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Elliott Associates, L.P. v Republic of Korea

Day 6

November 22, 2021

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( 9.00 am ) 2
THE PRESIDENT: Good morning and welcome back. I hope you
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had a relaxing weekend, as relaxing as it can be in the
circumstances.
The tribunal is grateful to the parties for reaching
an agreement on the examination of Mr Smith. We also
noted that the new exhibits have been produced and they
are uploaded on the platform. So we are, I understand,
good to go with Mr Smith after the examination of
Mr Milhaupt, or Professor Milhaupt, rather.
Is there anything else that needs to be discussed
before we start with his examination, Claimant?
MR PARTASIDES: Thank you, Mr President, members of the
tribunal. It may help if I give a little bit of an
update of how we've got to where we've got to and what
has happened over the weekend.
As you will remember, on Thursday afternoon of last
week we disclosed the underlying trade confirmations
that we had undertaken to disclose to the Respondent,
and in going through those trade confirmations, they
were organised in the following way, and I think
I mentioned this last week. They were organised by
reference to the brokers who had brokered those trade
confirmations.
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The brokers would issue confirmations in two
different ways. Some brokers would issue individual trade confirmations. Other brokers would issue trade confirmations for the day of all of the trades that they had undertaken as brokers for that day.
That meant that there would be trades during the course of that day unrelated to this dispute that we redacted because they were not trades in Cheil.
In going through those trade confirmations, and undertaking the redaction process, we noticed a number of SC\&T swap transactions entered into, and because it was SC\&T, and because another of the Respondent's document production requests, request 7 , asked for trades with SC\&T, we did not redact those. We showed those and we undertook to provide all of the SC\&T swap transactions as well, which we did on Saturday to the Respondent, and I should say that the witness statement that Mr Smith has now submitted explains all of those transactions, both the Cheil swaps and the SC\&T swaps, and the number that he has arrived at in determining that there remains a trading loss in relation to all of those transactions pertains to both, and so has taken into account the SC\&T swaps as well.
So he will be in a position to explain both of those sets of transactions when he appears later today, and as
you have said, Mr Chairman, those exhibits have now been put on to the record, including the correspondence
between the parties, and they appear as exhibits $C-750$ all the way through to $\mathrm{C}-772$ on the record and the tribunal may already have seen that they are already on the Opus system.

There's one other item I should update you on, members of the tribunal, and that relates to exhibit $\mathrm{C}-759$, the last of those exhibits that I have just referred to.

This is a document that we received from the
Respondent in Korean on the Friday before the hearing began pursuant to its ongoing disclosure obligation, and pursuant to your order number 18.

It is a report prepared by Samsung Securities of 10 June 2015 which may be relevant to the cross-examinations that we conduct this week.

After translation and review, we sought the Respondent's agreement to add that document to the record. They have provided their agreement which is why it now appears as exhibit $\mathrm{C}-759$.
THE PRESIDENT: Thank you very much, Mr Partasides, for the explanations. Mr Turner, anything to comment?
MR TURNER: No housekeeping from our side, sir, save one point that's related to what my learned friend has just

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said.
I confirm that we have indeed received yet further transaction documents relating to SC\& $T$ over the weekend. We understand that the Claimant can now confirm that there are no more transactions in Cheil or SC\&T and that this is it, but we've had several further disclosures over the course of the last week. That's the position as we understand it. My learned friend will be able to confirm.

We confirm our consent to this further document having gone into evidence and the one housekeeping point that flows from what my learned friend has said and the discussions over the last week is you will recall, sir, that last Tuesday morning I asked that Professor Dow have extra time to look at and deal with the new documents. I make that request now formally, if you will.

Professor Dow will need a further 15 minutes on his presentation to deal with the additional documents that have been disclosed and have now been admitted into evidence over the course of the last week.
THE PRESIDENT: And this would be in lieu of putting anything in writing, so he would comment as part of his presentation?
MR TURNER: Correct. As my learned friend has stressed,
these are the documents that complete the disclosure of
swaps in Cheil that were disclosed and dealt with by Professor Dow in his second report. He needs to bring that up to date.
THE PRESIDENT: Mr Partasides?
MR PARTASIDES: Thank you, Mr President.
Let me confirm what we have already confirmed in writing to the Respondent, that to our understanding, the transactions that we have disclosed the documents of, to our knowledge, are all of the transactions that have been undertaken during the relevant period, indeed, for a period that extends beyond the document production request that the Respondent has made.

So I repeat that confirmation that we have already given in our correspondence over the weekend.

I have no objection to Professor Dow spending some more time dealing with that new documentation in his direct presentation.
THE PRESIDENT: Okay, thank you very much. That is noted and then the schedule will be amended on these lines.

Very good. I understand that is all that the parties have. We can then start with
Professor Milhaupt. Thank you very much.
MR LINGARD: Mr President, I wonder if I might raise one small procedural point which I thought I ought raise now 5
in fairness to the Professor before he begins his presentation. It is this. The members of the tribunal will have noticed that Professor Milhaupt's slide deck, provided to the tribunal last night, includes with it four annexes of closely typed material at the back of that deck, and I thought I ought note before the Professor begins his presentation that if he does not speak to those annexes, we will object to their entry to the record consistent with our discussion in the pre-hearing procedural conference.

I raise it now, before the presentation, as I say,
in fairness to the Professor, rather than waiting until he has spoken.
THE PRESIDENT: Any comments on that?
MR PARTASIDES: My understanding, members of the tribunal,
is that he will be referring to all pages of his
presentation.
THE PRESIDENT: Okay.
Very good.
PROFESSOR CURTIS MILHAUPT (called)
THE PRESIDENT: Good morning, Professor Milhaupt.
A. Good morning.

THE WITNESS: Good morning.
THE PRESIDENT: You have been called as an expert witness to
this hearing. So to that effect you have to give your
evidence in accordance with your sincere belief.
For that purpose, can you please read for the record the declaration of an expert witness that you should have there in front of you?
THE WITNESS: Yes. I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.
THE PRESIDENT: Thank you very much.
I understand you will be making a presentation instead of a direct examination. So, please, the floor is yours.

Presentation by PROFESSOR MILHAUPT
THE WITNESS: Well, good morning again, Mr President, members of the tribunal. My name is Curtis Milhaupt from Stanford University and it's an honour to have this opportunity to address you this morning.

This is an overview of my presentation this morning. I'm going to begin by discussing the merger and its impact on the minority shareholders of SC\&T before turning to the role of shareholder activism in Korea, and the counterfactual scenario in which the merger had been successfully voted down by the shareholders of SC\&T.

I' ll then turn to my responses to comments that Professors Bae and Dow have made on my report, before

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concluding, and as has been noted, there are several annexes to my report which l'll reference in my presentation.

## Next, please.

This is a list of my principal qualifications and experience. Obviously I' II be happy to answer any questions that you may have.

I would simply like to note at this point that my professional interaction with Korea dates back almost 25 years now, beginning with my participation in a project on Korean unification where $I$ first came to learn about Korea's developmental history, and the characteristics of the Chaebol.

I have remained in active contact academically with Korea ever since that time, and I have published in areas that are directly relevant to my report and to my testimony this morning.

Next, please.
As you recall, I provided a report in this case at the request of counsel for the Claimant. And in my report I sought to contextualise the merger and the surrounding events by discussing what I call the symbiotic relationship historically between the Korean Government and the Chaebol groups.

I also sought to contextualise the merger by
discussing serious corporate governance issues in the
Chaebol groups, which have come to be called tunneling, and the relationship between tunneling and the Korea discount, this well-known phenomenon in the Korean capital market.

I close my report by discussing what I term the therapeutic effect of shareholder activism. That is the ability of shareholder activism with the potential to improve corporate governance in Korea and to mitigate the Korea discount.

Next, please.
In my report, I state that in my opinion the merger was a textbook example of tunneling, and I would like to spend a few minutes explaining what that means.

As the first quotation on the slide shows, tunneling is a term that comes out of the economics literature and the quotation here is from Johnson et al in the seminal paper on tunneling. As you see here, it simply refers to a diversion of corporate assets from the minority shareholders of a Chaebol group, or any corporate group for that matter, to its controlling shareholder.

Now, the second quotation is from Professor Bae who, as you know, is an expert for the Respondent. And as Professor Bae correctly points out, the structure of the Chaebols, the structure of these groups, creates

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a conflict of interest between the minority shareholders and the controlling shareholder, and it gives an incentive for the controlling shareholder to siphon assets away from the minority shareholders for the benefit of the controlling family.

This is described in annex 1 , and I set out some additional information about this particular merger, showing the relative cash flow rights of the $\square$ family in this transaction, and various quotations which demonstrate, I think beyond any doubt, that this transaction was in fact a tunneling transaction.

Next slide, please.
I would like to provide a simple illustration of how a tunneling merger works. So let's imagine a time when we have two companies, A and B . They're both controlled by a controlling family. They are part of the same corporate group, and let's assume that they're equivalent in value.

Now, the controller, let's assume, controls these companies both through shares that it owns directly, and the literature calls these cash flow rights, as well as voting rights that they obtain through affiliates, and the literature calls these control rights.

Now, the difference between the higher control rights and the lower cash flow rights are referred to in
the corporate governance literature as the wedge.
Now, let's assume that the controlling family has greater cash flow rights in company $B$ as compared to company $A$. So it has a strong economic interest to favour B over A in any transaction.

Now, if we go to the extreme right side of my slide, let 's imagine what would happen if this were truly an arm's-length merger, with two boards of directors who were acting in the best interests of their respective shareholders.

In this case, the merger ratio would be 1 to 1 , reflecting fairly the underlying value, the relative values of the two companies, and the result would be a merged company owned $50 \%$ by the shareholders of $A$, former shareholders of A, and $50 \%$ by the former shareholders of $B$.

Now let's go to a tunneling transaction. Recall that in a tunneling transaction the controller controls both companies. So it can also control the valuation, the relative valuation of these two companies. And it has a strong incentive to inflate the value of $B$ and to suppress the value of $A$, because its economic interest, its cash flow rights are higher in B as compared to A .

Now, solely for the purposes of illustration, let's assume a merger ratio of 1 to one-third, such that the

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shareholders of $A$ have to give up three of their shares, three shares of their company, to get one share of the merged enterprise.

At the end of the day, they are going to own only $25 \%$ of the merged entity, and the former shareholders of B , including predominantly the controlling family, are going to own $75 \%$ of that merged enterprise.

The darkened slice of pie in my illustration represents the value that has been expropriated, it's been diverted from the minority shareholders of $A$ for the benefit of the shareholders of $B$, and principally, the controlling family.

Now, what's important to recognise is that a tunneling transaction inevitably harms the minority shareholders of the disadvantaged firm. That's company A in my illustration.

Now, if we were to substitute SC\&T for company $A$ in my example, and Cheil for company B, conceptually we would have a very good understanding of what took place in the merger and we would have a very good understanding of the way that value would have been transferred from the SC\&T minority shareholders to the Cheil shareholders predominantly for the benefit of the $\square$ family.

Next, please.

Now, what is the impact of these, the prevalence of
these kind of tunneling transactions on the Korean capital market, and what can be done about it?

Well, here there's agreement, widespread agreement by corporate governance experts, including
Professor Bae, who expressly notes his agreement with these principles in his report. Three important principles.

First, principal cause of the Korea discount is the risk of tunneling that I have just described, which stems from this agency conflict between the minority shareholders and the controlling shareholder in a Chaebol.

Second, widespread agreement that shareholder activism has the potential to mitigate these agency conflicts and improve corporate governance in the Chaebol groups.

Now, it follows from these first two principles, and again there's widespread agreement, including by Professor Bae, that shareholder activism has the potential to mitigate the Korea discount.

Next, please.
Now, let's turn to the counterfactual on which the merger had been successfully opposed by the shareholders of SC\&T.

Recognise that shareholders voting down a merger is
one of the most powerful demonstrations of shareholder activism imaginable. So in my opinion, successful opposition to this merger would have been a highly significant event for Korean corporate governance. Indeed, I think the circumstances were such that it provided a unique opportunity to demonstrate the power of shareholder activism in Korea.

This was not just any tunneling transaction in any Chaebol. It was a tunneling transaction in Samsung, the largest and most important Chaebol in Korea.

And it was not just any tunneling transaction within Samsung. It was in many respects the capstone in a series of transactions that were designed to increase - the heir apparent's, control over the Samsung Group, and particularly Samsung Electronics, the flagship of the group.

Think about the $11 \%$ shares held by the NPS. Imagine what a strong signal it would have been if the NPS had stood up to this transaction, said no to tunneling, and voted in the best economic interests of its beneficiaries, the Korean people. This would have been particularly powerful, having just voted no on a similar tunneling transaction in the SK Group.

So in my opinion, voting no on this transaction
would have lent momentum to corporate governance reform in Korea, and it would have emboldened shareholder activists in Korea, foreign, but more importantly, in my opinion, domestic institutional investors, to exercise their shareholders' rights.

Now, that's the more generalised impact of a no vote, successful no vote on the Korean capital market. What about specifically for SC\&T?

The valuation experts in this case agree that the Korean capital market is semi-strong efficient. It follows then axiomatically that SC\&T's' share price would be expected to react immediately in the event of successful opposition.

What new forms of information would have been conveyed to the market? Well, first, this immediate risk of tunneling, this diversion of value from the SC\&T minority shareholders to the $\square$ family would have been averted.

Secondly, there would have been specific deterrents exercised against the $\square$ family. It 's very hard to imagine that if this transaction had voted down, the $\square$ family could have turned right around and imposed another unfair transaction on the shareholders of SC\&T.

One of the things they could have done is come up with a fair merger ratio, but it's not clear what they

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could have done beyond that if this merger had been voted down.

Next slide, please.
Now, I would like to turn to my responses to Professor Bae's report.

The first point, Professor Bae provides some data which he interprets as suggesting that the capital market has changed its view about tunneling -- about mergers, I should say, in the Chaebol from a negative view at one point to a more positive view recently.

I'm not going to spend much time on this. I have noted my objections here. I don't find this data very convincing and I don't think it really even speaks to the issues in this case. So my response is here, I' II be happy to discuss this further if there's interest.

I would like to turn to the second point.
Professor Bae in his report provides an analysis showing that the wedge, this difference between control rights and cash flow rights, was reduced, as a result of the merger.

I agree. It was reduced. This is immaterial. A wedge simply signals a potential conflict of interest. It does not in and of itself harm minority shareholders. The harm comes when the controlling family acts on that conflict of interest.

If we go back to my illustration, there is no harm to minority shareholders at time 1 , simply by virtue of the existence of a wedge. It was only when the controlling shareholder exercised that wedge, took advantage of the conflict of interest, and expropriated the value in the merger that the shareholders suffered damages.

So Professor Bae's analysis of wedge reduction ignores the cost, the damage that was inflicted on the minority shareholders in the merger.

Tunneling via a merger is going to reduce the wedge. The purpose of the transaction is to increase the direct control of the controlling shareholders over the prized asset, here the shares in Samsung Electronics.

So if I were to put this differently, if tunneling is the principal corporate governance problem in the Chaebol, which is reflected in the Korea discount, then tunneling cannot simultaneously be the solution to the problem.

## Next, please.

Now, Professor Bae argues that shareholder activism of the sort that would be necessary to actually have an impact here would require that the activists actually be able to come in and immediately liquidate, force the liquidation of all of Samsung $C \& T$ 's investments in its
listed affiliates, Samsung Electronics and SDS, for example.

But this doesn't really follow from the premises that Professor Bae has accepted, and I've laid them out in annex 2.

Remember that Professor Bae has agreed that shareholder activism can mitigate agency conflicts in the Chaebol. He also agrees that therefore shareholder activism has the potential to mitigate the Korea discount.

And yet Professor Bae concludes that because the fundamental cause of tunneling lies in their complex ownership structure, for tunneling risks to disappear the practice of cross ownership has to be removed. But this doesn't follow. A conflict of interest does not have to be eliminated in order for its harm to be neutralised.

A shareholder vote, no, an exercise of market discipline here, would have prevented the $\square$ family from acting on this conflict.

So in the counterfactual scenarios I've just explained, shareholder activism would have had a powerful deterrent effect on the $\square$ family's future tunneling efforts.

I also believe that, contrary to Professor Bae's

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opinion, shareholder activism can be effective in Korea without further legal reform. He suggests to the contrary. But in fact the literature that Professor Bae cites for support for this point has been substantially discredited or called into question by legal scholars.

I have called into question the theoretical or conceptual basis of this argument, in a book that I wrote some time ago. Other scholars have really directly undermined the methodology that went into the economics literature that Professor Bae is relying upon.

What history shows, and there's academic literature to support this as well, legal reform often follows demand from investors rather than leading it. So in my opinion the successful opposition to this merger may have had an important by-product, which is fuelling additional support for legal reform in Korea.

In any event, corporate governance reform in Korea, since the merger, has improved without legal reform.
Korea adopted a stewardship code in 2016. The NPS signed on to it in 2018. Today, there's over 170 domestic institutions that have signed on to this stewardship code.

The key principle of the stewardship code is investor engagement in portfolio companies. This is a very important development for Korea.

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Now, finally, Professor Bae and Professor Dow cite to an aborted merger in the Hyundai Group and they say stock price didn't react positively in this other example. Therefore, it shows that or it suggests that stock price would not have reacted positively in the event of the counterfactual here.

I don't believe that the Hyundai merger provides a basis for an apples-to-apples comparison with the counterfactual scenario. As I have set out in annex 3, there are substantial differences between the failed Hyundai merger and the counterfactual scenario.

First of all, it was proposed several years after the merger in a completely different market context, different expectation for Chaebol mergers due to the fallout from this merger, new administration is in power, you have an FTC chairman who was a noted critic of the Chaebol.

It's a different business group, a different controlling family, with different family interests, different tax consequences, a different deal structure, different industries and a different policy climate. And also, although I won't speak in detail, I also don't see any apples-to-apples comparison in the other example that is cited by Professor Dow, a failed merger in the Samsung Group.

This merger was approved by shareholders and later
abandoned by the boards of directors. It is not comparable to a merger which falls apart because shareholders have voted it down, with is the counterfactual.

Next slide, please.
I' II turn now to Professor Dow's second report and this will be my final point before concluding.

Professor Dow asserts that there's a conflict
between my report and Mr Boulton's report with respect to the price impact for the counterfactual scenario.

He says Mr Boulton says there would be an immediate price impact, and he says I suggest that there may be some price impact down the road in the future.

With all due respect to Professor Dow, this is incorrect. Mr Boulton is a quantum expert in this case. He's opining specifically as to the amount of claimant's damage resulting from the merger. I'm opining in this particular section of my report on the potential of shareholder activism of the kind illustrated by Elliott 's opposition to the merger to improve Korean corporate governance.

If we could turn to annex 4.
I have set out the direct, verbatim quotations from Professor Dow's report and my report, so the tribunal
can see that we are in fact talking about two different things.

This passage in my report was written in response to a characterisation by the Respondent of Elliott's activities in opposing the merger as obstructionist and rent seeking. My response was to say I think there could be beneficial effects. Corporate governance literature suggests beneficial effects of corporate governance in Korea in the form of shareholder activism, as illustrated by Elliott 's opposition to this merger.

What Mr Boulton and I agree on is, again, in a semi-strong efficient market, new information conveyed by successful opposition to the merger would be immediately reflected in SC\&T stock price. That simply follows axiomatically from accepting that the market is semi-strong efficient.

So in conclusion, the merger was a tunneling transaction that caused a loss to minority shareholders of SC\&T.

Analysis purporting to show that corporate governance risk was reduced as a result of the merger, that the wedge declined, or any suggestion that the merger was somehow beneficial from a corporate governance perspective, fails to account for the damage that was inflicted on the minority shareholders of SC\&T
in the merger.
In my opinion, successful opposition to this merger would have been a highly significant event for Korean corporate governance, and three implications follow from that.

First, it would have exerted a therapeutic effect on Korean corporate governance. There would have been deterrence produced by this case. If $\square$ can be deterred from tunneling in the Samsung Group, any Chaebol leader can be deterred from tunneling. It would have set a precedent for the NPS that it's going to vote in the best financial interests of its beneficiaries and stand up to damaging tunneling transactions, and this would have, together with other reforms and developments, illuminated a pathway to an eventual mitigation of the Korea discount phenomenon in the capital market. It would have averted an imminent diversion of corporate resources from SC\&T's minority shareholders to the $\square$ family, and finally, it would have conveyed relevant new material information about SC\&T to the capital market for immediate incorporation into SC\&T's stock price.

That concludes my presentation. Thank you very much.
THE PRESIDENT: Thank you, Professor. Any follow-up

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## questions in direct?

## MS SNODGRASS: Nothing on direct.

THE PRESIDENT: It will be over to Mr Lingard.
Cross-examination by MR LINGARD
MR LINGARD: Thank you, Mr President.
Professor Milhaupt, good morning.
A. Good morning.
Q. Nicholas Lingard is my name. I represent the Republic of Korea in these proceedings. I' II be asking you some questions this morning.

My colleague has just passed you a binder, and I believe those binders are also being passed to members of the tribunal and counsel opposite.

Professor, I thought I might begin with an unusually personal observation, and it's this. In this job I have the opportunity to cross-examine experts across a whole range of fields. It's a software engineer one day; it's an economist the next; it's an expert in some area of law the next.

Among those, some of them are repeat experts. They serve principally as expert witnesses and so one comes across them with some frequency.

But putting aside that category of expert witnesses, it is vanishingly rare, I think unique, for me to be able to begin a cross-examination by saying I have known

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    and admired the expert's work for some decades, but
    I can, Professor Milhaupt, say that to you. I'm someone
    who has spent most of my adult life studying Japanese
    law and Japan and the Japanese language, and in that
    context I have long read and admired your work coming
    out of studies of Japanese law.
            In fact, before I left Singapore to come to Geneva
        for this hearing, I discovered I had no fewer than three
        of your books in my personal library.
            So I begin with that disclosure, as it were, and
        turn to the rather more prosaic, some ground rules for
        our conversation today, sir, if I may.
            I'm going to do my best to propose my questions in
        clear and concise terms, and I would ask in response,
        please, Professor, that you do your best to give me
        clear and concise answers. Is that acceptable, sir?
A. It is. And first, let me begin by saying thank you very
        much for those kind and generous remarks. It's
        wonderful to see someone who shares a deep interest in
        Japan and Japanese law.
Q. Thank you, sir. I'm also going -- well, take a step
        back. It is most important that we understand each
        other. If there's any part of any of my questions you
        don't understand, please do ask me to clarify. Is that
        understood, sir?
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A. Yes.
Q. Very good.

Let's come to begin with your CV, if we could, please, and I don't think this will take us terribly long.

I'm right, sir, that you have an undergraduate degree from Notre Dame in 1984?
A. Correct, 1984.
Q. And that was in government and international studies?
A. Correct.
Q. And a law degree from Columbia, sir?
A. Correct.
Q. And then it's my understanding that you carried out graduate studies at the University of Tokyo over two separate periods?
A. That's correct.
Q. And would I be correct, Professor, in saying you don't have any formal qualifications in economics?
A. No formal qualifications in economics.
Q. Or in corporate finance, sir?
A. No, although, again, in the field of corporate, comparative corporate governance, one is deeply immersed in economics and corporate governance; you really can't do this work without at least being conversant and understanding the principles. But I do not have formal
training in those subjects.
Q. And you have spoken to this already, but so we have it, you're now on the faculty at Stanford law school?
A. That's correct.
Q. And before you went to Stanford in 2018, you were on the faculty at Columbia law school; that's right, isn't it?
A. That's correct.
Q. And there you were the Fuyo Professor of Japanese law?
A. And also the Parker Professor of comparative corporate law.
Q. And also the director of the Centre for Japanese Legal Studies?
A. Director of the Centre for Japanese Legal Studies and also the director of the Parker School of Foreign and Comparative Law.
Q. You have professional competence in the Japanese language; that's right, isn't it?
A. Yes.
Q. Do you speak any Korean, sir?
A. I do not.
Q. Let me just cover off a few other roles if your CV, if I may. I have it right that you've served as a visiting scholar at the Bank of Japan Institute for Monetary and Economic Studies?
A. That's correct.

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Q. And also as a research fellow with Japan's Ministry for Economy, Trade and Industry?
A. Correct.
Q. I want now to move to some of your previous expert testimony, if I may. For that, can I invite you, sir, to turn to page 366 of your expert report, which is where your curriculum vitae begins. $\{\mathrm{F} 6 / 1 / 36\}$.

Then if we turn further in to page 43 , we see in the middle of page 43 a heading that says "Recent expert testimony"?
A. Yes.
Q. Do you see that, Professor?
A. Yes, I do.
Q. There's two cases listed there. I want to ask you about another case. I'm not for a moment suggesting that its exclusion was improper, it was certainly not recent, but just so we have it for the record. You also testified in an another case, as I understand it, another US litigation in 2002 in the US District Court for the District of Columbia, the vitamin anti-trust litigation. I have that right, sir?
A. Yes. That's a long time ago, and I don't have specific recollection of what that was about.
Q. That's entirely fair. Do you recall the subject of your testimony in that case, Professor Milhaupt?
A. Honestly, I do not, as I sit here at the moment. I do not.
Q. If I put it to you that it was concerning the information-gathering powers of the Japan Fair Trade Commission under Japan's anti-monopoly law, would that sound right, sir?
A. Yes, it does
Q. And any other expert testimony experience, Professor, beside the two listed in your CV and the one we have just discussed and of course our conversation now?
A. Yes. Well, I may have written reports in other cases. Again, this is going back a long time now. I don't have specific recollection of those. I was never called, I was not deposed in those cases. So there have been a handful of cases where I wrote a report, and then there was nothing that ever came of it. The cases settled or I was never contacted again. That's the extent of my expert witness service.
Q. That's clear, thank you very much.

In this particular case, the one we are discussing now, can I ask you, Professor, who first approached you about serving as an expert?
A. I was approached by a member of the law firm of -- let's see. I have to recall here for a minute.

Kobre \& Kim, actually a former student of mine,

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Nathan Park, contacted me initially.
Q. Understood, thank you very much.

Can I invite you please to turn to paragraph 14 of your expert report, Professor. It's on page 6.
\{F6/1/6\}.
A. Yes.
Q. And you list there what you say at (i) are the materials you were provided in the course of preparing your report, and then at (ii) separately you list the materials you reviewed.

Simply for good order, as we proceed, I want to confirm that you did in fact review the materials also at (i); I have that right, don't I?
A. Absolutely, yes.
Q. So, for example, as reflected in the first bullet point there, you reviewed the 2019, the first expert report of Mr Richard Boulton?
A. That's correct.
Q. And at the time you submitted your expert report, did you also review Mr Boulton's second report, which was filed the same date as yours?
A. No, I had not seen $--I$ had not seen his second report at that time.
Q. But you have now?
A. I have now.

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Q. And you have also now obviously seen the expert report
    of Professor Bae?
A. Yes, I have.
Q. And also the second report of Professor Dow?
A. Yes, I have.
Q. I want to come to the fact exhibit with which you were
    provided in the course of preparing your report. Only
    one is listed there in paragraph 14, so it's at the
    fifth bullet point. Do you see it there, it's exhibit
    C-585. It's described as a handwritten memo of
    . who you may know was a Blue House
    stafler, and you describe it there as a document
    produced by the Republic of Korea. Do you see that,
    sir?
A. I do.
Q. Did you review that document?
A. If it's listed here, I did. I believe I recall
        specifically what this memo is, but it would be helpful
    to have my memory refreshed about this.
Q. Well, you don't cite it anywhere, which is why I'm
    getting at the question, sir. I was wondering if you
    requested this fact exhibit specifically from counsel?
A. No, I have not requested this specifically from counsel.
Q. And do I have it right, therefore, that you were not
shown this Mr 's testimony in Korean court
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## proceedings?

A. Sir, could you repeat that?
Q. You were not shown this Mr $\square$ 's testimony in Korean court proceedings?
A. Well, no, it says handwritten memo. So I assume that does not refer to testimony in court proceedings.
Q. Sir, you don't know that Mr testified in Korean court that at the time he prepared this handwritten memo, he was completely ignorant of any meeting between Samsung's $\square$ and former President $\square$ ?
A. I'm not aware of the facts surrounding the production or the writing of this memo.
Q. Paragraph 14 also says you were provided with some of the parties' written submissions. We see there amended Statement of Claim, statement of Reply, Defence and so on.

As you reviewed those, did you ask counsel for any other fact exhibits cited in those submissions?
A. I may have. I don't recall specifically what I would have or would not have requested. If there was something that appeared relevant to me for the writing of my report I would have requested it, but I don't -as we sit here now, one of the challenges here was that this report was written some time ago because of the delays we all experienced because of COVID. So I don't
recall specifically.
Q. Let's move on.

You spoke this morning and you testify in your report to the so-called Korea discount, and that's the subject I want to turn to now, Professor.

Some basics first. I have it right, don't I, that in your view, the Korea discount exists because of the risk that value might be expropriated from minority shareholders and transferred to Chaebol controllers?
A. Yes, I believe that the Korea discount is unique to Korea in the sense that it reflects corporate governance risk. That's the way that I would explain the Korea discount. It reflects corporate governance risk, the risk of minority shareholder expropriation at the hands of controlling shareholders in the Chaebol.
Q. And you consider, that risk that you've just described, sir, its reflection in stock prices to reflect a rational fear?
A. Well, I believe so, yes.
Q. And the Korea discount has an observable impact on stock prices of Korean companies. That's right, isn't it ?
A. It is the case that Korean stock prices appear to demonstrate a discount that is somewhat unique or separate from a more generic holding company discount which is witnessed or experienced in other capital

## markets.

Q. It's also observable, isn't it, that the
price-to-earnings ratio of Korean companies is lower relative to their global peers?
A. That is the view of the OECD and the report that I cited. Its economic report for Korea in 2018 makes that point.
Q. And indeed, that has consistently been so; that's right, isn't it, sir?
A. I believe so.
Q. And so we can agree that the Korea discount has been a longstanding feature of the Korean capital market?
A. I believe that's correct.
Q. And that's because the risks you've described, as you characterise them, corporate governance risks, have existed for a long time?
A. Yes. Some commentators attribute additional factors, low dividend payments or geopolitical risk from the Korea peninsula, but, as the OECD economics department points out, and the OECD economics report for Korea points out, the principal cause of the Korea discount is this corporate governance risk or this tunneling risk.
Q. Would you turn with me to paragraph 66 of your report, please, Professor. It's on page 24. $\{\mathrm{F} 6 / 1 / 24\}$.
A. Yes, thank you.
Q. We see there that the Korean Government has taken measures to increase the transparency of Chaebol ownership and improve corporate governance.

> That's right, isn't it?
A. I believe that is accurate, yes.
Q. In fact, you tell us that the government has been taking those measures at least since the Asian financial crisis of 1997?
A. Yes, I believe that they began to try to address these issues at that time.
Q. And in your view, sir, those measures have been insufficient to eliminate the corporate governance risks you've described?
A. Yes, and that's not simply my view. I think that is the consensus view of observers of Korean law and the Korean market.
Q. And therefore those measures have been insufficient to reduce the Korea discount?
A. Legal measures on their own appear to have been insufficient to reduce the -- or to eliminate the Korea discount, yes.
Q. We could agree, could we not, that the Korea discount is stubborn?
A. That would be one way to put it. It has persisted, yes.
Q. You spoke to this in your presentation earlier this

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morning, sir. In 2016 I have it right, do I not, that Korea adopted a stewardship code?
A. That's correct.
Q. And that was another measure directed at improving corporate governance?
A. Yes, I believe so.
Q. And that stewardship code has not eliminated the Korea discount, has it, sir?
A. Well, to this point it hasn't, but the stewardship code has only been in effect since 2016. As I mentioned, it was 2018 when the NPS signed on, which I think is very important. The NPS is a very important actor in Korean corporate governance. So it is still early days, and I think it's too early to draw a conclusion. I think it 's an important step, but has it eliminated the Korea discount to this point? No.
Q. Let's move on, please, to paragraph 67 of your report. We see there, if I understand your testimony correctly, Professor, that in May of 2017, the current Korean President, President $\square$, was elected on what you characterise as a platform of ending corrupt practices and severing the Chaebol government nexus. Have I understood your testimony correctly, sir?
A. That is my understanding.
Q. And today the Korea discount still exists, doesn't it?

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A. It does. If I could add just one point?

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A. It does. If I could add just one point?
Q. Please.
Q. Please.
A. That is, referring back to my presentation, we don't

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A. That is, referring back to my presentation, we don't
``` know what the situation would be today with the Korea discount if this merger had actually been successfully opposed. I believe it would have been quite an important development for Korea. So we don't know what the situation would be in the event that there would have been a powerful demonstration of shareholder activism in opposing successfully this merger.
Q. Let's come on to discuss that very subject, Professor.
What I would like to do is simply walk through with you, in the first instance, to situate us and the members of the tribunal, some observations in your report, before we come on to your presentation and then discuss the merger specifically.
So if you would bear with me as we just walk through your report on the subject you have just introduced, sir. Can we begin at paragraph 84. The first paragraph there reads:
"Standard corporate governance theory suggests that shareholder activism of the sort engaged in by Elliott can potentially play a therapeutic role in CMS regimes, particularly in capital markets such as Korea's ..."
And you go on. Do you see that, sir?
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A. Yes, I do. {F6/11/31}.
Q. Let's then turn over the page to }32{F6/1/32}
        There you tell us, and I'm quoting:
        " ... investors likely would have viewed a successful
    activist campaign by Elliott to defeat an unfair merger
    within the Samsung Group as an important step in ongoing
    efforts to enhance shareholder protections ..."
        Do you see that, Professor?
A. I do.
Q. And then let's go, please, to paragraph 89. You tell us
        there:
            "An important potential byproduct of shareholder
        activism of the type represented by Elliott in
        connection with the Merger is mitigation of the 'Korea
        discount'."
            Do you see that, sir?
A. Yes, I do.
Q. What I would like to do now is compare that if I could,
        please, to your presentation from this morning. I see
        you have a hard copy in front of you?
A. Yes.
Q. If I could invite you, please, to go to slide 8 in your
    deck. I'm looking at the second major heading in blue
        on slide 8 of your deck, Professor?
A. Yes.
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## Q. You say there, in rather stronger terms: <br> "In a semi-strong efficient capital market SC\&T's stock price would be expected to react immediately to successful opposition." <br> And I'm taking it, if I may say so, sir, that we've moved from potential byproduct and important step, to reacting immediately. <br> My question is this: have you considered the magnitude of any immediate reaction? <br> A. Could you clarify the question, sir? <br> Q. Of course. Have you considered the magnitude of the immediate reaction in the stock price of Samsung C\&T to the rejection of this merger in the counterfactual you consider? <br> A. Well, if I may, let me begin by explaining, the points that you've raised or the quotations that you read from my report are discussing a general impact on the Korean capital market, and in my presentation I separated the general impact on the Korean capital market, which is the first point in my slide, this slide 8, and then there's a specific reaction as to $\mathrm{SC} \& T$. <br> In my report I was instructed to, and I did, speak in more general terms about the potential benefits of shareholder activism.

Here I'm speaking more specifically with respect to

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the stock price reaction because all of the experts in this case agreed that the capital market is semi-strong efficient.

I was never instructed to consider or to evaluate or to measure the stock price reaction of SC\&T. Mr Boulton is the valuation expert in this case. I undertook no such exercise.

But in response to comments by every one of the experts in this case, that the market is semi-strong efficient, it simply follows then, again, axiomatically, that in this specific counterfactual scenario, stock prices would have reacted immediately to the new information that would have been produced by the counterfactual, by the voting down of this merger.
Q. And just to make sure I have your response to my specific question, sir, you have not considered the magnitude of that immediate reaction in the stock price?
A. That's correct.
Q. Would you expect it to effectively be doubling the stock price overnight, Professor?
A. I have undertaken no effort to gauge or to measure the magnitude. I'm speaking in conceptual terms here. Mr Boulton is the valuation expert. So I have no opinion on that.
Q. And as to the Korea discount specifically, you described
A. Again, and I apologise if I was unclear, but there's two levels, every time I'm speaking in my presentation.

One is the general impact of the counterfactual scenario on the Korea market in general. I think it would have sent an important signal to the Korean market that tunneling can be stopped; it can be stopped through the exercise of a shareholder vote.

I think that would have a powerful impact on the Korean capital market in general. Would it change everything overnight? No, and I'm certainly not arguing that.

But that's separate from the impact of the counterfactual scenario on SC\&T, where there would be, again, if you accept semi-strong efficiency, then you have to accept that there would be an immediate impact based on the new information that would be relevant and material about SC\&T. That would be immediately incorporated into SC\&T's stock price.

That simply follows from accepting that the market is semi-strong efficient.

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Q. Let's see if we can come to specifics of what would or would not have changed upon the rejection of the merger in your counterfactual.

The day before the merger vote, we are agreed, are we not, that Samsung Electronics was the flagship company in the group?
A. I would agree to that, yes.
Q. And that was true the day after the merger vote, even if the merger had failed. That's right, isn't it?
A. Correct.
Q. And the day before the merger vote, are we agreed, sir, that $\square$ had only a small indirect stake in Samsung Electronics?
A. Well -- well, are you speaking in terms of -- just clarify what you mean by that, when you say a small indirect stake.
Q. You can tell me what you think it means. A small indirect stake. He had a shareholding through affiliates in Samsung Electronics and it was not large?
A. Okay, I would agree with that.
Q. And the day after the merger vote, even assuming the merger had been rejected, his stake in Samsung Electronics would have remained the same. I have that right, don't I?
A. Well, that's true. However, in the event of the

## Q. Yes.

A. Which specifies that the merger ratio should be set by virtue of trading volumes, trading prices in a one-month period prior to the announcement of the merger.
Q. That's precisely what I'm referring to.
A. Yes, that's what the Capital Markets Act provided.
Q. And the day after the merger vote, assuming the merger vote had failed, that would still have been the Korean law on public company mergers. I have that right, don't I?
A. I believe so.
Q. Very good. Let's move on. I want to come to the context for the merger we've been discussing. First,

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some general points, Professor Milhaupt.
I understand it's your view that the merger was a microcosm of what you call longstanding features of the Korean political economy and corporate governance environment. I have your testimony correct, sir?
A. That's the way I described it in my report, yes.
Q. And you say that historical patterns of interaction between the Chaebol and the Korean Government provide important context for the merger that is at the heart of Elliott 's claim, I have that right, sir?
A. I believe so, yes.
Q. And you would characterise those historical patterns in the relationship between Chaebol and the Korean Government as reflecting what you call a symbiotic relationship ; I have that right, Professor?
A. That's the way I characterise it, yes. I believe that there's a longstanding relationship of both mutual benefit and mutual dependency between the Korean Government and the Chaebol groups.
Q. And in fact I understand it's your view that Chaebol are so central to the Korean economy that they are properly characterised as too big to fail?
A. Well, that's taken from the title of an article by several economists and in the article they are pointing out that there could be a moral hazard effect to this
relationship between the Korean Government and the Chaebol; that the Chaebol may believe that they can extract rents from the government, they can take risks, and that they will be bailed out in the end by the Korean Government.

So this was taken from a title of an economics article, which was somewhat critical of the Korean Government's stance towards the Chaebol.
Q. You have just described a series of risks,

Professor Milhaupt. Can we agree that those are risks that would be known to any sophisticated investor in a Chaebol?
A. I think you have to separate out two different types of risk that are at issue in this case -- or really only one is at issue in this case. First, yes, I agree that a sophisticated investor would be aware of corporate governance risk in the Chaebol. This tunneling risk that I have described, a sophisticated investor should be aware of that risk.

There's a separate risk which I understand is really at the centre of the Claimant's claim here, which is that there was improper government influence on the process by which a corporate transaction was approved by shareholders.

That seems very different to me. Very, very
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different from corporate governance risk.
Q. You tell us in your report, sir -- I want to make sure I have it right -- that in the decades leading up to Elliott 's investment in Samsung C\&T, the Chaebol exercised what you would call outsized influence in Korea's political economy?
A. I believe that's an accurate statement. It's certainly not an opinion held only by me. I think that is
a general -- a consensus of academics who look at the Korean developmental experience.
Q. Let's come briefly away from Chaebol in general to the specific setting for our case. That is the Samsung Group.

That group was at the time of the merger, and is now, Korea's largest Chaebol, that's right, isn't it ?
A. That's correct.
Q. Indeed, it accounts for a significant portion of the Korean economy?
A. I think it accounts for perhaps something like $12.5 \%$ of GDP.
Q. Could we agree that long before the merger that is our subject, Samsung engaged in a number of controversial transactions motivated by succession planning?
A. I think that's accurate, yes.
Q. And those transactions long before the merger were
designed to consolidate control over the group in
A. I think that's correct, yes.
Q. And the merger that is our subject was a continuation of those ongoing series of steps taken to pass control to

A. I believe that's accurate, yes.
Q. And any sophisticated investor in a Samsung company would have been aware of that ongoing series of steps to pass control to
A. Yes, I believe that's correct.
Q. The merger, you tell us, and I want to make sure I have this right, Professor, exhibited corporate governance problems well-known in Korea. I have that right?
A. Yes, I think that's accurate.
Q. And to be a little more specific, you tell us that those corporate governance problems manifested in the risk of a value transfer from shareholders of a company in which the controller or his heir had a small stake, to shareholders of a company in which the controller or his heir had a larger stake. I have that right?
A. Yes, and that was my illustration in my presentation.
Q. And that's, sir, what you call tunneling risk?
A. Well, yes, that is what everybody calls tunneling risk. It's not my term. It's a well-accepted term in the

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## literature

Q. Again, any sophisticated investor in a Chaebol would have been aware of that corporate governance risk?
A. Yes, again, the corporate governance risk would be well understood by a sophisticated investor, but my understanding is that that is really not why we're here. We're here for a different reason, which is an allegation of improper government influence on the process by which that transaction was approved by shareholders.
Q. I have your testimony, thank you.

Can I invite you, please, to turn to paragraph 85, and with that we will move to a slightly different subject, Professor. 85 of your expert report, I should say, on page $31\{\mathrm{~F} 6 / 1 / 31\}$.
A. Yes.
Q. And as I understand your testimony there, it is that corporate governance reform initiatives by Elliott have gained traction in what you call the Korean domestic investor community?
A. Yes.
Q. And we see at the end of the first sentence of paragraph 85 your footnote 100 . And there you cite a press article from a publication called The Bell, which is exhibit $C-568$. You see that in your

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    footnote 100, sir?
A. I do.
Q. I'm going to invite you to turn up that article with me,
    please. It's at tab 4 of the binder in front of you
    {C/568/1}.
            Do you have it, Professor?
A. I do.
Q. And this article is entitled "The importance of Hyundai
    Motors, Lotte Chemicals' Introduction of Remuneration
    Committees."
            It's dated June 3, 2020. Are we looking at the same
        thing?
A. Yes.
Q. This is the article you cite in support of Elliott's
        corporate governance initiatives having gained traction
        in the domestic Korean investor community.
            If we turn to page 2 of the article, I think we see
        that to which you refer {C/568/2}. In the final
        paragraph of the article there's a reference there to
        Hyundai Motors and Lotte having implemented remuneration
        committees in response to the recommendations of what is
        described as an American hedge fund Elliott Management.
        That is what you were referring to, sir?
A. Yes, it is.
Q. This article is from 2020. But it's describing
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introduction of remuneration committees in 2019. Do you know, sir, that in that same year, 2019, Elliott also proposed to Hyundai that it should pay out larger dividends?
A. I don't have specific knowledge of that.
Q. So you don't know, sir, that that proposal to Hyundai by Elliott to pay out larger dividends was rejected by a majority of Hyundai shareholders?
A. Again, I don't have specific knowledge of that.
Q. Are you aware at the same time in 2019 Elliott also proposed that its nominees be appointed as directors of the board of Hyundai?
A. Yes, I am familiar with that.
Q. And so you're familiar that that proposal, that Elliott have board seats at Hyundai, was rejected by a majority of Hyundai shareholders?
A. Yes.
Q. That was 2019. You know too, don't you, that Elliott was an investor in Hyundai the year earlier, 2018?
A. Yes.
Q. And you know that in that year, 2018, Elliott successfully led a campaign to block a merger between two Hyundai affiliates, Hyundai Mobis and Hyundai Glovis?
A. Yes, my understanding is that transaction was called off
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by the boards.
Q. And, sir, my question is simply this. It's a yes-or-no question. Have you studied what happened to the share price of Hyundai Mobis after Elliott successfully
blocked that merger?
A. Well, it's described in Professor Bae's report.
Q. And what happened to the share price, sir?
A. Well, I believe that it declined.

MR LINGARD: Thank you very much. I have nothing further.
Thank you, Professor Milhaupt.
Mr President, thank you.
THE PRESIDENT: Thank you very much, Mr Lingard.
Redirect?
MS SNODGRASS: No questions on redirect.
THE PRESIDENT: No questions.
Questions from THE TRIBUNAL
MR THOMAS: Just a follow-up question. If you could turn to page 6 of your slide.
THE PRESIDENT: Actually we didn't receive a hard copy of the slides. You did? But the two of us, I don't think we did.
TRIBUNAL SECRETARY: It was placed on your chair as you came into -- I hope you're not sitting on them.
MR THOMAS: It's entirely possible.
THE PRESIDENT: No problem, we will sort it out.

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MR THOMAS: It's just a small point, Professor Milhaupt.
I was following your textbook example of tunneling and I just noted on the third column you mentioned that the consideration there would be boards of directors act in the best interests of their respective shareholders.
A. Yes.

MR THOMAS: I take it from the textbook example that that is an aspect of your analysis, which is the textbook example is that the board acts in the best interests of the shareholders. But in your report, and I read a number of your exhibits, you also mention that in Korea the board is held to have fiduciary duties to the company, not to the shareholders?
A. Correct.

MR THOMAS: So this is an aspect of Korean corporate law which is, I guess, in addition to the capital markets law which has the statutory merger ratio. This is another aspect of Korean corporate law?
A. Correct.

MR THOMAS: I also noted that in one of your exhibits that the civil law courts of Korea tend to take a formalistic interpretation as opposed to the approach that might be taken by common law courts.

To what extent do these other aspects, the way in which the courts approach these issues, the corporate
law doctrines, to what extent do they contribute to
this, I think Mr Lingard called it stubborn, I think you called it persistent, Korea discount?
A. That's an excellent question, sir. I'm very happy to respond to that.

The features of the domestic Korean legal system that you have mentioned, the statutory merger ratio, the doctrine held by the courts that fiduciary duties are owed to the company rather than to the shareholders, and to the rather formalistic way that the Korean courts approach these issues, is really a perfect climate for Chaebol leaders. It's a perfect climate for tunneling, because they can accomplish this transaction and it's deemed to be fair simply because the merger ratio was complied with, notwithstanding the fact that it 's quite clear that the transaction could be damaging to minority shareholders.

So I think absolutely you're right to suggest that this contributes to a climate in which tunneling can persist and, because of that, the Korea discount can persist.

If we were to contrast the way this merger was handled in the domestic legal system of Korea with, for example, the way such a transaction would be handled in the Delaware courts, and I've seen references to

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Delaware law in the opening statement of the Republic of
Korea, it's night and day. There is no way that
a Delaware court would have held this transaction to be
fair. There's no way that a Delaware court would have trusted the market prices in this case.

I saw a citation to the DFC Global case in the ROK's opening statement cited for the proposition that the Delaware courts trust the market. Very important pre-condition which is set out in that case. They trust the market price because they believed that the process was robust and conflict free.

Was this process robust and conflict free? I saw no evidence in the record whatsoever of negotiation on the part of the board of directors of SC\&T. They didn't even avail themselves of the opportunity provided by the Capital Markets Act to negotiate the price up by $10 \%$.

So there was no negotiation here. My understanding is that there are serious allegations of improper market manipulation, accounting fraud, etc. That would have been taken into account by the Delaware courts.

And was this transaction conflict free? It was the opposite of that. There was a controlling shareholder on both sides of the transaction. The Delaware court would have imposed a fairness standard of review and in my opinion there is no way that a Delaware court would
have held this merger to be fair.
So I think your question is very astute, and I think that this has contributed to the persistence of the Korea discount.

## MR THOMAS: Thank you

MR GARIBALDI: Professor, I have one question which is kind of motivated by this discussion.

Let's suppose that there is a tunneling transaction, as you describe this kind of transaction.

It seems, since the merger ratio is a statutory one, and it depends on a certain time period that is set by the statute, so it seems to me to follow -- correct me if I am wrong -- that there are two possibilities for a tunneling transaction to occur.

Either the controlling shareholder takes advantage of a conjectural imbalance in the prices of the two companies, or it manipulates the prices of the two companies to create that imbalance?
A. Yes.

MR GARIBALDI: Am I right?
A. Yes, I believe that's correct.

MR GARIBALDI: To what extent is it possible to infer in an environment like this that the existence of an imbalance of that kind is created by market manipulation?
A. Thank you for that question, sir.

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Well, what we know is that there are ongoing criminal proceedings in Korea relating to stock price manipulation, materially misleading disclosures and other bad behaviour by $\square$ and his top lieutenants in the time period right around the merger.

So that suggests to me that there were efforts to manipulate the stock prices of these two companies to satisfy the merger ratio in a way that would create this lopsided merger ratio.
MR GARIBALDI: Well, I understand that, but I suppose that under the Korean criminal law system, that requires evidence and all that.

So I'm thinking more in economic terms, how frequently occasional imbalances occur that could be taken advantage of, or in the environment, as you know -- this is a general question, it doesn't refer to this particular case - - or in that general environment, these imbalances tend to be created?
A. Yes, thank you, sir .

I think it would be important to look at the motivations of the Chaebol leaders with respect to engaging in these types of transaction. So I don't have specific knowledge of this, but one possibility is that they would simply opportunistically take advantages of imbalances in the market price and impose these

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transactions.

But I think what happens more generally, my sense is that the Chaebol leaders are motivated for a certain goal, such as transferring control from father to son, and they take advantage of these -- these motivations to engage in these transactions.

So rather than being kind of, you know, just simply opportunistic, here is an imbalance, let's push through an unfair merger, I think there's much more calculation that goes into these in terms of planning well in advance how we are going to engineer a transfer of control from father to son, for example.
MR GARIBALDI: Thank you.
THE PRESIDENT: You discuss or you comment briefly on Professor Dow's discussion of the holding company discount and you discussed that in the context of the Korea discount. It would be helpful if you could elaborate a bit further on the distinction, if there is one, between the holding company discount and the Korea discount. I mean, is there an overlap? To what extent there is an overlap in your view?
A. Yes.

THE PRESIDENT: Because it seemed to me that you didn't reach a clear view or clear conclusion on that issue.
A. Okay, yes, thank you, sir, that's also a very astute 57

\section*{question.}

So I think that there is a generic component to what is called the Korea discount, and there's a Korea-specific component. The terminology is used differently by different people and it creates a lot of confusion.

The way \(I\) think of it is there is a generic component, which is a holding company discount, and that is seen in capital markets around the world. It tends to be the case that a holding company trades at a discount to net asset value of its underlying holdings, and that could be because it's hard to manage a holding company, it's overly diversified, there are negative tax consequences to the holding company structure, etc. So that's generic and it's found throughout the world

But there seems to be something, or indeed there is something specific about Korea in which, over and above that generic discount, there's an additional discount which relates to and which every commentator that I know of attributes to this corporate governance risk, this tunneling risk. Again, the OECD agrees with that assessment, and I think that is just the consensus view.

So that component is separate from the holding company discount. So that's the way that I would try to
disentangle these two separate components of the Korea discount.
THE PRESIDENT: In a Chaebol, like Samsung at least, that is not yet a holding company, you discuss or at least some of the experts discuss holding company discount in connection with companies like SC\&T.

Is that because of the strategic ownership of key assets in the company and the indirect holdings that effectively make some of these companies in a Chaebol a holding company, not because of its formal role, but because of the holdings that they have --
A. Yes, sir .
Q. -- in the overall structure?
A. Yes, sir, that's correct. So there are holding companies under Korean law that are designated as such by regulation, by the FTC. So those are formally holding companies. But there are other companies that are de facto holding companies. So new SC\&T, the merged entity today, is a kind of de facto holding company for the group. So it's important or possible to distinguish possible formal from de facto in that respect. So your analysis is exactly right.
THE PRESIDENT: So in those instances where we are discussing a company in a Chaebol structure that acts in effect as a holding company, how would you distinguish

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between a Korea discount and a holding company discount in those circumstances?
A. Well, it 's admittedly challenging, and I think that one of the interesting features of this case is it 's, to my knowledge, the first case that would require actually separating out those components. And my understanding is that the expert, the valuation expert for the Claimant, his analysis is doing exactly that, separating out the specific corporate governance risk, Korea discount, from the more generic holding company discount.
THE PRESIDENT: Based on what you have seen in this case, and otherwise as a scholar, is the holding discount in the Korean market in your view in any way different from a holding company discount in any other similarly developed markets with a semi-efficient stock market?
A. In my view, Korea is unique in having this persistent additional corporate governance discount.

Now, there are other developed capital markets that have similar company structures. Hong Kong is an example where you have prominent families who control listed companies on the Hong Kong Stock Exchange. To my knowledge there is no Hong Kong discount. I'm not aware of any other developed capital market that has the specific aspect of a discount reflecting corporate
company discount.
THE PRESIDENT: Okay. Thank you very much, Professor. That
    concludes your examination. Thank you.
A. Thank you very much.
THE PRESIDENT: Thank you for your time.
            (The witness withdrew)
THE PRESIDENT: We are a bit ahead of time. We could have
        a break now if that is convenient and then continue in
        15 minutes with Mr Smith.
            Thank you. We continue at 10.35 .
(10.18 am)
                    (A short break)
(10.35 am)
THE PRESIDENT: Okay. We will resume.
        Good morning, Mr Smith.
THE WITNESS: Good morning, Mr President.
THE PRESIDENT: Welcome back.
THE WITNESS: Thank you.
THE PRESIDENT: Because your examination was concluded,
        I should remind you that you are required to tell the
        truth, the whole truth and nothing but the truth.
    I won't ask you to read the declaration, but you
    understand that you are under the commitment that you

\section*{have already made?}
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THE WITNESS: Yes, Mr President, I understand it.
THE WITNESS: Yes, Mr President, I understand it.

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THE PRESIDENT: Very good. Are there any questions on
    direct?
MR PARTASIDES: There are none, Mr President, thank you.
THE PRESIDENT: I hand over to Mr Lingard.
            Cross-examination by MR LINGARD
MR LINGARD: Thank you, Mr President.
        Mr Smith, hello once again.
A. Hi there.
Q. You will know, sir, that we received your fourth witness
    statement yesterday, Sunday. And also, sir, that over
    the course of the last week we've received in the order
    of 300 pages of documents from the Claimant since the
    hearing in this arbitration began.
    I begin with that note simply by way of reserving
    the Republic's rights with respect to the adequacy and
    timing of the production of that evidence, but also,
    sir, to reassure you that will not be the subject of our
    discussion today.
            The subject of our discussion will be the content of
        that evidence, the swap transactions, evidenced in your
        witness statement received yesterday and in the various
        materials I have just described.
        My colleague has just passed you in the ordinary way
governance risk over and above the more generic holding

THE PRESIDENT: Okay. Thank you very much, Professor. That concludes your examination. Thank you.
A. Thank you very much.

THE PRESIDENT: Thank you for your time.
(The witness withdrew)
THE PRESIDENT: We are a bit ahead of time. We could have
a break now if that is convenient and then continue in
15 minutes with Mr Smith.
Thank you. We continue at 10.35 .
(10.18 am)

> (A short break)
(10.35 am )
MR JAMES SMITH (recalled)

THE PRESIDENT: Okay. We will resume.
Good morning, Mr Smith.
THE WITNESS: Good morning, Mr President.
THE PRESIDENT: Welcome back.

THE PRESIDENT: Because your examination was concluded, I should remind you that you are required to tell the truth, the whole truth and nothing but the truth.
understand that you are under the commitment that you
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THE PRESIDENT: Very good. Are there any questions on direct?
MR PARTASIDES: There are none, Mr President, thank you.
THE PRESIDENT: I hand over to Mr Lingard.
Cross-examination by MR LINGARD
MR LINGARD: Thank you, Mr President.
Mr Smith, hello once again.
A. Hi there.
Q. You will know, sir, that we received your fourth witness statement yesterday, Sunday. And also, sir, that over of 300 pages of documents from the Claimant since the hearing in this arbitration began.

I begin with that note simply by way of reserving the Republic's rights with respect to the adequacy and timing of the production of that evidence, but also, discussion today.

The subject of our discussion will be the content of that evidence, the swap transactions, evidenced in your witness statement received yesterday and in the various My colleague has just passed you in the ordinary way
a small binder of materials. I want though to begin, please, with your fourth witness statement, the one we received yesterday, and if I could ask you, please, to go first, to frame our discussion, to paragraph 19 of your fourth witness statement. \{D1/4/5\}.

Are you there, Mr Smith?
A. I am there, yes.
Q. And it's in that paragraph, paragraph 19 of your fourth witness statement, that you describe your calculation of the profit made by Elliott on the swaps in Cheil and SC\&T. You see that in paragraph 19, sir?
A. In the intro section, yes.
Q. Yes?
A. Yes, I see that.
Q. And the experts can take up the question of how that number is calculated, the arithmetic. I'm simply aiming to situate our discussion that your calculation of Elliott 's profit on swaps in Cheil and SC\&T is 49.5 billion Korean Won. 49.5 billion Korean Won; yes?

\section*{A. Yes, I see that.}
Q. And I start there, as I say, to frame our discussion. It 's a number I would ask, sir, that you bear in mind as we proceed, and I would also respectfully ask that of the members of the tribunal, a profit of 49.5 billion Korean Won.

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You then compare that to your calculation of Elliott's trading losses on SC\&T shares, and that trading loss is a calculation you describe in paragraph 18, the preceding paragraph. Go with me to paragraph 18, if you would, please, sir.
A. Yes.
Q. And in the final line of paragraph 18 you describe a trading loss of 103.9 billion Korean Won. We're in the same place, Mr Smith?
A. Yes.
Q. And I want to look at how you have calculated that trading loss. It's a simple calculation. You describe the amount Elliott spent to acquire its shares in SC\&T, and you subtract from that the amount Elliott recouped when it sold its shares in SC\&T. I have that right?
A. You do.
Q. Let's look at the numbers that form part of that simple arithmetic in paragraph 18 of your fourth witness statement, sir .

You tell us that Elliott spent 685.6 billion Korean Won to acquire shares in SC\&T. Do you see that, sir? A. Yes.
Q. And in your calculation of Elliott 's trading loss you subtract from that what you say Elliott recouped, and you say there in paragraph 18 that amount is
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582.3 billion Korean Won. You see that, sir?
A. I do.
Q. That's the amount you testify in your fourth witness
statement that Elliott recouped on the sale of its SC\&T
shares, 582.3 billion Korean Won?
A. Yes.
Q. And do you know, sir, that that's less than the amount
the Claimant itself says in its submissions and in its
damages calculations in this arbitration that it
recouped upon the sale of SC\&T shares?
A. Say that one more time?
Q. Do you know, sir, that that's less than the amount the
Claimant itself says in its submissions and in its
damages calculations in this arbitration that it
recouped upon the sale of SC\&T shares?
A. You would have to show me a document to help me
understand that in context.
Q. Very good. Perhaps the easiest way to do that is to
take you to the Claimant's statement of Reply. It 's at
tab 1 in your bundle, and I would invite you, please, to
turn to paragraph 18 of that Reply.
A. Let me just read 18.
Q. Of course, take your time. (Pause).
While Mr Smith is reading, for the Opus operator,
I'm looking at the statement of Reply, rather than
6 5
Mr Smith's fourth witness statement. The Claimant's
statement of Reply. {B/6/16}.
Are you ready, Mr Smith?
A. Yes, I'm ready.
Q. And the first sentence of paragraph 18 of the Claimant's
statement of Reply says:
" ... the Claimant invested 685 billion Korean won in
SC\&T ..."
You see that, sir?
A. I do, yes.
Q. And that's consistent with the amount you describe in
paragraph }18\mathrm{ of your fourth witness statement, the
amount Elliott spent to buy shares in SC\&T; yes?
A. There's a small rounding anomaly, but yes, I agree.
Q. And then if we go to line 4 in paragraph 18 of the
Claimant's statement of Reply in this arbitration, we
see at the end of that line 4:
"... Claimant exited its investment in SC\&T having
recouped only }636\mathrm{ billion Korean."
I think the "won" is missing. }636\mathrm{ billion Korean
Won; do you see that, sir?
A. I do.
Q. The Claimant is stating, we can agree, a larger amount
it recouped on the sale of SC\&T shares than you state in
your fourth witness statement, sir?
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A. Yes.
Q. And I can show you if you would like, though I will
represent to you that the calculations performed by the
Claimant's damages expert, Mr Boulton, in his second
expert report, and this appears in Figure 26 on page 76
of that report, are the same as those in paragraph 18 of
the Claimant's Reply, and those same numbers similarly
appear on page 185 of the Claimant's opening in this
arbitration, 185 of its slide deck, saying that the
Claimant recouped 636 billion, a larger amount than you
say in your fourth witness statement the Claimant
recouped on the sale of shares.
Now, I'm going to ask you to undertake some simple
arithmetic with me, based only on the numbers in the
Claimant's case against us, not your fourth witness
statement, but in the case advanced by the Claimant in
this arbitration. We can use paragraph }18\mathrm{ for that.
Help me, if you would, to subtract }636\mathrm{ from 685?
A. You're breaking your promise of last week.
Q. I knew you would say that, Mr Smith.
A. Yes, I get 49 billion.
Q. 49 billion. And so on the Claimant's case as advanced
in this arbitration, a trading loss on SC\&T shares of
4 9 billion Korean Won.
Let me take you right back to where we began, sir,
6 7
and to paragraph }19\mathrm{ of your fourth witness statement,
the one we received yesterday, Sunday. {D1/4/1}.
You see there you describe Elliott's profit on SC\&T
and Cheil swaps. We've seen this already. You describe
that profit as 49.5 billion Korean Won. You see that,
Mr Smith?
A. I see that.
Q. And we can agree again, taking numbers as numbers, if
one were to offset that trading profit from the trading
loss you just calculated, it comes to an overall trading
profit for Elliott of 0.5 billion Korean Won; yes?
A. Yes, although I wasn't involved in the Claimant's
documents, so I don't know the 636 calculation, but
I agree with your math.
MR LINGARD: Very good. I have nothing else, Mr Smith.
Thank you very much.
Mr President, thank you.
THE PRESIDENT: Thank you very much. There will be
questions on redirect?
Examination-in-chief by MR PARTASIDES
MR PARTASIDES: Yes, thank you very much.
Mr Smith, let's go back to the paragraph in the
Claimant's Reply that you were taken to. This is
paragraph 18,and the Figure of 636 billion Korean Won.
A. Yes.

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Q. To situate ourselves, I'm right, aren't I, that that was recouped by way of the Settlement Agreement entered into by Elliott and Samsung; yes?
A. That's correct.
Q. Do you happen to know whether income tax was paid on the amounts received under the Settlement Agreement by Elliott?
A. Yes, it was.
Q. Can you help us understand whether that is relevant to the difference between the 582.3 billion Figure in your paragraph 18 of your latest witness statement, and the 636 billion Korean Won Figure we see in paragraph 18 of the Reply?
A. Yes, I think that would be relevant.

MR PARTASIDES: Thank you. No further questions.
THE PRESIDENT: Thank you very much.
Questions from THE TRIBUNAL
MR GARIBALDI: Mr Smith.
A. Hello.

MR GARIBALDI: Let's turn to paragraph 11 of your most recent testimony, written testimony.
A. Yes. \(\{D 1 / 4 / 3-4\}\).

MR GARIBALDI: You talk about three purposes of Elliott's increase in short positions in Cheil in the form of swaps.

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Let's turn to the third purpose. You say:
"Third, in (what we considered at the time) the very unlikely event that the Merger was approved, the Cheil swaps would offset some of the downward movement in the price of SC\&T shares that was to be expected following their exchange into overvalued New SC\&T shares upon the consummation of the Merger."

Would you mind explaining this a little further?
A. Yes, of course. So if we just remind ourselves of this transaction because of the value rigid rules in Korea, the SC\&T shares were valued based on a ratio, and you were to receive based on that ratio a number of Cheil shares based on a ratio between them.

It was our view, and we procured, as you would be aware, a Big Four accounting report cross-checking and ratifying this, that the Cheil shares were massively, massively overvalued, and so we had a great concern that the Cheil shares that we would receive would collapse after we received them.

And the merger having been voted on and passed, that was a great concern to us, and by having some level of short swap exposure on Cheil, they would become the same thing and so that risk would be taken away.
MR GARIBALDI: All right. I understood that as a general purpose, but this particular point, you say in the very
MR GARIBALDI: So the bet was that if the merger is
    approved, the Cheil share price would go down?
A. Yes. So --
MR GARIBALDI: Explain that. That part is the part I don't
    understand.
A. Yes. So we thought that the market price of Cheil was
    about two and a half times its actual value. So our
    SC\&T shares, which were trading at a huge discount to
    their actual value, would become Cheil shares that were
    trading at two and a half times their actual value.
            Therefore we felt that they would trade down to
        their actual value, which would be 70 or \(80 \%\) lower, and
        so the Cheil shares we have in our hand, received in
        exchange for the SC\&T shares, would fall very quickly.
MR GARIBALDI: After the approval?
A. Yes. Yes. Yes.
MR GARIBALDI: Okay.
A. We also felt they were, as you will see from point 1 ,
    overvalued anyway. But once the merger was approved,
    you knew with certainty you were going to receive these

\section*{71}
massively overvalued Cheil shares. So to put the short exposure in place before the collapse would give you some protection to that collapse. That was -- that's the rationale behind the third point.
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MR GARIBALDI: All right, thank you.

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Let me turn to paragraph 13.
A. Yes.

MR GARIBALDI: Let's focus on the last sentence \(\{D 1 / 4 / 4\}\) :
"As such, we increased the number of Cheil short
swaps we held, such that the inevitable value reduction (which would occur immediately following the EGM, and potentially faster than we could sell SC\&T shares) would not cause us yet further losses beyond the damage to our position in SC\&T shares that we would suffer as a result of the Merger."

Again, would you please explain this more fully?
A. Yes, sir. That's a very similar point. So --

MR GARIBALDI: I realise it's a very similar point, but I would like your explanation.
A. Yes. So at the point the merger was approved, we had insufficient Cheil short exposure to cover us for all of the SC\&T shares that did not benefit from put back rights. And so we increased the Cheil swap to ensure that all of the shares that didn't benefit from put back rights and that therefore would become Cheil shares had
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    a matching short Cheil swap, so that we were protected
    to that post-merger value collapse that we perceived
    would occur in the Cheil shares.
    MR GARIBALDI: Okay.
My final question is this: in the next paragraph it
says, the first sentence:
"Following 20 July 2015, we also undertook some
arbitrage investing in SC\&T and Cheil swaps."
A. Yes.
MR GARIBALDI: Would you explain this further, and for the
benefit of all of us -- I think I know, but -- please
remind us what arbitrage investment is.
A. Yes. Arbitrage investing, which is another strategy
that we pursued at Elliott on occasion, involves
identifying securities that are the same or
substantially similar in nature, but the price is
slightly different, perhaps because they are traded in
different markets. One might be a local share, the
other might be an ADR, but they ought to trade at the
same price, but they don't.
In this case, after 20 July, there were times at
which you could buy SC\&T shares at a price that was very
slightly cheaper than the Cheil price implied through
the terms.
So in other words you could kind of, through being
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short the equivalent amount of Cheil, you could
crystallise a short price of 1,000 or 2,000 Won higher
than where SC\&T was trading.
So we did an amount of that. It may have been --
I don't remember the exact numbers, maybe another
million shares equivalent of SC\&T worth, and so if you
imagine the SC\&T, you would buy like that, gives you
a profitability profile of that, and the Cheil short
would give you a profitability profile of that, and
there would be a small difference.
So we did an amount of that investing, which we made
a small amount of profit on, which is included in the
loss numbers actually that -- so it's probably a bit
conservative -- that those small profits are included.
That was the greater part of the arbitrage investing.
In addition, we did a small amount of -- on the shares that benefited from the put rights, so if you imagine, you own a share, and then you own a put which allows you to stop the losses at 57,000. We were allowed to do some selling of Cheil at slightly higher prices than 57,000, but that didn't last for very long. So we were able to kind of outperform the put back price very slightly, and then as the price traded actually below the put back price, we covered those shorts in

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SCT.
Again, small profits, but they are included in the number, so the number is a little conservative. But that's what the arbitrage piece is referring to. I hope that was clear.
MR GARIBALDI: It was. One final question.
This type of investing, may I call it hedging investing? I don't know if it is a technically correct, but to my mind I would call it hedging investment. Is this the normal business of Elliott or was it at the time?
A. Yes, we undertake, or Elliott, when I was there, and I believe they still do, undertakes some investing of this style.

These days it's quite rare that these arbitrages exist. In this case, prior to the merger being announced, the ability to get short Cheil shares was very limited. It was very limited because the stock borrow, the ability to borrow Cheil shares, was hard. There seemed to be a very surprising unavailability of stock borrow in the market.

The reason the stock borrow is important, as Mr Thomas was asking the other day, when you enter into a swap, the broker on the other side will tend to hedge himself with stock. So he needs a borrow.

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Now, when the merger was announced, there was
a little bit more borrow, and we were able to reserve
a good amount of that borrow, which just meant there was very limited ability for people to play that small spread. So we were able to take advantage of that, but again, the profits were very small.
MR GARIBALDI: Thank you very much.
THE PRESIDENT: Maybe just to understand what then happened,
Mr Smith, when you were increasing your short position on Cheil on the expectation that the share price of the merged entity would go down.
A. Yes.

THE PRESIDENT: In effect, or in practice, the share price for both, as I understand it, both SC\&T and Cheil went up after the announcement of the merger?
A. I don't recall exactly. After the announcement or the closing?
THE PRESIDENT: After closing apparently it went down, but we will be educated by the experts. But I was just curious what happened to your shorts in the end. We have seen the trading.
A. Yes. So I' ll just maybe make a point. When the merger was announced, both share prices did go up, but that was after a period of collapse in SCT. When the merger was finalised, we received our shares that didn't have put
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    back rights, that just allowed us to collapse the hedge.
    So we had the long that we received and the short to the
    broker, we were -- it was a liability effectively. So
    we effectively take the shares and give them to the
    broker. He collapses his borrow and the position is
    gone.
            So when the merger went effective, the shares, that
        position collapsed, because the --
    THE PRESIDENT: So that happened after the merger was
approved?
A. Yes, so 14 September, the actual physical receipt of the
shares, when SCT was exchanged into Cheil shares, you
received Cheil shares, long, physical, and you had
a Cheil short on swap, and they just collapsed.
We had a small residual short in Cheil, very small,
that we kept for some time, but the vast, vast bulk of
the position just collapsed at }14\mathrm{ September.
THE PRESIDENT: Understood, thank you. Thank you very much.
Nothing further from the tribunal. So thank you
very much.
MR LINGARD: Mr President, if I may, I'm terribly sorry to
interrupt. Might I put one point to Mr Smith in
fairness to him arising from Mr Garibaldi's question?
It's a subject that I understand will be taken up by the
experts, but I feel compelled to put it to Mr Smith, so
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he has an opportunity to respond before the experts do.
THE PRESIDENT: If it's a question that arises from the
questions of the tribunal, then please go ahead.
MR LINGARD: It does, sir, thank you very much.
THE PRESIDENT: Go ahead.
Further cross-examination by MR LINGARD
MR LINGARD: Mr Smith, it's simply this. As I say, the
experts will deal with this in due course but I want to
give you the opportunity to respond.
It is my understanding that in the arbitrage
investing you describe in paragraph 14 of your fourth
witness statement, with respect to SC\&T, that that
arbitrage investing in SC\&T generated a loss for
Elliott .
Is that consistent with your understanding, sir?
A. I don't believe it did because we were - - we were buying
the SCT shares at, I believe, very slightly below the
implied. But the differences were very small. It was
1%,2%, pretty small.
MR LINGARD: Very good. Thank you, Mr Smith.
Mr President, thank you.
THE PRESIDENT: Okay, thank you very much, Mr Smith. That
concludes your examination. I understand you will now
be able to catch your flight, plenty of time for that.
THE WITNESS: That's great.

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            (The witness withdrew)
THE PRESIDENT: It would be a bit early to break for lunch.
    The question is whether Professor Bae will be available
    for cross-examination already now? He would be? Very
    good. I suggest we don't have a break now. We continue
    immediately with Professor Bae.
THE WITNESS: Thank you for having me.
THE PRESIDENT: Unless there are technical reasons to have
    a break.
MR TURNER: Sir, may I raise just a purely technical
    question, which is that we go into the economic experts
    tomorrow and Wednesday. Inevitably, at least on our
    side, we will make reference when talking to Mr Boulton
    to what the other experts say.
            It has been the custom in this proceeding to include
        in the cross-examination bundles the expert reports or
        other witness statements that we are taking a given
        witness to. Given the volume of the economic expert
        reports, I have suggested to my learned friend that we
        do not put a further copy of the other side's expert
        reports into the bundle. It would be (a) unwieldy, (b)
        impose an element of a burden on those who produce the
        bundles, I think unnecessarily, but subject to the views
        of the arbitrators, and (c) I would not be able to look
        my children in the face, given the amount of paper that
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        we would then throw away.
            I have made this suggestion to my learned friend,
        but clearly we're in the -- and I don't know what his
        answer is going to be. But clearly we're also in the
        hands of the tribunal. But given the physical
        production process of those bundles, if you do want
        copies of, when I talk to Mr Boulton, Professor Dow's
        expert reports and vice versa, then you should say so.
        But that is my suggestion.
THE PRESIDENT: Mr Partasides?
MR PARTASIDES: Mr President, that sounds sensible to us as
        well. As long as the witness is given access on the
        screen to the report that is being referred to, then
        I don't think it needs to be produced in writing as
        well.
MR TURNER: I'm disappointed to learn that there may be an
    implication that our experts have not memorised the
    other side's expert reports, pleadings, transcripts and
    other evidence that has been put into the proceedings,
    but I certainly expect from my perspective that there
    would be a copy of the expert report on the screen when
    we are cross-examining. We rely on the good offices of
    the Opus operators for that.
THE PRESIDENT: Okay. I certainly don't need the hard
    copies. I have my own.

So we are fine, thank you very much.
So, Mr Smith, you are free to go. Do we need
a break of five minutes or can we continue immediately?
MR TURNER: Sir, if we have just a handover break of
a couple of minutes, that would be good.
THE PRESIDENT: Okay, that's fine. 6
(11.06 am)

\section*{(A short break)}
(11.09 am)

PROFESSOR KEE-HONG BAE (called)
THE PRESIDENT: Good morning, Professor Bae.
THE WITNESS: Good morning.
THE PRESIDENT: I understand you will be testifying in English?
THE WITNESS: Yes.
THE PRESIDENT: You have been called as an expert witness to
this proceeding which means you will be required to
express your opinions and to give your evidence in
accordance with your sincere belief.
THE WITNESS: Yes.
THE PRESIDENT: So for that purpose I would ask you to please read and make the statement, the declaration that you should have in front of you.
THE WITNESS: Yes, sir. I solemnly declare upon my honour and conscience that my statement will be in accordance

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with my sincere belief.
THE PRESIDENT: Thank you very much, Professor.
I understand you will be making a presentation in lieu
of a direct examination. So please go ahead.
THE WITNESS: Yes, thank you.
Presentation by PROFESSOR KEE-HONG BAE
THE WITNESS: Good morning. My name is Kee-hong Bae. I'm
a Professor of finance at Schulich School of Business at York University.

Speaking of myself, I was born and raised in Korea and got most of my education in Korea. After I got my masters degree from Korea University, I went working for the local investment banking firm for several years, and then I moved to US, to get my finance PhD in finance from the Ohio State University.

After that, I have taught at various universities in Asia, in Canada. Right now I'm teaching corporate finance course at York University.

My main research area is in corporate governance and international corporate finance and I have published many research articles in these areas.

Recently I got an eminent scholar award from the Korea-America Finance Association in recognition of my contributions to the Korea finance community.

Now, I have a few qualifications that could qualify
me as an expert in Chaebol issue and the Korean capital market. Perhaps the most important qualification is the paper that I wrote regarding the merger by a Korean business group that has been well cited and recognised by finance scholars.

I have other academic and industry experience that is relevant to this arbitration.

I was instructed to provide my opinion on two issues. The first, Professor Milhaupt's opinion that successful opposition by Elliott to the merger between SC\&T and Cheil could be expected to have a therapeutic effect to the benefit of all unaffiliated shareholders because it has the potential to improve corporate governance in Korea and reduce the so-called Korea discount.

The second issue is Mr Boulton's opinion that in the counterfactual scenario model being rejected by SC\&T shareholders, the share price of Samsung C\&T would have rapidly and instantaneously risen to its sum of the parts or SOTP value as computed by Mr Boulton.

So let me start with the first issue on slide number 6. Professor Milhaupt's opinion is that the central governance problem with the Chaebol is the gap between cash flow rights and control rights, and that is the major reason for the undervaluation of equity prices

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\section*{or so-called Korea discount.}

The gap is often called the wedge and
Professor Milhaupt and I are on the same page on this issue. So I have no objection to his description of the problem.

Next slide, the ownership structure of Samsung business group in 2015. As you can see, this is really complex. So this complex ownership structure creates the gap which creates the conflict of interest between minority shareholders and controlling shareholders, leading to the undervaluation.

So I have no objection to Professor Milhaupt's opinion, except that what would happen to the governance risk when the merger was being rejected. We are different. We have different opinions.

So although Professor Milhaupt did not explicitly say so, his opinion seems to be that the rejection of the merger would have reduced the market's assessment of the governance risk of Samsung C\&T, which can be proxied by the wedge, the so-called wedge.

So I computed the wedge of Samsung C\&T from 2012 to 2020, slide number 9. As you can see, from 2012 to 2015, the wedge ratio, the voting right divided by cash flow right, which creates the conflict of interest, that has been capped at 9.6 times, hasn't changed.

In 2016, as a result of the merger, it has gone down
to 1.2 , eventually it became 1 by 2019 , which means there is no wedge.

Professor Milhaupt pointed out that the wedge ratio after the merger is not relevant. I completely agree. It's not relevant. What is relevant is what would have happened to the wedge ratio if the merger was rejected.

Now, looking at this graph, and looking at the incentive of controlling family, my professional opinion is that it would have remained the same. In other words, nothing changes. It's just the status quo.

So my opinion is that the rejection of the merger would not have reduced the market's assessment of Samsung C\&T's governance risk because wedge wouldn't have changed. And the \(\square\) family have strong incentive not to liquidate the indirect share ownership, and I'm going to get back to this point later on when I discuss Mr Boulton's point.

Moving on to the second issue, which is Mr Boulton's opinion, his opinion is that in the counterfactual scenario of the merger being rejected, the share price of Samsung C\&T would have rapidly or instantaneously risen to SOTP value as computed by him.

Now, I disagree with his opinion for three reasons. The first reason is that the rejection of the merger
isn 't going to change the market's assessment of the governance risk which I just discussed, and I have two other reasons, and let me elaborate on these two reasons.

\section*{Moving to slide number 13.}

Now, the key assumption in Mr Boulton's SOTP valuation is that Samsung C\&T's listed investment should be valued at their market prices. Now, this is a critical assumption because much of the discount that he computes arises from the fact that listed investments should be valued at their market prices.

Now, I disagree with this assumption because in my opinion market does not value holdings by SC\&T in affiliated listed companies at their market prices, but actually at significant discount.

Now, Mr Boulton used the other terminology, listed investment, but in my view the correct term is the listed holdings by SC\&T in affiliated companies. But I'm going to use these two terms interchangeably.

So, why do I believe that the market discounts SC\&T's listed holdings at discount?

Now, notice that SC\&T's main businesses are construction and trading, and yet SC\&T carries two-thirds of the assets as holdings in stocks of affiliated companies within the same business group.

Now, this creates problem of having too many assets that do not create too little value to shareholders.

Now, what do I mean by that? Let me elaborate on that statement. Moving to the next slide, I created SC\&T's assets and income by the asset type held by SC\&T from Mr Boulton's report.

So the left - hand side bar represents the amount of asset held by SC\&T. The orange colour is the listed and unlisted investment or affiliated holdings. So the size of affiliated holdings is a 14 trillion Won, whereas the core business, the size of asset is 7 trillion Won. So altogether it 's 21. But two-thirds of the asset of Samsung C\&T is investment in listed holdings, which is not the main business.

Now, looking at the right-hand side, the income generated from each type of asset, looking at the blue colour which represents the income generated from construction and trading businesses, it's 499 billion Korean Won. So in terms of return, it's \(7 \%, 7.01 \%\). Return generated from the core asset is \(7 \%\), whereas the return generated from investment in affiliated holdings is only \(1.56 \%\).

In other words, having too many listed holdings or affiliated holdings has the effect of depressing profitability of Samsung C\&T.

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So going back to slide number 14 , given that listed holdings does not create much value to shareholder, why is it that SC\&T keep listed holdings? Why not just liquidate them? If they liquidate it, then SC\&T can generate a lot of cash flow which can be better used to increase shareholder value.

So why don't they do it? That is because listed holdings are strategic holdings which is not tradeable.
These holdings are held for the purpose of control by
\(\square\) family over the whole Samsung business group.
So the \(\square\) family is not going to liquidate listed holdings because they need them for their control purpose.

So recognising this problem of having too many listed holdings, market values, as SC\&T's listed holdings, significantly lower than their market prices.

Now, I think this is the key governance problem causing the discount by the market of the Samsung C\&T shares.

Now, notice that this problem has nothing to do with the tunneling due to merger. It's just the presence of listed holdings creates this problem of poor asset management.

So moving to slide number 16 , the important question is: would the market have valued SC\&T's holdings in
affiliated listed companies at their market prices if the merger was rejected?

My opinion is that it is highly unlikely. First of all, for the market to value SC\&T's holdings at their market prices, I don't see any other way except liquidating listed holdings.

This is because they are not going to generate any profit to Samsung C\&T shareholders. As long as they are kept as SC\&T's assets it's going to depress the profitability .

Furthermore, in my view no market participants could have forced the liquidation. Otherwise they would have done so regardless of the merger outcome because of the huge profit incentive. But they could not do so because controlling family has a full control of the company.

Now, Professor Milhaupt pointed out that the activists could have made a difference, but in my view activists do not have enough power to make such changes because the control power exercised by the Chaebol families are too strong to be beaten.

So I believe discount was unlikely to have been unwound.

The third reason why I disagree with Mr Boulton is the cancelled Hyundai merger, which suggests a drop in Samsung C\&T price if the merger was rejected.

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The proposed Hyundai merger between Hyundai Glovis and Hyundai Mobis in 2018 is quite similar to the Samsung merger in many ways.

First of all, both mergers were for the purpose of family succession from the chairman to his son.

Now, moving to slide number 18 , this shows the simplified ownership structure of Samsung related to the merger, and it shows that has only \(0.5 \%\) of ownership in Samsung Electronics, which is the crown jewel of the Samsung Group.

Now, to take over the group from his father, he needed to increase his control power over Samsung Electronics. But he held only \(0.5 \%\) of ownership. He could inherit his father's ownership, but then it could cost him several billion US dollars.

So alternative is to merge Cheil with Samsung C\&T and through the new merged firm, he could exercise indirect control of Samsung Electronics. That was the motivation of the merger, in my opinion.

Moving to the next slide, the Hyundai merger, the motivation seems to be exactly the same.

Now, who is the successor of Hyundai Group, he needed to increase his control power of Hyundai Motor, which is the crown jewel of Hyundai Group, but he had only \(1.8 \%\) of ownership. Again, he
could have inherited his father's ownership, but again it's going to be very costly.

So, merging Hyundai Glovis, which he had a lot of ownership, with Hyundai Mobis, he can exercise indirect control of Hyundai Motor.

So the motivation is quite similar. The difference is that the Hyundai merger was cancelled because of the opposition by Elliott and other institutional investors.

So Hyundai Mobis, in slide number 19, is like SC\&T, in slide number 18.

So what happened to stock price of Hyundai Mobis, which is like Samsung C\&T? When the merger was - I'm sorry, the cancellation of the merger was announced, the market reaction was quite negative. The horizontal axis shows the timeline. So zero is the day when the announcement of merger cancellation was made.

So right after the announcement, Hyundai Mobis went down significantly. By Day 20, almost \(13 \%\).

So if anything, I suspect SC\&T price might have gone down if the merger was rejected.

So to conclude, for the three reasons that I have just discussed, I think the discount is unlikely to have been unwound if the merger was rejected.

Thank you very much for your attention.
THE PRESIDENT: Thank you, Professor Bae. Will there be any

\section*{further follow-up?}

MR TURNER: One or two formal questions, sir. Ms Tan will do the examination-in-chief.
Examination-in-chief by MS TAN

MS TAN: Thank you.
Professor Bae, may I ask if you need to make any corrections to your report?
A. Oh, yes, thank you for reminding me. If I may, I would like to make a few minor corrections in my expert report.
THE PRESIDENT: Yes, please, go ahead.
A. Thank you.

Page number 7, paragraph 15 \{G5/1/9\}.
Paragraph 15(d), the Statement of Reply and Defence to Preliminary Objections dated 17 July 2020, I haven't read the whole statement. I read only the part that is related to damage calculation. So I wanted to make sure of that.

Page number 42, paragraph 85, paragraph 85(c) \{G5/1/44\}:
"Specifically, ... had a small stake in Samsung C\&T ..."

That is not correct. It should be written as had no stake in Samsung C\&T.

And also, the third sentence from the bottom:
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    "... ... had a small stake in Hyundai
    Mobis..."
        But it should be written as \square had no stake in
    Hyundai Mobis.
        That's all.
    THE PRESIDENT: Thank you very much.
MS TAN: Just a small point for clarity in the transcript
this morning. Earlier, when discussing slide 14, the
transcript on page 84 records you using a double
negative. You talked about Samsung C\&T "having too many
assets that do not create too little value to
shareholders". {Day6/86:25}
Does the transcript record correctly what you were
describing there?
A. Which --
Q. Line --
A. Line number?
Q. [Draft] line 21:
"... do not create too little value to
shareholders."
A. No, it should be -- maybe I said wrong. I meant SC\&T
has too many assets that do not create value. Yes,
" little " should be taken out, yes.
MS TAN: No further questions.
A. It should be too many assets, or create too little
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value.
MS TAN: No further questions on direct.
THE PRESIDENT: Thank you very much, Ms Tan. And then I
hand over to the Claimant.
MR PARTASIDES: Mr President, it will be Mr Stafford who
conducts the cross-examination of Professor Bae.
Cross-examination by MR STAFFORD
MR STAFFORD: Good morning, Professor. My name is
Andrew Stafford and I'm part of the legal team appearing
on behalf of the Claimant. My job is to ask you
questions and I guess your job is to answer them. If
I don't ask a question clearly, please ask for
clarification . I'm going to try and make sure that my
questions are concise so as to make it easy for
a concise answer.
A. Sure.
Q. What you've been presented there is with two
intimidatingly large bundles. I' I| be referring to some
of those documents. It's not as bad as it looks. Some
of them are just big documents and I'll need to ask you
to look at a few pages of some of those documents.
Professor Bae, you do not say so in your report, so
let me ask you this straightaway: could you tell the
tribunal whether in your opinion the merger transaction
was a tunneling transaction?

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A. It is similar.
Q. And the words in that paper that you used to describe tunneling transaction included the following, didn't they: "theft"; that's correct? That's a word that you used in that paper?
A. No, I didn't use theft.
Q. In your paper - -
A. Tunneling can be a downright theft, but it could be a perfectly legal transaction.
Q. Oh, yes. I'm saying amongst the words that you've used

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to describe types of tunneling transaction in your paper include, as you have said, outright theft?
A. Yes.
Q. You also in your paper use the expression "fraud" to describe some types of tunneling transaction?
A. Yes, that's possible. But there are \(--I\) wasn't referring to the Korean merger case.
Q. And in your paper you also describe a form of tunneling and the phrase you use is "siphoning resources"?
A. \(\mathrm{Mm}-\mathrm{hm}\). Yes.
Q. Yes. And "expropriation of minority shareholders"?
A. Yes.
Q. And "wealth transfer"?
A. Yes.
Q. What of those descriptors would you say this tunneling transaction was?
A. Now, this transaction, Professor Milhaupt described as a textbook example of tunneling.
Q. Yes.
A. I disagree. The nature of transaction is consistent with tunneling but I wouldn't use this as a textbook example. There is an alternative view. There is room for debate. After all, the merger was conducted through Korean capital market regulation law.

So the question is whether this merger ratio was
\[
\begin{aligned}
& \text { fair or unfair. } \\
& \text { Q. Very well. } \\
& \text { Let's move on to a different topic -- } \\
& \text { A. If I -- } \\
& \text { Q. Of course you can. } \\
& \text { A. -- make a further comment. } \\
& \text { So one could argue that this could be interpreted as } \\
& \text { a value creating transaction, although my view is not. } \\
& \text { So it's not a textbook example of tunneling. I would } \\
& \text { use a more straightforward example. } \\
& \text { Q. Yes. Do you have a view as to the amount of value that } \\
& \text { was destroyed by this transaction if it is not a value } \\
& \text { creating -- } \\
& \text { A. Pardon? } \\
& \text { Q. You said "this could be interpreted as a value creating } \\
& \text { transaction, although my view it is not"? } \\
& \text { A. No, I never said that this is a value creating } \\
& \text { transaction. } \\
& \text { Q. Wait one moment, please. I'll read back to you from the } \\
& \text { transcript. You just said: } \\
& \text { "... one could argue that this could be interpreted } \\
& \text { as a value creating transaction, although my view is } \\
& \text { not." } \\
& \text { A. Yes, that's my view. I don't view this transaction as } \\
& \text { a value creating -- }
\end{aligned}
\]

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\section*{Q. It's a value destroying transaction?}
A. That is debatable, yes, but -- yes.
Q. Very well.

Now, I want to ask you about a couple of documents which again you do not refer to in your report.
Can I take you within the bundle to tab 4 , and for the record it's \{C/413/1\}.
A. Which document?
Q. It's tab 4 in the bundle
A. Volume 1 or 2?
Q. Volume 1?
A. Volume 1, tab 4?
Q. Tab 4, please.
A. Okay, yes.
Q. You will see that this is a typewritten version of meeting notes, and the meeting is memorialised in the meeting between and Samsung executives on the one hand and NPS officials on the other.

Could I ask you to read to yourself paragraph 3 which starts with the phrase:
A. Okay.
Q. If you could --
A.
Q. Just read it to yourself and tell me when you've read
it. (Pause)
A. Yes.
Q. Is this a document which you reviewed at the time you
were preparing your report?
A. I don't recall I read this -- this page. Is it --
Q. It was part of the statement of Reply.
A. Right, yes. So like I said, I only read the damage
related part.
Q. That's fine.
A. So I didn't read. I'm not aware of this.
Q. Now that you read that, is it your view that this
document is irrelevant?
A. To my expert report?
Q. To your opinion.
A. It's not relevant to my report or to my opinion.
Q. Let me take you to another document which is --
A. Mr Stafford, if I may.
Q. Please.
A. So which view are you talking about? Which view that
Q. have?
Q. Well, your opinion that there would have been no
therapeutic effect, and that the risk of tunneling --
A. No.
Q. And the risk of tunneling would have remained unaffected 99
by the --
A. No, in principle I agree with Professor Milhaupt. It could have some therapeutic effect.

What I disagree with the Professor Milhaupt is that, is that effect strong enough to remove the discount? Not at all. I don't agree with that.
Q. Let me ask you to go to another document, which you may or may not have looked at before, which is at tab 6 in volume 1. This is a document which you will not have seen at the time of your report because it was produced subsequent to that.
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. This is a document produced by a Samsung Securities employee, and it's analysing the impact of EALP's application for an injunction to prevent the holding of the extraordinary general meeting during part of the merger proposal process.

Can I ask you to turn to the second page of that document, which is \(\{\mathrm{C} / 759 / 2\}\) ?
A. Yes.
Q. And do you see the first bullet point below the graph marked Starting with the words --
A.
Q. Yes. And do you see the last sentence of that bullet point? Do you see it reads:
MS TAN: Excuse me --
MR STAFFORD: And do you agree with me that what that
sentence suggests is that there was a sharp rise in the
merger ratio arising out of the news that Elliott had
filed an injunction?
MS TAN: Excuse me, Mr Stafford. I'm sorry to interrupt,
members of the tribunal, I have to note that this
document that Professor Bae is looking at is an English
translation, and the document is originally in Korean.
I just want to note that for the record. So that if the
witness wishes to look at the Korean, that should be
provided.
MR STAFFORD: Professor Bae, do you wish to look at this
document in Korean or are you content as before to deal
in English?
A. Yes, I would like to see the original version.
Q. Very well. It's up on your screen. \{C/759K/2\}.
I will not be able to read the Korean, but some of
my colleagues will.
(Pause)
A. Yes, I --
Q. Do you see in the last sentence of the first

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paragraph --
A. Yes.
Q. - the translation says that

A. Yes.
Q. Do you agree with me that that would appear to be the market pricing in news that the opposition by Elliott was taking place? Is that how you would interpret those words in that paragraph?
A. Okay, so can you repeat the question, the last question?
Q. Do you agree with me that the last sentence means that

A. Now, is this -- can I ask a --
Q. I would actually like to you answer my question, please.
A. No, this is a premium \(--I\) need to see whether the ratio change is due to Cheil price change or Samsung C\&T price change.
Q. I'm asking you to interpret what you see on the page.
A. Well, my interpretation is that the ... I think ... (Pause)

So I would interpret that \(\square\)


\section*{A. Yes.}
Q. My question to you arising out of this document is: do you consider that the contents of this document are relevant to your opinion or do you think they are irrelevant?
A. Okay, I have two opinions. So which opinion are you referring to?
Q. We are referring to your opinion relating to how the market would have reacted to the rejection of the merger.
A. On Cheil or Samsung C\&T?
Q. If you like, you can take them in turn.
A. I haven't really studied the Cheil Industries. My focus was on Samsung C\&T.
Q. Then stick to Samsung C\&T.

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A. So if the merger was rejected, like I said, then my opinion is that price is likely to have gone down.
Q. Very well. So you would regard this document as irrelevant to that opinion?
A. Yes, I have to say it's not relevant.
Q. Now, I want to move forward, if I may, to what this succession planning transaction involved.

So my first suggestion to you is going to be that this succession planning was a long time in the making.
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. So if we could have a look in the -- let me get the right document reference. If we could have a look at bundle 1, tab 9. Tell me when you have that. For the note, it's \(\{C / 540 / 1\}\).
A. Yes.
Q. And do you see that this is an article about the Samsung versus Elliott Management matter:
"An episode encapsulating corporate governance challenges facing Korea."

Do you see that?
A. Yes.
Q. Could I ask you to turn to \(\{C / 540 / 3\}\), which is the third page in this?
A. Yes.
Q. And beneath the plan of family ties, do you see
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a paragraph that begins with the words "The diagram
above", and then four lines below that it reads:
"...\square needed to secure control of Samsung Life
Insurance (SLI) and C\&T. \square and group firms undertook
a series of transactions to carry out their objective
since the mid-1990s."
Then he sets out three stages:
"First, they engaged in transactions to keep
accumulate seed money. Second, with this seed money
secured 31.3% of the shares [in] ... Samsung Everland
[in 1996]."
And then:
"Third, Cheil acquired C\&T by merger in 2015."
So do you agree with me that this succession
planning required more than 15 years to be pursued?
A. I agree.
Q. Thank you.
I'm now going to ask you about the effort that went
into the succession planning over the course of that
more than }15\mathrm{ years. To do this, I'm going to take you
to the Korean prosecutor's indictment.
A. Mm-hm.
Q. You will find that in bundle 1, at tab 2.
Now, before I ask you to look at the contents of
that, let me make plain to you, Professor Bae, so that
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we are in agreement, that the Korean court is still
hearing the case against the defendants arising out of
this indictment. Do you understand that?
A. Yes.
Q. And so what I'm going to take you to are the fruits of
the prosecutor's investigation. You understand that?
A. Mm-hm.
Q. And I'm not suggesting to you that these are matters
which have been decided by the Korean court yet; okay?
Nonetheless, I'm going to suggest to you that this is
a snapshot of the evidence that has become available to
the prosecutors and gives a snapshot of what the merger
involved; okay?
So if we look at the first page, we can see, at
{R/316/1} --
A. Forgive me. I'm lost. Which page are you referring to?
Q. It's the first page of tab 2.
A. First page of tab 2, yes.
Q. Do you see at the end of the first paragraph, the
sentence that reads:
"The investigations have been ongoing for the past
one year and eight months."
A. Sorry, I think I'm looking at the wrong one. Is it --
Q. If you have a look on screen?
A. -- volume 1 of 2 or 2 of 2?

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Q. Volume 1, tab 2.
A. Yes. I'm looking at tab 2.
Q. You have a document which should have, in the bottom
right - hand corner, R/316; do you have that?
A. Yes.
Q. If you look at the top, after the heading, which is
marked "exclusive", there is a paragraph that then
begins "On 1 September"; do you have that?
A. Mm-hm.
Q. I'm asking you just to see the last sentence of that
paragraph:
"The investigations have been ongoing for the past
one year and eight months."
A. Yes.
Q. Now I'm going to take you to --
MS TAN: If I may take this opportunity to point out that
this document is also originally in Korean. So perhaps
the EPE operator could pull up the Korean document on
the screen so that Professor Bae can look at both
versions.
MR STAFFORD: Are you comfortable reading it in English or
would you prefer it to be in Korean, Professor Bae?
A. I want to make sure I understand it, so I would prefer
reading in Korean.
Q. Very good.

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A. The thing is I'm not familiar with the legal terminology in English. So I need to --
Q. Well, if you find that you have any trouble with the words that are on the page, please do tell .

So, if we could turn within that document to
\{R/316/19\}.
A. \(316 / 19\), yes.
Q. Do you see the numbered paragraph 7?
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. And correct me if the translation is inaccurate, it reads in English:
"Establishment of a plan to artificially manage stock prices."
A. Yes.
Q. And then if we go forward to page 23, sorry, 22 \(\{R / 316 / 22\}\), do you see the letter D, "Fabrication of merger synergy effects and figures"?
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. And then on page \(23\{R / 316 / 23\}\), "Preparation of false merger ratio adequacy review report". You see that?
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. \(24\{R / 316 / 24\}\), "Manipulation of merger ratio adequacy review results"; do you see that?
A. Yes.
Q. \(27\{R / 316 / 27\}\), "Announcement of false information
regarding the purpose, background, effects, etc of the merger"?
A. \(M m-h m\).
Q. \(30\{R / 316 / 30\}\), at the top there was a plan to -- it reads "Plan to secure allies using SC\&T treasury stock." Yes?
A. Yes.
Q. Number 3 on that page, "Plan to secure voting rights of major domestic and foreign investors including the NPS". That's what it says?
A. Yes.
Q. Number 4, "Securing voting rights of minority and small shareholders".
A. Yes.
Q. Then turn forward to page \(41\{R / 316 / 41\}\). Letter \(B\), "Dissemination of false information by contacting foreign investors and voting rights advisors"?
A. Yes.
Q. \(45\{R / 316 / 45\}\), at the very bottom of the page, letter \(D\), "Distortion of details by intervening in the preparation of analysis reports by financial investment business entities "; yes?
A. Yes.
Q. Page 48 of \(R-316\{R / 316 / 48\}\), at the top, "Inducing favorable media coverage through media personnel

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contacts"?
A. Page 48?
Q. Yes. It says page 47 at the top left. Do you have that?
A. Yes.
Q. Thank you. And then on to \(\{R / 316 / 49\}\), at the bottom, the number 4, "Announcement of false favorable factors to artificially boost the stock price". Do you have that?
A. Yes.
Q. And then page \(55\{R / 316 / 55\}\), number 2, "Solicitation of the members of the Special Committee on the Exercise of Voting Rights"?
A. Yes.
Q. Over the page to \(57\{R / 316 / 57\}\), "Unfair intervention by the President, the Blue House, and the Minister of Health and Welfare in the exercise of voting rights"?
A. Yes.
Q. \(60\{R / 316 / 60\}\), number 2, "Making of a proposal of economic benefits to llsung Pharmaceuticals for the purpose of securing voting rights"?
A. Yes.
Q. The next page, \(61\{R / 316 / 61\}\), "Securing voting rights of ordinary minority and small shareholders by mobilising Samsung Securities retail organisation"?
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A. Yes.
Q. That will suffice
Would you agree with me on that reading that the
prosecutor has found evidence of an extremely thorough
mobilisation plan for this transaction?
A. Now, as you said, this is an ongoing case. So,
I mean --
Q. I'm not asking you -- sorry.
A. -- I have to assume that he is innocent until proven
guilty.
Q. Very well.
A. So, I'|l tell you why this is not relevant to my expert
opinion.
Now, this transaction, the motivation of the merger
was to increase control power of \square. So that is
a common knowledge among investors in Korean capital
market.
So even with this kind of -- even if this is true --
okay, let me say: even without this effort by the
Samsung controlling family, the market would have
responded in a way that Cheil price moved up, Samsung
C\&T price moved down, because the motivation is to
increase Cheil -- Samsung \square's - - \square\'s control
power, so that this transaction cannot be good for
Samsung C\&T shareholders.
1 1 1
So market knows that. So they're going to revalue
upward Cheil and downward Samsung C\&T.
So --
Q. I beg your pardon.
A. -- that is because I believe this transaction is not
beneficial to Samsung C\&T and consistent with the
tunneling nature.
So even without these, you know, illegal
activities -- I'm not saying that they have done this,
I don't know. This is still an ongoing case. But even
without these efforts, market would have responded in
a way that Cheil price goes up, Samsung C\&T price goes
down, so that the merger ratio is determined in a way
that is unfavourable to Samsung C\&T shareholders.
Q. Thank you. So let me just --
MR GARIBALDI: May I ask a question at this point.
Are you saying, Professor, that these efforts were
unnecessary? If they were in fact true these were
unnecessary?
A. No, I'm not saying that. They might have done so or
they might not have done so, but then the merger ratio
would have been determined in a way that is not
beneficial to Samsung C\&T shareholders, even without
this effort
MR GARIBALDI: So your theory is, if I understand, that the

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mere fact that \square wanted to maintain control of the
group was enough of a signal for that the Cheil shares
in which he had control would go up, and the SC\&T shares
would go down in the expectation of a merger?
A. Exactly.
MR GARIBALDI: All right. This doesn't explain to me all
that went on.
A. Pardon me?
MR GARIBALDI: All that the evidence shows and the
allegations that surround this case, this is a movement
up and a movement down, but the ratios, what actually
happened, and all those efforts, seem to go beyond your
theory. That's my problem.
A. Yes. So that I haven't really studied. I mean, all I'm
saying, that merger ratio would have been different if
the motivation of the merger was different. After all,
this is a related party transaction within the
affiliated companies.
So it's not like an arm's-length transaction between
two independent parties.
So the merger ratio, at the end, the question is if
the merger ratio was fair or unfair. That --I mean, so
I think, Mr Garibaldi, what you're asking is that even
with the market's expectation, the merger ratio was
fair. If I understand you correctly.
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MR GARIBALDI: (Inaudible).

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\section*{Q. Yes?}
A. That would have been bad news for minority shareholders.
Q. It would be bad news for minority shareholders to learn that the assets of SC\&T were not going to be expropriated; is that your evidence?
A. No. You see, as I showed you, the wedge ratio hasn't changed over the years.

Now, if the merger is rejected, then the expropriation risk is back on the table.

So, market knows that \(\square\) will come up with an alternative solution to increase his power. So the uncertainty for Samsung C\&T came back to the table. So in other words, the expropriation risk is still there, and that's not good for the minority shareholders.
Q. Let me ask you this: is it your evidence that the continued existence of the wedge would compel \(\square\) to embark on a further tunneling transaction?
A. Can you repeat that question? I don't quite understand.
Q. Would the continued existence of the wedge compel \(\square\) to embark on a further tunneling transaction?
A. That is possible.

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Q. What matters, surely, is not whether \(\square\) wants to embark on a further tunneling transaction; I suggest to you that what matters is whether \(\square\) is in a position to try a second tunneling transaction. Do you agree with that?
A. Well, what is important is how the market perceives the tunneling risk.
Q. We will come to that in a moment.

Can I take you back, please, to tab 4 in the bundle, volume 1. It's a document we've looked at briefly before.

This is a document which l'd ask be put up in Korean, because you wanted it in Korean last time. \(\{C / 413 / 1\}\{C / 413 K / 1\}\). Do you recognise this document as the one we looked at before?
A. Yes.
Q. And do you see in the third paragraph it is recording \(\square\) as saying:


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Do you think that was relevant advice for Samsung Securities to give or is it beyond your expertise?
A. Yes, that is beyond my expertise.
Q. Very well:


Does that affect the view that you have just articulated, that \(\square\) would come back with another unfavourable tunneling transaction?
A. Now, I cannot speculate on what \(\square\) would have done if the merger was rejected. All I can say is that his motivation to secure control power of Samsung Group, which is to secure power of Samsung Electronics, that motivation would not change. It's not going to change at all. After all, Samsung Electronics is the most important company in the Samsung business group. Without it, there's no point of controlling Samsung Group. So his motivation is still there, even if the
merger was rejected.
Given his motivation, the market believes that any transaction he comes up with is going to be beneficial to him.

So I cannot speculate on what transaction he will come up with. That is beyond my expertise.
Q. Very well. Let's move forward in the bundle. This time I think we are going to bundle 2, tab 15.

I should preface this, Professor Bae, by saying we're moving on to how significant the rejection of the merger would have been in the eyes of the market; do you understand?
A. Yes.
Q. Thank you.

So tab 15. It should be marked in the bottom right-hand corner \(\{\mathrm{C} / 585 / 1\}\).

This is a Blue House handwritten memo. Would you like this to be up in Korean? \(\{\mathrm{C} / 585 \mathrm{~K} / 1\}\)
A. Yes.
Q. Do you see in the box at the top right-hand corner, little numbered paragraph 1 in English:
A. Now, may I ask what this note is about? Who wrote this note?
Q. This is a note written by who is

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executive official to the Secretary of Civil Affairs at the Blue House. It's an undated written memo.
A. Okay.
Q. I'm just asking you to confirm the accuracy of what I'm putting to you.

The box in the top right-hand corner:
That's accurately set out there; yes?
A. Yes.
Q. And do you see within brackets in the left - hand column below, a paragraph that reads:

A. Yes.
Q. And it reads:

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A. You mean the outcome of the merger?
Q. Yes.
A. Now, where does it say that the outcome of the merger
will have this huge impact?
Q. I'm asking your opinion.
A. No, I disagree. Whatever the merger outcome is, it's
not going to have a huge impact on the Korean economy.
Why would --
Q. Significant impact?
A. No, I don't think -- merger rejection would not have had
the kind of impact that whoever this person is has in
mind. I disagree
Q. Minor impact?
A. Well, again, I cannot speculate on the short-term or
long-term effect, but not significant enough to change
the magnitude of discount to be disappeared.
Q. No impact?
A. No, I don't say no impact. I mean, it's an event, so
there is an impact to the market. What I'm saying is
that that event, merger rejection, isn't going to change
the corporate governance in Korea in a way that your
Claimant describes. I completely disagree with that
statement.
Q. Let me ask you a few more questions about how the market
would have -- what the market would have learned and
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inferred from this merger vote
One thing that the market would know is that the
rejection of the merger meant that the }\square\mathrm{ family's
attempt to secure control of Samsung Electronics had
failed; correct?
A. Yes.
Q. And the market would already know, because it knew about
the Everland tunneling, the market would also know that
the proposed merger had been part of the long-term
succession planning manoeuvre?
A. Yes.
Q. And the market would also know that this merger was
going to involve a very significant appropriation of
wealth from SC\&T shareholders to Cheil shareholders;
yes?
A. Yes.
Q. And it would also know in this counterfactual, with the
rejection of the merger, that this was the second time
in a matter of weeks that the NPS had voted against
a tunneling transaction; yes?
A. I'm sorry, I'm lost. Can you repeat the question?
Q. I'm referring to the SK merger.
A. Yes.
Q. And in the SK merger, NPS voted against the merger?
A. Mm-hm.

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\section*{Q. Yes}
A. Now, where does it say that the outcome of the merger will have this huge impact?
Q. I'm asking your opinion.
A. No, I disagree. Whatever the merger outcome is, it's not going to have a huge impact on the Korean economy. Why would --
Q. Significant impact?
A. No, I don't think -- merger rejection would not have had the kind of impact that whoever this person is has in mind. I disagree.
Q. Minor impact?
A. Well, again, I cannot speculate on the short-term or long-term effect, but not significant enough to change the magnitude of discount to be disappeared.
Q. No impact?
A. No, I don't say no impact. I mean, it's an event, so there is an impact to the market. What I'm saying is that that event, merger rejection, isn 't going to change the corporate governance in Korea in a way that your statement.
Q. Let me ask you a few more questions about how the market would have -- what the market would have learned and

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inferred from this merger vote.
One thing that the market would know is that the rejection of the merger meant that the \(\square\) family's attempt to secure control of Samsung Electronics had failed; correct?
A. Yes
Q. And the market would already know, because it knew about the proposed merger had been part of the long-term succession planning manoeuvre?
A. Yes.
Q. And the market would also know that this merger was going to involve a very significant appropriation of wealth from SC\&T shareholders to Cheil shareholders; yes?
Q. And it would also know in this counterfactual, with the rejection of the merger, that this was the second time in a matter of weeks that the NPS had voted against a tunneling transaction; yes?
A. I'm sorry, I'm lost. Can you repeat the question?
Q. I'm referring to the SK merger.
A. Yes.
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. And the Samsung-Cheil merger, that vote happened a few weeks later; yes?
A. Yes.
Q. So if the NPS voted again against a tunneling transaction, it would be the second time in a matter of weeks that the NPS had voted against such a transaction; you agree?
A. Yes.
Q. And the market would also infer, wouldn't it, that in voting against these transactions the NPS was upholding its operating guidelines and principles of independence; yes?
A. Yes.
Q. And the market would also know that the NPS was upholding its operating principle of public benefit; yes?
A. Well, there could be other interpretation, but yes, I agree.
Q. And it would also know that the NPS was upholding its operating principle of profitability ; yes?
A. Profitability of which company? Samsung C\&T or Cheil?
Q. Samsung C\&T.
A. You see, the NPS is the largest investor in Korea, so they have a portfolio of whole different stocks. So they're not going to make decisions based on the single

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company of Samsung C\&T. They are going to have to look at the whole picture.

So you keep speaking of the decision from the perspective of a single shareholder who owns only Samsung C\&T. NPS is different. So they may have -- you know, they're going to have to look at the whole portfolio. So the decision could have been different.

Now, if I may, I would like to ask -- although I'm not allowed to ask -- what happened to the SK merger when --
Q. You're right. I'm going to stick to my questions, if you don't mind?
A. Okay. My apology.
Q. No, don't apologise at all. It's very tempting.

Whilst we're on the NPS and the importance of the NPS, could you turn within volume 2 to tab 32, please. So sorry. You will see that this is an article written in the Journal of Korean Law in December 2008; do you see that? It's headed "Changes in Korean Corporate Governance: A Response to Crisis".

Can I ask you to turn within that, please, to page 19 , so the reference in the bottom right-hand corner is \(\{\mathrm{C} / 350 / 19\}\).
A. Page 19?
Q. Do you have that?
Q. In your 2002 article, which we have in the bundle but need not go to, you used cumulative abnormal return, CAR, and you used it as an analytical tool, and my suggestion is that you used that as a tool to tell the

\section*{\[
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\] \\ 127}
difference between a value adding transaction and
a tunneling transaction; is that correct?
A. That's correct.

\section*{Q. Thank you.}

Now, I want to move on to another section entirely of your report. In your report you conducted your own sum of the parts valuation of SC\&T; that's correct?
A. Yes, that's correct.
Q. And you had a disagreement with Mr Boulton as to the number and basis of the sum of the parts calculation, but nonetheless you agree with Mr Boulton that a sum of the parts valuation is a valid way of valuing SC\&T; that's correct?
A. On the contrary, the point of that exercise is to show that sum of the part valuation approach is subject to a lot of assumptions and subject to biases. So no, that that isn't my intention. That's exactly the opposite.
Q. And where you part company with Mr Boulton fundamentally is that Mr Boulton calculated his sum of the parts valuation using listed investments in SC\&T at their market price; that's correct?
A. Correct.
Q. And the reason that you disagree with Mr Boulton's approach is because you say SC\&T is not holding the listed investments in Samsung affiliates for investment
simple as that.
MR STAFFORD: Sir, would that be a convenient moment to break? It's almost the end of a section. I have another couple of sections, but if that would be convenient to you?
THE PRESIDENT: It would be, thank you very much. We will break now for an hour, and we will resume at 13.20.

I should remind you, Professor Bae, you cannot speak
with anybody about your testimony during the lunch
break. Of course you are free to go and --
A. Yes, I understand, sir.

THE PRESIDENT: Please, there will be a lunch waiting for
you, you will be shown where. Thank you very much.
THE WITNESS: Thank you.
( 12.21 pm )

> (The short adjournment)
( 1.20 pm )
THE PRESIDENT: Let's resume. Mr Stafford.
MR STAFFORD: Thank you very much, sir.
Good afternoon, Professor Bae.
A. Good afternoon.

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ren you us
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A. Yes

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A. Yes
Q. And I'm going to ask you to look at the third paragraph
Q. And I'm going to ask you to look at the third paragraph
    on the page that is in the middle of the page which
    on the page that is in the middle of the page which
    starts with the words, "Another institutional investor".
    starts with the words, "Another institutional investor".
    Do you see that paragraph?
    Do you see that paragraph?
A. Yes.
A. Yes.
Q. "Another institutional investor with large potential to
Q. "Another institutional investor with large potential to
    improve Korean corporate governance is the ... NPF."
    improve Korean corporate governance is the ... NPF."
        Which is the same -- you agree that's essentially
        Which is the same -- you agree that's essentially
    the same as the NPS?
    the same as the NPS?
A. Yes.
A. Yes.
Q. Thank you:
Q. Thank you:
            "In December 2005, the NPF management committee
            "In December 2005, the NPF management committee
        included in its statement of proxy voting principles and
        included in its statement of proxy voting principles and
        guidelines a clear declaration that proxy voting should
        guidelines a clear declaration that proxy voting should
        be carried out for the sole purpose of enhancing
        be carried out for the sole purpose of enhancing
        long-term shareholder value."
        long-term shareholder value."
            Then there's a section about the NPF being committed
            Then there's a section about the NPF being committed
        to disclosing its votes, and then it continues:
        to disclosing its votes, and then it continues:
            "Part of the promise comes from the realisation that
            "Part of the promise comes from the realisation that
        the amount of assets under management by the NPF - about
        the amount of assets under management by the NPF - about
        $240 billion based on the exchange rate as of
        $240 billion based on the exchange rate as of
        September 2007 - represents almost 20% of the Korean
        September 2007 - represents almost 20% of the Korean
        stock market's total capitalisation of $1.2 trillion.
        stock market's total capitalisation of $1.2 trillion.
        With its current investment in domestic equity of
        With its current investment in domestic equity of
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    $37 billion, the NPF's impact on Korean corporate
    governance could exceed the combined effect of CaIPERS
    and other US public pension funds in strengthening the
    accountability of US management and boards."
        Do you understand the points that being made in that
        paragraph?
A. Yes, absolutely.
Q. You do. A no vote by the NPS would have had an
    immediate and important effect on corporate governance?
A. On the Samsung merger between Cheil and Samsung C&T?
Q. We're talking about when that merger has been voted
        down; the market would know the NPS's views on corporate
        governance; do you agree?
A. If the merger was rejected due to NPS vote, would market
        react in a way that your Claimant suggests? No,
        I disagree.
Q. You disagree.
A. Because the ownership structure remains the same.
            Now, let me elaborate on that point. My point is
        simple. Professor Milhaupt suggests that the ownership
        structure is the main cause of the governance problem.
        I completely agree with that. If merger was rejected,
        would ownership structure of Samsung business group have
        changed? No, I don't think so. No change in ownership,
        no change in governance, no change in discount. It's as
    starts with the words, Another institutional investor".
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    starts with the words, Another institutional investor".
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Q. And instead you say that SC\&T's listed investments should be valued using the dividend income that the affiliate shares would generate?
A. No, I'm not saying it should be valued using a dividend discount model. I'm simply showing that the alternative assumption results in a completely different estimated sum of the parts valuation.
Q. Indeed. So what you used was essentially a discounted cash flow relating to dividend income rather than the market value of the shares?
A. Yes.
Q. And if we have a look in your report, we can see a table. So I'm going to take you in bundle 1 to tab 1 , and take you to page 74 . So it's the bottom right-hand corner of the page, it has \(\{G 5 / 1 / 74\}\).
A. Bundle 1, tab 4?
Q. Tab 1. What you should be looking at is on the screen in front of you and you will find that in your bundle as well, just to make sure you have the right page.
A. Appendix Figure 8, yes.
Q. If we look in the second half of the page, we see the heading "Appendix Figure 8. Revised SOTP value of

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Samsung C\&T"; do you see that?
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. And the fourth line entry is listed investments?
A. Right.
Q. And the first entry in numbers starts with the number 12,12 trillion?
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. And that we see is Mr Boulton's valuation?
A. Yes.
Q. Alongside it is \(4,508,941\), and that is your valuation of listed investments?
A. Correct, from the perspective of Samsung C\&T investors.
Q. Indeed. And the reason that you made that valuation, the revision, is because you considered shares in Samsung Electronics and SDS were held for the purposes of control by the \(\square\) family and were therefore illiquid?
A. It's not tradeable, yes.
Q. Yes. And would you also regard as illiquid any other shares held in Electronics and SDS by the \(\square\) family or by other Samsung affiliates for the purposes of control?
A. Can you repeat that question?
Q. Yes. Would you regard as illiquid any other shares in Electronics or SDS held by the \(\square\) family for purposes of control?
A. Yes, I think they will \(--I\) mean, if they keep those holdings for the purpose of control, then it's not -you're not going to expect a lot of transaction on those holdings.
Q. Would you regard that all other shares in those -- in Electronics and SDS not held for control by third parties, would you regard those as shares held for investment?
A. So what do you mean by a third party?
Q. In other words, not \(\square\) family or not for the purposes of control by the \(\square\) family.
A. Well, I mean, it depends because the other party may, you know, participate - I mean, the other party may invest for the purpose of control. So it depends.
Q. So let me just give you a specific example. Would you say that the shares in SC\&T that were held by EALP, the Claimant, would you say that these shares were held for investment or control?
A. I cannot speculate on their objective. It's an activist hedge fund company. So it's not like a mutual fund or typical investment company. I think they do both.
Q. So does it follow from your answers that whether a share is illiquid, non-tradeable, or not depends on the subjective intention of the owner?
A. Yes, I have to agree with that. But then you cannot

\section*{131}
really speculate on the intention.
Q. And does that mean that when we look at the entire shareholding of SC\&T, some part of the shareholding should be regarded as illiquid because it's held for control and the rest of the shareholding regarded as tradeable because it would be held for the purposes of investment?
A. Yes, if the purpose is to realise capital gain, yes.
(1.28 pm)
(A short break for technical issue)
( 1.31 pm )
MR STAFFORD: So, Professor Bae, when we look at the entire shareholding of SC\&T, is it your view that some part of the shareholding should be regarded as illiquid because it's held for control?
A. Yes.
Q. And the rest of the shareholding should be regarded as tradeable because it would be held for the purposes of investment?
A. Yes.
Q. Thank you. I would like to take you to a small passage in the first report of Professor Dow which is in tab 10 of volume 1. Within that, could you go to the reference \(\{\mathrm{G} 1 / 1 / 62\}\). It's paragraph 139.
A. This is Professor Dow's report?
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Q. Professor Dow's report.
A. Yes.
Q. I would ask you to read to yourself paragraph 139. No
need to read it out loud. I just want you to read it to
yourself.
(Pause)
A. Yes.
Q. Do you agree that in that paragraph Professor Dow seems
to be dealing with this issue as if shares in SC\&T were
tradeable and were liquid; is that your interpretation
of this paragraph?
A. I mean, SC\&T shares are listed on the stock exchange.
Q. They are indeed.
A. They obviously should be traded.
Q. So do you agree with the way in which Professor Dow has
described what he's done in paragraph 139?
A. This analysis is not relevant to my opinion.
Q. Very well.
Around the world there are many companies that have
affiliates that are listed. You would agree with that?
A. Okay. So can you repeat that question?
Q. Many companies around the world hold affiliate shares?
A. Yes. But not necessarily listed company shares.
Q. You are saying that you know of none that are listed
affiliate shares?

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A. Now, this is the key issue. I think this is the key governance issue in Korean, or Chaebol companies. The problem with the Chaebol is that they are holding stocks of affiliated companies which are listed. That creates the conflict of interest between shareholder of the affiliated company and the controlling shareholder.

Now, take the example of Alphabet, which is a holding company. None of the subsidiaries, none of the affiliate companies are listed. So there is no conflict of interest. So there is no discount.

This is the so-called holding company discount as far as I know. It is unique to a Korean ownership structure.

I think Belgian companies are -- some companies have a similar structure, but as far as I know, no holding companies in the US has a listed subsidiary.
Q. You earlier explained, and I think you agreed, that the reason for the Korea discount was not the fact that affiliates were listed, but the behaviour and the risk of the behaviour of Chaebol in embarking on tunneling transactions?
A. I don't remember saying that.
Q. Is that your evidence though? Is that what you --
A. Say it again?
Q. The Korea discount is a reflection of the risk of
predatory transactions?
A. Part of the discount, yes.
Q. What part of the discount?
A. Now I think I presented that opinion in my presentation. The problem of having listed holdings depresses the profitability, which is not good for the shareholder. Why would manager hold non-profit-generating asset?
More than two-thirds of the other company assets? There is no need.
Q. What part of the discount is referable to the risk of predatory transactions?
A. That I don't think one can -- yeah, I'm not sure whether anybody can separate the two discounts arising from two different problems, because the fact that the company, like a company like SC\&T, has too many of the listed holdings, that can be considered as a tunneling because that sacrifice the opportunity for shareholder to make more money. So that is kind of the tunneling.

So I cannot really -- I don't really believe that one can separate which part is a tunneling, which part is a holding company discount. It's all mixed up due to the unique ownership structure in Korean Chaebols.
Q. We shall be hearing from Professor Boulton in due course and his report addressing that topic.

Can we have a look at a paper which you relied on

\section*{135}
which is called "Valuing Thinly Traded Assets". It's at tab 31 in bundle 2.
A. Bundle 2?
Q. Yes, bundle 2, tab 31.
A. Yes.
Q. Do you see the second page of that, which is marked \(\{G 5 / 30 / 2\} ?\)

\section*{A. Yes.}
Q. And on the left-hand column, under the word "Introduction" it says:
"Thinly traded assets are often defined as investments for which there is no liquid market available."

Do you see that?
A. Yes.
Q. And then towards the bottom of that column there's a series of bullet points; do you see that?
A. Yes.
Q. And there is a list there of examples of what could be called thinly traded assets?
A. Yes.
Q. You've read that?
A. Yes.
Q. And do you agree that none of the examples given there relates to listed affiliates of a holding company?
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A. No, I mean, why would Francis Longstaff talk about the
Chaebol problem here? He's not discussing the Chaebol
problem in this paper.
Q. I'm --
A. I'm just applying the main finding of his paper, which
is that illiquidity is also associated with
a significant discount.
Q. I know you are, and my suggestion to you is that it is
contrived to divide the shares in SC\&T depending on the
subjective motive of the owner of the shares.
A. I'm sorry, I don't quite follow your question.
Q. I'm saying to you that it is contrived to suggest that
you divide the shares into those which are held for
control purposes and those which are held for investment
purposes when valuing a company.
A. Yes, it should be, because the value is different from
different investors.
Let me put it this way. Now, if I'm interested in
Samsung Electronics, why would I buy Samsung C\&T, which
holds a bunch of Samsung Electronics stocks? I can just
buy Samsung Electronics. Why would I bet on the Samsung
C\&T, which has a lot of Samsung Electronics stocks? It
doesn't matter to me. I mean, Samsung C\&T has no reason
to hold that much Samsung Electronics stock. It doesn't
do any good to me. So why would I pay the market price?
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Q. Now I'm going to take you to some analyst -- I beg your
pardon, sir.
MR GARIBALDI: I'm sorry. A commonsense question. Why
would anyone other than Samsung invest in Samsung C\&T if
the value is so low in your opinion --
A. Samsung C\&T --
MR GARIBALDI: Since you don't count the shares that are
held for control, the value is very low.
A. Yes.
MR GARIBALDI: So why would anyone invest in that?
A. The investors are betting on the Samsung C\&T core
business, which is construction and trading.
MR GARIBALDI: I'm sorry, but I don't quite follow.
A. The main --
MR GARIBALDI: The income from that investment, from those
investments, is very small according to your own --
A. Yes.
MR GARIBALDI: To your own figures.
A. Correct.
MR GARIBALDI: Why would anyone invest in that?
A. That is exactly why the market discounts Samsung C\&T
stocks relative to SOTP value, because it's not worth
that much.
MR GARIBALDI: Wouldn't the discount be much larger?
A. So, yes, I think the magnitude of discount should be

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around 40 to \(50 \%\), which is indeed the case.
MR GARIBALDI: I still don't understand the logic of an investor investing in something that has very little value.
A. Can I use an analogy, if I may, to explain this concept? Now, suppose you are the CEO of construction company. Your main business is construction. Now, I'm the Samsung C\&T shareholder, I mean the construction company you manage, and you are the controlling shareholder and you can appoint board of directors. Practically it is your company, although it is a publicly traded company.

Now, somehow you invest in art, paintings, a lot of paintings, very, very expensive paintings. So the value of those paintings, it was like \(\$ 1\) billion.

The construction company, the main business, is worth \(\$ 1\) billion. So altogether, if paintings are liquidated, it should be worth \(\$ 2\) billion.

But you're going to keep your paintings in your safe and you have no intention to sell.

Now, if I'm an investor in your company, would I pay \(\$ 1\) billion, \(\$ 2\) billion? No, the painting has worth to you. It doesn't mean anything to me. So l'm not going to pay \(\$ 2\) billion. I' ll pay \(\$ 1\) billion.

So the paintings in this analogy, it's like the
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holdings held by Samsung C\&T in Samsung Electronics or Samsung SDS.
MR GARIBALDI: At the moment of -- suppose that you are valuing that company for merger purposes, M\&A market.
A. Right.

MR GARIBALDI: How do you value that company? You value the paintings or you don't value the paintings?
A. If the new merged company, the controlling shareholder, has no intention to liquidate their paintings, it's not worth to me. It shouldn't be valued at the market price.
MR GARIBALDI: But the paintings are there --
A. The paintings are there, but then as an investment.

MR GARIBALDI: -- they are part of the assets. At some point they may be liquidated.
A. Maybe. That's why the value is not zero. There is some value, but it's not going to be market price because I know your intention is you're not going to sell the paintings, you're going to keep them, as long as I'm investing in your company.

So I'm not willing to pay \(\$ 2\) billion to your company.
MR GARIBALDI: Thank you.
MR STAFFORD: Let's see what advice and recommendations were given to people who might buy or sell shares in Samsung
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    C&T. Would you take bundle 2 and go to tab 25.
    A. Bundle 2? Bundle 2?
Q. It's tab 25. What you should have in front of you
is Bank of America Merrill Lynch in the right-hand top
right - hand corner; do you see that?
A. Mm-hm.
Q. You will see immediately above that the date, which is
2 3 ~ A p r i l ~ 2 0 1 5 .
A. Mm-hm.
Q. And so that is at a time after the merger has been
announced, the merger proposal has been announced?
A. Is it? I think the merger announcement was May.
Q. Am I mistaken about that? I'll be corrected if I am.
MR TURNER: }26\mathrm{ May 2015, sir.
MR STAFFORD: I am wrong and you are right.
But let's have a look at -- and this is a document
which is issued by Bank of America analysts for people
to read if they are thinking of buying or selling shares
in Samsung C\&T; do you agree? {C/632/1}
A. Mm-hm.
Q. If we turn the page and go to {C/632/3}, do you see in
the top there is a table marked "Table 1: SOTP
valuation"; you see that?
A. Yes.
Q. And do you see the -- it is a sum of the parts

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    valuation, and then the fourth line entry is "listed
    investment securities"?
A. \(M m-h m\).
Q. And it's 9.3 trillion ; that's correct?
A. Yes.
Q. And \(30 \%\) discount on market value?
A. Yes
Q. And first of all, there is no difference there being
suggested in the -- no problem with the sum of the parts
being used as a valuation method, is there?
A. Can you repeat the question?
Q. The analysts are perfectly happy to use a sum of the
parts valuation when making recommendations and
conveying information to potential buyers and sellers?
A. Yes, this is a popular valuation approach among
analysts.
Q. And we will see that there is a \(30 \%\) discount on market
value, and that would incorporate the Korea discount; do
you agree?
A. No. Not necessarily.
Q. It would incorporate the holding company discount; do
    you agree?
A. I don't know the intention of the analyst applying \(30 \%\)
discount. This is exactly proving my point. It's
arbitrary. SOTP valuation is not reliable, objective,

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valuation, and then the fourth line entry is " listed investment securities"?
A. \(M m-h m\).
Q. And it's 9.3 trillion ; that's correct?
A. Yes.
Q. And \(30 \%\) discount on market value?
A. Yes
Q. And first of all, there is no difference there being suggested in the -- no problem with the sum of the parts being used as a valuation method, is there?
A. Can you repeat the question?
Q. The analysts are perfectly happy to use a sum of the parts valuation when making recommendations and conveying information to potential buyers and sellers?
A. Yes, this is a popular valuation approach among analysts.
Q. And we will see that there is a \(30 \%\) discount on market value, and that would incorporate the Korea discount; do you agree?
A. No. Not necessarily
Q. It would incorporate the holding company discount; do you
A. I don't know the intention of the analyst applying \(30 \%\) arbitrary. SOTP valuation is not reliable, objective,
unbiased estimate of the value. It depends on the analyst. It's subject to assumption. And then I have no idea where this \(30 \%\) comes from
Q. Well, if this is arbitrary, then it is arbitrarily over 200\% higher in its valuation of 9.3 billion than your valuation of 4.5 trillion ?
A. No. Again, the point of my exercise is to show that SOTP valuation is not subject to \(--I\) mean, it is subject to errors and estimation errors and depends on the valuator's bias. It's not objective measure of valuation approach

I agree with Professor Dow. The best measure of the value is market price.
Q. And if we turn to tab 26, we can see another analyst's report, also dated, as I now am reminded, before the merger announcement, 24 April 2015; do you see that?
A. Yes.
Q. And it's going to be a similar point I make. If you could turn to \(\{\mathrm{C} / 634 / 6\}\); do you have that?
A. Yes.
Q. And you will see there a single set of figures,

Figure 7, that's sum of the parts valuation; do you see that?
A. Yes.
Q. And do you see under number 3, investment assets, the

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first such investment asset is "listed investment holdings"; do you see that?
A. Yes.
Q. And the valuation given is 10.1 trillion Won?
A. \(M m-h m\).
Q. And if we go to the right-hand column, we see there a \(23 \%\) discount to market price incorporating tax implication.
A. Again, you're proving my point. Depending on the analyst, they apply a different discount. So where does that come from? Is it a reliable measure? No, absolutely not.
Q. And then moving on to tab 27 , this is \(\{C / 636 / 1\}\) and this is Samsung Securities. Again, April 24, 2015. And if you turn to the second page of this \(\{\mathrm{C} / 636 / 2\}\), we see in the right-hand column, towards the bottom of the page on the screen, "Sum-of-the-parts valuation"?
A. Yes.
Q. And do we see under value of investment securities, \(30 \%\) discount, listed subsidiaries, 9.29 trillion?
A. Yes.
Q. On the face of it, would you agree with me, each of these analysts adopted the sum of the parts method?
A. Yes.
Q. And on the face of it, none of the analysts used your
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    discounted cash flow method?
    A. Yes.
Q. And each included both listed and unlisted affiliates in
Samsung C\&T?
A. Right.
Q. And with regard to listed entities, the approach that
each analyst adopted was to start with the share price
and multiply it by the number of issued shares to reach
a final Figure?
A. Right.
Q. And the share price -- sorry. And none of the analysts
treated the assets of SC\&T as illiquid in these reports,
did they?
A. Well, I mean, I cannot tell. I mean, they just list the
listed subsidiary and apply the market price, and then
discount it.
Q. Can we turn now to tab 30. This is not an analyst's
report. Let me explain to you what this is. This is
a document prepared by the NPS research team and it's
dated 30 June 2015.
A. Yes.
Q. Are you familiar with this document already?
A. No.
Q. Okay.
A. First time to see this document.
A. Right.
Q. And with regard to listed entities, the approach that each analyst adopted was to start with the share price and multiply it by the number of issued shares to reach a final Figure?
A. Right.
Q. And the share price -- sorry. And none of the analysts treated the assets of SC\&T as illiquid in these reports, did they?
A. Well, I mean, I cannot tell. I mean, they just list the listed subsidiary and apply the market price, and then discount it.
Q. Can we turn now to tab 30. This is not an analyst's report. Let me explain to you what this is. This is a document prepared by the NPS research team and it's dated 30 June 2015.
A. Yes.
Q. Are you familiar with this document already?
A. No.
A. First time to see this document.
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Q. And could you turn on to the second page of that

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Q. And could you turn on to the second page of that
        document. Do you see in the right-hand column, under
        document. Do you see in the right-hand column, under
        the heading
        the heading
        |; do you see that heading?
        |; do you see that heading?
A. Yes.
A. Yes.
Q. And then as you go down that column, you will see in
Q. And then as you go down that column, you will see in
        bold the number 2
        bold the number 2
A. Mm-hm.
A. Mm-hm.
Q. Do you see that?
Q. Do you see that?
A. Mm-hm.
A. Mm-hm.
Q. And immediately below that, do you see
Q. And immediately below that, do you see
    \square
    \square
A. Right.
A. Right.
Q. And do you see
Q. And do you see
A. Right.
A. Right.
Q. Can you see any evidence there that the NPS used your
Q. Can you see any evidence there that the NPS used your
        discounted cash flow method to value Samsung C&T shares?
        discounted cash flow method to value Samsung C&T shares?
A. No, I think I used, despite my intention of using DCF
A. No, I think I used, despite my intention of using DCF
    method, an SOTP calculation.
    method, an SOTP calculation.
        Actually, I don't claim that my approach is right.
        Actually, I don't claim that my approach is right.
        I'm just simply stating that the SOTP valuation is
        I'm just simply stating that the SOTP valuation is
        subject to assumptions. And different assumptions, you
        subject to assumptions. And different assumptions, you
        know, come up with different values. That's my whole
        know, come up with different values. That's my whole
        point. I have -- just because they don't use a DCF
```

        point. I have -- just because they don't use a DCF
    ```
method, doesn't mean that what I'm saying is wrong. I'm
simply stating the SOTP valuation is subject to
assumptions and the intent of the valuator. It 's
a biased measure.
Now, looking at this NPS document, it says
\(\square\) Yes, if it is sold
out, it should be worth that much. But my opinion is
that family has no intention to sell.
Q. When you prepared your report were you provided with the NPS's own valuations of SC\&T?
A. Was I provided NPS document?
Q. Evidence of their own valuation of SC\&T?
A. No.
Q. No?
A. No.
Q. Were you provided with information from the evidence as to how NPS changed its valuations?
A. No. I mean, as I mentioned in my presentation, I was instructed to comment on the Professor Milhaupt's opinion and the discount, whether it's going to disappear or not if the merger was rejected.

So the NPS decision, how NPS valuate Samsung C\&T is not relevant to my analysis.

So I haven't looked at anything related to NPS.
Q. Which takes us to your report, which is tab 1 ,

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and I would like you to go within your report to paragraph 45.
A. Yes.
Q. And the reference is \(\{\mathrm{G} 5 / 1 / 27\}\).
A. 45 , yes.
Q. Paragraph 45, where you say:
"For this report, I do not need to, and do not, otherwise comment on the Merger and its terms. I find it relevant only to note that the Merger is consistent
with \(\square\) 's having a motivation to gain control of 4.06\% of Samsung Electronics. I consider that this motivation would have remained even in the Counterfactual Scenario of the Merger rejection described by Mr Boulton."
A. Yes.
Q. Looking back on that, do you now think that it would have been better if you had looked at the merger and the terms of the merger?
A. I was aware of the terms of the merger. But it's not relevant to my analysis.
Q. In your report you make reference to the 2018 Hyundai transaction?
A. Yes.
Q. And you make the point that in certain respects that was a scenario similar to the Samsung case?
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A. Exactly.
Q. And you make the further point that after the
restructuring proposals were withdrawn, the price of the
target entity went down and not up?
A. You mean Hyundai Mobis?
Q. Yes.
A. Yes.
Q. Is it your contention that that Hyundai transaction was
also a clear case of attempted tunneling?
A. It is consistent with the tunneling, yes. The nature of
that merger, proposed transaction, benefit \square\, who
is the successor, because he has a huge ownership in
Hyundai Glovis, whereas he has no ownership in Hyundai
Mobis. So the transaction is a beneficial to
Yes, consistent.
Q. And the reaction of the market in going down is
consistent with the market considering that despite the
proposal being withdrawn, there remained a risk of
predatory transaction?
A. No. That's not how I interpret the market reaction.
If the merger went through, then the Mobis, which is
subject to a tunneling risk, that risk is going to be
gone. So uncertainty for Hyundai Mobis is going to go
away.
Now, with the merger cancelled, Mobis is back on

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    table to the expropriation risk by \(\square\) family. It's
    uncertain what's going to happen to that company,
    Hyundai Mobis. Given that \(\square\) family has little
    ownership, \(\square\) family has little incentive to increase
    the value of Hyundai Mobis because they have no
    incentive.
Q. So the expropriation risk persisted?
A. Yes, it 's going to be back on the table, and this is
    why.
Q. And that is what the market would have perceived, in
    your view?
A. Yes, that's why price went down. That's my
        interpretation. Could be many other reasons, but I can
        only suspect. Given the motivation of the merger, that
        is how I interpreted the market reaction.
Q. Let's have a look at the context and the world in which
    that took place.
A. \(\mathrm{Mm}-\mathrm{hm}\).
Q. First of all, I expect you would say that after the
        merger proposal was withdrawn, there was still a wedge
        to incentivise the Chaebol family?
A. Right. The Mobis are... the wedge, it's likely to be quite high.
Q. And in this real world of 2018, the market would know from the Samsung case that the power and influence of

Chaebol families was still very considerable?
A. Can you repeat the question? Sorry.
Q. In the real world in 2018 the market would know, after the Hyundai proposal was withdrawn, the market would know that the Samsung case showed that the power and influence of Chaebol families was still very strong?
A. I believe so. The market would think the power of the Samsung family is still quite large, yes.
Q. And indeed, by 2018, because of the criminal trials that had then taken place, arising out of the Samsung scandal, the market would know that the way in which \(\square\) had acted reflected the exercise of power by Chaebol families?
A. Sorry, I --
Q. My fault. It's not a very well put together question.
A. Can you repeat?
Q. By 2018, Hyundai proposal being withdrawn, the market would know from the Samsung criminal trials that had taken place --
A. Can I ask you a question. Which criminal case are you talking about?
Q. There's \(\square\), ex-President \(\square\), Messrs \(\square\) and \(\square\) ?
A. Okay, yes. Not the stock manipulation case.
Q. Not the stock manipulation. But they would know, the market would know from those trials that the Chaebol

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family,
use it for tunneling?
A. Yes, I believe so. The market always perceives that
risk.
Q. And in 2018 the market would know that NPS had backed
the merger in Samsung?
A. In 2018 ?
Q. Yes.
A. Why would market wait until 2018 if this has been known?
I mean, the NPS - -
Q. It's a simple question: the market would know in 2018
that the NPS had voted in favour of the Samsung merger?
A. Yes. I think that's a public information.
Q. And the criminal trials of , ex-President
Messrs
revealed publicly the steps that could be taken by
a Chaebol family to support a tunneling transaction?
A. I don't understand your question.
Q. The information that came out about the behaviour of
A. Okay, yes.
Q. - - revealed to the public and the market the influence
A. Yes.
Q. And that's a very different world from the

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        counterfactual world that I have been putting to you,
        isn't it?
    A. Counterfactual world of Hyundai case or --
Q. Of Samsung case, where there is no merger because it is
defeated.
A. So what you're asking is if there is no criminal
activity on the part of }\square\mathrm{ family and former President,
and if the merger was rejected, then you are saying that
the market take that news as a really good news, so that
the discount of Samsung C\&T is going to go away; is that
your question?
Q. I'm asking you about the Hyundai merger against the
background of the Samsung merger being cancelled.
A. Yes, the context is quite different, but the motivation
is exactly the same.
Q. I agree. The context is very different.
A. Yes, I agree. Of course.
Q. Now, let's just have a quick look at the content of the
Hyundai proposal.
Did you believe that the Hyundai transaction was for
the purpose of strengthening control of the flagship
company?
A. Yes.
Q. As with Samsung?
A. Yes.

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Q. And in the Samsung transaction the flagship company is Samsung Electronics?
A. Yes.
Q. And in the Hyundai transaction the flagship company is Hyundai Motor Company?
A. Yes.
Q. And in the Hyundai transaction it was Hyundai Mobis that was holding the shares in the flagship. Hyundai Motor Company?
A. Exactly, just like Samsung C\&T.
Q. But in the Hyundai merger, the proposal was to spin off part of Hyundai Mobis and then merge the spin-off company with Hyundai Glovis?
A. Yes, that's right, but then again the motivation is to have control power over Hyundai Motor.
Q. So this was in fact re-organising the business, not re-organising the shareholding?
A. Yes, its purpose is to re-organise, but the ultimate goal is to increase control power. I think even with the Samsung merger, I think one can argue that the merger was for the purpose of the restructuring.
Q. Let me just check my notes to make sure that I have asked you everything that I need to ask you.
A. Absolutely.

MR STAFFORD: Thank you very much. I've got no further

\section*{questions for you.}
A. Thank you.

THE PRESIDENT: Ms Tan, redirect, please?
MS TAN: No questions in redirect, sir.
THE PRESIDENT: There will be questions from the tribunal. Mr Thomas.

\section*{Questions from THE TRIBUNAL}

\section*{MR THOMAS: Thank you.}

As I understand it from reading the evidence on the record, the phenomenon of Chaebols, it's a longstanding phenomenon in Korea, as I understand it; is that correct?
A. Yes, sir

MR THOMAS: To the best of your knowledge, how far back in time does it date? Is it a phenomenon that emerged after the Korean war? When did these types of circular holdings begin to become established?
A. I think the Chaebol structure emerged during the process of economic development in 1960s under former President \(\square\) - I mean, I'm not talking about the lady - ; her father. So that started from 1960s and because Korea was such a poor country, it has no capital.

So a way to accumulate capital and make an investment is to create an organisational structure like
a Chaebol, helping each other.
So at the initial stage of the economic development, I think a Chaebol contributed to the economic development quite a lot.

But now, Korea now is in the stage of, you know, advanced country. So the old organisational structure is not beneficial to shareholders.

So as far as I remember, it started from 1960s.
MR THOMAS: Okay. Now, I know you're not a lawyer, and I know you are a business Professor, but was there something distinctive in Korean capital markets law which prohibited -- not prohibited; which permitted circular holdings? How did the law treat similar holdings?
A. So obviously the regulator noted the problem with the circular holdings. So they came up with several measures of the regulations preventing circular holdings. So I don't think it's possible right now.

But then the problem is there is existing circular holdings which the government cannot remove in an arbitrary way, because they could argue that it's against the Constitution.

So I think the government's dilemma is to do something about this ownership structure, but then the existing circular holdings is still there, and I think
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    government cannot do much about it
    MR THOMAS:Could we take a look at tab, I think it's tab 4
You've been taken to this by Mr Stafford. It 's the
meeting notes.
Can you take a look at the second full paragraph
beginning \square {C/413/1}.
A. Yes.
MR THOMAS: Just read it to yourself, just to familiarise
yourself with it
(Pause)
Now, you will see in the third line down there's
a reference to
The question I have is the
difference between a bill and a legislative Act. A bill
will lead to a legislative Act.
Can you shed any light on whether or not the bill to
which I'm assuming Mr referred became law? And if
you don't know the answer, that's fine with me. I just
wondered whether you --
A. As far as I know, there are rules preventing circular
investment which applies to the largest Chaebols, whose
asset size is -- I don't remember the exact Figure, but
then the largest Chaebols, they are not allowed to make
a circular investment. I think that law is in effect
right now. Yes.

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MR THOMAS: Was it in effect at the time or was it ...?
A. They keep changing the law, so I cannot tell for sure. But my guess is that law was still there in 2015.
MR THOMAS: Okay. I don't think I can take this much further.
MR STAFFORD: By your leave, may I ask the witness to have a look at another document to clarify an answer for you? MR THOMAS: That would be helpful.
MR STAFFORD: Professor Bae, could you take up bundle 1, and go to tab 8, please. You will see that this is an OECD report from October 2018 concerning large Korean business groups \(\{\mathrm{C} / 541 / 1\}\).

Could I ask you to turn within that to \(\{C / 541 / 24\}\).
Do you have that?
A. Yes.

MR STAFFORD: You will see a table of key regulations imposed on the large business groups; do you see that? A. Yes.

MR STAFFORD: If you look at the last entry in that table, it reads:
"Prohibition of new circular shareholding."
Date imposed, July 2014.
A. Yes, so my guess was correct.

MR STAFFORD: So does that assist you?
MR THOMAS: That's very helpful, Mr Stafford. Thank you
very much.
If I can just ask one more question about that. It's a prohibition on new circular shareholding. So how did the Korean regulators deal with existing circular shareholdings? Were they intended to be phased out or was it: this practice will no longer continue?
A. Again, I mean, I don't -- I haven't really closely followed up with the other regulation because that's not my expertise area. But since the financial crisis of 1997 in Asia, the Korea Government pushed Chaebol to adopt the so-called holding company structure, so that the ownership structure becomes more transparent.

But the trouble with Samsung, Samsung Electronics is just way too big. So to adopt the holding company structure by Samsung business group, it's going to cost too much. So because of the cost reason, they cannot really adopt the holding company structure. I think that's the dilemma \(\square\) has.

So I don't know the details, but I think Mr Smith, the fact witness, he proposed the restructuring to get around that problem to Samsung, but I don't know the details about it. But then that's the dilemma has.

On the one hand he faces the pressure from the government to adopt a holding company structure. On the

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other hand, where is the money coming from to make that change?
MR THOMAS: Sorry, just one other question, as I listen to this.

I have also seen in a number of the materials that have been filed in the case that there seems to be some attachment to the idea of Chaebol because of the economic success that Korea has undergone?
A. Yes.

MR THOMAS: Again, if this strays from your area of expertise, forgive me, and if it's outside your --
A. Not at all, not at all.

MR THOMAS: But my question is this: are there, within the Korean National Assembly, are there parties who support Chaebols, who say that this is the key to Korean economic success?
A. That is absolutely beyond my expertise, but I have my personal opinion on that.
MR THOMAS: Please give it to me.
A. They are all the same. They are under the influence of Chaebol.
MR THOMAS: There are other legislative bodies in the world like that, aren't there?
A. Yes.

MR THOMAS: That's another confirmation.
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A. It's an unfortunate reality, in my view.
MR THOMAS: Thank you very much.
THE PRESIDENT: A couple of questions perhaps.
First, interesting you explained how the Chaebol
structure was used to effectively pool capital in
a stage of the development of Korea, of the Korean
economy, when there was not much capital around. So as
I understand, the idea with the circular ownership was
to allow the shareholders to support each other with
capital injections?
A. Exactly.
THE PRESIDENT: That's the way it developed.
A. Yes, exactly.
THE PRESIDENT: There are other ways of doing that in other
parts of the world. People are using cooperatives to
achieve the same, basically.
A. Right. You're absolutely right.
THE PRESIDENT: But in a sense the Korean economy doesn't
need Chaebol structure anymore to create capital or to
accumulate capital in the market, because there is
sufficient capital
A. Yes, yes, that's true.
THE PRESIDENT: Then I put this question to
Professor Milhaupt, so I should put this question to you
as well then.

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The distinction between the Korea discount and the holding company discount, you didn't discuss that in your report extensively, but you mentioned that it came up during your cross-examination. What is your view on that distinction?
A. It's all related to the governance problem, but when we say Korea discount, it's the valuation of Korean companies, Chaebol companies, relative to similar companies in, say, US or Canada, and the valuation difference, we call that Korea discount.

Now, holding company discount is different, because we're not comparing the Chaebol companies with foreign companies. Holding company discount is the difference between net asset value or SOTP value and the market price.

So in Mr Boulton's report, that \(40 \%\) discount is a mix of, you know, discount due to a lot of problems. But as far as the definition is concerned, Korea discount is relative to foreign company valuation. Holding company discount is the difference between net asset value and the market price. But then the discount all arises from the governance problem.
THE PRESIDENT: Okay. Thank you very much.
A. Thank you.

THE PRESIDENT: If the questions from the tribunal don't
give rise to any questions by the parties -- do they?
MR STAFFORD: No, thank you.
THE PRESIDENT: Then they don't. So Professor Bae, thank you very much.
THE WITNESS: Thank you.
THE PRESIDENT: Your examination is concluded.

\section*{(The witness withdrew)}

Housekeeping
THE PRESIDENT: That seems to bring us to an early end of the day, which is probably welcome by many quarters in this room.

Is there anything else that either party would like to raise?
MR PARTASIDES: Only one matter, members of the tribunal.
I believe the tribunal were going to consider the parties' slightly differing views on the length of the oral closings on Friday. As that will be relevant to our preparations, we on our side wondered whether the tribunal had reached a conclusion on that yet.
THE PRESIDENT: We haven't, but now that you are reminding us, we will. We will do that after this meeting. Mr Turner?
MR TURNER: Nothing. Nothing else from our side, sir. We look forward to seeing everybody tomorrow morning at 10 o'clock as for once is written in the original

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timetable.
THE PRESIDENT: Yes. We will go back to the original timetable.

So just to remind us of the position, it 's one hour or two hours, the parties' positions on the closing.
And is there anything that either party would like to add in terms of justifying their request or proposal for the time to be allocated for closings?
MR PARTASIDES: Let me add perhaps one thing, members of the tribunal, and that is, as I have given thought to our oral closing, it seems to me this is a case that would be particularly difficult to make oral submissions limited to one hour that would be useful for this tribunal, and so we maintain our preference for a two-hour closing on our side.
THE PRESIDENT: Mr Turner?
MR TURNER: It won't surprise you to know, sir, that we maintain our preference. We are worried about falling between two stools. We think we can give you the highlights in an hour. We don't think we can do justice to the fortnight's hearing and the complicated issues in two hours. But we would then be trespassing or risking, very significantly risking, saying the same thing in writing as we would have said on Friday to you.

So that is what I said the other day. That is still

> our position. Obviously we are in the tribunal's hands.
> THE PRESIDENT: On a related point, we haven't had a chance to discuss this within the tribunal, so I'm simply putting the question for the parties to hear you on this. As we indicated, the tribunal is likely to have questions to the parties at the end of the hearing. We don't know yet how many there will be. They can be given to the parties at the end of the closings so that you will deal with them in your written submissions, or we can make an effort to give them to you so that you can address them as part of the oral closings, which may complicate the oral closings though, I recognise that.
> But do the parties have any views or any preferences on getting a sense of the tribunal's questions?
> Again, the parties shouldn't read too much into the tribunal's questions. They may well be focusing on issues that we felt are not fully covered, rather than being the key questions for the tribunal to decide. So there is no suggestion that these are the key issues on which we would like to hear you.
> MR PARTASIDES: Mr President, on our side, of course, we would be very happy to hear any questions that the tribunal has. We're equally happy to deal with it in post-hearing briefs, as you prefer and would find most useful.

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\(\begin{array}{lr}\text { I would say that if you would want us to address } & 1 \\ \text { questions in our oral closings, speaking for our side, } & 2 \\ \text { certainly we would appreciate receiving those questions } & 3 \\ \text { before the end of Wednesday, in order to give us an } & 4 \\ \text { appropriate opportunity to try and address them. } & 5 \\ \text { THE PRESIDENT: Mr Turner? } & 6 \\ \text { MR TURNER: Yes, I wholeheartedly echo my learned friend's } & 7 \\ \text { wish to get questions sooner rather than later if there } & 8 \\ \text { are any. Clearly it's not a strict division between } & 9 \\ \text { questions before oral closings or questions in writing } & 10 \\ \text { afterwards. We're in the tribunal 's hands. If the } & 11 \\ \text { tribunal would like us to address questions orally on } & 12 \\ \text { Friday, we will do our best to do so, as long as the } & 13 \\ \text { tribunal allows us to have another go in writing if } & 14 \\ \text { necessary or to supplement those answers in writing if } & 15 \\ \text { necessary. } & 16 \\ \text { But we're in the tribunal's hands. I only echo my } & 17 \\ \text { learned friend's wish to get any such questions as soon } & 18 \\ \text { as the tribunal can formulate them. } & 19 \\ \text { THE PRESIDENT: Okay, understood. } & 20 \\ \text { Okay. Very good. So we will revert to the parties } & 21 \\ \text { as soon as possible in the course of the evening and in } & 22 \\ \text { the meantime, I wish you a good evening and we'll see } & 23 \\ \text { you tomorrow morning at } 10 \text { o'clock. } & 24 \\ \text { TRIBUNAL SECRETARY: Mr President, I think you wanted to } & 25\end{array}\)
briefly raise the question of the schedule for Thursday with the parties?
THE PRESIDENT: Yes, Thursday, a technical question.
The question is whether we can release the technical people, in particular on Thursday. It looks like Thursday will be a day off, fully. Based on the programme we anticipate that the examination of the quantum experts can be completed by close of business on Wednesday.
MR PARTASIDES: That is still our expectation and so no objection at all to proceeding in that way.
THE PRESIDENT: Okay. So Thursday will be a day off for the technical people in particular. So we can confirm that now.

If necessary, we can --
MR TURNER: Just for the transcript, so that I don't then challenge the arbitrators for making such a momentous decision without hearing from the Respondent, we completely agree.
THE PRESIDENT: Okay, very good. I appreciate it.
Thank you very much.
( 4.27 pm )
(The hearing adjourned until Tuesday, 23 November 2021
\[
\text { at } 10.00 \mathrm{am} \text { ) }
\]

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