispute. What is stated in the
 12 Contract? In the Contract it is stated in case of failure
 13 to perform financial obligations through the fault of an
 14 investor, the investor "shall" be deprived of the right to
 15 implement the Investment Project. So, only in case we
 16 failed to perform our financial obligation we are deprived
 17 of our rights to build investment Project.
 18 If we are in delay, with defects, fine, file a
 19 claim against us in commercial court in Minsk and, you
 20 know, charge damages, liquidated damages, whatever. But
 21 our right for to build new Investment Object was depend on
 22 our financial obligation and, again, remind to the Tribunal
 23 that total amount of investment was 25 million, major part
 24 came in 2011. We proposed to invest another USD 3 million
 25 and the offer was rejected. So, what that means there was

11:32:58 1 no breach on the Claimant's side on its investment
 2 obligation.
 3 There is also one important paragraph in the
 4 Contract. It is pretty standard for all construction
 5 contracts. It says that, if a Minsk City or Minsktrans or
 6 fail to timely discharge their obligations then the timing
 7 would be proportionally extended. This is reasonable. If
 8 the customer is a client is responsible for delay, then the
 9 timing for construction is extended, but what is also
 10 important is the additional course is also, then, on the
 11 client's side.
 12 If, for example, if the client does not give land
 13 for one year, so the time for completion is extended for
 14 one year, and the construction cost due to this delay are
 15 normally on a customer side; right? So, what we are saying
 16 is that because there were numerous delays and there was
 17 increase of construction, we saw it several times, the
 18 Respondent is liable also for additional cost, at least
 19 part of the additional cost, so all it boils down to our
 20 submissions that we performed all our obligations to
 21 finance.
 22 So, what is the end of the story, in
 23 September 2017, there was new auction to the right to
 24 construct of the same land plots and a new company won this
 25 tender for approximately USD 8.8 million. This is, we

11:34:28 1 submit, very minimum of our lost profit and why we are
 2 saying this is very minimum of our lost profit, it's pretty
 3 classical example; right?
 4 We had tried to develop. We were deprived of
 5 this right to develop. This new auction--new winner and it
 6 paid USD 8.8 million. Why we are saying it is very minimum
 7 is because this auction is frankly tainted, by our story.
 8 No investor in their right mind would participate in
 9 auction where he saw the previous investor screwed by the
 10 Belarusian government. I would never give a penny,
 11 frankly, to such kind of auction. And this should be taken
 12 by Tribunal into account.
 13 So, to finalize, if the Tribunal, well, if the
 14 Respondent would give us five months in 2011, this more or
 15 less housing investment object would look like, and this is
 16 how it looks now.
 17 And this concludes my factual presentation. And
 18 after a coffee break, I was 1 hour 20 minutes, and I was
 19 promised to be 1 hour 30 minutes, Ms. Zagonek. I made it,
 20 although it was physically impossible, and after coffee
 21 break, my colleague will continue on the legal part.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 23 Thank you very much. It is now quarter to
 24 12:00 p.m. It is 20. So, in a quarter of an hour would be
 25 11:50. So, we are back by 11:50. My watch seems to be--15

11:36:12 1 minutes. 15 minutes' break. Thank you.
 2 (Brief recess.)
 3 PRESIDENT FERNÁNDEZ-ARMESTO: We will resume the
 4 Hearing, and we give the floor to Claimant.
 5 MR. HANESSIAN: Thank you, Mr. President.
 6 I just turned off our computer here, with our
 7 slides. Just give us one second. I shouldn't be trusted
 8 to touch anything. Vladimir does such a good job doing his
 9 own slides.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Let's break for
 11 five minutes.
 12 MR. HANESSIAN: No, we're back. Thank you very
 13 much. And good morning. I think it's still about morning.
 14 So, my name is Grant Hanessian. I will speak
 15 about jurisdictional issues, issues regarding the Claim,
 16 and then we will have a presentation by my colleague, Nick
 17 Kennedy, about quantum, and that will conclude our
 18 presentation.
 19 So, the jurisdictional points are five, as you
 20 see on our first slide. The Tribunal has jurisdiction
 21 *ratione temporis*. The Claimant is an investor that made
 22 investments in Belarus. This is a Treaty dispute. It is
 23 not a repackaged contract dispute. Minsktrans' acts are
 24 attributable to the Respondent, one of a number of State
 25 actors here, and the Tribunal has jurisdiction under the

12:01:34 1 Belarusian Investment Law.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: You used to
 3 have--sorry for that. This is on our time.
 4 (Comments off microphone.)
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Sorry for the
 6 interruption.
 7 MR. HANESSIAN: All right. Very good.
 8 So, as I've said, we have five jurisdictional
 9 points.
 10 (Comments off microphone.)
 11 PRESIDENT FERNÁNDEZ-ARMESTO: So, now we are
 12 definitely online.
 13 MR. HANESSIAN: All right. Very good.
 14 All right. So, the first point is *ratione*
 15 *temporis*. The Treaty here, the EEU Treaty, entered into
 16 force on 1 January 2005. Our first point is that there is
 17 no temporal restriction.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: 2015?
 19 MR. HANESSIAN: 2015. What I did say? Something
 20 else? Well, it is '15, whatever I said. 1 January, 2015.
 21 And we have two points on this, the two that follow.
 22 The first is, the Treaty itself has no temporal
 23 restriction on disputes. The Treaty applies to all
 24 investments made after December 16, 1991. And the second
 25 point is the dispute, in any event, arose after the Treaty

12:04:04 1 entered into force on 1 January 2015.
 2 Our view is the Treaty dispute arose when it was
 3 noticed, in April 2017, and it arose out of an interrelated
 4 chain, a series of events that we began prior to entering
 5 into force of the Treaty. And, alternatively--well, I
 6 should say at this point, the Parties have characterized
 7 these facts in somewhat different ways. There has been
 8 talk about one dispute, and there has been talk about two
 9 disputes.
 10 And our view, the two-dispute theory of the
 11 Respondent--our view, in any event, if there are two
 12 disputes, they both arose after January 1, 2015. And I'll
 13 talk about that as we go forward here.
 14 I don't press it down. I press sideways for some
 15 reason.
 16 So, the first point, that this Treaty has no
 17 temporal restriction on disputes. This is the Protocol 16
 18 regarding the investment protections of this Treaty.
 19 Provisions apply to all investments since
 20 December 16, 1991. And then it says "all disputes arising
 21 in connection with an investment of that investor shall be
 22 resolved"--as we see and as we're here--under UNCITRAL
 23 Rules of Arbitration."
 24 Now, Respondent has raised the Vienna Convention
 25 point, as we see here, Article 28, that: "Unless a

12:05:44 1 different intention appears from a treaty or is otherwise
 2 established, Treaty provisions do not bind a party in
 3 relation to any act or fact which took place or any
 4 situation which ceased to exist before the date of the
 5 entry into force of the Treaty with respect to that Party."
 6 It just sort of repeats what I just said, that
 7 there is no temporal restriction beyond the
 8 16 December 1991 Application. And, reading it, according
 9 to its plain terms, the Treaty applies to existing
 10 disputes.
 11 Now--and I think this is the key point for the
 12 Tribunal--Belarus and Russia did not intend temporal
 13 restriction on disputes under this EEU Treaty, as evidenced
 14 by a previous Treaty between the same Parties on the same
 15 subject matter that has a temporal restriction on disputes.
 16 Here's a comparison of these two treaties. And
 17 the Parties that are referenced here are the first State
 18 Parties. These are the Parties that drafted this
 19 Agreement. Other Parties came onto it later, but these are
 20 the first State Parties to these two agreements.
 21 So, you see this earlier agreement that was
 22 drafted in 2008, Eurasian Economic Community Investment
 23 Agreement, Belarus, Kazakhstan, Russia. Our Treaty,
 24 six years later, Belarus, Kazakhstan, Russia. There are
 25 only three countries here, including the two countries who

12:07:18 1 have the investor in the Host State in this case.
 2 So, in the 2008 Treaty, at Article 12, you have a
 3 clear provision in the Treaty that the Agreement does not
 4 apply to disputes that arose before the entry of the Treaty
 5 into force. These same three countries, six years later,
 6 another investment treaty, there is nothing there. There
 7 is nothing there.
 8 Clearly, they knew how to do this and, clearly,
 9 they didn't do it in the subsequent Treaty. And, again if
 10 you go to the plain terms, our view is there's nothing to
 11 restrict a dispute that is arising for investments since
 12 December 16, 1991.
 13 So, this is one of these cases that a different
 14 intention can be otherwise established.
 15 ARBITRATOR STERN: Yes, you say there is nothing
 16 there, but isn't there a general principle of law that a
 17 treaty applies to the facts when the Treaty is in force?
 18 MR. HANESSIAN: Well, I think that depends on the
 19 intention of the Contracting Parties. The Mavrommatis
 20 Case, which I know that you know very well, is a Treaty
 21 that was held to apply to facts prior to the date of the
 22 Treaty.
 23 And, in part, my understanding--I think the
 24 Tribunal knows this a lot better than I do--it was, in
 25 part, as a response to that that some of these Treaties

12:09:12 1 began to have temporal restrictions. And a lot of treaties
 2 do have temporal restrictions, and most of the cases that
 3 involve *ratione temporis* holdings have temporal
 4 restrictions, specifically.
 5 The reason why we think it is so important to
 6 compare these two Treaties is these Parties knew they could
 7 do this by specifically doing it, and then decided not to.
 8 So, it seems counterintuitive that they would rely on
 9 customary international law if they felt that existed, when
 10 they knew they could specifically contract out of it, and
 11 had, just six years earlier.
 12 ARBITRATOR STERN: Well, you suppose that
 13 six years earlier, they contracted out of it. You can also
 14 think that they just implemented, in writing, what exists
 15 as a general principle.
 16 MR. HANESSIAN: Again, ultimately, it goes to--we
 17 could say it goes to the intent of the drafters, but it
 18 would appear from the intentions of the Parties that they
 19 knew how to do this and decided not to.
 20 ARBITRATOR ALEXANDROV: If I may follow up,
 21 because I'm a little bit confused by the Submissions of
 22 both Parties, and I'll have the same question for
 23 Respondent.
 24 So, it seems to me there are three different
 25 points here. One is, does the Treaty apply to Claimant's

12:10:36 1 investment? The Treaty says that it applies to preexisting
 2 investments, so that point seems to be resolved.
 3 The two other points are, one, when the dispute
 4 arose, your argument is the Treaty has no restriction with
 5 respect to preexisting disputes. Other treaties do; this
 6 one doesn't.
 7 MR. HANESSIAN: Correct.
 8 ARBITRATOR ALEXANDROV: I understand that
 9 argument, but there's a third point, which I think
 10 Professor Stern was referring to, which is--on your
 11 Slide 7, which is that--and whether that's a point on
 12 jurisdictional merits is another discussion--but there can
 13 be no breach before there is a legal norm to be breached.
 14 In other words, before January 1, 2015, Respondent could
 15 not have breached the Treaty because there was no provision
 16 of the Treaty to be breached.
 17 And this may not be a matter of jurisdiction. It
 18 doesn't really relate to when the dispute arose.
 19 MR. HANESSIAN: Right.
 20 ARBITRATOR ALEXANDROV: The point is, when did
 21 the breach happen?
 22 MR. HANESSIAN: Right.
 23 ARBITRATOR ALEXANDROV: And I think one argument
 24 is it could not have happened before January 1, 2015.
 25 MR. HANESSIAN: Right. The breach--we'll get to

12:11:46 1 this, and this is part of what I'll talk about. So, we'll
2 next talk about when the dispute arose. We'll take that
3 point first.

4 There are some of the cases that were raised
5 earlier--some of the cases in what I'm about to--the slides
6 I'm about to show you do reference--I think there are four
7 or five cases in this section that are not in the pleadings
8 to date. The cases are all very well-known, I think, to
9 this Tribunal, and we would like to address that
10 Post-Hearing, with your permission. And I'll just skip
11 through those slides that have those cases for now.

12 This law is fairly well-known in standard. You
13 consider a series of acts in the same direction that could
14 result in a breach at the end of the process of
15 aggregation--I'm reading from the Société
16 Générale v. Dominican Republic case. And the aggregation,
17 the consummation of this, comes into play after the Treaty
18 obligation comes into force.

19 So, this could be characterized as "creeping" or
20 "indirect expropriation," but the point is that the acts
21 taken together constitute the wrongful act, and the
22 consummation--I'll use that word--occurs after the Treaty
23 comes into force.

24 This is sort of the same thing with Tecmed. I'll
25 go quickly, given our time. We have, I think, an hour and

12:15:04 1 All right. January 2015. This was, here, now,
2 that the Belarusian Supreme Court denies the final appeal
3 on this Investment Contract termination. And so, this was
4 now over. So, as a matter of--we'll talk a little bit
5 about the legal implications of this, but this happened
6 after January 1.

7 Also, as my colleague just described at some
8 length, there were continuing negotiations in 2016 about
9 the amount that would be paid to the investor for what it
10 had built. The Contract rights had been terminated, which
11 terminates its rights to this Investment Object, this new
12 building it was going to build. But, on the ground, there
13 were these buildings they had built and which were almost
14 finished.

15 One building was 85 percent finished. All the
16 rest were finished and were being used by the City of
17 Minsk. And it was only in February 2016 that the
18 Government--not communicating this to the investor--but the
19 Government just decided to take them through these tax
20 matters that have been described, even after that date,
21 where the investor is seeking to have the City take these
22 properties into its communal ownership.

23 The first Tax Audit Report wasn't until May '16.
24 The entire tax scheme, if I can use that word, came in
25 to--first became--went into operation in 2016, and then the

12:13:32 1 40 minutes, but we don't have time to spend that much time
2 so we can all have lunch at a reasonable hour.

3 So, these are the key events that my colleague
4 just went through. I'm not going to actually take any time
5 with this right now. These are the events that happened
6 after the Treaty came into force, if the Tribunal feels
7 that this is relevant.

8 So, in January 2015--actually, there is one point
9 that I wanted to make that I didn't make when I was talking
10 about the Vienna Convention. And this is--I will admit
11 this is not a point we've made in our papers. And full
12 disclosure, I certainly believe everybody should be given a
13 fair opportunity to respond.

14 But the Vienna Convention, of course, also at
15 Article 26, says that, upon signing a treaty, Parties have
16 an obligation not to defeat the object and purpose of a
17 Treaty. It's not into force for the Party, but there is an
18 obligation under the Vienna Convention.

19 So, under this way of looking at things, as of
20 May 26, 2014, there would be an obligation for Belarus not
21 to take actions which would be offensive to the object and
22 purpose of the Treaty.

23 Again, this is not an argument we've made before,
24 but we do put it on the table now and it may be appropriate
25 for Post-Hearing Submissions.

12:16:56 1 New Communal Facilities at this time--this is
2 important--the investor, Manolium, still has legal title to
3 these New Communal Facilities. That's what this tax
4 dispute is about. It had title. It didn't have
5 possession; the City had possession, but the City would not
6 take title. And so, because it had title, this tax scheme
7 was created.

8 And, ultimately, that resulted in the taking, in
9 the expropriation and the transfer of legal title from the
10 investor to the State, by the order of the President of the
11 country. And shortly thereafter, the Pre-Arbitration
12 Notice was sent.

13 So, there's one investment, but there are various
14 ways of looking at it. I have a couple slides here on the
15 claims, but I have a whole section on claims. So, I'll do
16 that piece later.

17 This afternoon, you're going to see timelines and
18 hear a lot about different proposed dispute dates. This
19 was written, of course, before we saw the slides of the
20 Respondent, but this is based on the Submissions in the
21 case. They've proposed various dispute dates, but in our
22 view, none of these can work.

23 Early 2002, after the Final Commission date, the
24 Parties are still negotiating the way forward, when they
25 submit their breach--2013, when the City submits its

12:18:33 1 breach-of-contract claim, but that is just a contract
 2 claim. It is not--there is a distinction, as we've seen,
 3 between the Contract case and the Treaty claims here that
 4 involve the State, not just the City but the President, the
 5 tax authorities. The tax authorities are federal
 6 authorities. They are Republic authorities. That's
 7 different from the City.
 8 The Tax Inspectorate demanded tax returns in
 9 2014. That has nothing, really--in no way can a dispute
 10 about the expropriation for failure to pay taxes that
 11 weren't even computed until 2016 be said to arise in 2014.
 12 If somebody asked you for a tax return, that's not saying
 13 they are about to take away your property. That tax
 14 dispute could not possibly have started before 2016. The
 15 penalty wasn't assessed until then.
 16 Now, Duke is one of the cases that is not in the
 17 case. I'd just ask you to just not look at that, if you
 18 can.
 19 And then they say 29 October 2014, when the
 20 Appellate Court Decision on the termination came into
 21 force, they say, under Belarusian law, that terminated
 22 contract rights and that terminated the Investment Object.
 23 As a matter of Belarusian law, that is our understanding of
 24 the local law. Two points there.
 25 The first is the Vienna Convention point that I

12:21:55 1 instigate a dispute, therefore, does not refer to the
 2 commission of the act that caused the Parties to disagree,
 3 for the very simple reason that a breach or violation
 4 doesn't become a dispute until the injured Party identifies
 5 the breach or violation and objects to it."
 6 Now, again, with respect to the tax--the taking
 7 of the New Communal Facilities, this couldn't have happened
 8 before 2016 because it didn't happen. That is kind of a
 9 non sequitur.
 10 There can be significant delay between the acts
 11 underlying the dispute and when the dispute arises.
 12 Maffezini again: "Critical date will, in fact, separate,
 13 not the dispute from the claim, but the dispute from prior
 14 events that don't entail a conflict of legal views and
 15 interests."
 16 And you can disregard Duke Energy for now.
 17 So, this is another case where this is a
 18 construction case against Lebanon where--highway
 19 case--there were disputes about the costs and times. There
 20 always are in construction cases. The BIT enters into
 21 force during those disputes. The Treaty--then a case is
 22 filed in the local courts and Notice of Dispute under the
 23 BIT is filed in June of 2004. And the Treaty dispute arose
 24 in 2004, when it could be characterized as a treaty
 25 dispute.

12:20:07 1 just mentioned, which would actually back up their date to
 2 respect the Convention to May 26, 2014. And the second is,
 3 there are cases--which I'll talk about in a second--about
 4 when judicial acts create Treaty claims, Treaty disputes.
 5 And as we see here, the Highest Court didn't confirm the
 6 lower court and the termination until 2015.
 7 So, what is the standard for determining when a
 8 treaty dispute arises? I think this first bullet is
 9 actually an ICJ case: "A disagreement on a point of law, a
 10 conflict of legal views, must relate to clearly identified
 11 issues that go beyond general grievances, being stated in
 12 terms of a concrete claim, formulation of legal claims,"
 13 Maffezini.
 14 Maffezini, as you know, that was a case where the
 15 chemical plant that was at issue there actually was shut
 16 down. The investor closed down its operations before the
 17 Treaty went into force, and then he brought his treaty
 18 claim.
 19 So, there are cases--and this is one of the
 20 cases--where you have a series of events that are said to
 21 culminate in a claim, and that's what happened there. His
 22 lawyers presented a claim, and the Tribunal said, "Okay,
 23 the Treaty dispute arises when the Claim is coalesced and
 24 is presented."
 25 The Tender of this case isn't the case. "To

12:23:36 1 So, the fact that there were contract disputes
 2 earlier, in the view of that Tribunal, does not say the
 3 dispute arose, the Treaty dispute, the dispute being
 4 resolved by the Tribunal, resolved earlier than the
 5 presentation of the claim.
 6 Micula is not in the case, so I will skip it.
 7 ATA is a case that is cited by the Respondent.
 8 This is also a construction case. This case, the work is
 9 done, as you see, in '98. The Claimant is working with a
 10 State-owned company. They complete the work. They hand it
 11 over to the State-owned company. The dike collapses, and
 12 then there's a FIDIC Arbitration, which the Claimant wins
 13 and then the State-owned company goes to court to annul the
 14 Award and gets it annulled.
 15 And then the Treaty enters into force, and the
 16 Highest Jordanian Court then finally annuls the Award and
 17 the Arbitration Agreement. The Jordanian law at that time
 18 provided that, if for an arbitration site in Jordan, the
 19 Jordanian courts annul the Award, the Arbitration Agreement
 20 is also annulled.
 21 The Tribunal--again, this is Respondent's
 22 case--says that as to the denial of justice for the
 23 annulment, the Parties gave notice of an intent to commence
 24 the Arbitration in 2000, before the BIT, and, at least in
 25 the submission of the Claimant, it was a dispute between

12:25:14 1 itself and Jordan. Claimant and Jordan, that's the way it
 2 was framed, I guess, because it was a State-owned company.
 3 But they let the Claimant pursue the Claim for
 4 denial of justice of extinguishing the right to arbitrate
 5 because that occurred--that was something that the
 6 Jordanian courts did--finally did, after the Treaty went
 7 into force. So: "Denial of justice occasioned by judicial
 8 action occurs when the final judicial instance which is
 9 plausibly available has rendered its decision."
 10 Okay. So, now to look at this from the lens of
 11 two disputes. The final judicial act on the contract,
 12 which terminated the right to the Investment Object, again,
 13 the consideration for the Investment Contract was access to
 14 the land to build the Investment Object. So, that would
 15 be--that dispute, then, would arise in January 2015.
 16 And in addition to the case I mentioned, you have
 17 this ATA. You have a couple of other sites here, which are
 18 in the case, for continuing uninterrupted breach until the
 19 litigation concludes.
 20 The tax dispute--I mean, to us, again, as I said,
 21 this couldn't possibly arise before 2016. My colleague,
 22 Vladimir, talked about secret plan. I mean, this is all in
 23 2016. Manolium isn't even notified of what's going on here
 24 until 2016.
 25 Again, there is another Duke Energy cite, which I

12:28:53 1 for purposes of jurisdiction."
 2 And in Wena, just because it's a hotel case, but
 3 also, it talks about, as it says in the material in red,
 4 that groups are often involved in these sorts of
 5 investments. And the Tribunal says, "What are the
 6 investments that were made by Wena or by one of its
 7 affiliates? As long as these investments went into the
 8 Egyptian hotel venture, they should she recognized as
 9 appropriate investments."
 10 It is a widely established practice for hotel
 11 enterprises to adopt allocation measures which spread the
 12 profits from the group operations in various jurisdictions
 13 where there are tax advantages to the group as a whole.
 14 There is nothing exceptional about the way this
 15 was funded and the way this Claim was brought. The
 16 Claimant has a direct claim based on losses suffered by a
 17 company it controls. The Claimant is 100 percent owner of
 18 Manolium-Engineering, the Belarusian company, and it was
 19 structured through affiliated companies which provided
 20 loans. But the funds were transferred and were spent, as
 21 it was audited several times by the State, to
 22 Manolium-Engineering. You've seen this.
 23 This is more of the same. I guess we can
 24 just--all right.
 25 So, Respondent has said this is a repackaged

12:27:04 1 ask you to disregard.
 2 And this was ultimately accomplished in January
 3 of 2017, when the title was changed, and the tax liability
 4 set off.
 5 All right. So, the next issue for us for now is
 6 Claimant's investor that made investments in Belarus.
 7 So, Respondent's position is the investment is
 8 not protected by the Treaty because it failed to prove it's
 9 the beneficial owner of funds used for investment and,
 10 therefore, isn't protected and that the Treaty doesn't
 11 allow an investor to submit claims based on assets--the
 12 investment of assets a company controls.
 13 There is no such requirement. Neither of these
 14 requirements exists. Definition of investment has no
 15 requirement regarding source of funds; investor, no
 16 requirement regarding source of funds.
 17 I'll go more quickly here because I don't think
 18 this should be very controversial. In fact, I'll
 19 skip--these are the definitions in the Treaty.
 20 There are many cases on this: Tradex, "The
 21 source from which investor financed investment are not
 22 relevant as long as investment is proved." Very bottom of
 23 the next slide, Saipem: "The origin of the funds is
 24 irrelevant." Eiser against Spain: "Origins of capital
 25 invested by an investor in an investment are not relevant

12:30:15 1 contract case. I think, from the facts, it's pretty clear
 2 this is more than that and involved the State at the
 3 highest levels. They also say that a treaty claim requires
 4 State interference, which they said doesn't occur. And we
 5 don't believe that's the case either.
 6 All right. This is just sort of repeating our
 7 views of things.
 8 And just the last point here. The Treaty claims
 9 are not--they cannot be precluded by local proceedings
 10 because the Bulgarian Courts didn't consider or decide any
 11 Treaty claims. So, it is very well-known to this Tribunal
 12 that Treaty claims are different and separate from contract
 13 claims, and the Tribunal has jurisdiction over Treaty
 14 claims, even if they arise out of exactly the same facts as
 15 contract claims. There are many, many cases that have
 16 discussed this.
 17 You can disregard the SGS against Pakistan. I
 18 guess that one is not in the case.
 19 Crystallex is in the case. "Many investment
 20 disputes relate to par performance or termination of a
 21 contract, but this does not, per se, entail the Tribunal is
 22 faced with contract claims rather than Treaty claims. The
 23 Tribunal must determine the fundamental basis of claim
 24 through an objective inquiry and Prayer for Relief,
 25 formulation of a claim, and whether Claim has tried to

12:31:45 1 simply label contract breaches as Treaty breaches.
 2 Deciding the incidental question of whether a contract was
 3 validly terminated doesn't change the fact that the key
 4 issue is under the Treaty."
 5 That is in the case as well.
 6 The State action here which affected the
 7 investors' rights in 2015, '16, '17, in our view, is clear
 8 and clearly beyond anything that had to do with standard
 9 contractual Parties.
 10 The bar here is not terribly high: "The Tribunal
 11 will reject claims only if the facts, as pled, are plainly
 12 incapable of supporting a treaty breach." That is the
 13 jurisdictional bar.
 14 Maybe we don't need that.
 15 Just from the Tribunal's view here on
 16 Ampal-American: "Claimants claim breaches of various
 17 standards under the Treaty in relation to the gas supply
 18 dispute. The Tribunal accepts that, in order for it to
 19 find that there has been a breach of the standards in
 20 relation to the gas supply dispute, it will need to
 21 determine whether the Contract was validly terminated.
 22 However, this doesn't change the fact that the key issue
 23 under the Treaty in respect for a claim of unlawful
 24 expropriation or breach of fair and equitable treatment is
 25 whether there has been a loss of property right constituted

12:33:15 1 by the Contract or whether legitimate expectations arose
 2 under the Contract."
 3 Crystallex is another one of these cases. Of
 4 course, there are many where the Tribunal rejected the
 5 Respondent's' argument the rescission was a contract claim.
 6 There's more of the same here. I'm trying to be
 7 efficient. This, though, I do want to spend some time on.
 8 So, this, of course, was a mining case in
 9 Venezuela about denial of permit. The Tribunal found this
 10 was creeping expropriation.
 11 And they write: "The true nature of rescission
 12 was one of exercise of sovereign authority. The Tribunal
 13 is convinced that the evidence on the record clearly shows
 14 that the MOC"--the Contract--"was terminated to give effect
 15 to the superior policy decisions dictated by the higher
 16 governmental spheres." And then it gives the reasons for
 17 that.
 18 "There can be no doubt in the Tribunal's eyes
 19 that this was not more than an appearance to use a
 20 contractual remedy rather than to resort to a sovereign
 21 decision to regain control of the mine."
 22 Here you had sovereign acts to take back the New
 23 Communal Facilities and terminate the right to the
 24 Investment Object.
 25 ARBITRATOR STERN: Maybe I would like to ask you

12:34:37 1 a question here also.
 2 Do you make a difference--I mean, the Contract
 3 was not terminated by the Belarus contractor; it was
 4 terminated by a court.
 5 Do you make a difference between these two
 6 situations?
 7 MR. HANESSIAN: Well, I have a merits section
 8 which is following, and I talk a little bit about why the
 9 decision to seek to terminate the Contract--well, first of
 10 all, our view is that the Minsk City is--its acts are
 11 attributable to the State. So, you have the State seeking
 12 termination of the Contract. And it's terminating it
 13 disproportionately and in bad faith.
 14 I'm going to talk about that in about 10 minutes,
 15 if I could.
 16 Vigotop Case, it says: "The fact that Respondent
 17 purported to exercise a contractual right when terminating
 18 the Concession Contract does not exclude, per se, the
 19 possibility that this conduct, at the same time, amounted
 20 to an expropriation."
 21 And it has a test in this case, which is why we
 22 are showing it to you.
 23 "First, whether Respondent stepped out of the
 24 contractual shoes and acted in its sovereign capacity when
 25 terminating the Contract," or, in other words, whether

12:35:57 1 Respondent had a hidden political agenda which was the true
 2 reason for termination.
 3 "Whether contractual grounds for terminating
 4 contract, in fact, existed or were merely a pretext to
 5 conceal expropriatory measures, and, if both policy reasons
 6 and contractual grounds existed, if termination was in good
 7 faith or a fictitious or malicious exercise of the right."
 8 So, here there was a hidden political agenda, as
 9 was described earlier this morning. The State sought to
 10 punish the Claimant for ties to an opposition leader and,
 11 ultimately, took the New Communal Facilities without paying
 12 for them.
 13 There is a pretext here, as I'll talk about in a
 14 minute. The termination was clearly disproportionate
 15 because it was at the last stage of completion. And it was
 16 a fictitious, malicious exercise of the right, created the
 17 impossibility of performance to unlawfully terminate and
 18 then use State tax power to confiscate the facilities
 19 themselves.
 20 I'm going to skip this because I don't want to go
 21 too deeply into the lunchtime.
 22 Okay. I'm going to skip this too.
 23 I want to talk about this case for a minute,
 24 which the Respondents have referred to from time to time.
 25 As Vladimir said this morning, there were a

12:37:33 1 series of extensions, but they were very short, and they
 2 were shorter than the investor had requested, and there
 3 were elements of duress.
 4 In this Hamester Case, which Professor Stern was,
 5 I think, the Chair, there was an argument that this was a
 6 repackaged contract obligation, and that's what the
 7 Tribunal found. But this case was fundamentally different
 8 from that case.
 9 That was a pure commercial case to deliver cocoa
 10 beans. It was commercial in nature, whereas, the acts
 11 charged here, there were obligations to issue permits, to
 12 make straight property available, the tax authorities that
 13 were ultimately brought to bear. All these things required
 14 sovereign authority.
 15 So, this case is not like Gustav Hamester. There
 16 is sovereign authority here beyond just the Contract
 17 Parties.
 18 And the local proceedings. I don't think I need
 19 to spend time on this. The Court proceedings locally
 20 really failed the triple identity test, which the Tribunal,
 21 of course, will be familiar with.
 22 It's also argued that Minsktrans is--its actions
 23 are not attributable, but all of these State entities and
 24 agencies were involved in this, and from the President up,
 25 including February 2016, secret orders to take the New

12:39:07 1 Communal Facilities title. Gosstroy, these are the people
 2 that are giving the construction permits, the Minsk Land
 3 Planning Service, which didn't accept the land plots back.
 4 And then finally the Tax Inspectorate, which was at the
 5 Republic level, which was involved in these final acts in
 6 2016 and '17.
 7 I don't think I need to spend a lot of time on
 8 this. The Respondent said that Minsktrans had not
 9 empowered to exercise sovereign authority because public
 10 transportation is not a typical government function, that
 11 it's State-owned, it's insufficient, and that it didn't
 12 exercise sovereign authority. The cases have structural
 13 and functional tests. It's our view that the Minsktrans
 14 satisfies both tests in exercising sovereign authority.
 15 But in any event, there are plenty of other entity actors
 16 including the Minsk City, which is a Contract partner, and
 17 always involved President, the tax authorities, et cetera.
 18 In fact, I'm going to skip through all this.
 19 Minsktrans was managing public transportation,
 20 worked closely with Minsk City. It used the Depot and the
 21 Pull Station under these gratuitous use agreements. And
 22 the President, of course, was involved, as we said.
 23 Very briefly on the Belarusian Investment Law,
 24 and then I'm going to get to the claims which we'll address
 25 the question.

12:40:34 1 So, we have a claim also under the Belarusian
 2 Investment Law. There is also a *ratione temporis* argument
 3 here, and that doesn't apply to investments made or
 4 disputes arose before 24, January 2014. These are the
 5 Respondent's arguments that there is no investment under
 6 the law, that the tax dispute and Termination Dispute,
 7 their way of looking at it, falls under the exclusive
 8 jurisdictions of the State courts and, therefore, excluded
 9 from the Investment Law. And because there's a form
 10 selection clause in the Investment Contract, it is excluded
 11 from the Investment Law.
 12 We don't agree with any of that. And the reasons
 13 for that are these: First of all, the law--the
 14 preamble--there's a bit of dispute about the translation of
 15 this, which I'm just going to skip over for now. We can
 16 come back to it if we need to. But in our view the plain
 17 terms show an intention to apply to existing investments.
 18 And it's--to the entire range of investments, not just
 19 those that come in after that time. And the thing that I
 20 particularly want to highlight here is, this law superseded
 21 a previous investment law on the same topic that terminated
 22 the day this went into force. And there is no evidence of
 23 any intent by the Government to wipe away the rights of
 24 preexisting investors under Belarusian law.
 25 So, it doesn't make any sense that this law would

12:42:20 1 only apply to investments from that date, and investments
 2 prior to that date would have no coverage under Belarusian
 3 Investment Law because those were covered under the law
 4 that this law superseded. That's the main point here.
 5 Similar arguments about the source of funds which
 6 are not required under the law. And this is the standard
 7 here. It says "Property being investments or being created
 8 as a result of carrying out investments may not be
 9 gratuitously nationalized or requisitioned unless for
 10 public purpose of payment and prompt and full
 11 compensation."
 12 And their argument--and I show you this because
 13 their arguments are that under Article 13, there's no
 14 jurisdiction under the--the way they read the law is if it
 15 has--if you go to the third bullet, if your expropriation
 16 concerns immovable property--the statute doesn't say
 17 anything about expropriation except that the State can't do
 18 it without paying a compensation, but it does say that in
 19 cases having to do with immovable property, acts of State
 20 bodies, collections of taxes are not within the Investment
 21 Law. But it's nonsensical to read the Investment Law to
 22 read out expropriation of this kind of property or by these
 23 means because then you wouldn't have an Expropriation Law
 24 at all.
 25 The reading of the Belarusian Investment Law,

12:44:05 1 respectfully, by the Respondent, just doesn't make any
 2 sense, because you could have--most expropriations take
 3 place by acts of State bodies. Many of them take place by
 4 so-called "collection of taxes." It's, in our view, a
 5 nonsensical reading that's proposed. It's done over many
 6 pages of their multipage submissions, and when you break it
 7 down, it doesn't seem like it doesn't make sense. But when
 8 you consider it in totality, it's an exception that you
 9 could drive every expropriation through and you wouldn't
 10 have an Investment Law at all.

11 With respect to the form selection clause in the
 12 Investment Contract, well, the State is not a Party to the
 13 Investment Contract as State, and there are different
 14 attribution rules in Treaty law and local law. So, even
 15 though Minsk City and Minsktrans, their acts are
 16 attributable to the State under public international law,
 17 under Treaty law, that's not so under Belarusian law. This
 18 is discussed in the Impregilo case.

19 Okay. Now, as a separate presentation on the
 20 claims.

21 Okay. This has three pieces. There's a short
 22 standard of proof about expropriation, and then denial of
 23 fair and equitable treatment.

24 There's an argument that there should be a higher
 25 standard of proof than the usual preponderance burden in

12:47:17 1 Contemporary experience shows how unrealistic it can be to
 2 assume that important persons will not behave badly. We
 3 make no assumptions of this kind, one way or the other, in
 4 the present case, and shall approach the issues on the
 5 basis that in order to prove its case on the existence and
 6 causal relevance of evidence, the Claimant must show that
 7 its assertion is more likely than not to be true." There
 8 are other cases on this as well, as you know.

9 Expropriation. This is the Treaty. No direct or
 10 indirect expropriation except for public benefit in a
 11 procedure determined by the legislature, not
 12 discriminatory, and prompt, adequate compensation. These
 13 are standards of creeping/indirect expropriation. "Several
 14 acts taken together can warrant finding that such
 15 obligation have been breached. Converging action towards
 16 the same result."

17 If you have this kind of thing, creeping,
 18 converging, indirect, it seems to me that, maybe to address
 19 the earlier question, these can begin--they can begin
 20 outside the coverage of the Treaty putting aside the
 21 dispute question as long as they continue through the
 22 coverage, the rational material analysis.

23 And they have to be taken into consideration as a
 24 whole. The test is not which measures cause which effect,
 25 but whether the measures taken together as a package

12:45:50 1 this case, which we don't agree with. And so, I could
 2 just--I know you all are very familiar with this law, but
 3 just to show you these, the way the Tokios Tokelés Tribunal
 4 talked about this, "As regards to standard of proof, three
 5 possibilities of attracted support. First, usual standard,
 6 which is more likely than not. Second, where the dispute
 7 concerns an allegation against a person or body in high
 8 authority, which is virtually every Treaty case--the burden
 9 may be lower, simply because direct proof is likely to be
 10 hard to find. Third, that in such a situation--again,
 11 concerning allegation against a person or body in high
 12 authority--third, in such a situation, the standard is
 13 higher than the balance of probabilities." And that's
 14 what's being argued here.

15 "As to these, the logic of the second appears
 16 questionable. Certainly any sensible Tribunal considering
 17 an allegation of this kind will recognize the need to rely
 18 on circumstantial or secondary evidence does not
 19 necessarily tell against it, but this does not dispense of
 20 the need for evidence of one kind or another sufficient to
 21 take the proof over the barrier."

22 And then third, which is being suggested here,
 23 there are also serious logical problems. "It surely cannot
 24 be the case that evidentiary requirements can be heightened
 25 purely on the grounds of deference or comity or otherwise.

12:48:51 1 resulted in the dispossession. In determining whether a
 2 measure or set of measures is equivalent to expropriation,
 3 the Tribunal should evaluate the net effect of the measure,
 4 or set of measures, is the same as outright expropriation.

5 We have acts and omissions here which resulted in
 6 a complete deprivation of the Property rights. Refuse to
 7 permit the completion, then refuse to accept the Communal
 8 Facilities, refuse the reasonable terms and terminate the
 9 Investment Contract. And then refuse to pay compensation.
 10 And then as we saw, created this tax liability to actually
 11 take the title. The taking of the Contract rights
 12 themselves, of course, is expropriatory.

13 I'm just going to skip through these cases again
 14 to leave some time for my colleague to talk about quantum.
 15 This is the disproportionate contract termination. So,
 16 this is something I foreshadowed earlier.

17 So, at the time that the works stopped, the work
 18 had been substantially completed. The Pull Station is
 19 complete and in use. Road complete and in use. Depot
 20 administration, Depot checkpoint, complete and in use.
 21 This Depot Production Building was 85 percent complete.

22 Ad Vladimir said this morning, a five-month
 23 extension at no cost to the State. All these funds were
 24 expended by the Claimant in its own account in return for
 25 the Investment Object. The City offered two months, but

12:50:46 1 this was the Belarusian roulette, but a complete transfer
 2 of all the properties to the City if they didn't finish two
 3 months. And then in 2018, after the title was taken, the
 4 Minsktrans granted 10 months to complete.
 5 So, even if Manolium was entirely responsible for
 6 the Project delays, even if the investor was totally
 7 responsible for the delay, which it was not, to terminate
 8 at that late date with such draconian result to completely
 9 extinguish the right to Investment Object was
 10 disproportionate. Lacked legitimacy, suitability,
 11 necessity, and proportionality, stricto sensu.
 12 And the Occidental case I think is instructive
 13 here. Again, this is another oil development contract with
 14 Ecuador.
 15 So, Claimant, Occidental, enters into the
 16 agreements with Ecuador, but then a year later, it sort of
 17 subcontracts, if you want to put it that way, with a
 18 third-party certain of the operations without telling
 19 Ecuador. That's a violation of the Contract. So, Ecuador
 20 learns about this in 2004, and cancels the Contract.
 21 So, the Tribunal finds expropriation and denial
 22 of fair and equitable treatment, finding the termination
 23 disproportionate. Did the Claimant breach the Contract?
 24 Yes. Although it uses the word "negligent" here. It
 25 should have gotten authorization, and it discounted the

12:52:28 1 damages about 25 percent. But it found an expropriation of
 2 the contractual rights because the State's conduct in
 3 terminating for that reason, for that breach, was
 4 disproportionate. The States have an obligation to act
 5 proportionally.
 6 So, to terminate this Contract at that time,
 7 months after Mr. Dolgov is pulled over by the KGB, this is
 8 not--nothing other than an expropriation. And the Tribunal
 9 here in the Occidental case, "The Tribunal finds the price
 10 paid by the Claimants--total loss of investment worth many
 11 of hundreds of millions of dollars--was out of proportion
 12 to the wrongdoing alleged. And out of any deterrence
 13 message, which the Respondent says they were trying to
 14 send. It's the same here, although maybe the deterrent
 15 message was a little bit different in this case than in
 16 Occidental.
 17 And then the illegitimate taxation. I think
 18 we've talked about this. Taxation, of course, is a very
 19 typical means of expropriation, quote here from the Quasar
 20 de Valors v. Russia case. "It is no answer for a State to
 21 say that its courts have used the word 'taxation' in
 22 describing judgments by which they effect the dispossession
 23 of foreign investors. The guise of taxation will not save
 24 the Host State from liability for actions, based on abuse
 25 of tax laws, if these resulted in the total loss or

12:54:02 1 substantial impairment."
 2 So, this is a lot of this, as you know.
 3 So, FET. The FET; provision in the Treaty,
 4 terminating the contract reaches good faith,
 5 proportionality, legitimate expectations, refusal to take
 6 the New Communal Facilities into ownership, levying the
 7 tax, arresting, and then secretly transferring. These are
 8 all FET violations in our view.
 9 Frontier Petroleum, conspiracy by State organs to
 10 inflict damage upon or defeat the investment, the
 11 termination of the investment for reasons other than one
 12 put forth by the Government.
 13 This conspiracy by State organs, you know, I want
 14 to say maybe one more word about *ratione temporis*. This is
 15 not a case where the Project ended, years went by, and a
 16 claim was brought. The Project ended, the Treaty comes
 17 into force, and then this conspiracy by State organs, which
 18 are the C-140. This is all taking place after the
 19 Government has entered into this Treaty which obligates it
 20 not to expropriate and to observe a fair and equitable
 21 treatment.
 22 And Respondent states in their papers: It was in
 23 the City's best interest to find a mutually acceptable
 24 solution to enable the Project to go ahead. But they were
 25 using these buildings except for the one. And instead of

12:55:48 1 giving a short additional time, they ultimately took it
 2 all.
 3 Now, again, to come back to this Hamster case,
 4 they say this is particularly instructive, particularly on
 5 duress points, the fact that the investors here agreed to
 6 these short extensions, but that case, again, is purely a
 7 commercial case. The Court controversy, according to the
 8 Tribunal, relates to payments owed under purely commercial
 9 contract. Both Parties applied pressure on each other, the
 10 Tribunal finds, with the Claimant possibly applying more,
 11 and the Agreement reached was generally favorable to the
 12 Claimant.
 13 So, this case is really not the same as the case
 14 we have in front of us.
 15 And then lack of transparency. What does this
 16 mean? "Legal framework for the investor's operations is
 17 readily apparent. Any decisions affecting the investor can
 18 be traced to that legal framework. The legal system must
 19 be stable enough to facilitate rational planning and
 20 decision making." And then this "All relevant legal
 21 requirements"--just to sort of skip to the end--"are
 22 capable of being readily known to all affected investors."
 23 Well, here it's not readily known why any of
 24 these things happened, and particularly these last two, the
 25 secret order to defend the interests of the State, and then

12:57:17 1 calculating and applying this amount of taxes.
 2 Lots of talk about this being a claim for denial
 3 of justice, but the point of the Court's Decision is this
 4 finally and definitively terminate the rights to the
 5 Investment Object. And it's not just the courts, it's a
 6 great number of entities and agencies including the highest
 7 in the land were involved here.
 8 All right. That concludes this part of the
 9 presentation. Then we have a presentation on quantum and
 10 that will conclude our morning. If there are no other
 11 questions.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you.
 13 MR. HANESSIAN: Thank you.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you,
 15 Mr. Hanessian. Let us get a time check so that you know
 16 where you stand.
 17 NEW SPEAKER: So, Claimant's presentation lasted
 18 for two hours and 14 minutes.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: Two hours, 14
 20 minutes. With some questions from the Tribunal.
 21 MS. BAPTISTA: Which were detracted from the
 22 time.
 23 PRESIDENT FERNÁNDEZ-ARMESTO: Detracted. Okay.
 24 So, you have quite some time--
 25 MR. KENNEDY: Don't worry, I won't use nearly all

12:58:33 1 that time.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: --to go through the
 3 quantum.
 4 MR. KENNEDY: Mr. President, Members of the
 5 Tribunal, thank you. I'm Nicholas Kennedy. I'm the last
 6 leg of this relay race, marathon, however you want to say
 7 it. And you've heard what happened. You've heard why it
 8 breached the Treaty, and I'm going to tell you how Claimant
 9 suffered as a result and describe the quantum that we're
 10 seeking.
 11 We'll start with some governing legal principles
 12 and address some of the legal issues that have arisen.
 13 Those will be familiar to the Tribunal, as we won't dwell
 14 on them. It will then discuss the first category of
 15 damages, which is lost profits from the Investment Object.
 16 That being the aborted development of the hotel and other
 17 mixed use project. And then we'll move to the last
 18 category of damages, which is the value of the New Communal
 19 Facilities that was built by the Claimant and is now under
 20 the control of the Respondent.
 21 Before we get into the law, I just want to go
 22 through very quickly the different categories, the Quantum
 23 Experts will talk in a lot of detail, and you'll hear from
 24 them, on the assumptions and models, and they will do that
 25 better than me. So, I won't preempt them on the details.

01:00:00 1 But the first category is 68.9 million dollars of lost
 2 profits. And again, those are the expected profits from
 3 the multi-use, the Investment Object, had it been built.
 4 The methodology for that is simple: It is the
 5 familiar DCF Model projecting the future costs in
 6 subtracting the expenses and discounting it to Present
 7 Value. There's a big, as you can see, valuation difference
 8 here. Respondent's Valuation Expert concludes that the
 9 Investment Object would have been a loss making venture to
 10 the tune of roughly 60 million dollars. Again, you'll hear
 11 from the Quantum Experts on how their models operate.
 12 The second category is the New Communal
 13 Facilities. You heard a lot about what they were, what
 14 they entailed, and what Claimant spent to construct them.
 15 There is no dispute that Claimant--I don't believe there a
 16 dispute that Claimant is owed compensation. The dispute is
 17 about--well, assuming we prove liability and jurisdiction,
 18 the dispute is about valuation of those facilities, and the
 19 real difference is that the documents and the information
 20 the various Parties rely on.
 21 Claimant, as you've heard, relies on the State's
 22 own documents from its Minister of the Economy, the audit
 23 Report and supporting documents. The State's Quantum
 24 Expert prefers a projection approach which took original
 25 projections for the Project, adjusted them for inflation,

01:01:34 1 and decreased them for alleged lack of completion of the
 2 Projects. Again, you'll hear more about that from the
 3 Experts.
 4 The third category is the library payment. That
 5 was the million-dollar "donation" that was provided by
 6 Claimants as part of the Investment Object. Excuse me, as
 7 part of the consideration for the Investment Object.
 8 Claimant includes that in the value of the New Communal
 9 Facilities. Respondent disputes that exclusion in the New
 10 Communal Facilities, but based on the demonstrative this
 11 morning, I understand that they may dispute its
 12 recoverability all together. It is a little bit unclear,
 13 the basis of that. However, that million dollars was
 14 absolutely paid, and it hasn't been returned.
 15 So, whether it falls into the New Communal
 16 Facilities, or a separate category of damages, we believe
 17 that is recoverable.
 18 And the last category, of course, is pre-award
 19 interest. There is a lot of variables going into that,
 20 which you will hear about from the Quantum Experts. We
 21 just put this up here on this slide to show the magnitude
 22 of difference between the Parties and the relative
 23 proportion of the overall claim.
 24 So, we start with, I believe, the fundamental and
 25 the well-known damages kind of principle. And the Parties

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01:02:57 1 agree, of course, that the Tribunal has wide discretion to
 2 determine an appropriate measure of damages. I don't think
 3 there is any dispute that Chorzów Factory is the starting
 4 point here, as in most cases. We all know that the intent
 5 is to wipe out the consequences of the illegal act.
 6 There is a bit of dispute in the submissions as
 7 to whether Fair Market Value is the appropriate measure for
 8 both expropriation and FET claims or whether it is limited
 9 to expropriation claims only. As you see here, there are
 10 many cases where Tribunals have applied that same measure
 11 to both claims.
 12 And Respondent agrees with this. They agree that
 13 in the case of a total deprivation of an investment through
 14 a series of FET breaches, that Fair Market Value is
 15 appropriate. And we submit, as you've heard this morning,
 16 that's exactly what occurred here. This is a total
 17 deprivation. The investment is totally destroyed.
 18 Respondent's cases in which FMV was determined
 19 not to be appropriate, they are very different. The
 20 GAMI v. México Case, the mills at issue were actually
 21 returned to the Claimant. The LG&E v. Argentina case, the
 22 Claimant retained its investment and the value recovered.
 23 In the Feldman case, the business continued to operate,
 24 notwithstanding the taxes that were challenged.
 25 So, again, we're different here. The Investment

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01:04:32 1 Object is it's been destroyed, the New Communal Facilities
 2 have been taken. In fact, that development ride, as you've
 3 heard, has been sold to another investor.
 4 You also heard Mr. Hanessian talk about the
 5 relatively uncontroversial principle, that contractual
 6 rights can be expropriated so long as they are demonstrable
 7 existing. And we submit they absolutely were here. You
 8 see here the Investment Contract which you heard a lot
 9 about.
 10 Respondent, again, cited cases where contract
 11 rights were not held to be subject to an expropriation
 12 claim. Again, those cases are very different. In the
 13 Burlington case, it was a right to negotiate an extension.
 14 Of course, that's a very discretionary right.
 15 In the CCL Case, it was a right of first refusal
 16 if and when the State decided to sell shares in a
 17 State-owned entity. Again, discretionary, dependent on
 18 acts outside of the Claimant's control. Here the only
 19 condition was completing--providing financing for the New
 20 Communal Facilities, which, as you've seen, was done.
 21 And this is the next slide here. You heard a lot
 22 about the financing. You've heard a lot about Respondent's
 23 argument that the failure to provide financing was the or
 24 at least a cause of delays or any issues that Claimants are
 25 seeking compensation for here.

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01:06:00 1 That's just not the case. You see here the
 2 Respondents, again, that the audit memo you heard about,
 3 that confirmed investments of at least 19.4 million
 4 dollars, but there was more. As you heard this morning, at
 5 least 25 million dollars were invested in the project. So,
 6 again, the suggestion that there were funding difficulties
 7 and that caused these issues is just not supported by the
 8 evidence. And then finally, Claimants stood ready and
 9 willing to invest more. Unfortunately that didn't come to
 10 fruition because of the unfair or the impossible terms that
 11 were--that the Respondent insisted upon. But the fact
 12 remains that funding just wasn't the issue here.
 13 And so, that gets us to this kind of contributory
 14 fault argument. You heard Mr. Hanessian discuss the
 15 Occidental case. I won't dwell on it. But in that case
 16 there was a finding of contributory fault, but the acts at
 17 issue were very different there. That was a case where the
 18 investor essentially hid something from the State by not
 19 informing the State of the contractual transfer. No
 20 allegations of that here, or maybe no evidence of that
 21 here.
 22 The MTD Equity case is, again, another case that
 23 the Respondent relies on as contributory fault or showing
 24 Claimant's wrongdoing. Again, that's very different. In
 25 that case there was no due diligence done. As you heard

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01:07:35 1 this morning, the Claimant made its best efforts to make
 2 this investment project work. These are some of the facts
 3 there. But, again, you heard the full story this morning.
 4 And that takes us to the last point, the last
 5 legal point as an intro, which I think we can do away with
 6 quickly. This claim that damages may somehow--should
 7 somehow be reduced for purported third-party claims.
 8 First of all, there are no third-party creditors.
 9 This was fully funded by Claimant and related entities.
 10 And second, there is just no law supporting such a
 11 deduction. Respondent--they don't cite any case where
 12 damages were actually reduced to account for third-party
 13 claims.
 14 So, I now want to move on to the first category
 15 of damages, which is the lost profits. And at the outset,
 16 I think we'd have to remember that, as you see here, from
 17 the ILC Articles, causation is not an exact science. There
 18 is no magic word, there's no magic formula, the Tribunal
 19 knows this well. Causation can be established through
 20 circumstantial evidence inferences and those sorts of
 21 things. So, we submit that the Respondent attempts to
 22 improperly raise the bar for causation.
 23 We also submit that Respondent's claim--the
 24 argument, essentially, that because this Investment Object
 25 was not operating, a loss profit award is precluded--is not

01:09:03 1 supported. As you see here, the Crystallex case, that
 2 awarded lost profits for a venture that hadn't begun
 3 operation yet, as did the Sapphire versus Iran case. And
 4 all that is required is that reasonable basis from which to
 5 project future profits.
 6 The Al Kharafi Case we'll skip. That's not one
 7 that is in the case. As I said, all that's required is a
 8 reasonable basis from which to conclude that profits would
 9 have been earned had the Respondent not interfered.
 10 You heard this morning, this is the letter
 11 reciting that the project was expected to generate 50 to
 12 100 million dollars annually of tax revenue. Certainly
 13 that suggests a profitable Project.
 14 Same thing with the location. This was a prime
 15 centrally located multi-use project. It was a high-end
 16 project. It was a prestige project. You saw the picture
 17 where it was located on the map. This was prime real
 18 estate, and it was highly likely to succeed. That was the
 19 whole Investment Thesis behind this.
 20 So, that leads us to the Categories, the
 21 components of the lost profits claim. Again, we're not
 22 going to dwell on the assumptions. We'll leave that to the
 23 Quantum Experts. But I want to point out, however, where
 24 the differences lie, and essentially they lie in all three
 25 categories. There's a dispute on sales value of about

01:10:32 1 100 million, a dispute of about 115 million on construction
 2 costs, and there's also a dispute on discount rate. So,
 3 while many of the micro-level assumptions are agreed among
 4 the Parties, there is a relatively big difference of
 5 opinion on the more macro-level drivers of the DCF Model.
 6 And this is the first of those three drivers.
 7 This is sales value. Again, just to show order of
 8 magnitude of the difference, the majority of differences
 9 are driven by retail area and hotel and conference
 10 valuation. And you'll hear much more from the Quantum
 11 Experts on why those differences occurred and why we
 12 believe that our position is the correct one.
 13 While I said I'm not going to talk about the
 14 underlying data, I do want to talk about a couple of the
 15 sources of that data, in particular, this 2019 Colliers
 16 Report. That's one of the documents Mr. Taylor relies on
 17 in his Second Report for his analysis of certain market
 18 data, but primarily construction costs for the Investment
 19 Object. And, of course, as you've seen in the submissions,
 20 Respondent prefers a different approach. Respondent relies
 21 on a schedule graphic that was produced as an early
 22 projection for this Project. And Respondent in its Quantum
 23 Expert, of course, attacks the reliability of the Colliers
 24 Report.
 25 Mr. Taylor will tell you more why he considers

01:11:59 1 that Report the best evidence, but from a high level, this
 2 uses contemporaneous data. It was actual market data.
 3 It's not a projection like the schedule graphic used by
 4 Respondent's Quantum Expert. The figures are provided in
 5 U.S. dollars. They are not euros or rubles that have to be
 6 converted. The figures also contain a broader sampling of
 7 market data. It is not a single Project.
 8 It is not subject to changes in scope from the
 9 initial projections to the actual--to today, and you'll see
 10 in the evidence--and I think you've heard this
 11 morning--that there were, in fact, changes of scope to this
 12 Project, as with any Project of this size. That's why we
 13 believe that taking an early projection as the Respondent's
 14 Quantum Expert did is just simply not reliable.
 15 Respondent's Quantum Expert, as I said, has
 16 elected to rely on the construction schedule which was
 17 produced before construction even began, and it was
 18 essentially a projection of when things would occur and
 19 what they would cost, because that was preferred--prepared
 20 a decade ago it was necessary to adjust that for inflation
 21 and, indeed, as I said it was vulnerable to changes in the
 22 scope of the Project.
 23 Mr. Qureshi himself has criticized the use of the
 24 construction schedule in his First Report. He says "I do
 25 not consider the construction schedule as reliable evidence

01:13:26 1 of expected construction costs." He nevertheless uses that
 2 here.
 3 This shows a high-level overview of the various
 4 components in construction costs and the Parties'
 5 differences on them. You'll hear from the Quantum Experts
 6 about what drives those differences. As you can see a big
 7 driver of Mr. Qureshi's valuation of the construction costs
 8 is inflation which is, again, a vulnerability that is not
 9 present in the Colliers' Report.
 10 Another big driver is land lease costs. The
 11 Respondent includes that as a cost of development of the
 12 Investment Object. We submit, however, that that is not
 13 appropriate because there is no obligation of the Claimant
 14 to pay a land lease cost. In 2007 this Presidential Decree
 15 that was entered that you see on the screen, and that
 16 exempted tender winners from making a lease payment.
 17 As a result, if there ever was an obligation to
 18 make a land lease payment, which as you saw from our prior
 19 submissions, we don't think there was, but if there ever
 20 was, it expired when that Decree was entered. And to the
 21 extent Respondent attempts to argue that that Decree does
 22 not apply to Claimant, we submit that that would be
 23 improper and unfair because that would be discriminatory
 24 treatment as compared to other similarly-situated
 25 investors.

01:14:49 1 And that was a very important slide, so I
 2 shouldn't have skipped that one. So, this is--and you
 3 heard from my colleague this morning, this is what we view
 4 as the absolute, you know, baseline for the lost profits
 5 claim because this is what--there was an auction, another
 6 investor, a third Party, paid 8.87 million for the right to
 7 develop the same plot of land.
 8 You know, the task here of the Tribunal is to
 9 determine the Fair Market Value of this lost opportunity.
 10 We submit that the price that an arm's-length investor paid
 11 at a public auction is strong evidence of Fair Market
 12 Value.
 13 However, as you heard this morning, we don't
 14 believe that's the full Fair Market Value because that
 15 price was done at a recent auction with all of the
 16 information that we have today, with all of the experience
 17 that Claimants suffered and it--there's no doubt that any
 18 rational and reasonable investor would have discounted the
 19 amount they were willing to pay, to take into account what
 20 has happened with that Investment Object, in that plot of
 21 land to date. So, we submit that's a floor, but it is
 22 certainly nowhere near the ceiling.
 23 So, now I'll move to the second category of claim
 24 and that's of Quantum, and that is the compensation for the
 25 New Communal Facilities and, again, just to remind the

01:16:16 1 Tribunal, these were the facilities that were constructed
 2 by the Claimant. They were intended to be the
 3 consideration, the compensation Claimant paid for the right
 4 to develop the Investment Object. Because the right to
 5 develop the Investment Object was distinguished.
 6 The initial view was that the Respondent would
 7 compensate the Claimant for these New Communal Facilities
 8 instead of giving them the development right.
 9 Unfortunately, as you heard through the tax accrual and the
 10 secret plan, if you will, Respondent decided instead to see
 11 to take the New Communal Facilities without compensation.
 12 This graphic here, again, shows the different
 13 components of the New Communal Facilities. I put it up
 14 only to show that the biggest area of dispute is the Bus
 15 Shed. The other two values are, you know, pretty close to
 16 agreed. The Library payment there's a dispute, again, as
 17 to categorization, but there is no dispute that was paid.
 18 And, as you heard this morning, there is no
 19 dispute that these New Communal Facilities were taken into
 20 governmental control without consideration. I mean, if
 21 that's not an expropriation right there, I'm not sure what
 22 is. To transfer without consideration into the ownership
 23 of the Government, this Property.
 24 So, we heard some of the general principles. I
 25 do want to reiterate, however, now that we're talking about

01:17:40 1 recovering value for what was, you know, kind of
 2 out-of-pocket costs. As the Tribunal well knows,
 3 restitution is a widely accepted theory of damages here, so
 4 while we've been, you know, viewing the Fair Market Value
 5 of these assets, both the Investment Object and the New
 6 Communal Facilities, restitution as in the amount of
 7 out-of-pocket expenditure by the Claimant is another
 8 alternative theory of damages that we believe is
 9 appropriate, particularly to the value of the New Communal
 10 Facilities.
 11 There is no dispute that Respondent paid millions
 12 to construct these. There is no dispute they have value to
 13 the Respondent. The only dispute is about how much that
 14 value is.
 15 As you heard this morning, we believe the best
 16 evidence of that value is the \$19.4 million that was
 17 calculated by the Respondent's own Ministry of Finance in
 18 its audit. Respondent has tried to distance itself from
 19 that in this arbitration. You'll hear more from that about
 20 that--more about that from the Quantum Experts, and you
 21 heard more about the documents underlying that audit this
 22 morning. It wasn't a stand-alone audit, it was the third,
 23 at least, in a series of valuations, independent valuations
 24 of this Investment Object.
 25 First, there was the third-party auditing firm.

01:19:13 1 Then it was the Registration and Cadastre Agency, and
 2 third, it was this Ministry of Finance audit. While there
 3 were some slight differences on the figures, all three were
 4 generally, you know, within several hundred thousand
 5 dollars of each other, maybe \$1 million max. So, we submit
 6 there can be no dispute that this is the best evidence.
 7 This goes through the history of--that you heard
 8 earlier of how the audit was undertaken and how it came
 9 about.
 10 And let me go back to the audit. I just, you
 11 know, as I said, Claimant's position is this evidence from
 12 the Respondent itself is the best evidence of costs, but
 13 you may be asking, what does the Respondent use. What the
 14 Respondent does is, again, goes back to estimates from the
 15 beginning of the Project, and what were those estimates?
 16 They were cost projections for the three pieces of the New
 17 Communal Facilities that were prepared in 2007, 2008, and
 18 those cost estimates, while prepared in 2007, 2008, were
 19 based on 1991 price schedules from the former Soviet Union
 20 because, as you heard, it was a Soviet design.
 21 So, what Respondent's Expert has done is taken
 22 those initial cost projections, which, again, as you heard,
 23 the scope has changed significantly since those were done.
 24 The Respondent has then adjusted the 1991 prices in those
 25 projections to 2019 prices.

01:20:38 1 So, that's--I mean, it was like--you'll hear from
 2 the Quantum Experts, but it was, I think, a 2,000 percent
 3 markup or 2,500 percent mark-up simply to account for
 4 inflation.
 5 The Respondent then deducted from the value for
 6 what the Respondent deemed to be necessary work to complete
 7 the Project based on a survey that was done during this
 8 arbitration, and based on a survey that was done five years
 9 after the facilities were turned over to the State control.
 10 So, we submit that this projection, extrapolation,
 11 adjustment, which had many subjective components and large
 12 room for error is significantly less reliable than the
 13 audit Report from, again, three different independent
 14 agencies, two of which were Respondent State agencies, one
 15 of which was an independent auditor.
 16 So, the last category, as I said, is a Library
 17 payment. It's a little unclear to us whether Respondent
 18 concedes the Library payment is properly recoverable,
 19 assuming we prevail on liability. I know it's clear that
 20 Respondent disputes that it is not part of the New Communal
 21 Facilities. In the submissions and in the Expert Report,
 22 neither the Quantum Expert nor Respondent that we have seen
 23 says the \$1 million should not be recovered.
 24 What they do say is what you see here; that it
 25 should not be part of the new communal facilities. So, I'm

01:22:03 1 sure we'll hear more about that from the Respondent and
 2 Quantum Experts, but we don't see any valid basis to
 3 exclude that from the damages. It was clearly paid. It
 4 was clearly part of the consideration, and Claimant clearly
 5 did not receive the right to develop the Investment Object.
 6 And this is the last piece of the damages
 7 section. This is the pre-Award interest. As the Tribunal
 8 know, there is several different assumptions that go into
 9 this, a wide range of outcome, so I won't go through the
 10 ins and out here. You will hear more about that from the
 11 Quantum Experts, but, again, I want to give you an order of
 12 magnitude about how the prejudgment interest, pre-Award
 13 interest breaks out and the Parties' relative positions on
 14 that. But, essentially, all three drivers are in dispute,
 15 the rate, the date, and, of course, the Award date will be
 16 valuable--variable as well.
 17 So, in closing this is our summary of damages.
 18 We thank the Tribunal for their time this morning. We look
 19 forward to presenting you the evidence this week, and I
 20 guess with that, we will close.
 21 PRESIDENT FERNÁNDEZ-ARRESTO: Thank you. Thank
 22 you, Mr. Kennedy.
 23 Now, let us see if there are questions from the
 24 Tribunal.
 25 And I look first--no question?

01:23:22 1 Well, I have questions.
 2 Give me one second, I'll get this working. And I
 3 have three or four questions. And the first refers to the
 4 law regarding property of real estate in Belarus, because
 5 I'm slightly confused about that. Let us start with the
 6 easy question. And that is if you go to Mr. Kennedy's
 7 Page 30.
 8 I don't know if this is a question for
 9 Mr. Kennedy or not, but it--my question comes from this:
 10 And this is that there was this auction and a plot of land
 11 was then awarded to a new investor for \$9 million. Awarded
 12 what? Because you remember that under our Contract, there
 13 was to be a lease, and here I'm not sure if the new
 14 investor is getting a lease or is getting ownership, if it
 15 is legally possible that a foreign investor has ownership
 16 of land in Belarus.
 17 MR. KENNEDY: I will defer to my able colleague
 18 to answer that question.
 19 MS. SHMARKO: I'm here responsible for facts.
 20 So, Mr. Presiding Arbitrator, I suppose that--please let me
 21 know if I didn't understand your question correctly. So,
 22 to the knowledge of the Claimant, the purpose of the
 23 standard was to sell the rights to implement the Project on
 24 the same land plot. So, it was--it was exactly the
 25 same--maybe the Claimant's understanding is not right. So,

01:25:26 1 we make this reservation, but it was exactly the same right
 2 to implement the Project, not the same of course, but on
 3 the same land plot, just for 8,000,087.
 4 MR. KHVALEI: Mr. President, we need to check.
 5 It was certainly not a title to the land which was sent.
 6 PRESIDENT FERNÁNDEZ-ARRESTO: No title.
 7 MR. KHVALEI: No, no title. To my best
 8 knowledge. We'll double check. Under Belarusian law it is
 9 possible to sell title to foreign company. It is possible,
 10 but my recollection is that they sold right to lease of the
 11 land plot, but I think the time for the lease was a
 12 different one.
 13 PRESIDENT FERNÁNDEZ-ARRESTO: Okay.
 14 MR. KHVALEI: We will double check and come back
 15 after the lunch time.
 16 PRESIDENT FERNÁNDEZ-ARRESTO: It was really a
 17 question leading me to the next question, which is the
 18 important one, and it is, can you go to R-242? Which is
 19 the order of the President of the Republic of Belarus.
 20 Okay.
 21 (Comments off microphone.)
 22 PRESIDENT FERNÁNDEZ-ARRESTO: 242. There it is.
 23 Now, if you go to the first line, it says: "To transfer
 24 without consideration into the ownership of Minsk Property
 25 that is owned by the limited Company that is I suppose the

01:27:12 1 asset which is owned by the limited liability Company,
 2 Manolium-Processing, and is under the economic management
 3 of the foreign industrial and trading Unitary Enterprise
 4 Manolium-Engineering, said property having been attached by
 5 the Inspectorate of the Ministry of Taxes."
 6 And then, if you go to the Annex where you will
 7 find the assets, which are the actual assets, it includes
 8 the structure, but it includes the land. If you go further
 9 down, it is in my internal page, it is Page 3 or 4, it says
 10 "site area, 207, site for a warehouse."
 11 So, it seems to include also--and I may be wrong.
 12 But it seems to include the land. My question to you is
 13 why was Manolium--this seems to be the land of the communal
 14 buildings and this seems to be the communal buildings.
 15 What I am now slightly confused is why were these assets in
 16 the ownership of Manolium, because Manolium was basically a
 17 constructing company. They were constructing these
 18 buildings, and from this order of the President of the
 19 Republic of Belarus, it seems that they were the owners of
 20 it and are now deprived of that because they have not paid
 21 their taxes.
 22 MR. KHVALEI: Mr. President, well, Manolium
 23 suddenly was never owner of the land plots.
 24 PRESIDENT FERNÁNDEZ-ARRESTO: Sorry?
 25 MR. KHVALEI: Manolium was never the owner of the

01:30:51 1 and--
 2 MR. KHVALEI: Infrastructure.
 3 PRESIDENT FERNÁNDEZ-ARRESTO: Infrastructure on
 4 the land.
 5 Then I have one other question, and this is also
 6 a question for Belarus, and maybe more even more for
 7 Belarus. Is the normal way when, under Belarusian law,
 8 when there is a tax debtor and the tax debtor does not pay,
 9 and then the assets of the tax debtor are attached, that is
 10 worldwide? What the normal way, then, in most countries is
 11 that the tax authority themselves make an auction and sell
 12 these assets and they are collected.
 13 And I see that here in Belarus, this is done not
 14 through an auction, but it is an Order signed by President
 15 Lukashenko, and so my question is, is this the normal way?
 16 Is if I am a Belarusian company and I don't pay my taxes
 17 and my--or I am a Belarusian citizen and I don't pay my
 18 taxes and my house is attached by the tax authorities, is
 19 the normal way that this attachment is enforced through an
 20 order of the President of the Republic, or it was that for
 21 some reason exceptional in this case? Do you--I look first
 22 to Claimant if they have some question, otherwise, I'm sure
 23 that Belarus will have some information on that.
 24 Mr. Khvalei you have--no, no, no. Not now, in
 25 the--

01:29:09 1 land plots, and I have explanation to this document why
 2 there is some reference to the land.
 3 Technically, when you make in construction also
 4 some roads, for example, to be done. So when you put some
 5 gravel or such onto it, you take it and you take it on your
 6 balance sheet and you should also indicate where it is
 7 placed. So, various references to the land most likely are
 8 referred to the value of the construction work which was
 9 done on this land. S walks, for example, making it flat or
 10 making the road. This is technically on the balance sheet,
 11 should be assigned to a particular piece have land.
 12 Otherwise, you cannot take it into account.
 13 So, because Manolium-Engineering was making this
 14 construction work, they accrued all the cost on its balance
 15 sheet. So, technically, although the road physically is on
 16 the land, technically it is on the balance sheet of
 17 Manolium-Engineering and technically it should be
 18 transferred under the Act. This is my explanation because
 19 there is no Act. When President issued his Decree, it took
 20 what is accrued on various pieces of land, and we should be
 21 on the balance of Manolium-Engineering because now, well,
 22 it should be transferred to State ownership.
 23 PRESIDENT FERNÁNDEZ-ARRESTO: Thank you. Thank
 24 you. So, your basic interpretation is that this Order
 25 refers to the buildings and the structures on the land

01:32:30 1 (Overlapping speakers.)
 2 MR. KHVALEI: I used to be Belarusian in the
 3 past, but I'm not sure that I'm still in good shape as a
 4 Belarusian lawyer. So, I'll leave it to the big team of
 5 the Respondent.
 6 PRESIDENT FERNÁNDEZ-ARRESTO: Very good. So,
 7 then, let's go to questions more for you, but you make a
 8 note, please, Dr. Julia and you come back to us with that.
 9 Investment. Has any amount been invested as
 10 capital? Because we have heard that amounts were invested
 11 through loans, but has there been any capital investment,
 12 thus, the subsidiary in Belarus have any capital, or is
 13 there no capital at all?
 14 MR. KHVALEI: Yes, it has nominal charter capital
 15 but it was not significant. Major part of investments came
 16 as loans.
 17 PRESIDENT FERNÁNDEZ-ARRESTO: Do we have--and
 18 sorry, I should know that, but you will forgive me. Do we
 19 have anywhere in the file the balance sheet of the
 20 Belarusian subsidiary?
 21 MR. KHVALEI: No. I think no.
 22 PRESIDENT FERNÁNDEZ-ARRESTO: No. Is it that a
 23 document--let me ask you. Do you know, for example, in
 24 Europe--and maybe in Russia too--companies have to deposit
 25 their public accounts. Is that the same in Belarus?

01:33:56 1 MR. KHVALEI: Yes, of course.
 2 MS. SHMARKO: Just one small mark. Sorry for the
 3 interruption. If you have a look at the wording of the
 4 Report of the Minister of Finance, you will notice that the
 5 subject of the review where the annual balance sheets of
 6 Manolium-Engineering, so the same was with the C-14--sorry,
 7 154, because the registration Cadastre Agency also reviewed
 8 the same accounting documents of Manolium-Engineering. So,
 9 for the purposes of convenience and not to produce too many
 10 unuseful documents, these two Reports were produced as
 11 evidence confirming the review that has already been done.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: My point was I
 13 wanted to--you understand why I wanted to see the balance
 14 sheet. To have any idea of how it looks, how much capital,
 15 how much loans. I mean, companies at the end, their face
 16 is the balance sheet, and I always like to have a look at
 17 the balance sheet.
 18 I would, I think, at some stage, it would be
 19 helpful if we can have a look at the balance sheet at the
 20 relevant times. Not all of them, but at the balance sheet
 21 of the subsidiary to see, because there we will see how
 22 much is capital, how much is loans, how that--because, just
 23 to be on the safe side with my question, the Loans went,
 24 Mr. Kennedy, the Loans went to the subsidiary and the
 25 subsidiary then used the funds for the construction?

01:35:36 1 MR. KHVALEI: Yeah. I'll answer. Yes. This is
 2 the case. The Loans went to account of
 3 Manolium-Engineering in Belarus, then were converted into
 4 Belarusian rules because the Loans were received in U.S.
 5 dollars, they were converted into rubles because all those
 6 actions within Belarus are allowed only in local currency
 7 and then were spent in Belarusian rubles.
 8 PRESIDENT FERNÁNDEZ-ARMESTO: When you say
 9 "rubles," it's Belarusian rubles?
 10 MR. KHVALEI: Belarusian rubles, yeah.
 11 PRESIDENT FERNÁNDEZ-ARMESTO: Because there are
 12 two different--
 13 MR. KHVALEI: Yeah, Russian, Belarusian are big
 14 difference, yeah.
 15 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah. Very good.
 16 I'm have--sorry, but I have a couple of questions more.
 17 C-154, that is the Decision, I think, of a court.
 18 It may the Minsk courts, but--no, then I have it wrong.
 19 But, I don't really need the document. The question is the
 20 following: There is a termination of the Contract which,
 21 at the end, is ordered by the Supreme Court. And I have
 22 looked at the Decision and this why I had the document, and
 23 the Decision just says the Contract is terminated, but it
 24 has no reference at all to compensation, to compensation
 25 for--yeah, that is the Decision. Thank you to whoever has

01:37:16 1 found it.
 2 If you go to the end. Can you go to the Decision
 3 of the Supreme Court? You will see it just says it is
 4 terminated. It just says the Contract is terminated. "Has
 5 decided to uphold the Decision of the Economic Court of the
 6 City of Minsk," and I had a look at that and the Decision
 7 of the lower court is just the Contract is terminated.
 8 But, I understand from your factual presentation that after
 9 these Decisions there was some discussion regarding
 10 compensation whether--and this is when the \$19 million
 11 figure comes up.
 12 And I was looking whether the Court had ordered
 13 the compensation to be paid or whether this or the duty to
 14 pay this compensation comes from the Contract, comes from
 15 Belarusian law. Why was there still an obligation, or how
 16 did the obligation to pay, then, the USD 19 million arise?
 17 MR. KHVALEI: First of all, it was not subject of
 18 dispute in Belarusian Courts, because subject matters of
 19 claim were for termination, and, as you know, normally
 20 cause do not go beyond of what was claimed.
 21 With regard to compensation, if you ask what is
 22 the legal basis for compensation, right, first of all, we
 23 do believe that the Claimant or Manolium had tried to--for
 24 compensation as a basis of the Contract. Because, even if
 25 you terminate the construction Contract and, in part,

01:39:02 1 indeed it was a Contract for construction, and you say,
 2 well, you have not completed the buildings, we terminate
 3 the Contract, you still are under obligation to pay for
 4 what was done. I'm not saying this clearly follows from
 5 Belarusian civil court. It's a general provision of
 6 contract law.
 7 Or, at least if the Party who could get all
 8 ownership or title to it was not a Party to the Contract,
 9 which is not the case, you still have provisional unjust
 10 enrichment. So, either it would be contractual obligation
 11 or it's unjust enrichment but still there is just
 12 obligation to pay for what you got benefit of.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank
 14 you. So--I promise, this is the last question. And this
 15 is regarding land taxes. And this is also a question for
 16 Belarus, because I have some doubts how the land taxes in
 17 Belarus are established because under Belarusian law, there
 18 is ownership of land, there is private ownership of land.
 19 I understand. But the land tax is not on the legal
 20 ownership, and is it a public registry? Let me ask a very
 21 simple question. I don't think it has been addressed by
 22 the Parties. Is there a public registry?
 23 MR. KHVALEI: Yes.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: A public registry.
 25 So, the land tax. First question, that if I am the owner

01:40:41 1 of a piece of real estate, registered at the Land Registry,
 2 do I have to pay every year a land tax?
 3 MR. KHVALEI: I assume so.
 4 PRESIDENT FERNÁNDEZ-ARRESTO: Very good. So, the
 5 first person, the first obligee.
 6 MR. KHVALEI: Obligee.
 7 PRESIDENT FERNÁNDEZ-ARRESTO: Is the obligee is
 8 the owner, but we saw that Manolium is not the owner of the
 9 plot of land. It was just constructing on that plot of
 10 land, and we saw then the order of the President of Belarus
 11 withdrawing that ownership. But still it was under an
 12 obligation to pay the land tax. Manolium was under an
 13 obligation to pay the land tax. And my question is, if it
 14 was not the registered owner, why was it obligated to pay
 15 the land tax?
 16 MR. KHVALEI: Well, that's a very good question,
 17 Mr. President. First of all, the land belonged to the
 18 Minsk City Committee. So, if you think about who is the
 19 registered owner, it is Minsk City. And Minsk City, of
 20 course, would not be paying taxes to itself because it will
 21 take money from one pocket and put it in the other pocket;
 22 right? It's the same State Authority.
 23 So, without knowing frankly details how it works,
 24 I would assume that Minsk City would normally charge for
 25 the land tax only a Resource used by Minsk City itself.

01:42:12 1 So, if Minsk City lease the land plots to somebody, then
 2 this, the lessee, is under obligation to pay a land tax.
 3 In our case it is a little bit more complicated
 4 because in 2009, there was a special Decree saying that the
 5 owners of the land--no, no. The lessees of the land are
 6 released from a land tax for a time of construction. A
 7 special decree for promoting of investment, and the decree
 8 said that, if you're an investor and constructing,
 9 something based on an Investment Contract, you are released
 10 from the land payments for the term of construction.
 11 So, this is why Manolium did not pay any land
 12 taxes 2009, 2010, 2011, because it was released under this
 13 Presidential Decree for payment of these land taxes. And
 14 this is why Mr. Dolgov instructed his chief accountant not
 15 to provide taxes until later on because until a Decision
 16 was taken and terminated, Manolium believed it was not
 17 obliged to pay land tax.
 18 But once the Investment Contract was terminated,
 19 then tax authorities took a pretty technical position and
 20 said you have buildings which belong to you as Manolium
 21 Engineering and they were, indeed, in the balance sheet of
 22 Manolium. These buildings were on the land. So, because
 23 you did not have permission for this land, you illegally
 24 occupied the land, so, therefore, you still that to pay tax
 25 for illegal occupation of the land and penalty 10 times of

01:44:01 1 what you normally paid.
 2 So, this was the logic of the tax authorities. I
 3 don't know if that was the answer to your question.
 4 PRESIDENT FERNÁNDEZ-ARRESTO: Yes. You went even
 5 into my next question. Of course, not now, but after or
 6 during or after your presentation, it would be nice to get
 7 some education on how land taxes work in Belarus.
 8 Very good. Let's get a time check.
 9 MS. BAPTISTA: So, the Claimants spent 2 hours
 10 and 38 minutes in their presentation. I imputed the
 11 questions that the Tribunal made to the Tribunal's time,
 12 and that would be almost 40 minutes. And the Respondent
 13 spent 7 minutes and 48 seconds in their pleadings,
 14 initially.
 15 PRESIDENT FERNÁNDEZ-ARRESTO: Very good. Thank
 16 you.
 17 3:00? Is 3:00 okay? I look to you. Does that
 18 give you some time to get--to prepare yourself?
 19 MS. ZAGONEK: Thank you.
 20 PRESIDENT FERNÁNDEZ-ARRESTO: We see each other
 21 back at 3:00 p.m.
 22 (Whereupon, at 1:43 p.m., the Hearing was
 23 adjourned until at 3:00 p.m., the same day.)
 24
 25

1 AFTERNOON SESSION
 2 PRESIDENT FERNÁNDEZ-ARRESTO: We will resume the
 3 Hearing. And we give, now, the floor to the Respondent, to
 4 the Republic of Belarus.
 5 There is a stack of slides here in front of us.
 6 I assume it is your presentation.
 7 MS. ZAGONEK: Correct.
 8 PRESIDENT FERNÁNDEZ-ARRESTO: We will give it
 9 H-3. We will number it.
 10 MS. ZAGONEK: Thank you.
 11 PRESIDENT FERNÁNDEZ-ARRESTO: By the way, if I
 12 can then ask both teams to, starting with your H-1, which
 13 was your list of points which you said had been amended by
 14 Claimant and, then H-2, which is your presentation, and
 15 H-3--if you can send it to the Secretary in electronic
 16 format, that will be appreciated, so we have the whole file
 17 electronically.
 18 Very good. Without further ado.
 19 OPENING STATEMENT BY COUNSEL FOR RESPONDENT
 20 MS. ZAGONEK: Thank you.
 21 Members of the Tribunal, this Case is brought
 22 against the Republic of Belarus by a Russian company,
 23 Manolium-Processing, beneficially owned, we are told, by
 24 Mr. Ekavyan, who is present here. And I must say that this
 25 is the first investment arbitration claim conducted under

03:04:50 1 the Treaty of the Eurasian Economic Union--in these
2 Proceedings, we call it the "Treaty" or sometimes the "EU
3 Treaty."

4 You have heard this morning chilling stories
5 about Mr. Dolgov's problems with the KGB, an explanation
6 concocted 1.5 years into the Proceedings and raised only in
7 the Reply and extensively today. The Claimant talks about
8 Mr. Dolgov not returning to Belarus for fear of being
9 arrested. Yet, nothing has been said about Mr. Dolgov's
10 son running a successful business in Belarus, quite,
11 apparently, unaware of his father's concern, and the
12 reference to an exhibit, R-224, which shows the ownership
13 of Mr. Dolgov's son of his business in Belarus.

14 However, the Respondent submits, the reality is
15 quite different. This is a case about a series of bad
16 decisions, bad business decisions, made by Mr. Dolgov, the
17 General Manager of Manolium-Engineering, who was driven
18 slowly by a desire to invest as little as possible and
19 profit as much as possible.

20 Mr. Dolgov even hired ex-Belarusian officials to
21 try and place the Claimant above the law and avoid the
22 consequences of its failure to perform its contractual
23 obligations. Such attempts were futile, but, then again,
24 Belarus is not Russia.

25 As I intend to show the Tribunal, this Case is an

03:06:18 1 attempt by the Claimant to seek compensation under the
2 guise of international investment protection, for losses
3 which it itself caused through its bad faith, incompetence,
4 and manifest lack of business judgment.

5 During the course of the Written Submission, the
6 Respondent has been forced to address numerous irrelevant
7 issues by the Claimant, including many spurious factual
8 allegations unsupported by evidence. The Respondent has
9 addressed all such allegations in its Written Submissions
10 which have, as a result, run up to a considerable length.

11 For the sake of brevity, the Tribunal will be
12 happy to hear I shall not address, in this Opening, the
13 relevant issues raised. Amongst other things, I don't want
14 to waste time discussing the events which occurred before
15 the Amended Investment Contract was signed in 2007, to
16 which the Claimant--that particular period, the Claimant
17 has devoted a substantial amount of time in its Opening
18 today.

19 And the reason I won't be doing that, because
20 they are irrelevant to the issues in dispute and occurred
21 long before the Treaty entered into force and long before
22 Belarus acquired any obligations under the Treaty capable
23 of being breached.

24 I shall, instead, enlighten the Tribunal to focus
25 on what the Respondent believes are the real issues in the

03:07:41 1 case. I shall begin by briefly introducing those two
2 issues before the Tribunal today, and I will outline some
3 of the key issues of the case.

4 In the main part of Opening, I shall then return
5 to the same structure addressing the key, factual, and
6 legal issues relevant to the Termination Dispute first,
7 before--after the break, is my intention, turning to the
8 key factual and legal issues relevant to the Tax Dispute.

9 I'll proceed on the assumption that the Tribunal
10 has read the Parties' extensive Written Submissions and
11 will have seen the Respondent's position in this case is
12 about two distinct disputes. The first dispute is a simple
13 contractual dispute arising out of the Claimant's failure
14 to perform its contractual obligations. In these
15 Proceedings, we all call it the "Termination Dispute."

16 So, on 8th of February 2007, the Claimant and its
17 Belarusian subsidiary, Manolium-Engineering, entered into
18 the Amended Investment Contract with the City of Minsk, and
19 Minsktrans, which is the transport of Minsk. The terms of
20 the deal were simple: Manolium-Engineering agreed to
21 construct, commission, and transfer to the City of Minsk a
22 Trolleybus Depot and other-related facilities in Minsk
23 known as the "New Communal Facilities."

24 Once Manolium-Engineering fulfilled its
25 obligation to construct, commission, and transfer those

03:09:06 1 facilities, it would obtain the right to develop a
2 desirable plot of land in the center of Minsk known as the
3 "Investment Object." In the event Manolium-Engineering did
4 not construct, commission, and transfer the New Communal
5 Facilities by the agreed deadline--and Mr. Ekavyan's Forbes
6 status is irrelevant to this issue.

7 At the time the Claimant blamed its failure to do
8 so on its financial difficulties. The reality, as has
9 become clear in these Proceedings and as is confirmed by
10 contemporaneous evidence, is that the Claimant, by early
11 2012, simply lost the appetite to proceed with the Project.
12 Whether because of its financial difficulties or because it
13 considered it to be unprofitable, we don't know.

14 The Claimant, therefore, stopped financing the
15 construction of New Communal Facilities.
16 Manolium-Engineering's failure to construct and commission
17 the facilities by the agreed deadlines, despite the
18 extensions and indulgence afforded to it by the City of
19 Minsk, gave the City the right to apply to courts to
20 terminate the Amended Investment Contract.

21 The City of Minsk filed its claim to terminate
22 the Contract with the Economic Court of Minsk on
23 12th November 2013. And this Application was neither
24 sudden nor unexpected.

25 Firstly, the disagreement as to the Parties'

03:10:31 1 rights and obligations under the Contract had already come
 2 to a head by April 2012, when Mr. Dolgov threatened to
 3 submit a claim to--and I quote--"international court, to
 4 seek"--and I quote--"compensation of the costs of the
 5 construction of the Communal Facilities."
 6 And that you can find in Exhibit R-79.
 7 Secondly, the deadline for completing the
 8 construction of the New Communal Facilities December 28 to
 9 July 2011, had already been extended by the Claimant. A
 10 delay of 2.5 years, which the Claimant, at the time, blamed
 11 on its financial difficulties.
 12 Thirdly, the City of Minsk gave the Claimant
 13 numerous warnings, from as early as October 2010, that it
 14 would be forced to apply to court to terminate the Contract
 15 if the Claimant and Manolium-Engineering did not comply
 16 with their contractual obligation to complete the
 17 facilities.
 18 And that's Exhibits R-59 and R-89.
 19 The City's Claim was upheld in the Termination
 20 Proceeding by three levels of Bulgarian Courts in which the
 21 Claimant and Manolium-Engineering participated at each
 22 stage. The Court Judgments were clear, well-reasoned, and
 23 irreproachable from the perspective of both the Belarusian
 24 law and international law.
 25 The termination of the Contract became effective

03:13:28 1 Tax Dispute is a distinct dispute from the Termination
 2 Dispute, with quite a different subject matter.
 3 After the termination of the Contract on
 4 29 October 2014, as we've heard today, Manolium-Engineering
 5 remained the owner of the incomplete New Communal
 6 Facilities, so Manolium-Engineering no longer had any
 7 contractual obligation to complete them. Equally, the City
 8 of Minsk was no longer obligated to grant
 9 Manolium-Engineering the rights to develop the Investment
 10 Project, even if Manolium-Engineering completed those.
 11 On the other hand, Manolium-Engineering was free
 12 to agree and negotiate with the City of Minsk the terms for
 13 the sale of those unfinished facilities. But, on the other
 14 hand, the City didn't have an obligation to purchase them
 15 or to accept the price demanded by Manolium-Engineering.
 16 So, it wasn't a discussion of compensation as
 17 such. It was a discussion of acquisition. It was a matter
 18 of new negotiations and the New Agreement in the event the
 19 Party never reached the consensus on the price.
 20 At the same time, Manolium-Engineering remained
 21 the legal owner of the incomplete New Communal Facilities
 22 which stood on the land plots belonging to the State, and,
 23 as such, Manolium-Engineering, as a matter of Belarusian
 24 law, remained liable to pay land tax in respect of those
 25 land plots.

03:12:02 1 when the Appeal Instance Court rendered its Judgment on the
 2 29th October 2014. And, as a consequence of that Decision,
 3 Manolium-Engineering lost its contingent right to develop
 4 the Investment Object. And this happened several months
 5 before the Treaty entered into force, on 1st of
 6 January 2015.
 7 The Claimant now seeks to bring this purely
 8 contractual dispute "back from the dead," so to speak,
 9 under the guise of international investment protection.
 10 The Claimant labels the termination of the Amended
 11 Investment Contract as an expropriation and a breach of
 12 fair and equitable treatment and seeks lost profits it
 13 alleges it would have made had it developed the Investment
 14 Object.
 15 As I intend to show this afternoon, the reality
 16 is much simpler: The Claimant willfully breached the terms
 17 of the Contract because it lost the appetite to continue
 18 with the Project, and now, in the Present Proceedings, it
 19 seeks compensation for the value of a development, the
 20 Investment Object, which it never built and had no
 21 intention of building.
 22 The second dispute concerns the Claimant's utter
 23 disregard for provisions of local, and, in particular, tax
 24 legislation of which the Claimant was well aware. In these
 25 Proceedings it is referred to as "the Tax Dispute." The

03:14:57 1 And the reason being--and I will go into that a
 2 bit later--is because the rights that they were exercising
 3 by having the property that it owned on the State land is
 4 because there was a permit. They required a permit to have
 5 that. It is nothing to do with ownership. It is to do
 6 with the right over land such as leased land, permanent or
 7 temporary rights to use that land.
 8 The accrual of Manolium-Engineering's tax
 9 liability of which the Claimant complains was compounded by
 10 several factors. Most significantly, Manolium-Engineering
 11 failed to extend or even to apply to extend--and for the
 12 first time, we found out about their admission that they
 13 didn't apply from the slides that were sent on Saturday.
 14 So, it failed to extend or even apply for land
 15 permits for the plots in which those incomplete facilities
 16 were located. And this led, under Belarusian law, to a
 17 tenfold rate of tax being applied. These unpaid land taxes
 18 of Manolium-Engineering were eventually, in January of
 19 2017, enforced against its only asset. And if there were
 20 other assets that Manolium had in Belarus, perhaps it would
 21 have been a different outcome.
 22 The New Communal Facilities--it was enforced
 23 against the New Communal Facilities but still left a large
 24 chunk of tax debt still outstanding. And to answer the
 25 reason why they couldn't--the tax authorities couldn't just

03:16:33 1 auction and sell it is because they couldn't--because of
 2 the nature of the assets. It's a Trolleybus Depot. So,
 3 the only purchaser would have been a state to state.
 4 For the sake of narrowing down the issues for the
 5 Tribunal, I wish to highlight what's in the Reply. And in
 6 counsel Opening Statement and presentation today, the
 7 Claimant does not appear to question the Respondent's
 8 position set out in the Defence at Paragraphs 313 to 331,
 9 that the tax assessments were carried out in accordance
 10 with Belarus law.
 11 Rather, the crux of the Claimant's position, as
 12 we've heard this morning, is that the focus of its
 13 expropriation claim, as we formulate it, is that the City
 14 of Minsk created a no-escape situation in which the
 15 Claimant could not, A, avoid the tax liabilities accruing,
 16 and, B, could not avoid the subsequent enforcement against
 17 those facilities. And, therefore, the Claimant seeks to
 18 present the enforcement of Manolium-Engineering's tax debts
 19 as an expropriatory abuse of tax law.
 20 As I intend to show in this Opening, the
 21 Claimant's position simply does not add up.
 22 Firstly, the so-called "no-escape situation" to
 23 which the Claimant refers could easily have been avoided if
 24 Manolium-Engineering had not willfully breached its
 25 contractual obligations to construct, commission, and

03:18:02 1 transfer the New Communal Facilities. By doing so,
 2 Manolium-Engineering created a situation in which it lost
 3 the contingent right to develop the Investment Object but
 4 was still, unfortunately, liable to pay land taxes in
 5 respect to the land belonging to the State on which the
 6 incomplete facilities belonging to Manolium-Engineering
 7 stood.
 8 Secondly, it was not a no-escape situation, as
 9 the Claimant seeks to portray. There were several simple
 10 practical solutions to avoid or minimize the accrual of
 11 land taxes, which Manolium-Engineering negligently failed
 12 to make.
 13 Thirdly, if it the Claimant disagreed with the
 14 assessment of the taxes, both the Claimant and
 15 Manolium-Engineering had various opportunities, a number of
 16 them, in fact, to appeal or raise objections to them, of
 17 which they were duly notified by the authorities. Both the
 18 Claimant and Manolium-Engineering chose not to do so at
 19 every opportunity.
 20 In effect, the Claimant is asking in the Present
 21 Proceeding to be exempted from the normal application of
 22 local tax law and be given special treatment which is not
 23 afforded to any other by operating in Belarus. Such an
 24 attempt must fail because international investment
 25 protection is not an indemnity against the good-faith

03:19:28 1 application of domestic tax law.
 2 In its Written Submissions the Claimant also
 3 introduces various red herrings, distracters concerning the
 4 Tax Dispute, in particular, regarding the 2012, 2016
 5 administrative proceedings and the President's Order of
 6 20th of January 2017 regarding the enforcement of the taxes
 7 against the New Communal Facilities, which the Respondent
 8 exhibits at R-242.
 9 These issues have been addressed in detail in the
 10 Respondent's Written Submissions and, I hope, are put to
 11 bed. The Presidential Order of 20th of January 2017 is
 12 addressed at Defence 339 to 356 and in the Rejoinder, 567
 13 to 570, and 127 to 127-8.
 14 I do not want to waste time repeating what is
 15 already set out in the Submissions in relation to this
 16 point. However, I shall briefly touch upon them to the
 17 extent appropriate, and I promise, only to that extent.
 18 So, in the Respondent's view, the real issues on
 19 the Merits before the Tribunal, which I intend to focus
 20 this afternoon, are as follows: For the Termination
 21 Dispute, did the termination of the Amended Investment
 22 Contract and the Claimant's loss of its contingent right to
 23 develop the Investment Object breach the EEU Treaty?
 24 And for the Tax Dispute, the question is: Did
 25 the City of Minsk breach the EEU Treaty by creating a

03:20:59 1 no-escape situation in which Manolium-Engineering was
 2 unable to avoid the accrual of tax liabilities and the
 3 transfer, subsequently, of the New Communal Facilities by
 4 way of enforcement?
 5 As for jurisdiction, the Parties have set out
 6 their positions in considerable length in Written
 7 Submissions. I shall not repeat what is already stated
 8 there. However, I would like to draw the Tribunal's
 9 attention to certain core jurisdictional issues, in order
 10 that they might be in the back of the Tribunal's mind
 11 during the remainder of the Opening.
 12 So, the Respondent's first jurisdiction objection
 13 is that *ratione temporis* objection. The first element of
 14 the Respondent's *ratione temporis* objection is that the
 15 Tribunal does not have jurisdiction over disputes which
 16 arose before the Treaty came into force.
 17 The Respondent's position follows the position of
 18 nonretroactivity enshrined in Article 28 of the Vienna
 19 Convention, which provides that, in the absence of express
 20 words to the contrary, treaties do not apply retroactively.
 21 There is nothing in Protocol 16 of the Treaty to suggest
 22 that the Tribunal has jurisdiction over disputes which
 23 arose before it entered into force.
 24 The Respondent's interpretation is supported by
 25 the ordinary meaning of Article 84 and 85(3) of

03:22:24 1 Protocol 16: "All disputes between a recipient State and
2 an investor of another Member State arising in connection
3 with an investment may be referred to ad hoc arbitration,
4 in accordance with the Rule of Arbitration of the United
5 Nations Commission."

6 The ordinary meaning of the word "arising" in
7 Article 84, the translation of the Russian word
8 "vytekayushchiye," is to refer to disputes arising in the
9 future. If the drafters had intended, it is our
10 submission, to refer to disputes which have arisen in the
11 past, they would have used the past tense of the
12 participle.

13 The Claimant's primary argument to the contrary
14 is that Protocol 16 applies to investments made since
15 December 1991, but this is a different issue to whether the
16 Tribunal has jurisdiction over disputes which have arisen
17 since 1991. The Claimant also relies on Article 13 of the
18 EEC Investment Agreement, which expressly states that it
19 does not apply to disputes which arose before its entry
20 into force.

21 The Claimant submits--and I quote from Reply
22 402--that: "The conscious choice of different language in
23 the subsequent EEU Treaty by the same Parties should be
24 respected." As explained in the Rejoinder at 661 to 663,
25 the Claimant's position is misguided for the following

03:23:57 1 reason:

2 Firstly, the Investment Agreement is not between
3 the same parties as the EU Treaty. There is also a Kyrgyz
4 Republic and the Republic of Tajikistan, who are parties to
5 EEC Investment Agreement but not to the Treaty.

6 Secondly, the construction of the treaty should
7 be focused on the treaty itself rather than on different
8 treaties agreed by different Parties at different times and
9 drafted by different people.

10 Thirdly, the Claimant is merely brushing under
11 the carpet the absurdity of its argument in the context of
12 the EU Treaty, we submit. Essentially, the Claimant's
13 position is that the intention of the Treaty was to provide
14 a dispute resolution mechanism for disputes dating back to
15 the time of the dissolution of the Soviet Union.

16 Nowhere in the EU Treaty is such an intention
17 expressed or implied. The Respondent, therefore, maintains
18 that the Tribunal does not have jurisdiction over disputes
19 which arose before the EU Treaty entered into force.

20 The Parties agree that, as per Mavrommatis, a
21 dispute is defined as "a disagreement on a point of law, a
22 fact, a conflict of legal views, or of interest between two
23 persons." That's at RL-9. The Parties disagree, however,
24 as to whether the case before the Tribunal concerns one or
25 two disputes.

03:25:15 1 The Respondent's position, as explained in
2 Rejoinder 675 to 688, is that the Termination Dispute and
3 the Tax Dispute are two different disputes. Tribunals have
4 consistently held, for example, in CMS Gas against
5 Argentina, which is at R-38 or Lucchetti and Perú at CL-37,
6 that the key fact in determining if a Claimant has referred
7 one or two disputes to the Tribunal is whether the two
8 disputes have the same subject matter.

9 And that's at our Rejoinder 677.

10 In the Present Case, the Termination Dispute and
11 the Tax Disputes concern a different set of factors and
12 different legal issues, have a different subject matter,
13 and, therefore, are different disputes. By way of
14 illustration, in Crystallex and Venezuela, it is
15 particularly instructive.

16 There, the Tribunal confirmed that the relevant
17 inquiry in determining whether it was faced with two
18 different disputes or with one dispute was whether the
19 disagreements in the one settings related to the subject
20 matter.

21 The Tribunal held--and I quote from Paragraph 454
22 of the Award at CL-25--that: "The two main areas of
23 disagreement at issue in this Arbitration relate to the
24 same dispute having the same subject matter." Expanding on
25 this, the Tribunal reasoned that the two disagreements had

03:26:44 1 the same subject matter because--and I quote--"both
2 disagreements concern the same conflicting legal views and
3 interests in relation to Crystallex's claim to mine
4 Las Cristinas."

5 As the Respondent explains in the Rejoinder at
6 Paragraph 680, the same cannot be said in the Present Case
7 in relation to the Termination Dispute and the Tax Dispute.
8 The Termination Dispute concerns the conflicting legal
9 views and interests in relation to Manolium-Engineering's
10 contractual rights under the Amended Investment Contract,
11 and, in particular, its contingent rights to develop the
12 Investment Object.

13 The Tax Dispute, on the other hand, concerns
14 conflicting legal views and interests regarding
15 Manolium-Engineering liability on obligation to pay tax for
16 the land plots it occupied. The land dispute is unrelated
17 to any of Manolium-Engineering's contractual rights under
18 the Amended Investment Contract that are subject of the
19 Termination Dispute.

20 The subject matter of the Termination Dispute is,
21 therefore, distinct from the subject matter of the Tax
22 Dispute, and they should be deemed two different disputes.

23 In seeking to support its position that the two
24 disputes are one, the Claimant misapplies the relevant
25 test. In particular, the Claimant asserts, and I quote

03:28:08 1 from Reply 379--that: "Because all of the breaches
2 comprise a single sequence of actions, they must be
3 considered as one dispute."

4 Contrary to what the Claimant asserts, the
5 correct test, we respectfully submit, for determining
6 whether the Claimant has referred one or two disputes to
7 the Tribunal is not whether the two disputes concern a
8 single sequence of events, but whether the two disputes
9 share the same subject matter. And as I have already
10 explained, the subject matters are quite different.

11 The Claimant assertion that its Claims concern
12 one single event is, in any event, incorrect. We have said
13 that at Rejoinder 684. The actions and events which form
14 the subject matter of the Termination Dispute culminated in
15 the termination of the Amended Investment Contract. The
16 actions and events which form the subject matter of the Tax
17 Dispute, on the other hand, culminated in the enforcement
18 of the tax debt against Manolium-Engineering's only asset
19 at the time, the New Communal Facilities and their
20 subsequent transfer into municipal ownership.

21 Whichever way you look at it, the termination
22 dispute is, therefore, different from the Tax Dispute.

23 And the Respondent's position is that both
24 disputes arose before the EU Treaty came into force on 1st
25 of January 2015. As explained in Defence 408, and

03:31:17 1 time, in fact, Mr. Dolgov was already well aware of
2 Manolium-Engineering's liability to pay the land taxes
3 because his own accountant, Ms. [REDACTED], the accountant
4 with Manolium-Engineering had made numerous attempts to get
5 him to pay the taxes from as early as February 2013.

6 That's in Defence 320 and in Ms. [REDACTED]
7 Witness Statement at 30 to 38. Mr. Dolgov simply decided
8 that he was not going to pay taxes.

9 In its Opening Presentation, in part--in
10 jurisdiction part, on Slide 20, the Claimant, this morning,
11 relied, for the first time, on a passage from Maffezini in
12 Spain, in which the Tribunal drew a distinction between the
13 dispute over clearly identifiable issues and mere general
14 grievances which does not constitute a dispute.

15 Both the Termination Dispute and the Tax Dispute
16 have developed well beyond general grievances by the time
17 the EU Treaty came into force. With regard to the
18 Termination Dispute, the clearly identifiable issue was
19 Mr. Dolgov's mistaken belief that the City of Minsk were in
20 breach of their obligation under the Amended Investment
21 Contract, in respect of which he threatened to submit a
22 claim to international court.

23 With regard to the Tax Dispute, the clearly
24 identifiable issue was Manolium-Engineering's blatant
25 refusal to pay its land taxes, as demanded by the District

03:29:43 1 Rejoinder 696, the Termination Dispute regarding the
2 performance of the Amended Investment Contract arose in
3 early 2012.

4 This was when Mr. Dolgov began to insist that
5 Manolium-Engineering was entitled to compensation for all
6 monies spent on the New Communal Facilities exceeding
7 15 million, which the City of Minsk and Minsktrans
8 disagreed with. And that's at Rejoinder 696.

9 In April 2012, Mr. Dolgov threatened to submit a
10 claim to international court and seek compensation of the
11 costs for the construction of the New Communal Facilities.
12 That is R-79.

13 In June 18, 2012, the City of Minsk wrote
14 directly to Mr. Ekavyan, saying that unless he was able
15 to--and I quote from Exhibit R-89--unless he was "able to
16 intervene and resolve the situation by resuming financing,
17 the City of Minsk would be left with no choice but to apply
18 to courts for termination."

19 The Tax Dispute, on the other hand, arose in
20 early 2014, when the District Tax Inspectorate demanded
21 that Manolium-Engineering comply with its land tax
22 obligations for the years 2013 and 2014.

23 That's R-111 and 112, and references to Defence
24 412 and Rejoinder 707.

25 Manolium-Engineering refused to do so. By this

03:32:55 1 Tax Inspectorate in early 2014. Therefore, according to
2 Maffezini, both the Termination Dispute and Tax Dispute had
3 arisen before 1st of January 2015.

4 As explained in the Rejoinder, at 696, 723, the
5 acts or events the Claimant complains about which occurred
6 before the Treaty entered into force--which occurred after
7 the Treaty entered into force, such as the Supreme Court
8 ruling in January 2015, as well as the transfer of the New
9 Communal Facilities to Minsk in 2017, did not recrystallize
10 or transform the Termination or the Tax Dispute into new
11 disputes over which the Tribunal has jurisdiction.

12 And as Tribunal found in the case of Phosphates
13 in Morocco--that's at RL-39--these acts, or events,
14 constitute--and I quote--"subsequent factors which either
15 presume the existence or are merely the confirmation or
16 development of earlier situations of facts constituting the
17 real causes of the dispute, rather than sources of a new
18 dispute."

19 Firstly, the Supreme Court Decision of 27th of
20 January 2015 did not recrystallize the Termination Dispute
21 into a new dispute over which the Tribunal has
22 jurisdiction. The disagreement before the Supreme Court
23 was exactly the same disagreement that has arisen by
24 mid-2012, when Mr. Dolgov threatened to submit a claim to
25 an international court.

03:34:32 1 A very similar factual scenario was the subject
 2 of ATA against Jordan case, at RL-32, where the Tribunal
 3 held that a Supreme Court Decision did not recrystallize
 4 the dispute into a new dispute.
 5 The Respondent sets out its position in detail at
 6 Rejoinder 796 to 705.
 7 Secondly, the tax assessments in 2016, that are
 8 transfer of the facilities into municipal ownership in
 9 2017, were merely the development or consequence of the
 10 disagreement between Manolium-Engineering and the tax
 11 authorities regarding Manolium-Engineering's obligation to
 12 pay land tax, which arose in early 2014, well before the
 13 Treaty entered into force.
 14 And that's at the Rejoinder 720-723.
 15 The Claimant misrepresents the nature of the
 16 Presidential Order so to create the impression that the
 17 President of Belarus secretly instructed that the New
 18 Communal Facilities be transferred into municipal ownership
 19 and, by doing so, the Claimant's attempts to shift the
 20 emphasis of the Tax Dispute away from its real cause. And
 21 that is Manolium-Engineering's blatant refusal to pay tax.
 22 The Respondent's position is, therefore, that the
 23 Tribunal does not have jurisdiction over either the
 24 Termination or the Tax Dispute because both arose before
 25 the Treaty entered into force.

03:35:58 1 ARBITRATOR ALEXANDROV: Can I ask you if you're
 2 done with the *ratione temporis* objection?
 3 MS. ZAGONEK: I have just one more point.
 4 ARBITRATOR ALEXANDROV: Please, and then I want
 5 to ask you a question before we proceed to the next
 6 objection.
 7 MS. ZAGONEK: Sure.
 8 ARBITRATOR ALEXANDROV: Thank you.
 9 MS. ZAGONEK: The second element of the
 10 Respondent's *ratione temporis* objection relates to the fact
 11 that the Claimant bases its claims very heavily on conduct
 12 that occurred before the Treaty came into force on
 13 January 2015. And it is an established principle that
 14 actions or conduct which occurred before a treaty enters
 15 into force cannot substitute breach of the Treaty.
 16 And that is Defence 392 and the Rejoinder 666.
 17 The Respondent sets out a full list of the
 18 Claimant's Claim concerning pre-Treaty conduct at Rejoinder
 19 737. Most importantly, the Termination of the Amended
 20 Investment Contract on which the Claimant bases its
 21 expropriation and lost profit claim came into effect on
 22 29 October 2014. That's at Rejoinder 386.
 23 And I shall return to this issue a little later
 24 when I discuss Termination Dispute in more detail.
 25 I'm done with the *ratione temporis*.

03:37:03 1 ARBITRATOR ALEXANDROV: Thank you. I apologize I
 2 interrupted you earlier. Actually, I have two questions.
 3 One is very quick one.
 4 On your Slide Number 3, which is the text of the
 5 EEU Treaty, I think you said--and if I misunderstood you,
 6 please correct me--that in Russian--the word for "arising"
 7 is not past tense, but in future tense.
 8 MS. ZAGONEK: It is present continuous, which is
 9 used--
 10 ARBITRATOR ALEXANDROV: Present continuous.
 11 Okay. I agree. I misunderstood you then because it is the
 12 exact translation of "arising," and in English "arising"
 13 means which arise, meaning present tense, not past, but not
 14 future. Okay. Thank you for the clarification.
 15 The second question is in relation to retroactive
 16 application of treaties. Retroactive application meaning
 17 treaties don't apply before the Effective Date. Again, I'm
 18 confused because I don't think that applies to the date
 19 when a dispute arises, it applies to when the breach takes
 20 place because a provision of a Treaty cannot be breached
 21 before it becomes effective.
 22 So, let me give you an example. If there is, for
 23 example, discriminatory treatment that starts in 2010, the
 24 EEU Treaty comes into force on January 1, 2015. Based on
 25 the principle of retroactivity, there wouldn't be--this

03:38:31 1 discriminatory treatment would not be a breach before
 2 January 1, 2015, because there is no prohibition under that
 3 Treaty, but it would be a breach if it continues after
 4 January 1, 2015, because discrimination is prohibited
 5 regardless of the fact that it began earlier. Or am I
 6 misunderstanding the principle of retroactivity?
 7 MS. ZAGONEK: No. The point that I was
 8 making--and I do agree with you, and I think you mentioned
 9 that earlier when the Claimants were making their
 10 submission--is that it matters when--it matters when the
 11 breach occurs, certainly. And we say that the acts--the
 12 Claimant says that even acts or conduct that occurs before
 13 the EEU Treaty enters into force may constitute violations
 14 of the EEU Treaty, and as you quite rightly say, they form
 15 part of the competence of creeping expropriation.
 16 We are saying that only acts and measures--I
 17 mean, it's an interpretation of what is an act or measure.
 18 But I would say that the main principle is that a State
 19 cannot acquire a liability that is capable of--obligation,
 20 rather, that is capable of being breached before the Treaty
 21 comes into force. And then what happens after has to be
 22 viewed and the behavior that comes after has to be viewed
 23 in that context.
 24 ARBITRATOR STERN: I have also a question on
 25 *ratione temporis*.

03:40:14 1 I would like to be sure--well, if we go back to
 2 slide--well, maybe the Tax Dispute. Oh, which slide is the
 3 best? Maybe the second one. So, we understand, I mean,
 4 you say that Manolium becomes liable to pay land tax 1st,
 5 January 2013, and this was asked by the district Tax
 6 Inspectorate on 21st, February 2014. I would like to be
 7 sure I understand, what was the basis for the obligation to
 8 pay land tax in 2013 requested by Belarus because--if you
 9 could clarify this.
 10 MS. ZAGONEK: Yes. I will go into that today
 11 when I go address the Tax Dispute, but can I say that in
 12 2013, there was a change in tax legislation which meant
 13 that, for two years that the Claimant didn't account for
 14 separately for land and property taxes; whereas, he did
 15 before 2010. He, again, became liable to file tax returns
 16 separately and pay separately the land taxes. That's what
 17 happened on January 2013, as a matter of normal application
 18 of the Tax Code that applied to everyone. It wasn't a
 19 special treatment of the Claimant. It's--the Tax Code had
 20 particular changes made.
 21 And I will address that in more detail when I
 22 talk about Tax Dispute, because also, the way that the
 23 Claimant chose that it would be taxed under simplified
 24 regime or not simplified regime effectively meant that for
 25 two years it didn't have to file that return prior to 2013,

03:42:21 1 and then, it again--again became liable to both file and
 2 pay land taxes separately.
 3 ARBITRATOR STERN: Okay. Thank you.
 4 MS. ZAGONEK: Yeah. Mr. Alexandrov, just to be
 5 sure that I have answered your question on the continuity,
 6 obviously the Respondent's position is that there wasn't a
 7 continuing breach. We say that on the 29th of October, the
 8 contingent rights to develop the Investment Object was lost
 9 forever. So, that--everything has been extinguished by
 10 that time if we talk about that. And also, my colleague--I
 11 mean, I'll talk about it shortly, so I don't want to
 12 preempt myself.
 13 Now, I move to the contractual objection. The
 14 second objection of which I wish to draw the Tribunal's
 15 attention at this stage to is that referred to in the
 16 submissions as the contractual objection, namely, that both
 17 the City of Minsk and Minsktrans were acting in a
 18 contractual, non-sovereign capacity in their relations with
 19 the Claimant and with Manolium-Engineering up until the
 20 termination of the Contract came into effect on 29th of
 21 October 2014.
 22 It is an established Principle that only conduct
 23 carried out in a sovereign or governmental capacity
 24 constituted a breach of a State's obligation under
 25 International Law. And we set that in detail in Defence

03:43:50 1 434 to 436, and Rejoinder 769. The practical significance
 2 of this is that, if the Tribunal does not agree with the
 3 Respondent's *ratione temporis* objection, but does accept
 4 its contractual objection, the scope of the issues is that
 5 the Tribunal needs to address on the Merits will be
 6 significantly narrower.
 7 The Respondent sets out a full list of all the
 8 Claimants' claim which concern purely contractual conduct
 9 and Rejoinder 759, and more significantly, the Claimant
 10 alleges that the City of Minsk termination of the Contract
 11 was an expropriation and a breach of the FET Standard. And
 12 that's Reply 577, 631, and 632.
 13 However, as explained in the Defence at 438 and
 14 Rejoinder 791 to 800, the City of Minsk acted in a pure
 15 contractual capacity in applying to terminate the Contract,
 16 exercising its contractual right under Clause 16(2)(1), as
 17 any private Contracting Party could have done in the
 18 circumstances, and, therefore, the City of Minsk's conduct
 19 could not *prima facie* constitute breach of EEU Treaty.
 20 The Claimant deliberately puts everything in the
 21 mix by arguing that all actions of the City of Minsk and
 22 Minsktrans were exercises of sovereign power and not
 23 distinguishing between particular measures. That is in the
 24 Reply 435.
 25 This is inadequate and, in our submission,

03:45:23 1 plainly sloppy. The task is to determine whether the
 2 measures carried out by the City of Minsk and Minsktrans in
 3 performing their contractual obligations under the Amended
 4 Investment Contract involved any exercise of sovereign
 5 authority. The Claimant doesn't even attempt to apply this
 6 test in its written submission, nor we've heard nothing
 7 about it this morning.
 8 *Ratione materiae* objection is the third
 9 jurisdiction objection I would like to draw very briefly.
 10 In the notice, the Claimant seeks to create the impression
 11 that it invested into Belarus by financing the construction
 12 of the New Communal Facilities. And by way of an example,
 13 it asserts in the notice of three--at 343 that, and I
 14 quote--"the financing of the design and the construction of
 15 the New Communal Facilities constitutes an investment by
 16 the Claimant. In the Reply, however, the Claimant
 17 discloses for the first time"--that is Reply 48--"that, in
 18 fact, the sums invested on the construction of the
 19 facilities were loaned to Manolium-Engineering and not to
 20 the Claimant by third-party entities incorporated in the
 21 U.K., Cyprus, the Isle of Man, and they were not--and not
 22 by the Claimant itself. So, no money came from the land of
 23 Russia or the Claimant.
 24 At the same time, the Claimant keeps up the
 25 pretense that the investments made by these third-party

03:46:55 1 entities constitute an investment by the Claimant and seeks
 2 compensation for losses that it did not itself suffer. For
 3 example, at Reply 828, the Claimant refers to third-party
 4 loans to Manolium-Engineering as the "Claimant's costs."
 5 In its Opening presentation today at Slides 35 to
 6 38 of the jurisdictional part, the Claimant also continues
 7 to rely on the various case relating to source of funds.
 8 As explained at Rejoinder 883 to 886, these cases are
 9 irrelevant on the present facts because the Claimant itself
 10 did not invest anything.
 11 As explained in the Rejoinder 858904, the
 12 Claimant's attempt to recover amounted loan to
 13 Manolium-Engineering by these third-party entities should
 14 fail for the following reasoning: Firstly, the language of
 15 the Protocol 16 of the Treaty plainly provides that only
 16 assets invested by an investor of the EEU Member State will
 17 constitute a protected investment. The amounts loaned to
 18 Manolium-Engineering, not to the Claimant, by third parties
 19 incorporated in the U.K., Cyprus, Isle of Man, are not
 20 protected under the EEU Treaty.
 21 Secondly, it's an established principle of
 22 international law that the Claimant should only be entitled
 23 to compensation to the extent of its own loss. If the
 24 Claimant were permitted in the present proceedings to seek
 25 damages for the losses suffered by third parties' entities,

03:48:33 1 it would be compensate for the loss it never itself
 2 suffered.
 3 And, thirdly, the Claimant's interpretation would
 4 prejudice the rights of Manolium-Engineering's third-party
 5 creditors which may well have claims of their own under
 6 their respective bilateral or multilateral agreements with
 7 Belarus.
 8 The Respondent also raises jurisdictional
 9 objections in relation to the attribution of Minsktrans'
 10 conduct to the Respondent.
 11 PRESIDENT FERNÁNDEZ-ARMESTO: One second. This
 12 Page 7, you have Russia, a blue box, and it says
 13 "Manolium-Processing, LLC."
 14 MS. ZAGONEK: Yeah.
 15 PRESIDENT FERNÁNDEZ-ARMESTO: Which, I assume,
 16 this to be the Claimant?
 17 MS. ZAGONEK: Correct.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: Then at the bottom,
 19 you have a company which is Foreign, LLC
 20 Manolium-Processing.
 21 MS. ZAGONEK: That is a Belarusian company.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: It's a Belarusian
 23 company?
 24 MS. ZAGONEK: Correct. As you can see in the
 25 square, in the green square, it says "Belarus." There are

03:49:38 1 two entities, the foreign enterprise Manolium-Engineering
 2 and Foreign, LLC Manolium-Processing. Both are Belarus--
 3 PRESIDENT FERNÁNDEZ-ARMESTO: Processing or
 4 proceeding?
 5 MS. ZAGONEK: Processing. Apologies. That's our
 6 inability to type.
 7 PRESIDENT FERNÁNDEZ-ARMESTO: So, it's
 8 processing?
 9 MS. ZAGONEK: It's processing.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: So, my question to
 11 you is because I'm slightly lost now. Is it the same as
 12 Manolium-Processing that the Claimant OOO
 13 Manolium-Processing or not?
 14 MS. ZAGONEK: No. It's a different entity.
 15 PRESIDENT FERNÁNDEZ-ARMESTO: If I go to Russia,
 16 I see there a company which also called
 17 Manolium-Processing, LLC.
 18 MS. ZAGONEK: Correct. I think they do it not to
 19 forget. They call everything Manolium-Processing. And
 20 then in different jurisdictions, there are various
 21 Manolium-Processing. So, there is Manolium-Processing, LLC
 22 in Russia, I understand, Manolium-Processing in Belarus.
 23 PRESIDENT FERNÁNDEZ-ARMESTO: Because the
 24 Claimant--sorry for the--the Claimant is called OOO
 25 Manolium-Processing, and it is a Russian company. Let me

03:50:40 1 look to Mr. Khvalei.
 2 The Claimant is a Russian company and it is
 3 so-called OOO Manolium-Processing?
 4 MR. KHVALEI: Mr. President, OOO stands for
 5 "Russian Obchtchestvos Ogranitschennoy Otvetstvennostuy,"
 6 which is limited liability company. So, limited liability
 7 company abbreviation in English is LLC; in Russian OOO.
 8 Okay?
 9 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So, your
 10 point is LLC and OOO is the same?
 11 MR. KHVALEI: The same. That's first point. My
 12 second point is, and these are two companies, called
 13 Manolium-Processing, LLC. One is registered in Russia--
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Okay.
 15 MR. KHVALEI: --and another is registered in
 16 Belarus. The same name--
 17 PRESIDENT FERNÁNDEZ-ARMESTO: Okay.
 18 MR. KHVALEI: --but different countries. The
 19 company registered in Belarus, Manolium-Processing, is
 20 established by Manolium-Processing, LLC, by Russian
 21 company, and by Mr. Dolgov. So, there are two
 22 shareholders: Russian Manolium-Processing and Mr. Dolgov
 23 himself.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. We have
 25 now cleared the issue. "LLC" and "OOO" is the same, and

03:51:50 1 there are two companies with exactly the same name, one in
 2 Russia and one in Belarus.
 3 MS. ZAGONEK: Correct. They are two distinct
 4 legal entities. And I believe the Tribunal had the
 5 pleasure of considering one of those entities when there
 6 was an application for interim measures made, but we have
 7 seen no evidence of the ownership apart from what's
 8 provided in the submissions by way of a chart.
 9 PRESIDENT FERNÁNDEZ-ARMESTO: Just so that
 10 we--sorry if I interrupt.
 11 MS. ZAGONEK: That's all right.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: I'll do it at the
 13 end. At the end I will ask you. We'll come back and you
 14 can continue now because I don't want to interrupt you.
 15 Afterwards, I'll have some questions from Claimant on this
 16 structure.
 17 MS. ZAGONEK: Sure.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: On the objection,
 19 yes, not on the facts. Of course.
 20 ARBITRATOR ALEXANDROV: On the objection. Just
 21 to make sure I understand this objection.
 22 And I'll give an example to make sure I
 23 understand it.
 24 If I'm a Russian investor, I want to buy a
 25 factory in Belarus. I set up a subsidiary in Belarus to

03:54:36 1 it matter? Can I just finish?
 2 MS. ZAGONEK: Yes.
 3 ARBITRATOR ALEXANDROV: Why would it matter where
 4 the money is coming from? It's not the money that is the
 5 investment. It's the subsidiary and its business.
 6 MS. ZAGONEK: Well, in our submission, it
 7 wouldn't matter if it was--we were today hearing the Claim
 8 of a Claimant, and the protection is afforded to the
 9 Claimant that is the entity registered in the Russian
 10 Federation. And the investment on the definition of
 11 investments, it's a tangible/intangible assets invested by
 12 an investor of a Member State on--including funds. And on
 13 our reading, if those money came via the Claimant, there
 14 would be absolutely no issue. But there are loans that are
 15 acquired by the Belarusian--we are told, by Belarusian
 16 entities from third-party--essentially third-party
 17 investors.
 18 And so, the Cypriot entity, Lascker, Limited, or
 19 Manolium Trading, Limited registered in Cyprus, arguably is
 20 the investor and should really use the BIT between Belarus
 21 and Cyprus to bring their claims, and equally United
 22 Kingdom.
 23 Bradley Enterprise is NOMAL Oil Limited. They
 24 have invested into Belarus, and they have protection under
 25 the relevant treaties. But the Claimant, which is a

03:52:57 1 buy this factory. And instead of transferring money from
 2 the parent company in Russia to my subsidiary in Belarus, I
 3 have a very successful business, let's say, in Kazakhstan,
 4 and I transfer money from my affiliate in Kazakhstan into
 5 Belarus to buy this factory.
 6 You're saying I would not be protected by the
 7 Treaty as a Russian investor. Is that your argument?
 8 MS. ZAGONEK: Well, we are guided by the wording
 9 in Protocol 16, which says--which plainly says that only
 10 assets invested by an investor or Member State. The issue
 11 here is we have no idea how--and no evidence has been
 12 presented in these proceedings apart from just a chart in
 13 submissions as to the ownership of all these entities. We
 14 are none the wiser just because they are the same--just
 15 because they are called the same, and we have to believe
 16 Mr. Dolgov or Mr. Ekavyan or the Claimant's counsel that
 17 they are, in fact, related, we don't know.
 18 ARBITRATOR ALEXANDROV: But why does it matter is
 19 my question? Because whether my subsidiary, investments
 20 made, I have made an investment by setting up a subsidiary.
 21 That is my investment. Where it borrows money from doesn't
 22 really matter, does it? It can borrow from a bank. It can
 23 borrow from Bank of America in the U.S. It can borrow from
 24 a Belarusian bank. It can borrow from a bank in Russia.
 25 It can borrow from my affiliate in Kazakhstan. Why would

03:56:00 1 Russian entity, which hasn't received money from those
 2 entities, is bringing its claim, and the money came
 3 directly from those entities. Again, I repeat, there is
 4 nothing in the case file which shows that they are, in
 5 fact, related to the Claimant at all. We just have to
 6 believe.
 7 ARBITRATOR ALEXANDROV: So, under this theory,
 8 under your argument, if Manolium-Engineering would borrow
 9 from Bank of America, then the real investor is Bank of
 10 America?
 11 PRESIDENT FERNÁNDEZ-ARMESTO: You can give it
 12 some thought.
 13 MS. ZAGONEK: I'm not sure I understand, but,
 14 yeah.
 15 PRESIDENT FERNÁNDEZ-ARMESTO: Give it some
 16 thought if you want, and you come back afterwards, and you
 17 go on with your presentation. Sorry for all the
 18 interruptions.
 19 MS. ZAGONEK: I mean, the Claimant would have
 20 been then the Belarus entity. If a Belarus entity borrowed
 21 from Bank of America, it would be the Belarus entity
 22 claiming the losses because it would be the Belarus entity
 23 that has suffered those losses, which is why you see now
 24 the empty box. We fail to see what are the losses that are
 25 suffered by a Russian entity. The only loss that may

03:57:20 1 have--the only potential claim is it may have suffered
 2 losses are the Cypriot, United Kingdom, and Belarus, but
 3 not the Russian Claimant.
 4 We're not discussing here whether Belarus company
 5 has suffered losses. We're not discussing whether Cypriot
 6 and United Kingdom entities. We are trying to ascertain
 7 what is it that the Russian entity Manolium-Processing, LLC
 8 has lost. And on the documents we have available, it
 9 appears that it has lost nothing.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Why
 11 don't you continue?
 12 MS. ZAGONEK: Thank you.
 13 Now, briefly on to the Belarusian Investment Law.
 14 The Respondent raised jurisdictional objection in relation
 15 to the attribution of Minsktrans' conduct to the Respondent
 16 under the ILC Article 5 and also the Tribunal's
 17 jurisdiction under Belarus Investment Law. In fact, we
 18 call it the "Minsktrans Objection." That is closely
 19 connected to the contractual objection and we believe
 20 addressed in sufficient detail at Defence 441 to 454 and at
 21 Rejoinder 826 to 857.
 22 Given that Claimant does not even raise any
 23 claims concerning conduct of Minsktrans in its written
 24 submission, I don't want to address this issue now. And
 25 the latter objection concerns the Claimant's mistaken

03:58:51 1 submission that the Tribunal has jurisdiction under
 2 Belarusian Investment Law. However, contrary to what the
 3 Claimant said before lunch at Slide 72 of its presentation,
 4 there is nothing in the preamble and elsewhere in the 2014
 5 Investment Law of Belarus that implies that it covers
 6 existing investments.
 7 The Respondent's submission that the 2014
 8 Investment Law extends to future investments, and as we
 9 have already explained in the Defence at 467 and at
 10 Rejoinder 912 to 920, the Law on Normative Legal Acts at
 11 Article 67, which is RL-49, states that in order for a law
 12 to apply retroactively, it must contain express provision
 13 to that effect. So, the Claimant hasn't addressed neither
 14 in the Reply, nor this morning, this issue.
 15 In the Rejoinder at 913, we provide a few
 16 examples of how retroactivity clause is originally worded
 17 in Belarus Normative Acts, and there is no provision of
 18 similar nature that is included in 2014 Investment Law.
 19 So, the summary of differences on legal issues is
 20 the next I'd like to go over. The Tribunal will be
 21 familiar with the test for denial of justice,
 22 expropriation, and breach of FET, which the Parties have
 23 addressed in detail in their written submissions. I,
 24 therefore, do not intend to go over the well-trodden
 25 ground, given the time constraints. However, I would like

04:00:17 1 to bring the Tribunal--draw the Tribunal's attention to
 2 certain key differences in the legal positions between the
 3 Parties.
 4 Firstly, the Respondent's position is that to
 5 prevail in its claims concerning the termination of the
 6 Amended Investment Contract, the Claimant must prove that
 7 the court proceedings in which the Contract was terminated,
 8 violated the Treaty as the Tribunal held in Azinian and
 9 United Mexican States. A Governmental authority surely
 10 cannot be faulted for acting in a manner validated by its
 11 courts unless the courts themselves are disavowed at the
 12 international level. It is, therefore, particularly
 13 striking that in the 274 slides presented to the Tribunal
 14 this morning, the Claimant doesn't even attempt to argue
 15 that the Belarusian Court proceedings in which the Contract
 16 was terminated did, in fact, violate the Treaty.
 17 Presumably, the reason why the Claimant is
 18 reluctant to discuss the Court proceedings is because it
 19 knows full well that it's not able to satisfy the demanding
 20 test necessary to prevail in International Law claims
 21 concerning domestic court proceedings.
 22 Secondly, the Parties disagree as to whether the
 23 substantive provisions of the Treaty can be applied to
 24 conduct which occurred before the Treaty entered into force
 25 if the conduct complained of was part of compositive of

04:01:40 1 series of measures.
 2 The Claimant suggested at Reply 417 and today in
 3 its presentation, that even acts of conduct which occurred
 4 before the Treaty entered into force may constitute
 5 violations of the Treaty if they form part of a composite
 6 or creeping expropriation which culminated after the Treaty
 7 came into force. And in our submission, this is misguided.
 8 The ILC Commentary at Article 15, CL-87, expressly confirms
 9 that if a Claim is framed as a composite act to a creeping
 10 expropriation, only the acts or measures which occurred
 11 after the Treaty entered into force constitute a breach.
 12 In practice, this means that the Claimant's claim
 13 regarding termination of the Contract must fail because
 14 termination occurred before the Treaty came into force.
 15 Thirdly, the Parties disagree as to applicable
 16 standard of proof for the Claimant's claim. In particular,
 17 the Claimant raises various spurious allegations of bad
 18 faith, conspiracy, harassment, not providing any concrete
 19 evidence in support of its accusations.
 20 The Respondent's position is that there is a
 21 fairly high standard of proof for allegations of bad faith
 22 and state conspiracy, and that the burden of proof is one
 23 on the Claimant.
 24 And this is confirmed by cases such as
 25 Rumeli/Kazakhstan, Rompetrol/Romania, Tokios Tokelés and

04:03:00 1 the burden of proof--the standard of proof is a very high.
 2 The tasks for the Tribunal to determine whether
 3 the Claimant has met this demanding standard of proof, and
 4 the Respondent submits that it has not.
 5 I now move to talk about the Termination Dispute.
 6 As I mentioned--
 7 (Comments off microphone.)
 8 MS. ZAGONEK: And a sauna that we've seen in the
 9 pictures today. Thank you.
 10 Now I'd like to move to discuss in more detail
 11 the Termination Dispute. As I mentioned, it arises out of
 12 a disagreement between the Claimant, Manolium-Engineering,
 13 the City of Minsk and Minsktrans regarding their respective
 14 rights under the Contract.
 15 The Termination Dispute culminated in termination
 16 of the Contract through Belarusian Court proceedings which
 17 the Claimant claimed was an expropriation and a violation
 18 of the FET Standard. The first key issue for the Tribunal
 19 to determine is, therefore, whether the termination of the
 20 Contract violated the Treaty. Before I address this
 21 question, I would like to draw to the Tribunal's attention
 22 the Claimant's legal and factual position regarding
 23 Termination Dispute and how it has transformed during the
 24 written submissions.
 25 In the Notice the Claimant's expropriation claim

04:07:35 1 On the one hand, the Claimant now alleges at
 2 Reply 383-384, that the expropriation occurred when the
 3 Supreme Court rendered its judgment on 27 of January 2015,
 4 rather than when the Appellate Instance Court rendered the
 5 judgment on 29th of October 2014.
 6 And the Claimant instructs now Mr. Taylor to
 7 adopt the 27th of January 2015 date as the Valuation Date
 8 for calculating Fair Market Value of the Investment Object.
 9 That's at 231 of the Expert Report.
 10 On the other hand, the Claimant contends that it
 11 was not until September 2017 when the rights to develop the
 12 land plots designated for the Investment Object was sold to
 13 another investor that the Claimant was, and I quote,
 14 "totally deprived of its right under the Investment
 15 Contract."
 16 So, even within the Reply, the Claimant's
 17 expropriation claim is riddled with contradiction. On the
 18 one hand it argues that it lost its contractual rights when
 19 the Supreme Court rendered its judgment in January 2015.
 20 On the other hand, it argues that it lost the same
 21 contractual right later in September 2017. And it is the
 22 Respondent's submission that both these positions offered
 23 by the Claimant are equally misguided.
 24 As the Respondent explains in the Rejoinder 386,
 25 Article 423(3) of the Belarusian Civil Code provides that

04:05:55 1 is focused exclusively on the termination of the amended
 2 Investment Contract. To quote from the notice at 513
 3 to--512-513, "The Claimant submits that Belarus illegally
 4 expropriated the Claimant's investment as a result of the
 5 termination of the amended Investment Contract, and that
 6 the termination of the amended Investment Contract
 7 constitutes an indirect expropriation."
 8 Also in the Notice at 479, the Claimant refers to
 9 29th of October 2014 as the date on which, and I quote,
 10 "the amended Investment Contract was finally terminated."
 11 The Claimant also instructed its Quantum Expert,
 12 Mr. Taylor, to define the 29th of October 2014 as the
 13 expropriation date in his First Expert Report. That's the
 14 CER-1 at Page 5. In the Defence at 425, the Respondent
 15 submits that the termination of the amended Investment
 16 Contract on 29 October 2014 cannot prima facie breach the
 17 EEU Treaty because it occurred before the Treaty entered
 18 into force on 1st of January 2015. In reply, however, the
 19 Claimant appears to maintain that--and I quote from Reply
 20 577--"that termination of the Investment Contract should be
 21 considered an expropriation."
 22 However, apparently in response to the
 23 Respondent's *ratione temporis* objection, the Claimant
 24 transforms its position as to when the alleged
 25 expropriation occurred.

04:09:09 1 termination of a contract occurs when the Parties'
 2 contractual obligations are rescinded, and they are
 3 rescinded from the moment the termination enters into legal
 4 force. In Article 204 of the Belarusian Code of Commercial
 5 Procedure provides that, if at First Instance Court--if a
 6 First Instance Court judgment is appealed and then
 7 subsequently upheld by an Appellate Court, the judgment
 8 comes into legal force when the Appellate Court renders its
 9 judgment. It's 29th of October 2014 when the Appeal
 10 Instance Court upheld the Decision of the Economic Court of
 11 Minsk.
 12 The Claimant's contractual obligation under the
 13 amended Contract were, therefore, fully extinguished when
 14 the Appeal Court rendered its decision on 29th of October,
 15 several months before the Treaty came into force.
 16 In support of its new position in the Reply and
 17 the alleged expropriation of its contractual rights
 18 occurred when the Supreme Court rendered its decision in
 19 January 2015, the Claimant relies on Romania/Kazakhstan
 20 where the Tribunal held that it was the presidium of the
 21 Supreme Court of Kazakhstan which had carried out the final
 22 Act of taking of the Claimant's investment.
 23 It is our submission that Rumeli is clearly
 24 distinguishable from the present case as the Respondent
 25 sets out in the Rejoinder 748-749. In particular, in that

04:10:41 1 case, the Tribunal found that the presidium of the Supreme
 2 Court had itself expropriated the Claimant's investments by
 3 placing a Valuation of 3,000 on the Claimant's shares,
 4 which were sold a year later for 3 million.
 5 In the present case, by contrast, the alleged
 6 expropriatory act, the termination of the Contract,
 7 occurred when the appeal instance issued its decision on
 8 29th of October, and not when the Supreme Court rendered
 9 its judgment in January 2015.
 10 In the Opening Presentation, the Claimant has
 11 raised a new argument that a denial-of-justice claim does
 12 not crystallize until the final judicial instance which is
 13 available has rendered its decision. At the same time,
 14 however, the Claimant maintains that it is not bringing a
 15 claim for denial of justice, and remarkably, doesn't even
 16 refer to the termination proceedings in its presentation
 17 this morning. And that's Claimant's Opening Presentation
 18 in Section 3, Slide 31. The Claimant's position is,
 19 therefore, contradictory and doesn't hold up, and we are
 20 none the wiser following this morning's Opening
 21 Submissions.
 22 The Claimants reformulation of its expropriation
 23 claim in the Reply is, therefore, nothing more, we submit,
 24 that an artificial attempt to bring it within the
 25 substantive scope of the EEU Treaty protection. This

04:13:30 1 construction commission and having transferred the
 2 facilities to the City of Minsk, Manolium-Engineering would
 3 obtain from Minsk City the right to develop the Investment
 4 Object on a plot of land in the center of Minsk.
 5 As you can see from the wording of Clause 4, the
 6 Minsk City's obligation to grant Manolium-Engineering the
 7 right to develop the Investment Object was made conditional
 8 on Manolium-Engineering fulfilling its obligation to
 9 construct, commission, and transfer the facilities to
 10 Minsk.
 11 Under Clause 16.2.1, the City of Minsk was
 12 entitled to submit a claim to the courts to terminate the
 13 Contract if, as a result of delays caused by the Claimant,
 14 Manolium-Engineering did not construct and commission the
 15 new facilities by the deadline in Clause 6.1. That is
 16 C-66.
 17 The Claimant seeks support for its position in
 18 the Termination Dispute by misconstruing or simply ignoring
 19 the plain wording of the amended Investment Contract. Its
 20 first misguided interpretation is that
 21 Manolium-Engineering's rights to develop the Investment
 22 Object was guaranteed if it spent 15 million on a/the
 23 construction. And that's in the Reply at 546.
 24 This is incorrect for two reasons. Firstly,
 25 Manolium-Engineering's right to develop under Clause 4 was

04:12:05 1 attempt must fail. The substantive provisions of the
 2 Treaty do not apply retroactively to acts which occurred
 3 before it entered into force, including the termination
 4 which occurred on 29th of October 2014.
 5 If, however, the Tribunal disagrees with the
 6 Respondent's position and finds that termination of the
 7 Contract occurred after the Treaty comes into force, the
 8 Tribunal should proceed to determine whether the
 9 termination of the Contract constitute a breach under the
 10 Protocol of the EU Treaty.
 11 And, as I hope to show, the Claimant claims
 12 concerning the termination of the Investment Contract are
 13 equally hopeless on the merits as they are on jurisdiction.
 14 Given that the Termination Dispute in our submission is
 15 essentially a contractual dispute concerning contractual
 16 issues, I believe it might be helpful to start by briefly
 17 taking the Tribunal through its terms. I shall then
 18 proceed to show how the Claimant in Manolium-Engineering
 19 breached them, entitling the City of Minsk to submit the
 20 Claim for termination to courts.
 21 The deal under the Contract was simple:
 22 Manolium-Engineering agreed under Clauses 8(1), 8(8), and
 23 8(11) to construct and commission the New Communal
 24 Facilities by the deadline set out in Clause 6.1 of the
 25 Contract. Upon fulfilling its obligations, the

04:14:59 1 contingent upon its fulfilling its obligation under the
 2 Contract to construct, commission, and transfer the
 3 facilities to Minsk rather than on the Claimant's investing
 4 any particular amount.
 5 Secondly, the Claimant expressly agreed under
 6 Clause 710 that it would finance the construction of the
 7 communal facilities whatever the cost, including if costs
 8 run over \$15 million. The Claimant's second misguided
 9 interpretation of the Contract at Reply 635 is that the
 10 only ground on which Minsk City could apply to terminate
 11 the Contract was if the Claimant spent less than
 12 15 million. This is, again, plainly wrong.
 13 The City became entitled under Clause 16.2.1 to
 14 submit a claim to terminate the Contract if
 15 Manolium-Engineering failed to construct and commission the
 16 facilities by the deadlines agreed under Clause 6.1 as a
 17 result of delays caused by the Claimant.
 18 Lastly, the Claimant raises a late argument in
 19 the Reply, which it repeats today--repeated today in the
 20 opening, that it agreed to the amended Investment Contract,
 21 under, and I quote, from the Reply 333-335--"under extreme
 22 duress." The respondent explains at Rejoinder 1223-1223
 23 this allegation is not borne out by the facts.
 24 Firstly, it was the Claimant itself who suggested
 25 to enter into the amended Contract. Second, the Contract

04:16:40 1 was, in fact, a good deal for the Claimant, since it
 2 significantly reduced the scope of facilities that it had
 3 to construct and commission in order to acquire the right
 4 for the Investment Object, and the Claimant's allegation
 5 is, therefore, entirely divorced from the facts.
 6 So, Manolium-Engineering failed to construct,
 7 commission, and transfer the facilities by the agreed
 8 deadlines because of its failure to finance the
 9 construction. This entitled the City of Minsk to make the
 10 Claim to the courts to terminate under Clause 16.2.1.
 11 Pursuant to the Agreement, the original deadline for
 12 Manolium-Engineering to construct and commission was
 13 December-2008. At the Claimant's request, this contractual
 14 deadline was extended on two occasions, delaying the
 15 completion date by 2.5 years. That is set out in the
 16 Defence 76-98.
 17 In its correspondence with the City of Minsk the
 18 Claimant explained that the 2.5 year delay in constructing
 19 the New Communal Facilities was caused by the financial
 20 difficulties it was experiencing, in particular, as a
 21 result of financial crisis in Russia--that's Defence 76-98.
 22 At the time the City of Minsk had no reason not to believe
 23 those representations.
 24 For example, on 1st of December 2008, the
 25 Claimant wrote to Minsk City asking to move the deadline

04:18:11 1 for completion of facilities by a year and attached a draft
 2 Additional Agreement Number 5. That is R-42. In the
 3 letter the Claimant states that the "financial and economic
 4 crisis in Russia and other countries has significantly
 5 impaired the Claimant's capability to finance the
 6 construction of the Communal Facilities in a timely
 7 manner."
 8 On other occasions in 2009, the Claimant wrote to
 9 Minsk City explaining that, because of its financial
 10 difficulties, it was struggling to pay the contractors
 11 working on the facilities. That is R-47. Or that it was
 12 unable to pay land tax in respect of the land plots on
 13 which the New Communal Facilities were bought. That is
 14 R-48. That is all happening in 2009. And the Claimant
 15 continued blaming the delays on its financial difficulties
 16 throughout 2009 and 2010. That is set out in Defence 76
 17 to 98.
 18 Remarkably, however, in his Fourth Witness
 19 Statement, Mr. Dolgov reveals that apparently the real
 20 reason for the Claimant failing to finance the construction
 21 of the facilities and pay the land taxes was not that it
 22 was having financial difficulties but, rather, that the
 23 Claimant's owner, Mr. Ekavyan, had simply decided, quite
 24 deliberately, not to make any further capital injections
 25 into the Project.

04:19:32 1 In Mr. Dolgov's own words, Mr. Ekavyan repeatedly
 2 voiced apprehensions about the Project's implementation
 3 from 2008 through its effective abandonment in the middle
 4 of 2012. It is for that reason that I refer to the
 5 financial crisis and to problems with financing the
 6 Project. "I needed time to persuade my partner to make
 7 further capital injections." That is Dolgov's Fourth
 8 Witness Statement, 102-104.
 9 As a result of the delays caused by Claimant's
 10 inability to finance the construction works, or, as
 11 Mr. Dolgov maintains, the Claimant's deliberate withdrawal
 12 of financing, the facilities were still incomplete when the
 13 Final Commissioning Date came and went on 1st July 2011.
 14 On that date the City of Minsk became entitled
 15 contractually to submit a claim to terminate the Amended
 16 Investment Contract under Clause 16.2.1, because the
 17 facilities had not been constructed and commissioned by the
 18 extended deadline due to the Claimant's delays.
 19 The Claimant makes various spurious and
 20 unsupported allegations in the Reply which it conveniently
 21 forgot to mention in its earlier submissions that the
 22 Respondent is responsible for certain minor delays, for
 23 example, the newly discovered water pipes, relocation of
 24 contractors and so on. That is Reply 50-122.
 25 Given Mr. Dolgov's own admission the delays were

04:20:59 1 really caused by the Claimant's withdrawal of financing,
 2 the Claimant's position is untenable, not to mention
 3 contradictory.
 4 In any event, at Respondent explains in detail at
 5 Rejoinder 107-188, either the responsibility for the delays
 6 as alleged lie within the Claimant and Manolium-Engineering
 7 or the allegations are simply not true. The Claimant also
 8 introduces a story in the Reply regarding alleged
 9 harassment of the Claimant by the KGB in Belarus, which it
 10 repeats this morning at Slide 70-75 of Part 1.
 11 As the Respondent explains in the Rejoinder, at
 12 250-255, the Claimant's story is unsupported, speculative
 13 and not borne out of the facts. And I do not intend to
 14 waste time on this now.
 15 Now, even though the City of Minsk became
 16 entitled to terminate the Contract on 1st of July, it was
 17 not until two years later on 12th of November 2013 that it
 18 actually applied to the courts for termination. And,
 19 during these two years, the City of Minsk entered into
 20 discussions with the Claimant to try and find mutually
 21 agreeable contractual solution to enable the Project with
 22 the Claimant to go ahead or to terminate the Contract by
 23 mutual agreement.
 24 And, during this time, Manolium-Engineering was
 25 still under an obligation to complete the construction but

04:22:22 1 chose not to do so. And that's set out in the
 2 Rejoinder 483.
 3 As Mr. Akhramenko explains at his First Statement
 4 at 23 and second at 57-61, it was clearly in the City's
 5 interest for the Project--with the Claimant to go ahead
 6 rather than to terminate the Contract. Amongst other
 7 reason, terminating the Contract would mean that the City
 8 would have to find a new investor, develop the land plot in
 9 the center of Minsk, which by that time stood idle for
 10 almost 10 years.
 11 The Claimant wants to give the impression that,
 12 in the period between 2011 and 2013, the City conducted its
 13 discussions with the Claimant in bad faith, proposing
 14 draconian terms in return for postponing the contractual
 15 deadlines for completion for the third time whilst on the
 16 other hand refusing the Claimant's very reasonable terms.
 17 The Claimant contends that the City's conduct constitutes
 18 an independent breach of FET.
 19 The Respondent addressed this argument in detail
 20 in its Rejoinder at 261, 331, and submits that the
 21 Claimant's position is plainly contradicted by the
 22 evidence. The Claimant's proposals were either highly
 23 unfavorable to the City of Minsk and involved fundamentally
 24 changing the terms of the Project originally agreed or were
 25 simply unworkable in practice.

04:23:54 1 On the other hand, on the submission of the
 2 Respondent, the City of Minsk proposal were entirely
 3 reasonable, given the Claimant's breaches to date.
 4 By way of an example, the Claimants says that its
 5 proposal to postpone the deadline for construction of the
 6 Communal Facilities on 4 June 2011 was neither unreasonable
 7 nor unrealistic. However, the Claimant conveniently fails
 8 to mention that its proposal was to effectively remove any
 9 deadline for completing the Investment Object altogether,
 10 and given that the land plot in the center of Minsk had
 11 already stood idle for almost 10 years, and given the
 12 Claimant's delays to date, this was hardly a reasonable
 13 proposal and one which could see this Project dragging on
 14 for another 10 years.
 15 The Claimant's unconstructive approach in its
 16 discussions with the City of Minsk is, at first glance,
 17 surprising. If the City genuinely wanted to acquire the
 18 right to develop the Investment Object why would it not
 19 constructively engage with the City to agree to a final
 20 contractual extension? After all, Mr. Dolgov asserted that
 21 the facilities were 90 percent complete by this time. And
 22 that's C-83.
 23 The real reason it seems is that the Claimant had
 24 by that time lost the appetite to proceed with the
 25 development of the Investment Object altogether. As

04:25:31 1 Mr. Akhramenko recalls in his First Statement at 36 and
 2 Second Statement at 27, the Claimant frequently referred
 3 not only to its financial difficulties but also to the fact
 4 that the Amended Investment Contract as a whole was no
 5 longer attractive.
 6 And on 19th of March 2013, for example,
 7 Mr. Dolgov admitted that the Claimant saw no economic sense
 8 in entering into a new Contract for the development of the
 9 Investment Object. That is C-83. By this admission,
 10 Mr. Dolgov revealed that the real reason why the Claimant
 11 was refusing to engage constructively with the City of
 12 Minsk in the discussion was that the Claimant had no
 13 genuine intention to develop the Investment Object.
 14 Mr. Dolgov had also indicated on several
 15 occasions in 2012 that the Claimant and
 16 Manolium-Engineering had no intention to proceed with the
 17 Project. For example, on 7th of May 2012, Mr. Dolgov chose
 18 to write to the President of Belarus stating that he
 19 was--and I quote--"terminating all investment programs in
 20 the Republic of Belarus and intended to seek a court
 21 judgment for the return of invested funds." That is R-86.
 22 Given the Claimant's unconstructive stance in the
 23 negotiations and Mr. Dolgov's clear indication that the
 24 Claimant had no intention to proceed with the development
 25 of the Investment Object, the City of Minsk was left with

04:26:56 1 no choice but to apply to the courts to terminate the
 2 Contract, and it submitted that claim on 12th of
 3 November 2013, as it had been contractually entitled to do
 4 for over two years since July 2011. That is C-140.
 5 The Claimant contends that the submission of a
 6 claim to terminate the Contract was not only an
 7 expropriation of the contractual rights but also an
 8 independent breach of the FET Standard. The Claimant
 9 compares the present case to Occidental Petroleum against
 10 Republic of Ecuador in which a Tribunal held that Ecuador's
 11 termination of oil Participation Contract was
 12 disproportionate and breached FET Standard.
 13 The Respondent's position is that the Claimant's
 14 position is both legally and factually hopeless. First,
 15 unlike Occidental, where the Contract was terminated
 16 through a form of Ministerial degree, City of Minsk
 17 enforced its contractual right to apply for termination
 18 under Clause 16.2.1. As any private contracting Party
 19 would have done in the circumstances. That's at
 20 Rejoinder 791-800.
 21 In the absence of any exercise of sovereign
 22 authority, the City of Minsk conduct prima facie cannot
 23 breach the Treaty. Secondly, the City applied to the
 24 courts to terminate the Contract in November 2013, well
 25 before the Treaty entered into force. This further

04:28:23 1 supports the Respondent's position that its application to
 2 court cannot constitute breach.
 3 And, thirdly, unlike in Occidental, the City of
 4 Minsk's decision to apply for termination was not only
 5 reasonable but entirely proportionate. That is Rejoinder
 6 1088.
 7 Given that the Claimant's failure to finance the
 8 construction works had already delayed the completion of
 9 the Communal Facilities by 2.5 years, it would have been
 10 wholly reasonable for the City of Minsk to apply for
 11 termination as soon as the final commissioning date passed.
 12 Instead, it engaged with the Claimant to try and help it to
 13 take the Project forward.
 14 And, as I already mentioned, it would have been
 15 far more favorable for the City of Minsk to terminating the
 16 Contract and only after two years of discussions with the
 17 Claimant taking an obstructive approach, continuingly
 18 asserting that it had no intention to proceed, did the City
 19 of Minsk finally exercise its contractual right. This was
 20 the last resort for the City of Minsk, and it had nothing
 21 to do with KGB, as the Claimant suddenly remembered
 22 1.5 years into the proceedings.
 23 As I mentioned, the Termination Application was
 24 neither sudden nor unexpected. The City of Minsk had
 25 warned the Claimant as--Manolium-Engineering as early as

04:29:43 1 October 2010 that it would have no choice but to apply for
 2 termination if Manolium-Engineering failed to comply with
 3 its obligation to construct. That's R-59.
 4 The Claimant's expropriation FET claims
 5 concerning the City's Application to the courts to
 6 terminate the Contract are, therefore, meritless.
 7 Now, I would like you to take a look at the
 8 timeline for the Belarusian court proceedings. The Claim
 9 to terminate was upheld by three levels of Belarusian
 10 Courts. The Respondent's position is that in order to
 11 prevail in its claims concerning termination of the
 12 Contract, the Claimant must prove that the Belarusian
 13 Courts' proceedings in which the Contract was terminated
 14 violated the Treaty.
 15 The Tribunal must, therefore, determine whether
 16 the Claimant suffered a denial of justice or whether its
 17 due process rights were violated in the Belarusian Court
 18 proceedings in which the Contract was terminated. As I
 19 intend to show the Tribunal, the Claimant does not come
 20 close to satisfying the demanding test of standard of proof
 21 necessary to succeed in an international law claim
 22 concerning domestic court proceedings.
 23 In their Statement of Claim in the Belarus
 24 proceedings, the City of Minsk submitted that the Claimant
 25 in Manolium-Engineering had failed to construct the

04:31:06 1 facilities by their final commissioning date, because the
 2 Claimant's failure to provide stable and continuous funding
 3 and that it was entitled--and that that entitled the City
 4 to terminate pursuant to Clause 16.2.1.
 5 In its statement of Defence in those proceedings,
 6 Manolium-Engineering raised two major defenses. Firstly,
 7 it argued that it had invested over 18 million and,
 8 therefore--and I quote from R-102--"had performed its
 9 financial obligations under Clause 11." And, second, it
 10 argued that it had constructed--and I quote--"most of the
 11 Communal Facilities."
 12 Manolium-Engineering then copied and pasted these
 13 arguments word for word into both an appeal and cassation
 14 appeal. That's at R-239.
 15 As the Respondent describes in their Defence 246
 16 to 255, and the Rejoinder, 344 to 388, the courts upheld
 17 the City's claim to terminate the Contract based on the
 18 following simple logic: The Claimant in
 19 Manolium-Engineering had failed to construct and commission
 20 by the final date, which they effectively admitted in their
 21 Defence submitted to Belarus Court and, two, failed to
 22 provide any evidence that the delay--that this was caused
 23 by the City. And, therefore, the City became entitled to
 24 terminate the Contract.
 25 With regards to Manolium-Engineering's first

04:32:35 1 argument that the Claimant invested more than 18 million,
 2 the Courts refer to the wording of Clause 710, which
 3 expressly provided that the Claimant would fund the
 4 construction if the amount exceeded 15 million. So, the
 5 amount invested by the Claimant was, therefore, irrelevant
 6 for the purpose of the Court proceedings there.
 7 As to the second argument that the Manolium
 8 Engineering had constructed most of the Communal
 9 Facilities, the Courts referred to the wording of Clause 2
 10 of the Contract, pursuant to which it had agreed to
 11 construct all of the facilities by the final commissioning
 12 date and, therefore, it was irrelevant that some were
 13 constructed or parts were constructed by them.
 14 Accordingly, the Courts dismissed
 15 Manolium-Engineering's argument, and, as noted in the
 16 Rejoinder 387, the Claimant and Manolium had two further
 17 opportunities to appeal the Court rulings but chose not to
 18 do so. And it is striking that, in 274 slides presented
 19 this morning, Counsel for the Claimant does not even
 20 attempt to argue that the Belarus Court proceedings in
 21 which the Contract was terminated violated the Treaty.
 22 This is presumably because counsel is well aware
 23 that the Court proceedings were irreproachable from the
 24 perspective of both domestic and international law.
 25 In its written submissions, however, the Claimant

04:33:50 1 contends that termination, through court proceedings,
 2 constitutes an expropriation of investment and breach of
 3 FET Standard. In the Respondent's submission, that
 4 position is hopeless. Firstly, because the termination
 5 became legally effective on the 29th of October. The
 6 termination, therefore, cannot constitute breach of the
 7 Treaty because it occurred before it entered into force.
 8 Secondly, to prevail the international--in
 9 international claims concerning domestic court proceedings,
 10 the Claimant must satisfy a different and more demanding
 11 standard of proof linked with the principles of denial of
 12 justice. And the Claimant falls manifestly short of that.
 13 In any case, even if Tribunal were just another
 14 Court of Appeal for contractual dispute, which it's
 15 certainly not, the Claimant's contention that the Courts
 16 misapplied the provisions of the Contract in ruling to
 17 terminate would be untenable. As I've already explained,
 18 the City became entitled to terminate when, if
 19 Manolium-Engineering failed to construct by the final
 20 commissioning date, and so the logic adopted by the Courts
 21 in its ruling was entirely correct.
 22 The Claimant supports its claim by arguing that
 23 the Courts failed to assess issues that were crucial for
 24 resolution of its dispute, and, again, this is plainly
 25 wrong. As the Respondent explains in detail in the

04:35:26 1 Rejoinder at 349, either Manolium-Engineering never raised
 2 those issues in the Belarusian Court, or the Courts
 3 addressed those issues and expressly rejected them.
 4 In order to divert the attention from the Court
 5 proceedings themselves, the Claimant vaguely alleges that
 6 the outcome of the termination proceedings was preordained
 7 before the proceedings even began. The Respondent
 8 explained in the Rejoinder at 399-409 that the Claimant
 9 position is based on mere conjecture and is not supported
 10 by evidence.
 11 Lastly, as we heard this morning, the Claimant
 12 seeks to color the Tribunal's perception of dispute by
 13 making various general allegations regarding the judicial
 14 system which have nothing to do with the facts of the case.
 15 And we invite the Tribunal not to entertain those vague and
 16 exaggerated assertions.
 17 I will conclude this section on the Termination
 18 Dispute that the termination of the amended Contract did
 19 not violate the Treaty because the dispute arose in
 20 mid-2012. Termination came into legal force on 29th of
 21 October 2014. Termination dispute concerns purely
 22 contractual issues, and, in particular, measures taken by
 23 the Minsk City in a contractual, rather than in sovereign
 24 capacity.
 25 The City was contractually entitled to terminate

04:36:58 1 the Contract, and it was both reasonable and proportionate
 2 for it to do so, and the Claimant falls manifestly short of
 3 proving that it suffered a denial of justice in the
 4 termination proceedings and the test is at the
 5 Rejoinder 963.
 6 And I conclude with a coffee break announcement.
 7 Thank you.
 8 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank
 9 you very much, Ms. Zagonek. Let us get a time check.
 10 MS. BAPTISTA: The Respondent has used 1 hour and
 11 27 minutes.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: 1 hour and 27
 13 minutes. Perfect.
 14 Very good. So, we now break. It is 25 to 5:00.
 15 So, we are back at 10 to 5:00. 10 to 5:00.
 16 (Brief recess.)
 17 PRESIDENT FERNÁNDEZ-ARMESTO: We are back. Thank
 18 you very much. We resume.
 19 Respondent has the floor to continue with the
 20 Opening Presentation.
 21 MS. ZAGONEK: Thank you.
 22 And in the remainder of today's presentation, I
 23 shall bore you with the tax legislation. I apologize in
 24 advance.
 25 So, I now turn to the Tax Dispute, and I believe

04:55:26 1 it would be helpful if I were to take the Tribunal through
 2 the various land tax obligations that Manolium-Engineering
 3 had at all material times.
 4 Under Belarus law, payment for the use of
 5 State-owned land is set either through lease payments or
 6 land tax. Manolium-Engineering was liable to land tax
 7 because it was occupying it under a temporary permit. Once
 8 the permit expires, it needs to be renewed or you need to
 9 return the land in such a way--you have to return the land
 10 that it is in the same state in which you received it; so
 11 it has no private property on it.
 12 It is not an issue between the Parties that,
 13 since 2001, where an entity continued to occupy a land plot
 14 without the requisite permit or after its expiry of a
 15 temporary right to use the land, the land tax it was liable
 16 to pay on those land plots was calculated at a tenfold
 17 increased rate. For as long as a party occupied the land
 18 without a permit, this multiplier applied. So, that's
 19 since 2001.
 20 Under Belarusian law, the land tax is calculated
 21 at a double rate if there are uncompleted facilities
 22 located on the land and the statutory term of construction
 23 of these facilities has expired. And this provision
 24 existed in Belarusian since 2012.
 25 It is also not an issue between the Parties that

04:57:15 1 Manolium-Engineering started to account for land tax in
 2 2007, when the land plots were provided to it for the first
 3 time and that, before 1st of January 2010,
 4 Manolium-Engineering did pay the land tax. Accordingly,
 5 there is no dispute that Manolium-Engineering was aware of
 6 the obligation to pay land tax.

7 For example, in 2009, Manolium-Engineering wrote
 8 to the City of Minsk, apologizing for the delay in paying
 9 land tax and explaining that the delay was caused by the
 10 financial crisis. However, Manolium-Engineering assured
 11 the City of Minsk that it would pay the outstanding tax as
 12 soon as it was able to.

13 From 1st of January 2010, Manolium-Engineering
 14 elected to be taxed under a simplified taxation regime so
 15 that it no longer needed to account for and pay the land
 16 tax. This meant that, starting from 1st of January 2010,
 17 Manolium-Engineering had to account for and pay only two
 18 types of tax: VAT and the special tax for simplified--for
 19 companies' tax under simplified regime, which replaced
 20 income tax, property tax, land tax, and certain other
 21 taxes, and was calculated based on the taxpayers' gross
 22 revenue.

23 So, between 1st of January 2010 and 1st of
 24 January 2013, Manolium-Engineering, indeed, had no
 25 obligation to pay land tax. In January 2013, the Tax Code

05:00:25 1 with the tax legislation and sign the relevant tax return
 2 in 2013--that's Ms. [REDACTED] First Witness Statement
 3 at Paragraph 30-31 and R-0007--and 2014--that's R-202.

4 It was, therefore, not surprising that, in
 5 February 2014, the District Tax Inspectorate demanded that
 6 Manolium-Engineering comply with its obligation to submit
 7 land tax returns for 2013 and '14. These demands remained
 8 unanswered, and the Claimant says nothing about them in its
 9 Submissions.

10 The origins of the Tax Dispute lie in the failure
 11 of Manolium-Engineering to, first, timely complete the New
 12 Communal Facilities; and secondly, apply for an extension
 13 of the right to use the land plots on which stood the
 14 uncompleted facilities after the right expired in July of
 15 2011. The consequence of this failure, under Belarus law,
 16 was clear, predictable, and financially significant.

17 The Claimant asserts--and I quote from Statement
 18 of Reply--that: "The Respondent itself created a situation
 19 where the Claimant was unable to avoid the tax liability
 20 after expiration of the construction permit for the Depot
 21 in July '11." That is Reply 654.

22 The Claimant contends that this led to the
 23 expropriation of the facilities and constitutes an
 24 independent breach of FET Standard. The allegation that
 25 the Claimant was unable to avoid the tax liability after

04:58:55 1 was amended so that all entities taxed under simplified
 2 regime which occupied land plots over a particular size had
 3 to file and pay land tax. Accordingly,
 4 Manolium-Engineering again became liable to pay land tax
 5 and had to file land tax returns, just as it did prior to
 6 2010.

7 Indeed, Manolium-Engineering's chief accountant,
 8 Ms. [REDACTED], brought this to the attention of
 9 Mr. Dolgov, at least in February, March 2013 and then,
 10 again in February '14.

11 This change in the tax legislation certainly had
 12 nothing to do with the Claimant or Manolium-Engineering.
 13 Yet, Manolium-Engineering never submitted land tax returns
 14 after 1st of January 2013, plainly, and seemingly, quite
 15 intentionally, breaching its tax obligations under
 16 Belarusian law.

17 It matters not why the Claimant thought it could
 18 breach the local tax legislation through its incompetence,
 19 arrogance, lack of finance, shortsightedness, or mere
 20 stubbornness. Mr. Dolgov appears to have considered the
 21 company he was managing as being above the law.

22 The result is still the same:
 23 Manolium-Engineering did not file and did not pay lands
 24 tax, despite reminders from its own chief accountant, when
 25 she was desperately trying to persuade Mr. Dolgov to comply

05:02:08 1 expiration of the construction permit in July '11 makes no
 2 sense.

3 First of all, the last construction permit
 4 expired in December '11 and not in July.

5 Secondly, construction permits have nothing to do
 6 with land tax. What matters for the land tax are permits
 7 to land and statutory terms of constructions.

8 Throughout all its Submissions, the Claimant
 9 insists on mixing up the different types of permits
 10 Manolium-Engineering had to apply for and, also, the
 11 construction terms that it had to observe under Belarusian
 12 law.

13 Whether the Claimant is doing it deliberately or
 14 through a lack of understanding of the difference between
 15 the various types of permits and statutory terms is
 16 irrelevant. To assist the Tribunal, it may be helpful for
 17 me to pause for a moment to explain the difference between
 18 the various types of permits and terms, as a matter of
 19 Belarusian law.

20 So, you will have seen in the Submissions
 21 "contractual term for the construction of the facilities."
 22 That's the term agreed between the Parties in the Contract,
 23 and it is irrelevant for the purpose of tax. That has
 24 expired on 1st of July 2011.

25 Then there is construction permit. That's also

05:03:32 1 irrelevant for the purpose of tax. It is issued by
 2 Gosstroy, upon Application attaching the required set of
 3 documents. The last one has expired on 30 December 2011.
 4 That is R-071.

5 In April 2012, Manolium-Engineering applied to
 6 Gosstroy for an extension but didn't provide all the
 7 necessary information and documents to do so. Gosstroy
 8 responded that it was unable to extend the construction
 9 permits for that reason: Failure to provide documents.
 10 That is R-81 and C-127.

11 Yet, Manolium-Engineering never remedied the
 12 defects in its Application and just decided not to reapply.
 13 That's in Defence 129-139 and Rejoinder 473-482.

14 The next is the statutory term for the
 15 construction. That is relevant for the purpose of tax.
 16 Once this term expires, the land tax rate for the land on
 17 which the facility is located doubles. The statutory term
 18 for construction is stated in the Design Specification and
 19 Estimate Documentation, which is approved by a State Expert
 20 for each facility separately. It is calculated by the
 21 designers based on the expected duration of the
 22 construction works set out in the relevant regulations and
 23 takes into account all relevant circumstances.

24 The statutory term for construction of the Depot
 25 expired in 2009. That is Paragraph 40 of the Reply. For

05:06:51 1 record shows that the issuance of permit for the land plots
 2 was never subject to the terms of the Investment Contract.
 3 Nothing to do with them.

4 Twice during the lifetime of the Project,
 5 Manolium-Engineering applied for and was granted extension
 6 of the permits to the land plots after contractual
 7 construction term expired and before it was extended by a
 8 new additional agreement.

9 For example, the term for the construction of the
 10 New Communal Facilities under Additional Agreement Number 5
 11 expired in July 2009. That's C-72. Manolium-Engineering
 12 applied for an extension of the right to use the land
 13 plots, and on 3rd September 2009, the Minsk City granted
 14 the extension until 1st of August 2010. That's in C-263.

15 When this term expired, Manolium-Engineering
 16 applied for and obtained a new extension for the right to
 17 use the land plots. That is C-627. This extension was
 18 granted on 16 September 2010, while the Parties executed
 19 the Additional Agreement Number 6, extending the
 20 contractual construction term only seven months later, on
 21 20th of April 2011. That's C-76.

22 However, the City of Minsk could not extend
 23 Manolium-Engineering's land rights after they expired in
 24 July 2011 because Manolium-Engineering never made an
 25 application to extend such land permit. That is set out in

05:05:15 1 the road and the Pull Station, these terms expired in 2008
 2 and 2009 respectively. Manolium-Engineering never
 3 initiated the procedure for an extension of these.

4 The next one is permit to land plots. These are
 5 also relevant for the purpose of tax. The land tax rate in
 6 relation to the land occupied in the absence of permit is
 7 tenfold. It is issued by the City of Minsk, and it has, in
 8 this case, expired on 1st of July 2011. That is C-075.
 9 Manolium-Engineering never applied for an extension.

10 This morning, in its presentation--that is
 11 Slide 46 of the first part of the Claimant's
 12 presentation--the Claimant appears to have admitted, for
 13 the first time in these Proceedings, that
 14 Manolium-Engineering, in fact, never applied for an
 15 extension of a permit for the land plots.

16 Having sent us on a wild-goose chase for the
 17 previous years in these Proceedings, the Claimant now says,
 18 again, for the first time, that the right to use the land
 19 plots could not have been granted without the Investment
 20 Contract being extended.

21 Now, since the Claimant never made this
 22 allegation in the Submissions prior, effectively, to this
 23 Hearing, the Respondent didn't have an opportunity to
 24 properly address this new argument and to submit any
 25 evidence in this respect. However, even the evidence on

05:08:37 1 detail in Defence 113-117 and in the Rejoinder 461-482.

2 As can be seen from the slide in front of you,
 3 what are the formal Application attaching supporting
 4 documents, the authorities were not in a position to
 5 consider the Application, let alone, grant it. And the
 6 Claimant was well aware of that. The requirement was set
 7 out in the actual permits for the land plots issued to
 8 Manolium-Engineering. That is C-073.

9 So, contrary to what appears to be the Claimant's
 10 position now, Manolium-Engineering could and, in fact, had
 11 an obligation to get the permits to the land extended,
 12 regardless of whether the Investment Contract was in force
 13 and whether it was going to complete the construction. The
 14 continuous and deliberate failure by Manolium-Engineering
 15 to apply for the extensions after they have expired in
 16 July--after the permits have expired in July '11 resulted
 17 in the application of the multiplier to the tax rate.

18 Since Manolium-Engineering chose not to apply for
 19 an extension of the permits to the land plots, the only way
 20 for it to avoid land tax liability was to return the land
 21 plots to the City. Yet, this was impossible as a matter of
 22 Belarusian law, for the reasons I shall explain now.

23 First, the Claimant asserts in these Proceedings
 24 that, somehow, when the right to use the land has expired,
 25 it is automatically restored to the City, a concept

05:10:13 1 entirely alien in Belarus law, as in a number of countries
 2 with similar legislation. There is no basis for such an
 3 assumption and none was put forward by the Claimant. So,
 4 we remain none the wiser.

5 The Claimant's argument that it was "it," or
 6 Manolium-Engineering, that wasn't using that land is also
 7 unsubstantiated. For the purpose of Belarusian law, the
 8 land was used because private property of
 9 Manolium-Engineering, the uncompleted facilities, stood on
 10 that land.

11 Second, as early as in March 2012, the Land
 12 Planning Service wrote administrative offense reports in
 13 relation to Manolium-Engineering occupying the land plots
 14 without a permit. In response to that, and in order to
 15 avoid administrative sanctions, Manolium-Engineering wrote
 16 to the City that it was looking to return the land plots.

17 At that point the City responded that it was
 18 impossible at that stage because the facilities remained
 19 the private property of Manolium-Engineering. And the
 20 Claimant's suggestion that the City of Minsk was obliged to
 21 accept the land plots has no basis under Belarus law.
 22 However much the Minsk City wanted to do so, they were
 23 under an obligation to follow the procedures established
 24 under the Belarusian law.

25 And that is set out in Defence 303.

05:13:24 1 payments in their--in respect of those.

2 And that's set out in the Defence at 143 and 144
 3 and also 184.

4 Secondly, after--as you can see on the slide.
 5 The slide is split into life before and after termination
 6 of the Contract. So, after the Contract was terminated,
 7 the City of Minsk was under no obligation to accept the
 8 Communal Facilities, whether complete or incomplete, into
 9 municipal ownership.

10 And that's set out in the Defence at 263-265, and
 11 Akhramenko First Statement at 126.

12 Any transfer or acquisition would have been
 13 possible if the Parties reached a new and separate
 14 agreement to that effect. At that time, as seen from
 15 evidence submitted by both Parties, the City of Minsk was
 16 contemplating buying out the unfinished Communal
 17 Facilities. However, it was not prepared to pay for them
 18 more than what they were actually worth.

19 The City of Minsk acted reasonably,
 20 proportionately, and in good faith, engaging with the
 21 Claimant and Manolium-Engineering to find a solution. So,
 22 the Claimant's allegation that the City of Minsk
 23 intentionally created a no-escape situation for
 24 Manolium-Engineering in which Manolium-Engineering was
 25 liable to pay land tax at the increased rates is wrong.

05:11:46 1 So, as I mentioned, it was impossible for the
 2 Minsk City, as a matter of law, to accept the land plots
 3 from Manolium-Engineering whilst the uncompleted facilities
 4 remained Manolium-Engineering's private property.

5 The Claimant argues that the Minsk City
 6 wrongfully refused accepting them into municipal ownership.
 7 This isn't so. Firstly, whilst the Amended Investment
 8 Contract was still in force, the Minsk City could not
 9 accept the facility into municipal ownership because it was
 10 not possible under the terms of the Contract because they
 11 were incomplete. Under the Contract it couldn't accept
 12 those in their incomplete state.

13 That's in Defence 188, Defence 563, in the
 14 Rejoinder 1137(b), and also in the First Witness Statement
 15 of Akhramenko at 71.

16 At Slide 19 of Part 3 of today's presentation,
 17 the Claimant, in its Opening Submissions, asserts--and I
 18 quote--"that Minsktrans began use of Depot, but they
 19 refused to take title." This is a very good example of how
 20 the Claimant has, throughout these Proceedings, distorted
 21 facts to suit its purpose.

22 Minsktrans was not using the Depot; rather,
 23 Minsktrans was merely maintaining certain buildings that
 24 made up part of the Depot, in order to release
 25 Manolium-Engineering from its obligation to make utility

05:14:46 1 Firstly, this was not a no-escape situation. At
 2 all times Manolium-Engineering had lawful means to avoid
 3 the tax liability, or, at least, the increased tax
 4 liability, and nothing prevented it from using those. But
 5 it chose not to do that.

6 Secondly, the City of Minsk's refusal to accept
 7 the land plots with or without of the uncompleted facility
 8 on them was not done in bad faith but because it was unable
 9 to do so, as a matter of law.

10 This morning the Claimant, for the first time in
 11 these Proceedings, relied on the February 2016 letter from
 12 Minsk City to the Council of Minister, which was disclosed
 13 by the Respondent in the first round of Submissions--so
 14 last year. The letter refers to Manolium-Engineering's tax
 15 liability being higher than the value of the New Communal
 16 Facilities.

17 The Claimant has had this letter since, in fact,
 18 November 2018, when the Respondent exhibited to the
 19 Statement of Defence. The Claimant never relied on it,
 20 never even mentioned it in their Submissions until today.

21 Had the Claimant raised concerns about this
 22 letter as it did this morning, if the Claimant raised their
 23 concerns in the Reply, the Respondent would have been more
 24 than happy to disclose the documents referred to in that
 25 letter. They would dispel any concerns the Claimant may

05:16:17 1 have and would, therefore, demonstrate that there is
 2 nothing malicious in these documents or in the letter
 3 itself.
 4 Further, the fact that the State authorities
 5 speak of protecting State interest in their formal
 6 correspondence doesn't assist the Claimant. Turning to the
 7 facts of the letter states that the investor did not agree
 8 to transfer the incomplete municipal facilities into
 9 communal ownership on acceptable terms and conditions.
 10 Again, the Claimant is looking for some
 11 inappropriate meaning. There are none. As I mentioned,
 12 the City of Minsk was prepared to buy out the incomplete
 13 facilities after the termination of the Contract. It had
 14 no obligation to do so.
 15 The negotiations lasted many months, but the
 16 Parties couldn't reach agreement on the price and,
 17 otherwise, they couldn't find an agreement that was
 18 acceptable for both the Claimant and the City of Minsk.
 19 The Claimant now suggests that the City of
 20 Minsk's letter supports its position on the expropriation
 21 of the Facilities by way of abuse of tax laws. However,
 22 the Claimant, the Respondent submits, misses the point
 23 about the nature of Manolium-Engineering's tax obligations
 24 and does not address at all the issue of tax liabilities
 25 actually being genuine.

05:17:36 1 Manolium-Engineering, as I already mentioned, was
 2 well aware of its tax obligations throughout its operations
 3 in Belarus, and Mr. Dolgov, on its behalf, made a
 4 conscience decision not to comply with them.
 5 The consequences of his choice would have been
 6 obvious to Manolium-Engineering, just as they became
 7 obvious to the City of Minsk when this issue of
 8 Manolium-Engineering not paying tax came to their
 9 attention. What the Claimant refers to as the Respondent's
 10 "secret plan" was the legitimate procedure that would have
 11 inevitably followed Manolium-Engineering's own deliberate
 12 failure.
 13 The Claimant does not dispute that the tax-rate
 14 multipliers were applicable under Belarusian law, and the
 15 Claimant never challenged the tax calculations by the tax
 16 authorities. In these Proceedings, it doesn't submit that
 17 they were incorrect either.
 18 The only argument that the Claimant is making in
 19 its Submission to justify its failure to pay the taxes is
 20 the no-escape argument. I have already addressed it today
 21 to show that there was no such no-escape situation.
 22 Today, in its Slide 27 at Part 3, although the
 23 Claimant actually skipped this part of the slide this
 24 morning, it asserted that it had reasonable expectation for
 25 Manolium-Engineering not to pay land tax.

05:19:02 1 This is baseless and an entirely absurd
 2 allegation. As I already explained, Manolium-Engineering
 3 not only knew it was liable to pay land tax, but in the
 4 past, has actually paid it.
 5 In May 2016, the District Tax Inspectorate
 6 carried out a desk task audit of Manolium-Engineering for
 7 the years 2013 and '15 and the first part of '16, as it was
 8 entitled to do so, in the absence of the failure to file
 9 land tax for the requisite years. As a result of this
 10 audit, it issued what is referred in these Proceedings as
 11 the "Fast Tax Audit Report" at C-163--164- thank you.
 12 Contrary to the Claimant's Submission, the tax
 13 audit was not in any way connected to anything else or to
 14 another red herring that the Claimant raised in its Written
 15 Submission, the Administrative Proceedings.
 16 The First Tax Audit Report states that the
 17 outstanding land tax liability of Manolium-Engineering
 18 was--and there are many, many numbers--that's
 19 BYR 18 billion nondenominated, plus penalty of
 20 BYR 4 billion nondenominated, which at the time was
 21 \$962,473 and \$227,454. That's in Defence 324.
 22 And I remember the Members of the Tribunal
 23 mentioning today the difference between rubles, and I
 24 assume we're not talking between the Belarusian rubles and
 25 the Russian rubles; we're, rather, talking about the

05:20:45 1 various iterations that the Belarusian rubles have gone
 2 through. So, the nondenominated with many, many numbers
 3 and the dominated, and the numbers were reduced somewhat.
 4 But this amount did not take into account the
 5 tenfold multiplier, which should have been applied to the
 6 tax rate because Manolium-Engineering was occupying the
 7 land without the requisite permit and the double
 8 multiplier, which should have been applied because the
 9 uncompleted facilities were located on the land and the
 10 statutory term of their construction had expired.
 11 So, in June 2016, the Tax Inspectorate received
 12 letters from the Land Planning Office which stated that, as
 13 a matter of fact, Manolium-Engineering occupied lands
 14 without a permit and that incomplete facilities, in
 15 relation to which statutory construction term had expired,
 16 stood on those lands.
 17 And, accordingly, the District Tax Authority
 18 Inspectorate amended the Fast Tax Audit Report to take into
 19 account the fact that the applicable multipliers--to take
 20 account the applicable multipliers to the land tax rate.
 21 So, accordingly, the tax liability was increased
 22 significantly.
 23 That is C-166.
 24 It is not an issue between the Parties that
 25 Manolium-Engineering was duly notified of the tax

05:22:08 1 liability. Under Belarusian law, a taxpayer has 15 days to
 2 pay or to submit objections. In the absence of either, the
 3 tax authority normally proceeds to issue a formal decision
 4 which becomes enforceable the day after it is dispatched to
 5 the taxpayer.
 6 All this information is actually stated in the
 7 Amended Tax Audit Report.
 8 And this is what happened here:
 9 Manolium-Engineering did not submit any objections, and on
 10 19 July 2016, the Tax Inspectorate issued a formal
 11 decision.
 12 As you can see on the slide, Manolium-Engineering
 13 had the right to appeal the Inspectorate Decision, both to
 14 a higher tax authority and also to Belarusian court but,
 15 again, chose not to do so.
 16 Jumping slightly ahead, I will add that, in 2017,
 17 after Manolium went into liquidation, another tax audit
 18 took place in the ordinary course because a tax audit is
 19 always required under Belarusian law when an entity is in
 20 bankruptcy proceedings.
 21 The insolvency administrator there, who replaced
 22 Mr. Dolgov as Manolium-Engineering's manager, in fact,
 23 challenged the result of audit and submitted objections, as
 24 he was entitled to do by law. And the Tax Inspectorate
 25 considered the objections and accepted them. It amended

05:23:33 1 its calculations accordingly, and we talk about it in the
 2 Defence at Paragraph 358 and 359.
 3 So, this example demonstrates, once again, what
 4 legal remedies were available to Manolium-Engineering had
 5 it chosen to utilize them or had it disagreed with the
 6 State authorities' actions. Manolium-Engineering's
 7 decision not to challenge the findings or the calculations,
 8 its failure to file any objections or to appeal, is
 9 telling.
 10 The Claimant alleges that by imposing the tax,
 11 the Respondent acted in breach of FET and that its actions
 12 in imposing the tax liabilities were aimed at
 13 expropriation. The Claimant relies on Ryan v. Poland Case.
 14 The Respondent agrees that an abuse of tax law
 15 might be expropriatory if the tax abuse results in the
 16 total loss or substantial deprivation of the investment.
 17 We say it in Rejoinder 1114. Whereas, measures taken by a
 18 State in a bona fide and legitimate exercise of State power
 19 would not constitute an abuse of tax law.
 20 This is precisely what has happened here. And
 21 both Parties rely on RosInvestCo. against Russia, where the
 22 Tribunal found that tax measures would be abusive if they
 23 could only be understood to have had the aim to deprive the
 24 investor of the assets, but the normal applications of
 25 domestic tax law in the Host State cannot be seen as an

05:25:00 1 expropriatory act.
 2 Now, I turn to enforcement of those tax
 3 liabilities.
 4 Since Manolium-Engineering's only assets were the
 5 uncompleted Communal Facilities, in July 2016, the District
 6 Tax Inspectorate issued an order for the attachment of the
 7 facilities--of those facilities.
 8 That is in C-167.
 9 Because Manolium-Engineering had no money or
 10 receivables, the tax authorities had to apply to court to
 11 enforce the outstanding tax liabilities against Manolium's
 12 only asset, the uncompleted Communal Facilities.
 13 On 20th of July 2016, the District Tax
 14 Inspectorate applied to the Economic Court of Minsk for an
 15 Order to enforce the tax land liabilities against the
 16 attached assets of Manolium-Engineering. And that's C-170.
 17 As you can see from the slide,
 18 Manolium-Engineering did not engage in any of these court
 19 proceedings, and filed no Defence. And so, in August 2016,
 20 the Court granted the order to enforce the tax liabilities.
 21 I must add that the Manolium-Engineering
 22 representative attended the Court in person, to familiarize
 23 himself with the Order--and that is at R-210--but chose not
 24 to challenge it, although it had the right to do so. And
 25 that right was clearly explained in the order.

05:26:32 1 Now, the execution of the Court Order was
 2 undertaken under an appropriate procedure which is set out
 3 in a specific regulation. Under that regulation, because
 4 the Communal Facilities could not be sold on the open
 5 market--and that's one of the issues, I understand, was
 6 raised today by the Tribunal: Why they didn't just do it
 7 at auction--it is a trolleybus depot, and it's unlikely to
 8 be a private buyer for such a facility.
 9 So, the only way in which tax liabilities could
 10 be enforced against those facilities was to transfer them
 11 into communal ownership.
 12 And that's RL-126, Regulation Article 217. The
 13 procedure is actually explained in great detail in the
 14 Defence at Paragraph 340.
 15 Such transfer could only be made under Belarus
 16 law effective by the President's Order. And this is, I
 17 must say, a standard administrative document, the purpose
 18 of which is merely to formally complete the Enforcement
 19 Procedure ordered by the Court. And we say that in our
 20 Defence at 341. The Regulation, as well as the Decrees of
 21 February 2016, adopting it, are in the public domain.
 22 The President's Order was issued on 20th of
 23 January 2017. Before I turn to the President's Order in a
 24 bit more detail, I would like to briefly address the amount
 25 of tax liabilities.

05:28:13 1 The Claimant makes an issue about the tax
 2 liabilities not matching. Yet another artificial argument
 3 which appears to have abandoned--or maintained that
 4 position, actually, in the Reply.
 5 As can be seen on the slide, the amount of land
 6 tax liability was updated to reflect the applicable
 7 multipliers, once the tax authorities became aware that
 8 they applied. The only figure that continues to rise was
 9 the penalty.
 10 And I would ask you just to see--because you have
 11 the first two columns using the nondenominated rubles and
 12 then it moves to denominated--just to make sure that you
 13 see that.
 14 So, the only figure that continues to rise was
 15 the penalty. This was restated as at the date of the
 16 Application to the Court in July 2016. And that's at
 17 C-169. By the Order to enforce the land tax liabilities
 18 against the New Communal Facilities, the Court also ruled
 19 to recover State duty from Manolium-Engineering in the
 20 amount of BYR 147.
 21 In November 2016, the District Tax Expectorate
 22 issued a resolution imposing administrative sanctions to
 23 file land tax returns and failure to settle outstanding tax
 24 liabilities. It resolved to impose an administrative fine
 25 of some 2.3 million.

05:29:40 1 The calculation was set out in the Resolution.
 2 And that's at R-146.
 3 Again, Manolium-Engineering never challenged the
 4 District Tax Inspectorate Resolution to a higher Tax
 5 Inspectorate or to Economic Court of Minsk.
 6 Accordingly, as at 19th of January, the day
 7 before the President's Order was issued, the outstanding
 8 amount of Manolium-Engineering's liability comprised of, A,
 9 the amount of tax; B, penalty; C, administrative fine and;
 10 D, State duty of BYR 147,000.
 11 As you can see, the full amount of tax and a part
 12 of the penalty was written off following the President's
 13 Order. You can also see that this did not settle
 14 Manolium-Engineering's outstanding liability to the State
 15 in full.
 16 Furthermore, as I mentioned, another tax audit
 17 took place in 2017, which was required by law because
 18 Manolium-Engineering went into liquidation. And unlike the
 19 narrow audit in 2016, which only concerned land tax for the
 20 period of '13 to '16, the second audit was a comprehensive
 21 audit, covering all tax liabilities and looked at a longer
 22 period.
 23 And it is following that second audit that the
 24 tax authorities calculated the total outstanding tax
 25 liabilities of Manolium-Engineering. And so, as at

05:31:04 1 September 22, 2017, the total amount of
 2 Manolium-Engineering's outstanding liability to the State
 3 was BYR 20,913,550. That's in Defence 361.
 4 That is approximately USD 10.7 million. The
 5 liabilities are registered in Manolium-Engineering's
 6 insolvency proceedings and have not been settled to date.
 7 Now, let me turn to the President's Order.
 8 The Claimant makes a big issue out of the Order
 9 alleging breach of transparency requirement that is part of
 10 the FET Standard because it served as a ground, allegedly,
 11 for the transfer of the Communal Facilities and was not
 12 made available to the Claimant. The Claimant also asserted
 13 that the Respondent has failed to justify the purported
 14 legality of the Presidential Order of 20th of January 2017.
 15 That's Reply 672.
 16 It says: "Irrespective of the particular content
 17 of the Presidential Order, the fact that the Presidential
 18 Order served as a ground for the transfer of the New
 19 Communal Facilities and thus, affected the Claimant's
 20 rights and was not made available to the Claimant, even at
 21 present time, constitutes a breach of the requirements for
 22 transparency that is part of FET Standard."
 23 The Respondent agrees with the Claimant that
 24 transparency means that legal framework for the investors'
 25 operation is readily apparent, and that any decisions

05:32:36 1 affecting the investor can be traced to that legal
 2 framework. However, the unqualified requirement of total
 3 transparency set out in Metalclad, on which the Claimant
 4 relies, requires some qualification.
 5 The task in our Submission is to determine
 6 whether the alleged failure to provide transparency is
 7 indicative of either a larger failure in the fair operation
 8 of the regulatory system or a lack of good faith or
 9 arbitrary decision-making directed against a particular
 10 investor.
 11 That's RL-44.
 12 And the concept of transparency under
 13 international law is also closely related to protection of
 14 the investors' legitimate expectation. Accordingly, if the
 15 Tribunal concludes that the Claimant's legitimate
 16 expectations have been met, this is likely to indicate that
 17 the alleged failure to provide transparency does not
 18 violate the FET Standard.
 19 And we say that in the Rejoinder at 173.
 20 First, the Claimant's Submission is wrong as a
 21 matter of fact. The President's Order was not the legal
 22 justification purportedly supporting the transfer of
 23 facilities to Minsk ownership. The Order of the Economic
 24 Court of Minsk, dated 18th of August 2016, served as the
 25 ground for transfer of the facilities into municipal

05:34:01 1 ownership to enforce against Manolium-Engineering tax
 2 liability and not the President's Order of 20th of
 3 January 2017.
 4 The purpose of the President's Order was merely
 5 to complete the formal procedure of enforcing tax liability
 6 as already ordered by the Economic Court of Minsk. And we
 7 say that in the Defence 339, 353, and the Rejoinder 551,
 8 570, 1274, and 1277.
 9 Secondly, the Respondent complies with the
 10 transparency standard because the legal framework for the
 11 investors' operation is readily apparent, and decisions
 12 affecting the investors can be traced to that legal
 13 framework.
 14 The Order of the President is a procedural
 15 document which is required under Belarusian law for any
 16 transfer of real property into municipal ownership to
 17 enforce against tax liabilities. This requirement is
 18 expressly set out in the regulations, which is publicly
 19 available and has consistently been applied by Belarusian
 20 State authorities.
 21 And we say that in the Defence at 339, 353, and
 22 Rejoinder 551 and 570.
 23 Thirdly, given that Mr. Dolgov spent a
 24 significant part of his career working in Belarus, he will
 25 have been well aware that some orders of the President are

05:35:26 1 also not public documents under Belarusian law at the time
 2 the Claimant entered into the Investment Contract.
 3 It is misleading for the Claimant to now plead
 4 ignorance and claim that this element of the Belarusian
 5 legal regime violates its rights under international law.
 6 The Claimant entered into the Investment Contract on notice
 7 of both the prospects and potential pitfalls of the legal
 8 regime in Belarus.
 9 And that is supported by Generation Ukraine
 10 against Ukraine at Paragraph 20.37 at RL-58.
 11 If there was some aspect of this regime that was
 12 not agreeable to the Claimant, the Claimant was free to
 13 invest elsewhere, as we say in our Defence in 062 and
 14 Rejoinder 1276.
 15 Although the Claimant never requested production
 16 of the President's Order in those proceedings, in its
 17 Submissions, it made a huge issue out of fact that the
 18 Order hasn't been provided. And so, on 26th of June 2019,
 19 the Respondent produced a copy of the Presidential Order,
 20 after a lengthy process of declassification that has been
 21 completed, permitting its disclosure to third parties.
 22 As can be seen from the text of the Order. There
 23 is nothing sinister nor premeditated. The Order is at
 24 R-242.
 25 The Claimant doesn't allege that any of its

05:36:48 1 rights were violated in the court proceedings to enforce
 2 the tax liability and doesn't dispute that the
 3 Manolium-Engineering had the right and opportunity to
 4 submit the Defence and appeal the enforcement Order.
 5 There doesn't appear to be any dispute between
 6 the Parties that these Court Proceedings complied with
 7 international law standards. The subsequent enforcement of
 8 Manolium-Engineering's tax liability against the Communal
 9 Facilities, as ordered by the Economic Court of Minsk,
 10 therefore, also cannot constitute a violation under
 11 international law.
 12 A Governmental authority surely cannot be faulted
 13 for acting in a manner validated by its courts, unless the
 14 courts themselves are disavowed at the international level.
 15 And I quoted that from the Azinian against United
 16 Mexican States, at Paragraph 97-99. And that's at RL-14.
 17 So, to conclude on the tax section,
 18 Manolium-Engineering did have an obligation to pay land tax
 19 at the increased tax rate during the period of 2013 to '17.
 20 The obligation was not conditional, any administrative
 21 sanctions imposed, and was not caused by the Respondent.
 22 And, therefore, enforcement of tax liabilities against the
 23 Communal Facilities was lawful.
 24 And I just pause there, as well, that, in its
 25 proceedings, the Claimant dedicates a lot of its time to

05:38:20 1 Administrative Proceedings, another, we say, "red herring"
 2 in the Submissions. I will not be addressing those, but if
 3 the Tribunal is interested in refreshing its memory, it can
 4 review the Respondent's Submissions at Rejoinder 490-514.
 5 That concludes my section on the Merits. And
 6 before I move to Quantum, does the Tribunal have any
 7 questions, or I have I bored you to death with the tax
 8 Submissions?
 9 PRESIDENT FERNÁNDEZ-ARMESTO: Why don't you
 10 finalize? I do have a number of questions on tax, but I
 11 think it is better if you finalize first, and we have the
 12 questions thereafter.
 13 MS. ZAGONEK: Okay. Thank you.
 14 Unless anybody else has any questions, I will
 15 move to quantum. I'm afraid today you are listening just
 16 to my voice, and I can't do it in different accents, so I
 17 will continue with my own.
 18 (Comments off microphone.)
 19 MS. ZAGONEK: When I was at school, I used to try
 20 nice Bulgarian accents, but I wouldn't dare to do that. I
 21 would be very embarrassed.
 22 Moving on to causation and quantum.
 23 If the Tribunal finds that the Respondent
 24 committed an expropriation which deprived the Claimant of
 25 its contingent contractual right to develop the Investment

05:40:08 1 Object under the Contract, or committed FET standard
 2 violations tantamount to an expropriation of the
 3 contractual right, the Tribunal should proceed to determine
 4 how to calculate the Fair Market Value of this contingent
 5 right to develop the Investment Object.

6 It is in this context that the Claimant seeks the
 7 lost profits and the alternative lost profits. If the
 8 Tribunal finds that the Respondent expropriated the
 9 Communal Facilities or committed FET Standard violations
 10 tantamount to an expropriation of the Communal Facilities,
 11 the Tribunal should proceed to determine how to calculate
 12 the Fair Market Value of the facilities. It is in this
 13 context that the Claimant seeks what is called the
 14 facilities losses.

15 If, on the other hand, the Tribunal does not find
 16 the Respondent did not expropriate the Claimant's
 17 investment or carry out violations of FET standard
 18 tantamount to an expropriation, the Tribunal should proceed
 19 to calculate the actual losses resulting from the breach
 20 subject to the principles of causation and remoteness.

21 For example, if the Tribunal finds that the first
 22 Tax Audit Report itself is a breach of FET, then the
 23 Claimant should only be entitled to compensation for the
 24 amount of tax liabilities as originally calculated in the
 25 first Tax Audit Report. That is 962,000 of taxes and

05:41:44 1 227,000 of penalties. That's in Defence 324.

2 If, on the other hand, the Tribunal finds that
 3 the amendments to the first Tax Audit Report of 21st of
 4 June 2016 constitutes breach of FET, then the actual loss
 5 is the amount by which those amendments caused an increase
 6 in Manolium-Engineering's tax liabilities, which is
 7 approximately USD 9.1 million of taxes and 3 million of
 8 penalties. That is set out in the Defence 324 for original
 9 figures and then Defence 330 for the increased figures.

10 In this context, we submit, the Claimant's
 11 all-or-nothing quantum analysis in which the Claimant asked
 12 the Tribunal to consider only the Fair Market Value, Fair
 13 Market Value of the investment is no assistance to the
 14 Tribunal. Absent of finding of expropriation by the
 15 Tribunal or breaches tantamount to expropriation, the
 16 Claimant has failed to satisfy its burden of proving the
 17 fact that the amount of actual losses it suffered.

18 The Claimant's primary position on damages is not
 19 sophisticated. It says that it's entitled to both lost
 20 profits and the facilities, the Communal Facilities'
 21 losses. And that's in the Reply 736, (1) and (2).
 22 However, by asking the Tribunal to award both lost profits
 23 and the Communal Facilities' losses, the Claimant puts
 24 itself in the position it would never have been. Even if
 25 in the Claimant's fantasy world it could have acquired the

05:43:26 1 right to develop the Investment Object without any--it
 2 could not have acquired--I'll start again.

3 Even in the Claimant's fantasy world, it could
 4 not have acquired the right to develop the Investment
 5 Object without any consideration for that right. In the
 6 present case, the consideration is the New Communal
 7 Facilities, fully furnished and ready for operation, not
 8 almost completed.

9 The Claimant claims that lost profits are the
 10 losses it suffered resulting from losing the right to
 11 perform the Investment Contract plus appropriate interest.
 12 That's Reply 738 and Notice 538. In particular, the
 13 Claimant claims the lost profits in connection with the
 14 loss of its contingent rights to develop the Investment
 15 Object. The lost profit claim is highly speculative and,
 16 therefore, must fail.

17 It is based on the Discounted Cash Flow Method,
 18 yet contrary to what the Claimant says in Reply 793, there
 19 is nothing to compare with comparable property in Belarus.
 20 The Investment Object was not a going concern.

21 Unlike cases Siag, Beaune and Wena Hotels, the
 22 Investment Object was not in any stage of development.
 23 There was no detailed design of the Investment Object, and
 24 accordingly, we can only speculate as to what the Claimant
 25 would have built, if anything, what the Investment Object

05:45:06 1 would have looked like, and whether it would have been a
 2 lucrative venture. For the same reason, it is
 3 inappropriate to award damages for Loss of Opportunity as
 4 there is no way near enough data to conclude, let alone
 5 with a high degree of certainty, that the Investment Object
 6 would have been profitable had it been completed. Even if
 7 the Claimant would have constructed the Investment Object,
 8 we submit that it would be a loss-making development. We
 9 say that in the Rejoinder at 138 and following.

10 The Claimant alleges for the first time in its
 11 presentation today--and that was Slide 22 of its final
 12 presentation--that in the letter dated 6th of
 13 April 2006--that's C-35--the City of Minsk confirmed profit
 14 expectations. This is wrong as follows from the relevant
 15 extract which we saw on the slide today. The City of Minsk
 16 merely stated "According to the investor--that is the
 17 Claimant--"the City of Minsk did nothing more than
 18 referring to the Claimant's hopes and aspirations about
 19 profit expectations at the time of the tender." That's
 20 R-17.

21 In these proceedings, the Claimant has suggested
 22 two Valuation Dates: Initially 29th of October 2014, and
 23 then 27th of January 2015. The Respondent invites the
 24 Tribunal to apply the 29th of October '14 as the Valuation
 25 Date, if we get to that stage.

05:46:48 1 In his Second Report, Mr. Taylor does not update
2 his calculation of the lost profit as of 29th of
3 October 2014. He updates following the--in the Second
4 Report on that date. Whilst admitting that in some areas,
5 Mr. Qureshi has provided more reliable documents and
6 analysis. That's in the second Taylor 222.

7 Accordingly, if the Tribunal agrees with the
8 Respondent that the proper Valuation Date is 29th of
9 October, the only reliable and appropriate valuation as at
10 the date is Mr. Qureshi's date. If, however, the Tribunal
11 finds that the proper Valuation Date is 27th of
12 January 2015, the Respondent has submitted Mr. Qureshi's
13 valuations of the lost profit as of that date.

14 As in Mr. Qureshi's original valuation, the
15 amount of lost profits remains negative. And that's
16 Paragraph 17 of the Second Statement of Mr. Qureshi. The
17 Respondent has made extensive submissions on the various
18 flaws of Mr. Taylor's analysis. And we'll have the
19 pleasure later this week to hear the experts. Of much
20 concern is Mr. Taylor's cherry-picking approach to what he
21 considers contemporaneous documents and analysis. I do not
22 propose to go over these, as I'm sure the Tribunal will
23 have read the Parties' submissions. That's in the
24 Rejoinder 1354, 1368, and in the Reply 808-820.

25 So, to sum up the Respondent's position on the

05:50:13 1 profit represents the amount which any other investor would
2 pay for the right to develop the Investment Object on the
3 land plot intended for the Investment Object. For the
4 avoidance of any doubt, the Respondent submits that the
5 Claimant is not entitled to both the facility losses and
6 the alternative lost profits as it will lead to double
7 recovery.

8 Nonetheless, I shall touch upon both components
9 of this alternative lost profit claim. With regards to
10 8.87 million claim, as Mr. Qureshi explains in his Second
11 Report at 1618, this figure is what Astomaks was ready to
12 pay in September 2017. So, two years after the Valuation
13 Date. And he paid it for the right to develop the land
14 plot to construct quite a different project on the--to the
15 Investment Object. It would have no hotel, no large
16 shopping center, and would mostly consist of apartment
17 building. So, there is no comparison to the Investment
18 Object.

19 With regards to the 23 million, if we understand
20 the Claimant's presentation today correctly--and that was
21 on Slides 4 and 30 of the quantum section--the Claimant
22 appears to withdraw its alternative lost profit claim in
23 this regard, but if the claimant doesn't, I submit that
24 Mr. Qureshi's calculation of 23 million includes the
25 one-off payment which Manolium-Engineering would have been

05:48:24 1 primary lost profit claim, it is that the Claimant has
2 never acquired the right to develop the Investment Object
3 because of its failure to complete the facilities, the
4 Discounted Cash Flow Method and loss of opportunity
5 approach leads to a highly speculative lost profits, where
6 the Investment Object has not even been designed.

7 And, in any event, the Investment Object would
8 have been a loss-making development.

9 I now turn to alternative lost profits claim. In
10 the Notice the Claimant has calculated alternative lost
11 profits to be \$8.65 million. In the Reply, the Claimant
12 has increased its alternative lost profit claim to
13 31.87 million. In the Reply, the Claimant has arrived at
14 the alternative lost profit claim by adding together, first
15 of all, the price at which the right to develop the
16 Investment Object land plot was sold to Astomaks at the
17 auction on 12, September 2017, that is R-153, and that
18 price was 8.87 million. And the rental costs that would
19 have been payable by Manolium-Engineering for that land
20 plot as calculated by Mr. Qureshi and rounded down by the
21 Claimant. So, 23 million.

22 As we have seen from the Claimant's presentation
23 on quantum today at Slide 4--and I quote--"The Claimant
24 alternative loss profit claim is 87.87 million."

25 According to the Claimant, the alternative lost

05:51:43 1 required to pay in respect of its rights to release the
2 land plot for the Investment Object. And we say that in
3 the Rejoinder at 97-103.

4 By contrast, Astomaks not required to pay
5 anything beyond the auction price. Quite a different
6 procedure. And that's at R-218, and we set out in
7 Rejoinder 609 and 614.

8 Now, furthermore Mr. Qureshi's calculations rely
9 on the fact-specific scenario and doesn't represent an
10 amount that any other investor would have had to pay in
11 respect of its lease rights. The Minsk City's calculation
12 made first of all in January 2015, secondly, specifically
13 for the 7.05 hectares land plot, and, three, on the
14 assumption that it would have been leased from January '15
15 for a period of 99 years; whereas, in the case of Astomaks,
16 the auction was held in September '17 in relation to a
17 slightly smaller land plot of 6.7 hectares, and which was
18 subjected to a lease of 25 years.

19 So, the Respondent's position is that the lost
20 profits and the alternative lost profits are both
21 speculative and inappropriate in the present case.
22 Therefore, if the Tribunal finds that the Respondent
23 expropriated the Claimant's right under the contract and
24 decides to award damages for loss of its contingent right
25 to develop the Investment Object, the Respondent invites

05:53:20 1 the Tribunal to adopt the Sunk Costs approach.
2 Under that approach the Tribunal should proceed
3 to determine the level of Sunk Costs incurred by the
4 Claimant in constructing the Communal Facilities. And this
5 leads me to the second part of the claim, the Communal
6 Facilities losses.

7 So, what is sought? In the Notice the Claimants
8 sought \$36.9 million as direct losses caused by the
9 expropriation of the New Communal Facilities.

10 In the Reply, this figure has changed to
11 20.4 million. The Claimant seeks these together with
12 damages for lost profits or an alternative Head of Loss.
13 As I already mentioned today, the Respondent's position is
14 that it is not entitled to the Communal Facilities' losses,
15 and in any event, that the Claimant seeks double recovery
16 for the lost profits and the facility losses.

17 So, the Claimant is asking the Tribunal to rely
18 on the 2016 memoranda for calculating the Fair Market Value
19 of the Communal Facilities, and also says that the library
20 payment should not be excluded from that calculation, but
21 doesn't explain why. A library payment incidentally paid
22 by a Cypriot entity.

23 Despite clear submissions that the calculations
24 in 2016 memorandum are disputed by the Respondent, the
25 Claimant's Quantum Expert continues to rely on the 2016

05:56:33 1 construction of the facilities, such as costs not specified
2 in the Design Specification Estimate Documentation. They
3 are called construction management costs, indirect costs,
4 whatever they are, cost of construction, organization, and
5 management, exchange rate difference and so on. That is
6 C-160 at Pages 1516, and Pages 7-8 in the PDF file.

7 Second, it doesn't take into account the
8 significant extent in which Manolium-Engineering's costs
9 were inflated by Manolium-Engineering's delays. And we've
10 heard today the effect the delays had on the cost of
11 construction. To award the Claimant the full amount would
12 require the Tribunal determining that in the Claimant's own
13 words, the delays in 2007 to 2011 were the result of
14 actions attributable to the Respondent.

15 As can be seen from Mr. Qureshi's Report, had the
16 Claimant constructed the Depot in 2009 as originally
17 planned by the Claimant in the design documentation, the
18 construction costs would have been on average 31 percent
19 lower. And that is in Mr. Qureshi's Paragraph 28, and 185
20 in the Second Expert Report.

21 Mr. Qureshi calculates the losses based on the
22 anticipated costs of construction which can be found in the
23 design documentation, and the only detailed listing of the
24 projected costs as approved by the relevant competent
25 authorities adjusted based on applicable construction

05:54:53 1 memorandum without producing an independent assessment.
2 The Respondent has asked the Tribunal to adopt
3 Mr. Qureshi's calculation on the Fair Market Value of the
4 Communal Facilities because the Claimant is not entitled to
5 the inflated costs that were incurred as a result of its
6 own delays and because the library payment must in any way
7 be excluded from any such calculations.

8 In its today's presentation at Slide 37 on
9 quantum, the Claimant has asserted for the same time,
10 curiously, that Mr. Qureshi in his First Report agrees that
11 the Claimant is entitled to the library payment. No such
12 admission was made in the Reply, and no such admission was
13 ever made in any of the Party's submissions. Furthermore,
14 at Paragraph 244 followed by Paragraph 245 of the First
15 Expert Report of Mr. Qureshi clearly shows that Mr. Qureshi
16 did nothing more than calculating, on the Respondent's
17 instructions, interest on the library payment in case the
18 Tribunal decides to award it. This is not an admission.
19 And as I said, more importantly, the library payment was
20 made by Manolium Trading, Ltd., a Cypriot entity.

21 So, the question before the Tribunal is whether
22 the 2016 memorandum can be used in Fair Market Value
23 calculations. The Respondent says no. The 2016 memorandum
24 significantly overstates the Fair Market Value because,
25 first of all, it included costs not spent directly on the

05:58:07 1 indices for the relevant construction periods.

2 The Respondent's case is that this is the most
3 appropriate basis in the absence of primary documents
4 evidencing actual expenditure. The fact that the Claimant
5 itself chose not to use its own primary documents is
6 telling.

7 If, however, the Tribunal disagrees with
8 Mr. Qureshi's calculation of the Communal Facility losses,
9 it should then, in any event, reduce any award of damages
10 in respect to Fair Market Value to take account of the
11 legitimate interests of Manolium-Engineering's third-party
12 creditors.

13 And I have already talked today about the fact
14 that the losses--I talked about today what are the costs of
15 the Claimant. So, I would like to bring the Tribunal's
16 attention again to the fact that the Communal Facility
17 losses as presented by the Claimant and Mr. Taylor refers
18 throughout to his Report to costs incurred by the Claimant.
19 Yet, as we found out for the first time in the Reply, all
20 the monies spent on the construction of the Communal
21 Facilities were, in fact, loaned money lent by creditors
22 allegedly affiliated with the Claimant.

23 So, if we put aside the issue of such creditors
24 not being investors protected by the EEU Treaty and their
25 investment equally not being protected by the Treaty, the

05:59:40 1 Claimant can, in any event, only recover losses it has
 2 suffered itself.
 3 The Respondent's position is that the Claimant
 4 has not discharged its burden of proof in showing that the
 5 loans in question had been made by affiliated companies and
 6 not by third-party lenders, investors, who may have
 7 separate claims of action against the Respondent and the
 8 other bilateral or multilateral investment treaties.
 9 If the Tribunal concludes that these third-party
 10 creditors and their loans are protected by the Treaty, or
 11 that the Claimant's losses include losses suffered by its
 12 many alleged affiliated entities, then the Respondent would
 13 like the Tribunal to consider reducing any award of damages
 14 pro rata to the creditors' outstanding claims. The value
 15 of the third-parties creditors' claims is approximately
 16 25 million.
 17 Further, we submit that the Tribunal should apply
 18 an appropriate reduction to take account of the increasing
 19 costs caused by the Claimant and/or Manolium-Engineering's
 20 contributory actions or inactions. The delays caused by
 21 the Claimant were willful and/or negligent. Notably,
 22 Mr. Dolgov expressly concedes that the delays were caused
 23 by Mr. Ekavyan, the Claimant's owner, having apprehensions
 24 about financing and making further capital injections into
 25 the construction of the New Communal Facilities. That's

06:01:11 1 that forth statement of Dolgov at 102-104.
 2 In short, Mr. Dolgov's position is that the
 3 delays in constructing the facilities in December 2008 to
 4 July 2011, and, finally, the effective abandonment of the
 5 construction works in 2012 were not caused by the financial
 6 crisis at all. The only financial difficulties of the
 7 Claimant, which according to Mr. Dolgov--and I quote from
 8 his forth statement at 62--"enough resources for investment
 9 in a dozen projects similar to the one undertaken. But,
 10 rather, because the Claimants' owner nearly deliberately
 11 chosen not to make any further capital contributions."
 12 In light of Mr. Dolgov's admission, there is no
 13 doubt that the actions of the Claimant which delayed the
 14 Project by at least four years were willful, and,
 15 therefore, fall within the scope of contributory negligence
 16 and ILC Article 39. We say that in the Rejoinder at 1458.
 17 Accordingly, the Tribunal should apply a
 18 31 percent reduction to the Communal Facilities' losses as
 19 calculated by Mr. Taylor to take account of the Claimant's
 20 negligence in causing such delays. After such reduction,
 21 the Communal Facilities' losses would amount to 14--just
 22 over \$14.5 million. And that's that Second Expert Report
 23 of Qureshi at 28 and 185.
 24 And finally, in addition to the willful delays
 25 caused by the Claimant, the Claimant should bear

06:02:45 1 responsibility for its own negligence in contributing to
 2 the accrual of tax liability by failing to construct the
 3 New Communal Facilities both before and after the Final
 4 Commissioning Date, by failing to apply for an extension to
 5 Manolium-Engineering's land permits after the Final
 6 Commissioning Date, which led to a tenfold increase at the
 7 land tax rate applied, by failing to lay out the
 8 facility--lay up means conserve--after the Final
 9 Commissioning Date by which Manolium-Engineering could have
 10 avoided the application of the tenfold in the land tax
 11 rate. Ignoring any warnings of the tax authorities that it
 12 was unable to pay land tax despite being aware that this
 13 was required under Belarusian law. Failing to appeal or
 14 raise objections to the first Tax Audit Report dated 18th
 15 of May 2016, the amendments and supplements, the first Tax
 16 Audit Report dated 21st, June 2016, the inspectorate
 17 decision dated 19th, July regarding Manolium-Engineering's
 18 tax liabilities.
 19 The order of the economic Court of Minsk dated
 20 18th of August, to enforce Manolium-Engineering's land tax
 21 liabilities against the Communal Facilities, the Resolution
 22 of the district tax inspectorate dated 24th of
 23 November 2016 to impose a fine on Manolium-Engineering for
 24 failure to submit its tax return on time and to settle
 25 outstanding tax liabilities.

06:04:10 1 So, if the Tribunal finds the transfer of the New
 2 Communal Facilities was an expropriation which is denied,
 3 the Tribunal should apply, in addition to the 31 percent
 4 reduction for the delays, a further reduction to the
 5 Damages Awarded to take account the extent to which the
 6 Claimant induced or contributed to such an outcome through
 7 such actions.
 8 And so, to sum up the Respondent's position on
 9 the Communal Facilities' losses is that the 2016 memorandum
 10 is unreliable and cannot form the basis of any calculation.
 11 In the absence of any alternative calculation put forward
 12 by Mr. Taylor on the primary documents of the Claimant,
 13 only Mr. Qureshi's calculation of the Communal Facilities'
 14 losses should be accepted by the Tribunal as the most
 15 appropriate calculation of the Fair Market Value.
 16 And this concludes my submissions. Thank you.
 17 PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank
 18 you very much, Mrs. Zagonek. Let us get a time check from
 19 the Secretary, and then we see if there are questions.
 20 No questions from Professor Stern.
 21 Dr. Alexandrov seems to have some questions. Please.
 22 MS. BAPTISTA: The Respondent has spent 2 hours
 23 and 36 minutes.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Please.
 25 ARBITRATOR ALEXANDROV: Thank you, Mr. President.

06:05:43 1 My first question relates to Exhibit R-140, which
2 I had had on the screen for some time, but Claimant
3 helpfully distributed a hard copy.
4 PRESIDENT FERNÁNDEZ-ARRESTO: 146?
5 ARBITRATOR ALEXANDROV: R-140.
6 (Comments off microphone.)
7 PRESIDENT FERNÁNDEZ-ARRESTO: Let's work on the
8 printed copy. I think it would be more efficient.
9 ARBITRATOR ALEXANDROV: Let's proceed, and I will
10 refer to the document.
11 Okay. So, you will recall, if you just scroll
12 down a couple of lines, you will recall that I was asking
13 Claimant's counsel whether the instruction of the Council
14 of Ministers Number 39, et cetera, of 9, February 2016 was
15 on the record. The answer was no. I wonder if it would be
16 possible to make that document available to the Tribunal.
17 MS. ZAGONEK: Yes, it would be.
18 ARBITRATOR ALEXANDROV: Then--and the reason I
19 think--well, one reason I think it might be. When will you
20 be able to do that?
21 MS. ZAGONEK: Well, it will need to be translated
22 because it's not in English, but I imagine it wouldn't take
23 a long time. We could make it available in the course of
24 this week before the Hearing ends.
25 ARBITRATOR ALEXANDROV: Thank you. That would be

06:10:14 1 are two points that the Minsk City Executive Council will
2 do. One is order the investor to pay the amount of tax for
3 the unauthorized occupation of the land plot and where the
4 latter fails to comply, refer the materials to the court,
5 et cetera.
6 So, the first question I have is, it seems to me
7 what the Minsk City Executive Council is saying here is, it
8 is expedient to ask them to transfer--ask the investor to
9 transfer--the Claimant to transfer the facilities for free.
10 If not, the Minsk City Executive Council will order the
11 investor to pay the amount of tax. And I wonder whether it
12 is within the competence of the Minsk City Executive
13 Council to order or not the payment of the tax, because it
14 seems what the Minsk City Council is saying is, if they
15 agree to sign the Agreement, we will not order them to pay
16 the tax, but if they disagree, we will.
17 And, again, I wonder why is it within the
18 competence of the Minsk City Executive Council to make that
19 order.
20 And the second point is, it seems here that the
21 payment of the tax is conditioned upon the Claimant's
22 Agreement to transfer the property for free. And I wonder
23 why the payment of a tax that is due under the law of
24 Belarus would be contingent on the investor signing an
25 agreement or not. It seems on the face of this document

06:08:38 1 very helpful. If you have difficulties with the
2 translation, I would accept the Russian.
3 The reason I think it is important is--
4 ARBITRATOR STERN: Russian text would not be
5 sufficient for me.
6 MS. ZAGONEK: (In French).
7 ARBITRATOR ALEXANDROV: If you look at the very
8 bottom of page 2 in English, it is the third paragraph from
9 the top of the last page in Russian. In English, it begins
10 with "In view of the foregoing." Bottom of the second
11 page.
12 MS. ZAGONEK: Yeah.
13 ARBITRATOR ALEXANDROV: Let me read it, perhaps
14 to be clear. It says: "In view of the foregoing, we
15 consider it expedient." "We" is here the Minsk City
16 Executive Committee. It says: "We consider it expedient
17 to propose that the investor transfers the Communal
18 Facilities into municipal ownership of Minsk free of
19 charge, which would release it from any additional
20 expenses, including those for vacating the land plot."
21 And then the next paragraph says: "Should the
22 investor disagree with the set-out proposal (fail to sign
23 an agreement on transfer of the Property on the terms and
24 conditions specified within one month), the Minsk City
25 Executive Council will." And then on the next page, there

06:11:54 1 that the Minsk City Council is saying, if you don't agree
2 to something we want you, then you pay the tax. If you
3 agree, you won't. And it strikes me as somewhat unusual.
4 MS. ZAGONEK: Mr. Alexandrov, thank you for the
5 question.
6 I would image that Minsk City Council, being not
7 a tax authority, cannot do that, but I'm afraid, given that
8 these arguments were not raised until today, I have to
9 consult with the Belarus lawyers as to precise authority
10 that the Minsk City Council would have. But based on my
11 knowledge so far, it is the tax authority that issues taxes
12 and not the Minsk City Council, for sure. I will have to
13 address the factual allegation also with instructions and
14 also with the explanation of the local lawyers because,
15 again, this document, although having been in the file
16 since November last year, was ignored by the Claimant for a
17 long time and no allegations were made. So, I must admit,
18 I haven't looked at it in that detail.
19 ARBITRATOR ALEXANDROV: Thank you. Just to be
20 clear, I'm not making a factual allegation.
21 MS. ZAGONEK: Sure.
22 ARBITRATOR ALEXANDROV: I'm just trying to
23 understand. My understanding would be the same as yours,
24 that the tax authorities impose a tax in compliance with
25 the tax laws.

06:13:28 1 MS. ZAGONEK: Correct.
 2 ARBITRATOR ALEXANDROV: And there is no--and the
 3 Minsk City Council would not be the authority to impose or
 4 not impose a tax. And that document makes it look like--
 5 MS. ZAGONEK: I understand your question.
 6 ARBITRATOR ALEXANDROV: --the Minsk City Council
 7 is saying we will unless they agree. So, I was trying to
 8 understand that point.
 9 MS. ZAGONEK: Yeah.
 10 ARBITRATOR ALEXANDROV: And in that light, I
 11 think it's also useful to see the instructions to the
 12 Council Ministers.
 13 MS. ZAGONEK: Sure. Yes.
 14 ARBITRATOR ALEXANDROV: Perhaps that they will
 15 somehow inform the meaning of this document.
 16 MS. ZAGONEK: Okay. We will provide the answers
 17 together with the document.
 18 ARBITRATOR ALEXANDROV: Thank you.
 19 MS. ZAGONEK: Thank you.
 20 PRESIDENT FERNÁNDEZ-ARMESTO: Since we are on
 21 this document, I understand that it is a letter--an
 22 official letter from the Minsk City Executive Committee to
 23 the Council of Ministers of the Republic of Belarus.
 24 MS. ZAGONEK: Correct.
 25 PRESIDENT FERNÁNDEZ-ARMESTO: So, it's like an

06:15:48 1 PRESIDENT FERNÁNDEZ-ARMESTO: Could you--since
 2 you are already asking for one, could you ask for the
 3 three? That would be appreciated.
 4 MS. ZAGONEK: Sure.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Then I would like
 6 to do the following, which is something I always like to do
 7 when I am confronted with a complex situation. The tax
 8 situation is certainly complex. I will try to explain to
 9 you what I understood from reading and from your
 10 presentation, and if I say something which is wrong, and I
 11 have a couple of doubts, then you jump in and say, no, you
 12 completely misunderstood.
 13 Let me start by something very obvious, and that
 14 is this plot of land on which these Communal Facilities are
 15 located. I asked and I received the answer there is a land
 16 registry in Belarus, and I understand that the plot of land
 17 is registered in the name either of the State or of a
 18 company belonging to the State, for the City.
 19 MS. ZAGONEK: The right to use the land is
 20 registered with Manolium-Engineering.
 21 PRESIDENT FERNÁNDEZ-ARMESTO: That's not my
 22 question.
 23 MS. ZAGONEK: The title to the land, I understand
 24 it's State property. I can't answer now precisely who is
 25 the title owner, but it will be the State--

06:14:22 1 official letter.
 2 MS. ZAGONEK: It's an internal--
 3 PRESIDENT FERNÁNDEZ-ARMESTO: Communication.
 4 MS. ZAGONEK: Communication, correct.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: And there are a
 6 couple of--since Dr. Alexandrov has brought up the question
 7 here that there was already pursuant to the instruction of
 8 the Council of Ministers of the Republic of Belarus, and he
 9 has asked for that document. There are a couple of other
 10 documents to which reference is being made, and may or not
 11 be in the file. I notice in Page 2, the Head of State
 12 previously gave an instruction to monitor the situation and
 13 to defend the interest of the State at all times. I wonder
 14 if that instruction is in the file.
 15 And at the end, there is something which says the
 16 Draft Report to the administration of the President of the
 17 Republic of Belarus is enclosed, which, at least in what we
 18 have received is not enclosed.
 19 Do you remember by heart if these documents are
 20 in the file or--
 21 MS. ZAGONEK: I'm pretty sure they are not
 22 because, again, they have never been requested. And we
 23 will have to make inquiries; whereas, on the first one I
 24 can say with some certainty that we will find it. This one
 25 I don't know either way. I'll have to look.

06:17:11 1 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 2 MS. ZAGONEK: --in whatever--in some form. If
 3 you would like to have more details, then--
 4 PRESIDENT FERNÁNDEZ-ARMESTO: No. The title.
 5 Let's use these two expressions: Title, and then--
 6 MS. ZAGONEK: Temporary right.
 7 PRESIDENT FERNÁNDEZ-ARMESTO: And use--right to
 8 use.
 9 MS. ZAGONEK: Right to use. Yeah.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Is the right to use
 11 registered at the property registry?
 12 MS. ZAGONEK: Yes. Correct.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: It is also
 14 registered at the property registry?
 15 MS. ZAGONEK: Yes, it is also registered.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Then
 17 there a land tax in Belarus. Now, let me ask you, who has
 18 to pay land tax?
 19 MS. ZAGONEK: Land tax--when you don't own the
 20 land, you have two types of use: Through a lease or
 21 through a permit. And when you have the right through a
 22 lease, like a lease contract, you pay whatever you pay
 23 under lease, a contractual lease. If you have a permit,
 24 like in this case, which is a temporary permit, then that
 25 payment for the use of land is--exists in the shape of land

06:18:32 1 tax. So, it's a payment for the right to use.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: Let us go slowly.
 3 The owner of the land, does the owner have to pay
 4 a land tax?
 5 MS. ZAGONEK: No. Only those--
 6 PRESIDENT FERNÁNDEZ-ARMESTO: Let me explain it
 7 to you, because otherwise it will be faster.
 8 MS. ZAGONEK: Sure. Yeah.
 9 PRESIDENT FERNÁNDEZ-ARMESTO: So, next question.
 10 A lessee of the land, someone who leases land from the
 11 State, for example, to build this new complex.
 12 MS. ZAGONEK: Yeah.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Is there a land
 14 tax? Is there a lease? First there will be a lease
 15 payment, which will be, say, an annual payment, but is
 16 there additionally a land tax?
 17 MS. ZAGONEK: I know the answer to that question
 18 because its complicated, and I appreciate and I thank the
 19 Tribunal Members for really trying to get to grasp this.
 20 If you have a lease, you pay a lease payment. If
 21 you have this--
 22 PRESIDENT FERNÁNDEZ-ARMESTO: No. Wait. Do you
 23 additionally pay a tax, a land tax?
 24 MS. ZAGONEK: No. No. It is either one or the
 25 other.

06:21:04 1 MS. ZAGONEK: Yes. Correct.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: And it's the users
 3 who pay.
 4 Now, in a contract like the Contract we had,
 5 under Belarusian tax law, it was Manolium, the user of the
 6 land, and consequently the person who had to pay the land
 7 tax?
 8 MS. ZAGONEK: Correct.
 9 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. It is
 10 just for the use of the land. Even if you use it--because
 11 they were using it to construct something. And then--but
 12 they still had to pay the land tax under Belarusian law?
 13 MS. ZAGONEK: Under Belarusian law, use, it's not
 14 what is a layperson or even a lawyer would consider use.
 15 You don't have to do anything with it. You may have
 16 something stood of your own, and it's the split between
 17 different ownership. If you have assets belonging to you,
 18 you use it.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: So, there were
 20 three different regimes for the payment of this land tax.
 21 Before 2010, it was Manolium had to pay and did pay the
 22 land tax?
 23 MS. ZAGONEK: Correct.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Then this land tax
 25 was--it was a simplified tax, and there was like a global

06:19:55 1 PRESIDENT FERNÁNDEZ-ARMESTO: Let's go slowly.
 2 Very good.
 3 So, you have a third situation where you use land
 4 which belongs to the State. Or to anyone.
 5 MS. ZAGONEK: No. This is the situation.
 6 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So, a third
 7 situation, we had ownership, no land tax; lease, no land
 8 tax; and we are now in the third situation.
 9 MS. ZAGONEK: Permit.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: That a person via
 11 permit uses land.
 12 MS. ZAGONEK: Correct.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Land from the
 14 State.
 15 MS. ZAGONEK: Yes.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. In that
 17 case is where the land tax arises?
 18 (Comments off microphone.)
 19 MS. ZAGONEK: I've just been corrected. May I
 20 slightly refine the answer to your question? If you are
 21 the owner of the land and also use it, you pay land tax.
 22 If you are the owner of the land and somebody else uses it,
 23 that somebody else pays the tax and the owner doesn't.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So, if the
 25 owner and the user are separated, it is the user who pays?

06:22:37 1 tax on your revenue, and companies like Manolium were
 2 exempted from paying the land tax?
 3 MS. ZAGONEK: Just a small correction. It was
 4 Manolium that itself elected to be taxed under a simplified
 5 regime, which at the time meant that it didn't have to
 6 report separately. It was taxed in a more kind of
 7 global--apologies, I'm not using the tax terminology, but
 8 on a more global basis without reporting directly on tax
 9 law, on tax--on land tax, on property tax, and so forth.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 11 MS. ZAGONEK: Income tax.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: Do we have when the
 13 tax was actually paid between 2007 and 2010, I think? What
 14 amounts are we speaking about? How much was? Do we have
 15 the figure? Maybe someone--
 16 MS. ZAGONEK: They are not in the case file, but
 17 we are happy to find them, yes.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. It's just to
 19 have an idea whether it was \$5,000 or \$50,000 or \$500,000.
 20 In any case, these amounts are included within either the
 21 50 million or 90 million or 11 million figure of costs
 22 incurred by Manolium to build the Depot. It was one of the
 23 costs which Manolium was paying.
 24 MS. ZAGONEK: I don't know.
 25 PRESIDENT FERNÁNDEZ-ARMESTO: By logic.

06:24:22 1 MS. ZAGONEK: By logic, yes. It seems logical,
 2 yes.
 3 PRESIDENT FERNÁNDEZ-ARMESTO: And then between
 4 2010 and 2013, there is no tax. The tax accrues once a
 5 year.
 6 MS. ZAGONEK: Yeah.
 7 PRESIDENT FERNÁNDEZ-ARMESTO: Do we know a
 8 beginning or end of the year, 1st of January?
 9 (Comments off microphone.)
 10 MS. ZAGONEK: They have to file their tax return
 11 or tax declaration in the beginning of the year, in
 12 February, and then they can pay it either by one payment or
 13 split it into two.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Very good.
 15 So, after 2013, the tax becomes, again, payable,
 16 and this is when--the accountant raised the issue and there
 17 was some discussion.
 18 MS. ZAGONEK: Correct.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: So, that was 2013,
 20 2014. But let us go now back to--so, that would be 2013
 21 and 2014. Because then on the 29th of October 2014, the
 22 Contract is terminated. Okay. So, the Contract implies,
 23 among other things, that Manolium had the right--the duty
 24 and the right to build the Depot. Once it is terminated, I
 25 would assume that under Belarusian law it was deprived of

06:27:17 1 wrote.
 2 MS. ZAGONEK: No, no. What's the question,
 3 though? Is the question what is it? Or the question is
 4 its effect?
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Both.
 6 MS. ZAGONEK: Both. Okay. What it is is the
 7 term that the Parties, when they start constructing, they
 8 put it in--they put it in the designers, assess how long it
 9 will take to construct.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Yes.
 11 MS. ZAGONEK: And then an authority approves it
 12 and typically authority gives a bit more than what the
 13 designers say it will take.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah.
 15 MS. ZAGONEK: So, that's what it is.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah.
 17 MS. ZAGONEK: And if you go beyond that term
 18 without renewing it, then comes--then the tax--part of the
 19 tax becomes double. It is the two multiplier.
 20 PRESIDENT FERNÁNDEZ-ARMESTO: That does not seem
 21 to make a lot of sense.
 22 I am repairing the roof of the Parliament of
 23 Belarus. I have a statutory term for the construction of
 24 one year.
 25 Why should that have any impact on my land tax?

06:25:49 1 the possibility of accessing the--of continuing with the
 2 production--with the construction of the Depot?
 3 MS. ZAGONEK: No.
 4 PRESIDENT FERNÁNDEZ-ARMESTO: No?
 5 MS. ZAGONEK: No. It could have completed it if
 6 it wanted to, yes. The City had no obligation to accept it
 7 if it did complete because the contractual obligation was
 8 extinguished by then, but equally, Manolium-Engineering
 9 didn't have to complete it. What did--what it was left
 10 with, unfortunately, is uncompleted facilities that still
 11 belonged to it, and termination of contract did nothing to
 12 the title to that property.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Now, I go to
 14 ore Slide 28, and there I am in the two last lines.
 15 Statutory term for the construction and permit to land
 16 plots.
 17 MS. ZAGONEK: Yeah.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. The
 19 statutory term for the construction, I don't know what that
 20 means and how that can impact on the land tax if the land
 21 tax is based on the use.
 22 (Comments off microphone.)
 23 MS. ZAGONEK: What is the statutory term, or what
 24 is--
 25 PRESIDENT FERNÁNDEZ-ARMESTO: It's what you

06:28:26 1 MS. ZAGONEK: Whilst you have the permit,
 2 nothing. You don't have anything. Once the permit
 3 expires, you have to apply for a new--you have to extend
 4 it.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah, but why would
 6 the Contract for renewal of the roof of the Parliament of
 7 Belarus, why should that have an impact on the land tax? I
 8 don't see the connection. We agreed at the beginning that
 9 the land tax is based on use. Remember?
 10 MS. ZAGONEK: Okay. Yeah.
 11 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. And
 12 statutory term for the construction does not refer to use.
 13 MS. ZAGONEK: Yeah.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: It refers to--that
 15 you have a contract to--you have a contract and the term
 16 period to build something.
 17 MS. ZAGONEK: Yeah. It's a very valid question,
 18 and, in fact, it's the same question that I had, and my
 19 understanding is that in 2010--and my Belarus colleagues
 20 will correct me if I'm messing up the date--a provision was
 21 made.
 22 The City was fighting the unfinished
 23 constructions all over the city. They wanted to--those
 24 companies that are undertaking constructions to do it
 25 within the time and not to have scattered all around the

06:29:39 1 city unfinished buildings which are ugly, which don't
 2 please anybody, don't please the guest, don't please the
 3 tourist, don't please those who live there. So, yes, it is
 4 a measure or, rather, is a series of measures directed at
 5 constructors who spent too long to construct.
 6 So, yes, it is in that sense, you would say
 7 what's the method. But, yes, it is something that should
 8 persuade the contractors to build within the times that
 9 they intended originally to build whatever it is that they
 10 are building. Again, this is a general direction by the
 11 Government of Belarus at the time, presumably because
 12 they--there were a number of unfinished buildings.
 13 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. I hear
 14 what you say, and tax law in no country is reasonable, so
 15 it would be a surprise.
 16 MS. ZAGONEK: Tell me about it.
 17 PRESIDENT FERNÁNDEZ-ARMESTO: That is worldwide
 18 that taxes are established for reasons which only the tax
 19 authorities know.
 20 But let us go to the next one, permit to land
 21 plots. This is, I understand, that you get a permit for
 22 the use of the land.
 23 MS. ZAGONEK: Correct.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. And I
 25 understand that the permit expired on the 1st of July 2011.

06:31:00 1 MS. ZAGONEK: Correct.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: And I think we
 3 agreed that the new Tax Code came into being in 2013.
 4 MS. ZAGONEK: Correct.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: So, if there was no
 6 permit to the land plot, how can you tax something which
 7 does not exist anymore because the permit had expired. So,
 8 they--if you don't have the permit, you cannot be taxed for
 9 the permit.
 10 MS. ZAGONEK: Mmm-hmm. Well, that's precisely--I
 11 clearly haven't delivered my message clearly.
 12 The land--the tax law looks at actual occupation,
 13 and if in order to have the right to occupy--let's use it
 14 "occupy" and we understand that "occupy--"
 15 PRESIDENT FERNÁNDEZ-ARMESTO: To use.
 16 MS. ZAGONEK: --doesn't mean use or whatever it
 17 used.
 18 PRESIDENT FERNÁNDEZ-ARMESTO: To use.
 19 MS. ZAGONEK: So, when you use the land or occupy
 20 the land, you have to have a permit. You cannot do it of
 21 your own free volition. You have to have a legal basis for
 22 that occupation. So, you either have to own it or you have
 23 to have a lease, or you have to have a land permit. So,
 24 you have a choice when your permit expires. You vacate the
 25 land, you extend the permit, or you buy the land. I mean,

06:32:26 1 I'm giving you one that...
 2 PRESIDENT FERNÁNDEZ-ARMESTO: Okay.
 3 MS. ZAGONEK: If you don't do any of these three,
 4 you continue to occupy it, yes, a multiplier at tenfold,
 5 quite draconian multiplier does apply for the actual
 6 occupation of the land. So, you are no longer paying for
 7 the permit. It's a land tax calculated through breach,
 8 through your actual occupation of the land without having
 9 the requisite right for it.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Understood.
 11 MS. ZAGONEK: It would be at Slide 24 on the--
 12 PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So, the 29th
 13 of October, the Contract was--so, in 2013 and 2014, the
 14 land tax accrued and your point is that since July 1, 2011,
 15 the permit to use had expired. The land tax was multiplied
 16 by 10.
 17 MS. ZAGONEK: The rate, yes. The rate of tax was
 18 multiplied.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah, the rate was
 20 multiplied by 10.
 21 MS. ZAGONEK: Because it was occupied without an
 22 extension of the land permit.
 23 If Manolium-Engineering extended the land permit,
 24 then they wouldn't have paid the multiplier, correct.
 25 PRESIDENT FERNÁNDEZ-ARMESTO: Very good. So,

06:33:52 1 that--that is the reason.
 2 So, and your point is that the fact that the
 3 Contract was terminated on the 29th of October 2014 is
 4 irrelevant because it is a bit difficult--let me ask you
 5 this: If the land, the use of the land and the original
 6 permit to land plots had been linked to the Contract, why
 7 would the termination of the Contract not provoke exactly
 8 the same effect? Do you see my question?
 9 MS. ZAGONEK: I do see your question now. I--
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Because both arose
 11 together and both arose together, contract and permit to
 12 land plot arose together.
 13 MS. ZAGONEK: Mmm-hmm.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: The permit to land
 15 plot is what accrues the land tax. The Contract is
 16 terminated. Before that, the permit to land plots had
 17 already been terminated and no one had cared to extend it.
 18 MS. ZAGONEK: Mmm-hmm.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: So, my question to
 20 you is wouldn't that--wouldn't the termination of the
 21 Contract also just ratify that the permit to land plots had
 22 been absent, had been expired since 2011?
 23 MS. ZAGONEK: Mmm-hmm. Well, the contractual
 24 arrangements in a sense have nothing to do with occupation
 25 or use of land plots because whatever the Parties

06:35:36 1 decide--the Contract was to build and then to accept into
 2 communal ownership and, in return, to provide rights to
 3 construct elsewhere.
 4 And, in fact, after the Contract was terminated,
 5 Manolium-Engineering could continue to construct it, finish
 6 the construction. It doesn't need a contract to do that.
 7 The only reason it needed the Contract is to force the City
 8 of Minsk to accept it once it was completed. But, once the
 9 Contract terminates, it has no bearing on the tax situation
 10 and on the land situation.
 11 Because the land title, the legal ownership,
 12 remains with the State, as it has done throughout, the
 13 Manolium-Engineering continues to occupy it by having its
 14 private property on it, and until such time that it no
 15 longer has private property on it, it has to have a permit.
 16 If it does not have a permit, it pays tax for--you call it
 17 "unauthorized occupation."
 18 So, you don't need an agreement--an Investment
 19 Contract or any other Agreement--in order to extend your
 20 right to occupy the land. They are quite separate. And in
 21 our Submissions, we give examples of that.
 22 So, they're quite separate occurrences. The
 23 Contract is what the Parties have agreed, if you like, the
 24 exchanged buildings for lucrative land plot. But the tax
 25 thinks about it in a very different manner and quite

06:38:22 1 And then, to understand this completely, what
 2 then happens is, this is not paid. Then the tax
 3 authorities take the case to a court.
 4 MS. ZAGONEK: As they have to.
 5 PRESIDENT FERNÁNDEZ-ARMESTO: Sorry?
 6 MS. ZAGONEK: As they have to. It's an
 7 obligation.
 8 PRESIDENT FERNÁNDEZ-ARMESTO: Of course, as they
 9 have to.
 10 The Court then enforces the tax inspection, the
 11 tax liability. And the President of Belarus authorizes
 12 that the asset be appropriated by the State--let me say it
 13 in these terms--instead of going to public auction?
 14 MS. ZAGONEK: The reason why you need the
 15 President's Order, as I understand--and my Belarusian
 16 colleague may correct me--is because it is received by the
 17 State and it's an immovable asset.
 18 If it was received by somebody else, you wouldn't
 19 require--because it's, effectively, financed by the State
 20 Budget. The State Budget puts that on its balance. And
 21 that's why it's the final--according to Belarusian law,
 22 it's the final concluding act which allows the State to
 23 accept an asset on its balance sheet.
 24 PRESIDENT FERNÁNDEZ-ARMESTO: Last question.
 25 MS. ZAGONEK: And then, also, it writes off the

06:37:21 1 unrelated to the Parties' relationship.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: So, then we have
 3 the land tax for 2013 and for 2014, I understand.
 4 These are the only ones--the two ones which
 5 accrue?
 6 MS. ZAGONEK: No. It continued until the title
 7 to the incomplete facilities was transferred to Minsk
 8 because, until then, Manolium-Engineering was the legal
 9 owner of the Property.
 10 PRESIDENT FERNÁNDEZ-ARMESTO: Yeah, okay. But
 11 first--we have the first tax audit on the 17th of May 2016.
 12 It includes the taxes for 2013, '14, and '15.
 13 MS. ZAGONEK: Correct.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Multiplied by 10?
 15 MS. ZAGONEK: Correct. From 2013, correct.
 16 PRESIDENT FERNÁNDEZ-ARMESTO: Correct. No, it's
 17 these three years multiplied by 10?
 18 MS. ZAGONEK: Correct.
 19 PRESIDENT FERNÁNDEZ-ARMESTO: And that, then,
 20 balloons with--
 21 MS. ZAGONEK: Correct. Yes, it does.
 22 PRESIDENT FERNÁNDEZ-ARMESTO: --penalties and
 23 interest and things like that?
 24 MS. ZAGONEK: Correct. Correct.
 25 PRESIDENT FERNÁNDEZ-ARMESTO: It then balloons.

06:39:58 1 appropriate amount of tax.
 2 PRESIDENT FERNÁNDEZ-ARMESTO: Last question:
 3 What could Manolium have--this is--I mean, you see the
 4 disproportion. I mean, they invested 19 million, and at
 5 the end, have a tax liability of a similar amount.
 6 What could Manolium have done to avoid this tax
 7 liability?
 8 How could they have avoided that?
 9 MS. ZAGONEK: Well, first of all, Manolium could
 10 have finished construction in 2009.
 11 PRESIDENT FERNÁNDEZ-ARMESTO: No. After
 12 termination. You must--after termination.
 13 MS. ZAGONEK: Okay.
 14 PRESIDENT FERNÁNDEZ-ARMESTO: Of course, yes.
 15 MS. ZAGONEK: After termination--
 16 (Overlapping speakers.)
 17 PRESIDENT FERNÁNDEZ-ARMESTO: If it had--if
 18 everything had gone smoothly, it's fine.
 19 No, after termination, on the 29th of
 20 October 2014, how could they have avoided this tax?
 21 MS. ZAGONEK: They could have easily avoided it
 22 by obtaining the land permit or the extension of the land
 23 permit so that they would occupy or use the land, not in
 24 unauthorized manner, but lawfully.
 25 MR. KHVALEI: Mr. President?

06:41:12 1 PRESIDENT FERNÁNDEZ-ARMESTO: Yes, Mr. Khvalei.
 2 Let me understand.
 3 MR. KHVALEI: Yes.
 4 PRESIDENT FERNÁNDEZ-ARMESTO: So, the position of
 5 Belarus is that the whole thing would have been avoided if
 6 Manolium had asked for an extension of the permit?
 7 MS. ZAGONEK: Well, they would have avoided these
 8 draconian multipliers.
 9 PRESIDENT FERNÁNDEZ-ARMESTO: The tenfold?
 10 MS. ZAGONEK: Correct.
 11 ARBITRATOR STERN: Can I just understand--I need
 12 to be sure that I understand also.
 13 The multiplication was started only in 2013?
 14 MS. ZAGONEK: Correct.
 15 ARBITRATOR STERN: But why didn't it start
 16 1st July 2011, because that was the end of the permit?
 17 MS. ZAGONEK: Because then, at that time,
 18 Manolium-Engineering was taxed on the simplified regime, so
 19 it had no obligation.
 20 ARBITRATOR STERN: It was under the--yeah. Okay.
 21 PRESIDENT FERNÁNDEZ-ARMESTO: I know you want to
 22 say something, Mr. Khvalei. I'll give you the floor
 23 immediately, but let's finish.
 24 ARBITRATOR ALEXANDROV: One more clarification on
 25 the same topic.

06:42:22 1 So, you said the options are: Ask for a renewal
 2 of the permit or unoccupy the land? Because buying the
 3 land was not an option, as I understand.
 4 MS. ZAGONEK: Correct.
 5 ARBITRATOR ALEXANDROV: So, let's assume that an
 6 investor asked for an extension of the permit and the
 7 relevant authority denies that extension.
 8 How can an investor unoccupy the land? Even if
 9 they withdraw, the construction is still there. So, what
 10 do they need to do, destroy the building?
 11 I mean, it seems to me practically a difficult
 12 proposition.
 13 What is the option of unoccupying the land in the
 14 scenario where you have construction?
 15 MS. ZAGONEK: Well, first of all, I would say
 16 that, in order for an authority to refuse a permit, it has
 17 to have grounds, and there are various ways of challenging
 18 if there is a refusal to grant the permit.
 19 The options that would be left to, as you say,
 20 "unoccupy," what the Manolium-Engineering could have done
 21 is what we call in different terms in the
 22 Submissions--sometimes we call it "mothball." And I start
 23 thinking about moths, but, of course, it has nothing to do
 24 with moths--or "lay-up," or, I think, in plain English, to
 25 "preserve," to "conserve" the building.

06:43:43 1 That would require--it is not a free exercise, so
 2 the investor would have to spend money on preserving that.
 3 And if it had done that, under Belarus law, you have no
 4 opportunity to deny extension of any rights.
 5 ARBITRATOR ALEXANDROV: But some of those
 6 facilities were already used, weren't they?
 7 How do you mothball a road, for example?
 8 MS. ZAGONEK: I can't answer the question how you
 9 mothball a road, but the facilities were not--
 10 (Comments off microphone.)
 11 MS. ZAGONEK: You could not--I understand that
 12 the use we've been talking about--and this is what we've
 13 discussed today--it was Manolium--it was the City of Minsk
 14 Komanstance (phonetic) that were paying for the utility
 15 bills. It wasn't the use in a sense that we understand the
 16 use.
 17 ARBITRATOR ALEXANDROV: I thought the Pull
 18 Station and the road were being used.
 19 (Comments off microphone.)
 20 MS. ZAGONEK: My Belarus colleagues explained to
 21 me that, under Belarus law, until an object is
 22 commissioned, you have the right to mothball it. It is
 23 only after--once it is commissioned, you, obviously, cannot
 24 mothball it. Until that time, under Belarus law, you have
 25 the right to preserve it.

06:45:34 1 PRESIDENT FERNÁNDEZ-ARMESTO: Mr. Khvalei- thank
 2 you very much for your patience and your help. I think we
 3 will all need some further education on the tax law of the
 4 land tax because it, evidently, is a complex--
 5 MS. ZAGONEK: It's a complex area.
 6 PRESIDENT FERNÁNDEZ-ARMESTO: --a complex area.
 7 Mr. Khvalei, you have the floor.
 8 MR. KHVALEI: Mr. President, thank you. I'll
 9 start with the last issue.
 10 The road was in use. We saw it in a picture.
 11 Pull Station was in use. It was feeding the electricity,
 12 wire electricity for trolleybuses, and administrative
 13 building was in use. They are not just paying bills for
 14 utilities.
 15 I was told by my client Minsktrans was sitting,
 16 physically, in this administrative building, not
 17 necessarily in the whole building, but some offices were
 18 occupied by them.
 19 But in terms of extending permission, or permit,
 20 I think the Respondent is a little bit misleading the
 21 Tribunal. Why misleading? Because, assuming we are in a
 22 situation as you describe in October 2014, and the Contract
 23 is terminated, and the Respondent is saying the Claimant
 24 could apply for extension of permit and finish
 25 construction. But to apply to the Minsk City Council to

06:46:56 1 get extension of land, they will ask you, "What is the
 2 ground for extending the land for you?"
 3 You don't have a contract for construction;
 4 right? It's terminated. If you had extended contract for
 5 construction following one year, that will be legal basis
 6 for extending your right to use the land and giving you
 7 permission to construct. But there's no Contract.
 8 You are sitting illegally on my land. How could
 9 I give you permission to sit one more year because you
 10 decided to build for your own trolley station? They will
 11 never do it.
 12 PRESIDENT FERNÁNDEZ-ARMESTO: Yes, but what I see
 13 here is- thank you, Mr. Khvalei. And I'm worried that we
 14 are getting here into a certain--at very late in the day,
 15 into a discussion of really important issues at the heart
 16 of the case.
 17 You may wish to--we have to close now for today.
 18 And I thank you both for your excellent presentations.
 19 You have to give some thought on how we address
 20 this issue about the tax and how exactly it worked
 21 with--exactly how it worked because it seems to the
 22 Tribunal to be an important issue at the heart of the case.
 23 There may--you may wish to give some thought
 24 whether there should be some contradiction. I'm slightly
 25 worried that, if you simultaneously make two presentations,

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR, CRR, CRC, Court Reporter,
 do hereby certify that the foregoing proceedings were
 stenographically recorded by me and thereafter reduced to
 typewritten form by computer-assisted transcription under
 my direction and supervision; and that the foregoing
 transcript is a true and accurate record of the
 proceedings.

I further certify that I am neither counsel for,
 related to, nor employed by any of the parties to this
 action in this proceeding, nor financially or otherwise
 interested in the outcome of this litigation.

Dawn K. Larson
 DAWN K. LARSON

06:48:32 1 we may end up ships passing in the night.
 2 So, I leave you to speak with each other in the
 3 course of the week, when we speak about the future of the
 4 Proceeding, we may wish to have--to see how we--because I
 5 think we are still a little bit in the dark here. I think
 6 we need a little bit more illumination and education.
 7 Very good. Thank you.
 8 So, we leave that for the Post-Hearing matters.
 9 Very good. Thank you very much to our Interpreters and to
 10 our Court Reporter. And we meet tomorrow at 9:00.
 11 Thank you.
 12 (Whereupon, at 6:50 p.m., the Hearing was
 13 adjourned until 9:00 a.m. the following day.)
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