Imamovic v Cinergy Global Trading Ltd

QUEEN'S BENCH DIVISION (COMMERCIAL COURT)

[2006] EWHC 323 (Comm), (Transcript)

HEARING-DATES: 16, 17, 18, 19 23, 24, 25, 26 30, 31 JANUARY, 1, 2, 8, 28 FEBRUARY 2006

28 FEBRUARY 2006

CATCHWORDS:
Contract - Parties - Parties to contract - Whether defendant party to contract between claimant and third party

INTRODUCTION:
This is a signed judgment handed down by the judge, with a direction that no further record or transcript need be made pursuant to Practice Direction 6.1 to Pt 39 of the Civil Procedure Rules (formerly RSC Ord 59, r (1)(f), Ord 68, r 1). See Practice Note dated 9 July 1990, [1990] 2 All ER 1024.

COUNSEL:
N Imamovic in person;A Haydon for the Respondent

PANEL: COOKE J

JUDGMENTBY-1: COOKE J:

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COOKE J:INTRODUCTION:[1] In this action the Claimant (Dr Imamovic) claims damages from the Defendant (CGTL) for breach of a contract dated 16 July 2001 (the Contract) and made between Energa SA, a Greek company and himself, when trading as Independent Consultants Group (ICG). Dr Imamovic alleges that Energa was in partnership with CGTL and the Agricultural Bank of Greece (ATE) and that all are equally bound by the Contract. Alternatively, he alleges that, on 29 June 2001, CGTL in the person of Mr Contomichalos represented to him that CGTL was in partnership with Energa and ATE and held out those entities as its partners.[2] As a further alternative, Dr Imamovic alleges that Energa purportedly concluded the Contract as agent for CGTL and that on 4 October 2001 Mr Contomichalos ratified the Contract on behalf of CGTL, such ratification being confirmed in a fax message from Dr Imamovic to Mr Contomichalos. There was allegedly further ratification by conduct, most of which post dated 4 October conversation.[3] The Contract expressly provided that the parties were to:'co-operate jointly in order to be able to supply electric power generated in former Yugoslavia and will be delivered at the Greek borders (via Albania or Serbia - FYROM)'and, subject to certain other provisions, had a duration of three years. Dr Imamovic was to receive a fee equal to 5% of the profits from the sale of the electric power generated in former

Yugoslavia, delivered at the Greek borders and sold to the Public Power Corporation of Greece (PPC) or other industrial consumers. In addition there was provision for Dr Imamovic to receive £500 per month as partial reimbursement of operational expenses, in accordance with a particular clause of the Contract.[4] It is alleged that CGTL failed to co-operate with Dr Imamovic in achieving the supply of electricity for delivery at the Greek borders and that it repudiated the Contract in July 2002 with consequent damage to Dr Imamovic in the shape of loss of commission on supply contracts which were concluded or ought to have been concluded during the three year period. In addition he claims for expenses at the rate of £500 per month for the whole three year period.THE CONTRACT:[5] The Contract is headed 'Private Agreement', is governed by English law and contains the following relevant wording: -1. 'Energa SA, a company established in Greece and having its registered address in Athens, 118B Kifissias Ave - 115 26, legally represented by Mr Achille Floros, President (hereinafter referred to as 'Energa')2. INDEPENDENT CONSULTANTS GROUP (ICG), a company established in England and having its registered address 51A Chase Side, London N14 5BU, legally represented by Dr Nedzad Imamovic (hereinafter referred to as 'ICG').Hereinafter collectively referred to as 'the parties'.'Whereas ENERGA SA is an engineering consultants company engaged mainly in energy business and more specifically in the electric power trading sector in the Balkans and mainly in Greece.Whereas ENERGA SA has signed a co-operation agreement with the British-American company Cinergy Global Trading Ltd. according to which the two companies co-operate to trade electric power in Greece.Whereas Cinergy & Energa & the Agricultural Bank of Greece decided to set up a power company in which they participate in the following proportion: Cinergy 40%, Agricultural Bank 40%, Energa 20% and they have also submitted an application to obtain a licence for the supply of electric power to Greece.Whereas ICG is a consultants company which is occupied, inter alia, in the trading of electric power generated in former Yugoslavia (FYROM, Serbia, Montenegro, Kosovo, Bosnia, Croatia and Slovenia) and has high level contacts in this country regarding energy.The Parties hereby agree upon the following:1. They will co-operate jointly in order to be able to supply electric power generated in former Yugoslavia and will be delivered at the Greek borders (via Albania or Serbia - FYROM).2. This co-operation is at a mutual exclusivity basis for its duration.3. The fee of ICG will be equal to 5% of the profits from the sale of the electric power generated in the former Yugoslavia and delivered at the Greek borders and sold to the Greece energy company PPC or other industrial consumer.4. This agreement done with Energa, will be in force under the new legal entity that will result from the co-operation between CINERGY - ABG - ENERGA, based on the expansion of the present agreement.5. The above mentioned expansion of the present agreement with the new company will take place by care of Energa.6. The duration of the co-operation is three (3) years and can be extended further with the consent of both the parties.7. If no commercial act has been reached within six (6) month, this agreement is terminated by right without any claims by either of the parties unless the parties mutually decide otherwise.8. Further to the agreement being extended as foreseen in four & five above and no later than 15 September 2001, ICG will receive the amount of 500£/month as partial reimbursement of its operational expenses. In case the operational expenses exceed the above agreed amount due to extra travel expenses or similar then ICG will inform Energa and these extra expenses can be covered by the company subject to prior agreement. All extra costs

of ICG have to be claimed with the company by presenting original receipts and any other further documentation . . . .11 The parties agree to exchange information regarding the object of their co-operation which will be ruled by the principle of confidentiality. Energa therefore has already sent on 12 July 2001 the Bidding Inquiry of PPC Greece for the purchase of a significant amount of electric power for three (3) years.Given that the final date for submission of offers is 3 September 2001 the parties agree to intensify their efforts in order to be able to participate effectively in the above mentioned bidding Inquiry.For that purpose ICG is expected to make specific proposals for the possibility to supply electric power from the former Yugoslavia to be delivered at the Greek borders according to the above mentioned bidding inquiry.'[6] It can be seen that the parties are defined specifically as Energa and ICG, the latter being said to be a company established in England with a registered address which is Dr Imamovic's home residence. There is no such registered company and it is accepted that Dr Imamovic was a party to this contract since ICG is only a trading name. The Contract was signed by the president of Energa SA, Mr Achille Floros and by Dr Imamovic himself 'for and on behalf of ICG'. The preamble to the agreement emphasises the identity of the parties and then spells out, in four sub paragraphs, the background to the agreement, reciting Energa's position as an engineering consultant company engaged in electric power trading in the Balkans and Greece and ICG's position as a consultancy occupied in the trading of electric power generated in former Yugoslavia with high level contacts relating to energy in that country.[7] The other two recitals refer to a 'co-operation agreement' between Energa and CGTL, to a decision of those two entities and ATE (called ABG in the Contract) to set up a power company and to a submission of an application to obtain a licence for the supply of electric power to Greece. Whilst the wording of this contract was agreed between individuals who are respectively Greek and Bosnian, so that English did not represent the first language of either, it is noteworthy that there is no reference to a partnership between CGTL and Energa but to a 'co-operation agreement' between the 'two companies' who agreed to co-operate to trade electric power. There is also express reference to a decision to set up a new power company with specific shareholdings to be held by Cinergy, ATE and Energa. The Contract wording, as a matter of construction alone, therefore shows some consciousness of the nature of corporate bodies, albeit that it refers to ICG as a company with a registered address in England, which betrays a lack of knowledge of legal personality in English law on the part of Dr Imamovic at the time, a point which was confirmed in his evidence.[8] The Contract between Energa and Dr Imamovic refers to 'a co-operation agreement' between Energa and CGTL and similarly uses the same word ('co-operate') in setting out the obligations of Energa and Dr Imamovic (the Parties) to one another under Cl 1. That relationship between Energa and Dr Imamovic was not one of partnership as both parties to it obviously appreciated, so that the word 'co-operate' could not reasonably have conveyed, and did not convey, to Dr Imamovic the notion of a partnership between CGTL and Energa.[9] Clauses 4 and 5 of the agreement emphasise that Dr Imamovic is contracting with Energa and make provision for the situation when a new legal entity results from the co-operation between Energa, CGTL and ATE. Clause 5 makes it plain that Energa undertakes to procure that the contractual obligations undertaken by Energa will be binding on the new company formed in consequence of the co-operation between those three entities.[10] In my judgment the terms of the Contract with Dr Imamovic do not themselves give rise to any

suggestion that any entity other than Energa undertook obligations towards him. The agreement specifically draws attention to the three distinct entities, Energa, CGTL and ATE, refers to the nature of the agreement between them as one of co-operation and requires Energa to ensure that, if a joint venture company is formed, the agreement will then become binding upon that company. It is clear that if Energa should fail to procure such liability on the part of the new joint venture company, when formed, Energa would be liable for such failure. There is express provision for Energa's obligation in this respect, in the context of the Contract which contains reference to the co-operation agreement between CGTL and Energa and the new joint venture company resulting from co-operation between the three distinct entities. Clause 4 thus draws a distinction between the 'private agreement' between Energa and Dr Imamovic and an 'expansion' of it on the one hand, as and when a joint venture company is formed, and the existing co-operation of the other entities and/or an existing (or past) co-operation agreement between CGTL and Energa on the other.[11] In my judgment, there is nothing on the face of the document to suggest that Energa was contracting as a partner of CGTL or ATE or as an agent for either or both of them. The terms of the agreement are, to the contrary, inconsistent with any such suggestion.THE RELATIONSHIP BETWEEN CGTL AND ENERGA:[12] There are two 'joint co-operation agreements' between Energa and CGTL dated 31 January 2000 and 7 November 2000 respectively, both governed by English law. The first contract recited the intention of PPC to issue a tender in February 2000 for the supply at the Greek border of electric energy during the summer months for a period of four years (2000-2004) (the Project) and the desire of Energa and CGTL to work together to join forces in the preparation and submission of a bid (the offer). It also referred to CGTL's interest in establishing itself in electricity trading in the Balkans in cooperation with a suitable regional partner such as Energa.[13] The first Joint Co-operation Agreement included the following: -'ARTICLE 1 - SUBJECT1.1 The Parties shall co-operate for the joint preparation and submission of the Offer and in case of success the implementation of the Project.1.2 The Parties shall constitute the appropriate legal body according to the tender requirements for submitting the Offer to PPC.1.3 The Parties agree, subsequent to the successful submission of the Offer, to enter into a joint venture agreement ('JVA') and to establish an appropriate joint venture corporate vehicle ('JVCo') for developing and implementing their joint co-operation on the Project. For this purpose, CINERGY may designate any of its subsidiaries or affiliates in holding CINERGY'S interest in the Project.ARTICLE 2 - TERMS OF CO-OPERATION2.1 EG and CINERGY shall endeavour to source electric energy for the Project at the most competitive terms and conditions. In particular, the Parties will obtain proposals from the Romanian electric system and other possible suppliers of energy outside of the Balkans.2.2 EG will use its connections for establishing appropriate transit/swap pre-agreements (and later agreements) and other required agreements with the various Balkan countries involved from the point of origin of the energy to the Greek borders. Any such agreements will be subject to the review and approval of the JVCo. CINERGY will endeavour to provide support at the government/public organisations level in those countries through US diplomatic and other channels.2.3 The scope of responsibility of each Party shall be agreed and detailed in the JVA. The day-to-day management of the Project will be entrusted to ENERGA SA and detailed in the JVA. ENERGA SA will at all times act in the interests of the JVCo in accordance with the terms of the JVA. The

financial control of all the Project cash-flows will be entrusted to CINERGY and detailed in the JVA.2.4 EG and CINERGY will establish jointly and agree the budget/costing of the Offer. All such costs shall be directly related to the Project, including but not limited to, for primary energy buying, transit/swap costs, management costs and other third party costs. The equity capital of the Parties in the JVCo to be established pursuant to Article 1.3 and the sharing of profits of the JVCo shall be as follows:CINERGY 60%EG 40% of which 20% is carried interest according to Article 2.52.5 The participation of the Parties in the financial obligations (including all bonds and letters of credit and other liabilities) relative to the submission of the Offer for the Project including the issuance of the participation bond and if successful of the performance bond shall be:- CINERGY 80%- EG 20%It is hereby understood that EG is granted a 20% carried interest in the risk/benefit ratio, such carried interest being equal to the contribution of goodwill and regional know-how by EG to the development of the joint venture.2.7 No less than twenty (20) days prior to the date for submission of the Offer, EG must provide evidence from its bankers that it is prepared to issue the form of financial obligation required in accordance with EG's obligations herein with respect to all bonds and Letters of Credit. Notwithstanding any other provision to the contrary, in the event EG fails to comply with its obligations in Article 2.5, CINERGY shall have the right to proceed in submitting the Offer on its own and the Parties shall endeavour to agree an alternative form of joint co-operation with respect to the Project. Each Party acknowledges its intention to support the Project and will provide such undertakings, including by way of equity funding obligations or credit support, in accordance with the allocation stated in Article 2.5'[14] Not only is there no suggestion of partnership in this document but there is express provision for the future creation of a joint venture corporate vehicle and the conclusion of a joint venture agreement, once an offer had been accepted by PPC. In the context of the agreement, the parties obviously intended, once a deal was struck with PPC, to conclude an agreement and form a joint venture company through which that deal would be channelled. The reference to a 'suitable regional partner' was plainly not intended to speak of partnership in the technical sense and could not reasonably be so understood. Article 5.1 provided for the Parties to co-operate with each other for their mutual benefit in pursuit of the Project and not to compete. Article 3 moreover expressly provided as follows: -'No partnership, agency or sharing of profits or losses between the parties shall be created or intended by this Agreement, and the parties shall ensure that their respective rights, obligations and liabilities under the Project will be set out clearly and separately in the JVA. Nothing in this Agreement shall entitle any Party to pledge the credit or incur any liabilities or obligations binding upon any other Party except as may be expressly agreed by each of the Parties.'[15] Article 6 is a 'entire agreement' clause and art 7.1 provided that the agreement would terminate upon the happening of any one of a number of events including 'execution of the JVA', 'notification from PPC that the offer is unsuccessful' or July 31 2000.[16] Nothing ever resulted from this agreement and no joint venture co-operation vehicle was ever formed or joint venture agreement made, but on 7 November 2000 a second 'joint co-operation agreement' was concluded between Energa and CGTL. In this case the recitals referred to Energa's experience and know-how in sourcing energy, transiting through the Balkan region and accessing the organisation and operating system of PPC, whilst also (as in the first agreement) referring to CGTL's interest in establishing itself in electric energy trading in the Balkans 'in co-operation

with a suitable regional partner such as [Energa]'. Recital D referred to Energa and CGTL's desire to work together and their decision to join forces to the end of trading electricity in the Balkan region.[17] The second Joint Co-operation Agreement contained the following provisions: -'1.1 The Parties shall co-operate to trade electricity from the Balkan region to Greek customers and/or sell electricity to other customers through Greece.1.2 The Parties agree, subsequent to the conclusion of the first transaction, to enter into a joint venture agreement ('JVA') and to establish an appropriate joint venture corporate vehicle ('JVCo') for developing and implementing their joint co-operation on the Project. For this purpose, CINERGY may designate any of its subsidiaries or affiliates in holding CINERGY'S interest in the ProjectARTICLE 2 - TERMS OF CO-OPERATION2.1 EG and CINERGY shall endeavour to source electric energy for the Project at the most competitive terms and conditions. In particular, the Parties will obtain proposals from the Romanian, Bulgarian, Serbian electric systems and other possible suppliers of energy outside of the Balkans.2.2 EG will use its connections for establishing appropriate transit/swap pre-agreements (and later agreements) and other required agreements with the various Balkan countries involved from the point of origin of the energy to the Greek borders. Any such agreements will be subject to the review and approval of the JVCo. CINERGY will endeavour to provide support at the government/public organisations level in those countries through US diplomatic and other channels.2.3 The scope of responsibility of each Party shall be agreed and detailed in the JVA. The day-to-day management of the Project will be entrusted to CINERGY while ENERGA SA will participate as consultant as the above shall be detailed in the JVA. ENERGA SA will at all times act in the interests of the JVCo in accordance with the terms of the JVA. The financial control of all the Project cash-flows will be entrusted to CINERGY and detailed in the JVA.2.4 EG and CNERGY will establish jointly and agree the budget/costing of the Project. All such costs shall be directly related to the Project, including but not limited to, for primary energy buying, transit/swap costs, management costs and other third party costs. The equity capital of the Parties in the JVCo to be established pursuant to Article 1.3 and the sharing of profits of the JVCo shall be as follows: CINERGY (60%) and EG (40%). In the case that the energy supplies will be effected via CZECHPOL ENERGY and/or ENEL. companies already related on business terms with CINERGY, the parties will re-examine the percentages of their participation with good faith and to the interest of the JVCo.2.5 The management of the JVCo is agreed to be exercised and conducted jointly by CINERGY and EWG. The registered offices of the JVCo is agreed to be the offices of EG or CINERGY's offices in Athens.2.6 EG reserves the right to transfer up to 50% of its participation in the JVCo to the Agriculture Bank of Greece or to another equivalent bank institution.2.7 The Parties will co-operate to the end of acquiring a licence to supply electricity following the provisions of Law 2773/99 and also to extend the scope of their co-operation so as to include development of wind parks and hydro-electrical stations.2.8 The participation of the Parties in the financial obligations (including all bonds and letters of credit and guarantee and other liabilities) relative to the Project shall be:- CINERGY 80%- EG 20%It is hereby understood that EG is granted a 20% carried interest in the risk/benefit ratio, such carried interest being equal to the contribution of goodwill and regional know-how by EG to the development of the joint venture.'[18] The agreement contained a similar exclusivity and confidentiality clause to that contained in the first co-operation

agreement whereby the Parties agreed not only to co-operate but also not to compete. Once again there was an entire agreement clause and art 3 of this agreement was in identical terms to art 3 of the earlier agreement, negating any partnership or agency and debarring either Party from incurring any liability or obligation which would be binding upon the other, unless this was expressly agreed by them.[19] The agreement was to be effective from the date of signature and would expire on the execution of the JVA or June 30 2001, whichever occurred first.[20] Once again, nothing happened under this agreement in terms of business concluded. Nor was a joint venture agreement concluded or a joint venture corporate vehicle formed. None of the provisions in art 2.3 - 2.6 ever became operative therefore, including the provision as to sharing of profits whilst the remaining provisions, including those relating to expenditure in art 2.8 were largely to be effective prior to the occurrence of those events. The Agreement expired on June 30 2001.[21] This and the previous agreement, on their own terms, could not support any conclusion that a partnership in English law existed between CGTL and Energa. All that the parties had agreed to do was to 'co-operate', with a view to obtaining a deal and setting up a joint venture vehicle of a corporate nature, making it clear that their relationship was not one of partnership in the meantime and that neither party could act in such a way as to bind the other. They were not therefore, by putting this agreement into effect and carrying out obligations under it, carrying on a business in common with a view of profit, within the meaning of the Partnership Act 1890. There was no common business, merely a joint objective for which they agreed to strive and no agreement to share profits until the joint venture vehicle was established. The parties went out of their way to agree that this was not to be a partnership and in that they succeeded.[22] Moreover this agreement only made passing reference to ATE which was not a party to it. Energa reserved the right to bring in its bankers in the future under art 2.6, once the joint venture vehicle was established. There is no possible basis for asserting a partnership in which ATE was involved in consequence of this agreement.[23] In para 32 of his witness statement Mr Contomichalos referred to a draft Memorandum of Co-operation in Greek which he signed for CGTL and Energa also executed in February 2001. A copy was put before the court, with a translation. It was governed by Greek law. His evidence was that he was told by Energa that this was never signed by ATE, the third party named in the document but in pleadings in a Greek action, both Energa and ATE refer to a document signed and dated 15 February 2001, in terms which make it plain that it is the same document.[24] This document provides in translation, so far as relevant:'The present text is a memorandum of cooperation between . . . [ATE] . . . CGT. . . . Energa . . . . The aforementioned companies intending to engage in the exploitation of the energy sector in Greece . . . . agreed and covenanted as follows:1. This memorandum is not a contract and none of its clauses is legally binding. It simply forms the basis of negotiations for future cooperation and the drawing up of the relevant documents.2. The parties intend to submit to the Regulatory Authority for Energy (RAE), on 19 of February 2001, a joint dossier of expression of interest to obtain the relevant Electric Power Generation and Supply Licenses for the projects referenced in the attached list, which forms an integral part herein, and form relevant Consortia, if they are granted these licenses and the final agreements are approved by the competent statutory bodies of the ATE [handwritten] and CINERGY GLOBAL TRADING respectively.3. The percentage

of participation in the Consortium to be formed for the Electric Power Supply License is agreed as follows:

ATE	20%
CINERGY GLOBAL TRADING LTD	60%
ENERGA SA	20%

... 4. Any expenses incurred by the parties for the preparation of the dossier of expression of interest described above, as well any other expenses incurred until the formation of the consortia or any other legal form of co-operation (company, society etc) for achieving the aforementioned or other relevant purposes, shall burden them pro rata to their above percentages of participation.5 In the event that the parties form companies between them in order to engage in the purchase and supply of electric power, the participation of each party in their share capital shall amount to the above percentages, and the share capital of such companies shall not exceed the amount of one billion drachmas. Once such companies are formed, the second and third parties declare that they shall transfer to these companies all business activities of the already existing consortium between them. The business relationships between the parties as shareholders shall be defined by relevant agreements to be executed between them.6. ATE undertakes the temporary administration and payment of required fees to the RAE for the licenses applied for, allocating the above expenses to CINERGY GLOBAL TRADING LTD and ENERGA SA pro rata to their participation in the aforementioned Consortia and/or Company.7. The contents of this memorandum are confidential and it is explicitly agreed that none of its clauses shall be communicated or disclosed to a third party, unless it is required by Law or a final magisterial decision.This Memorandum of Understanding is the only written record of any agreement between CGTL, Energa and ATE, the entities alleged to be partners by Dr Imamovic.[25] The intention expressed in the Memorandum of Understanding was to form a consortium or corporate body, with the percentages expressed owned by CGTL, Energa and ATE, if the power supply licence was granted and if the Boards of ATE and CGTL approved. The word translated 'consortium' is apparently the Greek word 'kinopraxia' which appears to have a known meaning in Greek law, although no evidence of Greek law was adduced by either party. The intention in the second joint co-operation agreement was to enter into a joint venture agreement, after the first transaction had been concluded in consequence of co-operation and also to establish a joint venture vehicle, namely a company, with a split of equity capital between CGTL and Energa alone. No joint venture entity or company was ever established as envisaged by either agreement, whether between two parties or three and whether to receive the transfer of the business activities, or otherwise.[26] Under the Memorandum, expenses prior to the formation of the consortium 'or any other form of co-operation', whether a company or society or anything else, were also to be apportioned, although it is unclear whether this provision, on its true construction, was to apply only if the company or consortium was actually formed.[27] The Memorandum however was agreed not to be binding in law and no evidence was presented by either party to show that the effect of this in Greek law was different from that in English law (which expressly governed the earlier two Co-operation Agreements). The Memorandum therefore gave rise to no obligations binding in law upon the parties to it and the earlier co-operation agreements, in terms nullified any suggestion of partnership.[28] The reference in the recitals to the

Contract between Energa and Dr Imamovic to a signed co-operation agreement between Energa and CGTL, could only be to the second joint co-operation Agreement since ATE was a party to the Memorandum and is not referred to in that recital. The reference to CGTL and Energa alone in the relevant recital and to a 'co-operation agreement according to which each agreed to co-operate to trade electric power in Greece' (which is reminiscent of recital D and Cl 1.1 of the second joint co-operation agreement) inevitably leads to this conclusion. In the following paragraph in the recitals to the Contract however, there is reference to the tripartite split of profit between CGTL, Energa and ATE, which clearly suggests that the Memorandum was there in mind. Although the second joint co-operation agreement was apparently no longer extant at the time when Energa and Dr Imamovic concluded their 'private agreement' in the shape of the Contract, and there is no evidence of any extension to it, it appears that the Contract had reference to both these documents.[29] CGTL and Energa were, if these agreements governed the position between them, not in a partnership as a matter of English law and Energa had no actual authority to conclude any agreement binding upon CGTL at all, whether in the form of the Contract or at all. At most, all there could be between them in July 2001 was an agreement, as separate legal entities, to cooperate on the terms of the second joint co-operation agreement, if extended, and a non binding understanding as to sharing of certain expenditure under the Memorandum in relation to the licenses obtained in consequence of such co-operation.[30] It is clear that Energa continued to work with CGTL in 2001 and 2002 in seeking to obtain the supply of electricity from countries outside the Greek borders and that Dr Imamovic sought to obtain offers or indications of availability from Bosnia in particular.[31] It was not however until April 2002, according to Mr Contomichalos, that there was any further agreement between CGTL and Energa, although there remained an understanding between them at all times after expiry of the second joint co-operation agreement that Energa would be entitled to 20% of the profits on any electricity deal of the kind envisaged by that agreement. At that stage, in April 2002, Mr Contomichalos' evidence is that he agreed with Mr Achille Floros, in relation to the securing of a likely future deal with APT/Verbund, that if any electricity power trading deals facilitated by Energa were successfully executed, Energy would receive 20% of any net profit accruing to CGTL on the deal but would also accept 20% of the risk and any net loss resulting. This was not however recorded in a new joint co-operation agreement. ATE did not feature in this agreement as it was by this stage losing interest, or had lost interest, in such activities.[32] I have no reason to doubt Mr Contomichalos' evidence on this point, supported as it is by later documents which show CGTL and Energa debating and agreeing a division of the 2002 profits and taking into account the loss of the 2003 year, in order to calculate the amount owing to Energa on an 80/20 basis. An in- principle set off was agreed at the end of 2002 and the practical financial outworkings of this were finally resolved in late 2004.[33] Ultimately, CGTL and Energa entered into a Joint Venture Agreement dated 18 May 2004. This provided, so far as relevant: -'SCOPE(a) Energa shall provide the services ('the Services') as described in Clause 1(b) below and in the attached Schedule A in connection with those electricity sale and purchase and/or transmission and distribution transaction(s) described in the attached Schedule B. Where used in this Agreement the term 'Transaction' means any transaction referred to in the attached Schedule B and any other transaction(s) hereafter added to Schedule B by agreement in writing (which agreement to be effective must state

that it amends Schedule B of this Agreement) (together 'the Transaction(s)').(b) Energa shall use know-how and resources at its disposal to actively search for and seek to identify and define opportunities which may be or become technically and financially viable electricity sale and purchase and/or transmission and distribution transaction(s) in Greece. Energa shall introduce such opportunities to Cinergy with as much information relating thereto as is reasonably available to Energa. Cinergy and Energa shall promptly review each opportunity introduced by Energa and use their reasonable endeavours to agree whether they are of interest to Cinergy and so should be included as a Transaction for the purposes of this Agreement. Energa shall give Cinergy a reasonable period in which to assess the opportunity (with the intention that it may then be added as a Transaction for the purposes of this Agreement) before such opportunity is offered to any other client or contact of Energa.(c) Energa shall provide the Services to Cinergy in accordance with the instructions, requests and directions of CinergyNATURE OF RELATIONSHIP(d) Energa is an independent contractor (and shall not under any circumstances act as, or be deemed to be, agent or employee of Cinergy or any other member of the Cinergy Group) and shall have no right, power or authority to bind any member of the Cinergy Group to the execution, delivery, incurrence or fulfilment of any condition, contract or obligation, express or implied, between any member of the Cinergy Group and any third party (and shall not hold itself out as having any such right, power or authority) without Cinergy's prior written approval. Non of the agents, staff, officers or employees of Energa shall be deemed an agent or employee of Cinergy or any other member of the Cinergy Group for any purpose, including for purposes of any of the employee benefit programmes, income, withholding taxes, social security or similar withholding taxes, or employment benefits or rights under the law of any jurisdictionPAYMENT OF TRANSACTION NET PROFITS AND TRANSACTION NET LOSSES(e) Cinergy will pay Energa twenty (2) percent of Transaction Net Profits and Energa will pay Cinergy twenty (20) percent of Transaction Net Losses for the duration of this Agreement as described in and in accordance with the provisions of Schedule C of this Agreement. For the avoidance of doubt it is stipulated that in the absence of a Transaction reaching Transaction Close no compensation shall be due to Energa for Services provided.SERVICESThe following services will be provided by Energa:(a) Energa will use its best endeavours (and using its experience, skill and resources) to identify and notify Cinergy of persons (all of whom must be Permitted Persons) who may have, or who have expressed, a serious interest in participating in some or all of the Transaction(s).(b) Energa will provide the following further services in connection with any transaction or potential transaction in connection with any of the Transaction(s):- Energa will advise on the optimum strategy for engaging or negotiating with Energa Introduced Parties with respect of their participating in the Transaction(s) (or any part thereof);- Energa will effect appropriate introductions between representatives of Cinergy and representatives of Energa Introduced Parties;- Energa will facilitate liaison and discussions between Cinergy and Energa Introduced Parties;- Energa will use all reasonable endeavours to ascertain the requirements of each relevant counterparty with regard to its participating in the Transaction(s) (or any part thereof) and the terms and conditions upon which such relevant counterparty may be prepared to participate, and Energa will promptly inform Cinergy of all such requirements, terms and conditions to the extent that Energa is aware of the same;- If requested by Cinergy, Energa will

perform such other services which are reasonably incidental to any or all of the foregoing and/or which may be reasonably required by Cinergy in connection with any or all of the foregoing, while if necessary for the purposes of the present, Energa will concede adequate space of its premises to Cinergy, without any consideration.'[34] This Joint Venture Agreement was expressly governed by English law and provided for termination on 31 December 2004. Schedule B referred to transactions with seven identified customers, to every power delivery to the Greek System, to every power purchase agreement concluded by CGTL for delivery of electricity to the Greek System and/or to Greek customers 'and such other transactions as the parties agree in writing shall be transactions for the purposes of this Agreement'. Whilst post-dating the events with which the court is concerned, and the dispute arising out of them, this Joint Venture Agreement nonetheless falls to be taken into account in determining the nature of the relationship between CGTL and Energa in the intervening period and the evidence of Mr Contomichalos and the allegations of Dr Imamovic about it.[35] No contrary evidence has been adduced from Mr Floros or any representative of Energa, ATE or CGTL in relation to these Contracts so that Dr Imamovic's case as to the existence of a partnership or agency depends upon inferences which he invites the court to draw from various documents and the activities which were undertaken by CGTL, Energa and himself. He maintains that a partnership can be spelt out of the conduct of CGTL, Energa and ATE outside the terms of the written agreements or the oral agreement to which Mr Contomichalos testified.[36] Furthermore Dr Imamovic relies upon representations made by CGTL, by word and conduct, as holding out Energa as its partner or agent. He accepted that separate allegations of misrepresentation inducing contract took his case no further, depending as they do, upon the same alleged facts which give rise to the allegations of holding out or allowing oneself to be held out as a partner.[37] In evaluating these matters the existence of the two joint co-operation agreements and the Memorandum of Co-operation between Energa and CGTL and the terms of art 3 of the former form a valuable background in showing the intentions of those entities in the period immediately preceding the relevant period. The first two agreements show a clear intention not to form a partnership within the meaning of the Partnership Act 1890, as a matter of English law, whilst the Memorandum refers to 'consortia' to be formed, possibly referring to a concept of Greek law, but not to any English law concept of partnership under that Act.[38] Between the signed agreement to which I have made reference, it is plain from the documents that attempts were made by CGTL and Energa to conclude joint venture agreements with other entities. One such such attempt is reflected in a draft joint venture agreement dated 24 January 2003, governed by the law of Greece. The recitals to this draft contract have some significance, if they reflect, as I find they largely do, the sequence of events from November 7 2000 to 24 January 2003, albeit in abbreviated form.[39] The recitals read as follows: -'1. The contracting parties have commenced co-operation in the Greek and Balkan energy market following a joint co-operation agreement executed in November 7 2000.2. The initial outcome of the co-operation of the contracting hereby parties was the formation of a joint-venture with Agriculture Bank of Greece ('ATE'). The subsequent submittal, on 19 February 2001, of all required applications to RAE and eventually the acquisition of a five years licence for the supply) electricity by RAE.3. The above joint venture, following a suggestion of ATE, attempted to co-operate with Alamanis group of companies so as to establish a

corporation in the form of a 'societe anonyme' to carry out the business of supplying energy within the bounds of the licence granted by RAE The relevant negotiations lasted 18 months and proved unsuccessful. ATE also withdrew from the joint venture.4. Nevertheless, CINERY & ENERGA continued their co-operation and achieved to be awarded supply contracts by Public Power Corporation of Greece ('PPC') which were fully performed at a value of 4.4 million of US dollars in the year 2002. Thus, they now wish to renew their joint co-operation agreement (by taking into account their recent experience in the relevant market and its prospects.'[40] This reveals that attempts to set up a joint venture vehicle in the form of a corporate body came to nothing, as between CGTL, Energa, ATE and the Alamanis Group which is also referred to elsewhere in the documents as Alfa or Alfalfa. The document refers to a joint venture with ATE from which it later withdrew. It also states that, CGTL and Energa, having commenced co-operation in 2000, continued such co-operation following the breakdown of the negotiations for a joint venture company, which appears to have been 18 months from 7 November 2000 or possibly 18 months from February 2001. Whichever way this is read, the attempt to establish a joint venture agreement with a joint venture vehicle was over by the summer of 2002. In the interim, whilst there is said to have been a 'joint venture' between CGTL, ATE and Energa, there is no suggestion that this was a 'partnership' or even a 'kinopraxia', whatever that concept involves. All that the phraseology could refer to is the Memorandum of Understanding and acts done pursuant to it. By way of contrast, the draft agreement goes on to provide for CGTL and Energa to enter into a joint venture agreement and to establish an appropriate joint venture corporate vehicle ('JVCo') or use the JV type ('kinopraxia') which is referred to as:'an acknowledged type of carrying out business for further developing their actual joint co-operation in the trade of electricity in Greece and in the countries which are inter-connected electricity-wise with Greece.'[41] Whilst this draft joint venture agreement was never signed, the form of it is consistent with the agreements to which I have already made reference and the construction of them set out in this judgment.[42] It is against this background that Dr Imamovic alleges that he was expressly told of the existence of a partnership, in the English law sense, between CGTL and Energa, by representatives of Energa and by Mr Contomichalos of CGTL, that he saw documents which showed there was such a partnership and that there are now documents before this court from which such a partnership should be inferred. For the purpose of assessing whether there was a partnership or a holding out by CGTL of Energa as its partner or agent, it is necessary to explore the history of the matter and to evaluate the evidence of the witnesses.THE WITNESSES:[43] Dr Imamovic gave evidence in support of his case whilst CGTL called Mr Contomichalos, a Director and the person at CGTL who was responsible for the trading of electricity in Greece. On nearly all the points which mattered, the evidence of each contradicted that of the other. Their evidence of what passed between them was irreconcilably different. Neither party called Mr Achille Floros, Aris Floros or anyone else from Energa to give evidence, so that I have had to decide whose evidence I accept on many issues in the light of the contemporary documents and commercial probabilities. I have had to form a view as to the credibility of these two witnesses in the light of the documents and the extensive cross examination which they both had to undergo. Dr Imamovic was cross examined for five days by counsel for CGTL whilst Mr Contomichalos was cross examined for six days by Dr Imamovic. Many of those days were extended days and I had a full

opportunity to judge their credibility.[44] Dr Imamovic was a most unsatisfactory witness. Notwithstanding the fact that English was not his first language (which I bear in mind), he was articulate but gave long answers which often failed to respond to the question. His major problem was that emails and faxes sent by him at the time did not correspond with the evidence set out in his witness statement or that given by him in the witness box as to what occurred. The evidence which he gave about the views which he held and had expressed at the time in relation to the obstacles in effecting electricity deals bore no relation to messages emanating from him at the time. These messages graphically referred to extensive barriers in the way of trading contracts and in particular to obstacles in obtaining rights of transmission across intervening republics for electricity purchased in Bosnia. His willingness to ignore contemporary documents and to state the exact opposite of what they showed, exhibited a degree of disregard for the truth which tainted all his other evidence. His explanations in evidence, that he was deluded at the time, sent messages that Mr Contomichalos wished to hear and merely repeated what Mr Contomichalos had told him, did not bear examination, particularly where he had maintained in his messages that he had documents to substantiate the wild allegations he made of the difficulties that he faced. In his submissions he himself described the messages as embarrassing.[45] He was also prepared to make allegations of impropriety against CGTL and Energa, with regard to secret profits (as appears from the Particulars of Claim) and a number of allegations of fraud appear throughout the history of the proceedings. Whilst such allegations were muted at the trial, he still pursued the issue of 'parallel payments' despite full financial disclosure from CGTL. The impression gained is of a man who readily sees conspiracies and obsessively looks for plots against him where in reality there is none. He may well believe in such theories but they appear unreal to any objective observer. His lack of grasp upon reality did not lend credence to his evidence.[46] He gave detailed evidence of a number of meetings and telephone conversations with Mr Contomichalos which the latter said had never taken place at all, let alone in the terms to which Dr Imamovic testified. In no case was there a document which supported Dr Imamovic's evidence as to what had taken place or what had been said, where this was an issue. Furthermore, the documents which had come into existence at around the time of these meetings and telephone calls belied his evidence, either by the absence of any reference to what he said had happened or because, in some cases, they were clearly inconsistent on their face with his testimony.[47] No notes of meetings or telephone conversations were produced by him and where there were issues about what had taken place at such meetings, I found the detailed evidence from Dr Imamovic, in relation to events in 2001 and 2002, impossible to believe. Much of what appeared in his statement was plainly framed with a view to making a case in relation to the English law of Partnership, of which he knew nothing at the time but which he had subsequently studied. The statement contained terminology which could only have been included after taking advice from a lawyer, reading a text book on Partnership or Agency or copying a pleading drafted by a lawyer. It transpired that many of the details which appeared in his statement as to the dates of telephone calls, where not garnered from the references in the documents, came from telephone company records which he only disclosed during the course of cross examining Mr Contomichalos.[48] Mr Contomichalos did not have a detailed recollection of events on a daily basis, but I did not find this at all surprising. He had a clear recall of the matters which he regarded as important at the time, although

there were areas of his evidence which also failed to tie in with all of the documents. He received 70-100 emails a day and the long and elaborate messages from Dr Imamovic were not those which he considered of great importance, since power trading in Greece was only a peripheral activity in which he was involved at the time. He operated mainly out of London at the time, although in 2001 he was spending a lot of time in Greece in connection with the conclusion of a major gas project for another Cinergy subsidiary, the acquisition of the supplier and distributor of gas to Athens. Although that company had been awarded the bid in October 2000, the deal was not finally concluded until 27 November 2001 and this occupied a great deal of his attention and that of Energa who were consultants to the project. By comparison with this, the trading of electricity in Greece assumed minor importance.[49] The messages received from Dr Imamovic were long, not easy to read or understand, full of wild allegations, conspiracy theories, unfounded rumour and intricate plans for outwitting supposedly hostile entities in order to procure the supply of electricity from Bosnia to Greece. One of the most noticeable elements in the correspondence bundle is the extent of material sent to him by Dr Imamovic and the limited written responses from him to those messages. I conclude that he did not pay overmuch attention to much of what was in them and that much of his evidence in the witness box was reconstruction, based on the documents which were put to him, rather than real recollection.[50] Whilst there were some loose ends in relation to his evidence concerning the relationship between CGTL and Energa, I am satisfied that this was not the result of any dishonesty on his part or of any desire to hide the position, but because CGTL and Energa defined their position in the documents to which I have already made reference and in the later agreement of 18 May 2004, whilst in the interim there was a degree of uncertainty both because of ATE's loss of interest in the trading of electricity which meant that it had effectively dropped out of the picture by about August 2002 and because of the possibility of other joint venturers working with CGTL. It was in those circumstances that the oral agreement of April 2002 was concluded between Mr Contomichalos and Mr Achille Floros of Energa, based on the earlier agreement of 7 November 2000 and anticipating the later agreement of 18 May 2004, whilst still considering whether a formal joint venture agreement might be made and a joint venture corporate vehicle established.[51] Although Mr Contomichalos said that he had never seen a fully signed copy of the tripartite Memorandum of Co-operation referred to earlier in this judgment, and his evidence was that this was never signed by ATE, I find that it was signed by ATE and that this must, in all probability, have occurred on 15 February, the date ascribed to the Memorandum by Energa and ATE in their pleadings in a separate Greek action. Since this Memorandum was not an agreement binding in law, the point ultimately assumes little importance, save for credit purposes, particularly in the light of Mr Contomichalos' evidence, in answer to a question from the court, that he would have dealt with the expenses referred to in the document in the light of its terms, in order to maintain good relations with ATE. I do not consider that he was seeking to mislead the court in relation to this Memorandum since the version in the possession of CGTL was one which was signed by CGTL and Energa only.[52] There was also some inconsistency between his evidence in the witness box of what he was seeking to do in obtaining electricity supplies to Greece and what was shown in the contemporary documents in 2002, but I conclude that this was in part because he signed documents prepared for him by Dr Imamovic, as part of Dr Imamovic's elaborate tactical plans to obtain supplies of

electricity from Bosnian suppliers or Balkans traders, by making threats of exposure of illegality or corruption or playing off one against the other, in the hope, by one means or another of obtaining electricity supply at the Greek border, where it could be sold to PPC. I conclude that Mr Contomichalos was prepared to sign documents in order to investigate the possibilities of obtaining power in Bosnia when he had no intention of actually concluding a deal for supply unless others would undertake responsibility for its arrival at the Greek border and guarantee its transmission there.[53] Nonetheless Mr Contomichalos oversimplified and overstated the position, both in his statement and in his oral evidence when he said that he and CGTL were not prepared to consider any purchase contract which in itself did not provide for delivery of electricity at the Greek border. He maintained that any arrangements whereby CGTL would purchase the electricity at any other delivery point and take the risk of trying to transmit the electricity across the Balkan countries to the Greek border were not acceptable and were known by Dr Imamovic not to be acceptable. This however does not fit with documents which he signed in 2002 which not only appeared to contemplate the purchase of electricity to be delivered on the borders of the supplying generating company's territory but sought permission from the intervening system operator for transmission of the electricity across that intervening territory to Greece. If there was a guarantee of supply at the Greek border with contractual obligations undertaken by reliable parties, that was something which Mr Contomichalos would have considered.[54] In this and other areas I considered that Mr Contomichalos was inclined to overstate the position in order to rebut what he saw as a speculative and fanciful claim by Dr Imamovic but the main thrust of his evidence accorded with the documents and with commercial probability and I therefore had no difficulty in accepting it, as opposed to Dr Imamovic's testimony which did not accord either with the documents or the commercial probabilities.[55] Other material was put before me in the shape of statements under the Civil Evidence Act but none of this was of sufficient weight to make any appreciable difference to the findings which I make.THE LAW:[56] The Partnership Act 1890 contains the following provisions: -1. - (1) Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.2. The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business.3. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners.7. Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the

apparent partner making the representation or suffering it to be made.[57] Dr Imamovic also relied upon the law of agency in the alternative, maintaining that if Energa and CGTL were not partners, CGTL authorised Energa to act as its agent in contracting with him or held out Energa to him as having authority to contract in that capacity.[58] At para 5-46 and 5-47 of Lindley & Banks on Partnership (18th edition), it is said that any representation which is to be treated as a holding out must be sufficiently clear and unambiguous as to entitle a third party, acting reasonably, to infer that a partnership exists. Subject to that, it need not take any particular form as is made plain by s 14 of the statute, but it must of course be made before the other person 'gives credit' to the firm, in relying upon that holding out.[59] Apart from the above, at para 12-172 of the same work the authors state that, if a partner enters into a contract in circumstances where he is demonstrably acting on his own account, ie as a principal and not as agent of the firm, he alone will be liable, even if the contract has some connection with the partnership business. Equally, if, at all times, a third party contracting with a person appreciates that the person is contracting solely for his own account, it matters not whether or not there is an underlying partnership or principal/agent relationship and there can be no question of the third party suing the other partner or alleged principal since at no time did he rely upon any holding out by that person of the contracting party as his partner or agent or consider that the was contracting with the partnership, as opposed to the immediate contracting party.THE RELEVANT HISTORY:[60] Mr Contomichalos was a Director of a number of Cinergy companies and worked not only for CGTL but represented the parent company Cinergy Corp in Greece. He was heavily involved in a natural gas project involving the transfer of the undertaking of the supply and distribution of natural gas in Athens from the Greek State to a joint venture company in which the State indirectly maintained a 51% shareholding, Shell held indirectly a 24% shareholding and another Cinergy subsidiary, CGP Global Greece Holdings SA indirectly held 25%. The 'tender' was awarded on 26 October 2000, as announced in the press, but completion did not occur until 27 November 2001. Both before October 200 and in the intervening period between October 2000 and November 2001 and thereafter, much of Mr Contomichalos' time was taken up with his involvement in this project.[61] In January 2000 Mr Contomichalos produced a Memorandum which considered the possibility of responding to a PPC tender seeking the supply of electricity over a four year period commencing in June 2000. In that Memorandum he canvassed the possibility of suppliers from Romania (with transit across Bulgaria to Greece), from Serbia and from Czechoslovakia, though he outlined the problems in relation to each. The Memorandum refers to the transit costs for transmission ($2.5-$3) and the Greek border price which typically ranged from $28-$30. Reference was also made to a proposed joint venture agreement to co-operate with Energa SA, with whom Cinergy was working on the gas project. This must refer to the first joint co-operation agreement of 31 January 2000. No transaction was ever concluded under this agreement and no joint venture agreement or joint venture corporate vehicle was ever established as a result of it.[62] The second joint co-operation agreement was concluded on 7 November 2000 but once again no transactions were ever concluded under it and no joint venture agreement or appropriate joint venture corporate vehicle were ever established pursuant to its terms.[63] Energa, in the midst of all the work relating to the gas project, persuaded Mr Contomichalos that it would be beneficial to apply to the Regulatory Authority for Energy in Greece (RAE) for

a power supply licence and seven generating licences which would permit the building of power plants in specified locations. As Mr Contomichalos put it, this gave an option but no commitment to proceed in the business of the supply or generation of electricity. Energa was keen to take the step of applying for licences and wanted the benefit of Cinergy's name to lend credence to the application. Mr Contomichalos put his signature to the front page of each application where representatives of ATE and Energa also signed. His evidence was, and I accept it, that he did not trouble himself with the body of documents which supported each of those applications and which set out, with some degree of detail, the standing of each of the participants and put forward enough material to suggest that the proposals for electricity generation on the sites selected were viable. All that work had been done by Energa and Mr Contomichalos' recollection was that this was all at their expense. The only costs which CGTL would bear would be those involved in the applications and licences themselves.[64] The applications, made in February 2001, included a declaration by the three entities that they would co-operate as members of a consortium in order to obtain an electric power supply licence and intended to co-operate as members of a consortium in order to establish the generation plants referred to. The participation percentages in the consortium were (1) 60% CGTL, 20% Energa and 20% for ATE (2) for the generation licences 40% CGTL, 40% Energa and 20% ATE. Each application stated that, in order to implement the project, a consortium or a company with the same participation percentages would be legally formed. The applications were, unsurprisingly, in the Greek language but the heading at the top of the front page of each application gave the names of the three entities with hyphens between them. CGTL's name appeared as Cinergy Global Trading (in English). This was followed by the name of ATE written in the Greek Alphabet and, following a further hyphen, the name of Energa SA appeared in English lettering. There then followed three application forms submitted by each of the three participants setting out their respective corporate structures and details, including directors. A full reading of the application for the supply licence, or of any of the applications submitted for electricity production licences at the same time by the same entities, discloses no basis for any conclusion that these entities were in partnership. The documents reveal agreements between the three entities to co-operate with the intention of forming a joint venture vehicle in due course.[65] It now appears that, at about the same time, the non-binding Memorandum of Understanding was executed by the three entities referring to the intention to submit applications for the licences with the intention of forming relevant consortia if the licences were granted and if there was approval by the boards of ATE and CGTL. This also set out the percentage participation in the consortia to be formed for the supply licence and the generation licences, in differing proportions. It also governed the expenses incurred in the preparation of the applications and provided for ATE to pay the costs of the applications themselves with later allocation on a proportionate basis to CGTL and Energa in line with their participation in the proposed 'consortia and/or company'.[66] Mr Contomichalos was at all times aware of the letter heading with the three names at the top in the context of the applications for licences and the correspondence exchanged with RAE in relation thereto. He would also have, if he had thought about it, appreciated that advertisements were probably necessary in the context of these applications and that these would be likely to refer to the three entities in much the same way, as they did in fact - referring to 'the joint venture of the companies CGTL-ATE-Energa'. Mr Contomichalos was content

for Mr Floros to use this form of letter heading in addressing the RAE since the applications made clear that the parties were merely agreeing to co-operate and that a consortium or a company would only be formed later. In this context I bear in mind the evidence that the word translated into English as 'consortium' here was 'kinopraxia' which, it appears, relates to concepts known to Greek law and possibly describes a particular form of entity known to Greek law. By contrast the word 'consortium' in English usage conveys no particular status in English law, save for some arrangement for entities to work together. Mr Contomichalos' evidence was that he gave no authority for the use of the three name letter- heading for anything other than dealing with RAE but saw no problem in a letter with that letter-heading addressed to himself by Energa, who were handling the applications.[67] Dr Imamovic was born in former Yugoslavia on 24 October 1970, studied engineering at the University of Sarajevo and then obtained a BSc at Imperial College London before being offered a sponsorship by Rolls Royce plc to undertake research activity on its behalf, whilst there. He obtained a PhD in 1998 and continued to work until 2001 as a consultant based there but engaged mainly on projects for Rolls Royce. Dr Imamovic had specialised in Correlation and Validation of Structural Dynamic Models (Vibration Engineering) of mechanical structures, which he applied to Rolls Royce aeroplane engines. Those engines are used in other applications for the generation of power, including the generation of electrical power. As a result Dr Imamovic had, and continued to acquire during the course of the events in question, knowledge about the generation of electrical power and its transmission although it may be that his knowledge of the practicalities of electricity transmission increased significantly during the course of his activities in seeking electricity deals and thereafter in the context of this dispute. Prior to undertaking these activities in Bosnia in 2001, he had no experience of the trading of power.[68] Dr Imamovic's evidence was that he met with Aris Floros, a former student of his at Imperial College, in London in about May 2001. The latter told him that his father, Mr Achille Floros was the President of Energa. According to Dr Imamovic he was informed that Energa was involved in a 'joint adventure' business in Greece in partnership with ATE and a US energy corporation, Cinergy Corp. The object of the joint adventure was to build several power plants in Greece and to trade electric power in and around Greece, Achille Floros was therefore interested to receive information concerning the purchase of electric power from former Yugoslavia with a view to supplying that power to Greece.[69] In consequence of this short, 45 minute meeting, Dr Imamovic's evidence was that he made various enquiries concerning the purchase of electricity in former Yugoslavia and concluded that there was potential for development of a viable trading operation. He told Aris Floros this in various telephone conversations in the first half of June 2001 and it was then agreed that he should visit Athens to present these possibilities and the potential for power trading to all members of the joint venture and to discuss his involvement in it, with a view to his introduction of the joint venture parties to potential suppliers of electric power in former Yugoslavia.[70] The documents show that on 12 June 2001 Dr Imamovic made enquiry of two power utilities in Bosnia which, for convenience, I shall refer to as EPBIH and EPRS, the latter being situated in a smaller republic of Bosnia known as Republika Srpska (to which I shall refer, however inaccurately, as Serbia). In each case, Dr Imamovic said he was acting on behalf of a large energy group from Greece that had instructed him to enquire (in the name of ICG) about the possibility of purchasing

electricity on the basis that his client was one of three licence holders who could import electricity into Greece. By this he plainly meant Energa, having obviously been told of the basis upon which the licence applications had been made. He received a reply dated 19 June from EPBIH asking for more details of what was required so that EPBIH could consider making an offer. He obtained such information from Energa who forwarded the last bidding enquiry issued by Public Power Corporation in Greece (PPC) dated 8 May 2001 pointing out, in clear terms, the need for delivery at the Greek borders for sale to PPC and the possibility of arranging swaps to achieve this.[71] On 19 June 2001 Energa had sent Dr Imamovic a 'short profile of Energa' which referred to it as a consultant and representative of Cinergy Corp in relation to the purchase of 49% and the management for the next 30 years of a natural gas distribution company called EPA Attikis. The presentation went on to say that Energa had lately become a member of a very important energy consortium established by Cinergy Corp and ATE with the main purpose of establishing a company which would invest in two thermal power stations, five hydro-electric stations and a wind park. It referred also to the application by 'this consortium' for a licence to supply electric power from the RAE.[72] In his statement, Dr Imamovic states that he was told by Aris Floros that Cinergy - ATE - Energa had ability to sell to PPC directly without a tender because of the strong position of Cinergy in Greece in the energy sector, that he was told by Aris Floros of a company that was already supplying electric power from former Yugoslavia to Greece and that Aris Floros actively encouraged him to seek immediate purchase of power from former Yugoslavia because of the possibility of an immediate sale of a large quantity to PPC in direct negotiations. On 20 June, Energa sent him a preliminary market analysis of the Greek energy sector which referred to four entities which had applied to the Greek authorities for a licence to supply electricity in Greece, including Cinergy - ATE - Energa as one of the Applicants. This confidential report also set out Cinergy - ATE - Energa joint venture financial projections which in fact mirrored the figures which Energa had included in the application for a supply licence in February 2001.[73] On 21 June 2001, in another fax, Energa informed Dr Imamovic that Energa had formed a consortium for the supply of electric power in Greece with Cinergy Global Power, a US multinational company and ATE, the second largest state owned bank in Greece. On the following day Dr Imamovic sent a fax to Energa describing the current arrangements in Bosnia regarding electricity export to Greece, referring to EPBIH, EPRS, EFT and a Croatian company EPHB. EFT was a trading company whilst the others were generating companies, but he referred to them as appearing to have 'all the market connection with EPRS' and also having some arrangements with EPBIH with possible swap agreements. 'It looks as if EFT has all the necessary connections in Bosnia'. He said that the aim should be to take some of EFT's market share, whilst also putting forward suggestions as to possible investment in the region as a bargaining counter for the obtaining of power.[74] On the same day, 22 June 2001 he faxed EPBIH, referring to his client as Energa SA, which in turn was acting for a consortium which he described as consisting of 'the following partners' namely Energa, Cinergy Global Power and ATE. The fax set out details of the power required by PPC stating that his client had authorised him to send a formal request for the purchase of electricity.[75] It is clear from these documents that Dr Imamovic regarded himself as engaged, if at all, at this point, by Energa only and that his client was Energa. He also understood that Energa had some arrangement with a Cinergy company, the details of

which were not supplied to him, but which he took to be some form of consortium. When reference was made in the correspondence here, as elsewhere, to 'partners', I am clear that the phrase was not being used in the sense of those involved in an English law partnership, but in a much looser sense, referring to those who worked in collaboration with one another, but without any legal analysis of their inter-relationship.MEETING ON 29 JUNE 2001:[76] In his statement Dr Imamovic said that he requested a joint meeting between representatives of each member of the consortium, particularly stating to Mr Floros that he was interested to meet somebody from Cinergy. In consequence his evidence was that he was invited to attend a meeting at Energa's offices in Athens on 29 June 2001. He flew from London, where he resided, to Athens on 28 June and went to Achille Floros' house where he was introduced to Achille Floros and conversed about the business with translation from Aris Floros, since Achille Floros could not speak English, although he had some understanding of it.[77] Under cross examination, having said that his purpose in going to Greece was to meet the joint venture partners, he was asked whether he had met any representative of ATE. He then said that he had met Achille Floros' son-in-law that evening at the house. Although there was some inconsistency in his evidence, he said that he had been briefly introduced and they had a ten or fifteen minute conversation discussing his position at the bank and Cinergy's connections with the bank in the joint venture. At one point he suggested that the existence of a partnership had been confirmed. None of this appeared in his statement. Mr Contomichalos, who knew the family well, gave evidence that none of Achille Floros' sons-in-law had ever worked for ATE. I accept that evidence and I find that this was an example of Dr Imamovic spontaneously fabricating a piece of evidence which he thought would help in the context of his arguments about a partnership between CGTL, ATE and Energa.[78] His evidence was that on 29 June he was introduced at Energa's offices in Athens to Mr Contomichalos who was described as a senior Director and Executive Manager of CGTL and in charge of all Cinergy's operations in and around Greece for Gas and power investments and trading. He was also introduced to Mr Avramakis, a Director of Energa. The meeting began at about 11 o'clock and the details of conversations at that meeting were spelt out by Dr Imamovic over nine pages in his statement. This recorded that Mr Avramakis began with a short presentation about the Greek power market followed by Mr Contomichalos describing the activities of Cinergy in the energy sector in Greece. He explained Cinergy's involvement in the natural gas distribution network jointly with Shell and explained Cinergy's desire to expand its business into the electric power sector. According to Dr Imamovic, Mr Contomichalos told him that Cinergy, together with its partners ATE and Energa, was involved in a joint venture to build and operate several electric power plants in Greece and to acquire a licence to import electric power into Greece and supply eligible customers inside the borders. He was told also that the partners in the joint venture had applied jointly to obtain licences to build and operate power plants for the generation of electricity in Greece. In this context he was shown various documents in Greek, English and other languages showing the names of the partners on these documents as Cinergy-ATE-Energa or Cinergy Global Trading-Agricultural Bank of Greece-Energa. In particular he saw the applications for the licences and various annual reports of Cinergy and the Agricultural Bank of Greece. The applications for licences were in Greek but the heading of each page was shown as Cinergy-Agricultural Bank of Greece-Energa, a name which also appeared in newspaper

advertisements in connection with the licences. The name Cinergy Global Trading and Energa always appeared in English. In his statement he listed the documents which he had then seen including an ICAP document which listed Applicants for licences, once again including Cinergy-ATE AE-Energa SA, as well as those documents to which I have already referred. Mr Avramakis and Mr Floros told Dr Imamovic that Cinergy's position was powerful in Greece, that they had a close working relationship with PPC and the Greek Government and that they (Cinergy-ATE-Energa) were the only people who could sell power directly to PPC in direct negotiations and without public tenders. Mr Contomichalos confirmed this by nodding.[79] Following a presentation by Dr Imamovic of the possibilities of obtaining power in former Yugoslavia Mr Contomichalos then told him that the partnership was ready, able and willing to trade power generated in former Yugoslavia with the intention of making a profit by selling it either to customers in Greece or elsewhere depending on the best achievable price. It was expected that significant trading operations would develop with PPC immediately and he made reference to the joint venture financial projections of figures produced by Energa, to which I have already referred, earlier in this judgment.[80] According to Dr Imamovic, Mr Contomichalos asked him to provide services for and on behalf of Cinergy Corp and the partnership Cinergy-ATE-Energa with the objective to open negotiations and conclude trading contracts with the Government and generation companies in former Yugoslavia. This was a proposal which he accepted and stated that his preference was to be employed in the UK where he was resident. Alternatively, he suggested that he would sign a written agreement with Cinergy Corp because he saw Cinergy Corp as the principal partner and established company in the energy sector. In his statement he said that he never intended to enter into a contract with Energa as a sole principal because Energa was not capable of being a sole principal in this kind of business (although in oral evidence he said he only discovered Energa's financial position after the dispute arose). He also made it clear at the time that he wanted a fixed annual remuneration in the region of £100,000 and that the agreement had to be for a minimum duration of three years.[81] In his statement, Dr Imamovic said that he also raised the question of the status of the joint venture, telling Mr Contomichalos that representations had been made to him about 'a joint venture' a 'consortium' and a 'new company'. He therefore asked Mr Contomichalos to explain in detail the structure of the joint venture and in particular to explain the exact legal position of it. He was then told by Mr Contomichalos (to use the words set out in the statement) that:'Cinergy Corp were doing business through its subsidiary Cinergy Global Trading Ltd and he stated that Cinergy, the Agricultural Bank of Greece and Energa were partners in the said joint venture business with share of 40%, 40% and 20% between them respectively . . . . . He further stated that joint venture was not a legal entity (a company) but a partnership (a relationship between them) although he stated that Cinergy and its partners (ATE and Energa) may in the future transform partnership Cinergy-ATE-Energa into a different legal entity, a new company. However Mr Contomichalos told me the transformation of the partnership into a new legal entity was only optional and that they . . . were at the time doing business as partners. Mr Contomichalos further stated that Energa was acting partner of the said partnership. Mr Contomichalos then told me that Energa would make a contract with me as representative of the said partnership (Cinergy-ATE-Energa) and partner of Cinergy and the Agricultural Bank of Greece and that any contract signed by Energa would bind the

whole partnership. Mr Contomichalos further told me that a contract made between me and Energa would be binding on Cinergy because there was a signed written contract between Cinergy Global Trading Ltd and Energa, pursuant to which Cinergy authorised Energa to do business for and on behalf of Cinergy in relation to their joint activity in power trading.'[82] Dr Imamovic said that he believed everything he was told about the partnership and, on the faith of it, he made a contract with Energa which was acting as a partner of Cinergy and ATE. He said he required a provision in the agreement that should any new legal entity be created, it would be bound by the same agreement and Mr Contomichalos accepted this.[83] There was then discussion, he said, of his remuneration. He was prepared to accept remuneration defined by reference to profits but there would have to be a mutually exclusive co-operation agreement which would guarantee remuneration through express contractual obligations specified in the Contract. He insisted on a three year minimum term with a defined geographical area, namely 'former Yugoslavia' although an 'opt-out' clause was suggested and the figure of 5% of 'profits' was agreed. It was also agreed that his basic costs would be covered but in such a way that he did not need to present original receipts to claim the costs. Additionally Dr Imamovic explained that Cinergy and its partners would be liable to him for damages should they decide to withdraw from the market due to a corporate decision in the United States. It was agreed that Mr Contomichalos and Mr Achille Floros would engage a lawyer to draft the Contract.[84] Mr Contomichalos' evidence was that he did not attend a meeting in Athens with Dr Imamovic and Energa on 29 June at all and that he did not ever meet Dr Imamovic in Greece. He became aware of the existence of Dr Imamovic during the summer of 2001 but their first meeting was in London a few months later. He had however been in Athens on 29 June, as he was able to tell from his hotel bills. The meeting as described by Dr Imamovic was a complete fiction and he maintained that Energa would never have allowed him to meet Dr Imamovic, as a potential supplier of business at this stage, prior to signing a contract with him, for fear that they might be 'cut out' by a direct agreement between CGTL and Dr Imamovic. Mr Contomichalos' evidence was that Energa was quite secretive about the identity of its consultant for some time, although there was passing reference to him in faxes which were copied to CGTL in July and August. At no time was Mr Contomichalos consulted about the engagement of Dr Imamovic, so he never saw his CV nor took any references. Mr Contomichalos thought the first time he had met Dr Imamovic was in October 2001 in London. He was uncertain of the date but was confident that the only times they had ever met were in the UK.[85] There are several reasons why I am unable to accept Dr Imamovic's evidence about this meeting.i) On 2 July 2001 Dr Imamovic sent a fax to Aris Floros thanking him for the hospitality provided during his visit to Athens and expressing pleasure at meeting his family. The letter went on to say that he was currently reviewing 'the latest developments regarding the electricity trading we discussed during my visit' and informed him of the actions which should be taken and conversations which Aris Floros might have with his father and Mr Avramakis. He referred then to a letter from Achille Floros 'that defines my responsibilities and activities regarding purchasing electricity in Bosnia on your behalf'. The letter continued:'I accept the responsibilities and will act on your behalf in your best interests with full personal responsibility and liability. I think there is nothing else that needs to be done regarding the definition of my role, activities and responsibilities. We also need to define and formalise the financial arrangements

between your company and myself. I will leave it up to your (sic) to propose arrangements and then we can discuss it and find mutually acceptable arrangement and draw a formal agreement.'ii) The letter from Achille Floros which is referred to was a power of attorney dated 2 July 2001 confirming Dr Imamovic's authority to act as Energa's exclusive representative in Bosnia to make all necessary preparations for meetings and negotiations for the supply of electricity from Bosnia save for the actual conclusion of contractual obligations. The power of attorney went on to say 'we herewith also confirm to conclude an exclusive co-operation agreement with Mr N Imamovic from Bosnia for this project.'[86] It is inconceivable, in my judgment, that if Dr Imamovic had met Mr Contomichalos on 29 June as he said he did, he could have written to Aris Floros in the terms of his letter of 2 July making express reference to meeting members of his family but not referring to Mr Contomichalos. Equally, the letter referred to accepting responsibilities and acting on behalf of Mr Floros and defining and formalising the financial arrangements between Mr Floros' company and himself. When the letter is seen in the light of the power of attorney which specifically gave him authority to act for Energa and referred to the intention to conclude an exclusive co-operation agreement with Dr Imamovic, I am driven to the conclusion that there could have been no conversations with Mr Contomichalos of the kind suggested and in particular none in which there were any representations of an existing partnership under English law between CGTL and Energa.[87] Moreover the correspondence files show that there is no letter of any kind directly from Dr Imamovic to Mr Contomichalos at CGTL, or to anyone else at CGTL until, on 4 October 2001, Dr Imamovic sent a fax to both Mr Floros and Mr Contomichalos jointly at Mr Floros' offices. Whilst there is evidence of telephone calls made to CGTL on 4 and 13 September 2001, it is impossible to conceive of a situation whereby agreement was reached between Mr Contomichalos and Dr Imamovic on 29 June, in the terms alleged by Dr Imamovic, without some direct communication in writing between them about their relationship immediately following that meeting. It is also impossible to conceive of conversations of the kind referred to occurring on 29 June without there being some reference to this in the correspondence between Dr Imamovic and Mr Floros. Since Dr Imamovic alleges that it was crucial to him that he had a contract which was binding upon CGTL, some direct reference to this element and to the partnership which he now says was represented to him, would be expected in the course of the correspondence which passed between the entities involved. This did not occur.[88] Additionally, the terms in which Dr Imamovic's statements are expressed do not ring true. Dr Imamovic said that he had not had any assistance in writing his witness statement, the grammar of which in part reflects the fact that English is not his first language. The statement nonetheless reads, in places, a little like a pleading where consideration has been given to various indicia which might possibly be used in support of an argument that there was a partnership within the meaning of English statute law. I find the suggested contents of the conversations to be highly improbable including in particular the discussion about the legal status of the relationship between CGTL or Cinergy, ATE and Energa. Whilst the word 'partner' is often used loosely in conversation, both by business men and others, and I would not find it difficult to imagine the word being used in the context of parties who are working together for some common purpose, I cannot envisage how someone like Dr Imamovic could possibly have subjected Mr Contomichalos to analytical questions about the relationship of CGTL, ATE and Energa,

in terms which suggest an understanding of English Law which he did not then have.[89] His evidence in relation to representations from someone at ATE was all of a piece with this, as set out earlier in this judgment. This fabrication of a statement by one 'partner' throws light on his suggestion that another partner made these statements. (He also later fabricated the presence of a representative at a meeting with EFT on July 23 in an effort to support the allegation of partnership with ATE)[90] Dr Imamovic's evidence was that the draft contract put forward by Energa thereafter was based upon Energa's notes of the meeting on 29 June and that Cl 4 reflected the conversation which had taken place about the new entity which might be formed as a joint venture company. The draft was sent on 13 July 2001 by Energa and was largely in the same terms as the Contract signed by Dr Imamovic and Mr Floros on 16 July 2001. Whilst I have already set out my conclusions as to the proper construction of this 'private agreement', it is worth noting, in the context of Dr Imamovic's evidence of 29 June meeting, that the Contract contains no hint of any partnership between Energa and CGTL nor of CGTL being in any way bound by its terms. To the contrary the parties are expressly defined as being Energa and ICG (in reality Dr Imamovic) and, in making provision for any new legal entity that might result from 'co-operation' between Cinergy, ATE and Energa, it is expressly the responsibility of Energa to ensure that the agreement would then bind that new company. Had there been the conversations which Dr Imamovic alleges, it is inevitable that he would have secured some reference in the contract to Energa's partnership with CGTL or its agency for it. He did not.[91] Dr Imamovic's comment in his fax to Mr Floros on 15 July about the draft private agreement includes his observation that 'I think it covers everything and addresses all issues in very correct and fair way'. He changed the area referred to to 'former Yugoslavia' (as opposed to Bosnia) and added a provision for reimbursement of operational expenses, which subsequently became, in fuller form, Cl 8 of the Contract. The Contract was thus signed after amendment and the regular exchanges of faxes thereafter proceeded between Dr Imamovic and Energa.[92] Also in a fax of 15 July 2001 to Aris Floros, Dr Imamovic suggested that he needed someone who was Greek and 'looked credible' for a meeting with EFT in London in late July 2001. He wanted someone from 'your company' whereas, had he already met Mr Contomichalos, he would have been the obvious person to attend, since he was not only Greek but operated in London and was a representative of Cinergy, a well known participant in the power industry. Moreover that fax discussed the possibility of forming two new Greek companies to purchase from EFT and sell to PPC and large customers - a suggestion that hardly fits with what he says he understood to be the position between Energa and CGTL.[93] On 8 August 2001 there is a manuscript note of Mr Contomichalos which appears to refer to a telephone conversation between him and Aris or Achille Floros in which EFT and Dr Imamovic are mentioned. The note refers to Dr Imamovic and in what appears to record Energa's comments the following appears: '- Our 'agent' - UK national - Imperial College Prof - Close to EPBIH and EFT - key role.'This appears to be the point at which Dr Imamovic's identity was first revealed to Mr Contomichalos, since there is no other explanation for the form which this note takes.[94] The first fax exchanges between Dr Imamovic and Mr Contomichalos of 4 and 10 October both indicate no significant prior contact between them at all. Both the detailed history of what had happened and the need for contact details suggest this. Moreover the stream of communications which followed, accentuate their prior absence.[95] The inevitable conclusion which I reach on

this point is that Dr Imamovic's evidence about the meeting of 29 June is entirely fictional in relation to the alleged presence of Mr Contomichalos and the statements made by him, whether about partnership or as to any contract between Energa and CGTL being binding upon the latter. It seems to me highly likely that there was a meeting between Energa and Dr Imamovic and that he may have been shown at that meeting some of the documents upon which he now relies, although I suspect he gathered some of this material much later with a view to making out his fabricated case. It is possible that in conversations with Achille Floros senior and Mr Avramakis, which would have been conducted in English with Aris Floros as translator, that the word 'partner' was used by representatives of Energa, in describing CGTL. There is no doubt that, not least from the terms of his later Contract with Energa, he would have gained the impression of an agreement between CGTL and Energa to co-operate in the trading of power, with a possibility of co-operation in the building of power plants and the generation of electricity also if he saw the relevant licence applications for power generation. Energa would no doubt have stressed their relationship with CGTL in order to impress Dr Imamovic and to show that there was purchasing power for electricity to be brought into Greece. This is a far cry from any representation of partnership or agency in English law or of CGTL holding Energa out as, or allowing Energa to hold itself out as, a partner of CGTL, within the technical meaning of partnership in English law. It does not involve any suggestion of CGTL holding Energa out as such, whatever documents he saw which may have referred to the names of CGTL, ATE and Energa in their heading.MEETING IN LONDON ON 7 SEPTEMBER 2001:[96] Dr Imamovic's evidence was that he arranged a meeting with Mr Contomichalos on 7 September and that they had lunch in a restaurant called Nicole's in Mayfair. He said that, at that meeting, he expressed dissatisfaction with Energa's performance and its conduct, said that he had produced good offers and opportunities which were wasted and that he had been thereby deprived of his opportunity to earn remuneration. He explained to Mr Contomichalos how easy it was to transmit power to Greece in the 2nd Synchronous zone and how this could be achieved. Mr Contomichalos told him that he was going to be personally involved in strategy development himself but that Energa was Cinergy's partner in Greece and he should continue to take instructions from it. He also said that he preferred direct negotiations and did not believe in public tenders. Dr Imamovic told Mr Contomichalos that it was necessary to bid for power directly with generation companies in the Balkans as well as seeking deals from traders.[97] Once again Mr Contomichalos had no recollection of any such meeting in September, although, I think, he did not rule it out. He was clear that no expressions of dissatisfaction were made by Dr Imamovic to him about Energa at this stage, since that came later in the story. If a meeting of this kind occurred, it would have been the first such meeting and it would be highly unlikely for Dr Imamovic to speak in those terms. There is no reference to such a meeting in any of the correspondence which again is of some significance in the context of what is now said by Dr Imamovic. If such a meeting occurred at this stage, it was no more than an introductory meeting and I reject any suggestion that Mr Contomichalos would have done anything more than talk in general terms with Dr Imamovic about business. Mr Contomichalos would not have talked in terms of a partnership with Energa, as there was none and he would have had no reason to do so and every reason not to do so.TELEPHONE CALL OF 4 OCTOBER 2001:[98] At the end of September CGTL was granted a supply licence by RAE and

seven generation licences. Dr Imamovic's evidence is that Mr Avramakis told him that Cinergy-ATE-Energa had received licences and that the 'partnership' was also enquiring about trading offers from Bulgaria and Romania. He said that it then came to his knowledge that the electricity supply licence in Greece was actually awarded to CGTL and not to the other members of the consortium. In consequence, he wanted clarification from CGTL as to its position with regard to the 'partnership' and the Contract he had made with Energa on the basis that there was such a partnership. He therefore sent a fax to Energa on 4 October seeking clarification and, when speaking to Mr Avramakis subsequently, asked him to arrange for Mr Contomichalos to telephone him directly so that he could clarify the position with regard to the ownership of the trading licence and the arrangements between CGTL, ATE and Energa.[99] That fax of 4 October to Energa is consistent only with Dr Imamovic regarding his engagement as with Energa alone and not with a partnership consisting of CGTL, ATE and Energa. In it, he says that, in order to secure a serious offer from a generating company in Bosnia, he needs an extension of his authority from Energa, as specified in the power of attorney, to the consortium of CGTL, ATE and Energa on the basis of the agreement already in place (ie the contract with Energa). He said he was ready to accept all necessary obligations to the consortium 'just as I have to Energa SA at the moment'. He asks that ICG should be appointed representative of the full consortium with authority to negotiate on behalf of the whole consortium or any new company associated with the licence, up to the point where a serious offer was produced. He wanted a letter from Energa SA in which he was given authority to act for and on behalf of the consortium in this respect, whilst saying that he would be proceeding under the 'agreement already in place', which was with Energa alone.[100] On its own terms, the fax does not suggest that Dr Imamovic was seeking anything other than the ability to represent the consortium in negotiations up to the point specified. He was not looking for a different agreement to that which was already in place with Energa but merely that Energa should authorise him to negotiate as representative of CGTL and ATE also. He thus would remain engaged by Energa only.[101] In his statement Dr Imamovic referred to a telephone call from Mr Contomichalos to him on 4 October 2001 in which he requested that Mr Contomichalos should clarify CGTL's position regarding the partnership Cinergy-ATE-Energa and the ownership of the electricity trading licence in Greece. He was told by Mr Contomichalos that the licence had been issued to CGTL for technical reasons only but that it belonged to the partnership Cinergy-ATE-Energa and that all other generation licences in Greece were or would be issued to that partnership. The statement continues: -'I requested that Mr Contomichalos affirms and ratifies the Contract as I made Contract with Energa on the faith of Mr Contomichalos' representations that Cinergy and Energa were partners. Mr Contomichalos told me that Cinergy and Energa were partners and that partnership Cinergy-ATE-Energa was to continue to exist and trade as partnership without any transformation from partnership into a new legal entity (a company). Mr Contomichalos further told me that my contract made with Energa was binding on Cinergy in any case because Energa were authorised to make a binding contract on Cinergy's behalf through a signed written agreement between Cinergy and Energa that was expressly specified in the Contract. I do not remember exact words used by Mr Contomichalos but I always understood that this conversation with him had legal effect of affirming and ratifying the Contract on behalf of Cinergy.'[102] Dr Imamovic's evidence was that there was

discussion of the mutual exclusivity term of the Contract and its implications on scenarios where CGTL and its partners could procure a trading offer from Bulgaria or Romania. He said that there was discussion of the position where he obtained an offer of power from Bosnia and the partnership received a competing offer from Romania or Bulgaria. Whilst CGTL would be free to accept the best offer, it was unreasonable that he should work exclusively for the partnership and his offer be rejected in favour of a better offer from either of those countries, without him receiving remuneration. Mr Contomichalos, he said, understood the point and stated that he would be remunerated by reference to the offer accepted. There was further discussion of Dr Imamovic's dissatisfaction with the performance of Energa, its conduct and approach to power trading and Mr Contomichalos told him that he would personally take control of power trading and asked him to send a detailed description of the current position:'Mr Contomichalos told me that he would confirm the affirmation and ratification in writing, but then he stated that he was in Greece and away from his office and he asked me to confirm the ratification to him in a fax message. I subsequently sent a fax to Mr Contomichalos to Energa's office in which I confirmed ratification and affirmation of the Contract by him.'[103] Mr Contomichalos had no recollection of any telephone conversation on 4 October but was certain that if he did have a conversation, he would not have said anything of the kind suggested by Dr Imamovic and would not have referred to a partnership because none existed. Equally he would not have discussed the terms of the 'Private Agreement' between Dr Imamovic and Energa (the Contract), as he was not aware of its terms (apart from the entitlement to 5% of the profit on deals introduced). He had not by that time even seen a copy of the Contract, which appears, on the correspondence, to have been sent to him only on 19 July 2002, after the dispute had arisen. Nor did he tell Dr Imamovic that CGTL accepted the obligations owed under the Contract or that Energa had made the Contract with him as agent of CGTL. Equally there was no discussion about Dr Imamovic receiving remuneration in respect of offers received from Bulgaria or Romania, an idea which Mr Contomichalos regarded as preposterous since it would reward Dr Imamovic for doing nothing. He maintained that he would never have agreed to enter into a contract with Dr Imamovic without recording this in writing and that the latter's version of events was entirely false, unrealistic and contrary to commercial common sense.[104] Once again I am driven to the conclusion that Dr Imamovic's evidence about this conversation is a fabrication. It may be that there was a conversation, although that is a matter of doubt since the correspondence upon which Dr Imamovic relies as confirming the ratification and affirmation of the Contract not only does nothing of the sort but also fails to mention any telephone conversation. In a fax sent to Mr Floros' office in Athens and addressed to 'Gerasimo and Mr A Floros' dated 4 October 2001, Dr Imamovic set out details of the work he had been doing in attempting to obtain offers for the purchase of power from Bosnia and Herzegovina. He then made comments about what had happened and made predictions or suggestions for the future, setting out the options available and actions to be taken in relation to those options. As a form of post-script, after his name at the bottom of the fax appeared the following: -'To Cinergy (GC): For your record, ICG has a Contract with Energa SA with specification that entitles ICG to 5% of the total generated profit of the whole consortium.'[105] Far from this document recording a ratification or affirmation by Mr Contomichalos in a telephone conversation of a contract made between Energa and Dr

Imamovic, this comment appears to be letting Mr Contomichalos know that there is a contract between himself and Energa, by way of explanation for the activities he had been undertaking to obtain offers of power and informing him of his suggestions for the future. The post-script plainly refers to a contract with Energa and contains no suggestion that this could amount to a contract with CGTL.[106] It is again inconceivable, if a conversation had taken place with Mr Contomichalos of the kind suggested by Dr Imamovic, that this would not be spelt out clearly and expressly in correspondence between CGTL and Dr Imamovic. It is inherently unlikely that Dr Imamovic, if he had been pressing CGTL to acknowledge liability under the Contract, would not have insisted upon something in writing from Mr Contomichalos to that effect. It is also unlikely that Mr Contomichalos would have suggested to Dr Imamovic that he confirm the position in writing.[107] It is equally inconceivable that Mr Contomichalos would have accepted a liability to pay Dr Imamovic 5% of the total generated profit on electricity deals struck by CGTL, in circumstances where the business accepted was not obtained by Dr Imamovic and where he might already be paying commission to Energa or to another entity responsible for introducing business from Bulgaria and Romania. Any such commitment would inevitably be recorded in writing if made. This is a further example of an opportunistic attempt by Dr Imamovic to claim monies for two deals concluded in the spring and summer of the following year, involving supply of electricity from Bulgaria (with APT/Verbund and Sempra) with which he had nothing to do. Having discovered their existence, he then framed a claim and fabricated a story to justify it.[108] Furthermore, the terms in which the relevant paragraphs of Dr Imamovic's statement are expressed once again do not ring true. Whilst he said in the statement that he did not remember the exact words used by Mr Contomichalos and in cross-examination said that he asked if Mr Contomichalos recognised the Contract , to which the latter said 'that is fine', the idea that Dr Imamovic should ask Mr Contomichalos to 'affirm and ratify' the Contract because he made it on the faith of Mr Contomichalos' representations that Cinergy and Energa were partners, has an air of total unreality. Dr Imamovic was by nationality Bosnian and, on his own admission had no knowledge of English law at the relevant time. The request he made however, according to the statement, is couched in terms which could only be made by someone who had concepts of agency and ratification plainly in mind.[109] As in the case of the details of the conversation at the alleged meeting of 29 June, the details of this conversation were also added on by way of amendment to the Particulars of Claim. They likewise have the look of fabricated statements introduced into the story in an attempt to make a case, after reading or being advised on the relevant law.[110] It is also inherently unlikely that Dr Imamovic would be expressing dissatisfaction with Energa at this stage of the story, since he had scarcely spoken to Mr Contomichalos before and, to judge from his own faxes and emails, he considered the difficulties he had encountered in obtaining viable offers from Bosnia for electricity supply the result of others' misdoings.[111] I accept Mr Contomichalos' evidence that no such conversation did or could have taken place between them. I have already found that there was no meeting between Dr Imamovic and Mr Contomichalos on 29 June and that no representations were made by him as to any English law partnership between CGTL and Energa. I have also found that he had no knowledge of the details of the 'Private Agreement' (the Contract) between Energa and Dr Imamovic, had not seen a copy and had not discussed this with Dr Imamovic previously. Whilst those findings in

themselves render Dr Imamovic's evidence about this telephone conversation incredible, I also find, for the independent reasons expressed above, that there could not have been any such conversation.[112] There is no evidence of any kind, other than Dr Imamovic's oral evidence, that Energa ever considered itself, in the person of Mr Floros, as acting as an agent or partner, in the English law sense, of CGTL when concluding its 'Private Agreement' (the Contract) with Dr Imamovic. The written agreements which exist between CGTL and Energa expressly prohibited that and I find that at all times, whether during the operative periods of those contracts or outside them, Energa never had any reason to consider that it could bind CGTL in any way in a contract with a third party. There is no sufficient basis for concluding that Energa ever indicated to Dr Imamovic that in entering into the Contract, it was doing so in anything other than its own capacity, whilst representing that it did have a Co-operation Agreement with CGTL.[113] Whilst, throughout the correspondence and in documents which Dr Imamovic may have seen, there are references to 'joint venture', 'consortium' and to 'partners' and the names of Cinergy, ATE and Energa were linked and even appeared together in hyphenated form, none of this could have suggested someone brought up in Bosnia, like he was, that there was an English law partnership between those entities, particularly as he could have had no knowledge of the English law of partnership at the time. To the contrary, what the documents show is that Dr Imamovic fully understood that he had been engaged by Energa and was in a contractual relationship with Energa alone, which he justifiably considered to have a Co-operation Agreement with CGTL. As at 4 October 2001 he may have spoken to Mr Contomichalos on the telephone but he had not met him and, as the fax of 4 October 2001 makes plain, he felt it necessary at that stage, in the first correspondence sent to him alongside Mr Floros, to explain that he (ICG) had a contract with Energa.OTHER CONTACTS BETWEEN DR IMAMOVIC AND MR CONTOMICHALOS IN 2001:[114] Whilst Dr Imamovic refers to a meeting with Mr Contomichalos at CGTL's offices in Mayfair on 9 October 2001 when he gave a power-point presentation to Mr Contomichalos about the possibilities for the purchase of electricity from former Yugoslavia, Mr Contomichalos, perhaps surprisingly, has no recollection of that presentation at all. Mr Contomichalos accepts that meetings took place between him and Dr Imamovic from October onwards in London because it was Mr Contomichalos who would ultimately make any decisions about purchases of electricity, because both he and Dr Imamovic resided in London and because Mr Achille Floros did not speak English and Dr Imamovic did not speak Greek which meant that direct communication was easier. Initially Mr Contomichalos understood from Achille Floros, who would speak to him in Greek, that Dr Imamovic would communicate with Aris Floros in English who would then pass this on to Achille Floros in Greek and the latter would then speak to Mr Contomichalos. When Mr Contomichalos dealt with Dr Imamovic, he did so on the basis that Dr Imamovic was Energa's man and that he was speaking to a representative of Energa. There must have been some contact between them as Mr Contomichalos accepts, before they both went to a meeting with EFT on 12 October 2001 and there must have been some discussion in relation to the purchase of electricity from Bosnia either through EFT or by other means. There appears to have been a 30 minute telephone call made by Dr Imamovic to CGTL's offices on 13 September and it seems likely to me that there was a meeting between them prior to meeting with EFT, probably discussing the history set out in the fax of 4 October and

preparing for that meeting.[115] According to Dr Imamovic, following the meeting with EFT, there was to be discussion of his 'costs' but because both he and Mr Contomichalos were dashing off to other places, there was no time. Following Dr Imamovic's trip to Bosnia in late October, his evidence was of a further meeting with Mr Contomichalos in London on 2 November at which various possibilities for trading with Bosnian companies were explored. On 19 November, following receipt of an email from Dr Imamovic, Mr Contomichalos emailed to ask him for his telephone number which led, according to Dr Imamovic, to a call the following day. It appears to be common ground that there were a number of telephone calls during which various suggestions were made by Dr Imamovic as to possible deals in Bosnia which Mr Contomichalos was not prepared to pursue for the purpose of selling to PPC. It was on 6 December 2001, according to Dr Imamovic, that he directly contacted PPC whom he considered to be open to offers of supply and upon which basis, negotiations for purchase from Bosnian companies should proceed. He therefore telephoned Mr Contomichalos to tell him so and to complain about Energa and the trading strategy being adopted. Energa then sent him a fax, copied to Mr Contomichalos, stating that, before he made any contact with anyone in Greece about energy trading or 'our Contract' it was essential for him to have their consent first. It warned that any action taken by him 'without prior approval by us' will result to your Contract with us be deemed null and void.'[116] Dr Imamovic relied upon this fax, and the fact that it was copied to Mr Contomichalos, as some evidence of partnership or agency but it is clearly explicable upon the basis that Energa wished to keep Mr Contomichalos informed in a situation where Energa's agent, namely Dr Imamovic, had gone behind both of their backs to PPC when his concern was only meant to be the obtaining of offers of supply to the Greek border from former Yugoslavia. His approach to PPC could clearly confuse the lines of communication and was not what he was engaged to do. There is nothing to suggest that he ever complained to Mr Contomichalos that this letter from Energa was a breach of contract on CGTL's part.[117] Dr Imamovic also relied upon a most extraordinary email sent by him to Mr Contomichalos on 21 December 2001 headed 'strategy re-thinking - must read all story (private)'. This is one of many messages which suggests conspiracies between entities such as EFT and PPC to sustain EFT's illegal monopoly in power trading in Bosnia. The email refers to 'dirty business' by EFT with Bosnian generating suppliers and to its control of transmission. Bosnian, Albanian, Croatian and Montenegran suppliers are all said to be incapable of withstanding EFT's strong position. Suggestions are then made by Dr Imamovic in order to break into the market and he suggested a meeting with Mr Contomichalos in early January to discuss various possibilities.[118] In amongst this verbiage appeared a paragraph which began with the following words: -'I also want to make it very clear that contract that I have with Energa will expire on 15 January 2002 and I would like to see where I fit into all this with Cinergy. I do not regret time and money that I have spent in the last six months but I do not want to work like this where I expect to generate business for Greek national interests or interest of PPC. I am sure that Energa is paid for this by Cinergy but Energa clearly does not want to have any serious business, they also want to keep the price in Greece low and this should have been indicated to me at the beginning and could even be a possible breach of contract. Anyway I do not want to have any argument with Energa about this and this is between us, but if they are paid for what they are doing then I do not understand what exactly is Cinergy

trying to do . . . .'In his statement, Dr Imamovic said that, by this email, he reminded Mr Contomichalos that his contract with the partnership was about to expire on 15 January 2002 and he requested the creation of a new contract between himself and CGTL for 2002. He said that the email advised Mr Contomichalos that CGTL was in breach of contract.[119] This construction of the email, notwithstanding any difficulties that Dr Imamovic may have with the English language, is not only strained but disingenuous. Once again the reference is clearly to the Contract with Energa, the expiry of which concerned Dr Imamovic. His complaint was against Energa and a potential breach of contract by it. Although it appears that he was hinting at acting for Cinergy in the future ('I would like to see where I fit into all this with Cinergy'), there is nothing in this email to support the existence of any belief held by Dr Imamovic about a partnership in English law between CGTL and Energa, nor of any existing contractual commitment owed by CGTL to him. Moreover the reference to payment by CGTL to Energa appears inconsistent with any notion of a partnership between them.11 JANUARY 2002 MEETING IN LONDON:[120] In his oral evidence, although not in his statement, Dr Imamovic said that he sent a draft Contract naming CGTL and Energa to Mr Contomichalos on about 6 January 2002. At para 139 of his witness statement, Dr Imamovic testified to attending a meeting with Mr Contomichalos on 11 January 2002 at CGTL's offices in London. His evidence was that at that meeting he brought up the issue of the 'opt-out' Clause in the Contract with Energa, (by which he meant Cl 7), which provided for automatic termination if no commercial transaction had been concluded within six months. This was discussed and Mr Contomichalos told him that there were some differences of opinion between Energa and Dr Imamovic but that he was very satisfied with Dr Imamovic's performance and wanted him to continue to work for CGTL. He told Mr Contomichalos that his preference was to have a new contract. Mr Contomichalos was holding a copy of the Contract between Energa and Dr Imamovic at the time, looked at p 2 and told him that there was no need for a new Contract since the current Contract could be extended for the full term of three years, as Cl 7 could be ignored. Mr Contomichalos extended the Contract for that term by saying: 'There is no reason for a new contract, just continue the same contract for the full term of three years and ignore that term.'Dr Imamovic therefore assumed that the contract was extended for the full term of three years.[121] Mr Contomichalos could not recall whether he had a meeting on 11 January 2002 with Dr Imamovic. Apart from the reference in 21 December email to the expiry of the Contract and his knowledge of the 5% profit sharing provision, Mr Contomichalos had no knowledge of the detailed terms of Dr Imamovic's contract with Energa and did not have a copy of it. He denied that any conversation of the kind had taken place on 11 January 2002 or at any time. He had no authority to change Energa's contractual obligations to Dr Imamovic and it was inconceivable that he would have done so and thus undermined Energa's position. None of CGTL's consultants had a three year contract. Moreover, if any contractual engagement of this kind was to be made by CGTL, it would be fully documented. As he pointed out, there were no documents recording any such extension at all.[122] Mr Contomichalos' evidence was that he did not know whether Energa did extend the Contract with Dr Imamovic. The latter continued to contact him about potential electricity offers and he continued to receive messages and talk to him. He assumed that some form of extension or alternative arrangement must have been agreed between Dr Imamovic and Energa.[123] The absence of any

documentation of any kind is once again a compelling reason for rejecting Dr Imamovic's evidence about this meeting and any discussion or agreement of an extension to the Contract with Energa. There is no document showing the sending of a draft contract, no draft contract to which CGTL was to be a party and no adequate explanation for the absence of such documents nor the absence of any further reference to them. They never existed and constitute a late fabrication on Dr Imamovic's part. Nor are there any documents disclosed by Dr Imamovic showing a request to Energa or CGTL to extend, or recording an extension to the existing Contract with Energa. In the light of later documents there is good reason for thinking that Energa refused to extend for the balance of the three years, which makes it unlikely that the issue of extension was ever put to Mr Contomichalos at all.[124] These are independent reasons for rejecting Dr Imamovic's evidence, quite apart from my rejection of all his earlier evidence of being told of partnership or of affirmation of liability on the part of CGTL in respect of his Contract. Since no transactions had been concluded in the six month period, it is hard to see why anyone should have thought that it was worth persevering with Dr Imamovic. Nonetheless, it may be that as appeared from parts of Mr Contomichalos' evidence, he and/or Energa considered he should be given one last chance, presumably without a formal extension of the Contract with Energa, but on the basis that if any business resulted it would be treated as entitling him to remuneration from Energa. I am reasonably confident in thinking (notwithstanding the lack of direct evidence on the point) that there was no full extension by Energa, since Dr Imamovic gave no evidence of Energa's agreement to it and such evidence would not necessarily have been inconsistent with the case he wanted to make against CGTL.[125] It appears that in January 2002, Dr Imamovic was seeking to persuade Energa and CGTL (and in particular Mr Contomichalos) to accompany him to Bosnia for meetings with power suppliers there in an attempt to arrange a deal. Had there been any realistic prospect of business, it seems that Mr Contomichalos might have gone but he did not consider that to be the case when the time came. He did send Mr O'Dwyer in April 2002 but it does not appear that any Energa representative ever accompanied Dr Imamovic to Bosnia, despite indications in the correspondence that this was what Mr Contomichalos envisaged.MEETING IN LONDON ON 24 JANUARY 2002:[126] Dr Imamovic's evidence was that he met with Mr Contomichalos on 24 January at CGTL's offices once again. At that meeting Mr Contomichalos told him that the partnership was ready to purchase power from generating companies in former Yugoslavia and that PPC had announced a tender to purchase up to 120MW of power. In consequence Dr Imamovic was to make immediate proposals for the purchase of power and explain the necessity for a CGTL visit to Sarajevo for a meeting with the Government and the management of the largest generating company there. Dr Imamovic said that both the company and the Government which owned it would want to develop a relationship with CGTL whereby the latter invested in the country in building plant. Such a suggestion was dismissed by Mr Contomichalos despite Dr Imamovic's insistence that this was necessary. On being asked to go to Bosnia, Mr Contomichalos told him that it was necessary to involve Energa in all such matters but Dr Imamovic strongly objected to this because of Energa's past conduct (another indication that Energa had not extended the contract). Mr Contomichalos took a draft letter which Dr Imamovic had prepared for the purpose of such a visit and added to it a sentence saying that CGTL would be prepared to visit Bosnia together with Cinergy's

'partner' Energa. This reference was again relied on by Dr Imamovic but, taken in context the term is obviously used loosely and could not have conveyed to the persons to whom it was addressed, let alone to Dr Imamovic, that there was an English law partnership in existence between CGTL and Energa. It is common for business entities to speak of their partners when they talk of people with whom they work or co-operate. Indeed in the context of investment in Bosnia, Dr Imamovic frequently referred to the possibility of a partnership with generating companies, which clearly did not mean a partnership in the sense understood in English law.[127] Although not in his statement, Dr Imamovic said that it was in consequence of this meeting with Mr Contomichalos that he lost confidence in him. This was supposedly because of Mr Contomichalos' insistence on the involvement of Energa but it was Dr Imamovic's evidence that, despite the oral extension of the Contract by Mr Contomichalos on 11 January, he now wanted a contract signed by Energa and CGTL. Despite considering this, I am unable to see the logic of Dr Imamovic's supposed position. In his statement he said that he objected to the involvement of Energa and this gave rise to an argument which led to him asking to see Mr John Bryant, whom he regarded as Mr Contomichalos' superior.[128] Not only did he fail to mention in his statement that he had lost confidence with Mr Contomichalos as a result of the meeting on 24 January, but he failed also to refer to a message from him dated 25 January 2002 which is confusing in its terms. In his statement he referred to this message as one in which he said he did not want any interference from Energa during negotiations with supplier companies. Under cross-examination he maintained that a reference in that message to the effect that 'he must have the co-operation agreement signed by you and Energa in the next few days' was a reference to the draft contract he had earlier sent to Mr Contomichalos and which he now wanted to be signed by both parties despite Mr Contomichalos' earlier assurance that there was no need for such a contract. It was in consequence of this assertion that he was now looking for a signed contract with CGTL that he said, by way of explanation, that he had lost confidence in Mr Contomichalos and the earlier oral extension which he maintained had been given on January 11.[129] As already mentioned the documents reveal no draft contract ever sent to Mr Contomichalos by Dr Imamovic. He said that he must have sent it from his computer, that the hard drive had changed and that he therefore had no record of it. He complained of deficient disclosure by CGTL. I find it inconceivable that if there was a draft contract which Dr Imamovic wanted CGTL to sign, he would not have a copy of it and the reality is that no such document was ever sent. What has happened is that Dr Imamovic has seized on opaque references in the emails and faxes exchanged to invent this point. It is a point which he failed to mention in his Particulars of Claim or his Witness Statement.[130] When cross-examined about 25 January message referred to, he saw a further opportunity to support his case. Although the point was not put to him in cross-examination and Mr Contomichalos was not sure what this referred to, I find that the reference to the co-operation agreement signed by Cinergy and Energa in that email is in fact a reference to the agreement to which his Contract of 16 July 2001 referred, namely the second joint co-operation agreement that which had been signed by CGTL and Energa on 7 November 2000. Dr Imamovic was not asking for signature of a new agreement at all, but seeking a copy of the second co-operation agreement between CGTL and Energa, presumably for the purpose of talking to Energa about an extension of the Contract or a fresh 'co-operation agreement' with Energa, as appears from his earlier

email of 21 December 2001 and his later email of February 6 2002. A further possibility is that he was seeking to ascertain Energa's duties or remuneration in considering his own options, including perhaps suggesting to CGTL that there was no need for Energa at all.[131] These possibilities are borne out by a further message from Dr Imamovic to Mr Contomichalos on 6 February in which he told the latter that he was not happy with the response he had received from Energa to his Co-operation Agreement which should have been finalised before the old one expired. This is a clear indication that no extension had been agreed as such, or certainly not for the balance of the three year period. He then wanted to discuss the matter with Mr Contomichalos in London, rather than with Energa.[132] What does appear from this message is that Dr Imamovic recognised that his existing Contract was with Energa, that it had expired on 15 January and that negotiations were either proceeding with Energa or had stalled. This is wholly inconsistent with any suggestion that Mr Contomichalos extended the contract in January 2002. Whether any agreement with Energa ever resulted is uncertain but it appears that Dr Imamovic had some idea of, as Mr Contomichalos put it, 'jumping ship' and abandoning Energa in favour of CGTL. I accept however Mr Contomichalos' evidence that Dr Imamovic never expressly asked to be engaged by CGTL, never produced a draft Contract to bind CGTL and never suggested at any stage that CGTL was bound by any existing agreement he had. Whilst expressing no concluded view on the subject, it appears to me that the most likely position is that Dr Imamovic did not obtain from Energa the extension to his Contract for the balance of the three year period but may well have obtained a short extension or been given one last chance to prove himself. Alternatively, optimistically hoping that he would be able to introduce business to CGTL, and would be rewarded for it, he continued in his efforts to obtain offers of power supply from Bosnia, sending numerous messages to CGTL and to Energa since Mr Contomichalos required its involvement.[133] Mr Contomichalos' evidence was that at a meeting, prior to the trip upon which Dr Imamovic had insisted a representative of CGTL should accompany him, Dr Imamovic had said that he was in financial difficulties and asked whether his expenses would be covered by CGTL. This is likely to have been the meeting on 24 January. In his statement, Mr Contomichalos said that he regarded this trip as Dr Imamovic's last opportunity to show that he could produce an attractive offer and that although he assumed that if a deal was concluded he would be paid his 5% of the profit by Energa, he knew that if nothing resulted Dr Imamovic would be out of pocket. He was therefore happy to pay his reasonable expenses if properly vouched by production of receipts and told him so.DR IMAMOVIC'S CLAIM FOR EXPENSES:[134] In his statement, Dr Imamovic described a meeting with Mr Contomichalos and Mr O'Dwyer at CGTL's offices in London on 19 April 2002. There was discussion of Mr O'Dwyer's trip to Bosnia to join Dr Imamovic there for a meeting with EPBIH. There was discussion of trading opportunities but, according to Dr Imamovic, Mr Contomichalos, after about 30 minutes, suddenly stood up and abruptly left the meeting. Discussion continued with Mr O'Dwyer and Dr Imamovic raised the question of his expenses and, as Mr O'Dwyer was not the appropriate person to deal with the issue, he asked him to call Mr Contomichalos back into the room. He did so and on Mr Contomichalos return, following attempts to obtain some response from Mr Contomichalos about trading offers, Dr Imamovic raised the question of his costs and reminded the latter that, according to the Contract, he was entitled to be reimbursed by

CGTL. Mr Contomichalos is then said to have informed him that CGTL would honour the Contract and reimburse his costs, asking about the actual amount involved. To this Dr Imamovic replied that he was not sure about the exact figure but it was of the order of a few or several thousand pounds, as it was almost a year since he started working for CGTL. Mr Contomichalos asked him to calculate the exact amount and send an invoice to Mr O'Dwyer directly to have it processed by CGTL. Dr Imamovic then raised the question of meeting with Mr Bryant and Mr Contomichalos said that he would liaise with Mr Bryant and find a suitable date for a joint meeting.[135] Mr Contomichalos' statement referred to the meeting following the Bosnian trip (which must be the same meeting to which Dr Imamovic referred) as unproductive. Following discussion of the trading possibilities which Mr Contomichalos did not consider worth pursuing, Dr Imamovic asked for payment of the out-of-pocket expenses he had incurred on the Bosnian trip. When the matter was raised either originally or on this occasion, the figure to which Dr Imamovic referred was £2,000/£2,500. According to Mr Contomichalos, that figure subsequently rose to £4,000, which Mr Contomichalos thought excessive but said he was willing to pay provided that a formal invoice was rendered attaching original receipts or other supporting documents relating to the costs incurred.[136] Dr Imamovic's statement referred to a telephone call on or around 3 May in which he said he again raised the issue of his costs and told Mr Contomichalos that he wanted to claim £500 per month pursuant to the Contract and did not wish to claim any extra costs for which he was under an obligation to produce receipts. He had spent, on average, in excess of that figure per month but it was difficult to calculate the exact amount and time consuming to find all the receipts. (Dr Imamovic must have been referring to Cl 8 of his Agreement with Energa when setting out this matter in his statement). Dr Imamovic maintains that this was raised at the meeting on 24 January 2002 when he first suggested the trip, though this does not appear anywhere in the paragraph of his statement which deals with the meeting.[137] Dr Imamovic also maintained that in the telephone call in May he also asked Mr Contomichalos to provide a payment for an equivalent period ahead on the fixed monthly basis, as well as payments for the past ten months, because the latter payment was overdue. Mr Contomichalos is said to have accepted this as reasonable and asked him to send an invoice to Mr O'Dwyer who would then process it. Dr Imamovic told Mr Contomichalos that the invoice would be for about £11,000 and Mr Contomichalos agreed to process it.[138] There is no reference whatsoever in the documents to any of these conversations so that I have again to determine an issue where there is a direct conflict of evidence between the two major protagonists. On 7 May 2002 Dr Imamovic sent an invoice to Mr O'Dwyer in the form of a fax which referred to 'invoice for consultancy for power trading in the South Eastern Europe'. This was not an invoice for £500 per month, whether relating to the past or the future. Instead it was an invoice which 'covers the cost of consultancy regarding travel, phone, hospitality and general office expenses'. These were then listed as separate items - 'phone & office £4,200, flights £5,700, hospitality £300, other travel £700'. The total cost was £10,900 which is of course not a multiple of £500. No receipts or vouchers of any kind were included and none have ever been provided at any stage since.[139] On the same day Dr Imamovic sent an email to Mr O'Dwyer saying that he had spoken to Mr Contomichalos the previous week who had said that Mr O'Dwyer could process his costs for the consultancy 'so far'. The invoice was also attached. To this Mr O'Dwyer replied saying

that he would 'process your invoice asap.'[140] Dr Imamovic's explanation for the form of the invoice was that it covered the period from July 2001 to May 2002 under Cl 8 of the Contract with Energa (11 x £500) and an approximate period ahead for the same amount of £5,400, due to delay in payment for the first period. He said that he specified on the invoice that it was in respect of phone, office and travel costs because Mr Contomichalos had asked him to do this, without any reference to the Contract.[141] Once again I find I cannot accept Dr Imamovic's evidence. The invoice contains no reference to the Contract at all and was clearly not designed to fit with Cl 8 and the monthly figure of £500. Mr Contomichalos had no knowledge of this term of the contract and it could not therefore have been discussed. This was an attempt to obtain payment of expenses from CGTL, whether justifiable expenses or not, not only for the April trip but for much else beside. Without any receipts or vouchers in support, there was no way in which such an invoice could be acceptable to Mr Contomichalos or CGTL.[142] I am satisfied that Mr Contomichalos and Dr Imamovic did not have conversations in the terms suggested by Dr Imamovic in his evidence because that would have been entirely inconsistent with everything which had gone before. I accept Mr Contomichalos' evidence as to what took place and it is noteworthy that in a fax and email of 8 July to Mr Contomichalos, the claim is made by Dr Imamovic in relation to this invoice as 'payment for the consultancy work I have done' and 'my consultancy fee', whilst also referring to an offer of £4,000 which he was unable to accept 'because I am not after any compensation or trying to claim something from Cinergy.' These exchanges took place after Dr Imamovic had taken a holiday in May and June for the duration of the World Cup and had conversed with both Mr O'Dwyer and Mr Contomichalos on the subject. Mr O'Dwyer had referred the matter to Mr Contomichalos who was said to be chasing for his 'expensives' on June 28 and had been told by Mr Contomichalos, in the context of the invoice, to 'tell him to take a hike', since the latter considered the claim to be a 'try on'.THE FINAL EXCHANGES:[143] Notwithstanding the rejection of his un-vouched expenses claim, on 1 July Dr Imamovic emailed Mr Contomichalos saying that he had spoken to some people in Bosnia who were meeting that day to decide on their approach. He wanted to come down to discuss this 'new development'. In response Mr Contomichalos said there was a possibility of a meeting at about 11 o'clock the following day but, so far as Bosnia was concerned, in order to avoid wasting time, he suggested that the message to be conveyed by Dr Imamovic was that the only thing of interest would be power delivered at the Greek border at below $29. Dr Imamovic responded by saying that he understood and would come down to meet at 11 o'clock the next day. He said that he did not want to repeat any of the previous shows with anybody (in Bosnia) and that although he would listen to what a representative of a Bosnian supplier would say, 'nobody should get excited too much'. Mr Contomichalos' reply was that he only had ten to fifteen minutes so that it would actually be better to telephone but in order to avoid being dragged into lengthy political matters with the Bosnian supplier, the message should be kept as simple as possible - 'DAF Greek frontier or nothing'.[144] According to Dr Imamovic he and Mr Contomichalos met on 2 July 2002 where he asked for his costs to be paid and Mr Contomichalos said it was a small issue and that he should chase Mr O'Dwyer in relation to it. Mr Contomichalos sought to talk about trading strategy and Dr Imamovic sought an explanation for what, in his statement, he described as a change in trading approach by insisting on delivery at the Greek border. There was then discussion

about profits to be generated by CGTL in the deal involving Verbund, the Bulgarian supplier, upon which Dr Imamovic claimed that he was entitled to 5% profit, since this was a competing offer to those which he had obtained and upon which he was entitled to remuneration in consequence of the alleged agreement reached in October 2001. I have made reference to this and rejected the contention of any such agreement earlier in this judgment.[145] In the same conversation Dr Imamovic maintains that Mr Contomichalos explained that the majority of profits had been paid to Energa although CGTL's share of profits was about $100,000. On being asked for the 5% profit share, Mr Contomichalos told Dr Imamovic that he could not provide payment from CGTL but needed to ask Energa to return part of their share of profits so that payment could be made.[146] This was allegedly followed by a further telephone call from Mr Contomichalos on 8 July in which he explained that Energa refused to return any monies from their share of the profits and that he was unable therefore to provide any payment of Dr Imamovic's fees as set out in the Contract, because the majority of the profits were paid to Energa. This was unacceptable to Dr Imamovic who demanded payment according to the terms of 16 July Contract, reminding Mr Contomichalos not only that CGTL was liable as a partner of Energa but also of the Contract which he had ratified. This led to an argument and to the messages of 8 July 2002 to which I have earlier referred where there is reference to an offer of £4,000 as compensation and of Dr Imamovic commencing proceedings in respect of monies due to him. In response to the fax seeking recovery for consultancy work, Mr Contomichalos' assistant sent him a fax stating that CGTL was not aware of any Consultancy Agreement with him or his company and was therefore surprised at the allegation of a dispute about it but saying that Mr Contomichalos might be available to meet in the following week or later in mid August when back in the UK.[147] That message is described by Dr Imamovic as a repudiation of the Contract which he accepted by sending a fax to CGTL saying that he had no option but to take legal action, whilst at the same time sending another fax to Mr Floros saying that he had no intention of taking legal proceedings against Energa.[148] Thereafter matters escalated and Dr Imamovic made a series of wild allegations of corruption and 'parallel payments' to Energa, in correspondence with the Cinergy parent company and Cinergy group in-house lawyers who, over a period of time, sought to obtain details from Dr Imamovic of all that he was saying and documents to support his contentions. These all proved fruitless since Dr Imamovic had nothing to support his allegations and in due course, in 2003, Dr Imamovic initiated these proceedings.THE EFFECT OF THE HISTORY:[149] The recitation of this history shows that there is nothing upon which Dr Imamovic can legitimately rely in support of his allegations of partnership or agency, nor in support of his allegations of holding out by CGTL of Energa as its partner or agent, nor in support of allegations that CGTL allowed itself to be held out by Energa as its partner.[150] Energa and CGTL, by agreement, shared the net profits obtained by CGTL on electricity supply business introduced by Energa to it, on an 80/20 basis. The net profit was calculated by taking into account CGTL's expense in obtaining import capacity in 2002 and 2003 as well as the profits on the two deals from Bulgaria which were concluded in the spring and summer of 2002. This was done on the basis of the April 2002 oral agreement between Achille Floros and Mr Contomichalos as well as the understanding which persisted after 30 June 2001 when the second joint co-operation agreement expired up to the date of this express agreement. During this period negotiations were still proceeding with a view to setting up

a formal joint venture with a joint venture corporate vehicle of some kind, whether with ATE or the Alamanis Group or otherwise.[151] Nothing in the material to which I have referred nor indeed in other documents showing ATE, at the time of the licence applications, entering into various transactions which amounted to options for the purchase of land for proposed generating plants gives rise to any partnership agreement by conduct of CGTL, Energa or ATE. The non-binding Memorandum of Understanding is what it says it is and actions taken pursuant to it did not give rise to a partnership between them. Likewise all the material to which I have referred gives rise to no inference of a partnership agreement between CGTL and Energa, without ATE, in the face of the specific agreements to the contrary. In his closing Dr Imamovic maintained that the second joint co-operation agreement had been extended but if this was the case, that would not assist him, given its terms and the matters set out in this judgment.[152] Dr Imamovic contended that Energa always purported to act on behalf of the partnership in which it was involved with CGTL and ATE. I am unable to accept this submission. I am equally unable to accept the submission that Mr Contomichalos or CGTL held out Energa as its partner to Dr Imamovic or allowed Energa to represent itself as such. In a limited context, Mr Contomichalos was content for the three name letter-heading to be used, namely for the applications for licences and dealing with the RAE Otherwise, he did not authorise the use of that letter heading for any purpose and the letter heading in itself does not unambiguously convey partnership, in any event. That applies equally to other usages of the three names by Energa or by others. In the context of use in Greece, it may convey other messages which bring into play concepts of Greek law which remained unexplored in the evidence before me.[153] Putting to one side the licence applications and the advertisements for the licence applications, the balance of Dr Imamovic's case on holding out relates to other documents where the three names appeared together or references were made to a 'consortium' a 'joint venture' or there was occasional use of the word 'partners'. Most of these references appear in documents produced by Energa or Dr Imamovic, as listed in Dr Imamovic's written submissions. There are 13 such documents referred to, only two of which emanate from CGTL where the word 'partner' is used in the sense of referring to a local or regional partner without any hint of a technical meaning of partnership under English law.[154] An example, relied on by Dr Imamovic, is a letter written by Energa to EPRS on the three name letter-heading on 21 September 2001, before the grant of the licences, was not seen by Mr Contomichalos and its reference to 'our consortium' does not unambiguously convey partnership in the English law sense.[155] On the basis of the material put forward, I cannot find any holding out by CGTL of Energa or ATE as its partner in the English law sense since all the expressions used and the references upon which Dr Imamovic relies are typical loose use of terminology which does not convey any particular legal status at all. All that could be reasonably understood by these references was that the entities referred to had some arrangement under which they collaborated, but there is no intimation that one would be bound by a contract made with the other.[156] Of crucial importance however is Dr Imamovic's understanding of the position at the time. As set out above, I have no hesitation in concluding that he was well aware that he had a contract with Energa alone, however dissatisfied he became with that in December 2001 and January 2002. He knew that he did not have a contract with CGTL although, at that stage, he might have liked one instead of his existing private agreement with Energa. I am certain that, at the

relevant time, he had no knowledge of the English law of partnership and did not consider that CGTL and Energa were partners, in the English law sense, with one another or with ATE. Dr Imamovic would simply not have been thinking in these categories at all. Moreover although he fully appreciated that the ultimate decisions for electricity trading would be made by Mr Contomichalos and contacted him directly on many occasions, he knew that he had concluded the Contract with Energa in July 2001 and that he had only been subsequently introduced to Mr Contomichalos who throughout treated him as 'Energa's man'. At no time did Mr Contomichalos or CGTL hold out Energa as its agent to conclude a contract of any kind with Dr Imamovic nor at any time did Mr Contomichalos recognise that there was an obligation owed by CGTL to Dr Imamovic on the basis of the Contract. At no time did Mr Contomichalos think that Energa was CGTL's partner or agent in contracting with him.[157] The history thus shows and I find that Dr Imamovic at all times knew that he had a contract with Energa alone, which probably expired in January 2002, and that he never had a contractual relationship with CGTL, save in respect of reimbursement of his expenses for the trip to Bosnia in April 2002.CONCLUSIONS ON THE CENTRAL ISSUES:[158] So far as the Contract between Energa and Dr Imamovic is concerned, I have already found, as a matter of construction, that this was a contract which Energa made on its own behalf. I find as a fact that in making the Contract Energa did not purport to contract on behalf of anyone other than itself, as appears from the terms of the Contract and all the surrounding circumstances to which I have referred. I also find that Dr Imamovic fully understood that he had contracted with Energa alone, as is made clear from the contemporary correspondence in which, on a number of occasions there is direct reference to his client being Energa and his Contract being with Energa, as opposed to anyone else. I find that he was well aware at all times that he was engaged by Energa alone, which he understood to have a Co-operation Agreement of some kind with CGTL.[159] I find also that, contrary to Dr Imamovic's oral evidence, no draft written contract naming CGTL and Energa as parties to a contract with Dr Imamovic was ever sent to CGTL, whether in January 2002 or at any other time and no agreement was ever made by CGTL to extend the Contract which he had made with Energa.[160] I find that there never was a partnership, as a matter of English law, between CGTL and Energa and that they had specifically agreed that there would not be such a partnership between them by the express terms of the written agreements to which I have referred. Nothing that they said or did at any time during the currency of those Agreements or in the intervening period between 30 June 2001 (when the second Joint Co-operation Agreement expired) and 18 May 2004 when the last written Agreement was executed, gave rise to any partnership between them. The oral agreement reached in April 2002 prior to the Verbund and Sempra deals, and carried through until 18 May 2004 Agreement came into operation, itself operated in the same way as the second Joint Co-operation Agreement so as to exclude any question of partnership and gave rise to a sharing of profit on business introduced by Energa as a matter of contract alone. CGTL, Energa and ATE never carried on business in common with a view of profit, the fundamental requirement for a partnership in law. Energa always fulfilled functions of the kind referred to in the second Joint Co-operation Agreement and were to be paid by reference to a percentage of net profit on particular deals which they introduced.[161] Furthermore at no time did CGTL hold out Energa as being in partnership with it or allow Energa to hold itself out as its

partner. Whilst CGTL, in the person of Mr Contomichalos, saw the first page of licence applications which set out the three names of those applying for the licence and which referred to them as companies which were to co-operate as 'members of a consortium' and to form 'a consortium or a company', that could not constitute a holding out of Energa as CGTL's partner as a matter of English law. Nor equally could the advertisements or any other correspondence or documents which Dr Imamovic may have seen, whether emanating from Energa or others and which referred to Cinergy, ATE and Energa in the same title, whether in the context of a consortium or a joint venture and whatever other wording appeared upon which he now relies.[162] Since Dr Imamovic had no knowledge of the English law of partnership, not only was there no holding out but there could have been no reliance by Dr Imamovic in any event. The fact that he did not rely upon any of these matters is plain from the correspondence and documents in which he described himself specifically as engaged by Energa, which itself was acting on behalf of a consortium, as opposed to referring to him being engaged by the consortium itself.[163] Equally and for much the same reasons, there can be no question of agency on the part of Energa for CGTL. Energa never purported to act as CGTL's agent and was never understood by Dr Imamovic to do so. In consequence there could also be no ratification or adoption of any contract between Energa and Dr Imamovic by CGTL. Moreover, as I have found as a matter of fact that conversations of the kind alleged by Dr Imamovic did not take place in October 2001 and January 2002 and no other conduct occurred which could amount to an acceptance of liability under the Contract, there could in any event be no basis for any allegation of ratification, adoption or recognition of the Contract between Energa and Dr Imamovic as binding upon CGTL.[164] Equally Energa did not have ostensible authority to bind CGTL to its contract with Dr Imamovic and was not held out by CGTL as its agent to contract with him, for all the same reasons as I have found for concluding that it did not hold out Energa as its partner.[165] Dr Imamovic's claim against CGTL under the Contract of 16 July 2001 therefore fails. Dr Imamovic is not entitled to any share in any net profit made by CGTL in the period July 2001 to July 2002 and has no claim in respect of any period of time thereafter for the simple reason that he never had any contractual relationship with CGTL other than under the oral contract by which CGTL agreed to reimburse him for the expenses of the Bosnian trip in April 2002, on production of appropriate invoices and receipts. As he failed to supply these at any stage, despite every opportunity to do so, both before and after these proceedings were commenced, any claim for such expenses, if made, also fails.[166] In closing Dr Imamovic referred to the alternative claim which he has always made for the sum of £100,000 pa over the three years of the Contract. There never was a contract with anyone for this amount, even on Dr Imamovic's evidence. He said it was what he requested in negotiation but that is nothing to the point. Moreover it is clear that the basis upon which Dr Imamovic has always maintained an entitlement is the Contract. He hoped for remuneration under it, in accordance with its terms but as no business resulted, he never became entitled to payment, as is the unfortunate lot of those who contract on a basis such as this. There is no room in such circumstances for any remuneration outside the terms of the Contract.[167] It is strictly therefore unnecessary for me to explore any of the further matters in dispute between the parties, but because considerable time was spent upon the alleged failure of CGTL to fulfil its alleged duty of co-operation under Cl 1 of the Contract between Energa and Dr Imamovic, I set out my conclusions as to the

un-sustainability of Dr Imamovic's claim for such breach, whether made against CGTL or Energa.THE DUTY TO CO-OPERATE:[168] Under Cl 1 of the Contract between Dr Imamovic and Energa, the following appears as the obligation of the parties thereto:'They will co-operate jointly in order to be able to supply electric power generated in former Yugoslavia and will be delivered at the Greek borders (via Albania or Serbia - FYROM).'[169] The last part of Cl 11 refers not only to PPC's Bidding Inquiry for the purchase of power for three years but to the expectation that Dr Imamovic was:'to make specific proposals for the possibility to supply electric power from the former Yugoslavia to be delivered at the Greek borders according to the above mentioned Bidding Inquiry.'[170] It is clear from these two provisions and from the other terms in the Contract that the role undertaken by Dr Imamovic was to seek to obtain offers for the supply of electricity from former Yugoslavia (including all its constituent parts) at the Greek border where PPC or others would accept it. Dr Imamovic's fee was to be equal to 5% of the profits from the sale of electric power 'delivered at the Greek borders and sold to the Greek energy company PPC or other industrial consumer'. What he was meant to bring to the enterprise was his knowledge of former Yugoslavia (and Bosnia in particular) where he was expressed to have 'high level contacts'. To judge from this and the recitals to the second co-operation Agreement, political difficulties were expected in that geographical area.[171] The duty which rested upon Energa, as set out in Cl 1, was a duty of co-operation in obtaining such supplies, whilst the primary initiative rested upon Dr Imamovic who was, by the terms of the Contract, 'expected to make specific proposals'. Had there been a partnership between Energa and CGTL or had Energa acted as agents for CGTL so that CGTL was bound by the Contract, its duty could be no higher than that of Energa. It is noteworthy that in the second joint co-operation agreement between CGTL and Energa, it was made plain that Energa was the party with experience in sourcing and transiting electricity across the Balkans and that it was to use that experience to establish appropriate transit/swap agreements (for the JV company to approve) for the electricity to arrive at the Greek border. This was the area in which Dr Imamovic was to assist, which again lends force to the conclusion already reached that he was Energa's man.[172] For the purposes of argument, CGTL was prepared to accept that Energa (and itself if it was bound by the Contract), was obliged to show and maintain interest in viable offers of delivery at the Greek border of power sourced from the former Yugoslavia in order to co-operate with Dr Imamovic as promised. No further concession was made as to the scope of the duty to co-operate which, CGTL maintained, had very little content indeed.[173] Whilst a number of implied terms were pleaded by Dr Imamovic, no reliance was placed upon any of these and the essence of his case was that CGTL acted in bad faith in failing to take up or pursue any of the proposals or offers put forward by Dr Imamovic. The gravamen of his complaint was that CGTL did not co-operate because it never made a bid at all and it ought to have made a bid in response to offers he had obtained for delivery of electricity elsewhere than at the Greek border, before concerning itself with, and making arrangements for, the transmission of electricity from the supplier in question to that destination.[174] Despite pressing Dr Imamovic as to the content of the duty to co-operate, he declined to go further than to say that it required good faith on the party subject to that obligation. He accepted that it did not require CGTL to take a short or long position or to trade otherwise than on a 'back-to-back' basis. On occasions in his submissions he appeared to be saying that it was simply a

question of process - namely that CGTL should make some response to any suggestions or communications he made, whatever the substance of that response, but that would not help him on a claim for damages if CGTL could have replied negatively to every suggestion. On other occasions he complained that CGTL did not act 'commercially' but he eschewed reliance upon any test of 'reasonableness' as the criterion for judging what was involved in the duty. Whatever that duty involved, he said, on the facts here, CGTL did nothing in response to his suggestions, whereas they should have bid for the electricity which he was suggesting was available.[175] The authorities, such as they are, on this point show that a duty to co-operate has limited ambit. As is made plain by the decision of Devlin J in Mona Oil Equipment & Supply Co Ltd v Rhodesia Railways Ltd [1949] 2 All ER 1014, at 1018, [1949] 2 All ER 1014, 83 Ll L Rep 178 the law can enforce a duty of co-operation only to the extent that it is necessary to make the contract workable. For any higher degree of co-operation the parties have to rely on the desire that both of them usually have that the business should be done. He furthermore pointed out that, since the decision of the House of Lords in Luxor v Cooper [1941] AC 108, [1941] 1 All ER 33, it was clear that the court could not, in the type of unilateral contract under consideration, by means of an implied term of co-operation, prohibit arbitrary behaviour or acts done 'without just cause or excuse' because such matters were not capable of sufficiently precise definition. For the same reason, the court could not, by implication of such a duty, exact a higher degree of co-operation than that which could be defined by reference to the necessities of the contract. As the current authors of Chitty on Contracts (29th edition) say at para 13-011, the duty to co-operate and the degree of co-operation required is to be determined, not by what is reasonable, but by the obligations imposed - whether expressly or impliedly - upon each party by the agreement itself and by surrounding circumstances.[176] Whilst, in the context of decisions such as Mackay v Dick (1881) 6 App Cas 251, it can be said that:'where in a written contract it appears that both parties have agreed that something shall be done, which cannot effectively be done unless both concur in doing it, the construction of the contract is that each agrees to do all that is necessary to be done on his part for the carrying out of that thing, though there may be no express words to that effect.'it is necessary to examine the contract in question to see what it is that has to be done by either party. Once again, if the duty to co-operate is said to involve a negative obligation, namely that of not preventing the other party from performing his part of the contract, the obligations of the parties under the contract fall to be examined first without reference to that duty.[177] In the context of the Contract between Energa and Dr Imamovic, as Dr Imamovic accepted, the final decision as to whether or not a business transaction was viable had to rest with Dr Imamovic's counter party, which took the risk of loss. He was expected to make specific proposals for the supply of power to be delivered at the Greek border whilst the counter party's duty was to co-operate with him with a view to achieving the objective of supply there. Dr Imamovic did not contend that the counter party had to act reasonably in working with him to achieve that objective whether in making decisions or taking positive action to assist him. At the end of the day he simply said that CGTL, in the person of Mr Contomichalos (his alleged counter party) acted in bad faith because it never had any intention of purchasing electricity in former Yugoslavia, never intended to work with him to achieve that objective and made use of his services for altogether ulterior motives. It is in that context that his proposals fall to be examined since he maintains that the failure to

respond to them or take any of them up in any way illustrates and constitutes breach of the duty.[178] As I have decided that, whatever the duty involved, it was not here broken, even if it required Energa or CGTL to act reasonably in responding to Dr Imamovic's suggestions, I do not trouble to explore the exact ambit of the duty. It must however have some content.[179] CGTL's position in relation to proposals suggested by Dr Imamovic and offers actually procured was that no viable offer was ever obtained by him for delivery at the Greek border and that it had no interest whatsoever in seeking to arrange transmission across intervening states or republics between the supplier and the Greek border. CGTL had never undertaken any evaluation of the risks involved in this and was not prepared to take them. It was aware of the risks of transmission before any of the events in question and those concerns were heightened and reinforced by Dr Imamovic's own advice at the time in relation to the obstacles involved in such transmission. Put simply, CGTL was not prepared to undertake any risks of that kind and, without full investigation by its in-house legal department of the contractual position on the supply contract and the transmission contracts suggested and a full risk evaluation from the risk department of its parent company, Mr Contomichalos had no interest nor internal authority to conclude a transaction for supply anywhere save at the Greek border.[180] Contrary to evidence given by Dr Imamovic, I find that he at all times appreciated that it was necessary for electricity to be made available at the Greek border for CGTL to be interested in it, whether by direct supply there or supply elsewhere and guaranteed transmission. He also appreciated that unless he came forward with realistic proposals for that, there was no basis upon which CGTL would be interested in negotiating a purchase. Although in 2002 there were letters to EPBIH and a draft Contract which explored the question of delivery at the Bosnia/Serbia border, subject to arranging transmission with the system operators between that border and the Greek border (and I did not find Mr Contomichalos' evidence about such letters convincing), the fact remains that Dr Imamovic never procured any viable offers at prices reasonably satisfactory to CGTL, with transmission guaranteed by the supplier and/or the intervening system operators, which would result in delivery at the Greek border where the electricity was required. Where offers were obtained for delivery elsewhere, he had no sensible suggestions to make to overcome the perceived problems of transit to the Greek border.[181] I am clear that Mr Contomichalos constantly stressed in telephone calls with Dr Imamovic, as he said he did in evidence, that, in order for him to offer electricity to PPC or other Greek customers, the arrangements made had to ensure delivery at the Greek border. That was at all times the basic position and all the messages sent by Dr Imamovic show that this was what he was seeking to achieve. If there had been no perceived difficulties with transmission, then it may be that, as some of the 2002 documents indicate, CGTL would have been willing to accept a purchase contract with delivery elsewhere and contractually guaranteed transmission arrangements with another reputable operator to bring the power to Greece, but that point was never reached. Whatever Dr Imamovic and his experts now say the position was with regard to transmission and the ease with which it could take place, at the time Dr Imamovic himself emphasised the extraordinary difficulties involved, with which all interested in the transactions, including the generating companies, agreed.[182] I had no difficulty in accepting Mr Contomichalos' evidence about each and every one of the proposals which were suggested by Dr Imamovic, whether through Energa or directly, because of the issues of price, transit and risk

inherent in those proposals. I find that Mr Contomichalos acted in good faith throughout in the sense that he genuinely wished to obtain electricity at the Greek border for on sale to PPC or others and that he wanted Dr Imaamovic to introduce profitable deals and to assist him in that, to the mutual benefit of CGTL, Energa and Dr Imamovic himself.[183] I accept his evidence that the suggestions made by Dr Imamovic were considered and I find that he responded to them where it was appropriate to do so and where there was something which called for a response. That was done either directly on the telephone or in a meeting or through Energa.[184] I further find that CGTL, in the person of Mr Contomichalos, and Energa, acted entirely reasonably throughout in their approach to Dr Imamovic's proposals or suggestions. I find that it was entirely reasonable for CGTL, which would be taking the risk of profit or loss on any particular deal, to insist upon a guaranteed supply at the Greek border at a price which allowed a profit margin for onward sale to PPC, which in 2002 was the only real customer. (The evidence shows that, prior to 2004 the liberalisation of the Greek market had not really yet come into being. Mr Contomichalos knew the market in Greece and I accept his evidence that the first arms-length commercial deal for supply to any entity in Greece other than PPC was CGTL's own deal with Carrefour in the spring of 2004, whilst in 2003 it was unable to conclude a single supply transaction to any eligible customer at all.)[185] One of the most extraordinary features of the evidence was Dr Imamovic's constant denials of the views which he set out in correspondence to Energa and Mr Contomichalos in 2001 and 2002. In those messages he regularly referred to conspiracies between various entities which prevented the transmission of power from Bosnia across Serbia, Croatia or other intervening states or republics to Greece. He maintained that EFT, a trader operating out of London and run by a Mr Hamovic (a Bosnian) had a monopolistic hold over the transmission lines and had, to a greater or lesser extent, Bosnian generating companies such as EPBIH, EPRS, EPS and possibly EPHZHB in its power. The consequence was that they would only offer supply at the borders of their territory and would not guarantee supply at the Greek border or grant rights of transmission across their territories. It was further alleged that the owners of EFT were persons connected with one or more of these entities so that they had a vested interest in keeping CGTL out of the market and assisting EFT in maintaining its established relationship for the supply of electricity to PPC at the Greek border.[186] In message after message, Dr Imamovic referred to EFT's control over transmission and stressed the need to reach agreement with EFT in order to obtain power supplies. From time to time he suggested other options, involving swaps and tactical attempts to pursue contracts in order to pressurise EFT to make sensible offers to CGTL at the Greek border, under threat of losing its monopoly of supply to PPC from these territories, should CGTL manage to obtain offers and procure supply at the Greek border by one means or another. Under cross examination Dr Imamovic maintained that he had been 'deluded' when sending messages of this kind, had sent the messages which Mr Contomichalos wished to hear, repeating what he had been told by the latter, and that he had been hoodwinked by Mr Contomichalos who never intended to purchase power in Bosnia at all but always wanted Dr Imamovic to obtain offers from EFT at the Greek border. It appeared to me that Dr Imamovic wavered between saying that this was a tactic which was unknown to him at the time and saying that this was something which he realised at the time. On either basis, this was supposed to be an explanation for the messages which he himself sent, with wild allegations which he said he could

substantiate with documents, setting out the transit difficulties and the need to work with or compete against EFT. I have no hesitation in concluding that these were his own views, forcibly expressed at the time and supposedly capable of verification by perusal of documents he said he had in his possession.[187] I find as a fact, having heard the evidence of Mr Contomichalos that, had Dr Imamovic ever procured an offer for the supply of electricity at the Greek border at an acceptable price, he would have considered it and sought to conclude a contract for the purchase of electricity on such a proposal and a sale to PPC on the back of it. That was at all times what he wished to do. If he could make money on a purchase from a Bosnian supplier and a sale to PPC he would have been delighted to do so. Mr Contomichalos always bought and sold on a back-to-back basis and never took a speculative position, which, I find, was a reasonable trading strategy to adopt. What he was seeking to do in 2001/2002 was to supply PPC (and if possible by direct negotiation, rather than by entering a bidding process) and for that purpose he needed to have an in-principle commitment to supply CGTL with power available at the Greek border, wherever the power originated. The object was to negotiate, purchase and sell concurrently so that CGTL was never at risk, in either a short or a long position. In-principle agreements could be made both ways and then finalised. In practice, PPC was in a strong position, had an established relationship with EFT which was already supplying electricity to it at the Greek border and its constant message to Mr Contomichalos was that supplies had to be made at the Greek border at a price of $30 or less for 2002 and less for 2001.[188] In order to bring electricity to the border at a price which allowed some profit, a purchase with delivery elsewhere than at the border with Greece would require evaluation of the cost of transit as well as a guarantee of transmission. In practice, although there was one Bidding Inquiry from PPC which gave scope for quotations for delivery elsewhere, the evidence that I heard and the basis upon which everybody plainly worked at the time was that PPC had never purchased, and would never actually purchase, electricity delivered elsewhere. As I have already mentioned, Dr Imamovic could have been, and was, I find, in no doubt about this as his own documents make clear, including all those emanating from him right at the outset in 2001, the slides he prepared for a power-point presentation in October 2001, the 'abstract' of his price review for the Greek market for 2002 produced on 10 October 2001 and endless messages recording strategies to achieve this objective.[189] Despite his evidence that, in the early days, he made enquiries of system operators about the availability and cost of transmission, no detailed proposals were ever put forward by him in relation to the terms of transmission contracts with system operators or in relation to the costs of such transmission. In practice it appears that a figure of about $3 was taken as a rule of thumb for such transmission, a figure which Dr Imamovic, in his evidence, described as unduly cautious since $2.75 was an absolute maximum and the usual basis was to pay the transmission operator at a rate equivalent to 1.5% of the cost in that country of the quantity of energy being transmitted per 100km. In this context he referred to the Jugel tables which show the distance between generation sources and the destination, which would enable negotiation with the transmission company on the basis of a maximum of 5.5% loss of energy per 100km.[190] Although Mr Contomichalos strenuously maintained in evidence that he always told Dr Imamovic that the only acceptable purchase was one which provided for delivery at the Greek border, I find too, in accordance with his evidence that, if a viable purchase agreement for delivery elsewhere

than at the Greek border had been accompanied by workable proposals for transit with contractual guarantees from reliable transmission operators, he would have considered it and put it to his legal department and risk department for assessment, although this might have been a cumbersome and time consuming process. The key for him was to have guaranteed delivery at the border.[191] This judgment proceeds to set out each of the nine proposals upon which Dr Imamovic relied as 'offers' or 'unqualified offers', which should have been pursued by CGTL and which gave rise to the loss of the chance of obtaining a profit share as and when such proposals resulted in a concluded agreement.OFFER 1:[192] On 3 July 2001, prior to the signature of the Contract of 16 July 2001, EPBIH responded to a request from Dr Imamovic for the purchase of electricity by stating that it had available 50MWh/h baseload or 1.2 GWh/day which could be offered for delivery on the Bosnia/Croatia border in August/September. The only way of supplying Greece would be to effect a swap with EPRS so that the supply of electricity by EPBIH in the first synchronous zone to EPRS was swapped for a delivery by EPRS to Greece in the second synchronous zone. In order to achieve this EPRS' approval of transmission was required.[193] Dr Imamovic's response on 10 July indicated that he considered it to be a real possibility to include EPBIH in 'our supply chain' and that he would instruct ATE to use its influence to try and arrange the swap with EPRS which was the only way of achieving delivery. He also said that there was a need to 'consider capacity of transmission lines through other members in the supply chain and this is likely to take some time to be resolved.'[194] Dr Imamovic said, in evidence, that this 'proposal' could and should have been pursued by CGTL but he did not complain at the non-pursuit at the time because he had no contract and Energa/CGTL were therefore then under no obligation. There could have been a response after the Contract was executed but he never pressed Energa or CGTL to do so because they had indicated they were not interested.[195] The letter of 3 July 2001 from EPBIH contained no indication of price at all and Dr Imamovic said that he did not give any indication of potential price to Energa at the time because he was told that it was not interested. The claim now put forward by Dr Imamovic works on the basis that the price payable would have been $23.50MWh but there is no independent evidence that this would have been acceptable to EPBIH. Dr Imamovic said that this was surplus electricity available in August and September and would therefore fall to be sold cheaply. The only price that EPBIH however, ever put forward to Dr Imamovic was $27.28, an offer which was made some six weeks later in relation to a three year long term deal for delivery between October 2001 and October 2002. This would attract a cheap rate but one which Dr Imamovic understood was fixed by the Government. The case put forward by Dr Imamovic is that the price that PPC would have paid was $28.5 and it is clear that, whether $3 or $1.7 (which Dr Imamovic maintained in evidence was the proper transmission cost) is taken, there is no room for profit at the long term deal price. Taking the higher figure of $3 for transmission, which was the basis used by all those involved at the time, the purchase price would have to be less than 25.5 to make even a marginal profit.[196] More importantly however this was not a proposal for delivery at the Greek border and could not therefore be acceptable to CGTL which was not prepared to undertake the risks of transit without guaranteed supply at the Greek border as was made clear to Dr Imamovic on a regular basis, on the evidence of Mr Contomichalos, which I accept.[197] It is clear from what Dr Imamovic said in his message of 10 July that he considered that there was

no means of solving the issue of transit in time for deliveries in August and September. The letter concluded by expressing the wish to consider the possibility of a long term contract with EPBIH 'once a supply chain is established'. Despite lengthy explanations under cross examination as to why, in reality, there was no transmission problem, it is clear that Dr Imamovic, at the time, thought that the transmission problem was incapable of being overcome in the time available. Energa's stance in relation to the impossibility of concluding this deal was therefore one which Dr Imamovic then shared and there can be no question of any breach of any duty to co-operate.OFFER 2:[198] This was an offer from EFT on 30 July 2001 for power between 1 October and 31 December 2001 at the Greek border at a price of $31.5MWh. There was plainly no possibility of a purchase at this price and an on-sale to PPC without sustaining considerable loss. EFT already had access to PPC and would not sell power to CGTL at a price which allowed it to make a profit on a re-sale to PPC which it could itself make on a direct sale to PPC. Although Dr Imamovic, in cross examination, was not prepared expressly to accept that this price was an unreasonable one, it is clear that it was such and that EFT itself offered this price to PPC, as recorded in a document obtained by Dr Imamovic, probably from Energa.[199] The offer was only open for acceptance up until 20 August 2001 as compared with the closing date for the PPC tender of 3 September, which meant that, if accepted, CGTL would have had to take a long position without any assurance of winning the tender, unless it could negotiate directly with PPC and agree a price in the meantime.[200] It was suggested by Dr Imamovic that the price from EFT could have been negotiated downwards but since EFT was in a position to offer this price directly to PPC, it plainly would not sell to CGTL unless it could obtain a higher price from CGTL than from PPC. At many places in his evidence, Dr Imamovic himself made the point that there was no room for CGTL to 'squeeze between EFT and PPC, which is plainly right. This deal was therefore a non- starter, as all those involved recognised at the time.[201] Dr Imamovic maintained that, on Energa's instructions, he had forwarded a handwritten note to EFT on 9 August which made threats about exposure of its anti-competitive monopolistic position, but whether or not this was done and whether or not it poisoned EFT against Dr Imamovic, there was never any realistic possibility of this deal being done and a rejection of it was clearly justified. There could be no breach of any duty to co-operate in failing to pursue this, the only offer which Dr Imamovic ever actually obtained for delivery at the Greek border.OFFER 3:[202] On 14 August EPBIH responded to a letter from Dr Imamovic which is missing but which appears to have sought an offer for electricity for the three year period to which the PPC Bidding Inquiry of 11 July related (October 2001-October 2004). It appears that Dr Imamovic's letter followed on from his earlier letter of 10 July, to which I have referred in the context of Offer 1. The issue of transit is the subject of some discussion in this letter of 14 August from EPBIH. The letter expresses the understanding that the consortium in which CGTL is involved will 'solve issue of transit and enable for EPBIH more favourable prices compared to actual EPBIH export prices'. EPBIH expressed interest to conclude a contract and expressed their awareness of 'technical problems connected with realisation of such arrangement which could be solved by consortium'. It referred to the consortium's understanding of the 'technical limits related to proposed way of power delivery through EPRS and that consortium has ability to solve this problem in an acceptable manner and ensure guaranteed deliveries in case of inability of EPRS to deliver the same quantities of electricity as EPBIH will

deliver to [EPRS]'. The letter put forward a price of $27.28 for the first year with index linking for the second and third years.[203] As appears from a draft Memorandum of Understanding drafted by Dr Imamovic for signature by EPBIH, EFT and the proposed consortium, the idea was that EPBIH would supply electricity to EFT in Bosnia and EFT would then supply the consortium with energy in Greece by way of swap. Dr Imamovic was looking to obtain a lower price from EPBIH- a price lower than EFT could obtain so that EFT would agree to a swap which gave it some profit. EFT however, as appears from correspondence from Dr Imamovic at that time and in particular from a later chronology which he set out in a message of 4 October 2001, after consideration, was not interested in pursuing this. Dr Imamovic's understanding of the position, as revealed in that later message was that EPBIH had agreed to sell the power to EFT before making its offer to the proposed consortium. Neither EPBIH nor EFT would join in the Memorandum of Understanding which Dr Imamovic had suggested and thus there was no possible transit and no swap.[204] A fax from EPBIH dated 28 August complains about a letter from Energa of 23 August, which is again missing, but which must have required delivery at the Greek border since EPBIH complains that Dr Imamovic had, in the earlier missing letter of 13 August stated that he would personally solve the problems of transit so that EPBIH had only to offer power at the border of its territory. EPBIH expressed dismay at the change of tack in thereafter seeking delivery in Greece and refused to entertain any such a suggestion. It looked forward to a concrete offer including a price for delivery at the border of Bosnia and Serbia and a detailed description of the way in which the transit problems could be solved.[205] It is plain from the messages sent by EPBIH to Dr Imamovic and those emanating from Dr Imamovic himself, that there was no possibility of the three year deal, in the eyes of those involved, unless the transit problems could be solved and that Dr Imamovic had no possible solution for that, notwithstanding his evidence at the trial that there were really no problems involved in transmission at all. Once again there could be no failure on the part of Energa or CGTL to co-operate in relation to this offer when there was no basis upon which anyone could see that power could be obtained at the Greek border for on sale to PPC.OFFER 4:[206] This 'offer' is referred to in an email from Dr Imamovic to Mr Contomichalos dated 27 November 2001. By this time, Dr Imamovic was contacting Mr Contomichalos directly whilst also taking instructions from Energa.[207] In the email he refers to entities in Albania negotiating with Montmontaza and EFT to close a deal for 2002. What he had in mind, as appears somewhat obscurely from the email, was the purchase of power by CGTL in the first synchronous zone from Bosnia, for supply to Montmontaza in Croatia and the use of one of two generators operated by Montmontaza for synchronisation of generated power to the second synchronous zone for supply to Greece. The suggestion was that, having supplied power from Bosnia to Croatia, CGTL would purchase from Montmontaza at $28.7-$29 at the Greek border.[208] It appears that after discussion with Mr Contomichalos, Dr Imamovic, in a fax of 29 November, informed Mr Curkovic that, should Montmontaza's purchaser in Albania fail to sign the Contract for 2002, he was ready to consider purchasing power at the Greek border at a price of $28.7MWh. He had already discussed with Mr Curkovic the possibility of supply from Hungary to Montmontaza at E24.49 (plus a brokers fee) but Montmontaza stalled on this offer. What however is plain from Dr Imamovic's fax of 29 November is that Montmontaza had made considerable progress in its negotiations with its purchaser in Albania and that it was seen

as very likely to conclude a contract with that purchaser.[209] That is what, I find, on the balance of probabilities, happened. Although Mr Contomichalos had no recollection of talking to Mr Curkovic, it appears from a later email of complaint of 21 December from Dr Imamovic that there was a telephone conversation between Mr Contomichalos and Mr Curkovic and that the latter regarded the purchase price offered by Dr Imamovic as too cheap. It appears that Montmontaza did conclude the sale to the Albanian customers as Dr Imamovic was inclined to agree, having already been in negotiations with them before any suggestion of a potential deal with CGTL.[210] There was therefore never any offer from Montmontaza at all for CGTL to pursue and the price offered by Dr Imamovic was considered too low by Montmontaza and was always conditional both upon the Albanian sale falling through and the supply of other electricity, whether from Hungary or Bosnia or elsewhere.[211] On this evidence it cannot possibly be said that there was any failure on the part of Energa/CGTL to respond appropriately to any suggestions being made by Dr Imamovic. Efforts were made to negotiate, however unlikely it was that a concluded deal might eventuate.OFFER 5:[212] On 13 December 2001, Utility Acts AG sent a fax to Dr Imamovic, informing him of the possibility of supply of 1,282,950MWh of electricity to be delivered DAF Greek borders 1 January 31 December 2002, 'after having a confirmation from EPRS as the power generator'. The fax went on to ask for an unconditional confirmation from CGTL as an acceptance of this energy so that Utility Acts could take all appropriate steps to complete a deal with EPRS. What this message conveyed was the willingness of a trader, Utility Acts, to bid at the EPRS tender for which invitations had been sought on 5 December, to obtain purchase with delivery on the borders of the EPRS system and to arrange transmission to the Greek border provided that CGTL unconditionally accepted in advance any amount of power that Utility Acts succeeded in obtaining up to the total amount being sold, regardless of price.[213] In a fax of 18 December to Energa and CGTL, Dr Imamovic set out an elaborate scheme for the supply of electricity to EPRS in the first synchronous zone and for supply by EPRS to the second synchronous zone in a form of swap. Utility Acts could be involved in one or both limbs. Dr Imamovic maintained in the fax that any purchaser who wished to stand any chance of obtaining supplies in the second synchronous zone had to provide electricity in the first zone (and might even need to supply EPRS additionally from the second zone as well). The message talked of the risks of transit and the need for guarantees of supply from Utility Acts so that the supply to PPC was certain. The diagram envisaged selling energy which would be transmitted across Croatia to EPRS, at a price of $30.5 or $31.6. The transit cost for electricity from EPRS in the second zone to Greece was put at $3MWh but no suggestion was made about the price to be offered to purchase and the message conveyed Dr Imamovic's intention not to argue about the price but to leave it to Utility Acts to give a price at the Greek border.[214] There is an air of unreality about all of this. There never was any discussion of price and Utility Acts never responded to Dr Imamovic's request for a price or for suggestions about profit sharing. It appears that Utility Acts was only considering a direct purchase at the EPRS tender and an on-sale to CGTL. As Mr Contomichalos made plain in his evidence, there was no possibility of CGTL locking itself into a purchase arrangement with Utility Acts at an undefined price since it only ever operated on the basis of back-to-back deals which would necessitate in-principle agreements with both PPC and Utility Acts upon price in order to ensure a margin. In reality there was no clear offer being made here because no

price was ever specified by Utility Acts, even if it was capable of resolving the transit issues.[215] In these circumstances there is once again no possibility of any suggestion of a failure to co-operate on the part of Energa or CGTL, particularly when regard is had to the matters set out below in relation to Offer 6.OFFER 6:[216] This proposal overlaps with the Utility Acts suggestion since it related to the self same energy, namely that on offer from EPRS with power offered for outright purchase between January and December 2002 and power offered on the basis of the supply of an equivalent quantity of power in the year from 1 April 2002. So far as the EPRS sales were concerned, delivery would be on the borders of the EPRS system.[217] In forwarding this tender to Mr Contomichalos, Dr Imamovic described it as a sham since EFT was already offering the power involved in it to PPC, because it had already signed a contract with EFT before the tender was published. Dr Imamovic described the tender as being given with such conditions that nobody else could actually purchase the power except EFT, no doubt referring to the question of transmission, over which he considered that EFT had a monopoly. The tender was thus a mere pretence 'designed to legalise EFT's illegal position and monopoly'. He concluded that EFT and PPC were working together to create an illegal monopoly in the market for EFT with some unknown benefit for PPC, which was prepared to accept power from EFT prior to the tender. In practice, it appears that EFT was, unlike CGTL, prepared to take speculative risks and to sell or purchase without a back-to-back contract, considering that it had enough contacts with others in the market and enough access to other energy to be able to buy or sell as required.[218] Whilst suggesting that CGTL should take part in the tender and saying that he would be very surprised if any purchase resulted, Dr Imamovic was also suggesting purchase from EFT at about $30 and envisaging an actual price in the range of $30-$31 for 2002 on a sale to PPC. This of course failed to take into account the transit problem and EFT's known unwillingness to sell to CGTL when it could sell to PPC at the same price. Other than a suggested challenge to the supposedly illegal monopolistic activities of EFT, failing which he considered that they were 'just wasting our time to secure an offer at Greek border', Dr Imamovic had no other suggestions to make in respect of this EPRS tender (apart from the Utility Acts proposal, already referred to above).[219] Six days before the closure of the offer however, Dr Imamovic faxed EPBIH seeking the supply of energy on the border of Serbia and Bosnia in order to supply EPRS with electricity for the exchange set out in the second part of the tender (without which, he had told Energa, there was no point in participating in it). He sought reserve and secondary regulation but only obtained a response from EPBIH on 11 January, long after the bids had closed, in which EPBIH made it plain that it could not offer the appropriate reserves and secondary regulation services for coverage of the EPRS consumer island in question.[220] In practice the deal could not be made to work because of transmission difficulties and because of the prices, which did not add up. There is, again, no room for any failure to co-operate in relation to these tentative proposals.OFFER 7:[221] In January 2002, following some extraordinary emails from Dr Imamovic in the preceding months, to some of which I have already referred earlier in this judgment, the latter persuaded Mr Contomichalos to sign various letters addressed to the President of Bosnia, to EPBIH, to the US Embassy and to EPRS in order to assist him on a trip to Bosnia to obtain electricity offers. At this stage Dr Imamovic was maintaining that EPBIH could control transmission by use of the switches in its power but that, because of its close relationship with EFT, it did not want to do so.

He complained that a realistic price at the Greek border should be $35 whereas the current level was $32. Mr Contomichalos' evidence was that it was about $30 in fact.[222] Dr Imamovic was now suggesting that it was better not to deal with EFT but to enter into a 'partnership' with a company such as EPBIH which could control transmission if it wished to exert its power. By this he envisaged some sizeable investment by CGTL in EPBIH or Bosnia. He said that EPBIH tended to sell its power directly to final customers, not on open public tenders and that a partnership with EPBIH would give CGTL complete control over EFT, by controlling supply to EPRS and this would give rise to control of the Greek market. It was in this context that Mr Contomichalos agreed to sign letters, some of which he re-drafted in part and which referred to CGTL's interest in principle in creating a strategic partnership with EPBIH for the purpose of supply from Bosnia to Greece. It was in that connection also that he referred to a visit 'with our partners Energa' with a view to discussion on such a long term joint venture. In writing to EPBIH Mr Contomichalos altered the draft prepared by Dr Imamovic. He stated that in principle CGTL was ready to purchase power from EPBIH and proposed a price of $30MWh delivered at the Greek frontier, subject to contract, whilst being willing to assist in resolving the issue of transit from Bosnia to Greece. The transaction in mind was a purchase with a view to supplying PPC under or in relation to a Bidding Inquiry dated 24 January covering March to May 2002.[223] Following a meeting that Dr Imamovic had with EPBIH on 28 January, the latter offered electricity for April and May only at the border of its territory (not the Greek border) at a price of $26.30 and a 50/50 distribution of profits if a final price at the Greek border exceeded $29. The offer was open for acceptance only until 11 February. Dr Imamovic's response to this was to say to Mr Contomichalos that the offer was not what he expected since it did not cover the period of the PPC tender and its validity was very short. He considered that EPBIH was playing a game with them since he had asked for an offer for the whole of 2002 and it should have begun in March in any event. He wanted Mr Contomichalos and Energa to get PPC to organise the transite sai via EFT.[224] Thereafter it seems that a letter was sent by way of response to EPBIH, at the instigation of Mr Contomichalos or Energa, seeking delivery at the Greek border at $29 with a 50/50 profit share arrangement and the suggestion that after further discussion with PPC a proposal would be made directly, after the end of the tender, in relation to delivery at the Bosnian/Serbian border. In both cases however an extension of time beyond 28 February was necessary.[225] The sequence of correspondence then reveals discussions between Dr Imamovic and Mr Contomichalos in relation to a draft contract with EPBIH which did provide for delivery at the Bosnian/Serbian border but was expressly made subject to the obtaining of necessary and satisfactory transmission rights between Bosnia and Greece, particularly through Serbia. Mr Contomichalos signed another letter drafted by Dr Imamovic, addressed to EPBIH, suggesting the preparation and conclusion of a final contract, subject to obtaining transit and stating that transit through EPRS to Greece was being actively explored. At the same time a letter was sent to EPRS seeking transmission rights.[226] Dr Imamovic then added a host of other provisions into a draft contract 'to secure the Contract validity in case EPRS deny us transit'. Article 10.4 of the draft contained a host of detailed provisions as to what was to occur if CGTL was unable to secure satisfactory transit agreements with operators of the systems between Bosnia and Greece, which appear ultimately, if all else fails, to put the burden on EPBIH to make

transmission arrangements, failing which, CGTL could cancel the contract. At the same time a letter was sent to EPBIH, suggesting the way in which it could organise its transmission of electricity to achieve the desired result with EPRS.[227] After further exchanges, unsurprisingly, EPBIH responded on 27 February stating that EPBIH's delivery point was at the borders of its system and it understood that CGTL was not capable of taking electricity there. The proposals in the draft contract were unacceptable, including art 10. EPBIH was only interested in delivering in zone one. It considered its offer of $26.30 at the border of Bosnia with a 50/50 split of profits if the final price in Greece exceeded $29 to be rejected.[228] It appears that Energa and Mr Contomichalos went out of their way to help Dr Imamovic to obtain an offer from EPBIH, even signing letters which suggested that there was some possibility of taking delivery at the Bosnian/Serbian border provided that transmission could be achieved to Greece, notwithstanding Mr Contomichalos' clear intention not to accept delivery, save at the Greek border. None of this resulted in anything and all those involved treated the transmission difficulties as real and hard to surmount. Although the draft contract did not contain a price, this was not the reason why negotiations failed. Dr Imamovic himself recommended that no price should be specified until there was agreement on the terms and conditions of the draft contract and the issue, as always, was the question of transmission to Greece. As appears from a letter drafted by Dr Imamovic for Mr Contomichalos to sign, EPRS informed him that its transmission capacity to zone two was fully contracted so that there was no basis upon which the offer to EPBIH could be pursued.[229] Again there is no question of any failure to co-operate in obtaining an offer or pursuing it.OFFER 9:[230] There was a final attempt to pursue EPBIH when Mr Contomichalos sent Mr O'Dwyer to Bosnia to meet with Dr Imamovic and Mr Kreso of EPBIH. Efforts were made to obtain the help of the Commercial Section of the US Embassy in Sarajevo in order to facilitate a meeting with Mr Kreso. A meeting took place although Mr Kreso did not attend for reasons which were unexplained at the time but which appear to have been based upon his dislike of Dr Imamovic. It is plain that personnel at IPBIH developed hostility towards Dr Imamovic and would have preferred to negotiate directly with CGTL without Dr Imamovic present.[231] In consequence of the meeting which did take place with others, on 25 April 2002, EPBIH offered electricity for the month of May 2002 with delivery at the border of EPBIH's power system, stating that it expected 'your best price'. The offer was only open for acceptance for four days. EPBIH's note of the meeting which had taken place on 12 April records Dr Imamovic making an offer for the period June-December 2002 at a price of $26.30 for delivery at the Bosnian/Serbian border with EPBIH representatives stating that they had no influence upon EPRS so that, effectively, CGTL would have to sort out any swap with EPRS. Dr Imamovic maintained that his offer was made 'subject to the conclusion of the contract with PPC and the arrangement of transmission' but that is not what is reflected by the note of the meeting nor by the agenda prepared by Dr Imamovic for that meeting. The agenda referred to seeking a guarantee of supply from EPBIH and asking EPBIH to attend a meeting with the transmission authorities to resolve the issue of transit. A letter was sent to EPRS by Mr O'Dwyer, at Dr Imamovic's instigation, seeking transit, following receipt of EPBIH's 'offer' but no response was received to this letter from EPRS.[232] Once again it is clear that transit was the issue which stood in the way of any deal being done with EPBIH and that Dr Imamovic could not resolve this question nor

make any suggestions as to how to resolve it, since EPBIH would not take responsibility for delivery of power beyond its own system. CGTL had again made considerable efforts to assist Dr Imamovic to obtain workable offers, despite its doubt as to any likely result.[233] It also appears that this offer in respect of deliveries in May overlaps with Offer seven which related to April and May, although Dr Imamovic maintained in evidence that it was not the same energy on offer.[234] In his claim, Dr Imamovic suggested that the energy could have been purchased at $25.5 but this is again unrealistic given the price already offered by him at the April meeting of $26.3, albeit for a longer period which was not restricted to the summer months.[235] Dr Imamovic could not therefore sustain an allegation of breach in relation to this proposal either.OFFER 8:[236] When in Bosnia with Mr O'Dwyer, Dr Imamovic also came up with a scheme involving EPHZHB. In a note which set out this opportunity, Dr Imamovic stated that EPHZHB was looking for a partner who would be interested to hire a power generation plant in return for a percentage of the total profit made from its use. What was envisaged was that off-peak power could be purchased locally from EPBIH at a cheap rate and used to pump water which would then be used in a hydro-electric scheme to generate electricity at peak times for sale into the second synchronous zone.[237] The note set out Dr Imamovic's estimate of costs in relation to this scheme which included the prices of off-peak power and the price of peak power which he assessed at $40MWh in Greece.[238] No offer was actually ever made by EPHZHB and the question of transit remained unresolved. This was not in truth a trading deal at all and Mr Contomichalos, who looked at the figures when they were produced to him on 19 April, concluded that it was a desperate and unrealistic scheme.[239] I cannot conclude on this basis that there was any proposal for CGTL to pursue or any possibility of a breach of a duty to co-operate.CONCLUSIONS:[240] I am left in no doubt that Mr Contomichalos was seeking to make profits in deals involving electricity trading in Greece. In 2002 he did make small profits in purchasing electricity from Bulgaria from Verbund and Sempra for onward sale to PPC. Dr Imamovic had no involvement in procuring either of those contracts since they emanated from a different country and, although he claimed a profit share, I have already found that he was not entitled to it. He had no entitlement in respect of any deal other than those which he obtained from suppliers in former Yugoslavia.[241] I find that Mr Contomichalos throughout acted reasonably and in good faith and genuinely sought to assist Dr Imamovic for whom he expressed a liking because he was energetic, regardless of the extraordinary outpourings he produced in messages to CGTL and Energa.[242] The true reasons which underlie the failure to obtain offers of electricity at the Greek border are not hard to find: -i) Above all there was the perceived problem of transmission which was recognised by all concerned at the time to be almost insurmountable, given EFT's purchase of all the transmission capacity on the relevant lines.ii) EPBIH moved from a lack of confidence in Dr Imamovic as shown in a fax to Energa on 28 August 2001, to a positive dislike of him, probably because of his wild allegations.iii) EFT clearly found him objectionable because of the rumours that he spread about EFT personnel in the context of corruption and monopoly.iv) Dr Imamovic had no experience of power trading and, despite his knowledge of power generation was ill equipped to obtain the offers he sought.v) Dr Imamovic was unrealistic when considering the possibilities and became obsessional in the conspiracy theories he developed and by which he sought to explain the reluctance of other to conclude

transactions. Whatever corruption there may be in Bosnia, it appears that each of the entities in question was merely pursuing its own commercial interests, including EFT, which Dr Imamovic failed to understand.vi) Dr Imamovic does not seem to have appreciated the limits on the prices which PPC would pay and the limited scope which this presented for purchases for Bosnia for back-to-back deals.[243] Dr Imamovic described himself as being deluded when sending many of the messages which he did. That may well be an accurate description but he was at no time deceived by Mr Contomichalos into believing that CGTL was interested in doing business in Bosnia when it was not. CGTL was always interested provided always that the power could be brought to the Greek border without risk to CGTL at a price which enabled CGTL to make a profit. This was something which Dr Imamovic was never able to facilitate and there were no proposals which Energa or CGTL could have pursued further to achieve such a deal.[244] In these circumstances, I conclude that there no breach of any duty to co-operate on the part of Energa or CGTL in relation to any of the suggestions Dr Imamovic made and on which he relied. I also find that, not having produced anything which could lead to a deal in the nine months following July 2001, having upset a number of personnel involved in the market in Bosnia, and in particular EFT, being able only to obtain offers for delivery outside Greece at prices unlikely to give rise to profits on sales to PPC or Greek customers and having no realistic solutions to the problem of transmission from Bosnia or former Yugoslavia to Greece, Dr Imamovic would never have obtained a realistic offer which was capable of being pursued, even if he had continued with his efforts after April 2002.[245] For all these reasons Dr Imamovic's claim fails.Judgment accordingly.

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