THE HIGH COURT

COMMERCIAL

[2016 No. 9981 P.]

BETWEEN

TRAFALGAR DEVELOPMENTS LIMITED, INSTANTANIA HOLDINGS LIMITED, KAMARA LIMITED and BAIRIKI INCORPORATED

PLAINTIFFS

AND

DMITRY MAZEPIN, OJSC UNITED CHEMICAL COMPANY URALCHEM, URALCHEM HOLDING PLC, EUROTOAZ LIMITED, ANDREY GENNADYEVICH BABICHEV, YULIA BOLOTNIKOVA, BELPORT INVESTMENTS LIMITED, MILKO EMILOV MINKOVSKI, ANDROULA CHARILAOU, DMITRY KONYAEV and YEVGENIY YAKOVLEVICH SEDYKIN

DEFENDANTS

(DISCOVERY SOUGHT AS BETWEEN PLAINTIFFS AND FOURTH AND FIFTH DEFENDANTS)

JUDGMENT of Mr. Justice David Barniville delivered on the 31st day of July, 2019

Introduction

1. This is my judgment on two applications for discovery made in these proceedings. The first application I consider in this judgment is the plaintiffs' application for discovery from the fourth and fifth defendants, Eurotoaz Limited ("Eurotoaz") and Andrey Gennadyevich Babichev ("Mr. Babichev"). Mr. Babichev is a director of Eurotoaz. For ease of reference, I refer to Eurotoaz and Mr. Babichev in this judgment, where appropriate, together as "these defendants". The second application dealt with in this judgment is the application by these defendants for discovery from the plaintiffs. A third application for discovery made by the plaintiffs as against another defendant, the ninth defendant (Ms. Charilaou), is the subject of a separate judgment which is also being delivered today.

2. The orders for discovery which I have decided to make as between the plaintiffs and those defendants are set out at paras. 89 and 90 below. My reasons for making those orders are set out in the body of this judgment.

A very brief description of the proceedings

3. These proceedings are complicated and involve entities incorporated in various jurisdictions in the Caribbean as well as individuals and entities incorporated and based in the Russian Federation, Cyprus, Bulgaria and Ireland. What follows is a description of the proceedings in necessarily truncated form. It will be appropriate to refer in somewhat greater detail to some of the matters specifically pleaded in the case in order to understand the disputed discovery being sought by the various parties.

4. The plaintiffs' claims may be summarised as follows. The plaintiffs, which are all companies incorporated in various jurisdictions in the Caribbean, claim that they own in excess of 70% of the shares in a company incorporated in the Russian Federation called OJSC Togliattiazot ("ToAZ"), which is alleged by the plaintiffs to be the largest producer of trade ammonia in Russia and one of the world's largest producers and exporters of ammonia. The plaintiffs claim that the defendants (including these defendants) are co-conspirators in an alleged scheme which is intended wrongfully to divest the plaintiffs of their shares, or the benefit of their shares, in ToAZ for the benefit of the first defendant, Dmitry Mazepin ("Mr. Mazepin"). Mr. Mazepin is described in the amended statement of claim as a Belarus-born Russian businessman and is alleged to be the ultimate beneficial owner and controller of the second defendant, OJSC United Chemical Company Uralchem ("UCCU"), another company registered in the Russian Federation, whose business is the production and sale of chemical products including ammonia and ammonia-based products. It is alleged that UCCU is a direct competitor of ToAZ and that it acquired a minority shareholding in ToAZ in 2008, now holding approximately 9.9% of the issued share capital of ToAZ.

5. The plaintiffs claim that the alleged scheme displays many of the features of a "raider attack" (the alleged features of which are set out at para. 38 of the amended statement of claim). The plaintiffs claim that the purpose of the alleged scheme to defraud the plaintiffs of their shares in ToAZ is consistent with the purpose of a "raider attack" and that the unlawful acts alleged by the plaintiffs in the proceedings have many of the features of such an attack.

6. The plaintiffs claim that the alleged scheme comprises many different actions undertaken by the defendants over various periods. They allege that each defendant can be linked to Mr. Mazepin and/or UCCU, either directly or indirectly. The plaintiffs further allege that the remaining defendants (including these defendants) are linked through a common relationship with Mr. Mazepin, UCCU or the third defendant, Uralchem Holding plc ("Holding") and, in particular, with Mr. Mazepin who it is alleged is the controlling mind and will of UCCU and Holding and the instigator and orchestrator of the alleged scheme.

7. The plaintiffs claim that each of the defendants has acted on the basis of a shared combination or understanding with Mr. Mazepin and has been an active participant in the alleged scheme on foot of a common understanding reached with him. It is alleged that each of the defendants have acted in furtherance of a shared understanding to embark upon concerted action with the intention of causing loss to the plaintiffs through the expropriation of the rights deriving from their shares in ToAZ for the benefit of Mr. Mazepin and/or UCCU and/or Holding.

8. The amended statement of claim refers to various threats being made by Mr. Mazepin and by the tenth named defendant, Mr. Konyaev, concerning legal proceedings and procedures already initiated or to be initiated against ToAZ and its management as well as threatened criminal proceedings.

9. The plaintiffs claim that Eurotoaz is central to the alleged scheme and has conducted a campaign of vexatious litigation based on false or sham evidence asserting that it holds, or is entitled to the payment of dividends in respect of, a shareholding of either 8.806% or 4.40% of the issued share capital in ToAZ. They claim that Mr. Babichev was the person responsible for submitting evidence to the Russian authorities in support of Eurotoaz's alleged campaign of vexatious litigation and also that it is to be inferred that Mr. Mazepin owns and controls Eurotoaz. The alleged campaign of vexatious litigation is claimed by the plaintiff to have commenced in July 2009 and to have consisted of a number of criminal complaints, the initiation of vexatious civil proceedings and the making of unfounded complaints to regulatory authorities in Russia, the aim and purpose of all of which was allegedly to render it impossible for ToAZ or its officers or the plaintiffs to prevent the acquisition of ToAZ by Mr. Mazepin and "*his accomplices*". The plaintiffs claim that false or sham documents were presented as part of this alleged campaign of vexatious litigation.

10. The plaintiffs also claim that UCCU embarked on a campaign of vexatious litigation (both civil and criminal proceedings) against ToAZ and its officers as part of the alleged scheme supported by false evidence including an alleged false or sham share purchase agreement ("SPA") between UCCU and the seventh defendant, Belport Investments Limited ("Belport"), dated 8th August, 2011 which was signed by the ninth defendant (Ms. Charilaou) in her capacity as a director of Belport. The plaintiffs further rely on the commencement of further criminal proceedings against officers of ToAZ and others in December 2012 under Article 159(4) of the Russian Federation Criminal Code on the basis of allegations previously made by UCCU in earlier proceedings which had been terminated. The allegation contained in those further criminal proceedings is that those in control of ToAZ had wrongfully diverted funds from ToAZ. UCCU maintained a civil claim as part of those criminal proceedings which has led to a recent judgment by the relevant Russian criminal court, the details of which have not been provided to me. The plaintiffs also rely on various orders freezing their shares in ToAZ, the dividends payable to the plaintiffs in respect of those shares as well as the freezing of funds and properties of ToAZ and the pre-trial detention of officers of ToAZ and others and a suspension of ToAZ's officers. The plaintiffs further rely on the alleged unjust and procedurally unfair and improper conduct of tax investigations under transfer pricing rules and the alleged improper conduct of judicial authorities in Russia.

11. The plaintiffs claim that as a result of these alleged wrongful acts committed by the defendants as part of the alleged conspiracy, the plaintiffs have suffered loss including the *de facto* expropriation of their shares in ToAZ, the loss of dividends, the loss in value attributable to their ToAZ shares and the loss in value of ToAZ and its shares as a consequence of the alleged "raider attack" with the consequent effect on the plaintiffs' shareholding in ToAZ.

12. The first, second, third, sixth and tenth defendants (the "UCCU defendants") have challenged the jurisdiction of the Irish courts to hear and determine the proceedings. I have reserved judgment on that jurisdictional challenge.

13. These defendants initially sought to have the proceedings struck out as disclosing no reasonable cause of action or as being bound to fail. In addition, Mr. Babichev sought to stay the proceedings on the grounds of *forum non conveniens*. Those applications were both dismissed by the High Court (Haughton J.) on 30th November, 2017 (*Trafalgar Developments Limited & ors v. Dmitry Mazepin & ors* [2017] IEHC 721). An appeal by these defendants from the refusal to strike out the proceedings was dismissed by the Court of Appeal on 18th July, 2019. In the meantime, these defendants entered unconditional appearances (the latest of which was on 8th February, 2018) and pleadings have been exchanged between the plaintiffs and these defendants. A full defence was delivered by these defendants on 30th July, 2018. It will be necessary to refer to parts of the defence of these defendants when considering the disputed discovery being sought. It should be stressed, however, that in their defence, these defendants deny the existence of any alleged scheme and deny that they have taken any actions on foot of any such alleged scheme. They deny that they have taken any actions designed to enable any of the defendants to acquire the plaintiffs' shares in ToAZ on the basis claimed by the plaintiffs. On the contrary, they contend that their object in bringing the civil proceedings brought by Eurotoaz and in making the criminal complaints (and complaints to the regulatory authorities) in Russia was to establish the entitlement of Eurotoaz to be recognised as a shareholder in ToAZ and to ensure that those who wrongfully removed Eurotoaz from the register of shareholders of ToAZ and refused to restore it to the register be punished for their wrongdoing and to obtain redress for Eurotoaz. These defendants further contend that any loss alleged by the plaintiffs was not caused by any action of the defendants but rather by the actions of the Russian authorities arising out of the alleged wrongdoing of (*inter alia*) "*the persons who control the plaintiffs in the management of ToAZ*" (para. 18 of the defence of these defendants) or by "*the wrongdoing of ToAZ and by implication the plaintiffs as the persons who control ToAZ…"* (para. 81.1 of that defence). The defence contains detailed pleas in relation to the allegations made against these defendants and some relevant admissions, which it will be necessary to consider further when assessing the disputed discovery sought as between the plaintiffs and these defendants.

14. It should also be noted here that the ninth defendant (Ms. Charilaou) ultimately entered an appearance to the proceedings and pleadings have been exchanged as between the plaintiffs and that defendant. She also denies any involvement in any alleged scheme to damage or cause loss to the plaintiffs.

15. Finally in this context, judgment in default of appearance was granted against Belport (the seventh defendant) and Yevgeniy Yakovlevich Sedykin (the eleventh defendant) on 17th January, 2019 (see my judgment delivered on 17th January, 2019: *Trafalgar Developments Limited & ors v. Dmitry Mazepin & ors* [2019] IEHC 7). Finally, as regards the remaining defendant, the eighth defendant, the plaintiffs are awaiting proof of service of the proceedings on that defendant in Bulgaria.

Discovery requests

16. The plaintiffs and these defendants made requests for voluntary discovery of each other on 11th January, 2019. Those request were responded to on 12th February, 2019. Agreement was reached between the parties in respect of certain of the categories of discovery sought. In respect of other categories, offers were made of more limited discovery than that sought. Further correspondence was exchanged between the parties culminating in the issuing of the plaintiffs' motion for discovery against these defendants and these defendants' motion for discovery against the plaintiffs on 27th March, 2019. Grounding affidavits were sworn in respect of the two motions. However, no replying affidavits were sworn in either motion. The parties exchanged written submissions and made helpful oral submissions at the hearing of the discovery applications on 16th July, 2019. I have carefully considered all of the material relied upon by the parties in support of their respective requests for discovery and responses to the discovery requested. In ease of expedition and in light of the procedural nature of the applications before me, I do not propose to rehearse in great detail the arguments and materials relied upon by each side. I will briefly set out the relevant legal principles and then set out my conclusions in respect of each of the categories of discovery in issue in the two applications the subject of this judgment.

Legal principles on discovery

17. Whilst the parties provided extensive written submissions on the legal principles applicable to discovery as they apply to these applications, it emerged that there was no real dispute between the parties as to what those applicable legal principles are. I propose, therefore, briefly to identify the relevant principles, referring, in that context, to the recent judgment of the Supreme Court in *Tobin v. The Minister for Defence & ors* [2019] IESC 57 ("*Tobin*").

18. As is well known, the Irish law on discovery is built on the twin requirements of relevance and necessity. As was recently confirmed by the Supreme Court in *Tobin*, relevance is assessed by reference to the test outlined by Brett L.J. in the Court of Appeal of England and Wales in *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Company* (1882) 11 Q.B.D. 55, namely, a document is relevant where it is reasonable to suppose that the document contains information which "*may – not which must – either directly or indirectly enable the party requiring the affidavit [of discovery] either to advance his own case or to damage the case of his adversary… [and includes]… a document which may fairly lead him to a train of enquiry which may have either of these two consequences…*" (per Brett LJ at 63). The requirement of necessity is now found in O. 31, r. 12 RSC. As stated by Fennelly J. in the Supreme Court in *Ryanair plc v. Aer Rianta cpt* [2003] 4 IR 264 ("*Ryanair*"), in order to establish that discovery of particular categories of documents is "*necessary for disposing fairly of the cause or matter",* it is not necessary for the applicant for such discovery to prove that they are in any sense "*absolutely necessary*". As noted by Clarke C.J. in *Tobin*, Fennelly J. went on to hold

that the court should:-

> *"…consider the necessity for discovery having regard to all the relevant circumstances, including the burden, scale and cost of the discovery sought. The court should be willing to confine categories of documents sought to what is genuinely necessary for the fairness of the litigation. It may have regard, of course, to alternative means of proof which are open to the applicant."* (at p. 277)

19. The Supreme Court in *Tobin* was mainly concerned with the question of the potential availability of alternative means of proof (such as interrogatories) and with the application of the principle of proportionality as a relevant factor in assessing whether discovery should be ordered (neither factor featured prominently in these applications). However, the Supreme Court did remind everyone of the important role which discovery can play in litigation and the "*valuable contribution*" which discovery can make. Clarke C.J. stated that:-

> *"[Dicovery] improves the chances of the court being able to get at the truth in cases where facts are contested. In that way, it makes a significant contribution to the administration of justice."* (para. 7.5)

20. The Supreme Court did, however, point to the possibility that discovery could also hinder access to justice if it became "*disproportionately burdensome*". The Chief Justice explained that in applying the procedural rules of discovery, it is necessary to bear in mind the objective "*to ensure that the ultimate trial of proceedings is conducted in a way most conducive to the necessary facts being truthfully determined and to the parties having a fair and reasonable opportunity to challenge or contest the factual position as put forward by their opponent. The overall purpose of all procedures should also include the need that parties are able to access justice in a timely and cost effective way."* (para. 7.8).

21. The Chief Justice observed, as Fennelly J. did in Ryanair, that there can be a danger in the "*over-pursuit*" of "*perfect justice*" (para. 7.9).

22. Ultimately, the Supreme Court held that the starting point for discovery was to consider what documents are "*relevant*" (para. 7.15). The court reiterated that relevance is determined by reference to the pleadings (para. 7.25) (see also the principles previously listed by McCracken J in the High Court in *Hannon v Commissioners of Public Works* [2001] IEHC 59 and by the Court of Appeal in *O'Brien v Red Flag Consulting Ltd*. [2017] IECA 258 ("*Red Flag*")). If it cannot be demonstrated that the documents sought are relevant, then there can be no entitlement to discovery of those documents (para. 7.15). The court considered that it should remain the case that the default position should be that a document which is relevant should be considered to be one whose production is necessary but that that default position is capable of being displaced for a range of other reasons such as that discovery of the requested documents would be excessively burdensome (para. 7.16 and 7.19). Therefore, once the relevance of the requested documents is established, necessity will *prima facie* also be established (similar conclusions were reached previously by the Supreme Court in *Framus Ltd. v CRH plc* [2004] 2 IR 20 and *PJ Carroll & Company Limited v. Minister for Health and Children (No. 3)* [2006] 3 IR 431). The court held that where the requested party was contending that the discovery of relevant documents was not necessary, the burden will lie on that party to demonstrate the reasons as to why the test of necessity has not been met.

23. Therefore, absent any special circumstances, the approach which the court should take in considering whether to order a party to make discovery is whether the documents are relevant based on the pleadings. If they are relevant, then *prima facie* discovery of those documents will be necessary. If the requested party seeks to resist discovery on the grounds of a lack of necessity, it will be for that party to put forward reasons as to why that is so.

24. The Irish courts have accepted that special considerations may apply where discovery is sought in fraud or conspiracy cases where it may not be possible for the plaintiff to fully plead its case by reason of the very nature of the cause of action alleged. The approach which the Irish courts have taken to assessing a discovery request in cases of this kind can be traced back to the judgment of Clarke J. in the High Court in *National Education Welfare Board v. Ryan* [2008] 2 IR 816 ("*National Education Welfare Board*"). That judgment concerned an application to strike out proceedings for failing to provide proper particulars or, alternatively, requiring the provision of further particulars of the allegation of conspiracy to defraud prior to the relevant defendant having to deliver its defence. Clarke J. found that in such cases it was necessary to strike a balance between the requirement for allegations of fraud to be pleaded with specificity and the difficulty facing a plaintiff in proceedings alleging fraud or some other form of clandestine activity in providing detailed particulars of activity which may often have been concealed. This is how Clarke J. said that balance should be struck:-

> *"4.7 A balance between these two competing considerations needs to be struck. The balance must be struck on a case by case basis but having regard to the following principles. Firstly, no latitude should be given to a plaintiff who makes a bare allegation of fraud without going into some detail as to how it is alleged that the fraud took place and what the consequences of the alleged fraud are said to be. Where, however, a party in its pleadings, specifies, in sufficient, albeit general, terms the nature of the fraud contended together with specifying the alleged consequences thereof, and establishes a prima facie case to that effect, then such a party should not be required, prior to defence and, thus, prior to being able to rely on discovery and interrogatories, to narrow his claim in such an unreasonable way by reference to his then state of knowledge. Once he passes the threshold of having alleged fraud in a sufficient manner to give the defendant a reasonable picture as to the fraud contended for, and establishes a prima facie case to that effect, the defendant should be required to put in his defence, submit to whatever discovery and interrogatories may be appropriate on the facts of the case, and then pursue more detailed particulars prior to trial."* (pp. 824 – 825)

25. This approach was directly applied by Clarke J. to an application for discovery in *Hartside Limited v. Heineken Ireland Limited* [2010] IEHC 3 ("*Hartside*"). That was a discovery application where one of the grounds on which discovery was requested was that the documents sought were highly confidential and that this was a factor which could be taken into account in deciding whether to order discovery. In the course of his judgment, Clarke J. made reference to the approach which he took in *National Education Welfare Board*, and in another case, *Moorview Developments Limited v. First Active PLC* [2008] IEHC 211, and stated:-

> *"5.9 ….Both of those cases involved allegations of fraud which are not, of course, of any relevance to this case. However, it does not seem to me that the issues raised are confined to fraud cases (indeed, I had occasion to indicate that similar principles applied in the competition field in Ryanair v. Bravofly [2009] IEHC 41). The overall problem is one between balancing, on the one hand, the need to facilitate a party who may have a legitimate claim but who may require access to information available only to its opponent in order to fully plead and ultimately substantiate that claim on the one hand, and the need to prevent, on the other hand, a party, by making a mere allegation, from being able to have a wide range of access to its opponent's documentation, including what may well include highly confidential information. The balance struck in both Moorview, National Education Board and Ryanair, leads to the conclusion that a party may be required to pass a limited threshold of being able to specify a legitimate basis for their case before being*

given access to their opponent's relevant documentation. The need for such a restriction seems to me to stem from the undoubted undesirability of allowing a mere allegation to give rise to an entitlement to access highly confidential information." (p. 13)

26. The observations made by Clarke J. in *National Education Welfare Board* in terms of the balance to be drawn or limited threshold to be met by a plaintiff in a case of fraud (or a case involving clandestine activity) were endorsed by the Supreme Court (in the context of a strike out or dismissal application) in *Keaney v. Sullivan & ors* [2015] IESC 75 and by the Court of Appeal in the context of discovery in *Red Flag*. The Court of Appeal in *Red Flag* specifically endorsed the balancing exercise applied in the discovery context by Clarke J. in *Hartside*, requiring a party to pass a "*limited threshold*" of specifying a legitimate basis for that party's case before obtaining discovery. On the facts of that case, the Court of Appeal held that the trial judge had correctly applied the threshold test described in *Hartside* and concluded that the plaintiff had not met the limited threshold required.

27. There is no dispute between the parties that these are the relevant legal principles to apply. The dispute between them is as to whether, in the case of each of the disputed categories of discovery sought, the request falls on the right side or the wrong side of the line identified by Clarke J. in *National Education Welfare Board* and *Hartside*.

28. I will now consider the categories of discovery sought in the two applications, the subject of this judgment. I will first deal with the plaintiffs' application for discovery from these defendants. I will then turn to the application by these defendants for discovery from plaintiffs.

Discovery sought by plaintiffs against Eurotoaz and Mr. Babichev

29. The plaintiffs' request for discovery dated 11th January, 2019 initially sought discovery from these defendants of sixteen categories of documents. The reply to that request on behalf of these defendants dated 12th February, 2019 offered to make discovery in respect of eight of the sixteen categories sought (Categories 1, 7, 10, 11, 12, 13, 14 and 16). An offer was made on behalf of these defendants to make discovery in respect of two further categories on certain terms which were subsequently agreed by the plaintiffs. In respect of Category 3, the plaintiffs agreed to the offer made by these defendants on the basis that there will be no temporal limitation on the discovery agreed to be made in respect of that category. In respect of Category 15, the plaintiffs accepted the contention by these defendants that the discovery requested in that category would be covered under Category 7.

30. Following engagement between solicitors for the plaintiffs and for these defendants which resulted in an agreement to make discovery of the documents referred to in the categories just referred to, a dispute remained in respect of six of the categories, Categories 2, 4, 5, 6, 8 and 9. There was also a dispute between the parties as to the timing of the discovery to be made by these defendants in respect of the agreed categories and in respect of those categories which might be ordered by the court. In respect of certain of the categories in dispute, it was contended by these defendants that discovery in respect of certain of those categories should await the determination of the jurisdiction challenge brought by the UCCU defendants.

31. The basis upon which the plaintiffs contended that they are entitled to discovery of the disputed categories was set out in the request for voluntary discovery dated 11th January, 2019 and in subsequent correspondence and was further outlined in the affidavit sworn by Karyn Harty on 27th March, 2019 for the purpose of grounding the plaintiffs' application. It was further explained in written and oral submissions. The basis for, and the grounds of, the objection by these defendants to the discovery sought in respect of the disputed categories was set out in their response dated 12th February, 2019 and in subsequent correspondence as well as in the written and oral submissions made to the court.

32. After the hearing of the plaintiffs' application for discovery commenced on 16th July, 2019, following an intervention by the court suggesting further engagement between the parties in relation to the disputed categories, the court rose for a period to allow such engagement to take place. That further engagement did not lead to any substantial further agreement between the parties. It did lead to a slight refinement in the description of the disputed categories of documents but in reality the discovery sought by the plaintiffs did not really change.

33. I will deal with each of the disputed categories (as they were amended during the course of the hearing on 16th July, 2019).

Category 2

34. Category 2: "*All communications and/or documents passing between the fourth and/or fifth defendants on the one hand and one or more of the other defendants on the other hand of and concerning the Scheme as described in the Amended Statement of Claim, including, for the avoidance of doubt, any documents falling under Categories 4, 5 and 6".*

Date range: 1st September, 2008 to 8th February, 2018.

35. Since the request for discovery in respect of the documents in this category (as amended) also seeks to include documents falling under Categories 4, 5 and 6, it is necessary to identify the documents sought in those categories. In Category 4, the plaintiffs sought discovery of "*documents relating to the multiple civil actions referenced at paragraph 14.1 of the Defence".* In Category 5, they sought discovery of "*documents relating to the multiple criminal complaints referenced at paragraph 14.3 of the Defence*". In Category 6, the plaintiffs sought discovery of "*documents relating to the complaints to regulatory bodies referenced at paragraph 39 of the Defence*". In each case, the date range for the discovery sought was also 1st September, 2008 to 8th February, 2018.

36. The plaintiffs contend that the documents sought in this category are relevant to the involvement of these defendants in, and their awareness of, the alleged scheme the subject of the proceedings. They contend that the documents are central to the plaintiffs' claim that these defendants were active participants in the alleged scheme. In particular, they assert that Eurotoaz aggressively sought to implement the scheme by a campaign of vexatious civil, criminal and regulatory action based on false or sham evidence in support of Eurotoaz's assertion that it holds shares in ToAZ and is entitled to dividends from those shares. They rely on the contention that Mr. Babichev submitted evidence in support of the allegedly vexatious litigation and that he is linked to Mr. Mazepin. They note that these defendants deny that participation in the alleged scheme in various paragraphs of their defence.

37. The plaintiffs contend that Eurotoaz has admitted the campaign of litigation against ToAZ since 2009 and that it has objective links with Mr. Mazepin and with UCCU. They contend that there are likely to be communications between Eurotoaz and other defendants and note that Eurotoaz retained Mr. Sedykin (the eleventh defendant) to act on its behalf in 2009. They also assert that the sixth defendant (Ms. Bolotnikova) is a lawyer in UCCU and acted as an attorney for Eurotoaz in defamation proceedings in Ireland brought by ToAZ against Eurotoaz (since discontinued) and gave evidence on behalf of UCCU in proceedings in Russia as part of what the plaintiffs contend is a campaign of vexatious litigation brought by UCCU. The plaintiffs contend that they should be entitled to discovery of documents passing between these defendants and the other defendants with whom they allege objective links have

been established "*of and concerning*" the alleged scheme the subject of the proceedings. The plaintiffs reject the grounds of opposition advanced by these defendants to the discovery in this category. They reject the contention that the discovery is premature in that they say there is no reason to await the determination of the jurisdiction challenge by the UCCU defendants as, irrespective of that challenge, the case will proceed in this jurisdiction against these defendants. As regards the contention that the category description was so wide and imprecise as to be inappropriate, the plaintiffs contend that that objection has fallen away with the amended category description. Finally, they assert that the claim that the category description was not tied to the alleged scheme the subject of the proceedings has also been remedied by virtue of the amended category description.

38. In response, these defendants raise various objections. They first contend that the discovery is premature in that it seeks documents in relation to other defendants and should, therefore, await the determination of the jurisdiction challenge brought by the UCCU defendants. They further contend that the category is so wide and imprecise as to be impermissible. Finally, they claim that the category as originally described was not even formulated with reference to the alleged scheme. These defendants contend that the court should focus on the specific allegations made against them, namely, their alleged participation in the scheme by virtue of the alleged vexatious campaign of litigation (comprising civil actions, and criminal and regulatory complaints) and that there is no dispute on the pleadings in relation to the fact that those proceedings and complaints were brought and made. They contend that the disputed issues between the parties in relation to the proceedings and the complaints made concern whether these defendants deployed false evidence (as alleged at para. 65 of the amended statement of claim) and that such documents fall within Category 13 (which these defendants have agreed to discover). They note that the plaintiffs did not seek documents evidencing the proposition that the bringing of proceedings and the making of the criminal and regulatory complaints was on foot of the alleged "raider attack" which might potentially have been relevant. It is further pointed out on their behalf that they admit that UCCU is the ultimate beneficial owner of Eurotoaz, through a chain of companies, although they deny that Mr. Mazepin is the ultimate beneficial owner of Eurotoaz, albeit they accept that he is the principal shareholder in and the "person behind" UCCU. They accept that documents evidencing the plaintiffs' proposition that the bringing of proceedings and the making of the complaints were on foot of the alleged "raider attack" and that it would be relevant if there were documents which showed the reason why Eurotoaz made the complaints and filed the civil claims but that there is no dispute between the parties on the pleadings as to the fact of the complaints, the making of the claims and the outcome of those complaints and claims. While the plaintiffs may be intending to seek documents relevant to the claims brought and complaints made insofar as forged documents were allegedly deployed, these defendants have agreed to make discovery of those documents in other categories (Categories 12, 13 and 14). While the plaintiffs may also be seeking documents under this category to demonstrate that the bringing of the actions and the making of the complaints were not *bona fide* but were in furtherance of the alleged "raider attack", it is contended by these defendants that the description of the documents (as amended during the hearing) does not focus on those documents, is incredibly wide and does violence to the English language.

39. My conclusions in relation to this category are as follows. First, I am not satisfied that the discovery sought (when the category is appropriately reworded) is premature or that the court should await the determination of the jurisdiction challenge brought by the UCCU defendants before directing discovery in respect of the documents sought in this category. The plaintiffs' position is that irrespective of the determination of the jurisdiction challenge, they intend to maintain the proceedings against these defendants in Ireland.

40. Second, I accept that discovery of some documentation under this category is appropriate. However, in my view, the amended category description is unclear and, in any event, is far too wide. It is unhelpful to seek discovery of documents "*of and concerning the scheme*" as it is very difficult to see how these defendants could go about complying with an order in such wide and general terms.

41. Third, the proposed amended wording for Category 2 does not replace the request for discovery of the documents sought in Categories 4, 5 and 6. Rather, it simply lumps those categories into Category 2 without in any way addressing what these defendants have said in relation to the necessity for discovery of documents in those categories.

42. Fourth, the discovery sought in the proposed amended Category 2 is not in any way tied to the particular claims made by the plaintiffs against these defendants in the amended statement of claim and does not properly take account of the matters admitted by these defendants in their defence. While it is true that the plaintiffs make a series of general allegations against these defendants in terms of their alleged participation in the alleged scheme the subject of the proceedings, specific claims are made against these defendants in terms of the alleged campaign of vexatious litigation comprising the bringing of civil claims, the making of criminal and regulatory complaints and the use of allegedly forged or sham documents in those claims and complaints. Specific pleas in the amended statement of claim are directed to this alleged conduct on the part of these defendants and specific pleas are contained in their defence in response to those pleas. These defendants admit bringing multiple civil actions and making multiple criminal complaints. They further admit that Eurotoaz made complaints to regulatory bodies. However, they deny that the bringing of those actions or the making of those complaints was wrongful or in pursuit of the alleged scheme asserted by the plaintiffs. They contend that the actions were brought and the complaints were made in a *bona fide* attempt to have Eurotoaz restored to the register of shareholders in ToAZ and to pursue those responsible for having Eurotoaz removed from the register. In their reply, the plaintiffs have joined issue with those pleas and have specifically denied that the actions of these defendants were undertaken for lawful or legitimate purposes. It seems to me that, bearing in mind the need to ensure that the discovery ordered is both relevant and necessary and that the party ordered to make discovery should be in a position to understand what documents it is required to discover, Category 2 should be appropriately reworded. It should be reworded in a way which more clearly links the documents sought to the case specifically made against these defendants. The reworded category set out in the next paragraph takes on board the point made by these defendants that they have admitted the fact of the civil actions and the criminal and regulatory complaints but have denied that they were taken or are being taken or made on foot of any alleged scheme. Documents which bear upon the motivation, intention, objective and purpose of these defendants in relation to these actions and complaints are, in my view, clearly relevant to the case made by the plaintiffs against these defendants and discovery of those documents is, in my view, necessary for the fair disposal of the proceedings. Finally, it seems to me that the category as reworded by me in the manner set out in the next paragraph is also what is required in order to stay on the right side of the line identified by Clarke J. in *National Education Welfare Board* and *Hartside*. Any more extensive discovery under this category would, in my view, fall on the wrong side of the line.

43. For these reasons, I am satisfied that these defendants should be required to make discovery of the following documents in lieu of the proposed Category 2:-

> *"Documents relevant to the plaintiffs' claims that –*
>
> > *(a) the bringing of the civil actions in Russia (referred to at paras. 54 and 55, 68 – 81 and 81 – 89 of the amended statement of claim and para. 14.1 of the defence of the fourth and fifth defendants);*
> >
> > *(b) the making of the criminal complaints to the Russian authorities (referred to in paras. 54 and 55, 56 – 58, 61 –*

67 and 87 – 89 of the amended statement of claim and para. 14.3 of the defence of the fourth and fifth defendants); and

(c) the making of regulatory complaints to the Russian authorities (referred to in paras. 56 and 59 – 60 of the amended statement of claim and para. 39 of the defence of the fourth and fifth defendants)

formed and form part of the alleged scheme the subject of the proceedings (referred to at paras. 2 – 4, summarised at paras. 5 – 12 and described elsewhere in the amended statement of claim) including (but not limited to):

(i) Communications between the fourth and fifth defendants, their respective servants, agents or representatives (on the one hand) and any of the other defendants, their respective servants, agents or representatives (on the other hand) which relate to or concern the matters referred to at (a), (b) and (c) above and their alleged part in the alleged scheme;

(ii) Documents recording, disclosing or evidencing the motivation, intention, objective, aim and purpose of the fourth named defendant, its servants, agents, representatives or officers (including the fifth named defendant) in relation to the matters referred to at (a), (b) and (c) above.

In respect of the period from 1st September, 2008 to 8th February, 2018."

Category 8

44. Category 8 (proposed amended version) – "*Documents relating to the relationship between the First Defendant and/or the Second Defendant on the one hand and the Fourth Defendant and/or Fifth Defendant on the other hand (whether through Benstock Finance Limited or otherwise)"*

Date Range: 29th March, 1995 to 8th February, 2018.

45. The plaintiffs originally sought the following documents under this category: "*Documents relating to Benstock Finance Limited and/or Mr. Mazepin, the 1st Defendant".*

46. That category was impermissibly wide and general as it was originally sought. The plaintiffs have sought to limit and to make more specific the scope of the discovery sought in this category. However, as I explain below, it seems to me that the category is still impermissibly wide and is not correctly tied to the case made against these defendants.

47. The basis on which discovery in Category 8 (as originally worded) was sought by the plaintiffs was set out in the letter seeking voluntary discovery dated 11th January, 2019. The reasons set out in that letter were applicable to Categories 7 and 8. The documents sought in Category 7 related to the incorporation, management, ownership, trading activity of, and the appointment of directors and officers to, Eurotoaz in respect of the period from 29th March, 1995 to 8th February, 2018. These defendants have agreed to make discovery of the documents in Category 7. In the request for voluntary discovery, the plaintiffs relied on the general reasons set out in respect of Category 1 (these defendants have agreed to make discovery of the documents in that category) and specific reasons referable to Categories 7 and 8. The plaintiffs claim that Eurotoaz is a "*central participant*" in the alleged scheme and that Mr. Mazepin stated in June 2013 that he purchased Eurotoaz and that the alleged campaign of vexatious litigation commenced in July 2009. The plaintiffs refer to the incorporation of Eurotoaz on 29th March, 1995 and to the admission by these defendants (at para. 24 of their defence) that Eurotoaz is owned by Benstock Finance Limited ("Benstock") and that Benstock and Mr. Babichev are "*connected*" to the management of UCCU and that UCCU is the "*ultimate beneficial owner"* of the shares in Eurotoaz (see also para. 26 of the defence). However, the plaintiffs note that these defendants did not admit the plea at para. 27 of the amended statement of claim that it is to be inferred that Mr. Mazepin owns and controls Eurotoaz. In fact, these defendants deny that plea at para. 24.5 of their defence. The plaintiffs submit that the question as to whether the first defendant owns and controls Eurotoaz is an issue in the proceedings and that Mr. Babichev may have documents relevant to this. These defendants declined to make voluntary discovery of the documents sought in this category and ultimately an order was sought by the plaintiffs.

48. The plaintiffs contend that the documents sought are directed to the dispute between the parties in relation to the alleged involvement of these defendants in the alleged scheme the subject of the proceedings, and also bear upon the issue as to whether Mr. Mazepin owns and controls Eurotoaz. The explanation given for the date range extending back to March 1995 is that Eurotoaz was incorporated in March 1995 and has asserted that ownership of the shares the subject of the alleged campaign of vexatious litigation occurred (or was acquired) in "*late 1995*" (para. 36 of Ms. Harty's affidavit). The plaintiffs contend that these defendants have provided no explanation for the delay on the part of Eurotoaz in pursuing its alleged shareholding and that the litigation pursued by Eurotoaz only commenced after the purchase by UCCU of shares in ToAZ thereby necessitating discovery for the entire period from March 1995. The plaintiffs contend that the period leading up to and following the acquisition of Eurotoaz by Benstock is relevant to the issue of the ultimate ownership and control of Eurotoaz in light of the admission in the defence that Benstock is "connected" to the management of UCCU. The plaintiffs assert that the relationship between these defendants and Mr. Mazepin and UCCU is of critical importance to the case they wish to make concerning the involvement of these defendants in the alleged scheme. They say that the documents now sought in the revised category are relevant in that the relationship between Mr. Mazepin/UCCU and Eurotoaz is relevant to the case made by these defendants that the litigation brought by Eurotoaz and the criminal and regulatory complaints made by it were all pursued on a *bona fide* and standalone basis.

49. These defendants assert that the documents sought are neither relevant nor necessary for the purpose of discovery in light of the admissions made in their defence and, in particular, the admission that UCCU is the ultimate beneficial owner of Eurotoaz (para. 26.3 of the defence). They contend that it is not in issue in the pleadings that there are links between Mr. Mazepin and Eurotoaz. They further contend that it is not in dispute that Mr. Mazepin owns UCCU. They assert that what the plaintiffs effectively seek in this category is documentation to prove that Mr. Mazepin owns UCCU, which, they say, is not in dispute. I observe here, however, that that is not the stated purpose of the plaintiffs in seeking discovery of the documents in this category which is directed not to the relationship between Mr. Mazepin and UCCU but between those defendants and Eurotoaz and/or Mr. Babichev.

50. I am satisfied that, on the pleadings, the alleged ownership and control by Mr. Mazepin of Eurotoaz is in issue between the parties and that discovery should be ordered in respect of those documents. However, it seems to me that the amended Category 8 proposed by the plaintiffs is still far too wide in its description and in terms of the period of time in respecting which the documents are sought. I set out below the terms of the order I will make in relation to Category 8. As regards the time period, I am not satisfied that it is appropriate to go back as far as 1995. The alleged campaign of vexatious litigation is alleged to have commenced in 2009. The plaintiffs plead that UCCU acquired its minority shareholding in ToAZ in 2008. I do not see any reason to order discovery in

respect of the period prior to 2008 having regard to the case made against these defendants on the pleadings.

51. In relation to Category 8, I will direct these defendants to make discovery of the following:-

> *"All documents disclosing or evidencing the alleged ownership and control by the first defendant of the fourth defendant (whether by reason of the admitted ultimate beneficial ownership of the fourth defendant by the second defendant, through Benstock Finance Limited, or by reason of the admitted connection between the fifth defendant and Benstock to the second defendant, or otherwise) in respect of the period from 1st January, 2008 to 8th February, 2018."*

Category 9

52. Category 9 (proposed amended version) – *"Documents relating to communications between the 4th and 5th Defendants, whether directly or through servants, agents or representatives."*

Date range: 1st January, 2011 to 8th February, 2018.

53. This proposed amended Category 9 was intended to make more clear what the plaintiffs are seeking by way of discovery under this category. However, as I explain below, the proposed amended category is excessively wide and uncertain in its terms. I am satisfied that the plaintiffs should obtain some discovery of documents under this category but not in the form now sought by the plaintiffs.

54. The basis on which the plaintiffs seek discovery of this category (in its original form) was set out in the request for voluntary discovery. The request focused on the fact that Mr. Babichev was appointed a director of Eurotoaz in December 2011 (a fact admitted at para. 26 of the defence of these defendants) and that there is a dispute on the pleadings concerning the role of Eurotoaz in the alleged scheme. The plaintiffs asserted that communications between Eurotoaz and Mr. Babichev were relevant to the question of the lawfulness or otherwise of the actions taken by Eurotoaz in pursuit of the alleged campaign of vexatious litigation. These defendants refused to make discovery under this category claiming that the documents sought were not relevant and that it was not necessary for the plaintiffs to obtain discovery of these documents for the fair disposal of the case.

55. The plaintiffs contend that the documents requested in the proposed amended Category 9 are intended to cover matters such as the briefing provided to Mr. Babichev when he was appointed as a director of Eurotoaz in December 2011 and that communications between these defendants are relevant to the role which it is alleged they have played in the alleged scheme. The plaintiffs argue that the documents sought in this category are relevant to the *bona fide*s or otherwise of the civil litigation brought by Eurotoaz and the criminal and regulatory complaints made by them. They rely on the alleged commonality of interests between Mr. Babichev and Mr. Mazepin and on the contention by these defendants that the litigation brought and the criminal and regulatory complaints made by these defendants had nothing to do with Mr. Mazepin or UCCU.

56. These defendants resist discovery on the basis that the category as described initially and in its proposed amended form lacks clarity and covers irrelevant documents. They submit that the category does not tie the communications as between these defendants to those that are relevant to the particular claims made against them by the plaintiffs. They say that no attempt has been made by the plaintiffs to focus the discovery sought in this category on the matters actually in issue between the parties in the proceedings.

57. I have concluded that communications between Eurotoaz and Mr. Babichev in relation to the alleged campaign of vexatious litigation are relevant but that the category proposed by the plaintiffs is far too wide. As proposed by the plaintiffs, the category would cover a whole range of communications having nothing whatsoever to do with the case made against these defendants by the plaintiffs. It seems to me that having regard to the case actually made by the plaintiffs concerning the pursuit by these defendants of the alleged campaign of vexatious litigation, and the denial by these defendants of those claims, documents between Eurotoaz and Mr. Babichev concerning the alleged campaign are relevant. I am further satisfied that it is necessary that the plaintiffs obtain discovery of such documents. As with the other categories in dispute between the parties, as now formulated by the plaintiffs, the discovery sought would, in my view, fall on the wrong side of the line laid down by Clarke J. in *National Education Welfare Board* and *Hartside*. It is necessary, therefore, to reformulate the category.

58. For those reasons, I will direct these defendants to make discovery of the following documents under Category 9:

> *"Documents recording, evidencing or disclosing all or any communications between the fourth defendant, its servants or agents or representatives and the fifth defendant, his servants, agents or representatives relating to (a) the civil actions in Russia (referred to in Category 2(a)), (b) the criminal complaints to the Russian authorities (referred to in Category 2(b)) and (c) the regulatory complaints to the Russian authorities (referred to in Category 2(c)) which the plaintiffs claim formed and form part of the alleged scheme the subject of these proceedings, in respect of the period from 1st January, 2011 to 8th February, 2018."*

Discovery sought by Eurotoaz and Mr. Babichev from the plaintiffs

59. The request for voluntary discovery made by these defendants initially sought discovery of sixteen categories of documents. Agreement was reached in relation to most of the discovery sought. However, four categories of documents remain in dispute. They are the documents sought in Categories 2, 4, 6 and 7. I will deal with each of them in turn.

Category 2

60. Category 2: *"All documents relating to the control exercised by the Plaintiffs of the management of ToAZ, including the beneficial ownership of each of the Plaintiffs."*

61. It was contended in the voluntary discovery request dated 11th January, 2019 that the documents sought in this category are relevant to the issue as to whether the plaintiffs are entitled to maintain the proceedings in light of the rule in *Foss v. Harbottle*. The request stated that, to the knowledge of these defendants, the persons who control the plaintiffs maintain control over ToAZ and were maintaining proceedings in this jurisdiction in the name of ToAZ (the recently discontinued defamation proceedings against Eurotoaz). They contended that the documents sought in the category are also relevant to the plea that the cause of the loss allegedly sustained by the plaintiffs was not the conduct of these defendants but rather the conduct of the plaintiffs or the persons who at their instigation control ToAZ.

62. In their response to the request for voluntary discovery dated 12th February, 2019, the plaintiffs asserted that the documents

sought in this category did not arise from any issues in dispute between the parties and the documents were, therefore, not relevant. They also complained about the breadth of the category description. They contended that there was no dispute between the parties on the pleadings in relation to the beneficial ownership of the plaintiffs.

63. In response, in further correspondence dated 4th March, 2019, these defendants made a series of points in support of the relevance of the documents sought. They relied on the contention that the alleged conspiracy had as its object the devaluation of ToAZ and the pressure on the plaintiffs to sell their shares in ToAZ at an undervalue. They also referred to the plea which they made in their defence (at para. 81.1) that the beneficial owners of the plaintiffs (or the controllers thereof) were *de facto* controllers of ToAZ and that the inability of the plaintiffs to enjoy the fruits of their shareholding in ToAZ (on the plaintiffs' case) is as a result of the conduct of ToAZ and the loss allegedly suffered by them is as a result of the actions of others, in particular, the Russian authorities. In response to this, in correspondence dated 19th March, 2019, the plaintiffs made various points including that there was no plea in the pleadings in this case concerning the proceedings brought by ToAZ against Eurotoaz in Ireland. It was further contended that documents relating to the control of ToAZ would not be relevant to the reflective loss plea made by these defendants. They contended that the question of whether the loss was a "reflective loss" of ToAZ could not be determined by the extent of the control, if any, which the plaintiffs exercised over ToAZ. They argued that the pleas contained in the pleadings did not support the discovery sought. The plaintiffs further contended that documents relating to the control of ToAZ are not relevant to the plea by these defendants in relation to the alleged embezzlement by persons in control of the plaintiffs of monies from ToAZ as contended by the Russian authorities.

64. In further support of their request for discovery of this category of documents, these defendants relied on their contention that part of the claim by the plaintiffs at least is for damage caused to ToAZ as well as their claim that damage was caused to the plaintiffs themselves as shareholders in ToAZ. These defendants assert that the claim maintained by the plaintiffs in that regard is one for reflective loss and not maintainable by the plaintiffs. They contend that in effect the plaintiffs maintain that they were exercising control over ToAZ but as a result of the actions complained of in the proceedings, they have no longer been able to do so and have been unable to cause proceedings to be taken by ToAZ. These defendants also contend that the beneficial ownership of each of the plaintiffs is relevant having regard to the case made as to the impact of the alleged scheme on persons such as Mr. Makhlai, Mr. Korolev and Mr. Zivy. They contend that the documents sought in this category (particularly in relation to the beneficial ownership of each of the plaintiffs) will demonstrate the nature and extent of the relationship between those persons and the plaintiffs.

65. In response, the plaintiffs object to the breadth of the discovery sought in this category contending that it is extremely broad and does not bear upon the plea by these defendants that the plaintiffs are not entitled to maintain the proceedings under the rule in *Foss v. Harbottle*. They maintain that their claim is for damages for conspiracy to deprive them of their shares in ToAZ and to expropriate the dividends to which they are entitled as shareholders of ToAZ. The claim is not, they maintain, one for reflective loss of ToAZ. The plaintiffs submit that there is no plea in the amended statement of claim about the plaintiffs losing control of ToAZ and that no claim was made for damages for losses to ToAZ. They further contend that the beneficial ownership of the plaintiffs does not rise on the pleadings and draw attention to the statement contained in the Arthur Cox letter of 11th January, 2019 requesting voluntary discovery of this category of documents that *"to the fourth and fifth named defendants' knowledge the persons who control the plaintiffs maintain control over ToAZ…".* They query how, in light of that contention, the documents sought in this category could be relevant or necessary. The plaintiffs point to an inconsistency between that statement and what is stated at para. 18 of the defence where it is pleaded that the alleged losses the subject of the proceedings were not caused by the actions of these defendants but were rather as a consequence of the actions of the Russian authorities arising out of the wrongdoing of, *inter alia*, "*the persons who control the plaintiffs in the management of ToAZ*". They also refer to the plea at para. 81.1 of the defence of these defendants where it is pleaded that the alleged damage was caused by reason of the wrongdoing of ToAZ and *"by implication the plaintiffs as the persons who control ToAZ…".*

66. Having carefully considered the submissions advanced by the parties and the applicable legal principles discussed earlier, and having again carefully reviewed the pleadings, I am satisfied that these defendants are entitled to some discovery under this category. However, I do not believe that they are entitled to the broad discovery which they seek in the category as it stands. The category description is far too broad in seeking all documents relating to the control exercised by the plaintiffs of the management of ToAZ. The documents requested are not specifically directed to anything in the pleadings. Nor is the request for documents relating to the beneficial ownership of each of the plaintiffs linked to the case pleaded by these defendants. I do not accept that documents relating to the beneficial ownership of each of the plaintiffs as such are relevant in light of the pleadings. I am not satisfied that these defendants are entitled to the discovery in the extensive terms sought in this category. Nor am I satisfied that these defendants are entitled to discovery of these documents for the purposes of their plea that the plaintiffs are not entitled to maintain the proceedings having regard to the rule in *Foss v.* Harbottle. However, I have concluded that they are entitled to documents which are relevant to the plaintiffs' case that the loss and damage which they rely on in the proceedings was caused by the actions of the defendants (including these defendants) and to the case made by these defendants that the loss and damage alleged by the plaintiffs was caused not by the defendants but rather by the actions of the Russian authorities and the Russian courts arising out of the alleged wrongdoing of the plaintiffs or of persons who control the plaintiffs in the management of ToAZ. In my view, such documents (as described below) are relevant having regard, in particular, to the pleas contained at paras. 18 and 81.1 of the defence of these defendants. As regards the time period for discovery in respect of this category (as ordered), it seems to me that it should date back to the start of 2008, being the year in which it is alleged that UCCU acquired a minority shareholding in ToAZ and initiated the alleged scheme, the subject of the proceedings. The period should extend to 8th February, 2018, on the basis that this is the cut-off date in the plaintiffs' request (being the date when the latest unconditional appearance was entered on behalf of those defendants). However, as I understand that there may have been some correspondence between the parties on the relevant period, I will hear counsel as to whether the period should be other than indicated above and, if necessary, will give liberty to apply in that regard.

67. The documents which I direct the plaintiffs to discover under Category 2 are as follows:-

> *"Documents recording, evidencing or disclosing the control allegedly exercised by the plaintiffs, their servants, agents or representatives, or persons who control the plaintiffs, over the management of ToAZ in relation to the alleged conduct which has allegedly given rise to the actions of the Russian authorities and/or the Russian courts which the plaintiffs claim have caused them loss and damage, in respect of the period from 1st January, 2008 to 8th February, 2018."*

Category 4

68. Category 4 – "*All documents evidencing or relating to any loss allegedly suffered by the Plaintiffs by reason of the matters in respect of which complaint is made in these proceedings to include, but strictly without prejudice to the generality of the foregoing, all documentation in relation to the conduct of the Plaintiffs or their proxies or the Swiss Shareholders that gave rise to the actions of the Russian Authorities in respect of which the Plaintiffs make complaint in the Amended Statement of Claim*."

69. In their request for voluntary discovery dated 11th January, 2019, these defendants gave a very brief justification for seeking these documents. They asserted that it was common case that the cause of the loss to the plaintiffs was the actions of the Russian authorities in dealing with allegations of the evasion of tax through selling product at an undervalue to entities controlled by or connected with the plaintiffs and the "Swiss Shareholders". I note that the term "*Swiss Shareholders"* is defined at para. 20 of the amended statement of claim as being persons including Mr. Zivy for whose benefit, it is alleged, another company, Maxim Invest and Finance Inc. ("Maxim"), a subsidiary of Ameropa Holding AG ("Ameropa"), holds a 12.9% interest in ToAZ. I also note that it is pleaded at para. 20 of the amended statement of claim that the plaintiffs have no interest in either Maxim or Ameropa. At para. 23 of their defence, these defendants put the plaintiffs on full proof of the matters pleaded at (*inter alia*) para. 20 of the amended statement of claim. In any event, in their request for voluntary discovery the plaintiffs contended that the documents sought in this category are relevant and necessary for the determination of the issue as to whether the plaintiffs have suffered any loss and the resolution of the issue as to whether, if they have suffered any loss, the loss arose as a result of any wrongdoing on the part of the defendants or rather was a consequence of the wrongdoing of ToAZ and "*by inference the plaintiffs as the persons who control ToAZ".*

70. In their response to that request, on 12th February, 2019, the plaintiffs declined to make discovery in the terms requested on the basis that it was far too broad. They contended that the conduct of the plaintiffs or their "*proxies*" or the "*Swiss Shareholders*" which these defendants allege gave rise to the actions of the Russian authorities is not relevant, not pleaded and not in dispute between the parties. However, the plaintiffs did offer to make discovery in revised terms provided the defendants agreed to make reciprocal discovery. The discovery offered by the plaintiffs was:-

> *"All documents evidencing or relating to any loss allegedly suffered by the plaintiffs by reason of the matters in respect of which complaint is made in the amended statement of claim."*

71. In the subsequent correspondence between the parties' respective solicitors, it was not possible to reach agreement in relation to this category and so discovery is sought in the terms originally requested by these defendants.

72. These defendants maintain that the discovery sought is relevant, in particular, to the case they make that the alleged loss the subject of the proceedings was not caused by the actions of these defendants but rather by the actions of the Russian authorities arising from the alleged sale of ammonia by ToAZ at an undervalue to Ameropa. They contend that the documents sought are relevant to the case made by the plaintiffs that the actions of the Russian authorities can only be explained as being part of a "raider attack" as well as being relevant to their defence that the losses complained of were due to the plaintiffs' own wrongdoing in relation to the sale of ammonia at an undervalue by ToAZ to Ameropa, an entity allegedly controlled by the "*Swiss Shareholders*". In response, the plaintiffs continue to contend that the discovery requested is excessive and does not arise out of the pleaded case. They further contend that these defendants did not put the required factual material on affidavit in support of the reasons relied on for seeking this category of discovery. They further note that these defendants have not raised any issue in relation to the "*Swiss Shareholders*" in their defence. They further maintain that the discovery offered in respect of this category is sufficient.

73. I have again carefully considered the submission advanced by both sides in respect of this category and have borne in mind the legal principles summarised earlier. I am satisfied that these defendants are entitled to some discovery under this category. However, I am not satisfied that they are entitled to discovery in the terms requested. In particular, I do not believe that the plaintiffs should be required to give discovery of the conduct of the "*Swiss Shareholders*" that allegedly gave rise to the actions of the Russian authorities. The defence of these defendants does not specifically raise the role of the "*Swiss Shareholders"*. Rather, the defence advances general pleas at paras. 18 and 81.1 in the terms previously described. As regards the "*Swiss Shareholders*", as I have already noted, these defendants do merely put the plaintiffs on proof of the matters alleged at (*inter alia*) para. 20 of the amended statement of claim. I am not satisfied that these defendants have properly grounded their request for discovery of documents extending to the "*Swiss Shareholders*" and I observe that a case was made in the written and oral submissions on behalf of these defendants which did not fully reflect what was set out in their defence. Nor was the factual basis for the request set out in terms in the affidavit sworn on behalf of these defendants grounding the application for discovery. However, it seems to me that these defendants are entitled to somewhat broader discovery than that actually offered by the plaintiffs. In particular, in my view, the category offered by the plaintiffs should be amended so as to make specific reference to the cause of the alleged losses.

74. In those circumstances, I direct the plaintiffs to make discovery of the following documents under this category:-

> *"All documents evidencing or relating to any loss allegedly suffered by the plaintiffs by reason of the matters in respect of which complaint is made in the amended statement of claim and evidencing or relating to the cause of any such alleged loss."*

Category 6

75. Category 6 – "*All documents evidencing or relating to any interest on the part of the Plaintiffs or ToAZ (or persons connected with the Plaintiffs or ToAZ) in Eurotoaz Hungary."*

76. In their request for voluntary discovery of this category dated 11th January, 2019, these defendants advanced a composite reason for Categories 6 to 14 of the discovery requested. Categories 8 to 14 were agreed by the plaintiffs. The basis on which it was contended that the documents in Category 6 (together with the other documents requested) should be discovered was that a central issue in the case is the circumstances in which Eurotoaz came to replace Eurotoaz Hungary on the register of shareholders in ToAZ and was then subsequently replaced by Eurotoaz Hungary as a shareholder in ToAZ. Eurotoaz contends that it acquired the shareholding of Eurotoaz Hungary in ToAZ and that that was acknowledged originally by ToAZ when Eurotoaz was entered on the share register of ToAZ. These defendants asserted in the request that the documents sought in the relevant categories (including Category 6) were relevant to the issue as to whether, as contended by the plaintiffs, Eurotoaz forged documents to support its assertion to be a shareholder in ToAZ or whether, as alleged by Eurotoaz, it is the owner of the relevant shares and that the actions taken by it were properly taken in order to establish that ownership.

77. In response, the plaintiffs contended that Category 6 was too broad having regard to the matters at issue in the pleadings. They asserted that the inclusion of the plaintiffs or persons connected with the plaintiffs in Category 6 did not arise from the pleadings and further that the question as to whether a party was connected to ToAZ required a subjective understanding on the part of ToAZ to which the plaintiffs were strangers. In lieu of the discovery sought by these defendants under Category 6, the plaintiffs offered to make discovery of the following documents:-

> *"All documents evidencing any interest in the part of ToAZ in Eurotoaz Hungary."*

78. These defendants advanced additional reasoning in support of this category in a further letter from their solicitors dated 4th

March, 2019. In that letter, they asserted that the beneficial owners of the plaintiffs direct the conduct of ToAZ and that the removal of Eurotoaz from the register of shareholders of ToAZ, together with the assertion that its shareholding is registered in the name of Eurotoaz Hungary, which was liquidated and is dissolved, gave added voting power to the plaintiffs and to those who control the plaintiffs. They contended that the relationship between ToAZ, those who control ToAZ and Eurotoaz Hungary is central to issues in the proceedings. The plaintiffs again disputed these contentions in further correspondence dated 19th March, 2019. In that letter, they asserted that it was not in issue in the proceedings that either the plaintiffs or persons connected with the plaintiffs, or ToAZ held an interest in Eurotoaz Hungary.

79. These defendants and the plaintiffs advanced submissions along the same lines in support of and in order to resist discovery of the documents sought in this category.

80. Having carefully considered the submissions made, the reasons advanced for the discovery sought in this category and the pleadings, I am not satisfied that these defendants are entitled to anything more than has been offered by the plaintiffs in respect of this category. It is nowhere pleaded by these defendants that the plaintiffs or any person connected with the plaintiffs had an interest in Eurotoaz Hungary. To seek discovery of such documents, in my view, amounts to fishing. I am not at all persuaded by the reasons offered by these defendants for seeking discovery under this category. As I have indicated, the documents sought do not appear to me to arise from anything pleaded. The most relevant pleas in respect of this category are those contained at para. 60 of the defence of these defendants. There it is pleaded that Eurotoaz Hungary acquired a shareholding in ToAZ and that ToAZ was a shareholder in Eurotoaz Hungary. It is not pleaded that the plaintiffs or persons connected with the plaintiffs or persons connected with ToAZ were shareholders in, or otherwise had an interest in, Eurotoaz Hungary. In those circumstances, it does not seem to me that the additional documents sought by these defendants under this category over and above those offered by the plaintiffs arise from the pleadings or are relevant to the matters in issue between the parties. As regards the plea at para. 60 of the defence that ToAZ was a shareholder in Eurotoaz Hungary and that it was, therefore, to be inferred that it was aware that Eurotoaz Hungary was liquidated, while there is no particular denial of these pleas in the plaintiffs' reply to the defence, there is a general denial at para. 1 of that reply. I am taking it, therefore, that the plaintiffs are denying that ToAZ was a shareholder in Eurotoaz Hungary and, therefore, its shareholding (or other interest) is arguably relevant. That may well explain the offer made by the plaintiffs in respect of this category. However, I do not believe that these defendants are entitled to anything more by way of discovery under this category.

81. In those circumstances, I note the agreement by the plaintiffs to make discovery of the following documents under Category 6:-

> *"All documents evidencing any interest on the part of ToAZ in Eurotoaz Hungary."*

82. I refuse to order any further discovery under this category.

Category 7

83. Category 7 – *"All documents relating to the liquidation of/dissolution of Eurotoaz Hungary including without prejudice to the generality of the foregoing the awareness of ToAZ, or the Plaintiffs, of the liquidation/dissolution of same."*

84. The reasons advanced for seeking discovery of the documents under this category were the same as those advanced in respect of Category 7 in the request for voluntary discovery made by those defendants. The response by the plaintiffs was also similar to its response to Category 6. Further, the plaintiffs offered voluntary discovery in respect of some documents under this category. The documents which the plaintiffs offered to discover were as follows:-

> *"All documents evidencing the liquidation and/or dissolution of Eurotoaz Hungary or the awareness of the Plaintiffs of the liquidation or dissolution of same."*

85. These defendants did not accept the more limited discovery offered in respect of this category and asserted that the removal of Eurotoaz from the register of shareholders of ToAZ and the assertion that its shareholding was registered in the name of Eurotoaz Hungary was central to the matters in issue in the proceedings. In further response, the plaintiffs asserted in correspondence that the offer made was sufficient and that the disputed element of the category concerned documents relating to the awareness of ToAZ of the liquidation or dissolution of Eurotoaz Hungary and this required a subjective understanding on the part of ToAZ to which the plaintiffs were strangers.

86. The parties advanced submissions along similar lines to those set out in the correspondence exchanged prior to the application. These defendants did point out in submissions that it was curious that the discovery offered by the plaintiffs in respect of this category extended to documents evidencing the awareness of the plaintiffs of the liquidation or dissolution of Eurotoaz Hungary whereas the offer in respect of Category 6 was in respect of any interest on the part of ToAZ in Eurotoaz Hungary.

87. Having carefully considered the submissions and the pleadings, I am satisfied that these defendants have established an entitlement of discovery to the documents sought in this category. The plaintiffs have offered limited discovery in respect of this category. The first limitation is that the discovery offered is confined to documents "*evidencing*" the liquidation or dissolution of Eurotoaz Hungary. I believe that is too narrow in the context of this category although documents relating to the liquidation or dissolution of Eurotoaz Hungary without qualification would be excessive in that there does not seem to be an issue on the pleadings between the parties that Eurotoaz Hungary was actually liquidated. The issue seems to be whether ToAZ was notified or was aware of the liquidation so that Eurotoaz Hungary remained on the share register of ToAZ (as pleaded at para. 70 of the amended statement of claim). That question is addressed principally at para. 60 of the defence of these defendants where it is denied that ToAZ was not aware that Eurotoaz Hungary was liquidated or that it was not notified of that fact. It is pleaded that ToAZ was a shareholder in Eurotoaz Hungary and that it was, therefore, to be inferred that ToAZ was aware of the liquidation. The second limitation proposed by the plaintiffs is to confine the awareness in question to the plaintiffs and to offer to discover documents evidencing the plaintiffs' awareness of the liquidation or dissolution of Eurotoaz Hungary. However, the issue on the pleadings concerns the extent of the knowledge of ToAZ of that liquidation or dissolution. It seems to me that to the extent that the plaintiffs have documents in their possession, power of procurement relating to the awareness of ToAZ of the liquidation of Eurotoaz Hungary, they would be relevant to an issue or issues in the proceedings and should, therefore, be discovered by the plaintiffs in addition to documents relating to the plaintiffs' awareness of these events. I do not believe, therefore, that it is appropriate to limit the discovery sought in this category in the way suggested by the plaintiffs.

88. I consider that the plaintiffs should make discovery of the following documents under Category 7 (as reformulated by me):-

> *"All documents relating to the awareness of ToAZ and/or the plaintiffs of the liquidation and/or dissolution of Eurotoaz Hungary."*

Summary of orders made on these applications

(A) Discovery sought by the plaintiffs against the fourth and fifth named defendants:
89. I direct the fourth and fifth named defendants to make the following discovery to the plaintiff:-

(1) Category 2 – "*Documents relevant to the plaintiffs' claims that –*

(a) the bringing of the civil actions in Russia (referred to at paras. 54 and 55, 68 – 81 and 81 – 89 of the amended statement of claim and para. 14.1 of the defence of the fourth and fifth defendants);

(b) the making of the criminal complaints to the Russian authorities (referred to in paras. 54 and 55, 56 – 58, 61 – 67 and 87 – 89 of the amended statement of claim and para. 14.3 of the defence of the fourth and fifth defendants) and

(c) the making of regulatory complaints to the Russian authorities (referred to in paras. 56 and 59 – 60 of the amended statement of claim and para. 39 of the defence of the fourth and fifth defendants)

formed and form part of the alleged scheme the subject of the proceedings (referred to at paras. 2 – 4, summarised at paras. 5 – 12 and described elsewhere in the amended statement of claim) including (but not limited to):

(i) Communications between the fourth and fifth named defendants, their respective servants, agents or representatives (on the one hand) and any of the other defendants, their respective servants, agents or representatives (on the other hand) which relate to or concern the matters referred to at (a), (b) and (c) above and their alleged part in the alleged scheme;

(ii) Documents recording, disclosing or evidencing the motivation, intention, objective aim and purpose of the fourth named defendant, its servants, agents, representatives or officers (including the fifth named defendant) in relation to the matters referred to at (a), (b) and (c) above.

In respect of the period from 1st September, 2008 to 8th February, 2018."

(2) Category 8 – "*All documents disclosing or evidencing the alleged ownership and control by the first defendant of the fourth defendant (whether by reason of the admitted ultimate beneficial ownership of the fourth defendant by the second defendant, through Benstock Finance Limited, or by reason of the admitted connection between the fifth defendant and Benstock to the second defendant, or otherwise) in respect of the period from 1st January, 2008 to 8th February, 2018."*

(3) Category 9 – "*Documents recording, evidencing or disclosing all or any communications between the fourth defendant, its servants or agents or representatives and the fifth defendant, his servants, agents or representatives relating to (a) the civil actions in Russia (referred to in Category 2(a)), (b) the criminal complaints to the Russian authorities (referred to in Category 2(b)) and (c) the regulatory complaints to the Russian authorities (referred to in Category 2(c)) which the plaintiffs claim formed and form part of the alleged scheme the subject of these proceedings in respect of the period from 1st January, 2011 to 8th February, 2018."*

(B) Discovery sought by the fourth and fifth defendants from the plaintiffs
90. I direct the plaintiffs to make the following discovery to the fourth and fifth named defendants (over and above what has been agreed):-

(1) Category 2 – "*Documents recording, evidencing or disclosing all or any communications between the fourth defendant, its servants or agents or representatives and the fifth defendant, his servants, agents or representatives relating to (a) the civil actions in Russia (referred to in Category 2(a)), (b) the criminal complaints to the Russian authorities (referred to in Category 2(b)) and (c) the regulatory complaints to the Russian authorities (referred to in Category 2(c)) which the plaintiffs claim formed and form part of the alleged scheme the subject of these proceedings, in respect of the period from 1st January, 2011 to 8th February, 2018."*

(2) Category 4 – "*All documents evidencing or relating to any loss allegedly suffered by the plaintiffs by reason of the matters in respect of which complaint is made in the amended statement of claim and evidencing or relating to the cause of any such alleged loss."*

(3) Category 6 – "*All documents evidencing any interest on the part of ToAZ in Eurotoaz Hungary."* (i.e., on the terms offered by the plaintiffs).

(4) Category 7 – "*All documents relating to the awareness of ToAZ and/or the plaintiffs of the liquidation and/or dissolution of Eurotoaz Hungary."*

91. I will hear counsel further in relation to any outstanding issues on the discovery agreed or ordered including the timing on which the discovery is to be made. I will also give liberty apply to both parties in the event of any further dispute or issue arising from the terms of the discovery ordered.