

In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 5
Hearing on the Merits

Friday, 26th May 2017

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
PROFESSOR ALBERT JAN VAN DEN BERG
PROFESSOR PIERRE MAYER

(1) BSG RESOURCES LIMITED
(2) BSG RESOURCES (GUINEA) LIMITED
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

DAVID WOLFSON QC, of One Essex Court, and DAVID
BARNETT and GABRIELLE PELED, of Barnea & Co, appeared on
behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON, THÉOBALD NAUD and SÂARRA-TILILA
BOUNFOUR, of DLA Piper, LAURENT JAEGER and AGNÈS BIZARD, of
Orrick Herrington & Sutcliffe, and MOHAMED SIDIKI SYLLA, of Sylla
& Partners, appeared on behalf of the Respondent.

Secretary to the Tribunal: BENJAMIN GAREL
Assistant to the Tribunal: MAGNUS JESKO LANGER

Transcript produced by Trevor McGowan
Georgina Vaughn and Lisa Gulland
www.thecourtreporter.eu

ALSO APPEARING

FOR CLAIMANTS

JACK BURSTYN, Mishcon de Reya
DAG CRAMER, BSGR
FRANÇOIS FERREIRA, CFA

FOR RESPONDENT

ANDREA LAPUNZINA VERONELLI, DLA Piper
CLÉMENTINE EMERY, DLA Piper
EUGÉNIE WROBEL, DLA Piper
YANN SCHNELLER, Orrick Herrington & Sutcliffe
QUIREC DE KERSAUSON, Orrick Herrington & Sutcliffe
VALÉRIE KUBWIMANA, Orrick Herrington & Sutcliffe
MARIUS ATTINDOGBE, Orrick Herrington & Sutcliffe

COURT REPORTERS

SIMONE BARDOT, French court reporter
CATHERINE LE MADIC, French court reporter
CHRISTINE ROUXEL-MERCHET, French court reporter

INTERPRETERS

SARAH ROSSI, French-English interpreter
ELIZA BURNHAM, French-English interpreter
JESUS GETAN BORNN, French-English interpreter

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(9.34 am)
THE PRESIDENT: Good morning to everyone. We are ready to start Day 5 of this hearing.

Let's start with the mini-openings. Is there anything to report on the Claimants' side, or presentations you'd like to make?

There are two points that the Tribunal thought we should address today: any news from Mr Avidan, if there is any; and then we should also briefly discuss the timing of next week.

Otherwise, of course we are in your hands with respect to any topics you wish to raise now.

MR WOLFSON: Madam President, members of the Tribunal, good morning. We were only going to raise one point, which is that of Mr Avidan.

The position is that, having spoken to Mr Avidan, he will appear before the Tribunal. I've been told by the Mishcon team, if I can put it that way, that what they propose to do is, having spoken to Mr Avidan, they are going to approach counsel for the Respondent and try to sort out the scheduling of that. I'm afraid I'm not personally able to help the Tribunal today on the scheduling.

I think what's being floated is that rather than

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1 interrupt the Guinean witnesses, I think, as we said
2 earlier, we would try to look at having Mr Avidan on
3 Thursday at some point.

4 But having said what I've said, could I leave the
5 scheduling to be discussed between the usual channels?
6 And I hope that on Monday the parties will be able to
7 either have an agreed position, or at least explain the
8 position to the Tribunal. But the main point is: he
9 will be able to appear.

10 THE PRESIDENT: That is indeed good news, and thank you to
11 the Claimants for having done what was needed.

12 Ideally, if the Claimants confirm that they will end
13 the cross-examination of the Guinean witnesses by
14 Wednesday, end of the day, then we could take Mr Avidan
15 on Thursday morning.

16 MR WOLFSON: Yes, I hear what Madam President says. I don't
17 mean to be difficult in any way, but I personally am not
18 going to be doing the cross-examinations of the Guinean
19 witnesses, so I am not able to confirm how long
20 precisely that will take.

21 What Madam President has said will of course have
22 been seen by those who are preparing the
23 cross-examinations. And I hope that, either over the
24 weekend or on Monday morning, there will be an agreed
25 position. But I see the force of what's just been said.

09:37

1 Equally, I don't want to limit, by saying something now,
2 the time which those doing the cross-examinations may
3 think they need for them.

4 THE PRESIDENT: Absolutely. Right now the
5 cross-examinations are scheduled for longer.

6 MR WOLFSON: Precisely.

7 THE PRESIDENT: Absolutely. You can confirm -- and
8 counsel -- over the weekend, and then see how you best
9 organise this. We have full confidence in your
10 organisational skills.

11 MR WOLFSON: I'm sure there's a way to sort this out.

12 THE PRESIDENT: Fine. That is all you had to raise at this
13 point?

14 MR WOLFSON: Yes. I think the only thing was respectfully
15 to remind the Tribunal that the Freeh report issue is
16 still, to use the phrase, in limbo. I don't know
17 whether the Tribunal wanted me to address that, but
18 I think I said all I wanted to say about it yesterday,
19 and I think the issue at the moment is with the
20 Tribunal, as I understood it.

21 THE PRESIDENT: That is how I understand it: that it's
22 a little premature for the Tribunal to revert to you
23 with a decision, but it will do so. I don't think it
24 should affect the examination of Mr Ferreira.

25 MR WOLFSON: I can't see it has any impact on that.

09:38

1 Unless the Tribunal would be assisted by anything
2 further from me, that's all I was going to say this
3 morning.

4 THE PRESIDENT: That is fine. Nothing further from the
5 Tribunal.

6 (Interpreted) Respondent, you have the floor.

7 (9.39 am)

8 Mini-opening on behalf of Respondent

9 MR OSTROVE: (Interpreted) We are very pleased that
10 Mr Avidan can testify, and we do hope that we will find
11 a solution quickly regarding the actual timing of this
12 hearing.

13 This morning we will be hearing Mr Ferreira, expert
14 for the Claimants. Just to give a little background on
15 his testimony, he talks about the role of a local
16 partner in a mining project and he talks about the
17 viability of the development of the Simandou deposit in
18 current market conditions.

19 The issue of the project's viability claims to be
20 tied in with our counterclaims. Because we did not
21 address our counterclaim on Monday, I simply wanted to
22 give a framework for our two counterclaims. We are
23 asking reparation for moral prejudice because of the
24 prejudicial communication by BSGR -- and Mr Ferreira's
25 testifying has no impact on this -- and the economic

09:40

1 prejudice caused by BSGR.

2 First, BSGR are not challenging the competence of
3 the Tribunal to address the counterclaims, so there is
4 no problem in this respect, as we have said in our
5 Counter-Memorial in paragraphs 1129 to 1131.

6 Concerning the economic prejudice caused by
7 corruption, Guinea has a loss of revenue that is huge
8 because of the late putting into operation of the
9 disputed deposits that are a direct result of the
10 fraudulent actions of BSGR. The quantum of prejudice is
11 to be addressed in a second phase, and no representation
12 has been made regarding this by the parties.

13 As to the principle concerning the Simandou
14 deposit -- because there is the Simandou deposit and
15 there is the Zogota deposit -- [the corruption of BSGR]
16 has [had] a tremendous impact regarding this deposit.
17 In [2008], Rio Tinto's mining rights were withdrawn
18 because there had not been a legally mandated
19 retrocession by Rio Tinto. And this was not challenged.
20 So for Guinea this was also a major problem, and this
21 led to a dispute with Rio Tinto on the grounds of this
22 non-retrocession, and the withdrawal of the mining
23 rights; and after long negotiations, a settlement
24 agreement [in 2011].

25 In the midst of this, rather than having negotiated

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1 a retrocession with Rio Tinto, although negotiations had
2 been undertaken so that Rio Tinto could decide which
3 part of its Blocks 1 through 4 would be retroceded, the
4 retrocession was forced and imposed by the state,
5 saying, "We are taking everything back. We are giving
6 you back Blocks 3 and 4". And actually they immediately
7 turned around and gave Blocks 1 and 2 to BSGR. And it's
8 BSGR's intercession that basically created the problems
9 over the blocks.

10 If BSGR had not committed fraud, if they had not
11 entered into their memorandum of understanding in 2006
12 saying as soon as the blocks would be available, they
13 would be taking up Blocks 1 and 2, and everything they
14 did -- not just what Mr Struik said yesterday, [PROTECTED]

[REDACTED]

23 Had BSGR not interfered at that point, the
24 negotiation with Rio Tinto would not have been cut
25 short. Rio Tinto could have conducted the retrocession

09:44

1 in accordance with their mining plan, as we called it
2 yesterday, and Rio Tinto could have resumed its work in
3 2010.

4 Instead of that, there followed three years of
5 various upheavals and Rio Tinto attempted in 2011,
6 following its settlement with the state to resume its
7 activities. And as Mr Ferreira says, by 2012 market
8 conditions had changed considerably, and the situation
9 was vastly different from 2008. The years 2011/2012
10 were absolutely crucial to develop the funding for the
11 Trans-Guinean Railway; not the one that BSGR had
12 proposed, it was not at all appropriate for shipping
13 mineral ore, but what Rio Tinto was considering doing,
14 which was a heavy railway which could have helped to
15 ship the ore from Simandou.

16 So BSGR's arguments in defence are inoperative. We
17 have addressed this in our Reply, starting with
18 paragraph 472, so I shall be brief in my comments this
19 morning.

20 According to their expert, Mr Ferreira, the Simandou
21 project is not viable. We must say that what
22 Mr Ferreira is talking about is simply unrelated to what
23 we're saying. He is saying that the project would not
24 be viable in the present market conditions and he is
25 looking at the situation as of 2015/2016. Thus, his

09:46

1 report on these issues is simply irrelevant, so he is
2 simply misunderstanding our counterclaims.

3 I might note in passing that even at this stage
4 Guinea contests -- and even beyond this arbitration --
5 that the Simandou ore deposit is not viable. [PROTECTED]

[REDACTED]

14 Not to go into too much detail, there's a tremendous
15 infrastructure investment required, as Mr Struik said,
16 to ship the ore, but the mining work and operations in
17 Simandou is extremely easy because the grade of the ore
18 is a very high quality because it's close to the
19 surface, and of course for -- we don't need to go into
20 the detail, however interesting it may be to the
21 experts.

22 Then if you just take recent press reports, and you
23 have Exhibit R-569 that says that Chinalco -- that was
24 also mentioned by Mr Struik -- was interested at the
25 time and was in talks with BSGR. Well, Chinalco is

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1 negotiating today, because even in current market
2 conditions, it wants to mine Blocks 1 and 2. And we
3 fail to understand why BSGR would have asked this
4 Tribunal to have its mining rights returned to it if
5 BSGR considers today that the project is no longer
6 viable. This is an absolutely blatant contradiction
7 between what their expert is saying and what BSGR is
8 claiming.

9 In any event, this is not relevant. Our position is
10 that if BSGR had not fraudulently conducted itself in
11 2005, 2006, 2008, even further to that, there would not
12 have been a dispute, and two things could have happened.

13 Either if BSGR had come in as a good investor,
14 without engaging in acts of corruption, if it had
15 presented itself as a good investor by going out and
16 getting the proper technical competence, everybody would
17 be happy today. BSGR would be a good investor in
18 Guinea, BSGR itself claims that it would have been
19 profitable, and there would have been money to be made
20 by all parties including the state, and the situation
21 would have been ideal.

22 But if BSGR was not able to come in without engaging
23 corruption, there were other investors -- and we have
24 this on the file -- there were other investors who were
25 interested in looking at Blocks 1 and 2 as early as

09:49

1 2008, and the situation would have been entirely
2 different.

3 The second line of defence of BSGR is something that
4 I can review quickly. If Guinea has lost something,
5 it's Guinea's fault because it manufactured these
6 alleged acts of corruption, charges of corruption: this
7 is their conspiracy theory, that's their defence
8 basically being recycled. It's a little bit difficult
9 to understand this. They're saying, "Even if we engaged
10 in corruption, there's no loss, because in any event
11 Guinea is to be blamed for the losses because they're
12 the ones who trumped up the corruption charges".

13 We need not scrutinise this. We know that there's
14 absolutely no evidence of these conspiracy theories.
15 Entirely absurd to think that George Soros and President
16 Condé agreed to corrupt individuals to buy the election.
17 We have even exhibits that go back to 2009 that explain
18 things very clearly, including Mr Bah's letter. The
19 idea that in any fashion whatsoever George Soros and
20 President Condé did something in 2009 to actually plant
21 all this corruption evidence in the file, all of this is
22 absurd.

23 Finally, I'd like to say something about the Zogota
24 deposit. So the loss of production in Zogota and the
25 late start of production is something that we address in

09:51

1 our Rejoinder from 1040 to 1042. Why did we deal with
2 this in a very cursory fashion? It's because BSGR did
3 not even take the trouble to address this in their own
4 reply. They're not challenging the fact that there is
5 prejudice on Zogota. BSGR claims that it would have
6 started production in 2012. Had they been an investor
7 in good faith with the real technical capability, we
8 know that it would have been doable.

9 One last thing regarding the conservatory measures
10 that have not been quantified. They have not been
11 quantified because we know that the late beginning of
12 mining only in Simandou, without even taking into
13 account taxes, we're talking about \$750 [million] to
14 \$1 billion in prejudice sustained by the state.

15 Mr Ferreira is right, and you can't go to market
16 with this because it's no longer viable because 6 to
17 8 years have been lost. But it should be possible to
18 market it 6 or 8 years later. But if he is right and
19 it's not viable, and the state, as a result of BSGR's
20 corruption, cannot market it, and has to wait another
21 10, 20, 30 years, in that case Mr Ferreira in effect has
22 proven that the damages for Guinea are much higher than
23 what we are claiming. Fortunately, we believe that he
24 is wrong on this score, but that is not our concern
25 today.

09:53

1 That's all I wanted to say about counterclaims
2 before beginning with Mr Ferreira's cross-examination.
3 Thank you.

4 THE PRESIDENT: (Interpreted) Thank you.

5 (In English) Fine. So I think that concludes the
6 mini-openings, and we can start now with the examination
7 of Mr Ferreira. Can I ask you to take a seat at the
8 witness table, please.

9 MR OSTROVE: I just want to make sure that in the documents
10 that are being handed out, it should be indicated when
11 the documents are confidential, so that we don't need to
12 interrupt proceedings later on.

13 (In English) Sorry, I will switch into English
14 because either I misspoke or the interpretation was
15 a little confused. We were just making sure we had
16 enough copies of the bundle so that when we follow
17 along, we can indicate when there are confidential
18 sections. We didn't want to create delay later by
19 having to stop all the time to check. (Pause)

20 THE PRESIDENT: Good. Are we ready to start? On the
21 Respondent's side, are we now -- it looks like we are.
22 Good.

23 (9.54 am)

24 MR FRANCOIS FERREIRA (called)

25 THE PRESIDENT: Mr Ferreira, good morning. Thank you for

09:56

1 being with us, and for having waited yesterday.

2 For the record, can you please confirm to us that
3 you are Francois Ferreira?

4 MR FERREIRA: That's correct.

5 THE PRESIDENT: I wasn't sure from reading your report: are
6 you still the CEO of African Resources Holding?

7 A. No, I'm not the CEO, I'm an investor in that business.
8 That was a vehicle that was looking at new
9 opportunities. But I continue to work within the
10 resources space, and advising clients in this space.

11 THE PRESIDENT: Are you the principal of a given company or
12 are you acting in your personal name?

13 A. I have a small consultation company of my own.

14 THE PRESIDENT: What is the name of this company?

15 A. Alemax.

16 THE PRESIDENT: Alemax?

17 A. Yes.

18 THE PRESIDENT: Thank you. You have provided us with one
19 expert report, dated 7th January 2017; is that right?

20 A. That's correct.

21 THE PRESIDENT: You have your report with you?

22 A. I do.

23 THE PRESIDENT: In an unmarked copy?

24 A. It's a clean copy, and I have just flicked through it,
25 and this is the correct version.

09:58

1 THE PRESIDENT: Good.

2 You are heard as an expert in this arbitration. As
3 an expert, you are under a duty to make only statements
4 in accordance with your sincere belief. Can you please
5 confirm your understanding of this duty by reading the
6 expert declaration.

7 Now I see the secretary will come and help you.

8 There is a witness declaration and there is an expert
9 declaration, so you should take the right one.

10 MR FERREIRA: Shall I read it?

11 THE PRESIDENT: Yes, please. You can read it aloud.

12 MR FERREIRA: I solemnly declare upon my honour and
13 conscience that my statement will be in accordance with
14 my sincere belief.

15 THE PRESIDENT: Thank you.

16 So I'll first turn to the Claimants' counsel for
17 direct questions, if there are any.

18 MR WOLFSON: We have no questions in direct.

19 THE PRESIDENT: Thank you.

20 So then I will turn to the Respondent. To whom do
21 I give the floor? Mr Schnelller?

22 MR SCHNELLER: (Interpreted) Thank you. I am going to cross
23 Mr Ferreira.

24 (9.59 am)

25 Cross-examination by MR SCHNELLER

09:59

1 Q. (In English) Good morning, Mr Ferreira.

2 A. Good morning.

3 Q. I'm Yann Schnellier, and I'm going to ask you some
4 questions on your expert report.

5 Could you please turn to page 7 of your expert
6 report. In paragraphs 22 to 26 you discuss the use of
7 local partners, and in paragraph 25 you say that:

8 "A number of entrepreneurs or 'facilitators' with
9 local connections were doing the rounds during this
10 time, offering a number of 'potential opportunities' in
11 almost every African country."

12 You are aware that corruption was very common in
13 Africa at that time, right?

14 A. So, no, I am not officially aware of corruption
15 specifically in African countries at the time, other
16 than what was alleged in the press throughout the
17 region. And to be fair, internationally I think
18 corruption is one of the evils of our time, sadly.

19 Q. What do you mean by "local connections"?

20 A. Somebody who has an understanding of the operations,
21 legal framework, infrastructure, language of
22 a particular country.

23 Q. Is that the people that you qualify as "entrepreneurs",
24 "facilitators" or "local partners"?

25 A. They could be either of those: entrepreneurs who may

10:01

1 have been engaged in activities in those countries and,
2 as they want to be, entrepreneurs looking for new
3 opportunities, even though they might not have the
4 expertise. It may be people who have assets themselves,
5 or it may be brokers, for want of a different
6 categorisation.

7 Q. So you discuss the use of local partners, but you don't
8 discuss corrupt practices, do you, in your report?

9 A. No, I don't.

10 Q. You are aware that corruption is often performed by
11 these entrepreneurs or facilitators?

12 A. I beg your pardon? Could you repeat that?

13 Q. You are aware that corruption is often performed by
14 these entrepreneurs or facilitators, aren't you?

15 A. No, I'm not aware that specifically there's always
16 corruption performed. I think there's corruption
17 performed in all levels in society. So this is a subset
18 of society. These people were involved in the industry
19 at the time, and so having access or engaging with these
20 people certainly is not synonymous with corruption.

21 Q. And a company like BSGR knows that corruption is common
22 in Africa, and that the use of local consultants is
23 often associated with corrupt practices, isn't it?

24 A. No, I disagree with that. I think that a lot of
25 companies go into Africa and other countries -- and I've

10:03

1 worked in Eastern Europe, I've worked in Central Europe,
2 I've worked in Asia: there is corruption, sadly, in all
3 levels of society across all industries. This is not
4 specific to Africa.

5 And BSGR or any company going into a new region
6 would look to find the best way to engage in that region
7 with local partners. They don't go in with presence of
8 mind that they are going to exploit a soft underbelly of
9 corrupt practice. They go with an entrepreneurial mind,
10 in my view. Certainly that would be my experience of
11 doing so.

12 Q. Are you aware of the situation in Guinea at the time?

13 A. I was aware of Guinea's mineral potential. I was
14 involved in an iron ore business similarly in the
15 Republic of Congo around that time. And Guinea was
16 a country that had a rich mineral potential. From
17 a mineralogical and geological point of view, Guinea is
18 the gift that could keep on giving. It had bauxite, it
19 had potentially gold up in the north, it had potentially
20 iron ore.

21 So all the potential was there. So I was aware of
22 Guinea from that perspective, yes.

23 Q. And you were not aware of the political situation and
24 the fact that corruption was common in Guinea at the
25 time?

10:04

1 A. Sir, there were allegations of corruption across
2 continent at the time, whether it was Guinea, DRC,
3 Angola, Zimbabwe, even South Africa. There have sadly
4 always been indications in the press that there's
5 something corrupt going on.

6 I'm not specifically aware of corrupt practices in
7 Guinea at the time. African countries I was operating
8 in at a similar time were also alleged to be involved in
9 corrupt practice, which I was not specifically,
10 fortunately, seeing much of.

11 Q. How would a company like BSGR make sure that its local
12 consultants would not be involved in corrupt acts?

13 A. I think it would be quite tough to determine that. It's
14 going into a country and finding a partner. The primary
15 objective is to find people who, in a relationship with
16 them, you can develop a sense of trust. And that sense
17 of trust is how they will deal with you on a one-on-one
18 basis, but also how they seem to be working and relating
19 to other people in the country.

20 So from my own experience, I would go into a country
21 and try and test, potentially, their credibility, by
22 asking firstly the Ministry of Mines what their view is
23 on the partner, if they've heard of them, and try and
24 cross-reference them. But other than that, it's really
25 hard to try and determine.

10:06

1 Q. So this requires careful assessment of the local
2 partner, right?

3 A. Careful assessment of the partner, yes; principally,
4 whether they can facilitate your work in-country. As
5 entrepreneurs, you don't go in with a hat of
6 a policeman; you go in with the hat of somebody looking
7 for an opportunity to make an earning and a return on
8 investment of going into the country.

9 Q. Could you please now turn to page 17 of your expert
10 report. In paragraph 57 you say:

11 "I see from paragraphs 208-217 of Guinea's
12 Counter-Memorial that Guinea suggests that it is not
13 credible that Pentler as in-country partner should have
14 received a 17.65% interest in BSGR Guinea BVI as
15 compensation for introducing BSGR to Guinea and helping
16 set up BSGR's operations on the ground in 2006."

17 And the first sentence of the next paragraph says:

18 "I do not find the grant of a 17.65% shareholding to
19 Pentler at all surprising."

20 So this shareholding is not surprising, right?

21 A. No, it's not.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

10:08

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] BSGR also promised \$19.5 million to Pentler if

6 certain milestones were achieved. Do you see that?

7 A. I have a table: is this what you're referring to?

8 Q. That's the table.

9 A. Yes.

10 Q. If you look at the columns at the right, you see
11 a number at the bottom: \$15 million and \$4.5 million.

12 A. Okay, yes. I've got it.

13 Q. That makes it \$19.5 million?

14 A. Yes.

15 Q. In paragraph 60 of your expert report, you state that:

16 "Similarly, milestones payments were not at all
17 unusual, and the payments set out in the Milestone
18 Letter are certainly within the range of what might have
19 been expected in terms of milestones themselves."

20 That is the milestone letter that you are referring
21 to?

22 A. Correct.

23 Q. Yes.

24 A. Can I just clarify that those milestones would have been
25 set and the quantum of the milestones would have been

10:10

1 set based on a size target that you were trying to
2 achieve. So whilst these numbers are -- in principle
3 they're the same, that was applied at the time, the
4 quantum of each milestone would be different if you were
5 trying to find a small gold deposit or if you're trying
6 to find a bauxite deposit or if you're trying to find
7 iron ore of a certain size.

8 Q. So the amount of this \$19.5 million was proportionate
9 with the project, right?

10 A. It is proportionate to the size of the target.

11 Q. What do you mean by "the target"?

12 A. Well, to commence an iron ore project, at this time
13 you'd probably need to find a deposit the size -- and
14 given the location -- of about 500 to 600 million tonnes
15 to justify the investment, and so that would have been
16 foremost in the mind of the team.

17 So if we were able to discover a deposit and we
18 continued the work, and you might have got to a point
19 where we've discovered 200 million tonnes, they would
20 have walked away from it in the early stage and
21 therefore these milestones would have not been paid out.
22 However, if you continue to find -- as they seem to do
23 so in this instance -- a successful and large project,
24 then these milestones would have kicked in and would
25 have been fair and appropriate.

10:11

1 Q. If you now turn to paragraph 69 of your expert report.
2 You state in paragraph 69:

3 "I do not agree with Guinea ... that the price of
4 US\$22 million paid by BSGR to acquire Pentler's
5 shareholding in BSGR Guinea was 'disproportionate'."

6 Do you confirm your opinion on this?

7 A. Absolutely.

8 Q. Do you know that this \$22 million price to buy back
9 Pentler's shareholding in BSGR Guinea was negotiated by
10 Mr Steinmetz?

11 A. I have no idea who negotiated. Whoever negotiated this
12 did a good job.

13 Q. So in your expert opinion you examine the price paid by
14 BSGR, but have you examined the services rendered by
15 Pentler for this price?

16 A. I haven't looked at the services rendered. I don't
17 believe though that this price was payable for services
18 rendered. I understand that this was a price paid for
19 acquiring the shares back from Pentler.

20 Q. But the shares were given for free in exchange for
21 services, right?

22 A. I'm not too sure exactly why the shares were negotiated
23 at the time in the specific case. Let me tell you what
24 the practice was in a number of projects that I was
25 involved with at the time, and certainly I would impute,

10:13

1 given the facts here, that it was the same.

2 Services were rendered, and for those services fees
3 were paid to parties or partners in country. They had
4 incurred costs and so they were remunerated based on
5 actual work done. Over and above that, there were
6 awards -- usually for free -- of shareholdings. At the
7 time of the award, there was no value in these projects.
8 And it was almost irrelevant -- not entirely, but it was
9 almost irrelevant the size of that initial award,
10 because as these projects proceed, the costs quickly
11 ratchet up, and the practice was certainly that the
12 partners would need to contribute on a like-for-like
13 basis.

14 Negotiations were tough. The best negotiators from
15 a local partner's point of view might have retained
16 a minimal non-dilutable interest, and typically that was
17 around 5%. But that would be a good negotiator on the
18 other side. In reality, the dilutionary effect of local
19 partners not being able to contribute over time would
20 have eroded any award made.

21 At the point in which this acquisition was made,
22 however, was the eye of the storm in the industry, and
23 two significant events happened immediately prior to
24 that which is borne out by the geological field reports
25 in the early part of 2008, which as an entrepreneur,

10:15

1 that was the absolute "Aha!" moment. And so buying out
2 Pentler at this time saved BSGR -- would have saved, had
3 the project gone ahead -- an enormous amount of money if
4 they had intention of buying out at a later date.

5 Q. So what was exactly the consideration for that amount to
6 be paid by BSGR and for the shares?

7 A. Can you repeat the question?

8 Q. What was the consideration, what was expected from
9 Pentler in exchange for these payments and for the
10 shares?

11 A. I don't believe there was any expectation other than for
12 them to return their share certificates and have them
13 cancelled. They were buying the shares back from the
14 company.

15 Q. So you don't know what services were provided by
16 Pentler, right?

17 A. I don't believe that this acquisition that I'm referring
18 to in paragraph 69 has anything to do with services
19 rendered. This is to do with purchase of shares.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 Madam, sir, it may be useful at this point for us to
12 delve into the geological report or the geological field
13 trip that was taken in January 2008. These were
14 geologists going out fishing, jigging, fishing for
15 little fish, and they landed an absolute whale. It was
16 an "Aha!" moment, one that most geologists will never
17 experience in their life. The geologists' report
18 created the opportunity for BSGR to purchase the shares
19 at a cheap price. I think in my view there was
20 an asymmetrical understanding of information and what
21 they had discovered when they made this acquisition for
22 shares.

23 Q. So who told you what services Pentler was supposed to
24 provide?

25 A. Could you repeat the question?

10:18

1 Q. Who told you, within BSGR, what services Pentler was
2 supposed to provide?

3 A. I have no idea what services Pentler were to be
4 providing.

5 Q. Are you aware that Pentler used the services of
6 Madame Mamadie Touré?

7 A. I am only aware to the extent that I read the papers in
8 preparation for this hearing.

9 Q. Could you please turn to Exhibit R-24. It's under
10 tab 4.

11 A. Sorry, can I just -- I'm only aware as to the
12 allegations about that from these papers.

13 So could you please repeat where to turn to?

14 Q. Tab 4, please. It's an agreement between Pentler and
15 Madame Mamadie Touré and it was signed on 20th February
16 2006, six days after Pentler was granted 17.65% in BSGR
17 Guinea, and Pentler granted 5% in BSGR Guinea to Madame
18 Mamadie Touré. So Pentler granted about a third of its
19 shareholding in BSGR Guinea to Madame Touré.

20 Were you aware of this?

21 A. No, sir. This document, just for the record, is in
22 French, so I sadly can't understand what is being said.
23 But I was not aware. I've been asked to be an expert
24 witness as to valuations, et cetera. So as to the
25 content of the case, I can't help you.

10:20

1 Q. According to Claimants, Madame Touré was under the
2 protection of President Conté, and according to
3 Respondent, Madame Touré was his fourth wife.

4 Madame Touré was 24 at the time and she had no
5 experience in the mining sector. So what kind of
6 services could Madame Touré provide?

7 A. Sir, I can't help you.

8 Q. Are you sure that Pentler was not providing corruption
9 services?

10 A. Sir, again, I have no idea what the relationship was
11 between Pentler and Madame Touré, between Pentler and
12 BSGR. I was not privy to that. I'm not involved in the
13 company. I have been called upon to give an opinion, as
14 I reflected in my report.

15 Q. So how can you affirm that there was nothing surprising
16 in Pentler's remuneration if you don't know what
17 services were provided?

18 A. Because I know what they were buying. They were buying
19 shares in what was recently announced as a potentially
20 1.1 billion tonne deposit.

21 Maybe what we can do, I don't know if it's possible
22 to put up on the screen the report from the field
23 geologist, I believe it was in February 2008 by
24 Iain Bryson. It's appendix 3 to my report.

25 MR SCHNELLER: Madam President, maybe we can go to that

10:22

1 later, after the examination of Mr Ferreira.

2 THE PRESIDENT: We can come back in re-direct or the
3 Tribunal will ask to see this report, absolutely.

4 A. Okay.

5 THE PRESIDENT: And you can proceed with your questions.

6 A. So to make the point in summary, they had discovered
7 what the geologist conservatively estimated as 1 billion
8 tonnes when he went to field in February 2008, supported
9 by aeromagnetic evidence and supported by what he'd seen
10 on the field.

11 If I take what was paid to Pentler, the \$22 million
12 for their 17%, and we gross that up, it implies that the
13 project was worth \$125 million at the time. By my
14 calculation, at a minimum this project was \$300 million
15 at the time. And if you had spent another \$10 million
16 or so in drilling, I believe that this project would
17 have been, if it had been confirmed by drilling, worth
18 close to \$1 billion.

19 So -- can I just finish on this? -- the people who
20 had access to this information in February 2008 saw
21 an unbelievable opportunity in my view. If I was in
22 that position, I would also try and buy these shares as
23 soon as I could.

24 MR SCHNELLER: Did BSGR need Pentler to know about the
25 Simandou project?

10:23

1 A. I've got no idea.

2 Q. Wasn't it a world-class iron ore project that was known
3 in the industry?

4 A. Zogota?

5 Q. A first-class iron ore project known --

6 A. Are you -- which one are you referring to?

7 Q. Simandou.

8 A. Simandou at the time was purported to have
9 an interesting discovery. If you go back into the
10 annual reports of Rio Tinto, the first time there was
11 any mention of Simandou I believe was in the 2007 annual
12 report, where they reference a little bit of exploration
13 expenditure that was to be made into Simandou.

14 The only time that was understood to be
15 a world-class asset was when Rio Tinto used Simandou as
16 part of their defence to the BHP takeover. And the
17 world in mining stood up and were agog at the claim that
18 Rio Tinto believed they could add between 9 and
19 11 million tonnes of iron ore to their inventory at the
20 time.

21 So in 2008 certainly, when this acquisition was
22 made, I don't believe that that information was already
23 publicly available.

24 Q. Do you know if Pentler had any specific knowledge of
25 Simandou?

10:25

1 A. There was knowledge in the industry with regards to some
2 information. So miners, drillers, arriving at
3 geological or mining conferences would talk and say,
4 "We've found something interesting". "Yes, it's
5 magnetite", or, "No, it's hematite", "It's deep", "It's
6 wide". It was chit-chat.

7 But certainly the important information that would
8 have attested to this project would not have been
9 available readily to anybody. It would be not
10 understandable to the layperson either. You might have
11 had drill logs hidden away in databases which would need
12 to be compiled through a GIS platform to render the
13 information useful to get an understanding of what was
14 there.

15 So as much as there would have been chit-chat, any
16 serious investor wouldn't take much notice of that.
17 Because this was the talk around town about many
18 projects, whether it was Simandou, or Sundance or our
19 own project or wherever else at the time. You can't
20 place a lot of relevance on that level of discussion.

21 Q. So BSGR had access to this knowledge; it didn't need
22 Pentler, right?

23 A. No, why? That's not what I said. I have no idea if
24 there was a leak from Rio Tinto about this information.
25 Given my knowledge of Rio Tinto and its practices,

10:27

1 I would be surprised that this would happen. This is
2 information that is very carefully guarded during
3 an exploration process.

4 Q. So coming back to the relationship between Pentler and
5 Mamadie Touré, as an expert, assuming hypothetically
6 that the facts I said about Mrs Touré were correct,
7 would you be concerned about what Pentler was doing?

8 A. Could you repeat what you're alleging I'm supposed to
9 hypothetically respond to?

10 Q. Do you still have Exhibit R-[24]?

11 A. No.

12 Q. It's under tab [4].

13 A. Sorry.

14 Q. So this is --

15 A. This is the French document you were referring to?

16 Q. Yes.

17 A. Yes.

18 Q. This is a letter whereby Pentler granted a 5%
19 shareholding in BSGR Guinea to Madame Mamadie Touré?

20 A. I'll take your word for it.

21 Q. Yes. So as an expert, assuming hypothetically that
22 these facts are right, would you be concerned about what
23 Pentler was doing with Mamadie Touré?

24 A. So if you're asking me to comment as an expert in
25 corruption practices, I can't help you. I'm not

10:28

1 an expert in corruption practices. I'm aware of
2 legislation -- increasingly so passed in recent years,
3 post this period we're talking about -- which places
4 greater onus on companies invested in places around the
5 world and with people of influence. I can't help you
6 with regard to this case and to these parties involved,
7 I'm sorry.

8 Q. But you are an expert in local partners, right?

9 A. I'm not an expert in local partners. I believe I'm
10 an expert in understanding what it takes to take
11 a project from discovery through to developing the
12 project. So that may include the use of local partners,
13 but it also includes the use and understanding of the
14 right geologists and the right understanding of markets
15 and distribution channels. So, no, sir, I'm not
16 an expert in local partners.

17 Q. This transaction whereby Pentler was granting 5%
18 shareholding in BSGR Guinea to Madame Mamadie Touré, the
19 fourth wife of the President, does that transaction look
20 normal to you?

21 A. Sir, you're asking me to confirm relationships between
22 parties and you're asking me to confirm that Madame
23 Touré was somebody of influence. I can't give any
24 comment as to that.

25 Q. Could you now turn to tab 14, please.

10:32

[PROTECTED]

[REDACTED]

[REDACTED]

10:36

[PROTECTED]

[REDACTED]

25

So when BSGR agreed to pay \$19.5 million to Pentler,

10:38

1 BSGR knew what services were to be provided by Pentler?

2 A. Sir, could you just confirm which payments you are
3 referring to, the \$19.5 million?

4 Q. The milestones that were to be paid by BSGR. Why would
5 BSGR pay this amount --

6 A. Why would they pay this amount?

7 Q. Yes, if no services were to be rendered.

8 A. Okay, so what was negotiated with Pentler -- I'm not
9 sure why, if there was any quid pro quo for services
10 discussed with them. But let me give you some
11 experience of what we have.

12 We would have an in-country partner who would have
13 a services agreement, and the services agreement would
14 be a bare-bones agreement. The price would be set very
15 keenly. So we paid ...

16 Q. But Pentler had to --

17 A. Can I just finish my answer, please?

18 Q. Sorry. BSGR had to know what services were to be
19 provided for this \$19.5 million?

20 THE PRESIDENT: It would be good if Mr Ferreira could finish
21 his answer.

22 You were saying that, in your experience, there
23 would be a service agreement with a local partner. And
24 then I lost you.

25 A. So to try and answer that question, there would be

10:40

1 a service agreement payable for specific services
2 rendered. The discussion was typically that you would
3 compensate those service providers for actually costs
4 incurred, and yet you would ask them not to put
5 a mark-up on those services.

6 Going into a country like this represented risk. So
7 any cash actually incurred would be a potential loss and
8 walk away. So there was some sharing of risk in terms
9 of how -- certainly in my case, in my experience -- how
10 we arrived in-country, and that sharing of risk was
11 reflected through milestone agreements.

12 So rather than put on a mark-up for services to be
13 rendered, there was an agreement of milestone
14 remunerations. And those milestones were set around
15 understanding [that] the market would incrementally put
16 an increased value on your project if you had received
17 those milestones.

18 So in the value creation curve, as you develop these
19 projects, it's not a smooth curve. There are certain
20 discrete steps where value jumps. So what you would say
21 to the local partner is, "Let's do the best we can
22 jointly to get us through the next milestone". There
23 would be a value accretion that we know would happen.
24 And we know that at that point, if we were to sell the
25 project or raise finance capital for it, we would have

10:42

1 passed the next incremental step associated with that
2 milestone. And as compensation for that incremental
3 value-add, there was a discussion about milestone
4 remuneration payments.

5 So this was a typical practice of trying to share
6 risk and reward with the partner in practice. They
7 weren't specifically around any services related to the
8 milestone. It was reaching and crossing a certain
9 threshold in the value curve process.

10 THE PRESIDENT: In the system that you describe now, would
11 you expect the local partner to contribute to the
12 achievement of the milestones?

13 A. The answer is yes. Their contribution to the
14 achievement is through their ongoing work and support of
15 the project, firstly by not taking any mark-up on their
16 services provided. So you are compensating for direct
17 costs.

18 So as a business, if they were providing services,
19 they wouldn't be making any money on the services
20 provided, because that's what you would say.

21 And then to go beyond actual services that they were
22 invoiced for is big presents and favours. In many
23 instances, we would arrive and use vehicles and
24 accommodation, et cetera, at their hospital -- as they
25 would provide to us. And those weren't directly

10:44

1 invoiced.

2 So it was a sense of partnership. They were
3 providing certain things. Certainly, out of the joint
4 project, some cash flowed across for actual services
5 rendered. But these milestones represented a sharing of
6 the benefits along the way.

7 THE PRESIDENT: So would it be the practice that,
8 in addition to the milestones that represent a share of
9 the benefits, you would in addition give a share in the
10 capital of the company that will carry forward the
11 project?

12 A. So there is a combination. For some projects, and
13 certain service providers, it would be only services
14 actually incurred. For the other partners, it would be
15 services and milestones. For other partners, it would
16 be services and milestones and a share of the project.
17 So it was dependent on how valuable you perceived the
18 team that you are cooperating with to be, and whether
19 you saw them as potentially a long-term partner.

20 But importantly, the shareholding was something that
21 was often not valued by in-country partners because the
22 majority of these projects don't go anywhere; they
23 collapse. And so holding on to some shares has got very
24 little real value.

25 THE PRESIDENT: Is it because they collapse or is it

10:45

1 because, even if they do not collapse, there will be
2 a dilution of their shares because they cannot
3 contribute to the financing?

4 A. So the recipient of the shares generally don't value
5 them as much because they've seen so many of these
6 projects collapse. The granter of these shares doesn't
7 place much importance on them because they appreciate
8 the dilutionary effect that erodes that grant over time.

9 THE PRESIDENT: Thank you.

10 PROFESSOR VAN DEN BERG: At page 1 of your expert report, in
11 the "Documents considered", you see you have at number 8
12 a services and cooperation agreement. You see that?
13 That's one of the documents you have studied. For the
14 record, it is Exhibit C-0331. Maybe it can be shown to
15 Mr Ferreira. It's not in the hearing bundle that has
16 been supplied to you.

17 This is a document that you state to have considered, and
18 it concerns a services and cooperation agreement between
19 BSGR Metals and Mining Limited and Pentler. As you can
20 see, the date of this document is not stated, but it is
21 stated that it enters into force as of 15th October
22 2005. I understand that this document was signed later.

23 But regardless, could you please have a look at
24 this. Could you help us where you see the services you
25 just described to Madam President?

10:48

1 A. Could you just repeat the question?

2 PROFESSOR VAN DEN BERG: Could you please help us and
3 identify the services that you just described to
4 Madam President in this document which is called
5 "Services and Cooperation Agreement".

6 A. So it would appear in this agreement that under
7 paragraph 3 there's reference to the services that were
8 provided.

9 PROFESSOR VAN DEN BERG: Yes. Could you help me here. What
10 is meant by:

11 "Pentler agrees to offer BSGMM its deal flow in the
12 mining, infrastructure, engineering and
13 telecommunications sector on a good faith, first offer
14 basis, though nothing contained in this Agreement shall
15 imply exclusivity obligations or a formal right of first
16 refusal on either Party."

17 What type of services are those?

18 A. So a local partner may have knowledge about not only the
19 target that you're working on, but they may be aware of
20 potential other resources and other opportunities in the
21 country. So in our case, on one of our projects we were
22 busy doing some exploration work, and we had a similar
23 clause in our agreements with a party in a different
24 country, and they were aware of somebody wondering to
25 sell a gold prospecting licence. So they introduced us

10:50

1 to this party and we went off and investigated.

2 So these partners with their ear to the ground would
3 come across opportunities offered by other people, other
4 companies trying to get out, who have tried a bit of
5 exploration work, have run out of cash and are looking
6 for the next partner. So there were those types of
7 opportunities that were often shown around. And what
8 you would want to do is that your partner that you have
9 chosen, you wanted them to show them to you first. And
10 it was an attempt to try and get the first bite at the
11 cherry of any other opportunities or new opportunities
12 that might be available in the country.

13 PROFESSOR VAN DEN BERG: Can you please look at clause 4.

14 It concerns "Consideration", and it states that:

15 "The Parties hereby agree to provide consideration
16 to the other Party for their respective corporation as
17 they may agree upon from time to time on a case by case
18 basis."

19 How does this connect with the share arrangement you
20 have seen earlier?

21 A. It's unrelated. So if they had a particular share, if
22 a partner had a particular share in a project that we
23 might already be engaged in, if another opportunity
24 arose, depending on how much value they provide in
25 introducing that second opportunity, there would be

10:52

1 a negotiation around their participation into that, if
2 at all. And there would be a range, starting from
3 a simple introductory fee, all the way through to them
4 participating in the negotiation and putting in some
5 capital of their own to try and secure the transaction.

6 PROFESSOR VAN DEN BERG: But if you look at the timing of
7 this document, which says it enters into force
8 retroactively as of 15th October 2005, that is the same
9 period that, firstly, the research permits are being
10 granted, and thereafter you see this letter -- which
11 I may not talk about with a green light -- that has been
12 issued on 14th February 2006.

13 So are they then doing two things at the same time:
14 providing the services you saw in the deal flow in
15 paragraph 3.1; and unrelated to that, as you just
16 stated, they provided other local partner services, as
17 you described earlier?

18 A. Sorry, so can you just confirm: so you're wanting to
19 know if they were providing the services as suggested
20 under paragraph 3, and that simultaneously they may be
21 doing introductions and get remunerated for them as
22 described under paragraph 4?

23 PROFESSOR VAN DEN BERG: My question is to you, not the
24 other way round.

25 A. I'm just trying to clarify your question.

10:54

1 PROFESSOR VAN DEN BERG: So my question is: you have two
2 types of services, according to your testimony?

3 A. Yes.

4 PROFESSOR VAN DEN BERG: The services you see in
5 paragraph 3.1 --

6 A. Yes.

7 PROFESSOR VAN DEN BERG: -- the deal flow services, as they
8 call there, "deal flow in the mining, infrastructure,
9 engineering and telecommunications sector"; that's one
10 thing. Another type of services are what you call the
11 local partner communication/introduction services.

12 A. Yes, there would be -- depending on the partner and the
13 opportunity, some of them may have their ear to the
14 ground, introduce projects to you; others would only do
15 specific services, you know, rendering infrastructure
16 and logistical support. So there would be a range.

17 In this instance I'm not aware of what was
18 introduced by Pentler to BSGR or what services what were
19 rendered. But in general, as a structure, these
20 agreements were signed as -- the relationship would have
21 started early on, and you would have explored
22 relationships with a number of parties going into
23 a country, and you may have a relationship with two or
24 three service providers. But as time goes on and as you
25 find your feet, some of the service providers drop out

10:55

1 and you don't need them anymore, and so you move along
2 and you progress. And as they mature, in this period of
3 courtship in the relationship, you discover at some
4 point: well, we need to put a document in place. And so
5 you sign the document and you continue.

6 Some of those relationships then don't continue and
7 you have to get out of the relationship. Others do
8 continue, and they move very quickly, and soon you
9 discover that the agreement you signed just a few months
10 ago is no longer valid and so there's catch-up that
11 needs to happen from the paperwork point of view.
12 Certainly that is my experience.

13 It's a fast-moving space. As entrepreneurs, you're
14 focusing on the deal, you're focusing on the
15 relationship, you're focusing on trying to determine
16 whether this project has a value; you're trying to, as
17 an in-country manager, support justification for capital
18 coming from the parent company to continue with this
19 process. It's a very fast-moving, very fluid
20 environment.

21 Documents between parties on the ground are often
22 scribbled down, cut and paste from lawyers, previous
23 agreements signed off on the fly. It's not a well-oiled
24 machine; it's a mess, to be honest, as to how it's
25 worked. But people try their best to progress the

10:56

1 project on an incremental basis.

2 PROFESSOR VAN DEN BERG: If I may, I have a related

3 question.

[PROTECTED]

[REDACTED]

20 If you take the milestones, to achieve milestone 1,

21 you may not need so much funding to get these permits,

22 isn't it?

23 A. Yes.

24 PROFESSOR VAN DEN BERG: To get a feasibility study, that

25 becomes already more capital-intensive, doesn't it?

10:58

1 A. Correct.

2 PROFESSOR VAN DEN BERG: Signing the Convention de Base,

3 maybe not. Signing the presidential concession and

4 issuing corresponding mining permits, maybe not. But

5 then commercial production, that's a huge investment.

[PROTECTED]

[REDACTED]

11:01

[PROTECTED] [REDACTED]

[REDACTED]

23 PROFESSOR VAN DEN BERG: It may also be that, since these
24 milestone payments are success fees --
25 A. Yes.

11:03

1 PROFESSOR VAN DEN BERG: -- that they are not dependent on
2 their shareholding, may it not?

3 A. Correct. And you can see from those milestones that
4 those amounts do not reflect the investment, or don't
5 match the investment. They really are reflective of
6 what the perception of incremental increase in the value
7 of the project would have been as perceived by the
8 external investment community.

9 PROFESSOR VAN DEN BERG: I stand corrected by the President
10 that I talk too much!

11 Mr Schneller, it's your turn.

12 THE PRESIDENT: I was the one who first interrupted you,
13 I have to be fair. But I'm sure you still have
14 questions, and we'll come back at the end if we do. Why
15 don't you carry on.

16 MR SCHNELLER: (Interpreted) Fine, Madam President. Is this
17 a good time to have a break?

18 THE PRESIDENT: (Interpreted) How much time do you need?

19 MR SCHNELLER: We would like a break to discuss it.

20 THE PRESIDENT: It's a good idea.

21 So let's have a 15-minute break.

22 (In English) Mr Ferreira, we are now going to take
23 a 15-minute break. During the break, please do not
24 speak to anyone about your testimony. And the best way
25 of doing that is not to speak at all.

11:04

1 MR FERREIRA: Okay.

2 (11.05 am)

3 (A short break)

4 (11.25 am)

5 THE PRESIDENT: [Mr Schneller, can I give the floor.]

6 MR SCHNELLER: (Interpreted) We have no further questions.

7 We'd like to thank Professor van den Berg, who helped us

8 to make haste. We have no further questions.

9 THE PRESIDENT: (In English) Mr Wolfson, any questions in
10 re-direct examination?

11 MR WOLFSON: Only one very short matter, with your
12 permission, Madame President.

13 Re-direct examination by MR WOLFSON

14 Q. Mr Ferreira, could you first look at the appendix to
15 your report, which should appear after the signature
16 page.

17 A. This is the list of appendices?

18 Q. Yes. Sorry, yes. It's an attachment which is the list
19 of appendices, exactly.

20 A. Yes.

21 Q. Just so we can clear up a housekeeping point. You
22 referred in your evidence to appendix 3, which is
23 a field report. You recall that?

24 A. Correct.

25 Q. Just for the Tribunal's note, in the way it's been

11:26

1 filed, 3 and 4 have been turned round, so the Tribunal
2 may find the document is actually attachment 4. So
3 I just want to clear up that confusion.

4 Having done that, let's focus on the document which
5 is listed at 3, and which you referred to in your
6 evidence as being the field report.

7 A. Yes.

8 Q. I think at one stage of your evidence you asked for the
9 report to be put up on the screen --

10 A. Correct.

11 Q. -- because you had something you wanted to say about it.

12 A. Yes.

13 Q. I just wanted to give you the opportunity to do so. So
14 could we put that on the screen, please.

15 A. Is it possible to do that report and the second one,
16 which is -- under the list of appendices it will be 5,
17 the report by Iain Bryson and Graham Greenaway entitled
18 "Reasons for Moving Drilling Rigs to the Southern
19 Concession".

20 Q. Do you want them on the screen?

21 A. Could I have that one first, the second one first, if
22 possible?

23 Q. Mr Burstyn can manage anything.

24 A. Yes, that's great.

25 Q. Would you like to tell the Tribunal whatever it is you

11:27

1 wanted to say about this document?

2 A. I certainly would.

3 This is a more formal reasoning for why drill rigs
4 were going to be moved from the northern concession,
5 where they had initially planned to do some drill work,
6 following up on an aeromagnetic survey that was done and
7 highlighting some drill targets. The geologists here
8 describe pretty much an unexciting discovery in the
9 north relating to finding magnetite, which is not the
10 not interesting part of the family of iron ore deposits.

11 But what I'd like to do is if you could just go down
12 to -- there's a slide -- a bit further down. Okay,
13 that's there (page 3). The resolution is not great
14 here. But what I am trying to show, this is what should
15 be called a massif. So the surrounding countryside is
16 pretty flat, and then there's this ridge that runs from
17 the bottom left to top right. You might be able to just
18 see a little red line going up from the bottom, in the
19 centre of the slide, passing a little yellow marker,
20 just to the left of the yellow marker, going up, and
21 then the red line is on top of the ridge. And there are
22 three further yellow markers, that's correct.

23 Q. I think we've got a little laser pen that might help
24 you.

25 PROFESSOR VAN DEN BERG: You can have mine. (Pause)

11:29

1 MR WOLFSON: Thank you, sir. I just thought it might help
2 the witness and the Tribunal if you could point to
3 precisely what you're talking about.

4 THE PRESIDENT: I think so far we have well followed the red
5 line and the five yellow markers.

6 A. Alright.

7 So this geology report refers to work that was done
8 in the north, saying that drilling was done; and where
9 they did do drilling, it coincided with drilling in the
10 valleys and not up on a ridge. So they initially were
11 sceptical that the aeromagnetic work up in the north was
12 going to be successful, quite rightly so. Why they did
13 any drilling up there, I'm not sure.

14 The south, however, coincides with this ridge, and
15 the aeromagnetic signature would have been from the left
16 to the right of this ridge, roughly about 8 kilometres
17 in length. And in sort of local parlance in this area,
18 these are referred to as "iron mountains". So the local
19 population have said, you know, "That's the iron
20 mountain", because it's red in colour and there is iron
21 discovered there.

22 It also would look similar, I suspect, in the
23 Simandou Blocks 1 to 4, I suspect it would be a similar
24 kind of ridge, as there is throughout the West African
25 region, where there are sizeable deposits. They are

11:30

1 what geologists call "structurally controlled": the
2 geology and mineralogy is pretty well defined and
3 continuous and homogeneous. It's relatively speaking,
4 because there are gaps, et cetera, in between. It's
5 dissimilar to gold mining, et cetera, where reefs can
6 come and they swell up and they disappear. In something
7 like iron ore, once you've got it and you've found it,
8 you know it.

9 You use two principal techniques. The first is
10 aeromagnetic survey. The analogy is an X-ray. If you
11 X-ray the human body, the bone will show up. So you do
12 that to pick up the bone structure, which is magnetite:
13 it's magnetic. It's the unexciting part of iron ore.
14 You can make iron from it; it's expensive, you've got to
15 crush it and mill it. It's a very expensive part.

16 What you're looking for is the flesh around the
17 bone. So the magnetite, over many tens and hundreds of
18 million years, oxidises and creates hematite. Magnetite
19 is grey; hematite is red. It's rusted, to use common
20 terminology.

21 Once you've discovered the bone structure,
22 therefore, what you want to do -- and you can [do] that
23 by aeromagnetic survey: they fly an aeroplane over it
24 and they collect data and process it. So there is in
25 the database within the BSGR/Vale group all that

11:32

1 structural information. I've looked through some of it;
2 it's no use going through the detail here. But the bone
3 structure is clearly there.

4 In the north they didn't find the flesh. In the
5 south we have Iain Bryson, who in February 2008 -- which
6 is the next point I will show in a moment -- he goes and
7 he walks across this and he cannot believe what he sees.
8 In most of the surrounding area, it's covered by top
9 soil. But where the rocks show -- or "outcrop", as
10 geologists call it -- you can see it and you feel it and
11 you touch it, and he can very clearly see this is
12 magnetite.

13 This red line appears to be a subsequent visit that
14 Iain Bryson, together with, I believe, his superior,
15 Graham Greenaway, do a follow-up visit, and they walk up
16 the hill and walk along the top of the ridge. And as is
17 described in this report, the second report, the reasons
18 for moving the drill rigs, they notice hematite, the
19 nice juicy red stuff, all along that ridge. So that
20 gets, as a geologist -- I'm not a geologist, but as
21 somebody who understands a bit of this -- this will get
22 your heart racing.

23 I believe that this report was written in -- that's
24 correct -- March 2008. It's a follow-up visit. It
25 doesn't, in this official report, say anything about the

11:34

1 projected size. And I presume that this would have been
2 more widely distributed.

3 The real exiting part is if we can now go to the
4 geologist field working notes, when he visited Zogota in
5 February 2008. So if you could just scroll slowly down.
6 Stop there. So this is a technicolour lithological
7 representation, meaning the colours represent the types
8 of rocks discovered.

9 What's important here is you'll see 4.8-kilometre
10 strike length is the amount of work mapped. So once
11 you've got the bone structure, mapping then goes to try
12 and find where these fleshy bits are. And you would
13 look at where it's outcropping, or the rocks are
14 showing, and in some instances you might dig a trench to
15 find the rocks, but you try and identify that this
16 fleshy bit is actually attached.

17 So they had mapped, by February 2008, 4.8 kilometres
18 along this geological phenomenon.

19 If we go down a bit further (page 2), you will see
20 an overlay now of the X-ray, so-called, the magnetic
21 anomaly, which is that sort of protruding white line,
22 showing the bone structure. And there you can see in
23 red, coloured in, is where they've marked and discovered
24 the fleshy magnetite bits. So this is all starting to
25 hang together quite nicely.

11:36

1 If you go further down, this is now a rendition of
2 using different filters on the aeromagnetic dataset, and
3 trying to colour what is non-magnetic. So the
4 non-magnetic bit is the purple bit, and why that's
5 exciting is because hematite is non-magnetic. So it
6 looks as if there's a huge amount of fleshy bits hanging
7 off this magnetite bone structure here.

8 If you go further down, to this paragraph (page 3),
9 this says it all. And I am going to read it:

10 "The mapping is showing that the maximum width of
11 a mapped outcrop ..."

12 So all those squiggly red lines, the maximum width
13 going diagonally in the picture, from bottom left to top
14 right:

15 "... is 3.7 kilometers and the minimum ... is
16 2.0 kilometers."

17 So let's call it minimum 2 kilometres wide, the
18 fleshy bits hanging off.

19 "The approximate height difference between the flat
20 area and the top of the HW bearing mountain ..."

21 "HW" is hematite, the red fleshy bit:

22 "... is 400 meters."

23 So you would have had erosion around the area over
24 millions of years. The bit that's competent should be
25 all iron-bearing, and that's 400 metres high, as we saw

11:37

1 from those previous slides with that picture with the
2 path going up.

3 "If one were to make the following assumptions ..."

4 And here the geologist is panicking, "(Extremely
5 dangerous at this stage)", because he hasn't drilled and
6 he hasn't confirmed this, and he's a nervous technical
7 individual. He said:

8 "... [assuming] that the average depth of the
9 deposit is 100m ..."

10 We know it's 400 metres from surface to top, but
11 he's only taking 100 metres as assumption. He says: and
12 assuming that the width is 1,000 metres. And if you
13 look at the first sentence, we know that the minimum was
14 2 kilometres, 2,000 metres. So he has taken 25% of the
15 depth of this deposit; and half of the minimum width, as
16 they have identified in the fleshy bit; and the length
17 of 3,750 metres; and then the density of 3, which is for
18 iron ore. He says there's "potential for 1.1 billion
19 tons" of iron ore. He has discounted and discounted and
20 discounted again this occurrence, and he has called it
21 as 1.1 billion tonnes.

22 He goes on to cover himself, saying, "Drilling will
23 be needed to confirm this", and again emphasises that:

24 "... these are broad and loose assumptions but give
25 [one] some idea of the possible potential of the area.

11:39

1 Obvious[ly] there is also potential along the remaining
2 4 kilometers of strike ..."

3 Read: bone structure that we've already identified
4 with this aeromagnetic survey. Another 50% discount of
5 the potential that might be there.

6 This is a little fisherman hooking into a whale.
7 It's an absolute "Aha!" moment. And this was
8 February 2008.

9 Simultaneous to this time, negotiations around iron
10 prices set on a contract basis had just gone up 70%, on
11 top of two previous years of, I think, if I correctly
12 remember, 35% and 45% jumps in iron ore prices.

13 So you've got a runaway pricing scenario, and then
14 you discover this unbelievably fantastic deposit. And
15 it could not have been assumed that the geologist would
16 have known this was there, even if hundreds or fifties
17 or tens of years ago we knew this was the iron mountain.
18 Because the geologists went off, as so often you do,
19 into the northern side and did your drilling there
20 first, because it's easily accessible and the magnetic
21 signature showed that there was actually iron ore there.
22 So it all needs to hang together.

23 If this was gold deposit we were looking at at this
24 stage, you would not get excited, because gold does not
25 have, generally speaking, a continuity of structure.

11:41

1 But iron ore, like bauxite, like some coal deposits, are
2 different: once you define something and you've found
3 it, it generally speaking continues. There are
4 exceptions where it can disappear.

5 So this is why this geologist is caught between his
6 technical education of not calling this too early,
7 because he's got to go and drill and confirm everything,
8 and looking at this and saying, "I cannot believe it!
9 It's an unbelievable discovery!"

10 So coming off mountain, he would have gone back, and
11 if he had reported to me, I would have known we had
12 an unbelievably good project, which would have had the
13 potential to stand alone, on its own, and justify the
14 infrastructure required to build a mine and a railway
15 line to the coast.

16 So based on this, the 1.1 billion tonnes -- and if
17 you go one more paragraph down, where it says:

18 "Other features of interest is the Canga Field ..."

19 Which is another, even better quality product than
20 the hematite that I spoke to you about. He says:

21 "This has hematite clasts inside which have been
22 assayed at 63.7% [iron]."

23 That is the highest quality iron ore you can find.
24 Iron ore is not like precious metals and base metals,
25 which you can refine done to get a good-quality product

11:42

1 almost irrespective of what's in the ground. Iron ore,
2 you're reliant on what nature has offered you. And at
3 63.7%, you know that there are very low deleterious
4 elements, or contaminants, of phosphorous, silicon and
5 alumina.

6 So you would have had two things running around your
7 head. One is: as an industrial mineral, this product is
8 eminently sellable to the market. It would likely be
9 able to command a premium to benchmark prices, because
10 the alternative is to go with Australian iron ore, lower
11 quality with more deleterious elements. The only other
12 place in the world where you see this quality is in
13 Brazil. So you would see this quality product, plus the
14 size.

15 From a valuation perspective, you go: how many
16 tonnes have you got? What is the potential revenue or
17 earnings you can generate per tonne? You've got
18 an enormous amount: 1 billion tonnes. You know that's
19 a project-maker. You've got a product which is good
20 quality, and so you know that your revenue per tonne is
21 great.

22 Then thirdly, you're looking for a good address.
23 And knowing at this stage that Rio Tinto was spending
24 a lot of time, and there was talk that they found things
25 interesting, you had a sense that you were in a good

11:44

1 address. You were also in a good address because you
2 were part of, geologically, this fantastic greenstone
3 belt that runs through this region. And Guinea is
4 blessed with unbelievable mineral potential, both in
5 iron ore and other minerals like bauxite.

6 So the address is good, the size is fantastic, and
7 the quality is, relative to recent discoveries prior to
8 this, unequal.

9 Based on that, I would go off and either try and get
10 my partner to put in as much money and to drill this
11 thing out as quickly as possible -- and from the next
12 report, when they talk about moving the drill rigs from
13 north to south, the cost of drilling the 30,000 metres,
14 the budget the team in-country would have asked for
15 would have been in the order of \$6 million to do the
16 preliminary drill work on this deposit. So you want
17 them to put in the \$6 million, come along with you; or,
18 if you thought they weren't going to do that, then you'd
19 say, "Well, we're going to buy you out", because this is
20 potentially a fantastic opportunity to own as much of it
21 as possible.

22 MR WOLFSON: Thank you. I have no further questions,

23 Madam President.

24 THE PRESIDENT: It was a long answer to your question!

25 MR WOLFSON: I was really affording him an opportunity to

11:46

1 say what he wanted to say.

2 THE PRESIDENT: No, it was interesting. It gives us a sense
3 of what the project could have been.

4 Do my colleagues have questions? I think we've
5 covered what I had. We had the field reports, but we
6 have just heard you on this.

7 This is a question for counsel: do I understand that
8 we do not have in the record a services contract other
9 than C-331, which to me deals probably with other
10 opportunities, on the one hand; and on the other hand we
11 also have R-182, that deals with this project, and that
12 is all? We don't have another services contract with
13 respect to this project?

14 MR WOLFSON: I think that's right, off the top of my head.

15 If I've forgotten something, we'll correct it on Monday
16 morning. But I think that's right.

17 THE PRESIDENT: You can tell us on Monday morning. That is
18 the way I understand it at this stage, yes.

19 MR OSTROVE: (Interpreted) For Respondent, we can say that
20 these are the two relevant documents.

21 THE PRESIDENT: (Interpreted) Yes, these are the services
22 agreements.

23 (In English) You have been asked questions about
24 R-184 and R-24. No, so I have no further questions,
25 Mr Ferreira. Thank you very much for your help.

11:48

1 MR FERREIRA: I am free to go?

2 THE PRESIDENT: Yes, you are.

3 MR FERREIRA: Thank you very much.

4 THE PRESIDENT: And I suppose we are free to go as well.

5 MR WOLFSON: Madam President --

6 THE PRESIDENT: Is there anything that you wish to add?

7 MR WOLFSON: Only two very short points.

8 First, the Tribunal will be aware that there was
9 another expert report, for which the attendance of the
10 witness was not required, and therefore he is not
11 attending orally.

12 The second point, if I may, on a personal note:
13 I may not be present next week, but I hope the Tribunal
14 will understand that no discourtesy at all is
15 intended -- I have other professional commitments -- and
16 certainly no discourtesy to my colleagues either. So
17 I just wanted to be clear that my non-attendance is not
18 due to anything else. And I thank the Tribunal and my
19 colleagues for their respective courtesies.

20 THE PRESIDENT: We will regret your absence and we thank you
21 for your cooperation all of this week.

22 (Interpreted) Would Respondent like to add anything,
23 before we end our hearing today?

24 MR OSTROVE: Nothing else, thank you.

25 THE PRESIDENT: I guess I would like to thank all of you for

11:49

1 your cooperation for the duration of the week. So we
2 will finish today, and we will resume on Monday morning
3 at 9.30, and I hope that in the meantime you will be
4 able to agree on the timing for next week in such a way
5 as to include a slot to hear Mr Avidan.

6 I wish you a good weekend, perhaps not free of work,
7 but with some rest time. (In English) Thank you.

8 (11.50 am)

9 (The hearing adjourned until 9.30 am
10 on Monday, 29th May 2017)

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