NCN: [2023] EWHC 457 (Comm)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND & WALES
COMMERCIAL COURT (KBD)

No. CL-2018-000304

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 3 February 2023

Before:

MRS JUSTICE COCKERILL

B E T W E E N :

(1) NAVIGATOR EQUITIES LTD
(2) VLADIMIR ANATOLEVICH CHERNUKHIN — Claimants

-and -

OLEG VLADIMIROVICH DERIPASKA — Defendant

MR J CROW KC and MR J WEALE (instructed by Quinn Emanuel) appeared on behalf of the Claimants.

MR N PILLOW KC and MR J SHEEHAN and MISS K RATCLIFFE (instructed by Quillon Law) appeared on behalf of the Defendant.

J U D G M E N T

(via Cloud Video Platform (CVP)

MRS JUSTICE COCKERILL:

Introduction

1 This hearing is effectively the Pre-Trial Review for the re-re-re-listed trial (the "Trial") of committal proceedings (the "Contempt Application") brought by the Claimants against the Defendant, Oleg Deripaska ("Mr Deripaska"). The Trial is listed to take place on 20-24 March 2023. The case has something of a troubled history.

2 The underlying dispute may be summarised thus. Mr Deripaska (together with his corporate vehicle, Filatona Trading Limited) and the Claimants have been involved in a substantive dispute since 2010. The essential matters giving rise to that dispute arose out of a joint venture between Mr Chernukhin and Mr Deripaska to develop a valuable 10-hectare real estate site in Moscow.

3 When attempts to settle the dispute failed, the Claimants commenced arbitral proceedings against Mr Deripaska pursuant to a shareholders' agreement made in 2015. Both in those arbitration proceedings and also in the course of Mr Deripaska's subsequent challenges under ss. 67 – 68 of the Arbitration Act 1996 (the "Arbitration Act Claims"), Mr Deripaska was found to have advanced a dishonest case and paid a multi-million dollar bribe to his principal witness in order to advance a case which they both knew to be false.

4 Having obtained permission to appeal on just one ground (out of eight for which permission was sought), Mr Deripaska's appeal was dismissed by the Court of Appeal following its judgment of 6 February 2020 ([2020] EWCA Civ 109) and his application for permission to appeal to the Supreme Court was dismissed in December 2020.

5 The Claimants issued a Committal Application on 14 November 2019. In short, the Claimants allege that, as a result of the re-domiciliation of a Jersey company known as EN+ to Russia earlier in 2019, the Defendant acted in breach of undertakings given by him in lieu

of a worldwide freezing order which had been made against him on 11 May 2018. The undertakings were given in relation to shares in the company of which he was the ultimate beneficial owner. The issues as to the alleged contempts are complex.

6 A trial and strike out application originally took place before Andrew Baker J in June 2020, at which the Judge dismissed the Committal Application as an abuse of process. The Claimants appealed and were successful. The Court of appeal concluded that it was (at least) properly arguable that, among other matters: (i) Mr Deripaska had committed a serious (as opposed to merely technical) contempt of court, as alleged in the Contempt Application; and (ii) the Contempt Application was a proportionate response to (what would be if proved) a serious contempt.

7 Following the Claimants' successful appeal, the Court of Appeal ordered in December 2021 that the trial be relisted in the Commercial Court with a time estimate of four days and (rejecting a stay application) that the Trial should be heard “with as little delay as possible”. The judgment on appeal can be found at [2022] 1 WLR 3656.

8 A four-day trial was originally listed to commence on 23 May 2022.

9 On 10 March 2022, the Defendant was made the subject of an asset freeze under the Russia (Sanctions) (EU Exit) Regulations 2019. This had the effect of preventing solicitors and counsel from being paid to represent the Defendant and caused his longstanding London solicitors RPC to indicate that they would terminate the retainer with him (and all other sanctioned clients) in any event.

10 I granted the application at a hearing on 6 May 2022 on the basis that there was no possibility of a fair trial in the circumstances, three weeks before the hearing. In my ex tempore judgment ([2022] EWHC 1637 (Comm)) I concluded that this result must follow because a fair trial was not possible in all the circumstances:

> "The bottom line is that at the moment Mr Deripaska cannot pay RPC for legal representation … even if RPC were to remain on the record or were bound to remain on the record, they could not properly represent Mr Deripaska at the trial without counsel. So, in the final analysis, when one looks at the question of solicitors and counsel, I regard the question of counsel as being more of a killer point … even if RPC did get a licence or Peters and Peters got a licence, there would be no time for counsel to read-in and prepare."

11 At that point, as the judgment makes clear, the parties anticipated that the adjournment would be of short duration and would not be open-ended. Indeed, I considered it realistic to re-list the hearing for October/November 2022 on the basis of the facts as known at the time.

12 The Defendant instructed new solicitors, Peters & Peters ("P&P") in place of RPC. On 5 May 2022, P&P applied to OFSI for a specific licence. P&P followed up on the application to OFSI on numerous occasions between May and October 2022, in particular writing to OFSI on 29 September 2022 to stress the urgency of the application and to request that the application be granted within the next seven days.

13 The trial had been listed again for four days, starting on 28 November 2022. In the continued absence of a licence, P&P wrote to the court on 18 October 2022 seeking an adjournment of the trial on the basis that they required a licence from OFSI and OFAC in order to represent him. They asserted that an OFAC licence was required because the payment route identified in the OFSI application "*involved a correspondent bank with a US connection*". Ultimately the parties were essentially agreed that the case could not proceed and I therefore indicated that the trial must be adjourned again and that the first day of the existing listing should be used for directions.

14 A directions hearing therefore took place on 28 November 2022 before Robin Knowles J. The Defendant was invited to provide dates convenient to his legal team prior to that hearing. The Defendant was not however represented at the hearing. P&P explained to the

Court at the time in a lengthy letter that this was a decision taken by the firm, which was not prepared to come on the record and instruct counsel until it was able to receive payment pursuant to and by the route provided for in the existing licence application, which would engage the US sanctions regime (and for which an OFAC licence was therefore required). The Defendant was proposing to pay his legal fees via a route which did not involve the US.

15 In brief summary, whilst the Claimants sought to have the Trial re-listed on the first convenient date, the Defendant sought an adjournment of the Trial pending the grant of a special licence by OFSI (i.e. not subject to a limit of £500,000). It was the Defendant's position that he should be entitled to his choice of solicitors and counsel and that, in order to have that choice, the Defendant required further funds beyond those permitted by the OFSI general licence. The Defendant did not provide any dates which would be convenient to his existing team at that stage.

16 At the November Hearing, Robin Knowles J gave directions for the relisting of the trial in either of the weeks commencing 20 or 27 March 2023. The order also revised the time estimate down to three days.

17 Shortly after that hearing the Defendant evinced an intention to instruct Quillon Law LLP instead of P&P – having approached Quillon before the directions hearing. Quillon had to make a new application to OFSI. On 11 January 2023, Quillon wrote to the Claimants' solicitors, Quinn Emanuel, seeking consent to an adjournment of the trial until July 2023 when the Defendant's existing counsel team are available. Quinn Emanuel refused the following day. Accordingly this hearing has been utilised for hearing arguments on this point.

18 The day before the hearing it became clear that a specific licence in the full amount sought had been granted.

Discussion

19 In essence, this is, as I have noted, an application for an adjournment. It is common ground that, on at least one level, adjournment of the hearing is highly undesirable, given the timeline of the case which I have outlined and the indication of the Court of Appeal that contempt proceedings of this sort should be heard with "*as little delay as possible*". That, of course, reflects a public interest in the prompt outcome of cases of this sort and, as Knowles J pointed out at the hearing in November of last year, such matters cannot go on indefinitely. Adjournment is the more undesirable because, even with some expedition, the only available trial dates would be in either 9 and 16 October 2023, and then from February 2024.

20 That acknowledged undesirability, of course, cannot trump the fair trial aspect involved in the question of an adjournment applications. There was little between the parties as to the appropriate test in relation to adjournment generally. The discretion falls to be exercised in accordance with the overriding objective of dealing with cases justly and at proportionate cost. This includes the need to ensure that the parties are on an equal footing so far as is practicable (CPR 1.1(2)(a)). That in turn *"requires the court to ensure that each party is afforded a reasonable opportunity to present his case under conditions which do not place him at a substantial disadvantage vis à vis his opponent"*: *Khudados v Hayden* [2007] EWCA Civ 1316 at [39].

21 Reference was made to the review by Nugee LJ of the principles in *Bilta (UK) v Tradition Financial Services Ltd* [2021] EWCA Civ 221 at [30] and following and, in particular, the second limb of the test which has been set out there and elsewhere, that the right to a fair trial would be infringed by the refusal of an adjournment. Where that is the case, then an adjournment must be granted (*Teinaz v Wandsworth London BC* [2002] IRLR 721 at [20]–

[21]), unless this would be outweighed by injustice to the respondent that could not be compensated for: see *Bilta* at [30]. That two-pronged approach has been reflected in a number of decisions, including in my own decision in May on the first application to adjourn where I did indicate that the primary consideration was the need for a fair trial.

22 There are a number of factual matters in relation to the background which have been debated in front of me, in particular the position as to the hearing in front of Knowles J and whether Mr Deripaska should be regarded as having been represented there such that the application should be seen as an impermissible attempt to relitigate the conclusions reached by the judge at the hearing on 28 November 2022. On that basis, it was argued, though not urged as the main point of argument, that, effectively, we were in *Chanel* territory and that there needed to have been a material change of position, which there was not.

23 In that regard, the Claimants reminded me of the relevant principles as summarised by Edwin Johnson J in *Golubovich v Golubovich* [2022] EWHC 1605 (Ch) at §113:

> "As the decision in Chanel demonstrates, it is not open to a party, even on an interlocutory application, to have a second go at an application on which they have already failed or, as occurred in Chanel, on which they have previously capitulated, unless that party can point to a significant change of circumstances or to material new evidence not previously available. The public policy behind this principle is that parties should not be permitted to relitigate matters which have already been decided against them or which could and should have been raised in previous proceedings."

24 Against this, the Defendant has prayed in aid the approach of P&P, the solicitors who were then on the record, which resulted in their not physically appearing. That is plainly, on the information I have before me, the case. The position at the hearing in front of Knowles J was that Mr Deripaska's legal team would not physically appear and Mr Pillow KC says that Mr Deripaska did not therefore have the <u>full</u> opportunity to appear - a point highlighted in

the quote from Lord Diplock in *Hunter v. Chief Constable of the West Midlands Police*, [1982] AC 529 cited in *Allsop v Banner Jones Solicitors* [2021] EWCA Civ 7:

> "The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

25 I bear well in mind therefore the importance of a plaintiff having a full opportunity of contesting the decision in the court by which it was made, and Mr Pillow says that Mr Deripaska did not have a full opportunity to contest that hearing. In the light of that the Claimants did not press the *Chanel* argument with full force.

26 At the same time, the Claimants point out that Mr Deripaska did at least have the benefit of submissions having been put in in writing by P&P, and was notified of the hearing and had the opportunity to appear himself. While he was not fully represented he did not lack (or in some respects fail to avail himself of) an opportunity to put forward his position. So far as that is concerned, there are certainly grounds to consider that there was an opportunity for Mr Deripaska to engage, including to indicate the issue with the availability of counsel, at the previous hearing. I would not be minded to decide the application on this basis; but the factual backdrop cannot be entirely ignored. This area therefore ultimately forms the background for some of the arguments which then are deployed in relation to the individual grounds and when considering the matter overall.

27 Turning to the adjournment application, there were four arguments by Mr Deripaska as to why an adjournment should be granted, the first being that the defendant's leading and senior junior counsel being unavailable on the dates currently listed ("the First Ground") ; the second being that the OFSI general licence would not cover the fees for existing

representation and the defendant would not be able to obtain proper representation to that budget ("the Second Ground") ; the third being that the legal team required time to obtain a special licence from OFSI before they were able to represent the defendant at the hearing ("the Third Ground") and the fourth being that the application could not be fairly disposed of in three days (the Fourth Ground").

28 In the light of the fact that, as of yesterday, OFSI granted a special licence in the full amount of the sum sought, which is £1.286 million, main figure, with contingencies rising to somewhere in the region of £2 million, those middle grounds drop out and the argument before me has been concentrated on the first and fourth grounds.

The First Ground

29 So the first ground is that the unavailability of the defendant's leading and senior junior counsel is a reason why a fair trial is at risk and that it infringes the Article 6 rights of Mr Deripaska.

30 The backdrop here is the hearing in front of Robin Knowles J and the setting of this date; while the statement of Mr Hastings asserted that there was no regard to the availability of Mr Deripaska's team, the reality is, as I have noted, that this date was set in circumstances where there was an opportunity given to Mr Deripaska and his team to state what the availability was. There was no reason why a response could not have been given to that, and no response was given. There was then an opportunity after the hearing for Mr Deripaska and his team to raise any difficulties with availability of counsel well before this point.

31 However, quite apart from the background, I am not persuaded that the argument which has been the primary argument before me this morning as to the right to a preferred legal team

would, in any event, be a good point to the extent that it would determine this adjournment application.

32 The authorities recognise that there is, to some extent, a right to a counsel of choice. They do not go so far, however, as to say that a defendant can entirely have its choice of counsel. The authorities say that he should be able to make a choice, but there are limits. That is a point that I made in the previous application; and it was not contentious that it is not open, for example, to a party choose counsel who is not going to be available for five years because of other commitments.

33 There are a number of authorities where the question as to the desirability of counsel has been considered. One to which I was referred was *Re Maguire* [2018] 1 WLR 1412, to which both sides pointed. That was a case which was on very different facts about the effect of a decision not to deprive the litigant of the choice of counsel *per se*, but the right to have junior counsel paid as senior counsel for legal aid purposes. That was the case where the Supreme Court referred to the question of a "*predilection for a particular counsel*" but, more to the point, they went on to look at the particular principles.

34 I was referred in particular to paragraphs 29 to 30 by Mr Pillow in his submissions, that being the point at which the Supreme Court rehearses some of the European authorities and says quoting from paragraph 66 of *Mayzit v Russia* [2005] 43 EHRR 38) that:

> "… the national courts must certainly have regard to the defendant's wishes. However, they can override those wishes where there are relevant and sufficient grounds for holding that this is necessary in the interests of justice."

35 Going on within that judgment, that same rider as to the interplay between choice and fair trial appears again, slightly differently stated. At paragraph 34, Lord Kerr says:

> "The wishes of a defendant as to his choice of counsel must be taken into account but these are properly subordinate to the overall aim of achieving a fair trial. Thus, it is not a question of the defendant enjoying a right to choose his own counsel which is freestanding of the fair trial goal. Rather it is as an element of the objective of a fair trial that the right to have counsel of one's choice arises. For this reason, it is not appropriate to apply the same analysis to the question of infringement of the right as obtains in an examination of an admitted interference with a right such as arises under Article 8."

36 He then goes on, at paragraph 35, to consider *Croissant v Germany* [1992] 16 EHRR 135, which, again, refers to overriding the wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice, and at paragraph 37 *Dvorski v Croatia* where the Grand Chamber said, at paragraph 76:

> "… the right set out in Article 6.3(c) of the Convention is one element amongst others of the concept of a fair trial in criminal proceedings …"

37 At paragraph 38, Lord Kerr then goes on to say:

> "It is clear from this review of the relevant authorities that the essence of the right to choose one's counsel lies in the contribution that the exercise of that right makes to the achievement of the ultimate goal of a fair trial. It is not an autonomous right which falls to be considered outside that context."

What this authority makes clear therefore is that choice of counsel is therefore an important matter and relevant and sufficient grounds must be given for overriding it, but it is one which falls to be considered as part of the overall right to the fair trial.

38 My attention was also drawn by the defendants to the case of *Berry Trade v Moussavi* [2002] 1 WLR 1910, which Mr Pillow said was a parallel case in that it was a case of a fourth adjournment, where the judge refused the fourth adjournment and was said by the Court of Appeal to have erred in so doing. I agree with Mr Crow KC that that is a very different case. There is a parallel in it being a fourth adjournment, but the facts are very

particular indeed and there was much focus on the particular and, one might say, unique restraint which occurred in that case.

39 Overall, the defendant says that the ability to have competent counsel in this case is not enough, otherwise the right to one's chosen counsel is meaningless and that there is a real danger of inequality of arms. It was submitted that there was nothing here sufficient to say that it was necessary to override the right to counsel of choice.

40 However, as I have indicated, I am not satisfied that, as a matter of law, the test is one of absolute necessity. It is part of the overall right to a fair trial and, as the Supreme Court indicated in *Maguire*, there are points at which, in the balance, the predilection of a litigant for his particular counsel must give way. So the mere fact that the presence of a particular longstanding counsel is particularly desirable does not change the fact that there are limits. The "right" to counsel of choice gives way if there are relevant and sufficient grounds for doing so and a fair trial is not imperilled (such that the particular counsel's presence is not necessary in the interests of justice).

41 I have also considered in argument the question of whether any of the existing team could do this hearing – the extent to which there is in fact deprivation of the counsel of choice. As for Mr Pillow, he has indicated that he considers that although he is not booked elsewhere for the actual dates in question, the preparation time, which is very slim between the end of his previous trial and this, would be such that despite his familiarity with the case he would not feel he could professionally appear. Therefore, I must consider this on the basis that Mr Pillow is not available. In addition Mr Sheehan is not available (being in trial on another matter), though Miss Ratcliffe is available. The senior end of the team is not available, but the junior end is. To a significant extent therefore, but not entirely, the Defendant would lack his counsel of choice.

42 But that fact does not stand in isolation. There is a broader picture. There are reasons why choice of counsel should be displaced. In the current case, the position is this: the date was set some considerable time ago; there have been numerous adjournments since the Court of Appeal urged swift resolution. This adjournment application need not have occurred at all: it was possible for the defendant to come back and indicate the unavailability of counsel at the time of the directions hearing, or at least much earlier. In addition it was perfectly possible to book and become familiar with alternative counsel earlier. There are also, as I consider further below, issues as regards non-engagement with the important business of getting this case heard.

43 Importantly also, this is not a case where a fair trial is imperilled by the loss of a major part of the team. This is not a case where it would be impossible to get competent counsel. There is now a special licence granted in fairly lavish amounts. There are still six weeks available to instruct new counsel. That is a period of time which would be more than ample to prepare for a three-day hearing on committal and, given the unavailability of counsel, which has been well known to the defendants, one might imagine that some steps should have been taken to line up possible counsel.

44 Of course, it has been said that when I heard this matter last May I indicated that the seven-week preparation time which was in Mr Pillow's diary was suitable for him; however, as I have suggested in argument, that was in the context of a rather different point being made as to whether three weeks' preparation time for new counsel was sufficient. Whatever my thoughts may have been last May in relation to that point, I am clear on the basis of the consideration of the documents I have now and the information which I have before me that six weeks is enough for alternative counsel, supported by one of the existing team, Miss Ratcliffe, to get up to speed.

45 As I will come to, the scope of this hearing is rather less than I had perhaps anticipated at the time. The evidence, of course, was completed in 2020. The committal was in fact fully prepared by the then team, including a full skeleton argument and, doubtless, preparation for the points which were anticipated plus advice. Although advice will need to be taken again, although it will not be the same team, it is not preparation from a fully standing start. There is a huge head-start in place. There is a supporting cast, not least in the person of Miss Ratcliffe, who is one of the existing team. There is that lavish budget.

46 I also note that, in this context, six weeks was a period which appears to have been identified as sufficient by P&P in correspondence with OFSI late last year, when they were pressing for an answer in relation to the licence. It was at the six-week point that they were indicating that matters could not be prepared unless an answer came, and Quillon, the current solicitors, indicated the same period this year by identifying 2 February as the date by which they imperatively needed an answer from OFSI. While there was that date in place by Knowles J, following the hearing in November, to indicate trial readiness, that date was itself apparently chosen because a six-week period is one where it would be considered sufficient to deal with the case.

47 So in terms of achieving a fair trial, I am satisfied that the availability of Mr Pillow and Mr Sheehan is (even without the *Chanel* arguments) not a factor which would make the achievement of a fair trial impossible or indeed remotely impracticable. Taking these factors in the round I conclude that there are sufficient reasons to depart from the usual course of permitting counsel of choice.

The Fourth Ground

48 I am also unpersuaded by the fourth ground and it provides no basis for an adjournment. The defendant says that four days was a robust estimate and Andrew Baker J's estimate was

never enough. While there is now no cross-examination of some witnesses, he submits there remains a real risk, unless parameters for cross-examination and so forth are set down, given that Mr Deripaska will now be via an interpreter; the claimants by contrast say that there is no danger in the length of the hearing. The materials for the hearing in front of Andrew Baker J were very large, but they also canvassed strike-out and damages for the breach of the undertaking, and so all the material relevant to those points has gone and what is left is slight in the sense of the scope of the undertakings, and the actual underlying facts are not much in dispute. The questions really relate to whether events constitute the shares no longer being available and Mr Deripaska's own personal involvement, or whether it is such as to make him liable for breach of those undertakings. It is suggested that cross-examination other than of Mr Deripaska will be very, very limited indeed.

49 Looking at the merits of the argument, even at the time of the CMC I heard back before the strike out, the real scope of the committal would, in my judgment, logically have fallen within three days, even allowing for some overlap between the abuse and the committal arguments. There is obviously no requirement to hear all the witnesses for Mr Deripaska, for them to attend for cross-examination. Less time will now be required to cross-examine Mr Deripaska and his principal other witness, Mr McGregor. The reduction in the time of trial causes no prejudice to Mr Deripaska, given that there will be little cross-examination, if any, of Ms Berard, as highlighted by Jacobs J at a recent (unsuccessful) disclosure application. Further, as has been noted, the original time estimate for trial was only increased to four days in order to fit in that strike-out, which reinforces the crossover between the strike-out and the committal application.

50 While it has been stated that the legal team believe that three days could not dispose of this, that has not really been seriously maintained in submissions, and it is not at all clear from the materials before me why three days would not be adequate. I would also indicate that,

again, it seems to me a colourable argument, that this is collateral attack on Robin Knowles J's conclusion, where he was satisfied that a three-day time estimate was appropriate. There is no indication as to a material change or why this matter could not have been raised earlier if there was considered to be an issue with the estimate for the hearing that had been put in the diary.

51 I am therefore not satisfied that there is a timing issue. Certainly there is no timing issue such as to indicate that there are any concerns as to the fairness of the trial, if the trial proceeds. To the extent any timing issue does emerge, it seems to me that it must be one which assists rather than hinders the defendant. The committal application is one on which the burden of proof will be on the claimants. That is a high burden and they can, and doubtless will, be subjected to guillotine in order to ensure that the matter stays within the hearing time.

"Gaming the System"

52 Finally, the claimants say that the conduct of Mr Deripaska comes into the balance when considering this matter. They say that I should infer that Mr Deripaska has been "gaming the system" and using his Article 6 right to use a situation where he can dictate a timeline. Various points have been made about address for service, the absence of disclosure of the OFAC licence application before me, the fact that the potential changeover of solicitors was not disclosed to Knowles J when, in fact, steps were already being taken to change solicitors, no evidence as to why the solicitors have been replaced, failure to engage regarding the dates before the hearing before Knowles J, or indeed before now, the application for the OFSI licence in the names of counsel at a time when Quillon knew that some of the existing team could not do the March hearing date.

53 All in all, and not being minded to give much weight to these, I do not accept that I should infer that Mr Deripaska has been gaming the system. However, when it comes to consider the overall factors, while it may not be fair to say that Mr Deripaska has taken deliberate steps, the way that the matter has been conducted is not one where there has been an engagement to positively promote the timeline. So, for example, the failure to respond in relation to Knowles J's hearing, not identifying unavailability earlier, making an application for an OFSI licence when the date was still in the diary on the basis of the names of counsel who were not available, rather than identifying the possibility that there might have to be a change of names. All of that has created difficulties which have played into the application for an adjournment.

54 As I say, however, I do not accede to the submission that there has been a gaming of the system.

"Trading Certainty for Uncertainty"

55 Nor do I accede on the other side to the submission that I should put any weight on the point that in refusing an adjournment I would be trading certainty for uncertainty because of the names in the special licence which has just been achieved. I do not accept that there is an extra factor in this which pushes in favour of an adjournment.

56 There is no reason why the names of counsel cannot be amended and, if there were any uncertainty, that is the creation of the decision to name counsel who were known to be unavailable at the time of the application. Further the idea that one would be trading certainty for uncertainty is not one to which I accede in circumstances where certainty is in any event elusive when one looks at the history of this matter: the scope for licences to expire, as the general licence will do in April, and the various other reasons which have been advanced for the need to have adjournments thus far. So the fact that the licence which

has come through is not yet in the names of counsel who can be instructed is not a factor which I think should be put into the equation as tending in favour of an adjournment.

57 Overall, therefore, I come back to the question of whether this matter should be adjourned, whether the test in relation to achieving a fair trial is one which is met, whether Mr Deripaska's right to a fair trial is infringed by a refusal of an adjournment bearing in mind all these factors.

58 Having considered the various factors, I am not persuaded that there is anything which raises any concern about Mr Deripaska's ability to have a fair trial. As I have already indicated, while there is, *prima facie*, a right to have one's choice of counsel, that is subject to limits. In circumstances where the desire to maintain the team comes against the background which it does, in the circumstances which it does, including the prejudice in not determining this serious issue following multiple adjournments, the prejudice which is caused to other court users by repeated adjournments, against the situation where there is ample time for those members of the team who cannot make the date to be replaced by competent counsel with an ample budget in place, I am not prepared to order an adjournment of this hearing.

59 Accordingly, the application is dismissed.

CERTIFICATE

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