



**FRISHBERG
& PARTNERS**
ATTORNEYS AT LAW



Lunch With Dr. Taras Kuzio

Thursday, February 4, 2010

Alex Frishberg: Thank you very much for coming. As some of you know, we have been holding seminars dedicated to political events on a fairly regular basis. In the past, we have had speakers from the government like Vice Prime Minister Nemyria and Ms. Kseniya Lyapina, an outspoken member of the Parliament. Lately, we have had the honor of welcoming our Of Counsel on Government Relations, Dr. Taras Kuzio, who described political events just before the first round of the presidential elections.

During that presentation we tried to predict the future by looking into our crystal ball. We concluded that Viktor Yushchenko would lose the elections in a major way with two victors coming out of the first round – Yulia Tymoshenko and Viktor Yanukovich. We also predicted there would be run-offs.

So far we had very close results for both Tymoshenko and Yanukovich – so much so that it could almost be said to be 50/50. However, nothing in Ukraine is that simple, as you know. There was a consensus between Yushchenko’s people (however few of them remained) and Yanukovich’s people in parliament. They passed an amendment to the election law, which is designed to seal Yanukovich’s victory. Now Tymoshenko is screaming bloody murder and begging the international community to help her defeat this amendment. Meanwhile, Yanukovich’s people are delighted to have the country in their pockets. This is what the situation looks like today.

I would also like to quickly mention that these types of under-handed maneuvers are not unprecedented. Do you remember the elections in the United States when Albert Gore ran against George Bush Jr.? There was a snafu in Florida, where George Bush’s brother was the governor, and the votes for Albert Gore weren’t all counted, thereby assuring George Bush’s victory. So these things do happen during major elections. And as you know, once George Bush came to power, all kinds of global turmoil unfolded, which didn’t have a positive influence on the development of the world.

In other words, when unexpected tampering at the last minute occurs, it can have an historical impact on the world for decades to come. This is pretty much what is happening now. We are only 3 days before the second round, which means we will have a new leader next week, although we don’t yet know the leader’s name. Most likely with this new amendment it will be Yanukovich. This will make a world of difference because if Tymoshenko were to come to power, we would have a Putin-like government. She would take government into her little hands and run it with an iron fist. In my opinion, were Tymoshenko to win, this would happen here as it happened in Russia.

If we get Yanukovich, as it looks like we might, then you are certainly going back to the days of Kuchma during his second term, when big business had an influential ear in the presidential office. So completely opposite consequences will be determined by this small amendment. With this in mind, I would like to turn the floor over to Taras Kuzio, who will give you an overview of what is happening and what the future looks like. Most important will be the question and answer period, which includes comments, opinions, views, etc. Last, but not least, we will be transcribing this for those who could not attend today. Therefore, if you wish for your name to be removed from the record, please let us know afterwards. But in any case, please be open and transparent, as we are trying to demonstrate our democratic credentials. Incidentally, you can find Taras Kuzio’s other transcripts on our website at www.frishberg.com. So without further adieu, please welcome Dr. Taras Kuzio.

Taras Kuzio: Thank you, Alex. First, I’d like to give just a brief background. Viktor Yushchenko campaigned on the platform that not only did he do a lot for Ukrainian nation-building but he also

brought democracy to Ukraine. The problem is that democracy is not just media pluralism and free and fair elections. If you look at both the Western and Ukrainian surveys in the last six months or so, then you can see that Ukraine's democracy isn't in that great of health. If you want to look at two American surveys, you can look at IFIS, from November of last year, and also Pew Associates, from October of last year. There are Ukrainian versions as well.

The poor health of Ukraine's democracy can be seen in widespread cynicism and disenchantment, which translates into very low public trust in state institutions with every candidate receiving high negative rates of distrust. Democracy is equated with chaos. I would disagree with Alex that Ukraine can become like Russia and Tymoshenko can become like Putin. If this were the case, then the equating of democracy with chaos would lead to people voting for a strongman. This is not the case in Ukraine. In Ukraine, because of its regional diversity, no political force can ever have a monopoly of power. This is the reason why we have a "knife edge" election because presidential elections here are won only in the range of 52-56%.

Autocracy in Russia is built on a foundation of Russian nationalism, which unites the country. This nationalism would be impossible to unite in Ukraine. Thus, I think it is very difficult to establish a Russian-style autocracy in Ukraine. Instead, we have a democracy in Ukraine is in very ill health.

Of course, the public is fed up with elite infighting, although surprisingly the turnout was very high in the first round of elections (68%). This is lower than about 5% than usual, but still respectably high particularly vis-à-vis Western countries and especially US presidential elections.

I also think we could argue that pro-European forces (or pro-reform forces, if that is the right way to put it) together won their 5th election since 2002 in Ukraine. This does not mean that those former "Orange" votes will be sufficient to win the second round.

Will there be election fraud? I think election fraud will take place. I don't believe that the real gap between Tymoshenko and Yanukovich was 10% in the first round. It is probably a bit less – say, 7%. I think that the fraud that is undertaken is far more difficult to find than 5 years ago. It is far more subtle. I just returned from Uzhgorod, and there is a typical example. When I saw that in the first round Transcarpathia was the only western region in Ukraine where Yanukovich came first, I was immediately suspicious. The reason is simple: the turnout in Transcarpathia was the lowest in Ukraine (55%). When you talk to people in Transcarpathia, you find out that one of the reasons was that pressure was applied upon people, who were paid by the state or government, to not come out and vote. Low turnout in "Orange" Ukraine means a good result for Yanukovich.

This is very different from 5 years ago when people were forced to come out and vote for Yanukovich. This time, people were told to just stay at home or there were various tricks applied so that people stayed at home in "Orange" Ukraine. This kept the turnout low in Western Ukraine and pushed the turnout higher in Eastern Ukraine. Therefore, when Yushchenko calls for people to stay at home or to vote against both candidates in the second round, it results in indirect votes for Yanukovich.

I still think we have the problem of technical candidates. From where can all of these technical candidates, who were about 14 of the 18 candidates in the first round, receive over half a million dollars to lose as a deposit and pay for election advertisements? Simply, they can probably make millions being technical candidates by loaning their people in the electoral commissions to certain political forces. This is certainly a major problem for fraud in the first round.

We also have the problem of yesterday's vote (on amendments to the election law), which doesn't really make much sense because the opinion polls seem to have indicated that Yanukovich was still in the lead over Tymoshenko by a very small margin. But, we need to remember the mentality of people like Yanukovich. In Russia and Belarus, Vladimir Putin and Alexander Lukashenko would win free and fair elections, but they don't hold them. Similarly here, I think Yanukovich seemed to be very optimistic about winning the election (some billboards already went up in some places in Ukraine with congratulations), but there was also a need to make sure that he wins. This vote to change the election law, which is not democratic and shouldn't have taken place between the two rounds, is partly due to this mentality. It is also a product of the fact that politicians remain unaccountable. It is a product of the fact that these elections are something that Yanukovich has waited for over 5 years: this is revenge for his humiliating defeat in the Orange Revolution in 2004.

Yanukovich is on the record on many occasions (and I have collected these quotes) as saying that the Orange Revolution was a political technology. This, translated into English, means a US conspiracy. He believes that he was legally elected 5 years ago and that the Supreme Court had no right to disbar him from being elected. He believes because there were no criminal prosecutions for election fraud 5 years ago, that therefore no election fraud occurred. Now, if Yanukovich wins, he will be saying "I told you so". So, the problem of the lack of accountability in politicians and the lack of prosecutions that Yushchenko never undertook, for example in September of 2005 when he gave amnesty to people who participated in election fraud, could now come back to haunt us.

With respect to personalities, I would like to go back to the question I have been trying to drum into peoples' heads amongst Ukrainians and in the West. There are big differences between Tymoshenko and Yanukovich. I think that it is wrong, as some journalists have been writing, to say there is not much of a difference. For one thing, Yanukovich is not his "own man". As Taras Chornovil, a former member of the Party of Regions has said, he would be a good "number two", but not a "number one". He is a front man. The joke in Ukraine is that the second round isn't between a man and a woman; it is really between two women – Tymoshenko and Hanna Herman. Yanukovich is not an independent individual. The only time, ironically, when Yanukovich was independent was when the gas lobby ran the Party of Regions between 2006 and 2009 when RosUkrEnergo existed in Ukraine. This is when he had a source of funding which was not from Rinat Akhmetov and big business. Without that gas lobby in place (Tymoshenko removed RosUkrEnergo), it means that Yanukovich is still reliant intellectually and financially on other people.

Tymoshenko, on the other hand, is very different and I think this is another reason that Russia prefers a Yanukovich victory. Some people would say that she is unpredictable, but she certainly is her "own person"; she is not controlled by big business (although it exists in the Tymoshenko faction) and she is not run by oligarchs or outside people. Of course, intellectually she is far superior to Yanukovich. Just last Friday in *Ukrainskaya Pravda*, there was a list of 26 gaffes made by Yanukovich, which would be embarrassing for any politician. Over the weekend, he made another two gaffes in Lviv (including the 'genocide' gaffe instead of saying the 'genetic fund of the nation').

With respect to new faces in politics, these elections have shown that about 26% of the voters voted for 3rd and 4th place – Sergei Tigipko and Arseniy Yatseniuk. I would classify this as a new middle class vote of urban, educated professionals. They are former Yushchenko and former Yanukovich supporters, but more former "orange" supporters than former Yanukovich supporters. We have many of these voters in Kyiv. For example, *Kyiv Post* lobbied for Tigipko in the first round and Tymoshenko in the

second round. The problem is that both Tigipko and Yatseniuk do not have any strong political forces. They have political parties, but they are amorphous political forces. If they don't go into politics now – by going into government with the president who will be elected or if there are pre-term elections this year – then they will have to wait until 2012 to enter Parliament. If this is the case, they could be very threatened by the fact that voters may have forgotten about them in two year's time.

It is a rather strange phenomenon that only a woman, Tymoshenko, is willing to take on the responsibilities of government when all of the men (Tigipko, Yushchenko, Yanukovych) don't seem to want that position. Of the two (Tigipko and Yatseniuk), I think that Tigipko is a far more serious player. It sounds hilarious to say that he is a young politician at 49, but maybe this is young for Ukraine. I think he is more likely to go further than Yatseniuk.

In terms of differences between the politicians, from a viewpoint of Europe and North America, which of course is key, the big difference is over attitudes towards separatism. Kuchma destroyed Crimean separatism in the mid-90s, but Yanukovych brought it back to life. In the For Yanukovych! blok in the Crimean parliament elected in 2006, the Party of Regions is allied to two extremist Russian political forces. Because of that reanimation, we've had problems with, for example, NATO PFP exercises in the Crimea since 2005-2006, and the blocking of joint military maneuvers between Ukraine and NATO. This was never a problem under Kuchma.

There are major problems, which I don't have the time to go into, between the candidates on relations to Europe. Yanukovych's party has no relations with the European Parliament and has an agreement with the Unified Russia party. Tymoshenko's Fatherland Party that she leads is the most active Ukrainian political party in the European Parliament. This is important because I think that Tymoshenko, as a president, would be more willing to listen to criticism and advice from Brussels than would Yanukovych.

If Yanukovych wins, NATO is a dead issue in Ukraine. Frankly, NATO is already on the back burner at the moment for a variety of reasons, but if Yanukovych wins you may as well hold a requiem mass. This is not only because of NATO membership issues, but because of lower interest in cooperation with NATO's PFP than you had under Kuchma over the decade he was in office.

There are major differences between the candidates over energy and gas. Yanukovych supports a gas consortium with Russia, while Tymoshenko does not. Yanukovych supports the bringing back of gas intermediaries, such as RosUkrEnergo, particularly because this helps him inside the Party of Regions. Yanukovych is also calling for the re-negotiation of the gas contract with Russia (about which Russia is not too happy). He is in effect calling for a return to Kuchma-era level gas subsidies from Russia.

Again, the candidates' relationship toward Russia is very different. Yanukovych's foreign policy is completely contradictory. For example, he talks about Ukraine being a neutral state while at the same time supporting the extension of the Black Sea Fleet base in Sevastopol beyond 2017 into a permanent base. He talks about Ukraine joining the EU while at the same time supporting Ukraine's membership of the CIS Single Economic Space customs union. You cannot be in two customs unions at the same time. He supports separatism in Georgia along side the terrorist group Hamas, Nicaragua and Russia. He doesn't understand how that is very negatively seen in Brussels, Washington and Ottawa.

Compared to Kuchma, Yanukovych has a far more dismissive attitude toward Russia as a potential threat to Ukraine. This is also a very important indication. Yanukovych comes from a Donetsk working class and criminal background, and is a far more pro-Russian than Kuchma ever was. Kuchma came from the senior *nomenklatura* of the Soviet Union (Kuchma had a direct phone line to Soviet leader Leonid Brezhnev next to his desk and he headed the largest military industrial plant in the world, Pivdenmash/Yuzhmash).

Looking at future elections, the constitutional issues are key of course. The problem here is that no political force in Parliament will have 300 votes. The other problem is that parliamentarism, which is associated in Eastern Europe with the move towards democracy amongst post-communist states, has become very discredited in Ukraine over the last 5 years. This is not because of parliamentarism, but because of the way it is associated with chaos and instability.

Tymoshenko is right in saying the same thing that Western political specialists say about Ukraine and about post-communist states. Namely, that for stability you need to either have a full presidential or a full parliamentary system. One or the other. If you have a semi-presidential or semi-parliamentary system, then you will always have clashes between different bodies of power. The problem is how to move to one of those systems. The only way you can do this is through a compromise that would implement those constitutional changes at the end of the 5-year term of the person elected next week. If you try to implement one of them now as they did with Yushchenko midway through his term, then no President will agree to such changes. The Parliament will never agree to move to a full presidential system with Yanukovych or Tymoshenko as President. And vice-versa, Yanukovych or Tymoshenko would never agree to move to a full parliamentary system. There needs to be some kind of compromise.

The problem with parliamentarism, which to me seems to be the right way to go because of the experience of Eastern Europe (post-communist Eastern Europe moved towards parliamentarism and democracy, whereas the CIS countries moved towards presidential systems and autocracy), is that you need political parties. But, you don't have political parties in Ukraine. As we've seen, particularly in the last two weeks, there are a lot of people in parliament who have no loyalties at all to anything and who can be bought very easily. The question is: can you move to a full parliamentary system with the parties coming afterwards? Maybe. I would also increase the threshold to 5% to remove the small parties, like the Lytvyn bloc and the Communists, which are only there to have their votes bought. The sad thing is that Yushchenko is leaving office with both the center-left and center-right in total fragmentation. You can see this with the votes in the "Our Ukraine" faction in Parliament where not only do you have a pro-Yanukovych wing, which is Viktor Baloga's united center, but you also have other people being bought which could lead to a majority of "Our Ukraine" voting to join a "grand coalition".

In terms of instability/stability after the elections, I believe that if Tymoshenko were to win the election you would more likely have stability than if Yanukovych were to win – for a variety of reasons. First of all, Yanukovych has called for a number of things to be re-negotiated, which would lead to instability. He has called for a re-negotiation of the IMF stand-by agreement and the gas contract with Russia. He strongly supports the new populism that has been coming into place in the last few months – the new law on raising social standards and wages. He signed an agreement with the left to support him in the second round. These promises will need to be paid back.

Of course, the big area of instability would be if Yanukovych tried to push for the issue of Russian as a second state language. If there is something that will split Ukraine, then it will be this question. We know

from any country that has issues with language, such as Canada, Belgium and others, that language is the issue more than anything that inflames tension between regional and ethno-cultural groups.

If Yanukovich is elected, he would try to push for either a reformat of the coalition, which would require bribing particularly the Lytvyn bloc and members of “Our Ukraine” to switch allegiances, or to push for pre-term elections, which would lead to a conflict with Tymoshenko who has no interest in a pre-term election.

On the other hand, if Tymoshenko were to win, she would stand by the IMF agreement and the gas contract. She is opposed to the new social populism law that was voted on in November 2009. She would have a ready-made coalition and potential government. She could probably offer the position of Prime Minister to Tigipko, who may even be willing to accept it after the election if she won.

I have one final comment on Russian as a second state language. It is not only that Ukraine has very liberal nationality and language laws, but it is not the case that Russian is threatened as a language in Ukraine, as Russia claims. If you go to any kiosk in Ukraine and look at the number of titles in Russian, you can see there is no threat to the Russian language. Even in Western Ukraine, 70% of the titles in kiosks are in Russian, particularly all of the journals and magazines that cater to the new middle class, such as health style magazines. Tigipko in this sense might be pro-Russian, but he is far more intelligent than Yanukovich. He states that he may in principle agree with Russian becoming a second state language, but he does not think it is a good idea because it is something that will divide the country and lead to instability.

On this note, I will leave it open as to who will win and how developments will pan out. I’ve always argued that if the entire “orange” vote - if you can call it that – which was about 60% in the first round, comes out to vote in the second round, then Tymoshenko will win. Of course, the problem is that we don’t know how much of the “orange” vote will come out to vote. I think that there is a hemorrhaging of the “orange” vote because some support Yushchenko’s position that both candidates are the same. I think that this is changing – I’m seeing this from my own personal friends in Kyiv who don’t like Tymoshenko, but are switching anyway. Events such as last week’s removal of Yuriy Lutsenko as Minister of Interior and yesterday’s vote in Parliament, which is tantamount to supporting election fraud, also may push some of those people who support Yushchenko’s position over to Tymoshenko. But it is a different question as to whether this will be sufficient enough for Tymoshenko to win. This is why I think it is a “knife edge” election. Thank you.

Alex Frishberg: Here comes my favorite part of our program, the questions and answer session. I think Taras provided a good analysis, which shows just how complicated Ukraine’s political system really is. Despite the system’s complexities, we can still make it fairly simple – I mean, there are only two people running, Tymoshenko and Yanukovich.

I heard on television yesterday, and Taras articulated on this question earlier, that the important thing is that Yanukovich represents the interests of several different people. All of these people are either connected to big business or are multi-millionaires and billionaires. So Yanukovich is essentially a front man for oligarchs. This will, of course, affect the way he runs the country. Tymoshenko has a completely different background, which I will not go into right now. To make a point, no one on the stage is a simple person, but there are only two people. The problem is that “a fix has been put in” (as they would say in Chicago in the 1930s) – and that “fix” was yesterday’s election law amendments.

If Tymoshenko has a chance (even a razor-thin chance) of becoming the President, this chance, in my opinion, has been damaged by the last-minute “fix”. Again, this is nothing new in the democratic world: it has been done in America, and now it is being done here in Ukraine.

As a matter of fact, you will notice several empty seats. More people signed up to attend, but a conference of EU Ambassadors was urgently called today to discuss this very issue. They are most likely discussing how bad of a “fix” this really is because it will alter the course of Ukrainian history over the next 10 years.

With this background in mind, I would like to open up the question and answer period to any topics, including the “fix”, the identity of the next leader and any other comments. Many of you have been here under Yanukovych when he was Prime Minister before the Orange Revolution, so you know the man you are dealing with.

Question: Regarding the new amendments adopted by parliament concerning the election law, how do you perceive the response of Mr. Yushchenko toward these amendments? Will he veto the amendments or not?

Answer: Trying to predict anything that Yushchenko does would be rather ludicrous. The last five years have shown that he is not a very rational person. He has done so much to undermine himself that it is difficult to know how he will react.

I am not a lawyer, but from what I understand, for the amendment to the election law to have an effect on Sunday [February 7th] Yushchenko must sign it today because then it will be published tomorrow [Friday, February 5th] in the government and parliamentary newspaper and it then becomes law. If the amendment is not signed and not published tomorrow, then it will not have an impact. If it is published next week, then it will be too late.

Remember five years ago the Supreme Court ruled to block the official printing of the election vote that Yanukovych won in the second round. If that had been published, then Yanukovych would have officially been the President. I presume that we will know by today if Yushchenko signs the amendment. If he signs it, he will leave office with an even worse reputation than he already has because he did campaign on the slogan that he brought democracy to Ukraine. So, he shouldn't sign it. Even if he delays it by sending it back to Parliament tomorrow, then it is too late for Sunday. But, his brother voted in favor of the amendment.

Question: Does that actually mean that this mysterious agreement that was leaked to the media and made quite a scandal was actually true? Does Yanukovych actually have an agreement with Yushchenko?

Answer: On December 25th, and I remember it well because it was Christmas day, that secret agreement was leaked in Ukraine. Taras Berezovets, who is a political analyst from Kyiv and works for Tymoshenko, might know better. But, I think that this was more likely a “wishful thinking” agreement drawn up in the Presidential Secretariat, reflecting Yushchenko's hope that he would be able to get Yanukovych to agree to it. I don't think they actually sat down and signed it – this was more Yushchenko's wishful thinking that maybe he would come in 3rd, like Tigipko, with 13% and he would have a bargaining position. If he came in 5th with 5%, then he has nothing to bargain with.

The only thing he really has to bargain with is the fact that his position, calling for a no-vote in the second round, is in effect a vote for Yanukovich.

There is evidence to show that appeals by extreme nationalist groups in Western Ukraine, supporting Yushchenko's stance of not voting in the second round or voting against both candidates, is being paid for by Yanukovich's campaign team. Again, this is part of the strategy of reducing the turnout in Western and Central Ukraine. Of course, this would help Yanukovich's victory.

It also makes no sense why Yushchenko issued a decree on Stepan Bandera when he did because all that does is mobilize Eastern Ukrainians to come out and vote even more in the second round. Yushchenko had five years to issue this decree, but he did it after the first round. This is quite strange – why didn't he do this before the first round to get himself votes? Was he asleep for five years and suddenly woke up to sign a decree on Bandera? This makes no sense at all. It didn't help him in the first round, but it certainly can help Yanukovich. It can mobilize Yanukovich's voters against the "nationalistic threat".

Question: After the election we will have a new government and new leader. The first task for the new leader will be to fill the state budget. From a business perspective we understand that we will have new laws and new local tax legislation as to how to fill that budget. What is your opinion on how this will be approached? For my business, I predict new pressure and new changes, which could even kill business. A week ago I was at an IT event and we discussed the issue of taxes and tax pressure on IT companies, for example. What is your prediction?

Answer: This depends on what happens in Parliament. It depends on whether there will be a reformatted coalition. If Tymoshenko stays, then the coalition will stay with a new Prime Minister. If Tymoshenko loses the election, then you will either have a new coalition in Parliament, a new government and pre-term elections. If Yanukovich wins, you will potentially have six months or more of instability in Parliament. You will not have a stable government in place – especially when we will have local elections in May as well.

I think that you may see the next six months as a period of very strong instability. I don't think we will get a clear picture of where things will go. The problem is that if Yanukovich tries to take control of the government and tries to re-negotiate the IMF stand-by agreement, then it is impossible to say where he will get the money from to pay for Russian gas. Russia will not agree to return to the gas subsidies of the Kuchma era. So, there are a lot of promises that have been made that cannot be fulfilled. I think this will all depend on the make up of the government coalition in the next three to six months.

Question: Can you please give us a rundown of the different scenarios that you anticipate occurring within Parliament depending on who wins? For example, if Tymoshenko wins do you anticipate new elections, people jumping ship to join her party, deputies being opportunists?

Answer: I think that if Tymoshenko wins she will have no interest in having pre-term elections. She has even mentioned this in the past. If she wins, then the next parliamentary elections will be in 2012. At the moment there are 220 members in the coalition, but I would expect that it would increase by another 10 or so to bring it up to a proper sized coalition number if Tymoshenko wins.

The problem is always the 72 deputies of “Our Ukraine”, who seem to flip-flop back and forth. I think that if these deputies see that Tymoshenko wins, there will be a small number of those deputies, who are currently unaffiliated, moving back toward the coalition. It won’t be the full 72, but it will be 50 as opposed to 40 at the moment. I suspect this will be the case, but it will depend on who would be Tymoshenko’s Prime Minister. Would Tigipko agree to become Prime Minister if Tymoshenko won?

If you read the *Ukrainskaya Pravda* report about the Davos summit, where Tymoshenko and Yanukovich gave televised interviews from Ukraine, Tigipko let something slip. On the record, Tigipko says he would work with both candidates. But, off the record at Davos he said that Tymoshenko is the more progressive of the two, but she is basically a micro manager; she doesn’t delegate. Whereas Yanukovich delegates because he is a “number two man” – he is not his “own man”.

The problem of a lack of willingness or ability to delegate is a problem of the management culture in Ukraine. You have had in effect two extremes – the micromanagement of Kuchma going to the non-management of Yushchenko. This micromanagement is a real problem when you have a semi-parliamentary constitution because it gives the president the wish to interfere in the work of the government rather than sticking to his area of responsibility.

From what I’ve read of Tigipko, this would be his fear if he agreed to be Prime Minister. Tymoshenko is the more progressive of the two candidates, but Tigipko’s fear would be that she would try to interfere in socio-economic issues particularly, as there is a need in Ukraine to undertake some very unpopular economic decisions - for example, the IMF’s demand that Ukraine reduce or eliminate the subsidy that households pay on utility bills.

If Yanukovich wins, then I would say that there will more likely be instability because he realized that as President, if Tymoshenko stays as Prime Minister, he won’t be able to do anything. He has an interest in trying to change that situation either by buying up deputies from “Our Ukraine”, the Lytvyn bloc and the Communists thereby creating a new coalition with the existing Parliament or by pushing for pre-term elections. I think it might be easier for him to try and buy up the deputies than push for pre-term elections because Tymoshenko is a formidable opponent.

In the autumn of 2008 Yushchenko tried to push for pre-term elections and Tymoshenko was able to block him. But, you do have a lot of guns for hire in Parliament – people are willing to be bought. The problem for Yanukovich is that the Party of Regions, the Lytvyn block and the Communists are not enough votes – that is only 220. Therefore, you need to have a majority of “Our Ukraine” to join that coalition. I can’t see how a majority of “Our Ukraine” would agree to join the coalition if the Communists are in there. “Our Ukraine” has been divided on whether to go into a coalition with the “orange” forces or Yanukovich over the last five years. So, there is nothing new here. The sweetener would be if maybe Yuriy Yekhanurov would get the position of prime minister in order to try and buy “Our Ukraine” to join a grand coalition. I still think it will be difficult to get a majority of “Our Ukraine” to vote for that because you have a very strong group of people who used to be strong Yushchenko supporters, such as Boris Tarasiuk, Lutsenko and that wing of “Our Ukraine” who could not be bought.

Yanukovich also doesn’t make any sense in some ways because if he really wants to buy “Our Ukraine”, then why is he already raising the issue this week of making Russian the second state language as one of his first steps as President? If you want to push “Our Ukraine” away, then you do that by saying that I will support the Russian language. As usual with Ukrainian politics, nothing is so clear.

Question: You mentioned the effects of the elections on NATO and Euro-Atlantic integration. We see that Ukraine has an acting Minister of Defense. Yushchenko had appointed a number of military officers throughout the military that share his views. What do you see as the effects on the top leadership in the Ministry of Defense and each of the services should Tymoshenko or Yanukovych win office?

Answer: The difference between the two “forces” is that within the Tymoshenko camp there is a pro-NATO wing, while in the Yanukovych camp there is no pro-NATO wing. That makes the Yanukovych camp very different from the Kuchma camp. Kuchma, as President, when Yanukovych ironically was Prime Minister, twice applied for a NATO Membership Action Plan in 2002 and 2004. In that sense, Yanukovych is far more anti-NATO than Kuchma was. This is partly due to the fact that around Kuchma you had very good people who led the National Security and Defence Council, like Volodymyr Horbulin and Yevhen Marchuk, who saw NATO and the United States, in particular, in the second part of the 1990s as a good counterforce to Russian pressure on Ukraine. Volodymyr Horbulin still writes about the Russian threat to Ukraine. These types of people do not exist around Yanukovych. The Yanukovych camp denies that there is any kind of Russian threat to Ukraine.

Some Russian spies have just been caught in Eastern Ukraine and the immediate reaction of the Party of Regions is that this is just a provocation. When President Dmitri Medvedev sent his very horrible letter, which in any other part of the world would be seen as a scandalous letter to Yushchenko (I can’t imagine the US President sending such a letter to the Canadian Prime Minister), the Party of Regions supported the criticism found in the Medvedev letter.

So, I think that on defense issues what the Ukrainian military has gained from cooperation with NATO in PFP since 1994 is a lot of restructuring and Westernization. Westerners, who have worked in that field, will always tell you that as a consequence of this Ukrainian and Russian military hierarchies are very different. There aren’t the same anti-American and anti-NATO feelings in the Ukrainian military hierarchy as there is in the Russian military hierarchy. All of the high level of cooperation you had under Kuchma would decline under Yanukovych. Just yesterday, for example, Yanukovych said he has no interest in the GUAM Regional Group (Georgia, Ukraine, Azerbaijan, Moldova), which was created by Kuchma as a counterweight to Russia and the CIS. With Tymoshenko, I think that PFP and those kinds of levels of cooperation would continue at the high levels there were in the Kuchma years. Under Yanukovych, obviously, they would be reduced, and that would have a tremendous impact on the Ministry of Defense.

I think that the biggest area that needs reform and hasn’t been touched is the Ministry of Interior. A soviet-type Ministry of Interior still exists in Ukraine. You can’t have a democracy where the Ministry of Interior has units that are called “Internal Troops”. This is a throwback to the 1940s in the Soviet Union. If you are seeking to “Europeanize” the Ministry of Interior, then I could see that potentially happening under Tymoshenko, but not under Yanukovych. Remember, as Prime Minister, which kind of people Yanukovych put in charge of the Ministry of Interior?

NATO membership is on the backburner for a variety of reasons and that is because Yushchenko missed the boat in 2006 and he didn’t do anything to help it. The level of popularity of NATO membership in Ukraine never went up in the last five years. Of course, now we have a different US administration than we did in 2005-2006 when there was maybe a momentum for NATO membership for Ukraine. This is not necessarily an issue, but down the road NATO membership could potentially revive with a Tymoshenko presidency because there are pro-NATO people in her camp. Worse still, as opposed to

Kuchma, the Yanukovych camp strongly supports Russian proposals for European Security, such as Medvedev's new proposal, which former President Kuchma would never have supported.

Question: Taras, in your opinion, what would happen to the state of freedom of the press under either candidate?

Answer: To be honest, I'm not sure. We would maybe have a continuation of the same we have today where, in effect, big business and oligarchs control TV stations. That could possibly change under Tymoshenko – she has threatened to remove oligarchic influence over television – but it is difficult to see how that could be done. It is these types of claims that Tymoshenko makes that lead people to make the absurd allegation that she would somehow become a Putin in Ukraine.

Beyond that, I can't see much influence on the printed media except for the fact that probably "Russification" would continue. Yushchenko talks a lot about nation-building, but little has changed on the question of language in the printed media in Ukraine in the last five years. The fact is that today the majority of printed media are in Russian.

What would change? I think you could get more pressure, particularly on TV stations that are controlled, but issues such as the problem of oligarchic control of television and financial corruption of journalists may not change very quickly. It may just continue.

If I was going to look at both candidates, then I would tend to prefer Tymoshenko on the question of media pluralism because I think it is a bit of an aberration that oligarchs control everything.

Question: Thank you very much for your presentation. I just have one question for you. We all here probably agree that Ms. Tymoshenko is a very charismatic persona on the political arena. She is very presentable and she knows how to talk and she is very smart and ambitious. She is also loved by many European leaders. Other than this charisma, how do you explain Tymoshenko's inability to lead the country out of the economic crisis, the tax hikes that many of you complain about on non-residents, her desire to attract FDI and basically her inability to adopt a program that would lead the country out of the recession?

Answer: I don't want to claim that I am an economist, but I really don't think that anyone else here in Ukraine that would have been in Tymoshenko's position would have done any better during this global crisis. Do you really think that Nikolai Azarov, from the Party of Regions, or Mr. Yekhanurov would have done better? This was a severe economic crisis and I think that Ukraine generally did not do too badly in dealing with the economic crisis – certainly when you compare Ukraine to Iceland and Latvia.

Is Tymoshenko presentable and ambitious? Well, there is nothing wrong with being ambitious. It just seems to be a problem when women are ambitious. Is she unusual? Yes, particularly in this part of the world, but she is unusual in the Western world. There are very few women in the Western world who have reached the senior levels of government – you could count them on one hand.

As Westerners, we have to look at the issue of which of the two candidates will overcome "Ukraine fatigue" in Brussels, Washington or Ottawa. If five years ago there was more of a Washington focus on the Yushchenko administration, then there is now more of a Brussels focus. It is obvious to me

that of the two candidates only Tymoshenko has the possibility of reviving relations between Kyiv and Brussels.

Question: Brussels obviously wants stability and whoever is able deliver it will be respected there, right?

Answer: Yes, they want stability and they want an end to elite infighting. They want reforms and to overcome the problems that Ukraine has become plagued with over the last few years. But, remember, it is only Tymoshenko that has some kind of contacts to the European Parliament and the center-right European People's Party political group, which is backing her in the second round.

Image is important in the sense that I just don't know how they would look at Yanukovych in Brussels as someone who was twice or three times in prison and someone that is incoherent when he speaks – he makes gaffs all of the time. These things are important.

Question: And, someone who is a “Gas Princess”?

Answer: Yes, but the “Gas Princess” is a ridiculous thing to bring up. Why is it just focused on Tymoshenko? Is it because she is a woman? Every candidate, including Yushchenko, had corruption problems in the 1990s. Yekhanurov is Yushchenko's favorite candidate for Prime Minister, but Yekhanurov was head of the State Property Fund in the 1990s – he oversaw privatization and he is the nemesis of Ukraine. Does he have clean hands?

Comment: You have proved a point that nobody has clean hands...

Response: No, there is a difference because Tymoshenko left the business sphere in 1998 – three years before Yushchenko. Yushchenko was forced to go into opposition in April 2001 because his government was removed by a no-confidence vote. I think there is a difference. I am not saying that she is completely clean, and nobody believes that any of these politicians are angels. We had that five years ago when we thought that Yushchenko was the “messiah”. There are no messiahs in Western or Ukrainian politics.

I'm not trying to say that Tymoshenko is an angel by any means, but the “Gas Princess” issue is always something that is brought up against Tymoshenko. It is very rare that the background of the other candidates is brought up. Yanukovych was governor of Donetsk from 1997-2002 when Akhmetov & Co. became oligarchs. So, does he have clean hands? That is not really brought up, is it?

On FDI, I know of a Canadian businessman from Toronto who has been the subject of a corporate takeover of his factory in the Transcarpathia. FDI is an issue that I don't think that any Ukrainian government has professionally dealt with in terms of encouraging FDI into Ukraine and protecting FDI. Ukraine could have a lot more foreign investment if there was more protection of foreign investors. As I know in the case of this Canadian-Ukrainian businessman, who has been swindled of nearly 12 million dollars, it is a major problem. The courts, being so corrupt that they can be bought, can change the ownership of factories through corporate raider take-overs.

Breaking News via SMS: We've just been told that Yushchenko signed the amendment to the election law.

Taras Kuzio: So, his reputation has now just fallen to zero.

Alex Frishberg: Ladies and Gentlemen, it looks like Yanukovych is the next boss.

Taras Kuzio: Well, I did not have any doubt that Yushchenko would sign the law which was supported by his brother. In addition, the Yushchenko “old guard” supported it as well; namely, Petro Yushchenko, Yuriy Kostenko (Peoples Party of Ukraine) and Igor Kolomoysky’s people. The National Bank was working against Tymoshenko and by financial speculation. The collapse in the hryvna from 5 to 8 to a US dollar should be blamed on the National Bank, not on the government, as constitutionally it comes under the presidents responsibility.

Of course, Tymoshenko is not ideal. Within the Tymoshenko camp you can see such people like Deputy Prime Minister Hryhoriy Nemyrya, Rukh leader Borys Tarasiuk and senior adviser and political consultant Oleh Medvedev, who are pro-European and oriented towards membership of NATO. Tymoshenko would always listen to alternative points of view, such as these, as well as to criticism and advice from Brussels. Yanukovych has no channels to Brussels and there is no pluralism of views within the Party of Regions.

Taras Kuzio: With the signing of the amendment by Yushchenko, a key issue for yourselves and for the OSCE, Council of Europe and European Union, as well as European and North American governments, is that this could now presage election fraud in the second round. This is something that should be made aware of even more so to election observers from the OSCE and should be something which should be taken into account as to the election results. I think this is a very bad sign. Again, we always try to understand Yushchenko, but as I joked to some colleagues before my presentation, it is better to have a psychologist than a political analyst to try to understand Yushchenko. The signing of the amendment into law destroys what was left of Yushchenko’s reputation. Yushchenko can no longer argue that he brought democracy to Ukraine.

Alex Frishberg: Well, congratulations, Kuchma has just won the elections. Now, all of the old people from Kuchma’s camp will be in Yanukovych’s camp.

Taras Kuzio: If Yanukovych wins and he re-formats the parliamentary coalition and has his own government, you will have Serhiy Lvochkin, linked to the opaque gas intermediary RosUkrEnergo, as head of the presidential secretariat. Yuriy Boyko will be Minister of Energy again (the ‘Godfather’ of RosUkrEnergo). Senior Fellow at the European Council on Foreign Relations Andrew Wilson wrote that if there was something that undermined the Orange Revolution, besides Yushchenko, it was the intrusion of billions of dollars of gas-corruption finance after RosUkrEnergo was included in the 2006 gas contract. This corruption took over huge chunks of the Ukrainian parliament, the presidential secretariat and, of course, certain government ministries. I don’t think it is a good sign of what will return to Ukrainian politics if Yanukovych wins the second round.

Alex Frishberg: If you take my hypothetical that now Yanukovych will be elected president, what is Tymoshenko’s future role in this government?

Taras Kuzio: Tymoshenko has no role in a pro-Yanukovych government. She has always been a formidable opposition leader. She will now try to prevent Yanukovych from reformatting the coalition or trying to push for pre-term elections. It would be a continuation of political instability and a

battle between Yulia and Viktor. She stays on as Prime Minister unless he can reformat the coalition. Presidential elections have nothing to do with parliamentary coalitions and governments, according to the 2006 constitution.

Question: What will happen with the other Viktor (Yushchenko)?

Answer: He has more important things to do, such as taking care of his bees. He might think that he'll be able to do a lecture tour around the Ukrainian Diaspora, but he will be persona non grata. If Yanukovich is elected as president, then the Ukrainian Diaspora will not have anything to do with him. Simply read the Ukrainian media in the last week or so. 'Orange' voters who don't like Tymoshenko are still saying that they can't understand Yushchenko's position.

If someone loses in a normal democracy, they stay out of the limelight for a few years and eventually come back into politics. Tigipko did the same – the “Rambo” of this year fled Ukraine five years ago after the second round. And, he did the right thing. It doesn't seem to dawn upon Yushchenko that 5% is a terrible election result and, therefore, he should gracefully bow out. There isn't that connection between elections votes and politicians future courses of action. He has actually argued over the last few months that opinion polls don't mean anything; that what is important is his position and if the voters don't understand his position, then that is their problem.

Alex Frishberg: Yanukovich hired a Washington, D.C. firm called Black Manafort and Black Manafort consultants have been helping him over all of these years. To what extent has this been helpful?

Taras Kuzio: Well, he no longer wears turtle necks under his jacket – he started wearing shirts and ties (but never changed his crocodile skin shoes). He didn't look like a bouncer in a disco anymore. I supposed it did help because his campaign is a far more professional campaign than it was five years ago. It is difficult to gauge because Manafort has never done an interview. But, you can only do so much with such raw material, as Yanukovich. You can't wave a wand over Yanukovich and make him intellectually coherent. You can make him more presentable and give him sound bytes, alter his image on billboards with computer graphics.

Alex Frishberg: But Black Manafort won.

Taras Kuzio: People can go off-cuff, like when Yanukovich made the comment about women should be in the kitchen, not in politics. But Black Manafort will certainly claim a lot of credit for the victory.

Alex Frishberg: But isn't there a coherent stance or policy from the United States? I know Black Manafort is a private company, but the US government was trying to help the Orange Revolution five years ago and it now allows an American company to come in and help Yanukovich in essence defeat the Orange Revolution.

Taras Kuzio: These are private American companies that are hired by Ukrainian political parties. They don't represent the US government. The US government can have a position that is totally independent of private individual companies, whether it is AKPD working for Tymoshenko former Clintonites working for Yushchenko or Manafort working for the Party of Regions and Yanukovich.

The more disingenuous issue was that Manafort's partner, I think Rick Davis, was someone who would have been Chief of Staff if Senator John McCain had won the US elections. And, McCain is a supporter of the Orange Revolution. It's a business issue. Manafort, AKPD or other US companies are guns for hire in domestic and foreign election campaigns.

Alex Frishberg: Well, that's about it for today. Thank you all for coming. I hope you have enjoyed the show, and we look forward to seeing you again at one of these presentations.

