

EXHIBIT 4

OPUS 2

INTERNATIONAL

Petr Aven, Mikhail Fridman and German Khan v Orbis Business Intelligence
Limited

Day 1

March 16, 2020

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1 range of possibilities .
2 There are no notes or records of this meeting -- of
3 these dealings and at present we know nothing more about
4 them. My Lord, that's a point I'll return to in due
5 course.

6 Mr Steele, following this interaction with his
7 source, produced Memorandum 112. As the court knows,
8 this is entitled , "Company Intelligence Report 2016/112
9 Russia/US Presidential Election Kremlin-Alpha Group
10 Co-operation".

11 The title is misleading because the memorandum says
12 nothing at all about the US presidential election and
13 the name of Alfa is spelled wrongly, which perhaps give
14 you some insight into how much care was taken with the
15 preparation of the memorandum.

16 The same day that that memorandum was given to
17 Fusion, there were two other memoranda produced, 111 and
18 113. It's interesting to note that 111, the source is
19 said to be a senior member of the Russian presidential
20 administration. One assumes that a senior member of the
21 Russian presidential administration is perhaps more
22 senior than a top level government official , but it
23 seems two different sources are being referred to.

24 My Lord, the memorandum itself, your Lordship will
25 obviously have seen it on a number of occasions, is at

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1 {A/1/1}.

2 MR JUSTICE WARBY: Yes.

3 MR TOMLINSON: It's a short document. It's only two pages.

4 It has a summary and then three numbered paragraphs.
5 What it is about is clear from the title , "Co-operation
6 between the Kremlin and Alfa Group and the claimants".
7 My Lord, it is obvious, we say, from that memorandum
8 that what is being said is that the relationship is
9 a close and a corrupt one, that the claimants do
10 significant -- and President Putin do significant
11 favours for each other, that they have paid him illicit
12 cash, they give him advice and do his political bidding.
13 It's also said that Alfa holds or held kompromat on
14 President Putin, that is to say compromising material.

15 It contains nothing at all about the US presidential
16 election or anything that could possibly be related to
17 national security of either the US or the UK. It's
18 about Alfa, the claimants and President Putin.

19 Mr Fridman is mentioned by name in the two pages six
20 times, Mr Aven by name five times, and Mr Khan once.
21 My Lord, it is common ground, as your Lordship knows,
22 that the memorandum contains personal data about
23 Mr Fridman and Mr Aven in four categories, set out in
24 paragraph 6 of the particulars of claim. They all
25 concern close relationships between those individuals

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1 and President Putin, but perhaps the most striking is
2 the statement that Mr Fridman and Mr Aven used
3 a Mr Oleg Govorun as a "driver" and "bag carrier" to
4 deliver large amounts of illicit cash to President Putin
5 when he was Deputy Mayor of St Petersburg.

6 There are two disputes about the personal data, as
7 your Lordship knows. The first concerns paragraph 1 and
8 paragraph 2. Going back to paragraph 1 {A/1/1},
9 my Lord, there's a dispute as to who is doing the
10 significant favours for President Putin in the first
11 paragraph. We say that clearly what that means is the
12 leading figures in Alfa, who are named in the previous
13 sentence, are the ones doing the significant favours.
14 Companies have to act through their agents or employees
15 and these are the named individuals and these are the
16 ones doing significant favours.

17 My Lord, that's, as it were, a pure matter of
18 construction.

19 The second point is the suggestion in the second
20 paragraph concerning illicit cash, is that an allegation
21 of criminal wrongdoing? Again, that's a matter for
22 construction of that paragraph. The defendants make the
23 remarkable submission that illicit means furtive or
24 secret, and so their case is what the memorandum is
25 simply saying is that in the 1990s this was just an

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1 ordinary patronage transaction. They were just paying
2 cash because everybody dealt in cash in those days and
3 there was nothing wrong about it at all .

4 My Lord, we say that's an absurd construction and we
5 ask rhetorically : if this is just recording something
6 which was standard and obvious, why does it feature so
7 prominently in the memorandum? It features in the first
8 paragraph and of course it also features as the second
9 point of the summary.

10 Clearly what's being said here about the claimants
11 is that they engaged in the paying of a bribe to
12 a public official . Any reasonable person, we say, would
13 understand that.

14 My Lord, there's a bit of side issue arisen in this
15 case, as your Lordship knows, because when we made
16 this -- when we said this alleged criminal offence, the
17 defendant said, "Well, tell us what the criminal offence
18 is". Now, my Lord, we don't actually accept that we
19 have to do that because if it alleges a criminal offence
20 you don't have to know what the criminal offence is .
21 Many people in England wouldn't know -- probably most
22 people in England wouldn't know what the offence was if
23 you were accused of paying money to a public official ,
24 what precise statute it was, but they would know it was
25 an offence. But in response to that request we produced

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1 an expert report pointing out that this was an offence
2 under Article 174 of the Criminal Code of the Russian
3 Soviet Federated Socialist Republic. My Lord, if that's
4 that's relevant, that's our evidence and the defendant
5 has no expert evidence to the contrary.

6 So, my Lord --

7 MR JUSTICE WARBY: It is a bit like slander, I suppose, is
8 it? You know, that category of slander which is
9 actionable without proof of damage because it imputes
10 the commission of a criminal offence.

11 MR TOMLINSON: Yes.

12 MR JUSTICE WARBY: In that context you would have to -- you
13 might have to, depending on the precise words -- spell
14 out what the offence was, but if the words were, "He was
15 guilty of a crime", then you probably wouldn't
16 because --

17 MR TOMLINSON: My Lord, so, for example, paying money to
18 a public official is a very good example because my
19 faint recollection is that until the Bribery Act came
20 along, this used to be an offence under the Prevention
21 of Corruption Act 1911, but I suspect that 99.9% of the
22 British population have never heard of that statute, but
23 everybody would know that if you said, "He paid a bung,
24 or illicit cash to a public official", everybody would
25 know you were saying a crime had been committed, even

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1 though they couldn't actually identify what it was.
2 MR JUSTICE WARBY: Yes, but if it wasn't a public official
3 under that Act then --

4 MR TOMLINSON: If it wasn't a public official, it wasn't
5 a crime, yes, quite.

6 MR JUSTICE WARBY: Wasn't a crime. So under the old law you
7 might have had a bit of a problem with a slander, where
8 you would have to prove that the person being bribed was
9 a public official, otherwise --

10 MR TOMLINSON: Yes, but if you say they are a public
11 official, you take the notorious case of T Dan Smith
12 that your Lordship may recollect from many years ago,
13 who was being bribed by the architect John Poulson over
14 public contracts, I mean, if someone said
15 a councillor -- I think he was the leader of Wandsworth
16 Council -- is being paid money by an architect, illicit
17 money by an architect, everybody would know that you
18 were saying he had committed a crime, even though you
19 didn't know precisely what it was called.

20 My Lord, that's the primary position.

21 MR JUSTICE WARBY: Yes.

22 MR TOMLINSON: It is interesting that the way it is put, all
23 that points in the same direction, because we have:
24 "... Govorun had been Head of Government Relations
25 at Alpha ..."

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1 Actually that was untrue, but never mind:

2 "... in reality, the 'driver' and 'bag carrier'
3 [both in inverted commas -- sorry, over the page,
4 {A/1/2}] used by Fridman and Aven to deliver large
5 amounts of illicit cash ..."

6 So the "driver" and "bag carrier", in inverted
7 commas, is all telling us -- sending us the message that
8 this man, although his official title is head of
9 government relations, is really there to pay off public
10 officials.

11 MR JUSTICE WARBY: Yes.

12 MR TOMLINSON: My Lord, it is perhaps useful to say
13 something at this stage about processing. Of course,
14 this is a data protection claim, it relates to the
15 processing of personal data. That processing took place
16 in a number of ways: the compilation of the memorandum,
17 its disclosure to Fusion, and its disclosure to third
18 parties.

19 Obviously we are not -- we still don't know what
20 third parties it was delivered to. Mr Steele admits
21 a number of individuals. The position is somewhat
22 unclear. We accept that the defendant is not
23 responsible for the processing by other data
24 controllers. Obviously, what other data controllers do
25 with it is a matter for them and not for the defendant.

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1 On the other hand, the defendant, we say, is
2 responsible for the damage caused by its own processing,
3 which includes the damage -- the foreseeable damage
4 caused when other people use or publish this memoranda.

5 We say, as we say in our reply, it was foreseeable
6 and likely that Memorandum 112 would be disclosed to the
7 media, given its high profile subject matter.

8 The defendant admits the disclosure to Fusion and
9 obviously, if it is disclosed to Fusion, it obviously
10 goes down the chain to the ultimate client.

11 It also admits disclosure to a number of other
12 individuals. My Lord, those are listed -- if
13 your Lordship looks at our skeleton argument at {A/2/9},
14 those are the recipients: Mr Strobe Talbott, who had
15 been a public official at one time but at that stage was
16 retired; an unidentified senior US national security
17 official; an unidentified senior UK Government national
18 security official, some former colleague; and then
19 David Kramer, who was a private individual, although was
20 provided with the memorandum for the purposes of passing
21 it on to Senator John McCain, who at that stage
22 certainly did have an official function.

23 The defendant seeks to divide the processing into
24 two categories: Fusion disclosure and what they call
25 national security disclosure.

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1 My Lord, we don't accept that there are national
2 security disclosures in this case. Your Lordship will
3 know that there's an exemption from certain principles
4 in the Data Protection Act under section 28 of the Data
5 Protection Act. We deal with that at paragraphs 80 to
6 82 of our skeleton, and the defendant at paragraphs 41
7 to 46.

8 My Lord, our short answer to that is whatever the
9 position in relation to the Trump -- the whole Trump
10 dossier, as it has been called, we can see something of
11 an argument which says: well, look, this is about the
12 potential US President being subject to blackmail by the
13 Kremlin or having improper connections with the Kremlin
14 and so on. One can see that in those circumstances it
15 might well be arguable that there were national security
16 reasons for disclosure, but Memorandum 112 has nothing
17 to do with any of that. It has nothing to do with --
18 the only mention of candidate Trump is in the title. It
19 has nothing to do with the election. It is about -- and
20 it doesn't have anything to do with links between
21 servers. It is simply about the claimants, Alfa and
22 President Putin. We say that that has no national
23 security implications at all. It's certainly not -- its
24 disclosure is certainly not required for the purposes --
25 for national security purposes.

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1 My Lord, we say, and there's a dispute of fact about
2 this, that the memorandum was never actually provided to
3 the FBI. Mr Steele decided, because he thought that the
4 results of his investigations were explosive, or what
5 his sources had told him, he decided to tell the FBI
6 about it. I showed your Lordship a note of a meeting
7 from July. He provided -- there's no doubt he provided
8 certain memoranda to the FBI. But the FBI say that, "He
9 didn't provide this memorandum to us". Mr Steele says
10 he did. Well, my Lord, with respect to Mr Steele, the
11 FBI's evidence in relation to this is to be preferred,
12 particularly as Mr Steele, as your Lordship will have
13 seen from the supplemental statement that he served,
14 can't even recollect when he was instructed to produce
15 the memorandum. So the idea that he can accurately
16 recollect when he handed it to some third party is --

17 MR JUSTICE WARBY: Where do I get what the FBI say about
18 this?

19 MR TOMLINSON: My Lord, it's in our skeleton. My Lord, if
20 I can just -- if your Lordship will give me a moment.
21 This in the report of the inspector general.

22 MR JUSTICE WARBY: Yes.

23 MR TOMLINSON: And the report of the inspector general,
24 which is -- I don't know if your Lordship -- it is a
25 very long document and your Lordship may --

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1 MR JUSTICE WARBY: No, I have just read -- so far I have
2 just read what you asked me to read.

3 MR TOMLINSON: Yes.

4 MR JUSTICE WARBY: Because I thought I could get directed to
5 the bits that matter.

6 MR TOMLINSON: Well, yes. The report of the Inspector
7 General is an extremely interesting document about the
8 background to this. It is all about the warrants that
9 were obtained. At paragraph 24 of our skeleton we deal
10 with this {A/2/9}. The reference is to {D/131/155}.
11 D/131 is the Horowitz report and your Lordship will see
12 the footnote is about Report 112:

13 "The Crossfire Hurricane team [which is the FBI
14 investigators who are looking into the links between the
15 Trump team and Russia] received Report 112 on or about
16 November 6, 2016, from a Mother Jones journalist through
17 then FBI General Counsel James Baker."

18 In other parts of the report it makes clear that
19 they didn't receive this from Mr Steele.

20 It is entirely unclear how the Mother Jones
21 journalist got it.

22 MR JUSTICE WARBY: Yes.

23 MR TOMLINSON: Although we do know that Mr Steele admits to
24 having spoken to the Mother Jones journalist --

25 MR JUSTICE WARBY: Is there any controversy about the status

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1 of this report evidentially?

2 MR TOMLINSON: I don't think so. Not that I'm aware of.
3 It's.

4 MR JUSTICE WARBY: I mean, it's a source of multiple hearsay
5 evidence of some kind.

6 MR TOMLINSON: It certainly is hearsay evidence, my Lord, of
7 course it is, but on the other hand the FBI interviewed
8 something like 100 witnesses, including Mr Steele, and
9 of course crucially what they had access to was their
10 documentary records.

11 MR JUSTICE WARBY: Yes, I only ask because sometimes, as you
12 know, there can be some debate about the status of
13 findings in reports of this kind.

14 MR TOMLINSON: Yes, my Lord.

15 MR JUSTICE WARBY: What you're showing me is a statement of
16 fact.

17 MR TOMLINSON: Yes. I'm not saying it's -- their assessment
18 of the witnesses and so on obviously has a very
19 different status, but this is a matter of fact.

20 Of course it is possible it is wrong and
21 your Lordship could of course believe Mr Steele, rather
22 than the FBI, but we say that really the position is
23 clear that Mr Steele didn't -- he obviously doesn't
24 actually remember when he gave this memorandum and who
25 he gave it to, if one looks at his witness statement

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