Neutral Citation Number: [2025] EWHC 94 (Comm)

Case Nos: CL-2024-000477, 000478, 000479 and 000480

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 22/01/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

(1) GOOGLE LLC **(2) GOOGLE IRELAND LIMITED**	**Claimants**
- and -	
(1) NAO TSARGRAD MEDIA **(2) NO FOND PRAVOSLAVNOGO TELEVIDENIYA** **(3) ANO TV-NOVOSTI**	**Defendants**

- -
- -

Stephen Houseman KC, Kabir Bhalla and Lorraine Aboagye (instructed by **King & Spalding International LLC**) for the **Claimants**
Yash Kulkarni KC (instructed by **Candey Limited**) for the **Defendants**

Hearing dates: 26 and 27 November 2024
Draft judgment circulated to parties: 7 January 2025

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Approved Judgment

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The Claimants, Google LLC ("***Google***") and Google Ireland Limited ("***Google Ireland***") seek final relief against the Defendants, to whom I shall respectively refer as "***Tsargrad***", "***NFPT***" and "***TV-Novosti***".

2. The main remedy sought is anti-enforcement injunctive ("***AEI***") relief, with ancillary anti-anti-suit injunctive ("***AASI***") relief, in order to prevent the recognition or enforcement of a series of judgments of the Russian courts ("***Russian Judgments***") in any jurisdiction outside Russia. The Russian proceedings are alleged to have been commenced and pursued in breach of London arbitration or exclusive English jurisdiction agreements. The judgments have led to the seizure in Russia of assets worth more than £50 million belonging to a subsidiary ("***Google Russia***"), and the Defendants have also embarked on a series of attempts to enforce the Russian Judgments in various other jurisdictions around the world.

3. The Defendants' position, in outline, is that:

   i) subject to one exception, the Russian Proceedings were not brought in breach of an exclusive jurisdiction clause or arbitration agreement;

   ii) the Claimants have submitted to the jurisdiction of the Russian courts; and

iii) relief should in any event be refused on the grounds of delay.

4. For the reasons set out below, I have reached the conclusion that the Claimants' arguments are to be preferred and that final anti-enforcement injunctive relief, and any appropriate supporting relief, should be granted.

(B) MAIN FACTS

(1) Contractual Matrix

5. The creation and use of a Google account and YouTube channel are subject to, respectively, the Google Terms of Service, as amended, and the YouTube Terms of Service, as amended. Use of and entitlement to such services is subject to contractual safeguards in the discretion of Google, including an ability (in the YouTube Terms of Service) to suspend or terminate a Google account (and related services) in the event that Google was required to do so to comply with law or a court order.

6. Tsargrad and TV-Novosti entered into separate agreements with Google Ireland for monetisation services, namely: (a) an Order Form, incorporating the Platform Terms, which covered revenue sharing from advertising on Tsargrad's YouTube channel; and (b) a Content Agreement setting out the terms by which Google Ireland would store, index and host content and make such content or portions of it available to end users of the relevant services provided to TV-Novosti.

7. The YouTube EJC provides:

> "The Agreement and your relationship with YouTube under the Agreement are governed by English law. To resolve disputes, the parties may apply to the courts of England and Wales.
>
> If, under any mandatory law of your country, the dispute cannot be resolved in a court in England or Wales and in accordance with the norms of English law, the case may be referred for consideration to a local court and the issue may be resolved as guided by local legislation."

8. The Platform EJC at clause 14.6 of the Platform Terms provides:

> "The Agreement is governed by English law and the parties submit to the exclusive jurisdiction of the English courts in relation to any dispute (contractual or non-contractual) concerning the Agreement save that either party may apply to any court for an injunction or other relief to protect its intellectual property rights."

9. Clause 14.11 of the Content Agreement provides:

> "This Agreement shall be governed by and construed in accordance with English law. Without prejudice to the right of either party to apply to any court of competent jurisdiction for emergency, interim or injunctive relief, any dispute or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under

> the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause… The seat, or legal place, of arbitration shall be London, England…"

(2) Russian Proceedings

10. The Defendants commenced proceedings before the Arbitrazh Court in Moscow and obtained the Russian Judgments, as summarised below.

(a) Tsargrad

11. Tsargrad created a Google account and YouTube channel in August 2014. It is indirectly majority owned by Konstantin Malofeyev, a Russian oligarch.

12. Mr Malofeyev became subject to sanctions in 2014. On 30 July 2014 the EU added him to the list of persons subject to EU sanctions under Decision 2014/508/CFSP for acting in support of the destabilisation of Eastern Ukraine. On 19 December 2014, he was designated by the US Treasury Department's Office of Foreign Assets Control ("***OFAC***") for, among other things, being complicit in, or for having engaged in, actions or policies that threaten the peace, security, stability, sovereignty or territorial integrity of Ukraine.

13. On 27 July 2020, Google ceased providing services to Tsargrad and terminated its Google accounts and YouTube channel. Google's evidence is that that step was taken *"in compliance with US sanctions law and Google's policies after identifying [Tsargrad] as an entity that was indirectly majority-owned by Malofeyev, who was subject to sanctions"* as noted above. Google Ireland likewise stopped providing advertising services to Tsargrad.

14. By a complaint dated 27 August 2020, Tsargrad filed a suit before the Arbitrazh Court against Google, Google Ireland and Google Russia alleging that Google had unlawfully refused to perform the Order Form / Platform Terms. By those proceedings, Tsargrad sought orders (i) invalidating the refusal to perform the Order Form; (ii) requiring restoration of access and (iii) imposing an astreinte penalty absent compliance. An astreinte is a court-imposed penalty for non-compliance with a judicial order, particularly an order for specific performance of obligations.

15. Claiming to have suffered *"tremendous negative consequences due to the Defendants' dishonest actions"*, Tsargrad asked the court to set a progressive penalty jointly and severally against all the Defendants of 100,000 rubles for each day of failure to comply with the court's order (starting from the sixth day of non-compliance), with the amount doubling each week. The evidence of the Claimants' expert, Professor Yarik Kryvoi, is that no Russian court had at the time granted an astreinte of anything approaching that amount. In his report he says:

> "101 The largest astreintes I identified were awarded to secure an obligation to demolish structures built in violation of applicable construction rules and standards. One example included a 1,000,000 rubles (approximately £8,800) one-off payment and 180,000 rubles (approximately £1,600) for each additional month of non-compliance.

A further example was a 200,000 rubles (approximately £1,750) one-off payment and 100,000 rubles (approximately £880) for each additional month. Finally, one court awarded 100,000 rubles (approximately £880) for each month of non-compliance. In other contexts, the courts have again imposed moderate penalties in connection with orders for specific performance. For example, the courts awarded an astreinte to secure an obligation to (i) return rented property upon the termination of the rental period in the amount of 16,000 rubles (approximately £140) per day; and (ii) refute defamatory statements, in amounts ranging from 10,000 rubles (approximately £90) daily to a one-off payment of 150,000 rubles (approximately £1,300). According to one study, the most typical amount of an astreinte awarded in cases unrelated to foreign sanctions is 1,000 rubles (approximately £9) accruable on a daily basis.

102 In cases brought under Law No. 171-FZ, however, the amounts of the astreintes imposed by the Russian Courts have been on an entirely different scale. There have been two different categories of cases. In the first, the amounts have been much higher and have grown at a higher rate, often without any limit or cap. Examples include astreintes in the following amounts: (i) 200,000 rubles (approximately £1,760) per day; (ii) 10,071,716.70 rubles (approximately £88,600) per day; and (iii) 36,714,132 rubles (approximately £323,000) per day. The second category of astreintes on a much higher scale includes the cases filed by the Defendants in these proceedings against Google. In the case initiated by Tsargrad against Google and its affiliates, the court imposed a then-unprecedented astreinte in the amount of 100,000 rubles (approximately £880) for each day of non-execution, starting from the sixth day from the date of entry into force of the judicial act, and until its actual execution, subject to a weekly doubling of the amount of the daily accrued astreinte. The Court of Appeal introduced a cap of 1,000,000,000 rubles (approximately £8,800,000) with respect to the first nine months of accrual, after which the astreinte has accrued on an uncapped basis.

103 Available information suggests that the amount of the astreinte imposed in the Tsargrad case was unprecedented at the time and has since been followed in other cases involving Russian Sanctioned Parties, including in the cases initiated by TV-Novosti and NFPT against the Google Entities. I have not identified any case with an astreinte that is similar in size outside the context of a Russian Sanctioned Party suing a foreign company under Law No. 171-FZ.

104 To sum up, the astreinte may be imposed in various forms, as a one-off payment or as a periodic payment accruable on a fixed or progressive scale. There is a significant difference in the amounts of court penalties imposed in cases brought under Law No. 171-FZ, such as the unprecedented case against Google and its affiliates, in which courts imposed, for the first time, court penalties of 100,000 rubles (approximately £880) per day subject to a doubling on a weekly basis and without a cap."

The decisions cited in quoted § 101 above ranged from June 2016 to March 2020. The decisions cited at points (i), (ii) and (iii) in § 102 were dated 27 July 2023, 11 May 2023 and 5 April 2023 respectively.

16. Google Russia was included as a defendant even though, on Google's case, it was a distinct legal entity with no contractual relationship with Tsargrad, did not provide any service to Tsargrad or operate any Tsargrad account, and (on the Claimants' evidence) did not have any ability to restore any service or account for the benefit of Tsargrad.

17. On 24 November 2020, Google and Google Ireland filed motions seeking dismissal of Tsargrad's complaint based on lack of jurisdiction of the Arbitrazh Court, including because of the EJCs in the relevant contracts.

18. By a decision dated 18 December 2020, the Arbitrazh Court found that it had exclusive jurisdiction over the dispute pursuant to Article 248.1 of the Arbitrazh Procedural Code ("***APC***"), holding (i.e. deeming or inferring) that Tsargrad faced obstacles to justice in foreign courts such as England. APC Article 248.1 was introduced in June 2020 by Law No. 171-FZ and provides as follows (in translation):

> "**The exclusive jurisdiction of arbitrazh courts of the Russian Federation over disputes with the participation of persons against whom restrictive measures have been adopted**
>
> 1. Unless otherwise provided by an international treaty of the Russian Federation or agreement of the parties, according to which the consideration of disputes with their participation is within the jurisdiction of foreign courts or international commercial arbitration located outside the territory of the Russian Federation, arbitrazh courts of the Russian Federation possess exclusive jurisdiction over cases:
>
> 1) in disputes with the participation of persons against whom restrictive measures are applied by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union;
>
> 2) in disputes of one Russian or foreign person with another Russian or foreign person, if the grounds for such disputes are restrictive measures imposed by a foreign state, state association and (or) union, and (or) a state (interstate) institution of a foreign state or state association and (or) union against citizens of the Russian Federation and Russian legal entities.
>
> 2. For the purposes of this chapter, persons against whom restrictive measures have been imposed by a foreign state, state association and (or) union, and (or) a state (interstate) institution of a foreign state or state association and (or) union are:
>
> 1) citizens of the Russian Federation and Russian legal entities against whom restrictive measures are applied by a foreign state, state

association and (or) union, and (or) a state (interstate) institution of a foreign state or state association and (or) union;

2) […]

3. The persons indicated in Part 2 of this article have the right:

1) to apply for the resolution of a dispute to an arbitrazh court of a constituent entity of the Russian Federation at the person's location or place of residence, provided that there is no pending dispute between the same persons on the same subject and on the same grounds in the court proceedings of a foreign court or international commercial arbitration located outside the territory of the Russian Federation;

2) to submit under the procedure stipulated by Article 248.2 of this Code an application for an injunction against the initiation or continuation of a proceeding in a foreign court or international commercial arbitration located outside the territory of the Russian Federation.

4. The provisions of this article also apply if the agreement of the parties, according to which the consideration of disputes with their participation is assigned to the jurisdiction of a foreign court or international commercial arbitration located outside the territory of the Russian Federation, is unenforceable due to application in relation to one of the persons participating in the dispute of restrictive measures by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union, creating obstacles for such a person in access to justice.

5. The provisions of this article shall not impede the recognition and enforcement of a decision of a foreign court or international commercial arbitration adopted pursuant to the claim of a person indicated in Part 2 of this article, or if that person has not objected to the consideration of the dispute to which that person was a party by a foreign court or international commercial arbitration located outside the territory of the Russian Federation, including if that party did not apply for an injunction prohibiting the initiation or continuation of the proceeding in a foreign court or international commercial arbitration located outside the territory of the Russian Federation."

19. On 31 December 2020, the UK Treasury's Office of Financial Sanctions Implementation ("***OFSI***") added Mr Malofeyev to the list of persons subject to an asset freeze under the Russia (Sanctions) (EU Exit) Regulations 2019.

20. The Claimants attempted to appeal the jurisdiction decision itself, but on 3 February 2021 the appeal court held that no appeal lay. (That decision was later upheld by the Court of Cassation on 22 March 2021.) Professor Kryvoi provides this explanation for the position in Russia procedure:

> "If the trial court dismisses an application to leave the claim without consideration, the proceedings continue, and the court will proceed to decide the case on the merits. The trial court's refusal to leave the claim without consideration can be appealed only as part of an appeal against the judgment on the merits. It cannot be appealed separately [citing APC Articles 149(2) and 188(1)(-(2)). As a matter of Russian law, participation in Russian proceedings subject to objections to jurisdiction raised in the form of an application to leave the claim without consideration preserves the party's jurisdictional objections.
>
> In other words, the participation of a foreign person in proceedings before a Russian state arbitrazh court may be considered as an acceptance of the jurisdiction of a Russian Court only if that person does not object to the existence of jurisdiction during such proceedings in the manner required by law."

21. The Claimants in their defence then noted their objections to the jurisdiction, and invoked the applicable EJCs.

22. On 20 April 2021, the Arbitrazh Court issued its substantive judgment. It considered and rejected the Claimants' jurisdiction objections. As to the merits, it ordered inter alia reinstatement of Tsargrad's Google account including access to its YouTube channel. An astreinte was imposed for each day of non-compliance commencing at 100,000 rubles per day for each day of non-compliance, starting from the sixth day from the effective date of the judgment and subject to a weekly doubling of the amount of the daily penalty. In other words, the court ordered an astreinte of the unprecedented kind Tsargrad had requested.

23. On 9 December 2021 the Supreme Court of Russia gave judgment in the *Uraltransmash* case (Ruling of the Judicial Panel for Economic Disputes of the Supreme Court of Russia dated 9 December 2021 in case No. A60-36897/2020). Professor Kryvoi explains that the Russian trial court found that the Russian company could fully participate in arbitration proceedings without any obstacles to its access to justice, the presence of which is a condition for the application of Article 248.1 of the APC under its plain reading, and it refused to issue the injunction. The Appeals Court agreed with the lower court and held that the contrary interpretation argued for by the Russian company would undermine the predictability of international commercial transactions. The Supreme Court, however, ruled that the application of sanctions to a Russian party *per se* creates obstacles to its access to justice and renders forum selection clauses inoperable, upon the application of the sanctioned party to a Russian Arbitrazh Court:

> "… according to Part 4 of this article [248.1 of the APC], the exclusive competence of arbitrazh courts in the Russian Federation also includes cases if such an agreement is unenforceable due to the application of restrictive measures in relation to one of the persons participating in the dispute by a foreign public legal entity creating such barriers to access to justice. Within the meaning of this norm, the very use of restrictive measures already creates obstacles for the Russian side in access to justice, due to which, in order to transfer the dispute to the jurisdiction

> of Russian arbitrazh courts, its unilateral expression of will, expressed in a procedural form, is sufficient."

24. The Tsargrad Judgment was upheld on appeal on 20 December 2021, save for imposition of a limit of one billion rubles (approximately £6.4 million) on the astreinte for the first nine months, after which it accrues without limitation. The Claimants on appeal maintained their jurisdiction objections, and the appeal decision considered and rejected them, applying Article 248.1.

25. Further appeals to the Court of Cassation and the Supreme Court of the Russian Federation have all been unsuccessful. At both stages, the Claimants maintained their jurisdiction objections (in substance, not merely in form) and the appellate courts considered and rejected them.

26. On 13 September 2023, pursuant to EU sanctions regulations which prohibited Google from broadcasting Tsargrad's content and to ensure compliance with internal policies and applicable laws, Google terminated the YouTube channel, having temporarily reinstated the Google account and permitted access to the YouTube channel within Russia.

27. As to the Claimants' response to these proceedings, their solicitor Ms Walker says this in her first witness statement in the Tsargrad case dated 16 August 2024:

> "54. When Tsargrad issued a claim against the Google Entities and Google Russia in the Russian Arbitrazh Court in August 2020, the Google Entities could not have anticipated such a deterioration in the Proceedings. Rather, in all the circumstances then prevailing, it was reasonable for the Google Entities to appear before the Russian Arbitrazh Court to raise jurisdictional objections, instead of seeking an anti-suit injunction in the agreed-upon jurisdictions, since the Google Entities had strong legal arguments pursuant to the relevant contracts which they believed would prevail. Given the unprecedented and unlawful nature of the Astreinte imposed on the Google Entities, the Google Entities had no reason to believe the Russian Courts would not grant their appeal and continued jurisdictional objections, and therefore the Google Entities sought to appeal the Russian Arbitrazh Court's decision. Meanwhile, other Russian parties began filing copycat claims against Google.
>
> 55. The Google Entities' appeal of the Tsargrad claims was still pending when Russia invaded Ukraine (in early 2022), increasing tensions between Russia and Western Countries, and it became even more clear that any effort to seek an anti-suit injunction from outside Russia, including the English Court, would be futile in the Tsargrad and other cases relating to the termination or blocking of YouTube accounts operated by Russian parties affected by sanctions.
>
> 56. At this point, it was also clear that any anti-suit injunction against Tsargrad obtained from the English Court at the time Tsargrad filed its claim would be futile, including because the Russian Courts had already

> explicitly disregarded the English Jurisdiction Clauses under Article 248.1 of the APC, which was specifically passed to allow them to do so. Furthermore, I understand from Professor Kryvoi's report that enforcement of a foreign anti-suit injunction (issued under foreign procedural law) in the context of disputes related to sanctions against Russia (or involving Russian sanctioned parties) is likely to be seen by the Russian Courts as contrary to public policy." (footnote omitted)

28. In addition, Ms Walker gave this evidence in the section of her witness statement dealing with full and frank disclosure:

> "107. Tsargrad may seek to argue that the Injunction Application is made after the event because it is sought not only after the Russian Judgments have been handed down, but also after enforcement proceedings have begun in the enforcement jurisdictions. Tsargrad might seek to argue that comity requires that the English Court decline to order the AEI and the AASI in those circumstances. In response, the Google Entities' draw the following matters to the Court's attention:
>
> 107.1 The Google Entities challenged the jurisdiction of the Russian Courts during the Russian Proceedings in a good faith attempt to resolve the dispute in their favour, given that the dispute should properly have been brought before the English Courts under the jurisdiction clauses. Following the Russian Judgments, it would have been futile to engage the English Courts for an anti-suit injunction as set out further in my witness statement at paragraph 56 above.
>
> 107.2 The circumstances of this case are far from typical, given the compounding nature of the Astreinte over time, Tsargrad's breach of the English Jurisdiction Clauses and Tsargrad's recent enforcement efforts outside Russia, in further breach of the English Jurisdiction Clauses (see VII above).
>
> 107.3 The enforcement efforts are in their earliest stages and service of process occurred against Google on 2 August 2024. Google Ireland has not been served."

(b) TV-Novosti

29. On 16 December 2021, Google terminated one of TV-Novosti's YouTube channels for violations of the then-prevailing (2021) version of the YouTube Terms of Service. In March 2022, following the second invasion of Ukraine, Google blocked access by third parties to TV-Novosti's other channels. TV-Novosti is subject to UK and EU sanctions. Ms Walker explains (in her first witness statement in the TV-Novosti case) that TV-Novosti is the operator of various media outlets, including RT (formerly known as Russia Today), as well as RT TV channels. TV-Novosti was sanctioned by the UK and the EU in 2022 due to its role as a major state-funded Russia media organisation and for spreading propaganda and misinformation. It is owned by the Russian state-owned agency RIA Novosti, and its Editor-in-Chief, Margarita Simonyan, a Russian national,

has also been sanctioned by the UK and EU for supporting actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine.

30. On 16 May 2022, following requests by TV-Novosti for access to its YouTube channels to be reinstated, TV-Novosti filed a suit before the Arbitrazh Court against Google, Google Ireland and Google Russia. TV-Novosti sought orders requiring reinstatement of its channels and imposition of an astreinte penalty similar to the one obtained by Tsargrad.

31. On 11 October 2022, the Arbitrazh Court dismissed Google's jurisdictional objections on the basis of a deemed or inferred obstacle to access to justice, holding that "*the mere fact of the introduction of restrictive measures against a Russian person participating in a dispute in international commercial arbitration, located outside the territory of the Russian Federation, is presumed to be sufficient to conclude that such person's access to justice is restricted*". It ordered the restoration of access to TV-Novosti's YouTube channels. It also ordered the imposition of an astreinte in similar terms to that ordered in favour of Tsargrad: 100,000 rubles per day for each day of non-compliance, starting from the fifth day from the effective date of the judgment and subject to a weekly twofold increase, limited to a sum of 10,000 times the sum of the astreinte for the first week of non-compliance for the first nine months (i.e. one billion rubles) and recommencing at a rate of 100,000 rubles per day and doubling on a weekly basis without limitation thereafter. Google formally challenged and objected to jurisdiction at all material times, whilst Google Ireland did not participate at all.

32. The TV-Novosti Judgment was upheld on appeal on 21 February 2023. The Claimants set out their arguments as to jurisdiction at length. However, the dispute was found to be within the competence of the Arbitrazh Court by virtue of APC 248.1.

33. On a further appeal to the Cassation court, the Claimants again set out their jurisdictional objections (and submissions as to the applicable law) in detail. The Cassation decision, dated 14 June 2023, rejected the jurisdiction challenge on the basis of Article 248.1. The Claimants made a further detailed challenge to the jurisdiction in their appeal to the Supreme Court. The Supreme Court's short decision rejecting the appeal was dated 26 September 2023.

34. As to the Claimants' response to the TV-Novosti proceedings, their solicitor Ms Walker says this in her first witness statement in the TV-Novosti case dated 16 August 2024:

> "43. TV-Novosti's claim was modelled on an earlier dispute brought by the same defendant as appears in the claim filed simultaneously by the Google Entities against NAO Tsargrad Media ("Tsargrad"). Tsargrad had sued the Google Entities and Google Russia in Russia in August 2020, prior to Russia's invasion of Ukraine. The Google Entities appeared in that case subject to jurisdictional objections. It was reasonable for them to do so there because they had strong legal arguments pursuant to the relevant contracts, which selected England as the forum for the resolution of disputes. However, the Russian Courts exceeded their jurisdiction, took the case, and ruled against the Google Entities and Google Russia at every turn, including disregarding that

Google Russia – which had identifiable assets in the jurisdiction – was a distinct legal entity and was brought into the case without any basis.

44. The Russian Arbitrazh Court proceeded to the merits of Tsargrad's claim, and the Google Entities and Google Russia were forced to litigate the case to judgment, without waiving their jurisdictional objections, in an effort to mitigate damages, because the Google Entities conducted a large amount of business in Russia at the time.

45. The Russian Arbitrazh Court, however, issued an unprecedented decision in the Tsargrad case and imposed a compounding Astreinte – the first of its size and kind – that is nearly identical to the one later sought by TV-Novosti. In March 2022, Tsargrad initiated proceedings to enforce its judgment in Russia against Google Russia. In enforcing the Tsargrad judgment, the Russian Federal Bailiff Service, an instrumentality of the Russian government, seized the liquid assets (the "Seizure") of Google Russia, which Tsargrad has asserted was a "factual representative" of Google. As a result of the Seizure, Google Russia became insolvent and is now in liquidation. Google's parent company, Alphabet Inc., has made relevant disclosures in its regulatory filings in the US.

46. The Tsargrad case confirmed that any effort to obtain an anti-suit injunction with respect to proceedings in Russia relating to the termination or blocking of YouTube accounts operated by Russian parties affected by sanctions would be futile. This was particularly the case because the Russian Courts had already explicitly disregarded the English Jurisdiction Clauses and English Arbitration Clause under Article 248.1 of the APC, which was specifically passed to allow them to do so. (As I understand from the Kryvoi Report at Question 7, seeking an anti-suit injunction in the agreed-upon jurisdictions likely would have been futile, such that appearing subject to jurisdictional objections was reasonable.) Moreover, by the time TV-Novosti issued its Russian Complaint, the situation had deteriorated further. Russia had invaded Ukraine, in the wake of which the UK, EU and US imposed sweeping sanctions on Russian parties, to which Russia strongly objected; and the Russian Courts had demonstrated that they would take an aggressive approach to interpreting Article 248.1. In addition, the Google Entities had ceased the vast majority of their commercial operations in Russia. It is therefore reasonable that the Google Entities, in light of the limited options available to them, and given that the litigation at that time was confined to Russia and related to the blocking of YouTube accounts, appeared in the TV-Novosti case to try to mitigate damages.

47. The Google Entities' exposure to risk was at first contained to Russia, including with respect to TV-Novosti's claim and the Google Russia bankruptcy proceedings. Under those circumstances, an anti-suit injunction would have been futile, as discussed in the Kryvoi Report. When TV-Novosti issued the Russian Complaint, therefore, it was reasonable for the Google Entities to appear before the Russian

Arbitrazh Court to raise jurisdictional objections and demonstrate on the record that they had validly objected to TV-Novosti's claims, given the paucity of options available to them.

48. However, new enforcement proceedings in various foreign jurisdictions initiated by TV-Novosti and the Russian defendants in the Proceedings have created a real risk of spillage outside Russia. These enforcement efforts now trigger the risk of enforcement of the Astreinte penalty again. …" (footnotes omitted)

"92. TV-Novosti may seek to argue that the Injunction Application is made after the event because it is sought not only after the underlying Russian Judgments have been handed down, but also after enforcement proceedings have begun in the enforcement jurisdictions. TV-Novosti might seek to argue that comity requires that the English Court decline to order the AEI and the AASI in those circumstances. In response, the Google Entities would draw the following matters to the Court's attention:

92.1 The Google Entities challenged the jurisdiction of the Russian Courts during the Russian Proceedings in a good faith attempt to resolve the dispute in their favour, given that the dispute should properly have been brought before the English Courts or via LCIA Arbitration under the English Jurisdiction Clauses and English Arbitration Clause, respectively. Following the Russian Judgments, it would have been futile to engage the English Courts for an anti-suit injunction as explained further in this witness statement at paragraph 47 above.

92.2 The circumstances of this case are far from typical, given the compounding nature of the Astreinte over time, TV-Novosti's breach of the English Jurisdiction Clauses and English Arbitration Clause and TV-Novosti's recent enforcement efforts outside Russia, in further breach of the English Jurisdiction Clauses and English Arbitration Clause (see IV above).

92.3 The enforcement efforts are in their earliest stages against the Google Entities. The Turkish Proceedings, as set out in further detail at paragraphs 52to 54, are subject to a number of challenges and a hearing is scheduled for 21 November 2024 during which the Turkish Court will determine a number of procedural issues."

35. Paragraph 46 of the evidence quoted above refers to section 7 of the first report of Professor Kryvoi, in which he considers the Russian court's approach to foreign anti-suit injunctions. Professor Kryvoi summarises his evidence on that matter as follows:

"Foreign judicial anti-suit injunctions (ASIs), including those from English courts, are generally not enforceable in Russia. Russian Courts

> do not recognise the enforceability of interim relief like ASIs, as they are not considered final judicial acts. Additionally, enforcing such ASIs would conflict with Russian public policy, particularly in sanctions-related cases involving Russian entities under Law No. 171-FZ. Russian Courts have consistently ignored foreign ASIs, assuming jurisdiction over disputes even when a foreign court has issued an ASI. This stance has been reinforced since 2022, especially against courts from countries that have imposed sanctions on Russia, further complicating the recognition and enforcement of foreign judgments, including ASIs, in Russia. The legal framework and public policy in Russia thus strongly oppose the enforcement of foreign ASIs, particularly in the context of disputes involving Russian sanctioned parties or proceedings initiated under Law No. 171-FZ." (1st report, § 13)

36. In his discussion of the topic, he cites *inter alia* an Information Letter issued in 2013 by the Presidium of the Supreme Arbitrazh Court explaining that a foreign anti-suit injunction cannot prevent the consideration of a case in an arbitrazh court or have legal consequences in Russia, and a Resolution to similar effect issued by the Plenum of the Supreme Court in 2017 (Resolution no. 23 dated 27 June 2017). Professor Kryvoi also refers to four cases where the Russian court rejected applications to stay proceedings made by the party against whom a foreign anti-suit injunction had been granted, thus refusing to suspend the Russian proceedings even though neither side sought their continuation: *UCF Partners* (Ruling of the Tenth Arbitrazh Court of Appeal dated 4 July 2022 in case No. A41-39590/2018), *RusChemAlliance/Linde* (Ruling of the Arbitrazh Court of St Petersburg and the Leningrad Region dated 8 June 2023 in case No. A56-129797/2022), *Transneft/Magomedov* (Ruling of the Arbitrazh Court of the City of Moscow dated 17 April 2024 in case No. A40-17658/2024) and *Transneft/Port Petrovsk* (Ruling of the Arbitrazh Court of the City of Moscow dated 15 May 2024 in case No. A40-23676/2024).

(c) NFPT

37. NFPT is a Russian media company which operates the Spas TV television channel, associated with the Russian Orthodox Church. NFPT also controls and operates the Spas TV YouTube channel and its associated Google account. NFPT's continued use of its Google account and the YouTube channel were subject to the Google Terms of Service and the YouTube Terms of Service, respectively.

38. In early March 2022, Google blocked access to users of NFPT's YouTube channel to address the dissemination of harmful content, following the second Russian invasion of Ukraine on 24 February 2022. On 30 September 2022, NFPT filed a claim before the Arbitrazh Court, in breach of the YouTube EJC, for declaratory relief that Google's and Google Russia's "*refusal to perform*" the YouTube Terms of Service was invalid; injunctive relief compelling the unblocking of access to the channel; and the imposition of an astreinte for non-compliance with such unblocking orders, in terms similar to the one obtained by Tsargrad.

39. By a decision dated 14 March 2023, the Arbitrazh Court found that the blocking of access to NFPT's YouTube channel violated the *"[fundamental] norms and public policy of the Russian Federation"*; was an *"attempt to interfere with the exercise of the*

rights that are generally related and guaranteed to the media" and was contrary to provisions of the Constitution of the Russian Federation concerning freedoms of religion, speech and information exchange. As with Tsargrad and TV-Novosti, it deemed there to be obstacles to access to justice pursuant to APC 248.1(4). It ordered Google and Google Russia to reinstate access to NFPT's YouTube channel. An astreinte was imposed in identical terms to those imposed against Tsargrad and TV-Novosti. Google formally challenged and objected to jurisdiction at all material times.

40. The NFPT Judgment was upheld on appeal on 22 June 2023. It was held that APC 248.1 was engaged *"by virtue of the inclusion of [NFPT] and the persons controlling [NFPT] in the sanctions lists of foreign states"*. NFPT did not explain to the Arbitrazh Court why it was said to be sanctioned: it relied only on sanctions imposed by OFSI against Patriarch Kirill of the Russian Orthodox Church (which controls NFPT) who was sanctioned by the UK on 16 June 2022 for his support of the Russian invasion of Ukraine. A further appeal to the Cassation Court was unsuccessful on 16 October 2023. The Claimants on both appeals set out their jurisdictional objections in detail, and the appellate courts ruled on them. Their final appeal, to the Supreme Court, again set out their jurisdictional contentions in detail, but the court rejected the appeal in a short decision dated 19 February 2024.

41. As to the Claimants' response to the TV-Novosti proceedings, their solicitor Ms Walker gave evidence in her first witness statement in the NFPT case dated 16 August 2024 (§ 37-42) substantially similar to the evidence in §§ 43-48 of her first witness statement in the TV-Novosti case. As part of the full and frank disclosure section, she says:

> "87. NFPT may seek to argue that the Injunction Application is made after the event because it is sought not only after the Russian Judgments have been handed down, but also after enforcement proceedings have begun in the enforcement jurisdictions. NFPT might seek to argue that comity requires that the English Court decline to order the AEI and the AASI in those circumstances. In response, Google would draw the following matters to the Court's attention:
>
> 87.1 Google challenged the jurisdiction of the Russian Courts during the Russian Proceedings in a good faith attempt to resolve the dispute in its favour, given that the dispute should properly have been brought before the English Courts under the English Jurisdiction Clause. Following the Russian Judgments it would have been futile to engage the English Courts for an anti-suit injunction as explained further in this witness statement at paragraph 41 above.
>
> 87.2 The circumstances of this case are far from typical, given the compounding nature of the Astreinte over time, NFPT's breach of the English Jurisdiction Clause and NFPT's recent enforcement efforts outside Russia, in further breach of the English Jurisdiction Clause (see Section VII above).
>
> 87.3 The enforcement efforts are in their earliest stages and are not yet formally in progress against Google. The South African Enforcement Action are stayed while Google challenges jurisdiction

> there. To date, Google has not been served by NFPT with any other enforcement proceedings."

(3) Enforcement Jurisdictions

42. Steps to enforce the Russian Judgments have occurred in two distinct stages: first, through the Federal Bailiff Service of the Russian Federation and claims advanced in the ensuing bankruptcy of Google Russia; and latterly, as part of a global strategy seeking to enforce the Astreinte Penalties against assets of Google and affiliated entities around the world.

43. As noted earlier, the sums imposed by the Astreinte Penalties are of an unprecedented magnitude. The liquidator of Google Russia stated in May 2024 that the value of some of the Astreinte Penalties (not including Tsargrad) amounted to the pounds sterling equivalent of around £1.85 octillion, i.e. £1,850,000,000,000,000,000,000,000,000 (which is about 20 trillion times greater than the estimated GDP of all the economies in the world of about US$110 trillion). A more recent estimate put the figure at the equivalent of £102 nonillion (a nonillion being a 1 followed by 30 zeros).

(a) Enforcement in Russia

44. On 14 March 2022, the Russian Federal Bailiff Service (an arm of the Russian Government) commenced enforcement proceedings to seize assets on the basis of the Tsargrad Judgment. This involved executing well beyond the amount said to be due at that time (one billion rubles: see § 24 above) by seizing over £51 million of Google Russia's assets. Ms Walker stated, in her first witness statement in the Tsargrad case:

> "57. In early March 2022, after Russia's invasion of Ukraine, Google announced that it would pause the vast majority of its commercial activities in Russia, while maintaining the operation of free services such as Search, Gmail, and YouTube, to provide Russian users with access to information and an outlet for free expression.
>
> 58. Shortly thereafter, on 14 March 2022, the Russian Federal Bailiff Service (the "Bailiffs"), a body of the Russian government, initiated enforcement proceedings to enforce the Russian Judgment against Google Russia, which Tsargrad has asserted was a "*factual representative*" of Google. The Bailiffs ordered Google Russia's bank to freeze and subsequently transfer all the money in Google Russia's bank accounts to the Bailiffs on an ongoing basis (the "**Seizure**"). The maximum amount purportedly due at the time of the Seizure was less than £6.4 million (one billion rubles). Even so, the Russian government-through the Bailiffs-seized more than £51.2 million of Google Russia's assets. The Google Entities have limited visibility into what the Bailiffs did with the money seized from Google Russia. After the Seizure, however, Malofeyev announced he would donate approximately one billion rubles he received to help fund the Russian government's invasion of Ukraine. OFAC apparently referenced this in its April 2022 designation of OOO Tsargrad as an SDN, stating *"[Tsargrad] recently pledged to donate more than $10 million to support Russia's unprovoked*

> *war against Ukraine"*. As a result of the Seizure, Google Russia became insolvent and is now in liquidation. Google's parent company, Alphabet Inc., has made relevant disclosures in its regulatory filings in the US. The Google Entities' exposure to risk was at first contained to Russia.
>
> 59. The Russian bankruptcy court appointed a manager of Google Russia's bankruptcy (the "**liquidator**"), who is meant to act as a neutral representative of creditors and the bankruptcy estate. I am informed that this court-appointed bankruptcy manager is represented by the same law firm that represented Tsargrad and other parties that sued the Google Entities in Russia: Art de Lex. As with Tsargrad, each of those litigations related to the termination of one or more Google accounts and YouTube channels and was filed in Russia in breach of the applicable terms of service. I understand Art de Lex continues to represent Tsargrad in attempts to enforce the Russian Judgment against the Google Entities and other Google affiliates as part of what appears to be a global enforcement strategy.
>
> 60. In December 2022, Tsargrad filed in Google Russia's bankruptcy proceedings to register a claim against Google Russia's estate for the penalty in the Russian Judgment. …" (footnote omitted)

45. Further claims were filed within the liquidation proceedings in October 2024, i.e. since and despite HHJ Pelling KC's order of 19 August 2024 granting interim anti-suit and anti-enforcement injunctions. These are 'clawback' and secondary liability claims against former employees of Google Russia and its shareholders.

(b) Enforcement outside Russia

46. From around late 2023, a coordinated strategy of foreign enforcement was initiated through Art de Lex on behalf of the Defendants. Nine separate jurisdictions are now known to have been engaged so far as part of this strategy: Algeria, Egypt, Hungary, Kyrgyzstan, Serbia, South Africa, Spain, Turkey and Vietnam.

47. There were media reports of threatened enforcement action in March and November 2022. Ms Walker states:

> "70. According to public reporting, Art de Lex, the Russian law firm representing several astreinte holders (including, upon information and belief, Tsargrad), has threatened to continue this campaign of enforcing the Russian Judgment and other similar such judgments against Google and Google affiliates in other jurisdictions. For example:
>
> 70.1 A media article published on Tsargrad's website dated 17 March 2022 stated that Tsargrad intended to enforce the Russian Judgments in Asia, Africa, Latin America and any jurisdiction that has not 'boycotted' Russia.

> 70.2 The same article referred to Singapore, in particular Google Asia Pacific Ltd; India; Turkey; Taiwan; and Israel, the article identifying local IT companies in which Google has invested as potential targets.
>
> 70.3 A news article of the same date published by Reuters reported that Malofeyev stated that Tsargrad may seek enforcement in India, China and Brazil.
>
> 70.4 A media article published on Tsargrad's website dated 24 November 2022 specified that steps to enforce the Russian Judgments abroad will be taken in 2023 and repeated the threat to take action against Google in Africa, Asia and in Latin America.
>
> 70.5 I understand that Tsargrad may be acting in concert with the other Russian defendants in these actions and that this group is engaged in a coordinated effort to enforce the Russian judgments." (footnotes omitted)

48. However, the Defendants did not in fact take any enforcement steps outside Russia until a year later, in late 2023. They then began to apply for recognition and enforcement in various jurisdictions without notifying the Claimants. The first applications were made in Hungary (by NFPT) and Turkey (by Tsargrad), in November 2023, followed by Serbia (NFPT) and Algeria (TV-Novosti) in December 2023. TV-Novosti also applied in Turkey in December 2023. Tsargrad applied in Egypt in February 2024, and in Algeria and Spain in April 2024. NFPT also applied in Spain in April 2024. Further applications were made in May 2024 (TV-Novosti/Vietnam, NFPT/Kyrgyzstan) and June 2024 (NFPT/South Africa). On 7 March 2024 the Turkish court held a procedural hearing in TV-Novosti's action and decided to appoint an expert panel to decide (among other things) whether Google Turkey, an affiliate of the Claimants, could be deemed a representative of the Claimants. On 14 March 2024 the Turkish court issued an interim order on Tsargrad's claim. In May 2024 the Hungarian court dismissed NFPT's action, which filed an appeal. On 11 July 2024 the Turkish court in TV-Novosti's action held a further procedural hearing at which, Ms Walker, says, Google Turkey *"reiterated its objections to its alleged 'representative status'"*.

49. However, these sets of proceedings were not served on the Claimants themselves until months later, and in some cases had still not been served by the date of the Claimants' applications to this court issued on 16 August 2024. Ms Walker's fourth witness statement, dated 5 November 2024, summarises the position as follows:

> "49. … On the Defendants' own case, the enforcement proceedings are not very advanced and in certain cases (e.g. Hungary, Serbia, and Vietnam) not even yet served on the Claimants. In relation to those enforcement proceedings in which the Defendants have purported to effect service, all substantive steps have occurred since June 2024:
>
> 49.1 In Algeria, TV-Novosti appears to have served Google with court papers on 10 September 2024 and Google Ireland on 22 August 2024.

> 49.2 In Algeria, Tsargrad appears to have served Google with papers on 6 September 2024. Google Ireland has not been served.
>
> 49.3 In Egypt, Tsargrad appears to have applied to the Court Bailiffs to initiate service via diplomatic channels on Google Ireland as of 3 April 2024. At present, Google Ireland has not yet been served. In addition, Google has not been served.
>
> 49.4 In South Africa, NFPT appears to have served Google with papers on 6 June 2024. (Google Ireland is not a party to that action.)
>
> 49.5 In Turkey, Tsargrad appears to have served Google with its enforcement action on 2 August 2024 and the interim seizure application on 25 September 2024. Google Ireland has not been served in either the enforcement action or the interim seizure application.
>
> 49.6 In Turkey, for TV-Novosti's enforcement action, neither Google nor Google Ireland has been served, and at present, the Turkish court has not determined, on the basis of a court-appointed Expert Panel, whether under Turkish law, service on the local affiliate Google Turkey amounts to service on Google or Google Ireland.
>
> 50. The Claimants further disagree with the Defendants' submission that the Claimants became aware of the enforcement proceedings in March 2022 following the publication of a media article on Tsargrad's website. Firstly, it is unreasonable to expect the Claimants to conclude that a threat in a media article will result in a definite outcome of foreign enforcement proceedings. Secondly, the Defendants' argument presumes that the English Courts would grant anti-enforcement relief at a juncture where there are no enforcement proceedings and the only indication that there could be (at some non-specific time in the future, within a non-specified foreign jurisdiction) is from two media articles published by the Defendant itself. As set out at paragraph 46.2, the Claimants were served with enforcement proceedings initiated by Tsargrad in August 2024.
>
> 51. The Claimants also disagree with the Defendants' assertion that in any event, "the Claimants became aware of the first Enforcement Proceedings on 11 March 2023, when Tsargrad commenced action in Turkey against the Claimants and Google Russia". This is incorrect. In fact, service on Google was not effected until 2 August 2024. Google Ireland has, to date, not been served. The Defendants' assertion that Claimants waited over seventeen months before seeking relief is simply inaccurate and misleading."

50. It appears that, prior to service, the Claimants may (through their affiliates) have had some awareness that enforcement steps were being taken in Turkey. Ms Walker states in her 1st witness statement in the Tsargrad claim:

> "63. I understand that on 3 November 2023, Tsargrad initiated enforcement proceedings before the Istanbul 5th Commercial Court of First Instance with Case No. 2023/724 E (the "Turkish Court"; the "Turkish Enforcement Proceedings"). In the Turkish Enforcement Proceedings, Tsargrad named the Google Entities and Google Russia as defendants and named their Turkish affiliate, Google Reklamcilik ve Pazarlama Ltd Sti ("Google Turkey"), as a purported "representative of the defendants", even though Google Turkey is not a party to the Russian Judgments or the Contracts and is not a representative of the defendants.
>
> 64. The Turkish Enforcement Proceedings seek the enforcement of the Russian Judgment, the Russian Appeal Judgment and the Supplementary Judgment. The Turkish Enforcement Proceedings have proceeded as follows:
>
> > 64.1 Following an objection by Google Turkey to service of the Turkish Enforcement Proceedings on it in a purported 'representative' capacity, the Turkish Court determined on an interim basis in a preliminary hearing dated 14 March 2024 that (given Google Turkey's separate legal personality and the absence of any authorisation of Google Turkey to accept service on behalf of Google, Google Ireland and Google Russia) Google, Google Ireland and Google Russia must be served out of the jurisdiction pursuant to the Turkish Notification Law.
> >
> > 64.2 Google appears to have been served on 2 August 2024 with process in the Turkish Enforcement Proceedings. Google Ireland does not appear to have been served.
> >
> > …" (footnotes omitted)

Similarly, as noted above, in the TV-Novosti Turkish action it appears that Google Turkey was aware of and purportedly involved by March 2024.

51. In relation to enforcement proceedings in other jurisdictions, Ms Walker said in that witness statement:

> "66. The Google Entities understand, including from public press reporting (as to which see further below), that Tsargrad may be seeking to recognise and enforce the Russian Judgments in other jurisdictions. To their knowledge, as at the date of this witness statement, the Google Entities have not yet been served with such other enforcement proceedings. I understand from public reporting that Tsargrad may be working in concert with other defendants in these Proceedings, who through their lawyers *"are now seeking recognition and enforcement of decisions of the [Russian Arbitrazh Court] in 15 jurisdictions around the world"*." (footnote omitted)

52. In her 1st witness statement in the NFPT case, Ms Walker stated that in South Africa, the court granted an *ex parte* motion on 12 March 2024, pursuant to an application made

on 14 December 2023, which NFPT purported to serve on Google on 6 June 2024. In Serbia, court papers were served on 27 May 2024 on Google Russia. However, that entity was by then under the control of a court-appointed bankruptcy manager. As regards Kyrgyzstan, Ms Walker said Google understood from correspondence received in June 2024 that a statement of claim by NFPT was in existence but did not know whether proceedings had been issued.

53. It is therefore fair to say that, whilst they may have received information from Google Turkey about the proceedings in the Turkish court in March 2024, the Claimants were not served or formally notified of the enforcement proceedings outside Russia until June 2024 or later. Some of the proceedings have yet to be served.

54. Since then, in July 2024, the Spanish court dismissed NFPT's claim, and the Kyrgyz court dismissed NFPT's claim, with NFPT in each case retaining the right to re-file the claim. In the South African case brought by NFPT, Google on 21 June 2024 filed a notice of intention to oppose, and on 26 July 2024 a rescission application. On 8 August 2024, NFPT filed a notice of intention to oppose Google's rescission application.

55. Since the present proceedings were commenced in this court and injunctive relief was granted, certain steps have been taken by the Defendants to comply with that relief by agreeing to stay proceedings or adjourn hearings in Algeria, Egypt, Hungary, South Africa and Turkey.

(C) PRINCIPLES

56. The court has jurisdiction over these claims pursuant to CPR 6.33(2B)(b) or CPR 62.5(2A), on the basis that (subject to the point considered in section (D) below about the YouTube jurisdiction clause) the contract in each case contains an English jurisdiction clause or an arbitration agreement providing for arbitration in England & Wales. (Jurisdiction would also exist under PD6B § 3.1(6)(c) on the basis that each of the relevant contracts is governed by English law.)

57. The power to grant anti-enforcement injunctions derives from the general power to grant an injunction, when it is just and convenient to do so, under section 37(1) of the Senior Courts Act 1981.

58. The primary basis on which final relief is sought in the present case is to enforce the Claimants' contractual rights. Subject to the point considered in section (D) below about the YouTube jurisdiction clause, all of the Russian Proceedings were brought in breach of the Defendants' contractual obligations in the jurisdiction or arbitration clauses referred to earlier. An attempt to enforce a judgment so obtained can in principle be restrained by an injunction. As Atkin LJ said in *Ellerman Lines v Read* [1928] 2 KB 144, 155-156:

> "The principle upon which an English Court acts in granting injunctions is not that it seeks to assume jurisdiction over the foreign Court, or that it arrogates to itself some superiority which entitles it to dictate to the foreign Court, or that it seeks to criticize the foreign Court or its procedure; the English Court has regard to the personal attitude of the person who has obtained the foreign judgment. If the English Court finds

> that a person subject to its jurisdiction has committed a breach of covenant, or has acted in breach of some fiduciary duty or has in any way violated the principles of equity and conscience, and that it would be inequitable on his part to seek to enforce a judgment obtained in breach of such obligations, it will restrain him, not by issuing an edict to the foreign Court, but by saying that he is in conscience bound not to enforce that judgment. … In the interests of justice in this case it is essential that an injunction should be granted restraining the defendants from reaping any advantage from the judgment obtained in Turkey, first in breach of an express contract and secondly by a gross fraud."

Scrutton LJ stated that the English courts "*do not, of course, grant an injunction restraining the foreign Court from acting; they have no power to do that; but they can grant an injunction restraining a British subject who is fraudulently breaking his contract, and who is a party to proceedings before them, from making an application to a foreign Court for the purpose of reaping the fruits of his fraudulent breach of contract*". Although, on the facts of *Ellerman Lines* the defendant had been held to have acted fraudulently, the second of the statements of principle Scrutton LJ cited (from *Lord Portarlington v Soulby* (1834) 3 Myl. & K. 104, 107, 40 E.R 40. and *Carron Iron Co v Maclaren* (1855) 5 H.L.C. 416, 439 10 E.R. 961, decision of the Privy Council) is premised not on fraud but on the institution of proceedings abroad *"contrary to equity and good conscience"*. Eve J in *Ellerman Lines* said:

> "So far as the jurisdiction is concerned, the power of the Court to grant such an injunction as is now claimed has been established by a long line of authorities commencing with *Bushby v. Munday* and *Carron Iron Co. v. Maclaren* and coming down to quite recent dates. I can see no logical reason to suppose that it ceases to be exercisable as soon as a judgment has been pronounced by the foreign tribunal. No doubt the jurisdiction is to be exercised with caution, but if ever there was a case calling for its exercise, this is the one. The foreign proceedings here were instituted and prosecuted in clear breach of contract, and the judgment was ultimately obtained by a deliberate and flagrant misrepresentation. The appellants in those circumstances are entitled to all the protection which this Court can extend to them." (footnote omitted)

I would not read that statement as suggesting that the fraudulent misrepresentation was a prerequisite for the grant of relief. It is in my view consistent with Atkin LJ's formulation quoted above, under which any one of a breach of covenant, breach of fiduciary duty or violation of the principles of equity and conscience can provide a basis for the grant of injunctive relief.

59. The Court of Appeal in *ED & F Man (Sugar) Ltd v Yani Haryanto (No 2)* [1991] 1 Lloyd's Rep 429 held that certain Indonesian judgments would not be recognised in England as they were inconsistent with a previous decision of the English court, but an injunction to prevent reliance on the Indonesian judgments in Indonesia or other countries was refused. Neill LJ (with whose judgment Balcombe LJ agreed) said as regards restraining enforcement in Indonesia itself:

> "The position in Indonesia also is clear. In my view it would be wrong for this Court to grant an injunction which is designed to take effect inside Indonesia and which would interfere or purport to interfere with the judgment of a court of competent jurisdiction inside that country." (p437 rhc)

As regards deployment of the Indonesian judgment elsewhere, Neill LJ concluded that it would be wrong to prevent reliance on the Indonesian judgment as a defence. As to whether to restrain the institution of enforcement/recognition proceedings in third countries, he said:

> "One can see the force of the argument that Man, having obtained declarations in England, should be entitled to ancillary relief to give teeth to the declarations and to reduce the risk of a multiplicity of proceedings. In the end, however, I have come to the conclusion that it would not be right on the facts of this case to grant any injunction which would have an extraterritorial effect on proceedings abroad. Mr Justice Steyn listed the special features of this case which distinguish it from earlier cases in this field. In the main I agree with his analysis." (pp437-438)

The "special features" to which Steyn J referred were these:

> "Features which in combination distinguish this case from other cases involving extraterritorial injunctions which have come before the English courts are the following: There is already in existence an Indonesian judgment. It was given in proceedings begun by Man. It was unsuccessfully appealed by Man. The Indonesian court was a court of competent jurisdiction. The procedure adopted is not criticised. The correctness of the Indonesian judgment as a matter of Indonesian law cannot be questioned. Reliance on that judgment was only defeated on the ground of English principles of res judicata and English public policy."

60. Neill LJ in *ED&F Man* did not refer to *Ellerman Lines v Read*. However, Mann LJ (with whose judgment Balcombe LJ also agreed) provided this explanation:

> "An injunction in regard to the institution or conduct of foreign legal proceedings can be granted against a person amenable to the jurisdiction in two situations. The situations are to be found in the speech of Lord Brandon in *South Carolina Insurance Co. v. Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24 at page 40C. There is a third situation but this is neither relevant nor was it relied upon, for it relates to the restraint of foreign proceedings where proceedings in respect of the same subject-matter have been commenced in England … . The first and second situations were relied upon by Man. They are:
>
> (1) when one party to an action can show that the other party has invaded or threatens to invade a legal or equitable right of the former for

> the enforcement of which the latter is amenable to the jurisdiction of the court;
>
> (2) where one party to an action has behaved, or threatens to behave, in a manner which is unconscionable.
>
> …
>
> I return to the two situations where an amenable person may be the subject of an injunction. The first is where such a person has invaded or threatened to invade a legal or equitable right of the applicant. *Ellerman Lines Ltd. v. Read* [1928] 2 KB 144 is an illustration of the category. In that case the court restrained defendants from seeking to enforce anywhere a Turkish judgment which had been obtained in breach of an English contract and by perjured evidence. The plaintiffs could (and did, see page 149) point to a breach of contract, that is to say the infringement of a right not to have their vessel arrested under a process of the Turkish Court at Constantinople. That was, as the law has now developed, a plain case of an invasion of a legal right having occurred. In this case, if I ask what legal or equitable right of Man was invaded by Mr. Haryanto in securing his judgment in Jakarta, I am compelled to return the answer "none" . ..."

On the assumption that obtaining the Indonesian judgments and relying on them by way of 'offence' would be unconscionable in English law, Mann LJ upheld the judge's decision, as a matter of his discretion, not to grant an injunction. He said:

> "The jurisdiction with which the court is concerned is not asserted against foreign courts but is asserted against a person (see eg *Lord Portarlington v. Soulby* [1834] 3 Myl & K 104, 107. However, that being said, the courts have always exercised the jurisdiction with caution (see *Ellerman Lines Ltd. v. Read* (supra) at 158; *Castanho v. Brown & Root (UK) Ltd.* (supra) at 573; also *Tracomin SA v. Sudan Oil Seeds Co. Ltd*. [1983] 1 WLR 1026, 1035B). The reason for caution is that an exercise of jurisdiction does involve an indirect interference with extant or future proceedings before a foreign court (see the *South Carolina Insurance Co.* case (supra) at 40D and the *Societe Nationale Industrielle Aerospatiale* case at 892E).
>
> The learned judge dismissed the claim for an injunction as a matter of his discretion. In my view he adopted the right approach by looking first at the respective interests of Man and of Mr. Haryanto and then at considerations of comity. He balanced the interests and the considerations and then said this:
>
> > "In all the circumstances it seems to me that it would be an affront to the Indonesian courts, and an illegitimate interference (albeit indirectly) with the processes of courts worldwide, to grant an injunction, the expressed objective of which is to prohibit Mr. Haryanto from relying on the Indonesian judgment. Balancing the

> competing private and public interests as best I can, I conclude that Man will have to be content with declaratory relief, leaving it to courts in foreign jurisdictions to choose (if the matter arises) whether to recognise the judgments of the English or Indonesian courts."

> Some criticism was made of the phrase "public interests" . I regard it only as a convenient way of referring to those considerations which require caution. Those considerations are of respect for decisions of foreign courts properly given within their jurisdictions and of not constraining albeit indirectly, the ability of foreign courts to apply their local law in regard to the recognition and enforcement of judgments."

Insofar as the first instance judge, in the passage quoted above, stated that it would have been an "*illegitimate interference (albeit indirectly) with the processes of courts worldwide*" to grant an injunction, it should be borne in mind that (a) *ED&F Man* was not a case where the respondent had agreed to an exclusive jurisdiction clause or arbitration clause, and (b) the judge was exercising a discretion *"[i]n all the circumstances"* of the case before him.

61. Rix J in *The "Eastern Trader" (Industrial Maritime Carriers (Bahamas) v Sinoca International)* [1996] 2 Lloyd's Rep 585 refused an anti-enforcement injunction where a judgment had been obtained in Algeria despite an arbitration agreement in the relevant contract. He stated:

> "If Sinco [the respondent] seeks to enforce the judgment elsewhere [than in England], such as in the Bahamas, IMC [the applicant]'s domicile, or in Louisiana, its principal place of business, the right to enforce will depend primarily upon the law of those jurisdictions, and it is not for an English injunction to pre-empt a decision based on the local law." (p.602 rhc)

After referring to the lack of evidence of any prejudice to IMC in its pending appeals in Algeria such as would militate in favour of the grant of an interlocutory injunction:

> "Moreover, unlike the position in *The Angelic Grace*, the English Court has not yet determined, for the argument still lies in the future, whether [the relevant claims] are within the scope of the arbitration clause. Finally, for an English Court to injunct a party from reliance on its foreign judgment is a far greater interference in the judicial process than occurred in *The Angelic Grace*, where the foreign proceedings were only in their infancy."

The *Angelic Grace* (*Aggeliki Charis Cia Maritima SA v Pagnan SpA*) [1995] 1 Lloyd's Rep 87 was, of course, the seminal case in which the Court of Appeal held that the English court ought not to feel any diffidence in granting an injunction to prevent foreign proceedings in breach of an arbitration agreement governed by English law, provided that it was sought promptly and before the foreign proceedings were too far advanced.

62. Thomas J, citing *ED&F Man* and *The Eastern Trader*, expressed the view, *obiter*, *in Akai v People's Insurance Co Ltd* [1997] C.L.C. 1508, [1998] 1 Lloyd's Rep 90 that the English court would have to act "*with great caution*" on an application for an anti-enforcement injunction since there were very powerful arguments that it was more consistent with comity to leave it to the courts in the place of proposed enforcement to decide what course to take in the light of their own law (p.1533).

63. In *Masri v Consolidated Constructors International (UK) Ltd (No 3)* [2009] QB 503, the Court of Appeal upheld an injunction granted to restrain proceedings abroad in respect of matters that had already been the subject of an English judgment. In relation to *ED&F Man*, the court said that:

> "93. It is important to note that in this case the Indonesian judgments had been given, and it is plainly a very serious matter for the English court to grant an injunction to restrain enforcement in a foreign country of a judgment of a court of that country. The decision in that case was reached as a matter of discretion, not jurisdiction. …"

64. The court referred also to the decision in *Mamidoil-Jetoil Greek Petroleum Co SA v Okta Crude Refinery AD* [2003] 1 Lloyd's Rep 1, explaining it as follows:

> "93. … the courts of the Former Yugoslav Republic of Macedonia had granted an interlocutory injunction restraining the defendants from paying any damages to the claimant in the English proceedings. Aikens J applied *ED & F Man (Sugar) Ltd v Yani Haryanto (No 2)* and refused as matter of discretion to grant an injunction restraining the defendants from relying on any judgment or order in Macedonia which prevented them from paying any damages adjudged due from them by the English court: paras 201–208. Aikens J considered that an injunction would be contrary to comity. It was for the foreign court to decide whether to recognise the English judgment, and an injunction would put the officers of the defendants in an impossible position since there was already an injunction in Macedonia preventing the defendant from paying any damages. That too was a decision on discretion, and there too the foreign court had made orders which the English court was being asked, in effect, to defy.
>
> 94. These decisions show that it will be a rare case in which an injunction will be granted by the English court to prevent reliance abroad on, or compliance with, a foreign judgment, or an injunction which will indirectly have that effect. But there is no general principle that even in such a case no injunction will be granted. In *Ellerman Lines Ltd v Read* [1928] 2 KB 144 (a case to which this court was not referred in argument) the Court of Appeal specifically rejected an argument that, while the English court could grant an injunction restraining the institution or continuance of proceedings in a foreign court, there was no power, after the foreign court had given judgment, to grant an injunction restraining the person who had obtained it from reaping its fruits: pp 152, 155 and 158, per Scrutton LJ, Atkin LJ and Eve J. No doubt the power will only be exercised in exceptional circumstances, as

> they were in that case, where the party enjoined was a British subject who had obtained the judgment by fraud."

65. In *Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd* [2013] EWHC 1276 (Comm) Hamblen J was content to grant an anti-suit injunction to restrain proceedings in Bangladesh in breach of an arbitration agreement in circumstances where *"[t]he Bangladeshi proceedings were commenced on 19 January 2012, about one year before the present claim was issued. However, as explained [in the applicant's solicitor's] witness statement, there were good reasons for the claimant's delay, namely that it thought it might be able to deal with the Bangladeshi proceedings more quickly and efficiently in the Bangladeshi courts themselves, by appealing the order for an interim injunction. In the event, that has not proved possible, hence the need for the present proceedings. No prejudice, however, has been caused to the defendant by the delay in the meantime. …"* (§ 33).

66. *Ellerman Lines v Read* was applied in *Bank St Petersburg v Arkhangelsky* [2014] EWCA Civ 593, where the claimant Bank in 2009 obtained judgments in Russia against the defendants, which they sought to enforce in Russia. Subsequently, in 2011, the parties agreed that the English courts should have exclusive jurisdiction to hear the 'substantive dispute' between them, and both the Bank and the defendants brought actions in England in furtherance of the dispute. The defendants sought an injunction to restrain the Bank from enforcing the Russian judgments anywhere in the world. The judge refused to grant an injunction, holding among other things that such an injunction was not justified by the exclusive jurisdiction clause and that it would constitute an unwarranted interference with the process of the foreign courts in which the proceedings had been pending since before the English court's jurisdiction was invoked. The Court of Appeal allowed the appeal. It held that by the 2011 agreement the parties had agreed to 'start afresh', and that enforcement of the Russian judgments would be inconsistent with that agreement (§ 29). Longmore LJ (with whom the other members of the court agreed) said:

> "35. It does not seem to me that to grant an interim injunction in support of the English proceedings is, in reality, an unwarranted interference in the process of either the French or Bulgarian court. It is the Bank and Mr Savelyev who will be required (temporarily) to cease continuation of enforcement proceedings and not to initiate new ones. That is an order that affects them, not the foreign courts."

After quoting from *Ellerman Lines*, he continued:

> "37. The principle so laid down was restated in *Masri v Consolidated Constructors International (UK) Ltd (No 3)* [2009] QB 503, para 94, per Lawrence Collins LJ albeit in the context of enjoining Yemeni proceedings inconsistent with an English judgment in proceedings in which the defendant had submitted to the jurisdiction.
>
> 38. Mr Marshall was correct to say that *Ellerman Lines Ltd v Read* [1928] 2 KB 144 was a stronger case but only to the extent there that the English trial had already taken place so that there was a finding that the Turkish judgment had been procured by fraud. Here the trial has not yet

> taken place and the allegations of fraud are only allegations. But an interim injunction had been granted in Ellerman's case to protect the position pending trial: see pp 146–147. So here it seems to me that an injunction against continuing existing enforcement proceedings or initiating new enforcement proceedings should be granted."

As the Court of Appeal noted in *Ecobank* (see below), it was a special feature of *Bank St Petersburg* that the jurisdiction agreement was reached after the relevant judgments had been obtained; and it was not argued that relief should be refused on the grounds of delay.

67. The Court of Appeal in *Ecobank Transnational v Tanoh* [2015] EWCA Civ 1309 reviewed the authorities and upheld the first instance judge's refusal to grant an injunction on the grounds of delay. The claimant bank was based in Togo and the defendant, its employee, was a national of Cote d'Ivoire. The contract of employment was expressly governed by English law, contained an exclusive jurisdiction clause, and provided for disputes to be settled by London arbitration. The bank purported to terminate the employee's employment in March 2014. He began proceedings in Togo, claiming that the termination was unfair and a breach of Togolese law. In May 2014 he began defamation proceedings in Cote d'Ivoire, complaining about comments made about him by the bank in the financial media. The bank unsuccessfully contested jurisdiction in both sets of proceedings, and each court made substantive orders in the employee's favour. In December 2014, the bank began arbitration proceedings in London. In April 2015, the High Court granted an interim anti-enforcement injunction, but discharged it on the return date on the ground of delay.

68. Christopher Clarke LJ (with whom the other members of the court agreed) reviewed the authorities, noting *inter alia* the observations in *Masri* § 94 which he said *"provide[] a strong contrast to the default position in anti-suit injunctions where relief will ordinarily be given to enforce an exclusive jurisdiction clause"* (§ 112). Summarising, Christopher Clarke LJ said:

> "118. In short, the cases in which the English Courts have granted anti-enforcement injunctions are few and far between. Of the two examples to which we were referred, one was based on the fraud of the respondent and the other involved an attempt to execute a judgment when, after it had been obtained, the respondent had promised not to do so. Knowles J suggested another circumstance where an injunction might be granted, namely where the judgment was obtained too quickly or too secretly to enable an anti-suit injunction to be obtained, a circumstance far removed from this case. No example has been cited to us of a case where an anti-enforcement injunction has been granted simply on the basis that the proceedings sought to be restrained were commenced in breach of an exclusive jurisdiction or arbitration clause."

I note that, in not treating *Ellerman Lines* as such an example, Christopher Clarke LJ appears to have proceeded on the basis that the obtaining of the foreign judgment by fraud was a necessary part of the reasoning in that case (see § 107), a view which for the reasons given earlier may be debatable.

69. The Court of Appeal in *Ecobank* continued:

> "119. This dearth of examples is not surprising. If, as has heretofore been thought to be the case, an applicant for anti-suit relief needs to have acted promptly, an applicant who does not apply for an injunction until after judgment is given in the foreign proceedings is not likely to succeed. But he may succeed if, for instance, the respondent has acted fraudulently, or if he could not have sought relief before the judgment was given either because the relevant agreement was reached post judgment or because he had no means of knowing that the judgment was being sought until it was served on him. That is not this case."

The words "*for instance*" indicate that the list of situations where an injunction might be granted is non-exhaustive.

70. The court then considered a submission that where there is an exclusive jurisdiction clause or an arbitration agreement, delay is not relevant to comity but only to the question of whether relief should be granted insofar as it involves prejudice (in the sense of detrimental reliance) to the person against whom the injunction is sought (§ 120): a submission which the court did not accept. Reference was made to *Advent Capital Plc v G.N.Ellinas Importers Ltd & Anor* [2003] EWHC 3330, where there was a dispute between insureds and their insurers and the insurance was subject to the exclusive jurisdiction of the English court. The insured started proceedings in Cyprus in May 2002. There was a challenge to the jurisdiction which was decided adversely to the insurers on 27 May 2003. Proceedings seeking an anti-suit injunction were begun in England on 12 September 2003. Morison J decided that there was no culpable delay on the part of the insurers between the time when the proceedings in Cyprus started and the judgment of the Cypriot court on 27 May 2003. The only relevant delay was between 27 May 2003 and 12 September 2003, which was not such as to disentitle the insurers to an anti-suit injunction.

71. After referring to these matters, the Court of Appeal in *Ecobank* continued in a passage I must cite at length in order to give a full flavour of the considerations bearing on the exercise of the court's discretion:

> "122. … An injunction is an equitable remedy. Before granting it the court must consider whether it is appropriate to do so having regard to all relevant considerations, which will include the extent to which the respondent has incurred expense prior to any application being made, the interests of third parties, including, in particular, the foreign court, and the effect of making such an order in relation to what has happened before it was made.
>
> 123. A relevant consideration, particularly in relation to interlocutory relief, as was sought in the present case, is whether the party seeking an injunction has acted with appropriate speed. The longer a respondent continues doing that which the applicant seeks to prevent him from doing, the greater the amount of labour and cost that he will have expended which could have been avoided. There is, I accept, some force in Mr Coleman's submission that Mr Tanoh ought not to be able to pray

in aid the expenditure he was incurring in advancing both sets of proceedings, when he was no doubt calculating that he would do better in the local courts than before the international arbitral tribunal to which he had agreed. It could also be said that, in the light of the objections made to the jurisdiction of the Togolese and Ivorian courts, Mr Tanoh was running the risk that his expenditure on the proceedings would turn out to be in vain (if the objections were upheld) anyway. At the same time, if Ecobank was going to bring a claim for an anti-enforcement injunction if it failed in Togo and Côte d'Ivoire, there was no good reason for it to delay seeking anti-suit relief in England, whose law governed the EEA and to whose jurisdiction the parties had submitted.

124. Nor do I think it right to say that the prejudice to Mr Tanoh arising from Ecobank's failure to seek relief before judgment is to be disregarded in the light of the fact that Ecobank was challenging jurisdiction. Whilst Mr Tanoh knew of Ecobank's objection, it was not apparent that Ecobank was ever going to seek injunctive relief until it did so (nor, as these proceedings indicate, was its entitlement to such relief self-evident) and the expenditure and effort which would have been wasted if an injunction was granted (and obeyed) increased as time went by. That is a relevant form of prejudice which continued even after the judgments were entered until 10 April 2015. During that time Ecobank commenced appeal proceedings and applied for provisional stays of execution.

125. The judge was, therefore, right [22], in my view, not to accept that any time during which the foreign jurisdiction is challenged is to be left out of account when considering whether to grant an anti-enforcement order or that Advent Capital Plc is to be taken as a decision to that effect. That case involved a claim to an anti-suit injunction. The Cypriot court had never given any judgment on the merits and does not appear to have been anywhere close to doing so. Morison J held in terms that there had been "no advancement of the substantive case" and therefore no prejudice to the insureds by granting the injunction. He was plainly concerned to consider whether the application for an injunction "*had been sought promptly overall and before the foreign proceedings were too far advanced*" [44].

126. Moreover the prejudice or detriment which would be involved in Ecobank allowing the proceedings to continue without seeking injunctive relief and then securing an injunction would not have been limited to Mr Tanoh. It extends to third parties involved in the litigation and, most importantly, the foreign courts which, in the present case, have held hearings and produced judgments of considerable length which are obviously the product of much labour.

127. I agree with the judge [24] that it is not a precondition to the refusal of an injunction that the respondent should establish detrimental reliance, if by that is meant that he must show (a) that he believed that no application for an injunction would be made or (b) that he believed

that and, if he had realised that an application would or might be made, he would have abandoned the foreign proceedings. The existence or otherwise of such reliance is relevant but not determinative. The relevance of delay is wider than that. The need to avoid it arises for a variety of reasons including the avoidance of prejudice, detriment, and waste of resources; the need for finality; and considerations of comity.

128. It is, thus, not, in my view, a complete answer for Ecobank to say that someone in the position of Mr Tanoh has only himself to blame because it his breach which will have caused the waste. The court is, in an appropriate case, entitled to be reluctant to use its coercive powers to restrain that which the applicant has in fact allowed to continue without any application for relief for some time. This is especially so if, as appears to me to be the case here, little useful purpose is likely to be served by the party who claims to be entitled to an injunction holding back from claiming it. In some cases, an objection to the jurisdiction can be dealt with first before the substantive merits, so that there may be something to be said for pursuing that objection in the foreign court. But that was not the case here.

129. Further the tenor of modern authorities is that an applicant should act promptly and claim injunctive relief at an early stage; and should not adopt an attitude of waiting to see what the foreign court decides. In *The Angelic Grace* Leggatt LJ said that it would be patronising and the reverse of comity for the English court to decline to grant injunctive relief until it was apparent whether the foreign court was going to uphold the objection to its exercising jurisdiction and only do so if and when it failed to do so. Whilst those observations related to the approach of the court it seems to me that they are a guide to what should be the approach of a would-be applicant for anti-suit or anti-enforcement relief.

130. The proposition that delay in this field is immaterial in the absence of prejudice and that there is necessarily no prejudice if the respondent is aware of the challenge to the jurisdiction of the foreign court which is being pursued there would have curious consequences. Firstly it would revolutionise the approach that has previously been taken in respect of the need for applicants to act promptly. Secondly it would mean that applicants could have two bites at the cherry. They could, without seeking or threatening any injunctive relief in this country, resist the foreign proceedings on the ground that the issue should be arbitrated and, provided they had not submitted to the jurisdiction, they could then, if the challenge failed, seek an anti-enforcement injunction. The impunity which Mance J had thought *"never [to have] been the law"* or something very like it would have arrived.

131. Mr Coleman submitted that, in the light of the fact that in the *St Petersburg* case Longmore LJ relied on the decision of the Supreme Court in *AES* (an anti-suit injunction case) the Court of Appeal has accepted that the principles that apply to anti-suit injunctions apply to anti-enforcement cases. However, the passages from the judgment of

Lord Mance JSC cited by Longmore LJ, namely [25] – [27], were to the effect that courts ought not to feel diffident at granting anti-suit injunctions *"if sought promptly"* because without them the claimant would be deprived of its contractual rights in a situation where damages would be a manifestly inadequate remedy. I do not accept that there can be no distinction between an anti-suit and an anti-enforcement case, not least because an anti-enforcement injunction may well not have been sought with the promptitude to which Lord Mance was referring. Nor do I accept that, in a case such as this, comity has no place other than to give effect to the rights of the parties to have the dispute determined by arbitration.

132. …The burdens imposed on courts are well known: long lists, size of cases, shortages of judges, expanding waiting times, and competing demands on resources. The administration of justice and the interests of litigants and of courts is usually prejudiced by late attempts to change course or to terminate the voyage. If successful they often mean that time, effort, and expense, often considerable, will have been wasted both by the parties and the courts and others. Comity between courts, and indeed considerations of public policy, require, where possible, the avoidance of such waste.

133. Injunctive relief may be sought (a) before any foreign proceedings have begun; (b) once they have begun; (c) within a relatively short time afterwards; (d) when the pleadings are complete; (e) thereafter but before the trial starts; (f) in the course of the trial; (g) after judgment. The fact that at some stage the foreign court has ruled in favour of its own jurisdiction is not per se a bar to an anti-suit injunction: see *AES*. But, as each stage is reached more will have been wasted by the abandonment of proceedings which compliance with an anti-suit injunction would bring about. That being so, the longer an action continues without any attempt to restrain it the less likely a court is to grant an injunction and considerations of comity have greater force.

134. Whilst a desire to avoid offence to a foreign court, or to appear to interfere with it, is no longer as powerful a consideration as it may previously have been, it is not a consideration without relevance. A foreign court may justifiably take objection to an approach under which an injunction, which will (if obeyed) frustrate all that has gone before, may be granted however late an application is made (provided the person enjoined knew from an early stage that objection was taken to the proceedings). Such an objection is not based on the need to avoid offense to individual judges (who are made of sterner stuff) but on the sound basis that to allow such an approach is not a sensible method of conducting curial business.

135. Mr Coleman submitted that *"comity has no role to play in the timing of the application for, or the grant of, an anti-enforcement injunction"*. I disagree. Timing is of considerable significance. The grant of an interlocutory injunction to prevent the commencement or

> continuance of a duplicate set of proceedings may well be a sound step which (a) gives effect to contractual rights and (b) avoids the cost and waste of rival proceedings operating in tandem and the risk of inconsistent judgments – results which considerations of comity would favour. In the case of an anti-enforcement injunction the application will, by definition, be made after the rival proceedings have run to judgment. The grant of an injunction will mean that the cost of those proceedings and the resources of the rival court will (unless the injunction is discharged) have been wasted. It will not avoid the risk of inconsistent decisions although it will preclude the respondent from enforcing the existing potentially inconsistent decision.
>
> 136. In the case of anti-enforcement injunctions there are further considerations which underpin the need for caution expressed in the cases. First, an order precluding enforcement in countries outside England & Wales or those States which are subject to the Brussels/Lugano regime will, if obeyed, in effect preclude the consideration by the Courts of those countries as to whether they should recognise or enforce the judgement in question. That is a matter which it is, intrinsically, for the relevant court to decide according to its applicable law. Moreover, insofar as the order prevents enforcement in the country of the court which gave the judgment it is, indirectly, an interference with the execution in its own country of the judgment which the court has given and can expect to be obeyed.
>
> 137. In short, both general discretionary considerations and the need for comity mean that an applicant for anti-suit relief needs to act with appropriate despatch. In *Transfield Shipping* at [78] I observed that *" …comity, which involves respect for the operation of different legal systems, calls for challenges … to be made promptly in whatever is the appropriate court"*. Whilst recognising that delay is not necessarily a bar to relief, and the importance of upholding the rights of those who are the beneficiaries of exclusive jurisdiction agreements, I do not regard the cases subsequently decided by this court as rendering that statement inaccurate." (footnotes omitted)

72. More recently, in *SAS Institute v World Programming* [2020] EWCA Civ 599, the Court of Appeal, reversing the court below, granted an anti-enforcement injunction preventing enforcement of a judgment of the courts of North Carolina insofar as the proposed enforcement processes affected debts (owed by the applicant's customers) situated in the UK pursuant to English jurisdiction clauses and funds held in UK bank accounts. The facts were complex. In bare outline, SAS had sued WP unsuccessfully in England. SAS then sued WP in North Carolina. After an unsuccessful challenge on *forum non conveniens* grounds – there was no applicable exclusive jurisdiction clause or arbitration agreement – WP submitted to the jurisdiction (whilst ultimately maintaining its objection to the North Carolina court granting certain types of relief). The North Carolina court gave judgment in favour of SAS, including triple damages. The English court refused to enforce that judgment in England on several grounds. SAS sought orders in the Californian courts, which the court indicated it was minded to grant, requiring the assignment to SAS of debts owed by WP's customers, and for WP to turn

over to a US marshal payments from customers which it had already received. Both orders would in principle operate *in personam* rather than *in rem* (§ 26).

73. Males LJ (with whom the other members of the court agreed) noted that the assignment and turnover orders, if made, would *inter alia* require the assignment of debts due from customers in third countries but which were situated in the UK (by virtue of exclusive jurisdiction clauses or arbitration agreements) and the transfer of debts due from banks also situated in the UK (§§ 59-63)). Under established and internationally recognised principles (as stated, for example, by Lord Hoffmann in *Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2003] UKHL 30, [2004] 1 AC 260, for a court in State A to seek to enforce its judgment against assets in State B would be an interference with the sovereignty of State B (§ 64 and ff.) The proposed assignment and turnover order would therefore, to the extent indicated above, be exorbitant, because even though in principle operating *in personam* their practical effect would be an enforcement against UK-situated assets (§§ 72, 73 and 83).

74. It is convenient to note at this point that I do not accept the Defendants' suggestion that the observations in *Société Eram Shipping* about territorial sovereignty and a court's lack of competence to discharge a debt recoverable abroad have a direct bearing on the exercise of the jurisdiction to grant an anti-enforcement injunction. What is in issue here is not (as was the case in *Société Eram Shipping* and *SAS Institute*) an order purporting to transfer, discharge or otherwise interfere with debts or other assets situated abroad but, rather, an order that particular parties must refrain from instituting or pursuing enforcement proceedings abroad.

75. Turning to the principles governing anti-enforcement injunctions, Males LJ said:

> "93. In my judgment there is no distinct jurisdictional requirement that an anti-enforcement injunction will only be granted in an exceptional case. Such injunctions will only rarely be granted, but that is because it is only in a rare case that the conditions for the grant of an anti-suit injunction will be met and not because there is an additional requirement of exceptionality. That accords, in my judgment, with the approach of Lawrence Collins LJ in *Masri v Consolidated Contractors International (UK) Ltd (No. 3)* [2008] EWCA Civ 625, [2009] QB 503 at [94], where he commented that such injunctions would only be granted in rare cases, or in exceptional circumstances, but did not identify this as a distinct jurisdictional requirement. In any event, exceptionality would be a vague and somewhat elastic criterion and (if it matters) it is hard to see why this case, with its complex procedural history, should not be regarded as exceptional.
>
> …
>
> 101. First, the English court has great respect for the work of foreign courts, particularly those in countries such as the United States with which we share common traditions and fundamental principles, and which have a high regard for the rule of law. To grant an injunction which will interfere, even indirectly, with the process of a foreign court is therefore a strong step for which a clear justification must be required.

…

103. When an anti-suit injunction is sought on grounds which do not involve a breach of contract, comity, telling against interference with the process of a foreign court, will always require careful consideration. The mere fact that things are done differently elsewhere does not begin to justify an injunction. It is evident in the present case that the anti-suit injunction granted by Robin Knowles J is viewed by the United States courts as an unwelcome interference with their process. That is inevitably a cause for concern and regret. However, as Toulson LJ's summary explains, comity will be of less weight where the order made or proposed to be made by the foreign court involves a breach of customary international law.

104. Second, there is a relationship between comity and delay. In general, the greater the delay in seeking relief, the further the foreign proceedings will have advanced, and the more justifiable will be the foreign court's objection to an order by the English court which is liable to frustrate what has gone before and waste the resources which have been expended on the foreign proceedings.

…

106. Christopher Clarke LJ's comments [in *Ecobank*] about the waste of resources caused by delay, in particular where an anti-enforcement injunction is sought, were made in the context of an application to restrain enforcement of a foreign judgment in its entirety. To grant such an injunction would render the entire liability proceedings a waste of time and resources. That is not this case. In the present case the injunction sought by WPL does not seek to prevent SAS from enforcing the North Carolina judgment in its entirety. WPL does not invite the English court to prevent SAS from enforcing the North Carolina judgment by normal methods of enforcement against assets in the United States. Nor does it suggest that the English court has any role in considering the appropriateness of the order upheld by the Fourth Circuit preventing WPL from licensing new customers in the United States. Accordingly, regardless of the outcome of this appeal, the North Carolina judgment will stand and there are processes of enforcement available to SAS in the United States. These have already achieved some (albeit not a full) recovery and may well continue to do so in any event.

107. WPL's application to the English court is based essentially on what it contends to be the exorbitant and therefore illegitimate effect of the proposed Assignment and Turnover Orders. I shall have to consider whether the injunction which it has obtained goes beyond this objective. However, the grant of an anti-suit injunction limited to dealing with the exorbitant effect of the proposed Orders would not "frustrate all that has gone before" and would not involve the same kind of waste of resources as that described in Ecobank.

…

111. … comity is a two-way street, requiring mutual respect between courts in different states. This need for mutual respect means that comity requires a recognition of the territorial limits of each court's enforcement jurisdiction, in accordance with generally accepted principles of customary international law … [citing Lord Bingham's statement in *Société Eram Shipping Co* that it is *"inconsistent with the comity owed to the Hong Kong court to purport to interfere with assets subject to its local jurisdiction.*"]

76. Finally, on the subject of delay, Males LJ said:

"113. The passage from the judgment of Christopher Clarke LJ in *Ecobank Transnational Inc v Tanoh* set out above explains that delay by an applicant for anti-suit relief may be an important and sometimes decisive factor against the grant of an injunction, but is not necessarily a bar to relief. It is a factor to be considered, but the weight to be accorded to it will depend on all the circumstances of the case.

114. The fact that an applicant for anti-suit relief submitted to the jurisdiction of the foreign court may also be an important and sometimes decisive factor, but again is not necessarily fatal. The position is fairly summarised in Briggs, Civil Jurisdiction and Judgments (6th Edition), at page 550:

> "No reported case holds, clearly and precisely, that an applicant will forfeit the right to ask for an injunction if he has already submitted to the jurisdiction of the foreign court. But if the applicant has taken a step in the foreign proceedings which goes beyond a challenge to that court's jurisdiction, it will be more difficult to persuade an English court that the respondent should now be restrained from continuing with those proceedings. … But the principle of the matter seems reasonably clear: an applicant who has already submitted to the jurisdiction of a foreign court should find that this is a substantial obstacle to his obtaining an anti-suit injunction from an English court."

115. In the present case WPL submitted to the jurisdiction of the North Carolina court and fought the liability proceedings there on the merits. Accordingly it was (or rapidly became) far too late for it to seek an anti-suit injunction to restrain SAS from pursuing its claim there despite the existence of the judgment in WPL's favour in the English liability proceedings. For the same reasons, it would be impossible for WPL to seek an injunction to prevent SAS from enforcing the North Carolina judgment at all. But it does not follow, in my judgment, that it is too late for WPL to seek an injunction preventing SAS from enforcing the judgment in ways which have exorbitant effect. Its submission to the jurisdiction of the North Carolina court can fairly be treated as a submission to normal enforcement procedures conforming to generally

> accepted international principles, but not as a submission to enforcement measures which are not of that nature. An application could not have been made any earlier for an anti-suit injunction on the ground that SAS might seek to enforce any judgment extra-territorially. That would have been regarded as an implausible speculation."

77. In *E-Star Shipping v Delta Corp Shipping* [2022] EWHC 3165 (Comm), [2023] 1 Lloyd's Rep 595 proceedings were brought in Benin in alleged breach of an arbitration agreement. An injunction was sought whose effect in substance would have been to prevent the operation of the order, in Benin, including sales of cargo by the court bailiff, receipt of monies and payment over to Delta. Jacobs J found the alleged arbitration agreement not to have been established, and as a second reason for refusing an injunction said:

> "49. The present application is, therefore, an anti-enforcement injunction designed to stop that order from being implemented, although the drafting of the order which is sought goes somewhat further, and requires Delta to take steps positively to reverse orders which have been made. In my judgment, this is not appropriate for an anti-suit injunction, or indeed, any injunction at all. The question of anti-enforcement injunctions is dealt with in some detail in the book by Thomas Raphael QC, *The Anti-Suit Injunction* 2nd Edition, paragraphs 5.65 to 5.72. In my view, he quite rightly points to two matters which are contrary to the idea that such an injunction should be granted.
>
> 50. The first is that, in practice, such injunctions are not granted. Secondly, the reason why such injunctions [are not granted] is that they would give rise to very serious comity considerations. In the present case, the Benin court has applied its mind in contested proceedings – to which there were many parties, including E-Star itself (albeit apparently not served) – to the question of what is to happen to cargo within its jurisdiction. It has reached conclusions on that question, and issued a detailed reasoned judgment. I do not consider that it is for this court, now, in effect, to tell the Benin court that it has come to the wrong decision, or to do so by the grant of anti-suit relief. It follows that the present application has come far too late. If a party does genuinely seek anti-suit relief, it must generally do so well before the foreign court has continued with its proceedings, and indeed, come to a decision.
>
> 51. That brings me to the third related point as to why no anti-suit or anti-enforcement injunction should be granted, and that is the question of delay. It is well established, in the context of anti-suit injunctions, that parties must act reasonably promptly and before the foreign proceedings are too far advanced. In the present case, as will be apparent from what I have already said, the foreign proceedings have advanced to the stage where judgment has actually been given. That is in the context of a case where, in my view, there is no satisfactory evidence which explains why, or excuses the fact that, E-Star did not act whilst those proceedings were underway."

The cited passages from Raphael's book include the statement that:

> "… delay in seeking the injunction until after the foreign judgment is a significant factor in the assessment of comity. It means that the injunction to restrain enforcement may well, in effect, be seeking to undo what has already been done by the foreign court. The English courts have tended to regard this as a considerable interference with the foreign court's jurisdiction, which is difficult to justify as a matter of comity" (§ 5.68, citing *The Eastern Trader* and *Ecobank*)

The following statement may also be pertinent:

> "But an important aspect of the landscape is that the cases so far have largely concerned attempts to restrain post-judgment enforcement through normal measures of enforcement abroad, on the basis of objections to the legitimacy of the foreign proceedings which existed pre-judgment. In cases where the gravamen of the injunction depends on post-judgment matters, such as the potentially exorbitant nature of the foreign enforcement measures sought, different considerations will apply." (§ 5.70, citing *Ecobank* and, as a possible example of post-judgment conduct, *Bank of St Petersburg*)

78. Foxton J in an *ex tempore* judgment in *Barclays Bank Plc v. PJSC Sovcombank* [2024] EWHC 1338 (Comm) made the following observations about the grant of an anti-enforcement injunction:

> "10. The second head of relief sought is an anti-enforcement injunction. That, at one stage, was a relatively rare beast in English civil procedure, although it is fair to say reports of sightings have significantly increased against the background of ongoing events arising from the Russian/Ukraine conflict. It is possible to find cases, and Ms. Hutton KC has very properly drawn them to my attention, stressing that the grant of an anti-enforcement injunction (i.e. one that would prevent a judgment creditor, who has obtained a judgment in proceedings brought abroad from taking steps to enforce that judgment) would be an exceptional measure.
>
> 11. More recent cases, and in particular I am referring to *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, have made it clear that there is no separate jurisdictional requirement of "exceptionality" over and above the reasons for granting anti-suit injunctive relief, but, in practice, it is likely to be a rare case in which it will be possible to persuade a court to grant such an injunction.
>
> 12. In this case I am satisfied that the anti-enforcement relief sought is appropriate. First, the facts of this case appear to be full square with those in the *Deutsche Bank v RusChemAlliance LLC* [2023] EWCA Civ 114 …. Although the anti-enforcement injunction application was dealt with briefly in the Court of Appeal's judgment at paragraph 43, the court made it clear that it was appropriate to grant the AEI because the effect

> of the evidence in that case was that even if the respondent to the anti-suit injunction had sought to discontinue the Russian proceedings, the approval of the court would be required, that the approval might not be granted, and that judgment might be entered regardless. I have expert evidence to exactly the same effect in this case.
>
> 13. In addition, as Ms. Hutton KC points out, the anti-enforcement injunction is being sought in this case in advance of the obtaining of any judgment before the Russian court, and therefore the court is not in the position considered in to *Masri v Consolidated Contractors (No. 3)* [2009] QB 503, *Mamidoil-Jetoil Greek Petroleum Company SA & Anor v Okta Crude Oil Refinery AD* [2003] 1 Lloyd's Rep. 1 and, *ED & F Man (Sugar) Ltd v Yani Haryanto (No. 2)* [1991] 1 Lloyd's Rep.161 and 429, in which proceedings in the foreign court had run their full course, resulting in a judgment, and then an injunction was sought from the English court seeking to restrain enforcement of the judgment at that stage. Whilst it can be said that the teeth granted in the anti-enforcement injunction sought will inevitably bite if, and only if, a judgment is entered, I am persuaded that there is a material distinction between applications made at an early stage pre-judgment and those made post-judgment, because the comity considerations in acting now are less intrusive than when the foreign court has already given judgment, the period of time and legal process that will elapse before a judgment is entered will usually involve delay and the incurring of expense by the respondent and also because obtaining a judgment in some sense vests a property right in the judgment creditor, which an anti-enforcement injunction would interfere with. Against that background, it seems to me an injunction given in advance of that position is inherently less intrusive.
>
> 14. In any event, however, on the basis of the *SAS* case and *RusChemAlliance* decision [sc. the Court of Appeal's decision in that case], where an anti-suit injunction has been sought at an early stage, but the concern is that that, of itself, will not be effective, either because it will not be complied with or because, even if it is complied with, a judgment may be entered in the foreign proceedings in any event, it does seem to me that the requirement for obtaining an anti-enforcement injunction will readily be satisfied, and I am persuaded they are satisfied in this case."

79. Most recently, the Supreme Court in *UniCredit Bank GmbH v. RusChemAlliance LLC* [2024] UKSC 30; [2024] 3 WLR 659, having determined that the arbitration agreement in a bond was governed by English law, upheld an anti-suit injunction granted to prevent the continuation of proceedings in Russia. Lord Leggatt (with whom the other members of the court agreed) highlighted Lord Bingham's statement in *Donohue v Armco* [2002] 1 All ER 749 § 24 that where proceedings are brought in breach of an exclusive jurisdiction clause, the court will "*ordinarily exercise its discretion (whether by granting a stay of proceedings in England, or by restraining the prosecution of proceedings in the non- contractual forum abroad, or by such other procedural order as is appropriate in the circumstances) to secure compliance with the contractual*

bargain, unless the party suing in the non-contractual forum (the burden being on him) can show strong reasons for suing in that forum" (*UniCredit* § 67).

80. Lord Leggatt added that where the contractually agreed forum is a court, reasons which may, depending on the circumstances, be of sufficient strength to justify declining to enforce the contractual bargain include, as well as matters such as delay in seeking relief or submission to the jurisdiction of another court, inconvenience and potential injustice that would otherwise result from allowing parallel claims to be litigated in different jurisdictions (*ibid*.). Where the agreed forum is arbitration, the policy of securing compliance with the parties' contractual bargain is further reinforced by the strong international policy of giving effect to agreements to arbitrate disputes; and the risk of parallel proceedings is not a factor of any weight (§§ 68-69). Lord Leggatt also reemphasised the point made in the *Angelic Grace* that where an injunction is sought on the basis of breach of contract, the court need not be diffident in granting an injunction (repeating that examples of matters which may be relevant to the exercise of the court's discretion are delay in applying for an anti-suit injunction or the fact that the applicant submitted to the jurisdiction of the foreign court) (§ 71). It is also of note that, aside from the jurisdictional gateways, Lord Leggatt described the fact that the contractual rights being enforced were governed by English law as providing *"a substantial connection with England and Wales"* (§ 83).

81. Finally, the English policy against enforcement of foreign judgments obtained in breach of an exclusive jurisdiction clause is reflected in section 32 of the Civil Jurisdiction and Judgments Act 1982, which prevents recognition or enforcement of a foreign judgment obtained in breach of a jurisdictional promise, absent a submission to or positive engagement of the local court's jurisdiction by the putative judgment debtor.

82. Viewing this body of case law as a whole, it is possible to identify the following key principles relating to the grant of anti-enforcement injunctions.

i) The fundamental question, pursuant to section 37(1) of the Senior Courts Act 1981, is whether it is just and convenient to grant an injunction.

ii) In principle, the enforcement of a judgment obtained in breach of an exclusive jurisdiction clause or an arbitration agreement can be restrained by injunction (see *Ellerman Lines* and *Bank of St Petersburg*). The order operates *in personam*: like an anti-suit injunction, it is directed to the party, not the foreign court or courts.

iii) There is no distinct jurisdictional requirement that the case be exceptional (see *SAS Institute* § 93).

iv) However, anti-enforcement injunctions are rarely granted, because delay and/or comity considerations usually make it inappropriate to grant such an injunction.

v) As to comity, an anti-enforcement injunction (like an anti-suit injunction) has the effect of indirectly interfering in the processes of a foreign court, and hence a strong step for which clear justification must be required (*SAS Institute* § 101).

vi) The fact that the foreign proceedings were brought in breach of the respondent's obligations under an exclusive jurisdiction clause or arbitration agreement is capable of amounting to such a justification.

vii) It would be particularly intrusive and inconsistent with comity to grant an injunction indirectly preventing enforcement by and in the territory of a foreign court which has already proceeded to judgment (see, e.g., the observations of Neill LJ in *Ellerman Lines* at p437rhc quoted earlier; *Masri* § 93; *Ecobank* § 136 last sentence). Moreover, such an injunction would be liable to result in the resources and time of the foreign court, as well as the respondent, having been wasted, providing a further strong reason against the grant of such relief (*SAS Institute* § 104; *Ecobank* §§ 123, 124, 126, 127, 132, 133, 134, 135).

viii) Where an anti-enforcement injunction prevents enforcement in one or more third countries, the general point about indirect interference with a foreign court applies ((v) above), in relation to both the foreign court which gave judgment and the putative enforcement court. However, if the injunction is sought before or at a very early stage of those enforcement proceedings, concerns about waste of resources and time of the enforcement court should not arise. Such concerns may still arise in relation to the court which gave judgment and in relation to the respondent, but that will depend on the circumstances. The position may be different, for example, if the injunction is not designed to prevent enforcement of the judgment in its entirety, and hence does not render the proceedings leading to judgment a waste of time and resources (*SAS Institute* § 106).

ix) Where the respondent seeks to enforce in a third country, it has been stated that the right to enforce should depend primarily on the law of the enforcement court, which the English court should not pre-empt by granting an injunction (*The "Eastern Trader"* at p.602 rhc; *Akai* at p.1533; *Ecobank* § 136 penultimate sentence). However, in the case of an anti-suit injunction, it is not regarded as a bar to injunctive relief that the overseas court ought instead to be left to make its own jurisdictional decision (applying its own rules as to the effect of exclusive jurisdiction clauses and arbitration agreements). It is arguable that it is no more intrusive indirectly to interfere with an overseas court's enforcement of a foreign judgment than with an overseas court's adjudicative jurisdiction over a dispute. In any event, there is a cogent argument that an applicant who has contracted for an exclusive jurisdiction clause or arbitration agreement has a *prima facie* entitlement not to be troubled by either substantive or enforcement proceedings elsewhere, and accordingly to seek to hold the respondent to its contractual promise: a view which I consider to be consistent with the observations of Longmore LJ in *Bank St Petersburg* § 35 quoted earlier).

x) It is relevant to consider whether there is a good reason for the applicant not having applied sooner for injunctive relief (by way of anti-suit injunction or anti-enforcement injunction) (as recognised implicitly in *Ecobank* §§ 128), or whether the applicant was simply hoping to have two bites at the cherry (*Ecobank* §§ 129-130).

xi) Delay is an important, and sometimes decisive, factor against the grant of an injunction, but it is not necessarily a bar to relief. Its weight will depend on all

> the circumstances (*SAS Institute* § 113; *Ecobank* §§ 119, 122 and 137). In assessing the circumstances, account will need to be taken of the considerations identified above. The relevant circumstances will include whether the anti-enforcement injunction seeks to prevent enforcement within the territory of the judgment court or only elsewhere; whether the injunction seeks to prevent enforcement of the judgment in its entirety; whether (if obeyed) it will result in the proceedings leading up to judgment having been a waste of time and resources; and whether there is a satisfactory explanation for the applicant not having applied sooner for injunctive relief.

83. As to AASI relief, Raphael states:

> "It is suggested … that in order for an anti-anti-suit injunction to be reconcilable with comity, the domestic court must be manifestly the appropriate forum for the determination of the question of forum. It would be inappropriate for an anti-anti-suit injunction to be deployed, in a case where there was a legitimate dispute as to the relative appropriateness of the different jurisdictions, merely because the domestic court had concluded that on balance it was the more natural forum for the trial of the merits.
>
> If the parties have agreed to an exclusive English forum clause, a foreign anti-suit injunction to restrain substantive proceedings in England will be viewed as a breach of the clause, and can be restrained by injunction, on the basis that it is a breach of contract, under the principles outlined in *The Angelic Grace*. In *Sabah Shipyard v Government of Pakistan*, the parties had agreed to the non-exclusive jurisdiction of the English courts. A claim in Pakistan for an anti-suit injunction to restrain proceedings in England was held to be in breach of implied terms of the jurisdiction clause, and also to be vexatious and oppressive, as the parties had implicitly agreed at least that English litigation could not be treated as inappropriate, and an anti-anti-suit injunction was required to protect Sabah's rights to non-exclusive jurisdiction against the Pakistani anti-suit injunction.168 However, probably due to the particular risks of conflict with foreign courts raised by anti-anti-suit injunctions, there is case law suggesting that the English courts are relatively willing to accept that there may be 'strong reasons' not to grant an anti-anti-suit injunction.." (§§ 5.62 and 5.63, footnotes omitted)

84. I consider the principles relating to submission to the foreign jurisdiction in section (E) below.

(D) THE YOUTUBE JURISDICTION CLAUSE

85. The YouTube jurisdiction clause provides:

> "**Governing Law**
>
> The Agreement and your relationship with YouTube under the Agreement are governed by English law. To resolve disputes, the parties may apply to the courts of England and Wales.

> If, under any mandatory law of your country, the dispute cannot be resolved in a court in England or Wales and in accordance with the norms of English law, the case may be referred for consideration to a local court and the issue may be resolved as guided by local legislation."

86. Two issues arise:

    i) whether the word *"may"* in the first paragraph means that the clause provides only for non-exclusive English jurisdiction; and

    ii) whether the Defendants were entitled to sue in Russia pursuant to the second paragraph.

(1) Exclusive or non-exclusive jurisdiction clause?

87. As a preliminary matter, Google submits that it is not open to the Defendants to take this point, because until a few days before the hearing they had proceeded in various ways on the premise that the clause provided for exclusive English jurisdiction. In the light of my conclusions about the effect of the clause, I find it unnecessary to decide that matter.

88. The Defendants submit that, applying ordinary principles of contractual interpretation, the word *"may"* indicates that the clause provides for non-exclusive jurisdiction. The second paragraph sets out a further non-exclusive jurisdiction provision in each of the user's local court if the 'mandatory law' wording is engaged. Neither provision compels a party to litigate either in England or in the user's home court, but they prevent the counterparty from objecting to proceedings brought in those jurisdictions pursuant to the clause.

89. The Defendants point out that the YouTube Jurisdiction clause is one of Google's standard terms and would, one can reasonably infer, have been drafted by Google's lawyers. They say that it is, in those circumstances, relevant to note that the sophisticated draftsman of this provision chose to use the permissive word "*may*", rather than the obligatory word "*shall*" or "*will*", in respect of commencing proceedings in England. The lack of a negative covenant (that the parties must not sue elsewhere) is particularly stark in circumstances where other Google terms relied upon in this case – i.e. the Platform Terms and the Content Agreement – contain a straightforward English exclusive jurisdiction clause or LCIA arbitration agreement.

90. I do not accept those submissions. The clause has to be read as a whole. If the Defendants' construction were correct, then it would mean that the Defendants were entitled to sue in their home court if the conditions stipulated in the second paragraph were met, but were also entitled to sue there if those conditions were not met (because the clause imposed no restriction on where they could sue). That is not, in my view, a remotely sensible construction of the clause.

91. In my view, the word "*may*" is explicable on the basis that the clause goes on in the second paragraph to provide for a contingent alternative jurisdiction (as well as, perhaps, on the basis that commencing legal action is inherently voluntary). However, reading the two paragraphs together, the plain intention is for any disputes to be

resolved either (a) in the English courts or (b) if, but only if, the stated conditions are satisfied, in the user's home court. That is underlined by the fact that the second paragraph contemplates litigation in England as the sole counterfactual to suit in the user's home court.

92. It is also notable, as Google points out, that the clause does not say "*non-exclusive*", as it could easily have done and is habitually encountered. Nor does it have language which expressly preserves a right to sue elsewhere, save for the specific displacement proviso in the second paragraph (contrast the language used in the clauses considered in *Deutsche Bank AG v Highland Crusader Offshore Partners LLP* [2010] WLR 1023 at [7] (final paragraph of clause quoted), [64] and [115]; *Royal Bank of Canada v. Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* [2003] EWCA Civ 7 at [3] (final paragraph of clause quoted), [35] and [40]-[42]). Further, there might be said to be an obvious link in the present case between the mandatory choice of English governing law in the first sentence and the mandatory choice of English jurisdiction – subject only to the carve-out in the second paragraph – in the second sentence of the clause.

(2) Mandatory law proviso

93. The second paragraph requires there to be a 'mandatory law' in the user's country whose effect is that the dispute "*cannot*" be resolved by an English court and applying English law.

94. Professor Kryvoi explains that the introduction by Law No. 171-FZ of Article 248.1 does not have that effect:

i) It does not change the right of Russian Sanctioned Parties to conclude arbitration agreements or jurisdiction agreements giving jurisdiction over disputes to foreign courts and foreign-seated arbitral tribunals.

ii) It has not affected the parties' right to choose the law that would govern their contracts, which is regulated by Article 1210 Civil Code of the Russian Federation:

> "1. The parties to an agreement may, when concluding an agreement or subsequently, choose by agreement among themselves the law that is subject to application to their rights and obligations under this agreement."

Under Article 1192 of the Civil Code some, but not all, mandatory rules of Russian law (called "norms of direct application") override the governing law agreed by the parties. These are norms which, in the language of Article 1192, *"as a result of being specified in the mandatory norms themselves or in view of their special significance, including for ensuring the rights and legally protected interests of participants in civil transactions, regulate the relevant relations regardless of the applicable law"*. Article 248.1 is not one of those norms. Rather, it merely gives one party the right to trigger the jurisdiction of Russian Arbitrazh courts. Article 248.1(5) makes clear that, unless the sanctioned party has objected to the jurisdiction of the foreign court, Article 248.1 does not prevent the recognition of foreign court decisions or arbitration awards.

iii) The disputes that cannot be referred to arbitration are stipulated by APC Article 33(2) and do not include disputes covered by "exclusive" jurisdiction under Law No. 171-FZ.

iv) Neither has Law No. 171-FZ authorised the Russian court to disregard the parties' choice of governing law or to apply Russian law to the issues in dispute. Resolution No. 23 of the Plenum of the Supreme Court of the Russian Federation dated 27 June 2017 predates Law No. 171-FZ, but still guides Arbitrazh Courts on economic disputes arising from relations with a "*foreign element*". In § 11, it makes it clear that parties can agree to conclude a jurisdiction agreement on the transfer of disputes to a court of a foreign state. For example, in one recent case an appellate court relied on that paragraph to conclude that the parties were entitled to refer their dispute to a foreign court (Resolution of the Ninth Arbitrazh Court of Appeal dated 11 August 2022 in case No. A40-80037/22).

v) Article 248.1 expressly provides that it applies only *"[u]nless otherwise provided by … agreement of the parties, according to which the consideration of disputes with their participation is within the jurisdiction of foreign courts or international commercial arbitration located outside the territory of the Russian Federation"*.

vi) Article 248.1 entitles a Russian sanctioned party to bring proceedings in Russia if, upon the application of that party, the Russian court concludes that the Foreign Forum Selection Agreement is inoperable as a result of the foreign sanctions. However, this provision does not limit a Russian sanctioned party's right to enter into a Foreign Forum Selection Agreement.

vii) Moreover, the law does not prohibit or otherwise prevent Russian Sanctioned Parties from seeking, in Russia or outside Russia, the recognition and enforcement of court judgments or arbitral awards issued as a result of litigation or arbitration proceedings initiated by Russian Sanctioned Parties outside Russia in accordance with Foreign Forum Selection Agreements. To the contrary, Article 248.1(5) of the APC specifically states that:

> "The provisions of this [Article 248.1] shall not impede the recognition and enforcement of a decision of a foreign court or international commercial arbitration adopted pursuant to the claim of [a Russian sanctioned party], or if that person has not objected to the consideration of the dispute to which that person was a party by a foreign court or international commercial arbitration located outside the territory of the Russian Federation, including if that party did not apply for an [anti-suit] injunction prohibiting the initiation or continuation of the proceeding in a foreign court or international commercial arbitration located outside the territory of the Russian Federation."

viii) Further, Article 244 of the APC sets out the grounds for refusal to recognise and enforce foreign judgments and arbitral awards in Russia. Article 244(1)(3) of the APC states:

> "The arbitrazh court refuses to recognise and enforce the judgment of the foreign court in full or in part if:
>
> …
>
> 3) in accordance with an international treaty of the Russian Federation or in accordance with a federal law, the case falls within exclusive jurisdiction of the court of the Russian Federation, except as indicated in Article 248.1(5) of [the APC]." (my emphasis)

ix) Thus judgments of foreign courts and awards of arbitral tribunals in cases covered by Article 248.1 are enforceable in Russia if the case was initiated by a Russian sanctioned party or if a Russian sanctioned party did not object to the jurisdiction of the foreign court or arbitral tribunal.

x) These provisions show that the 'exclusive' jurisdiction of the Russian Courts under Article 248.1 is fundamentally different from the exclusive jurisdiction of the Russian courts established by other provisions of the APC. For example, Article 248 of the APC provides for the exclusive jurisdiction of the Russian Courts over various categories of disputes, including real property disputes and intellectual property disputes. If a dispute falls within these categories of disputes, a foreign court judgment or award purporting to resolve the dispute is not enforceable in Russia at all.

xi) Hence, although Law No. 171-FZ refers to the jurisdiction of the Russian Courts as "exclusive" it is in effect neither exclusive nor mandatory. It does not exclude jurisdiction of the forum agreed upon by the parties, because it does not prohibit a Russian sanctioned party from suing in a foreign forum in accordance with a foreign jurisdiction agreement. Moreover, if the Russian sanctioned party does sue in a foreign forum, the resulting judgment or award of the foreign forum will be enforceable in Russia.

95. The expert instructed by the Defendants, Professor Nikitin, says:

> "12. Thus, Article 248.1 of the APC RF is an example of exclusive jurisdiction of Russian arbitrazh courts, which cannot be changed by the parties' agreement.
>
> 13. This article was introduced by Federal Law No. 171-FZ dated 08.06.2020 in order to provide protection of rights and legitimate interests of certain categories of Russian citizens and legal entities against whom "unfriendly countries" introduced restrictive measures. As a result of sanctions, such citizens and legal entities were deprived of their right to judicial protection on the territory of these foreign countries, not only in state courts, but also in arbitration institutions.
>
> 14. Accordingly, when a Russian arbitrazh court resolves the issue of its jurisdiction to consider a dispute, it is obliged to apply procedural rules on the exclusive jurisdiction of Russian courts, including Article 248.1 of the APC RF, which establishes that disputes involving

> sanctioned persons are subject to consideration by Russian arbitrazh courts at the location or residence of such persons."

Professor Nikitin refers to the *Uraltransmash* and other cases indicating the Russian courts' readiness to conclude that there are restrictive foreign measures creating an obstacle for a sanctioned person's access to justice, and then states:

> "23. Thus, taking into account the prevailing approach of the courts to the interpretation of Article 248.1 of the APC RF, for its application, it is sufficient for the claimant to prove that his claim arose in connection with the application of foreign restrictive measures and that he expresses his will to consider the dispute in a Russian court.
>
> 24. It seems that despite the fact that Part 1 of Article 248.1 of the APC RF includes a provision on inapplicability of the article in case there exists an agreement between the parties, which provides for the jurisdiction of a foreign court or international commercial arbitration, the widespread nature of restrictions actually applied to Russian persons impels Russian courts to treat such agreements as void and to find such disputes within their jurisdiction (in order to protect Russian persons' right to access to justice)."

96. However, the latter point (even to the extent it may be correct) in no way detracts from the points that Article 248.1(a) applies, if at all, only at the option of the sanctioned person (as reflected in the words *"have the right"* in Article 248.1(iii)), expressed by suing in Russia, and (b) expressly preserves the right for the sanctioned person to sue, or allow himself to be sued, outside Russia resulting in a judgment enforceable in Russia (Article 248.1(5)). I note that Professor Nikitin does not address Article 248.1(5). I consider Professor Kryvoi's evidence, as summarised above, to be cogent and I accept it.

97. The Defendants submit that the "*mandatory law*" paragraph of the YouTube Jurisdiction clause does not require Article 248.1 to exclude the sanctioned entity's contractual right to sue in a foreign forum or for that right to be lost or overridden. Rather, if, as in the present case, the applicability of the particular local law – Article 248.1 – falls within the exclusive competence of the Russian court, the Russian court becomes the only place where that issue and any dispute related to it can be resolved. They submit that that view is supported by §§ 12-14 of Professor Nikitin's report quoted above.

98. I disagree. The language of the paragraph in the jurisdiction clause is clear. It applies only where the dispute "*cannot*", by reason of a mandatory law, be resolved in an English court applying English law. Article 248.1 does not have that effect. Nothing in Article 248.1 would prevent the Defendants from starting proceedings in England in accordance with the first paragraph of the jurisdiction clause. Moreover, any resulting judgment would be enforceable in Russia, provided that the Defendants had not objected to English jurisdiction. The situation is entirely different from that which would exist if the dispute had instead concerned one of the categories of case for which Russian law applies exclusivity properly so called, such as real property and intellectual

property rights. Accordingly, the conditions set out in the second paragraph of the jurisdiction clause do not apply.

99. There was at one stage a suggestion by the Defendants that Google was issue estopped as to the meaning of the clause by the decision of the Russian court. Any such argument was not pressed in the skeleton argument or at the hearing, and would have no substance. There is no evidence that the Russian court considered or ruled on the meaning of the YouTube jurisdiction clause. To the contrary, it ignored it pursuant to Article 248.1.

100. For these reasons, I conclude that, in the context of these disputes, the YouTube jurisdiction clause had and has effect as an exclusive jurisdiction clause in favour of the English court.

(E) WAIVER AND SUBMISSION TO RUSSIAN JURISDICTION

101. The Defendants filed acknowledgments of service indicating an intention to challenge the jurisdiction. However, their applications to challenge the jurisdiction under CPR 11 were filed late, and eventually abandoned. The Defendants nonetheless contend that the Claimants submitted to the jurisdiction of the Russian courts and that that is a reason why no injunction should be granted.

102. The Defendants submit that if a party submits to a foreign jurisdiction, that submission will likely amount to a waiver of any exclusive jurisdiction agreement between the parties for the purposes of seeking an ASI/AEI, citing *Ecobank* § 55:

> "If Ecobank has submitted to the jurisdiction of the Togo Labour Court or to the Togo Court of Appeal, the prohibition on recognition of the Togo Court judgment would not apply; nor would the court be likely to be right to grant an injunction, since the submission would be likely to amount to a waiver of the arbitration agreement."

103. Whether or not there has been a submission to a foreign jurisdiction is a matter to be determined by reference to English law: *Ecobank* [57]; and *Rubin v Eurofinance SA* [2013] 1 AC 236 at [161]:-

> "The characterisation of whether there has been a submission for the purposes of the enforcement of foreign judgments in England depends on English law. The court will not simply consider whether the steps taken abroad would have amounted to a submission in English proceedings. The international context requires a broader approach. Nor does it follow from the fact that the foreign court would have regarded steps taken in the foreign proceedings as a submission that the English court will so regard them. Conversely, it does not necessarily follow that because the foreign court would not regard the steps as a submission that they will not be so regarded by the English court as a submission for the purposes of the enforcement of a judgment of the foreign court. The question whether there has been a submission is to be inferred from all the facts."

At the same time, the English court will take into account the position in the foreign jurisdiction, and Foxton J noted (in an *ex tempore* judgment) in *Ningbo Jiangdong Jiemao v Universal Garments International* [2017] 11 WLUK 660 that *"it would be a rare case in which a defendant will be held by an English court to have submitted to foreign proceedings, when the foreign court would not so have regarded him"* (§ 10).

104. The general rule is that the party alleged to have submitted to the foreign jurisdiction must have taken some step which is only necessary or useful if the party was not objecting to the jurisdiction. A step that is not consistent with or relevant to the jurisdiction challenge will usually be a submission to the jurisdiction – see *Williams & Glyn's Bank v Astro Dinamico* [1984] 1 Lloyd's Rep 453 at p.457, and *Akai* at p.96.

105. The Defendants also refer to the statement of Lord Denning MR in *Re Dulles' Settlement Trusts* [1951] Ch 842 at p.850:

> "… I quite agree, of course, that if he fights the case, not only on the jurisdiction, but also on the merits, he must then be taken to have submitted to the jurisdiction, because he is then inviting the court to decide in his favour on the merits; and he cannot be allowed, at one and the same time, to say that he will accept the decision on the merits if it is favourable to him and will not submit to it if it is unfavourable. But when he only appears with the sole object of protesting against the jurisdiction, I do not think that he can be said to submit to the jurisdiction. …"

106. However, if the circumstances are such that a jurisdictional objection cannot be pursued separately from arguing the merits, then it would be clearly unjust, and indeed unsound, to require the applicant to face the invidious choice of abandoning their jurisdictional objection or abandoning their case on the merits; and English law does not take that approach (see *AES Ust-Kamenogorsk Hydropower Plant v Ust-Kamenogorsk Hydropower Plant* [2011] EWCA Civ 647 at [186]-[187]; *PJSC Bank v Zhevago* [2021] EWHC 2522 (Ch) at [67]). The court is required to look at the totality of the events and decide whether the applicant chose to abandon its challenge to the jurisdiction of the overseas court (see e.g. *Evision Holdings v International Company Finvision Holdings* [2020] EWHC 239 (Comm) § 38). As was said in *Akai*, a broad test is to be applied, and submission is not to be inferred from appearing in foreign proceedings in circumstances which are obviously and objectively inconsistent with submission to the jurisdiction (pp. 97-98). Moreover, there has to be an unequivocal representation by words or conduct that objection is not being taken to the jurisdiction: see *Advert Capital v Ellinas Imports-Exports* [2005] EWHC 1242 (Comm) at [78], cited with approval in *PJSC Bank v Zhevago* [2021] EWHC 2522 (Ch) at [66].

107. If it was not argued in the foreign proceedings that the applicant had submitted to the jurisdiction, and if there is no finding by the foreign court that the applicant submitted to the jurisdiction by arguing the merits, those are relevant factors against a conclusion that the applicant did so submit (see *Evision* at [38]).

108. The Defendants submit that the Claimants in the present case were engaged in classic 'approbation and reprobation': appealing on the merits while simultaneously reserving their position on jurisdiction (often merely in a footnote). Repeatedly appealing a

merits judgment in circumstances where the appellant is content to accept the court's jurisdiction if successful is inconsistent with the appellant at the same time rejecting the court's jurisdiction.

109. Further, the Defendants say, the Claimants' supposed reservations of jurisdiction here were not reservations of jurisdiction pending the outcome of a higher determination on jurisdiction. They were reservations made after jurisdiction had already been determined by the Russian court against the Claimants, and thus devoid of meaning. In the Tsargrad claim, the Claimants lost their jurisdiction challenge in a judgment dated 18 December 2020 and then unsuccessfully tried to appeal the jurisdiction judgment, first, to the Russian Appeal Court (which dismissed the appeal on 3 February 2021) and then to the Russian Cassation Court (which dismissed the appeal on 22 March 2021). After that point, the Claimants' reservations of jurisdiction in their merits submissions to the Russian court were empty statements. In the NFPT claim, Google did not try to appeal the jurisdiction judgment of 14 March 2023, and any reservations of jurisdiction in their subsequent merits submissions were empty statements. In the TV-Novosti claim, Google similarly did not try to appeal the jurisdiction judgment of 11 October 2022. Any reservations of jurisdiction in their ensuing merits submissions were again meaningless.

110. Viewed objectively, the Defendants say, the Claimants' full engagement in the merits in Russia, in circumstances where they were clearly prepared to accept jurisdiction if they succeeded, amounted to a submission. The empty and brief reservations of jurisdiction in their various merits submissions, when viewed in context, are no more than window dressing and cannot sensibly be seen as keeping open any meaningful jurisdiction position. In the circumstances, the Claimants submitted to the jurisdiction of the Russian courts. Alternatively, their extensive participation before the Russian courts is a relevant factor for the court to have in mind when considering the discretion to grant injunctive relief.

111. I do not accept those submissions. The Claimants challenged the Russian courts at all stages of the proceedings in all three cases in which they appeared. Moreover, as set out in section (B)(2) above, they did so actively and not merely as a matter of rote. (The Defendants' submissions are factually wrong in that regard.) As became clear when they attempted to appeal the first instance jurisdictional decision separately, Russian procedure makes no such provision, making it necessary to argue the merits at the same time in order to avoid abandoning any case on the merits. Nothing in the Claimants' conduct of the Russian proceedings could be regarded as having involved an unequivocal decision to abandon their challenges to the jurisdiction; and nor were the Claimants taken by the Russian courts to have done so or alleged by the Defendants, in the Russian proceedings, to have done so. As a matter of Russian law, the evidence of Professor Kryvoi, which I accept, is that the Claimants did not submit to the jurisdiction, and that is an important factor to take into account. Google Ireland did not participate at all in the TV-Novosti proceedings, and equally cannot be said to have taken any step or made any statement capable of amounting to a submission to Russian jurisdiction.

112. I therefore conclude that the Claimants did not submit to Russian jurisdiction in any of the cases.

(F) DELAY AND COMITY

113. I can now explain my reasoning on these matters relatively shortly, having already set out the key facts in section (B) above and the principles in section (C).

114. I have had regard to all the considerations that I have summarised in § 82 above and in section (C) as a whole. I take into account the following significant features of the present cases:

i) The Claimants have given a cogent account of their reasons, including their legal reasons, for refraining from seeking anti suit injunctions in these cases. The evidence, supported by the expert evidence of Professor Kryvoi, is that the Claimants reasonably believed that such a step would have been futile. The Defendants are entities close to the Russian state, subject to Western sanctions as a result of their support for Russia's invasions of Ukraine. Article 248.1 was introduced for the specific purpose of enabling such persons to choose to litigate in the Russian courts even if they have contracted to litigate or arbitrate elsewhere. It was, in my view, reasonable for the Claimants to believe that in these circumstances, anti-suit injunctions would have no impact on the pursuit by these Defendants, in their home courts in Russia, of their claims against the Claimants, including the extravagant astreinte orders sought and obtained. (I would add, in parentheses, that it does not follow that an anti-enforcement injunction would be futile. It may give rise to constraints that do not apply to enforcement action in Russia, such as the need to involve local lawyers who may be unwilling to assist in proceedings in breach of an English injunction. An English anti-enforcement injunction may also be relevant to considerations of public policy taken into account in enforcement courts.)

ii) Moreover, until overseas enforcement steps were actually taken by the Defendants, it would have been hard to anticipate that the Defendants would (realistically and despite the threats reported in the Press) seek to enforce these judgments abroad, bearing in mind the general principle, broadly applied internationally, that a court will not enforce penal orders made by a foreign court. Ms Walker's evidence quoted in § 49 above indicates that, following the reported threats, the Claimants did not conclude that enforcement would actually be attempted until it actually occurred. In all the circumstances, I do not consider that the Claimants can be criticised for not commencing the present proceedings before enforcement proceedings were served on them or they were otherwise satisfied that enforcement steps were afoot.

iii) The anti-enforcement injunction sought will not indirectly interfere with enforcement action within Russia i.e. within the state and legal jurisdiction of the foreign court that has given judgment.

iv) Nor, in the present case, could a prohibition on enforcement proceedings outside Russia be regarded as meaning that the Russian proceedings were a waste of time for either the Russian courts or the Defendants. To the contrary, the Russian judgments have already led to the seizure of more than £51.2 million of the assets of Google Russia. Further, in all the circumstances, I do not consider the Defendants, or the Russian courts, to have been prejudiced by the fact that

the Claimants did not at an earlier stage seek either anti-suit injunctions or anti-enforcement injunctions.

v) The enforcement proceedings are at an early stage, and the Claimants in my view commenced the present cases with reasonable promptness after being served with, or becoming aware of, those proceedings. They have, in the circumstances, in my view acted with appropriate speed. Further, the Defendants have not in my view been prejudiced by any lapse of time between the time at which enforcement action was threatened or commenced and the time at which the Claimants made their present applications.

vi) The judgments which the Defendants seek to enforce abroad are for extravagant, indeed other-worldly, sums of money of a penal nature and (at least now) bearing no relationship to any measure of compensatory damages. The attempt to enforce them is exorbitant and, further, can properly be regarded as making this an exceptional case were such a finding necessary.

vii) Notwithstanding the reservations I express in § 82(ix) (first three sentences) above, I bear in mind that an anti-enforcement injunction might be regarded as indirectly pre-empting decisions that would otherwise be taken by the putative enforcement courts. However, that is in my view to be weighed against (or considered in the context of) the Claimants' contractual entitlements in principle not to be vexed with multifarious attempts to enforce judgments obtained in consequence of proceedings brought in clear breach of exclusive jurisdiction clauses or arbitration agreements, and the fact that the injunction will operate purely *in personam* to prevent the Defendants from pursuing the enforcement actions, which are in any event in their infancy.

115. I am mindful of all the points made about delay and comity. However, having regard to the considerations summarised above and the circumstances as a whole, I consider it to be just and convenient to grant final anti-enforcement injunctions in this case.

116. Finally, I am minded to agree with the Claimants that it is appropriate to grant AASI relief in support of the court's jurisdiction to grant anti-enforcement injunctions, bearing in mind the risk of the Russian courts granting anti-suit relief pursuant to APC 248.2. The Defendants did not address this topic separately in their written or oral submissions. However, I shall provide a final opportunity for submissions on this point before the form of order is drawn up.

(G) CONCLUSION

117. For these reasons, the Claimants' applications succeed and I shall grant final anti-enforcement injunctive relief and any appropriate ancillary relief.