OPUS₂

Elliott Associates, L.P. v Republic of Korea

Day 6

November 22, 2021

Opus 2 - Official Court Reporters

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1 Monday, 22 November 2021 1 you have said. Mr Chairman, those exhibits have now been 2. (9.00 am) 2. put on to the record, including the correspondence THE PRESIDENT: Good morning and welcome back. I hope you 3 between the parties, and they appear as exhibits C-750had a relaxing weekend, as relaxing as it can be in the 4 all the way through to C-772 on the record and the 4 5 5 tribunal may already have seen that they are already on circumstances. 6 The tribunal is grateful to the parties for reaching 6 the Opus system. 7 7 an agreement on the examination of Mr Smith. We also There's one other item I should update you on. 8 noted that the new exhibits have been produced and they 8 members of the tribunal, and that relates to exhibit 9 are uploaded on the platform. So we are, I understand, 9 C-759, the last of those exhibits that I have just 10 good to go with Mr Smith after the examination of 10 referred to. 11 Mr Milhaupt, or Professor Milhaupt, rather. 11 This is a document that we received from the 12 Is there anything else that needs to be discussed 12 Respondent in Korean on the Friday before the hearing 13 before we start with his examination, Claimant? 13 began pursuant to its ongoing disclosure obligation, and MR PARTASIDES: Thank you, Mr President, members of the 14 14 pursuant to your order number 18. 15 tribunal. It may help if I give a little bit of an 15 It is a report prepared by Samsung Securities of 16 update of how we've got to where we've got to and what 16 10 June 2015 which may be relevant to the 17 has happened over the weekend. 17 cross-examinations that we conduct this week. 18 18 As you will remember, on Thursday afternoon of last After translation and review, we sought the week we disclosed the underlying trade confirmations 19 19 Respondent's agreement to add that document to the 2.0 2.0 that we had undertaken to disclose to the Respondent. record. They have provided their agreement which is why 21 and in going through those trade confirmations, they 21 it now appears as exhibit C-759. 22 were organised in the following way, and I think 22 THE PRESIDENT: Thank you very much, Mr Partasides, for the 2.3 I mentioned this last week. They were organised by 23 explanations. Mr Turner, anything to comment? 2.4 2.4 reference to the brokers who had brokered those trade MR TURNER: No housekeeping from our side, sir, save one 25 confirmations 2.5 point that's related to what my learned friend has just

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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

said.

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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 puttinganything in writing, so he would comment as part of hispresentation?

25 MR TURNER: Correct. As my learned friend has stressed,

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1	these are the documents that complete the disclosure of	1	evidence in accordance with your sincere belief.
2	swaps in Cheil that were disclosed and dealt with by	2	For that purpose, can you please read for the record
3	Professor Dow in his second report. He needs to bring	3	the declaration of an expert witness that you should
4	that up to date.	4	have there in front of you?
5	THE PRESIDENT: Mr Partasides?	5	THE WITNESS: Yes. I solemnly declare upon my honour and
6	MR PARTASIDES: Thank you, Mr President.	6	conscience that my statement will be in accordance with
7	Let me confirm what we have already confirmed in	7	my sincere belief.
8	writing to the Respondent, that to our understanding,	8	THE PRESIDENT: Thank you very much.
9	the transactions that we have disclosed the documents	9	I understand you will be making a presentation
10	of, to our knowledge, are all of the transactions that	10	instead of a direct examination. So, please, the floor
11	have been undertaken during the relevant period, indeed,	11	is yours.
12	for a period that extends beyond the document production	12	Presentation by PROFESSOR MILHAUPT
13	request that the Respondent has made.	13	THE WITNESS: Well, good morning again, Mr President,
14	So I repeat that confirmation that we have already	14	members of the tribunal. My name is Curtis Milhaupt
15	given in our correspondence over the weekend.	15	from Stanford University and it's an honour to have this
16	I have no objection to Professor Dow spending some	16	opportunity to address you this morning.
17	more time dealing with that new documentation in his	17	This is an overview of my presentation this morning.
18	direct presentation.	18	I'm going to begin by discussing the merger and its
19	THE PRESIDENT: Okay, thank you very much. That is noted	19	impact on the minority shareholders of SC&T before
20	and then the schedule will be amended on these lines.	20	turning to the role of shareholder activism in Korea,
21	Very good. I understand that is all that the	21	and the counterfactual scenario in which the merger had
22	parties have. We can then start with	22	been successfully voted down by the shareholders of
23	Professor Milhaupt. Thank you very much.	23	SC&T.
24	MR LINGARD: Mr President, I wonder if I might raise one	24	I'll then turn to my responses to comments that
25	small procedural point which I thought I ought raise now	25	Professors Bae and Dow have made on my report, before
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1	in fairness to the Professor before he begins his	1	concluding, and as has been noted, there are several
2	presentation. It is this. The members of the tribunal	2	annexes to my report which I'll reference in my
3	will have noticed that Professor Milhaupt's slide deck,	3	presentation.
4	provided to the tribunal last night, includes with it	4	Next, please.
5	four annexes of closely typed material at the back of	5	This is a list of my principal qualifications and
6	that deck, and I thought I ought note before the	6	experience. Obviously I'll be happy to answer any
7	Professor begins his presentation that if he does not	7	questions that you may have.
8	speak to those annexes, we will object to their entry to	8	I would simply like to note at this point that my
9	the record consistent with our discussion in the	9	professional interaction with Korea dates back almost
10	pre—hearing procedural conference.	10	25 years now, beginning with my participation in
11	I raise it now, before the presentation, as I say,	11	a project on Korean unification where I first came to
12	in fairness to the Professor, rather than waiting until	12	learn about Korea's developmental history, and the
13	he has spoken.	13	characteristics of the Chaebol.
14	THE PRESIDENT: Any comments on that?	14	I have remained in active contact academically with
15	MR PARTASIDES: My understanding, members of the tribunal,	15	Korea ever since that time, and I have published in
16	is that he will be referring to all pages of his	16	areas that are directly relevant to my report and to my
17	presentation.	17	testimony this morning.
18		18	Next, please.
	THE PRESIDENT: Okay.	T 0	
	THE PRESIDENT: Okay. Very good.	19	As you recall, I provided a report in this case at
19	THE PRESIDENT: Okay. Very good. PROFESSOR CURTIS MILHAUPT (called)		As you recall, I provided a report in this case at the request of counsel for the Claimant. And in my
19 20	Very good.	19	
19 20 21 22	Very good. PROFESSOR CURTIS MILHAUPT (called)	19 20	the request of counsel for the Claimant. And in my
19 20 21	Very good. PROFESSOR CURTIS MILHAUPT (called) THE PRESIDENT: Good morning, Professor Milhaupt.	19 20 21	the request of counsel for the Claimant. And in my report I sought to contextualise the merger and the

 $\ensuremath{\mathsf{I}}$ also sought to contextualise the merger by

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this hearing. So to that effect you have to give your

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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

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 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

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

family.

Next, please.

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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 family would have been averted.

Secondly, there would have been specific deterrents exercised against the family. It's very hard to imagine that if this transaction had voted down, the 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'll 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.

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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

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 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 family's future tunneling efforts.

I also believe that, contrary to Professor Bae's

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.

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.

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1 This merger was approved by shareholders and later 1 2 abandoned by the boards of directors. It is not 2 3 comparable to a merger which falls apart because 3 4 shareholders have voted it down, with is the 4 5 counterfactual. 5 Next slide, please. 6 6 7 I'll turn now to Professor Dow's second report and 7 8 this will be my final point before concluding. 8 9 Professor Dow asserts that there's a conflict 9 10 10 between my report and Mr Boulton's report with respect 11 to the price impact for the counterfactual scenario. 11 12 12 He says Mr Boulton says there would be an immediate 13 price impact, and he says I suggest that there may be 13 14 some price impact down the road in the future 14 15 With all due respect to Professor Dow, this is 15 16 16 incorrect. Mr Boulton is a quantum expert in this case. 17 He's opining specifically as to the amount of claimant's 17 18 damage resulting from the merger. I'm opining in this 18 19 particular section of my report on the potential of 19 2.0 2.0 shareholder activism of the kind illustrated by

If we could turn to annex 4.

corporate governance.

I have set out the direct, verbatim quotations from Professor Dow's report and my report, so the tribunal

Elliott 's opposition to the merger to improve Korean

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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 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 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.

25 THE PRESIDENT: Thank you, Professor. Any follow-up

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1 questions in direct?

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2 MS SNODGRASS: Nothing on direct.

3 THE PRESIDENT: It will be over to Mr Lingard.

4 Cross—examination by MR LINGARD

 $5 \quad \mathsf{MR} \; \mathsf{LINGARD} \text{:} \; \; \mathsf{Thank} \; \mathsf{you}, \; \mathsf{Mr} \; \mathsf{President}.$

6 Professor Milhaupt, good morning.

7 A. Good morning.

Q. Nicholas Lingard is my name. I represent the Republic
 of Korea in these proceedings. I'll 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?

- 17 A. It is. And first, let me begin by saying thank you very
 18 much for those kind and generous remarks. It's
 19 wonderful to see someone who shares a deep interest in
 20 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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- 1 A. Yes.
- Q. Very good.
- 3 Let's come to begin with your CV, if we could, 4 please, and I don't think this will take us terribly 5 long.
- 6 I'm right, sir, that you have an undergraduate
 7 degree from Notre Dame in 1984?
- 8 A. Correct, 1984.
- 9 Q. And that was in government and international studies?
- 10 A. Correct.
- 11 Q. And a law degree from Columbia, sir?
- 12 A. Correct.
- Q. And then it's my understanding that you carried out
 graduate studies at the University of Tokyo over two
 separate periods?
- 16 A. That's correct.
- 17 Q. And would I be correct, Professor, in saying you don'thave any formal qualifications in economics?
- 19 A. No formal qualifications in economics.
- 20 Q. Or in corporate finance, sir?
- $21\,$ $\,$ A. No, although, again, in the field of corporate,
- 22 comparative corporate governance, one is deeply immersed
- 23 in economics and corporate governance; you really can't
- $24\,$ do this work without at least being conversant and
- $25 \qquad \text{ understanding the principles} \, . \ \, \text{But I do not have formal} \,$

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- 1 training in those subjects.
- 2 Q. And you have spoken to this already, but so we have it,
- 3 you're now on the faculty at Stanford law school?
- 4 A. That's correct.
- $5\,$ $\,$ Q. And before you went to Stanford in 2018, you were on the
- faculty at Columbia law school; that's right, isn't it?
- 7 A. That's correct.
- 8 Q. And there you were the Fuyo Professor of Japanese law?
- $9 \hspace{0.5cm} \hbox{A. And also the Parker Professor of comparative corporate} \\$
- 10 law
- $11\,$ Q. And also the director of the Centre for Japanese Legal
- 12 Studies?
- 13 A. Director of the Centre for Japanese Legal Studies and
- $14 \hspace{1.5cm} \hbox{also the director of the Parker School of Foreign and} \\$
- 15 Comparative Law.
- 16 Q. You have professional competence in the Japanese
- 17 language; that's right, isn't it?
- 18 A. Yes
- 19 Q. Do you speak any Korean, sir?
- 20 A. I do not.
- 21 Q. Let me just cover off a few other roles if your CV, if
- 22 I may. I have it right that you've served as a visiting
- 23 scholar at the Bank of Japan Institute for Monetary and
- 24 Economic Studies?
- 25 A. That's correct.

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- 1 Q. And also as a research fellow with Japan's Ministry for
- 2 Economy, Trade and Industry?
- 3 A. Correct.
- 4 Q. I want now to move to some of your previous expert
- $\,\,$ $\,$ testimony, if I may. For that, can I invite you, sir,
- 6 to turn to page 366 of your expert report, which is
- 7 where your curriculum vitae begins. $\{F6/1/36\}$.
- Then if we turn further in to page 43, we see in the middle of page 43 a heading that says "Recent expert
- 10 testimony"?
- 11 A. Yes
- 12 Q. Do you see that, Professor?
- 13 A. Yes, I do.
- 14 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
- 17 just so we have it for the record. You also testified
- $18\,$ $\,$ in an another case, as I understand it, another US $\,$
- 19 litigation in 2002 in the US District Court for the
- 20 District of Columbia, the vitamin anti-trust litigation.
- 21 I have that right, sir?
- 22 A. Yes. That's a long time ago, and I don't have specific
- 23 recollection of what that was about.
- $24\,$ $\,$ Q. That's entirely fair . Do you recall the subject of your

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25 testimony in that case, Professor Milhaupt?

- 1 A. Honestly, I do not, as I sit here at the moment. I do 2
- 3 Q. If I put it to you that it was concerning the 4 information-gathering powers of the Japan Fair Trade
- 5 Commission under Japan's anti-monopoly law, would that sound right, sir? 6
- 7 A. Yes. it does.

- Q. And any other expert testimony experience, Professor, 8 9 beside the two listed in your CV and the one we have
- 10 just discussed and of course our conversation now?
- A. Yes. Well, I may have written reports in other cases. 12 Again, this is going back a long time now. I don't have
- 13 specific recollection of those. I was never called.
- 14 I was not deposed in those cases. So there have been
- 15 a handful of cases where I wrote a report, and then
- 16 there was nothing that ever came of it. The cases
- 17 settled or I was never contacted again. That's the
- 18 extent of my expert witness service.
- 19 Q. That's clear, thank you very much.
- 20 In this particular case, the one we are discussing 2.1 now, can I ask you, Professor, who first approached you 2.2 about serving as an expert?
- 2.3 A. I was approached by a member of the law firm of -- let's 2.4 see. I have to recall here for a minute.
- 25 Kobre & Kim, actually a former student of mine,

- 1 Nathan Park, contacted me initially.
- 2 Q. Understood, thank you very much.
- 3 Can I invite you please to turn to paragraph 14 of 4 your expert report, Professor. It's on page 6.
- 5 $\{F6/1/6\}$
- 6 A. Yes.

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- Q. And you list there what you say at (i) are the materials you were provided in the course of preparing your
- 9 report, and then at (ii) separately you list the 10 materials you reviewed.
- 11
- Simply for good order, as we proceed, I want to 12 confirm that you did in fact review the materials also
- 13 at (i); I have that right, don't I?
- A. Absolutely, yes. 14
- Q. So, for example, as reflected in the first bullet point 15 16 there, you reviewed the 2019, the first expert report of
- 17 Mr Richard Boulton?
- 18 A. That's correct.
- 19 Q. And at the time you submitted your expert report, did 2.0 you also review Mr Boulton's second report, which was
- 21 filed the same date as yours?
- 2.2 A. No, I had not seen -- I had not seen his second report 23
- 24 Q. But you have now?
- 25 A. I have now.
- 30

- 1 Q. And you have also now obviously seen the expert report 2 of Professor Bae?
- 3 A. Yes, I have.
- Q. And also the second report of Professor Dow? 4
- 5 A. Yes. I have.
- Q. I want to come to the fact exhibit with which you were 6 7 provided in the course of preparing your report. Only
- 8 one is listed there in paragraph 14, so it's at the
- 9 fifth bullet point. Do you see it there, it's exhibit
- 10 C-585. It's described as a handwritten memo of
- , who you may know was a Blue House 11
- 12 staffer, and you describe it there as a document
- 13 produced by the Republic of Korea. Do you see that,
- 14 sir?
- 15 A. I do.
- 16 Q. Did you review that document?
- 17 A. If it's listed here, I did. I believe I recall
- 18 specifically what this memo is, but it would be helpful 19 to have my memory refreshed about this.
- 20 Q. Well, you don't cite it anywhere, which is why I'm
- 2.1 getting at the question, sir. I was wondering if you
- 22 requested this fact exhibit specifically from counsel?
- 2.3 A. No, I have not requested this specifically from counsel.
- 2.4 And do I have it right, therefore, that you were not
- shown this Mr 's testimony in Korean court

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- 1 proceedings?
- A. Sir, could you repeat that? 2.
- 3 Q. You were not shown this Mr stestimony in Korean
- court proceedings?
- A. Well, no, it says handwritten memo. So I assume that 5 6 does not refer to testimony in court proceedings.
- 7 Q. Sir, you don't know that Mr testified in Korean
- 8 court that at the time he prepared this handwritten
- 9 memo, he was completely ignorant of any meeting between
- 10 Samsung's and former President
- 11 A. I'm not aware of the facts surrounding the production or 12 the writing of this memo.
- 13 Q. Paragraph 14 also says you were provided with some of
- the parties' written submissions. We see there amended 14
- Statement of Claim, statement of Reply, Defence and so 15 16
- 17 As you reviewed those, did you ask counsel for any 18 other fact exhibits cited in those submissions?
- 19 A. I may have. I don't recall specifically what I would
- 2.0 have or would not have requested. If there was
- 21 something that appeared relevant to me for the writing
- 2.2 of my report I would have requested it, but I don't --
- 23 as we sit here now, one of the challenges here was that
- 2.4 this report was written some time ago because of the
- 25 delays we all experienced because of COVID. So I don't

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- 1 recall specifically.
- 2 Q. Let's move on.
- 3 You spoke this morning and you testify in your 4 report to the so-called Korea discount, and that's the 5 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?
- 10 A. Yes, I believe that the Korea discount is unique to 11 Korea in the sense that it reflects corporate governance 12 risk. That's the way that I would explain the Korea 13 discount. It reflects corporate governance risk, the risk of minority shareholder expropriation at the hands 14 15 of controlling shareholders in the Chaebol.
- 16 Q. And you consider, that risk that you've just described, 17 sir, its reflection in stock prices to reflect 18 a rational fear?
- A. Well, I believe so, yes. 19
- Q. And the Korea discount has an observable impact on stock 20 2.1 prices of Korean companies. That's right, isn't it?
- 2.2 A. It is the case that Korean stock prices appear to 2.3 demonstrate a discount that is somewhat unique or 2.4 separate from a more generic holding company discount 25

which is witnessed or experienced in other capital

- 1 markets
- 2 Q. It's also observable, isn't it, that the 3 price-to-earnings ratio of Korean companies is lower relative to their global peers?
- 5 A. That is the view of the OECD and the report that 6 I cited. Its economic report for Korea in 2018 makes

7 that point.

- 8 Q. And indeed, that has consistently been so; that's right, 9 isn't it. sir?
- 10 A. I believe so.
- 11 Q. And so we can agree that the Korea discount has been 12 a longstanding feature of the Korean capital market?
- 13 A. I believe that's correct.
- 14 Q. And that's because the risks you've described, as you characterise them, corporate governance risks, have 15 16 existed for a long time?
- A. Yes. Some commentators attribute additional factors, 17 18 low dividend payments or geopolitical risk from the 19 Korea peninsula, but, as the OECD economics department 2.0 points out, and the OECD economics report for Korea 21 points out, the principal cause of the Korea discount is
- 2.2 this corporate governance risk or this tunneling risk. 23 Q. Would you turn with me to paragraph 66 of your report, 2.4 please, Professor. It's on page 24. $\{F6/1/24\}$.
- 2.5 A. Yes, thank you.

1 Q. We see there that the Korean Government has taken

measures to increase the transparency of Chaebol

3 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 6 7 those measures at least since the Asian financial crisis 8 of 1997?
- 9 A. Yes, I believe that they began to try to address these 10 issues at that time.
- 11 Q. And in your view, sir, those measures have been 12 insufficient to eliminate the corporate governance risks
- 14 Yes, and that's not simply my view. I think that is the
- 15 consensus view of observers of Korean law and the Korean 16 market
- 17 Q. And therefore those measures have been insufficient to 18 reduce the Korea discount?
- 19 A. Legal measures on their own appear to have been
- 20 insufficient to reduce the -- or to eliminate the Korea 2.1 discount. ves.
- 2.2 Q. We could agree, could we not, that the Korea discount is 2.3 stubborn?
- 2.4 That would be one way to put it. It has persisted, yes.
- 25 Q. You spoke to this in your presentation earlier this

- 1 morning, sir. In 2016 I have it right, do I not, that
- 2 Korea adopted a stewardship code?
- 3 A. That's correct.
- Q. And that was another measure directed at improving 5 corporate governance?
- 6 A. Yes, I believe so.
- 7 Q. And that stewardship code has not eliminated the Korea 8 discount, has it, sir?
- 9
- A. Well, to this point it hasn't, but the stewardship code 10 has only been in effect since 2016. As I mentioned, it
- 11 was 2018 when the NPS signed on, which I think is very
- 12 important. The NPS is a very important actor in Korean
- 13 corporate governance. So it is still early days, and
- I think it's too early to draw a conclusion. I think 14
- 15 it's an important step, but has it eliminated the Korea
- 16 discount to this point? No.
- Q. Let's move on, please, to paragraph 67 of your report. 17
- 18 We see there, if I understand your testimony correctly,
- 19 Professor, that in May of 2017, the current Korean
- 2.0 President, President , was elected on what you
- 21 characterise as a platform of ending corrupt practices
- 2.2 and severing the Chaebol government nexus.
- 23 Have I understood your testimony correctly, sir?
- 24 That is my understanding.
- 2.5 Q. And today the Korea discount still exists, doesn't it?

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- 1 A. It does. If I could add just one point? 2 Q. Please 3 A. That is, referring back to my presentation, we don't 4 know what the situation would be today with the Korea 5 discount if this merger had actually been successfully opposed. I believe it would have been quite an 6 7 important development for Korea. So we don't know what 8 the situation would be in the event that there would 9 have been a powerful demonstration of shareholder
- activism in opposing successfully this merger. 11 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

"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. $\{F6/11/31\}.$ 1
- 2 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?

- 9 A. I do.
- 10 Q. And then let's go, please, to paragraph 89. You tell us 11

"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?

- 17 A. Yes, I do.
- 18 Q. What I would like to do now is compare that if I could, 19 please, to your presentation from this morning. I see 2.0 you have a hard copy in front of you?
- 2.1
- 2.2 Q. If I could invite you, please, to go to slide 8 in your 23 deck. I'm looking at the second major heading in blue 2.4 on slide 8 of your deck, Professor?
- 25 A. Yes

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1 Q. You say there, in rather stronger terms:

"In a semi-strong efficient capital market SC&T's stock price would be expected to react immediately to successful opposition."

And I'm taking it, if I may say so, sir, that we've moved from potential byproduct and important step, to reacting immediately.

My question is this: have you considered the magnitude of any immediate reaction?

- 10 A. Could you clarify the question, sir?
- 11 Q. Of course. Have you considered the magnitude of the 12 immediate reaction in the stock price of Samsung C&T to 13 the rejection of this merger in the counterfactual you 14 consider?
- 15 A. Well, if I may, let me begin by explaining, the points 16 that you've raised or the quotations that you read from 17 my report are discussing a general impact on the Korean 18 capital market, and in my presentation I separated the 19 general impact on the Korean capital market, which is 2.0 the first point in my slide, this slide 8, and then 2.1 there's a specific reaction as to SC&T.

In my report I was instructed to, and I did, speak in more general terms about the potential benefits of shareholder activism

2.5 Here I'm speaking more specifically with respect to

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1 the stock price reaction because all of the experts in 2 this case agreed that the capital market is semi-strong 3 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.

- 15 $\ensuremath{\mathsf{Q}}.$ And just to make sure I have your response to my 16 specific question, sir, you have not considered the 17 magnitude of that immediate reaction in the stock price?
- 18 A. That's correct.
- 19 Q. Would you expect it to effectively be doubling the stock 2.0 price overnight, Professor?
- 21 A. I have undertaken no effort to gauge or to measure the 2.2 magnitude. I'm speaking in conceptual terms here.
- 23 Mr Boulton is the valuation expert. So I have no 2.4 opinion on that.
- 2.5 Q. And as to the Korea discount specifically, you described

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- 1 it in your presentation earlier this morning -- excuse 2 me, you described rejection of the merger as "a pathway 3 to eventual mitigation of the Korea discount". Just to 4 make sure I understand your testimony, is that the same 5 or different than an immediate reaction, sir?
- A. Again, and I apologise if I was unclear, but there's two 6 7 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?
- 7 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?
- 10
- 11 Q. And the day before the merger vote, are we agreed, sir, 12 had only a small indirect stake in Samsung 13 Flectronics?
- 14 A. Well -- well, are you speaking in terms of -- just 15 clarify what you mean by that, when you say a small 16 indirect stake.
- Q. You can tell me what you think it means. A small 17 18 indirect stake. He had a shareholding through 19 affiliates in Samsung Electronics and it was not large?
- 2.0 A. Okay, I would agree with that.
- 21 Q. And the day after the merger vote, even assuming the 2.2 merger had been rejected, his stake in Samsung
- 23 Electronics would have remained the same. I have that 2.4 right, don't 1?
- 25 A. Well, that's true. However, in the event of the

1 counterfactual, the market would have learned something 2

- very important, which is that he did not have the
- 3 capacity to gain direct control over 4-plus% of Samsung
- Electronics that was held by SC&T. That's an important 4 5 fact that would have been delivered to the market in the
- counterfactual. 6
- 7 Q. The day before the merger vote, the Korean law on public company mergers provided for those mergers to be priced 8
- 9 at the market prices of the company. You describe that
- 10 as formalistic corporate law doctrine. We agree that
- 11 was the law the day before the merger vote, don't we?
- 12 A. You are referring to the Capital Markets Act?
- 13 Q. Yes.
- 14 A. Which specifies that the merger ratio should be set by
- 15 virtue of trading volumes, trading prices in a one-month 16 period prior to the announcement of the merger.
- 17 Q. That's precisely what I'm referring to.
- 18 A. Yes, that's what the Capital Markets Act provided.
- 19 Q. And the day after the merger vote, assuming the merger
- 20 vote had failed, that would still have been the Korean
- 2.1 law on public company mergers. I have that right, don't
- 22 17

2.3

A. I believe so.

- 2.4 Q. Very good. Let's move on. I want to come to the
- 25 context for the merger we've been discussing. First,

1 some general points, Professor Milhaupt.

2 I understand it's your view that the merger was 3 a microcosm of what you call longstanding features of the Korean political economy and corporate governance

5 environment. I have your testimony correct, sir?

- 6 A. That's the way I described it in my report, yes.
- 7 Q. And you say that historical patterns of interaction 8 between the Chaebol and the Korean Government provide
- 9 important context for the merger that is at the heart of
- 10 Elliott's claim, I have that right, sir?
- 11 A. I believe so, yes.
- 12 Q. And you would characterise those historical patterns in
- 13 the relationship between Chaebol and the Korean
- 14 Government as reflecting what you call a symbiotic
- 15 relationship: I have that right. Professor?
- 16 A. That's the way I characterise it, yes. I believe that
- there's a longstanding relationship of both mutual 17
- 18 benefit and mutual dependency between the Korean
- 19 Government and the Chaebol groups.
- 2.0 Q. And in fact I understand it's your view that Chaebol are
- 21 so central to the Korean economy that they are properly
- 2.2 characterised as too big to fail?
- 23 A. Well, that's taken from the title of an article by
- 2.4 several economists and in the article they are pointing
- 2.5 out that there could be a moral hazard effect to this

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- 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.
- 9 Q. You have just described a series of risks,
 10 Professor Milhaupt. Can we agree that those are risks
 11 that would be known to any sophisticated investor in
 12 a Chaebol?
- 13 A. I think you have to separate out two different types of
 14 risk that are at issue in this case or really only
 15 one is at issue in this case. First, yes, I agree that
 16 a sophisticated investor would be aware of corporate
 17 governance risk in the Chaebol. This tunneling risk
 18 that I have described, a sophisticated investor should
 19 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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- 1 different from corporate governance risk.
- 2 Q. You tell us in your report, sir -- I want to make sure
- 3 I have it right that in the decades leading up to
- 4 Elliott 's investment in Samsung C&T, the Chaebol
- 5 exercised what you would call outsized influence in
- 6 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
- $\begin{array}{lll} 10 & & \text{Korean developmental experience.} \\ 11 & & \text{Q}. \end{array} \text{ Let's come briefly away from Chaebol in general to the}$
- 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?
- 16 A. That's correct.
- Q. Indeed, it accounts for a significant portion of theKorean economy?
- 19 A. I think it accounts for perhaps something like 12.5% of $$\tt 30$$ 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?
- 24 A. I think that's accurate, yes.
- $25\,$ $\,$ Q. And those transactions long before the merger were

designed to consolidate control over the group in

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- 3 A. I think that's correct, yes.
- 4 Q. And the merger that is our subject was a continuation of those ongoing series of steps taken to pass control to
 - those ongoing series of steps taken to pass control to
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A. I believe that's accurate, yes.

A. Yes, I believe that's correct.

- Q. And any sophisticated investor in a Samsung company
 would have been aware of that ongoing series of steps to
- pass control to ?
- $12\,$ $\,$ 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?
- 15 A. Yes, I think that's accurate.
- $16\,$ $\,$ Q. And to be a little more specific, you tell us that those
- $17 \hspace{1cm} \hbox{corporate governance problems manifested in the risk of} \\$
- 18 a value transfer from shareholders of a company in which
- 19 the controller or his heir had a small stake, to
- shareholders of a company in which the controller or his
- 21 heir had a larger stake. I have that right?
- 22 A. Yes, and that was my illustration in my presentation.
- 23 Q. And that's, sir, what you call tunneling risk?
- $24\,$ $\,$ A. Well, yes, that is what everybody calls tunneling risk.
- 25 It's not my term. It's a well-accepted term in the

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- 1 literature .
- $2\,$ $\,$ Q. Again, any sophisticated investor in a Chaebol would
- 3 have been aware of that corporate governance risk?
- 4 A. Yes, again, the corporate governance risk would be well
- 5 understood by a sophisticated investor, but my
- 6 understanding is that that is really not why we're here.
- We're here for a different reason, which is an
- 8 allegation of improper government influence on the 9 process by which that transaction was approved by
- 10 shareholders.
- 11 Q. I have your testimony, thank you.
- Can I invite you, please, to turn to paragraph 85,
- $13 \hspace{1cm} \text{and with that we will move to a slightly \ different} \\$
- 14 subject, Professor. 85 of your expert report, I should
- 15 say, on page 31 $\{F6/1/31\}$.
- 16 A. Yes.

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- 17 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
- 20 investor community?
- 21 A. Yes
- 22 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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Τ	footnote 100	, sır !
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- A. I do.
- 3 Q. I'm going to invite you to turn up that article with me,
- 4 please. It's at tab 4 of the binder in front of you
- 5 {C/568/1}.
- 6 Do you have it, Professor?
- 7 A. I do.
- Q. And this article is entitled "The importance of Hyundai
 Motors, Lotte Chemicals' Introduction of Remuneration
- 10 Committees.'
- 11 It's dated June 3, 2020. Are we looking at the same 12 thing?
- 13 A. Yes.
- $14\,$ $\,$ Q. This is the article you cite in support of Elliott's
- corporate governance initiatives having gained traction
- in the domestic Korean investor community.
- 17 If we turn to page 2 of the article , I think we see
- that to which you refer $\{C/568/2\}$. In the final
- 19 paragraph of the article there's a reference there to
- 20 Hyundai Motors and Lotte having implemented remuneration
- $21\,$ committees in response to the recommendations of what is
- described as an American hedge fund Elliott Management.
- 23 That is what you were referring to, sir?
- 24 A. Yes, it is.
- 25 Q. This article is from 2020. But it's describing

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- 1 introduction of remuneration committees in 2019. Do you
- 2 know, sir, that in that same year, 2019, Elliott also
- 3 proposed to Hyundai that it should pay out larger
- 4 dividends
- 5 A. I don't have specific knowledge of that.
- 6 Q. So you don't know, sir, that that proposal to Hyundai by
- 7 Elliott to pay out larger dividends was rejected by
- 8 a majority of Hyundai shareholders?
- 9 A. Again, I don't have specific knowledge of that.
- $10\,$ $\,$ Q. Are you aware at the same time in 2019 Elliott also
- proposed that its nominees be appointed as directors of
- 12 the board of Hyundai?
- 13 A. Yes, I am familiar with that.
- 14~ Q. And so you're familiar that that proposal, that Elliott
- have board seats at Hyundai, was rejected by a majority
 - of Hyundai shareholders?
- 17 A. Yes.

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- 18 Q. That was 2019. You know too, don't you, that Elliott
- was an investor in Hyundai the year earlier, 2018?
- 20 A. Yes.
- $21\,$ $\,$ Q. And you know that in that year, 2018, Elliott
- 22 successfully led a campaign to block a merger between
- $23 \hspace{1cm} \hbox{two Hyundai affiliates} \, , \, \, \hbox{Hyundai Mobis and Hyundai} \,$
- 24 Glovis?
- $25\,$ $\,$ A. Yes, my understanding is that transaction was called off

1 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
- 4 price of Hyundai Mobis after Elliott successfully
- 5 blocked that merger?
- 6 A. Well, it's described in Professor Bae's report.
- 7 Q. And what happened to the share price, sir?
- 8 A. Well, I believe that it declined.
- 9 MR LINGARD: Thank you very much. I have nothing further.
- 10 Thank you, Professor Milhaupt.
 - Mr President, thank you.
- 12 THE PRESIDENT: Thank you very much, Mr Lingard.
 - Redirect?
- 14 MS SNODGRASS: No questions on redirect.
- 15 THE PRESIDENT: No questions.
- 16 Questions from THE TRIBUNAL
- 17 MR THOMAS: Just a follow—up question. If you could turn to 18 page 6 of your slide.
- 19 THE PRESIDENT: Actually we didn't receive a hard copy of
- $20\,$ the slides . You did? But the two of us, I don't think
- 21 we did.
- 22 TRIBUNAL SECRETARY: It was placed on your chair as you came
- into -- I hope you're not sitting on them.
- 24 MR THOMAS: It's entirely possible.
- 25 THE PRESIDENT: No problem, we will sort it out.

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

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- 7 MR THOMAS: I take it from the textbook example that that is
 - an aspect of your analysis, which is the textbook
- 9 example is that the board acts in the best interests of
- 10 the shareholders. But in your report, and I read
- a number of your exhibits, you also mention that in
- 12 Korea the board is held to have fiduciary duties to the
- company, not to the shareholders?
- 15 company, not to the sharehol
- 14 A. Correct.
- 15 MR THOMAS: So this is an aspect of Korean corporate law
- which is, I guess, in addition to the capital markets
- 17 law which has the statutory merger ratio. This is
- another aspect of Korean corporate law?
- 19 A. Correct.
- 20 MR THOMAS: I also noted that in one of your exhibits that
- 21 the civil law courts of Korea tend to take a formalistic
- 22 interpretation as opposed to the approach that might be
- 23 taken by common law courts.
- 24 To what extent do these other aspects, the way in
- $25\,$ which the courts approach these issues, the corporate

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1	law doctrines, to what extent do they contribute to
2	this, I think Mr Lingard called it stubborn, I think you
3	called it persistent, Korea discount?

4 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

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1 have held this merger to be fair.

2 So I think your question is very astute, and I think 3 that this has contributed to the persistence of the 4 Korea discount

5 MR THOMAS: Thank you.

6 MR GARIBALDI: Professor, I have one question which is kind 7 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?

19 A. Yes.

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20 MR GARIBALDI: Am I right?

21 A. Yes, I believe that's correct.

22 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?

25 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 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 lossided 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?

19 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

1	transactions.	1	disentangle these two separate components of the Korea
2	But I think what happens more generally, my sense is	2	discount.
3	that the Chaebol leaders are motivated for a certain	3	THE PRESIDENT: In a Chaebol, like Samsung at least, that is
4	goal, such as transferring control from father to son,	4	not yet a holding company, you discuss or at least some
5	and they take advantage of these $$ these motivations to	5	of the experts discuss holding company discount in
6	engage in these transactions.	6	connection with companies like SC&T.
7	So rather than being kind of, you know, just simply	7	Is that because of the strategic ownership of key
8	opportunistic, here is an imbalance, let's push through	8	assets in the company and the indirect holdings that
9	an unfair merger, I think there's much more calculation	9	effectively make some of these companies in a Chaebol
10	that goes into these in terms of planning well in	10	a holding company, not because of its formal role, but
11	advance how we are going to engineer a transfer of	11	because of the holdings that they have $$
12	control from father to son, for example.	12	A. Yes, sir.
13	MR GARIBALDI: Thank you.	13	$Q. \$ in the overall structure?
14	THE PRESIDENT: You discuss or you comment briefly on	14	A. Yes, sir, that's correct. So there are holding
15	Professor Dow's discussion of the holding company	15	companies under Korean law that are designated as such
16	discount and you discussed that in the context of the	16	by regulation, by the FTC. So those are formally
17	Korea discount. It would be helpful if you could	17	holding companies. But there are other companies that
18	elaborate a bit further on the distinction, if there is	18	are de facto holding companies. So new SC&T, the merged
19	one, between the holding company discount and the Korea	19	entity today, is a kind of de facto holding company for
20	discount. I mean, is there an overlap? To what extent	20	the group. So it's important or possible to distinguish
21	there is an overlap in your view?	21	possible formal from de facto in that respect. So your
22	A. Yes.	22	analysis is exactly right.
23	THE PRESIDENT: Because it seemed to me that you didn't	23	THE PRESIDENT: So in those instances where we are
24	reach a clear view or clear conclusion on that issue.	24	discussing a company in a Chaebol structure that acts in
25	A. Okay, yes, thank you, sir, that's also a very astute	25	effect as a holding company, how would you distinguish
	57		59
1	question.	1	between a Korea discount and a holding company discount
2	So I think that there is a generic component to what	2	in those circumstances?
3	is called the Korea discount, and there's	3	A. Well, it's admittedly challenging, and I think that one
4	a Korea—specific component. The terminology is used	4	of the interesting features of this case is it's, to my
5	differently by different people and it creates a lot of	5	knowledge, the first case that would require actually
6	confusion.	6	separating out those components. And my understanding
7	The way I think of it is there is a generic	7	is that the expert, the valuation expert for the
8	component, which is a holding company discount, and that	8	Claimant, his analysis is doing exactly that, separating
9	is seen in capital markets around the world. It tends	9	out the specific corporate governance risk, Korea
10	to be the case that a holding company trades at	10	discount, from the more generic holding company
11	a discount to net asset value of its underlying	11	discount.
12	holdings, and that could be because it's hard to manage	12	THE PRESIDENT: Based on what you have seen in this case,

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.

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

So that component is separate from the holding company discount. So that's the way that I would try to

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

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1	was a war and a side a	1		a small binder of materials. I would be used to begin
1 2	governance risk over and above the more generic holding	1 2		a small binder of materials. I want though to begin, please, with your fourth witness statement, the one we
3	company discount.	3		received yesterday, and if I could ask you, please, to
4	THE PRESIDENT: Okay. Thank you very much, Professor. That concludes your examination. Thank you.	4		go first, to frame our discussion, to paragraph 19 of
5		5		your fourth witness statement. $\{D1/4/5\}$.
6	A. Thank you very much. THE PRESIDENT: Thank you for your time.	6		
7		7	٨	Are you there, Mr Smith?
8	(The witness withdrew)	8		I am there, yes.
9	THE PRESIDENT: We are a bit ahead of time. We could have a break now if that is convenient and then continue in	9	Q.	And it's in that paragraph, paragraph 19 of your fourth
	15 minutes with Mr Smith.			witness statement, that you describe your calculation of
10		10		the profit made by Elliott on the swaps in Cheil and
11	Thank you. We continue at 10.35.	11		SC&T. You see that in paragraph 19, sir?
12	(10.18 am)	12		In the intro section, yes.
13	(A short break)	13		Yes?
14	(10.35 am)	14		Yes, I see that.
15	MR JAMES SMITH (recalled)	15	Q.	And the experts can take up the question of how that
16	THE PRESIDENT: Okay. We will resume.	16		number is calculated, the arithmetic. I'm simply aimir
17	Good morning, Mr Smith.	17		to situate our discussion that your calculation of
18	THE WITNESS: Good morning, Mr President.	18		Elliott 's profit on swaps in Cheil and SC&T is
19	THE PRESIDENT: Welcome back.	19		49.5 billion Korean Won. 49.5 billion Korean Won; yes
20	THE WITNESS: Thank you.	20		Yes, I see that.
21	THE PRESIDENT: Because your examination was concluded,	21	Q.	And I start there, as I say, to frame our discussion.
22	I should remind you that you are required to tell the	22		It's a number I would ask, sir, that you bear in mind a
23	truth, the whole truth and nothing but the truth.	23		we proceed, and I would also respectfully ask that of
24	I won't ask you to read the declaration, but you	24		the members of the tribunal, a profit of 49.5 billion
25	understand that you are under the commitment that you	25		Korean Won.
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1	have already made?	1		You then compare that to your calculation of
2	THE WITNESS: Yes, Mr President, I understand it.	2		Elliott's trading losses on SC&T shares, and that
3	THE PRESIDENT: Very good. Are there any questions on	3		trading loss is a calculation you describe in
4	direct?	4		paragraph 18, the preceding paragraph. Go with me to
5	MR PARTASIDES: There are none, Mr President, thank you.	5		paragraph 18, if you would, please, sir.
6	THE PRESIDENT: I hand over to Mr Lingard.	6	Α.	Yes.
7	Cross—examination by MR LINGARD	7		And in the final line of paragraph 18 you describe
8	MR LINGARD: Thank you, Mr President.	8	٦.	a trading loss of 103.9 billion Korean Won. We're in
9	Mr Smith, hello once again.	9		the same place, Mr Smith?
10	A. Hi there.	10	Α.	Yes.
11	Q. You will know, sir, that we received your fourth witness	11		And I want to look at how you have calculated that
12	statement yesterday, Sunday. And also, sir, that over	12	٦.	trading loss. It's a simple calculation. You describe
13	the course of the last week we've received in the order	13		the amount Elliott spent to acquire its shares in SC&T
14	of 300 pages of documents from the Claimant since the	14		and you subtract from that the amount Elliott recouped
15	hearing in this arbitration began.	15		when it sold its shares in SC&T. I have that right?
16	I begin with that note simply by way of reserving	16	А	You do.
17	the Republic's rights with respect to the adequacy and	17		Let's look at the numbers that form part of that simple
18	timing of the production of that evidence, but also,	18	٦.	arithmetic in paragraph 18 of your fourth witness
19	sir, to reassure you that will not be the subject of our	19		statement, sir.
20	discussion today.	20		You tell us that Elliott spent 685.6 billion Korear
21	The subject of our discussion will be the content of	21		Won to acquire shares in SC&T. Do you see that, sir?
22	that evidence, the swap transactions, evidenced in your	22	Д	Yes.
23	witness statement received yesterday and in the various	23		And in your calculation of Elliott's trading loss you
24	materials I have just described.	24	۹.	subtract from that what you say Elliott recouped, and
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My colleague has just passed you in the ordinary way 62

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?
- 6 A. Yes.
- 7 Q. And do you know, sir, that that's less than the amount
 8 the Claimant itself says in its submissions and in its
 9 damages calculations in this arbitration that it
 10 recouped upon the sale of SC&T shares?
- 11 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?
- 16 A. You would have to show me a document to help me17 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.
- 22 A. Let me just read 18.
- 23 Q. Of course, take your time. (Pause).
- $24\,$ While Mr Smith is reading, for the Opus operator,
- 25 I'm looking at the statement of Reply, rather than

- 1 Mr Smith's fourth witness statement. The Claimant's statement of Reply. $\{B/6/16\}$.
 - Are you ready, Mr Smith?
- 4 A. Yes, I'm ready.

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- Q. And the first sentence of paragraph 18 of the Claimant'sstatement of Reply says:
- 7 "... the Claimant invested 685 billion Korean won in SC&T ..."
- 9 You see that, sir?
- 10 A. I do, yes.
- Q. And that's consistent with the amount you describe in
 paragraph 18 of your fourth witness statement, the
 amount Elliott spent to buy shares in SC&T; yes?
- $14\,$ $\,$ 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 havingrecouped only 636 billion Korean."
- 20 I think the "won" is missing. 636 billion Korean 21 Won; do you see that, sir?
- 22 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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- 1 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
- 8 appear on page 185 of the Claimant's opening in this
- 9 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
- 12 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 for that.

 Help me, if you would, to subtract 636 from 685?
- 19 A. You're breaking your promise of last week.
- 20 Q. I knew you would say that, Mr Smith.
- 21 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
 49 billion Korean Won.
- Let me take you right back to where we began, sir,

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- $1 \hspace{1cm} \text{and to paragraph 19 of your fourth witness statement,} \\$
- 2 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?
- 7 A. I see that.
- 8 Q. And we can agree again, taking numbers as numbers, if
 9 one were to offset that trading profit from the trading
 10 loss you just calculated, it comes to an overall trading
 11 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
- 14 I agree with your math.
- 15 MR LINGARD: Very good. I have nothing else, Mr Smith.
 16 Thank you very much.
- 17 Mr President, thank you.
- 18 THE PRESIDENT: Thank you very much. There will be questions on redirect?
- 20 Examination—in—chief by MR PARTASIDES
 21 MR PARTASIDES: Yes, thank you very much.
- 22 Mr Smith, let's go back to the paragraph in the
- Claimant's Reply that you were taken to. This isparagraph 18, and the Figure of 636 billion Korean Won.
- 25 A. Yes.

- 1 Q. To situate ourselves, I'm right, aren't I, that that was 2 recouped by way of the Settlement Agreement entered into 3 by Elliott and Samsung; yes?
- A. That's correct. 4
- Q. Do you happen to know whether income tax was paid on the amounts received under the Settlement Agreement by
- 8 A. Yes, it was

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- 9 Q. Can you help us understand whether that is relevant to 10 the difference between the 582.3 billion Figure in your 11 paragraph 18 of your latest witness statement, and the 12 636 billion Korean Won Figure we see in paragraph 18 of 13
- A. Yes, I think that would be relevant. 14
- 15 MR PARTASIDES: Thank you. No further questions.
- THE PRESIDENT: Thank you very much. 16
- 17 Questions from THE TRIBUNAL
- 18 MR GARIBALDI: Mr Smith.
- 19 A. Hello

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- MR GARIBALDI: Let's turn to paragraph 11 of your most 20 2.1 recent testimony, written testimony.
- 2.2 A. Yes. $\{D1/4/3-4\}$.
- 2.3 MR GARIBALDI: You talk about three purposes of Elliott's
- 2.4 increase in short positions in Cheil in the form of 25 swaps.

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1 Let's turn to the third purpose. You say: "Third, in (what we considered at the time) the very 2 3 unlikely event that the Merger was approved, the Cheil swaps would offset some of the downward movement in the 5

price of SC&T shares that was to be expected following their exchange into overvalued New SC&T shares upon the

7 consummation of the Merger." 8

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.

2.4 MR GARIBALDI: All right. I understood that as a general 25

purpose, but this particular point, you say in the very 70

1 unlikely event that the merger was approved, the Cheil

swaps -- you are betting, because these are shorts -

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- MR GARIBALDI: $\,--\,$ that the price would go down? 4
- 5 A. Yes
- MR GARIBALDI: So the bet was that if the merger is 6 7
 - approved, the Cheil share price would go down?
- 8 A. Yes. So --
- 9 MR GARIBALDI: Explain that. That part is the part I don't 10 understand
- 11 A. Yes. So we thought that the market price of Cheil was
- 12 about two and a half times its actual value. So our 13
 - SC&T shares, which were trading at a huge discount to
- 14 their actual value, would become Cheil shares that were 15 trading at two and a half times their actual value.

16 Therefore we felt that they would trade down to 17 their actual value, which would be 70 or 80% lower, and 18 so the Cheil shares we have in our hand, received in

- 19 exchange for the SC&T shares, would fall very quickly.
- 20 MR GARIBALDI: After the approval?
- 2.1 A. Yes. Yes. Yes.
- MR GARIBALDI: Okav. 22
- A. We also felt they were, as you will see from point $\mathbf{1}$, 2.3
- 2.4 overvalued anyway. But once the merger was approved,
- 2.5 you knew with certainty you were going to receive these

1 massively overvalued Cheil shares. So to put the short

2 exposure in place before the collapse would give you 3 some protection to that collapse. That was -- that's

the rationale behind the third point.

5 MR GARIBALDI: All right, thank you.

6 Let me turn to paragraph 13.

7 A Yes

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8 MR GARIBALDI: Let's focus on the last sentence {D1/4/4}:

"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?

17 A. Yes, sir. That's a very similar point. So --

18 MR GARIBALDI: I realise it's a very similar point, but

19 I would like your explanation.

2.0 A. Yes. So at the point the merger was approved, we had 21 insufficient Cheil short exposure to cover us for all of

2.2 the SC&T shares that did not benefit from put back

23 rights. And so we increased the Cheil swap to ensure

2.4 that all of the shares that didn't benefit from put back

2.5 rights and that therefore would become Cheil shares had

1	a matching short Cheil swap, so that we were protected	1	SCT.
2	to that post—merger value collapse that we perceived	2	Again, small profits, but they are included in the
3	would occur in the Cheil shares.	3	number, so the number is a little conservative. But
4	MR GARIBALDI: Okay.	4	that's what the arbitrage piece is referring to. I hope
5	My final question is this: in the next paragraph it	5	that was clear.
6	says, the first sentence:	6	MR GARIBALDI: It was. One final question.
7	"Following 20 July 2015, we also undertook some	7	This type of investing, may I call it hedging
8	arbitrage investing in SC&T and Cheil swaps."	8	investing? I don't know if it is a technically correct,
9	A. Yes.	9	but to my mind I would call it hedging investment. Is
10	MR GARIBALDI: Would you explain this further, and for the	10	this the normal business of Elliott or was it at the
11	benefit of all of us —— I think I know, but —— please	11	time?
12	remind us what arbitrage investment is.	12	A. Yes, we undertake, or Elliott, when I was there,
13	A. Yes. Arbitrage investing, which is another strategy	13	and I believe they still do, undertakes some investing
14	that we pursued at Elliott on occasion, involves	14	of this style.
15	identifying securities that are the same or	15	These days it's quite rare that these arbitrages
16	substantially similar in nature, but the price is	16	exist . In this case, prior to the merger being
17	slightly different, perhaps because they are traded in	17	announced, the ability to get short Cheil shares was
18	different markets. One might be a local share, the	18	very limited . It was very limited because the stock
19	other might be an ADR, but they ought to trade at the	19	borrow, the ability to borrow Cheil shares, was hard.
20	same price, but they don't.	20	There seemed to be a very surprising unavailability of
21	In this case, after 20 July, there were times at	21	stock borrow in the market.
22	which you could buy SC&T shares at a price that was very	22	The reason the stock borrow is important, as
23	slightly cheaper than the Cheil price implied through	23	Mr Thomas was asking the other day, when you enter into
24	the terms.	24	a swap, the broker on the other side will tend to hedge
25	So in other words you could kind of, through being	25	himself with stock. So he needs a borrow.
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1	short the equivalent amount of Cheil, you could	1	Now, when the merger was announced, there was
2	crystallise a short price of 1,000 or 2,000 Won higher	2	a little bit more borrow, and we were able to reserve
3	than where SC&T was trading.	3	a good amount of that borrow, which just meant there was
4	So we did an amount of that. It may have been $$	4	very limited ability for people to play that small
5	I don't remember the exact numbers, maybe another	5	spread. So we were able to take advantage of that, but
6	million shares equivalent of SC&T worth, and so if you	6	again, the profits were very small.
7	imagine the SC&T, you would buy like that, gives you	7	MR GARIBALDI: Thank you very much.
8	a profitability profile of that, and the Cheil short	8	THE PRESIDENT: Maybe just to understand what then happened,
9	would give you a profitability profile of that, and	9	Mr Smith, when you were increasing your short position
10	there would be a small difference.	10	on Cheil on the expectation that the share price of the
11	So we did an amount of that investing, which we made	11	merged entity would go down.
12	a small amount of profit on, which is included in the	12	A. Yes.
13	loss numbers actually that $$ so it's probably a bit	13	THE PRESIDENT: In effect, or in practice, the share price
14	conservative $$ that those small profits are included.	14	for both, as I understand it, both SC&T and Cheil went
15	That was the greater part of the arbitrage	15	up after the announcement of the merger?
16	investing.	16	A. I don't recall exactly. After the announcement or the
17	In addition, we did a small amount of $$ on the	17	closing?
18	shares that benefited from the put rights, so if you	18	THE PRESIDENT: After closing apparently it went down, but

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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.

very slightly , and then as the price traded actually

below the put back price, we covered those shorts in

So we were able to kind of outperform the put back price

finalised , we received our shares that didn't have put $$76$\,$

we will be educated by the experts. But I was just

have seen the trading.

curious what happened to your shorts in the end. We

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

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1	back rights, that just allowed us to collapse the hedge.	1	(The witness withdrew)
2	So we had the long that we received and the short to the	2	THE PRESIDENT: It would be a bit early to break for lunch.
3	broker, we were $$ it was a liability effectively . So	3	The question is whether Professor Bae will be available
4	we effectively take the shares and give them to the	4	for cross-examination already now? He would be? Very
5	broker. He collapses his borrow and the position is	5	good. I suggest we don't have a break now. We continue
6	gone.	6	immediately with Professor Bae.
7	So when the merger went effective, the shares, that	7	THE WITNESS: Thank you for having me.
8	position collapsed, because the $$	8	THE PRESIDENT: Unless there are technical reasons to have
9	THE PRESIDENT: So that happened after the merger was	9	a break.
10	approved?	10	MR TURNER: Sir, may I raise just a purely technical
11	A. Yes, so 14 September, the actual physical receipt of the	11	question, which is that we go into the economic experts
12	shares, when SCT was exchanged into Cheil shares, you	12	tomorrow and Wednesday. Inevitably, at least on our
13	received Cheil shares, long, physical, and you had	13	side, we will make reference when talking to Mr Boulton
14	a Cheil short on swap, and they just collapsed.	14	to what the other experts say.
15	We had a small residual short in Cheil, very small,	15	It has been the custom in this proceeding to include
16	that we kept for some time, but the vast, vast bulk of	16	in the cross—examination bundles the expert reports or
17	the position just collapsed at 14 September.	17	other witness statements that we are taking a given
18	THE PRESIDENT: Understood, thank you. Thank you very much.	18	witness to. Given the volume of the economic expert
19	Nothing further from the tribunal. So thank you	19	reports, I have suggested to my learned friend that we
20	very much.	20	do not put a further copy of the other side's expert
21	MR LINGARD: Mr President, if I may, I'm terribly sorry to	21	reports into the bundle. It would be (a) unwieldy, (b)
22	interrupt. Might I put one point to Mr Smith in	22	impose an element of a burden on those who produce the
23	fairness to him arising from Mr Garibaldi's question?	23	bundles, I think unnecessarily, but subject to the views
24	It's a subject that I understand will be taken up by the	24	of the arbitrators, and (c) I would not be able to look
25	experts, but I feel compelled to put it to Mr Smith, so	25	my children in the face, given the amount of paper that
	77		79
1	he has an opportunity to respond before the experts do.	1	we would then throw away.
2	THE PRESIDENT: If it's a question that arises from the	2	I have made this suggestion to my learned friend,
3	questions of the tribunal, then please go ahead.	3	but clearly we're in the —— and I don't know what his
4	MR LINGARD: It does, sir, thank you very much.	4	answer is going to be. But clearly we're also in the
5	THE PRESIDENT: Go ahead.	5	hands of the tribunal. But given the physical
6	Further cross-examination by MR LINGARD	6	production process of those bundles, if you do want
7	MR LINGARD: Mr Smith, it's simply this. As I say, the	7	copies of, when I talk to Mr Boulton, Professor Dow's
8	experts will deal with this in due course but I want to	8	expert reports and vice versa, then you should say so.
9	give you the opportunity to respond.	9	But that is my suggestion.
10	It is my understanding that in the arbitrage	10	THE PRESIDENT: Mr Partasides?
11	investing you describe in paragraph 14 of your fourth	11	MR PARTASIDES: Mr President, that sounds sensible to us a
12	witness statement, with respect to SC&T, that that	12	well. As long as the witness is given access on the
13	arbitrage investing in SC&T generated a loss for	13	screen to the report that is being referred to, then

15 Is that consistent with your understanding, sir?

A. I don't believe it did because we were -- we were buying 17 the SCT shares at, I believe, very slightly below the

implied. But the differences were very small. It was

 $1\%,\,2\%,$ pretty small. 19

Elliott .

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MR LINGARD: Very good. Thank you, Mr Smith.

Mr President, thank you. 21

22 THE PRESIDENT: Okay, thank you very much, Mr Smith. That

23 concludes your examination. I understand you will now 24

be able to catch your flight, plenty of time for that.

THE WITNESS: That's great.

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13 screen to the report that is being referred to, then

14 I don't think it needs to be produced in writing as

15 well.

MR TURNER: I'm disappointed to learn that there may be an 16

17 implication that our experts have not memorised the

18 other side's expert reports, pleadings, transcripts and

19 other evidence that has been put into the proceedings,

20 but I $% \left(1\right) =\left(1\right) \left(1\right) =\left(1\right) \left(1\right) \left(1\right)$ but I $\left(1\right) \left(1\right) \left(1\right) \left(1\right) \left(1\right)$ but I $\left(1\right) \left(1\right) \left(1\right) \left(1\right) \left(1\right)$

would be a copy of the expert report on the screen when 21

22 we are cross-examining. We rely on the good offices of

23 the Opus operators for that.

THE PRESIDENT: Okay. I certainly don't need the hard 24

2.5 copies. I have my own.

1	So we are fine, thank you very much.	1	me as an expert in Chaebol issue and the Korean capital
2	So, Mr Smith, you are free to go. Do we need	2	market. Perhaps the most important qualification is the
3	a break of five minutes or can we continue immediately?	3	paper that I wrote regarding the merger by a Korean
4	MR TURNER: Sir, if we have just a handover break of	4	business group that has been well cited and recognised
5	a couple of minutes, that would be good.	5	by finance scholars.
6	THE PRESIDENT: Okay, that's fine.	6	I have other academic and industry experience that
7	(11.06 am)	7	is relevant to this arbitration.
8	(A short break)	8	I was instructed to provide my opinion on two
9	(11.09 am)	9	issues . The first , Professor Milhaupt's opinion that
10	PROFESSOR KEE—HONG BAE (called)	10	successful opposition by Elliott to the merger between
11	THE PRESIDENT: Good morning, Professor Bae.	11	SC&T and Cheil could be expected to have a therapeutic
12	THE WITNESS: Good morning.	12	effect to the benefit of all unaffiliated shareholders
13	THE PRESIDENT: I understand you will be testifying in	13	because it has the potential to improve corporate
14		14	governance in Korea and reduce the so—called Korea
	English? THE WITNESS: Yes.	15	
15 16		16	discount.
	THE PRESIDENT: You have been called as an expert witness to		The second issue is Mr Boulton's opinion that in the
17	this proceeding which means you will be required to	17	counterfactual scenario model being rejected by SC&T
18	express your opinions and to give your evidence in	18	shareholders, the share price of Samsung C&T would have
19	accordance with your sincere belief .	19	rapidly and instantaneously risen to its sum of the
20	THE DESCREAT CO. C. of the control o	20	parts or SOTP value as computed by Mr Boulton.
21	THE PRESIDENT: So for that purpose I would ask you to	21	So let me start with the first issue on slide
22	please read and make the statement, the declaration that	22	number 6. Professor Milhaupt's opinion is that the
23	you should have in front of you.	23	central governance problem with the Chaebol is the gap
24	THE WITNESS: Yes, sir. I solemnly declare upon my honour	24	between cash flow rights and control rights, and that is
25	and conscience that my statement will be in accordance	25	the major reason for the undervaluation of equity prices
	81		83
1	with my sincere belief .	1	or so—called Korea discount.
2	THE PRESIDENT: Thank you very much, Professor.	2	The gap is often called the wedge and
3	I understand you will be making a presentation in lieu	3	Professor Milhaupt and I are on the same page on this
4	of a direct examination. So please go ahead.	4	issue. So I have no objection to his description of the
5	THE WITNESS: Yes, thank you.	5	problem.
6	Presentation by PROFESSOR KEE-HONG BAE	6	Next slide, the ownership structure of Samsung
7	THE WITNESS: Good morning. My name is Kee-hong Bae. I'm	7	business group in 2015. As you can see, this is really
8	a Professor of finance at Schulich School of Business at	8	complex. So this complex ownership structure creates
9	York University.	9	the gap which creates the conflict of interest between
10	Speaking of myself, I was born and raised in Korea	10	minority shareholders and controlling shareholders,
11	and got most of my education in Korea. After I got my	11	leading to the undervaluation.
12	masters degree from Korea University, I went working for	12	So I have no objection to Professor Milhaupt's
13	the local investment banking firm for several years, and	13	opinion, except that what would happen to the governance
14	then I moved to US, to get my finance PhD in finance	14	risk when the merger was being rejected. We are
15	from the Ohio State University.	15	different . We have different opinions.
16	After that, I have taught at various universities in	16	So although Professor Milhaupt did not explicitly
17	Asia, in Canada. Right now I'm teaching corporate	17	say so, his opinion seems to be that the rejection of
18	finance course at York University.	18	the merger would have reduced the market's assessment of
19	My main research area is in corporate governance and	19	the governance risk of Samsung C&T, which can be proxied
20	international corporate finance and I have published	20	by the wedge, the so-called wedge.
21	many research articles in these areas.	21	So I computed the wedge of Samsung C&T from 2012 to
22	Recently I got an eminent scholar award from the	22	2020, slide number 9. As you can see, from 2012 to
23	Korea—America Finance Association in recognition of my	23	2015, the wedge ratio, the voting right divided by cash
24	contributions to the Korea finance community.	24	flow right, which creates the conflict of interest, that
25	Now, I have a few qualifications that could qualify	25	has been capped at 9.6 times, hasn't changed.

In 2016, as a result of the merger, it has gone down Now, this creates problem of having too many assets 2 to 1.2, eventually it became 1 by 2019, which means 2 that do not create too little value to shareholders. 3 there is no wedge. 3 Now, what do I mean by that? Let me elaborate on 4 Professor Milhaupt pointed out that the wedge ratio 4 that statement. Moving to the next slide, I created 5 after the merger is not relevant. I completely agree. 5 SC&T's assets and income by the asset type held by SC&T It's not relevant. What is relevant is what would have 6 6 from Mr Boulton's report. 7 happened to the wedge ratio if the merger was rejected. 7 So the left-hand side bar represents the amount of asset held by SC&T. The orange colour is the listed and 8 8 Now, looking at this graph, and looking at the 9 incentive of controlling family, my professional opinion 9 unlisted investment or affiliated holdings. So the size 10 10 is that it would have remained the same. In other of affiliated holdings is a 14 trillion Won, whereas the 11 words, nothing changes. It's just the status quo. 11 core business, the size of asset is 7 trillion Won. So 12 12 So my opinion is that the rejection of the merger altogether it's 21. But two-thirds of the asset of 13 would not have reduced the market's assessment of 13 Samsung C&T is investment in listed holdings, which is 14 14 Samsung C&T's governance risk because wedge wouldn't not the main business 15 have changed. And the family have strong incentive 15 Now, looking at the right-hand side, the income 16 16 not to liquidate the indirect share ownership, and I'm generated from each type of asset, looking at the blue 17 17 going to get back to this point later on when I discuss colour which represents the income generated from 18 Mr Boulton's point. 18 construction and trading businesses, it's 499 billion 19 Moving on to the second issue, which is Mr Boulton's 19 Korean Won. So in terms of return, it's 7%, 7.01%, 2.0 2.0 opinion, his opinion is that in the counterfactual Return generated from the core asset is 7%, whereas the 2.1 scenario of the merger being rejected, the share price 21 return generated from investment in affiliated holdings 22 of Samsung C&T would have rapidly or instantaneously 22 is only 1.56%. 2.3 23 risen to SOTP value as computed by him. In other words, having too many listed holdings or 2.4 2.4 Now. I disagree with his opinion for three reasons. affiliated holdings has the effect of depressing The first reason is that the rejection of the merger 2.5 profitability of Samsung C&T. 85 87 1 isn't going to change the market's assessment of the 1 So going back to slide number 14, given that listed 2 governance risk which I just discussed, and I have two 2 holdings does not create much value to shareholder, why 3 other reasons, and let me elaborate on these two 3 is it that SC&T keep listed holdings? Why not just reasons. liquidate them? If they liquidate it, then SC&T can 5 Moving to slide number 13. 5 generate a lot of cash flow which can be better used to Now, the key assumption in Mr Boulton's SOTP 6 increase shareholder value. 6 So why don't they do it? That is because listed 7 7 valuation is that Samsung C&T's listed investment should 8 8 be valued at their market prices. Now, this is holdings are strategic holdings which is not tradeable. 9 9 These holdings are held for the purpose of control by a critical assumption because much of the discount that 10 he computes arises from the fact that listed investments 10 family over the whole Samsung business group. 11 should be valued at their market prices. 11 family is not going to liquidate listed 12 Now, I disagree with this assumption because in my 12 holdings because they need them for their control purpose 13 13 opinion market does not value holdings by SC&T in So recognising this problem of having too many 14 affiliated listed companies at their market prices, but 14 15 15 actually at significant discount. listed holdings, market values, as SC&T's listed 16 Now, Mr Boulton used the other terminology, listed 16 holdings, significantly lower than their market prices. 17 investment, but in my view the correct term is the 17 Now, I think this is the key governance problem 18 listed holdings by SC&T in affiliated companies. But 18 causing the discount by the market of the Samsung C&T 19 I'm going to use these two terms interchangeably. 19 2.0 2.0 So, why do I believe that the market discounts Now, notice that this problem has nothing to do with 21 21 SC&T's listed holdings at discount? the tunneling due to merger. It's just the presence of

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listed holdings creates this problem of poor asset

is: would the market have valued SC&T's holdings in

So moving to slide number 16, the important question

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Now, notice that SC&T's main businesses are

affiliated companies within the same business group.

construction and trading, and yet SC&T carries

two-thirds of the assets as holdings in stocks of

1 affiliated listed companies at their market prices if could have inherited his father's ownership, but again 2 2 the merger was rejected? it's going to be very costly. 3 My opinion is that it is highly unlikely. First of 3 So, merging Hyundai Glovis, which he had a lot of 4 all, for the market to value SC&T's holdings at their 4 ownership, with Hyundai Mobis, he can exercise indirect market prices, I don't see any other way except 5 5 control of Hyundai Motor. liquidating listed holdings. So the motivation is quite similar . The difference 6 6 7 This is because they are not going to generate any 7 is that the Hyundai merger was cancelled because of the 8 profit to Samsung C&T shareholders. As long as they are 8 opposition by Elliott and other institutional investors. 9 kept as SC&T's assets it's going to depress the 9 So Hyundai Mobis, in slide number 19, is like SC&T, 10 profitability 10 in slide number 18. 11 11 So what happened to stock price of Hyundai Mobis, Furthermore, in my view no market participants could 12 12 which is like Samsung C&T? When the merger was -- I'm have forced the liquidation. Otherwise they would have 13 done so regardless of the merger outcome because of the 13 sorry, the cancellation of the merger was announced, the 14 14 huge profit incentive. But they could not do so because market reaction was quite negative. The horizontal axis 15 controlling family has a full control of the company. 15 shows the timeline. So zero is the day when the 16 16 Now. Professor Milhaupt pointed out that the announcement of merger cancellation was made. 17 activists could have made a difference, but in my view 17 So right after the announcement. Hyundai Mobis went 18 activists do not have enough power to make such changes 18 down significantly. By Day 20, almost 13%. 19 because the control power exercised by the Chaebol 19 So if anything, I suspect SC&T price might have gone 2.0 2.0 families are too strong to be beaten. down if the merger was rejected. 21 So I believe discount was unlikely to have been 21 So to conclude, for the three reasons that I have 22 22 unwound. just discussed, I think the discount is unlikely to have 2.3 The third reason why I disagree with Mr Boulton is 23 been unwound if the merger was rejected. 2.4 2.4 the cancelled Hyundai merger, which suggests a drop in Thank you very much for your attention. Samsung C&T price if the merger was rejected. 2.5 THE PRESIDENT: Thank you, Professor Bae. Will there be any 1 The proposed Hyundai merger between Hyundai Glovis 1 further follow-up? MR TURNER: One or two formal questions, sir. Ms Tan will 2 and Hyundai Mobis in 2018 is guite similar to the 2 3 Samsung merger in many ways. 3 do the examination-in-chief. First of all, both mergers were for the purpose of Examination-in-chief by MS TAN MS TAN: Thank you. 5 family succession from the chairman to his son. 5 Now, moving to slide number 18, this shows the 6 Professor Bae, may I ask if you need to make any 6 7 7 simplified ownership structure of Samsung related to the corrections to your report? 8 8 A. Oh, yes, thank you for reminding me. If I may, I would 9 ownership in Samsung Electronics, which is the crown 9 like to make a few minor corrections in my expert 10 jewel of the Samsung Group. 10 report. 11 , to take over the group from his father, 11 THE PRESIDENT: Yes, please, go ahead. 12 he needed to increase his control power over Samsung 12 A. Thank you. 13 Electronics. But he held only 0.5% of ownership. He 13 Page number 7, paragraph 15 {G5/1/9}. could inherit his father's ownership, but then it could 14 14 Paragraph 15(d), the Statement of Reply and Defence to 15 15 cost him several billion US dollars. Preliminary Objections dated 17 July 2020, I haven't 16 So alternative is to merge Cheil with Samsung C&T 16 read the whole statement. I read only the part that is 17 and through the new merged firm, he could exercise 17 related to damage calculation. So I wanted to make sure 18 indirect control of Samsung Electronics. That was the 18 of that. 19 motivation of the merger, in my opinion. 19 Page number 42, paragraph 85, paragraph 85(c) 2.0 2.0 Moving to the next slide, the Hyundai merger, the {G5/1/44}: 21 21 motivation seems to be exactly the same. "Specifically, ... had a small stake in

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Samsung C&T ...'

had no stake in Samsung C&T.

That is not correct. It should be written as

And also, the third sentence from the bottom:

, 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

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1	" had a small stake in Hyundai	1	Α.	From the perspective of Samsung C&T shareholders who
2	Mobis"	2		have only stake in Samsung C&T shares, yes, I believe it
3	But it should be written as had no stake in	3		is consistent with the tunneling transaction.
4	Hyundai Mobis.	4	Q.	Can I ask you to keep your voice up a bit so the
5	That's all .	5		transcribers —— I heard that, I'm hoping that the
6	THE PRESIDENT: Thank you very much.	6		transcribers heard it as well?
7	MS TAN: Just a small point for clarity in the transcript	7	A.	Yes, from the perspective of the Samsung C&T
8	this morning. Earlier, when discussing slide 14, the	8		shareholders, who have only the stake in Samsung C&T,
9	transcript on page 84 records you using a double	9		this transaction is consistent with the tunneling
10	negative. You talked about Samsung C&T "having too many	10		transaction. The nature of transaction is consistent
11	assets that do not create too little value to	11		with tunneling.
12	shareholders". {Day6/86:25}	12	Q.	And it's similar to the kinds of transaction that you
13	Does the transcript record correctly what you were	13		wrote about in your 2002 paper?
14	describing there?	14	A.	Yes.
15	A. Which ——	15	Q.	That's correct?
16	Q. Line ——	16	A.	It is similar.
17	A. Line number?	17	Q.	And the words in that paper that you used to describe
18	Q. [Draft] line 21:	18		tunneling transaction included the following, didn't
19	" do not create too little value to	19		they: "theft"; that's correct? That's a word that you
20	shareholders."	20		used in that paper?
21	A. No, it should be $$ maybe I said wrong. I meant SC&T	21	A.	No, I didn't use theft.
22	has too many assets that do not create value. Yes,	22	Q.	In your paper ——
23	" little " should be taken out, yes.	23	A.	Tunneling can be a downright theft, but it could be
24	MS TAN: No further questions.	24		a perfectly legal transaction.
25	A. It should be too many assets, or create too little	25	Q.	Oh, yes. I'm saying amongst the words that you've used
	93			95
1	value.	1		to describe types of tunneling transaction in your paper
2	MS TAN: No further questions on direct.	2		include, as you have said, outright theft?
3	THE PRESIDENT: Thank you very much, Ms Tan. And then I	3	A.	Yes.
4	hand over to the Claimant.	4	Q.	You also in your paper use the expression "fraud" to
5	MR PARTASIDES: Mr President, it will be Mr Stafford who	5		describe some types of tunneling transaction?
6	conducts the cross-examination of Professor Bae.	6	A.	Yes, that's possible. But there are —— I wasn't
7	Cross—examination by MR STAFFORD	7		referring to the Korean merger case.
8	MR STAFFORD: Good morning, Professor. My name is	8	Q.	And in your paper you also describe a form of tunneling
9	Andrew Stafford and I'm part of the legal team appearing	9		and the phrase you use is "siphoning resources"?
10	on behalf of the Claimant. My job is to ask you	10	A.	Mm-hm. Yes.
11	questions and I guess your job is to answer them. If	11	Q.	Yes. And "expropriation of minority shareholders"?
12	I don't ask a question clearly, please ask for	12	A.	Yes.
13	clarification . I'm going to try and make sure that my	13	Q.	And "wealth transfer"?
14	questions are concise so as to make it easy for	14	A.	Yes.
15	a concise answer.	15	Q.	What of those descriptors would you say this tunneling
16	A. Sure.	16		transaction was?
17	Q. What you've been presented there is with two	17	A.	Now, this transaction, Professor Milhaupt described as
18	intimidatingly large bundles. I'll be referring to some	18		a textbook example of tunneling.
19	of those documents. It's not as bad as it looks. Some	19	Q.	Yes.
20	of them are just big documents and I'll need to ask you	20	A.	I disagree. The nature of transaction is consistent
21	to look at a few pages of some of those documents.	21		with tunneling but I wouldn't use this as a textbook
22	Professor Bae, you do not say so in your report, so	22		example. There is an alternative view. There is room
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Korean capital market regulation law.

So the question is whether this merger ratio was $% \left(1\right) =\left(1\right) \left(1$

tribunal whether in your opinion the merger transaction

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was a tunneling transaction?

1 fair or unfair. 1 Q. Just read it to yourself and tell me when you've read 2 Q. Very well 2 it. (Pause) 3 Let's move on to a different topic --3 A. Yes 4 A If I --4 Q. Is this a document which you reviewed at the time you Q. Of course you can. 5 5 were preparing your report? A. I don't recall I read this — this page. Is it — 6 A. — make a further comment. 6 7 So one could argue that this could be interpreted as 7 Q. It was part of the statement of Reply. 8 a value creating transaction, although my view is not. 8 A. Right, yes. So like I said, I only read the damage 9 So it's not a textbook example of tunneling. I would 9 related part. 10 10 Q That's fine use a more straightforward example. A. So I didn't read. I'm not aware of this. 11 Q. Yes. Do you have a view as to the amount of value that 11 12 12 was destroyed by this transaction if it is not a value Q. Now that you read that, is it your view that this 13 13 document is irrelevant? A. Pardon? 14 14 A. To my expert report? 15 Q. You said "this could be interpreted as a value creating 15 Q. To your opinion. 16 16 transaction, although my view it is not"? A. It's not relevant to my report or to my opinion. A. No, I never said that this is a value creating 17 17 Q. Let me take you to another document which is --18 transaction 18 A. Mr Stafford, if I may. Q. Wait one moment, please. I'll read back to you from the 19 19 Q. Please 20 transcript. You just said: 20 A. So which view are you talking about? Which view that 2.1 "... one could argue that this could be interpreted 2.1 I have? 22 as a value creating transaction, although my view is 2.2 Q. Well, your opinion that there would have been no 2.3 2.3 therapeutic effect, and that the risk of tunneling --2.4 A. Yes, that's my view. I don't view this transaction as 2.4 A No 25 a value creating --25 Q. And the risk of tunneling would have remained unaffected 97 99 1 Q. It's a value destroying transaction? 1 by the --A. That is debatable, yes, but -- yes. 2 A. No, in principle I agree with Professor Milhaupt. It 3 Q. Very well. 3 could have some therapeutic effect. Now, I want to ask you about a couple of documents What I disagree with the Professor Milhaupt is that, 5 which again you do not refer to in your report. 5 is that effect strong enough to remove the discount? Can I take you within the bundle to tab 4, and for the 6 Not at all. I don't agree with that. 6 7 $\ensuremath{\mathsf{Q}}.$ Let me ask you to go to another document, which you may record it's $\{C/413/1\}$. A. Which document? 8 8 or may not have looked at before, which is at tab 6 in 9 9 Q. It's tab 4 in the bundle. volume 1. This is a document which you will not have 10 A. Volume 1 or 2? 10 seen at the time of your report because it was produced 11 Q. Volume 1? 11 subsequent to that. 12 A. Volume 1, tab 4? 12 A. Mm-hm 13 Q. Tab 4, please. 13 Q. This is a document produced by a Samsung Securities A. Okay, yes. 14 employee, and it's analysing the impact of EALP's 14 15 15 Q. You will see that this is a typewritten version of application for an injunction to prevent the holding of the extraordinary general meeting during part of the 16 meeting notes, and the meeting is memorialised in the 16 17 meeting between and Samsung executives on the one 17 merger proposal process. 18 hand and NPS officials on the other. 18 Can I ask you to turn to the second page of that 19 Could I ask you to read to yourself paragraph 3 19 document, which is $\{C/759/2\}$? which starts with the phrase: 2.0 2.0 A. Yes 21 21 Q. And do you see the first bullet point below the graph 2.2 2.2 marked Starting with the words --23

Yes. And do you see the last sentence of that bullet

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point? Do you see it reads:

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Opus 2 Official Court Reporters

A. Okav.

Q. If you could --

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1 2 2 3 3 4 MS TAN: Excuse me 4 MR STAFFORD: And do you agree with me that what that 5 5 Q. Yes. And let's have a look at the final bullet point on that page which reads: 6 sentence suggests is that there was a sharp rise in the 6 7 merger ratio arising out of the news that Elliott had 7 8 8 filed an injunction? 9 MS TAN: Excuse me, Mr Stafford. I'm sorry to interrupt, 9 10 10 members of the tribunal, I have to note that this Do you read that? 11 document that Professor Bae is looking at is an English 11 A. Yes 12 12 translation, and the document is originally in Korean. Q. My question to you arising out of this document is: do 13 I just want to note that for the record. So that if the 13 you consider that the contents of this document are 14 witness wishes to look at the Korean, that should be 14 relevant to your opinion or do you think they are 15 provided 15 irrelevant? A. Okay, I have two opinions. So which opinion are you MR STAFFORD: Professor Bae, do you wish to look at this 16 16 17 17 document in Korean or are you content as before to deal referring to? 18 in English? 18 Q. We are referring to your opinion relating to how the 19 A. Yes, I would like to see the original version. 19 market would have reacted to the rejection of the 20 Q. Very well. It's up on your screen. $\{C/759K/2\}$. 20 2.1 I will not be able to read the Korean, but some of 21 A. On Cheil or Samsung C&T? 2.2 my colleagues will. 2.2 Q. If you like, you can take them in turn. (Pause) 2.3 23 I haven't really studied the Cheil Industries. My focus 2.4 2.4 A. Yes. I -was on Samsung C&T. 25 Q. Do you see in the last sentence of the first 25 Then stick to Samsung C&T. 103 1 paragraph --1 A. So if the merger was rejected, like I said, then my A. Yes opinion is that price is likely to have gone down. 2 2 3 Q. — the translation says that 3 Q. Very well. So you would regard this document as 4 4 irrelevant to that opinion? 5 5 A. Yes, I have to say it's not relevant. 6 A. Yes 6 Q. Now, I want to move forward, if I may, to what this 7 7 Q. Do you agree with me that that would appear to be the succession planning transaction involved. market pricing in news that the opposition by Elliott 8 8 So my first suggestion to you is going to be that 9 9 was taking place? Is that how you would interpret those this succession planning was a long time in the making. 10 words in that paragraph? 10 11 A. Okay, so can you repeat the question, the last question? 11 Q. So if we could have a look in the -- let me get the 12 Q. Do you agree with me that the last sentence means that 12 right document reference. If we could have a look at bundle 1, tab 9. Tell me when you have that. For the 13 13 14 14 note, it's $\{C/540/1\}$. 15 A. Now, is this -- can I ask a --15 A. Yes Q. I would actually like to you answer my question, please. 16 Q. And do you see that this is an article about the Samsung 16 A. No, this is a premium -- I need to see whether the ratio 17 17 versus Elliott Management matter: 18 change is due to Cheil price change or Samsung C&T price 18 "An episode encapsulating corporate governance 19 19 challenges facing Korea." 2.0 Do you see that? 2.0 Q. I'm asking you to interpret what you see on the page. 21 21 A. Well, my interpretation is that the ... I think ... A. Yes 22 (Pause). 22 Q. Could I ask you to turn to $\{C/540/3\}$, which is the third 23 So I would interpret that 23 page in this? 2.4 24 A. Yes 25 25 Q. And beneath the plan of family ties, do you see

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1		a paragraph that begins with the words "The diagram
2		above", and then four lines below that it reads:
3		" needed to secure control of Samsung Life
4		Insurance (SLI) and C&T. and group firms undertook
5		a series of transactions to carry out their objective
6		since the mid-1990s."
7		Then he sets out three stages:
8		"First, they engaged in transactions to keep
9		accumulate seed money. Second, with this seed money
10		secured 31.3% of the shares [in] \dots Samsung Everland
11		[in 1996]."
12		And then:
13		"Third, Cheil acquired C&T by merger in 2015."
14		So do you agree with me that this succession
15		planning required more than 15 years to be pursued?
16	A.	I agree.
17	Q.	Thank you.
18		I'm now going to ask you about the effort that went
19		into the succession planning over the course of that
20		more than 15 years. To do this, $I'm$ going to take you
21		to the Korean prosecutor's indictment.
22	Α.	Mm-hm.

that, let me make plain to you, Professor Bae, so that 105

Now, before I ask you to look at the contents of

1 we are in agreement, that the Korean court is still hearing the case against the defendants arising out of 2 3 this indictment. Do you understand that? 4 5 Q. And so what I'm going to take you to are the fruits of 6 the prosecutor's investigation. You understand that?

Q. You will find that in bundle 1, at tab 2.

A. Mm-hm. $\ensuremath{\mathsf{Q}}.$ And $\ensuremath{\mathsf{I'm}}$ not suggesting to you that these are matters 8 9 which have been decided by the Korean court yet; okay? 10 Nonetheless, I'm going to suggest to you that this is 11 a snapshot of the evidence that has become available to 12 the prosecutors and gives a snapshot of what the merger 13 involved; okay?

So if we look at the first $% \left(1\right) =\left(1\right) \left(1\right)$ page, we can see, at 14 15 {R/316/1} --

A. Forgive me. I'm lost. Which page are you referring to? 16

17 Q. It's the first page of tab 2.

18 A. First page of tab 2, yes.

19 Q. Do you see at the end of the first paragraph, the 2.0 sentence that reads:

21 "The investigations have been ongoing for the past 2.2 one year and eight months."

23 A. Sorry, I think I'm looking at the wrong one. Is it $\,--\,$

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24 Q. If you have a look on screen?

2.5 A. — volume 1 of 2 or 2 of 2? 1 Q. Volume 1, tab 2.

A. Yes. I'm looking at tab 2.

3 Q. You have a document which should have, in the bottom

4 right—hand corner, R/316; do you have that?

5 A. Yes

Q. If you look at the top, after the heading, which is 6 7 marked "exclusive", there is a paragraph that then

8 begins "On 1 September"; do you have that?

9 A. Mm-hm.

10 Q. I'm asking you just to see the last sentence of that 11

paragraph:

12 "The investigations have been ongoing for the past 13 one year and eight months."

14 A. Yes

15 Q. Now I'm going to take you to --

MS TAN: If I may take this opportunity to point out that 16

this document is also originally in Korean. So perhaps 17

18 the EPE operator could pull up the Korean document on

19 the screen so that Professor Bae can look at both

20

2.1 MR STAFFORD: Are you comfortable reading it in English or

2.2 would you prefer it to be in Korean, Professor Bae?

2.3 A. I want to make sure I understand it, so I would prefer

24 reading in Korean.

2.5 Q. Very good.

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1 A. The thing is I'm not familiar with the legal terminology in English. So I need to --

3 Q. Well, if you find that you have any trouble with the words that are on the page, please do tell.

5 So, if we could turn within that document to

6 {R/316/19}.

7 A. 316/19, yes.

8 Q. Do you see the numbered paragraph 7?

9 A. Mm-hm.

10 Q. And correct me if the translation is inaccurate, it

11 reads in English:

12 "Establishment of a plan to artificially manage

13 stock prices.'

14 A. Yes

15 Q. And then if we go forward to page 23, sorry, 22

16 {R/316/22}, do you see the letter D, "Fabrication of

merger synergy effects and figures"? 17

18 $A.\ Mm{-}hm.$

19 Q. And then on page 23 $\{R/316/23\}$, "Preparation of false

merger ratio adequacy review report". You see that?

21

22 Q. 24 {R/316/24}, "Manipulation of merger ratio adequacy

23 review results"; do you see that?

24 A. Yes

2.0

Q. 27 $\{R/316/27\}$, "Announcement of false information 25

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1 regarding the purpose, background, effects, etc of the 1 A. Yes. 2 2 Q. That will suffice . merger"? 3 A. Mm-hm. 3 Would you agree with me on that reading that the 4 Q. 30 $\{R/316/30\}$, at the top there was a plan to -- it 4 prosecutor has found evidence of an extremely thorough reads "Plan to secure allies using SC&T treasury stock." 5 5 mobilisation plan for this transaction? 6 A. Now, as you said, this is an ongoing case. So, 6 Yes? 7 7 I mean --Q. Number 3 on that page, "Plan to secure voting rights of 8 8 Q. I'm not asking you -- sorry. 9 major domestic and foreign investors including the NPS". 9 A. $\,--$ I have to assume that he is innocent until proven 10 10 That's what it says? guilty 11 11 Q. Very well. 12 12 Q. Number 4, "Securing voting rights of minority and small A. So. I'll tell you why this is not relevant to my expert 13 13 14 14 Now, this transaction, the motivation of the merger 15 Q. Then turn forward to page 41 $\{R/316/41\}$. Letter B, 15 was to increase control power of . So that is "Dissemination of false information by contacting 16 16 a common knowledge among investors in Korean capital 17 17 foreign investors and voting rights advisors"? 18 A. Yes. 18 So even with this kind of -- even if this is true --19 Q. 45 $\{R/316/45\}$, at the very bottom of the page, letter D, 19 okay, let me say: even without this effort by the "Distortion of details by intervening in the preparation 20 20 Samsung controlling family, the market would have 2.1 of analysis reports by financial investment business 21 responded in a way that Cheil price moved up, Samsung 2.2 entities"; yes? 22 C&T price moved down, because the motivation is to 2.3 A. Yes 23 increase Cheil —— Samsung s's —— 2.4 Q. Page 48 of R-316 $\{R/316/48\}$, at the top, "Inducing 2.4 power, so that this transaction cannot be good for 25 favorable media coverage through media personnel 2.5 Samsung C&T shareholders. 109 111 1 contacts"? 1 So market knows that. So they're going to revalue upward Cheil and downward Samsung C&T. 2 A. Page 48? 2 3 Q. Yes. It says page 47 at the top left . Do you have 3 So --Q. I beg your pardon. 4 A. -- that is because I believe this transaction is not 5 A. Yes 5 6 Q. Thank you. And then on to $\{R/316/49\}$, at the bottom, 6 beneficial to Samsung C&T and consistent with the 7 7 the number 4, "Announcement of false favorable factors tunneling nature. 8 8 to artificially boost the stock price". Do you have So even without these, you know, illegal 9 9 that? activities -- I'm not saying that they have done this, 10 A. Yes. 10 I don't know. This is still an ongoing case. But even 11 Q. And then page 55 $\{R/316/55\}$, number 2, "Solicitation of 11 without these efforts, market would have responded in 12 the members of the Special Committee on the Exercise of 12 a way that Cheil price goes up, Samsung C&T price goes 13 Voting Rights"? 13 down, so that the merger ratio is determined in a way A. Yes 14 14 that is unfavourable to Samsung C&T shareholders. Q. Over the page to 57 $\{R/316/57\}$, "Unfair intervention by Q. Thank you. So let me just --15 15 16 the President, the Blue House, and the Minister of 16 MR GARIBALDI: May I ask a question at this point. 17 17 Health and Welfare in the exercise of voting rights"? Are you saying, Professor, that these efforts were

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A. Yes.
 Q. The next page, 61 {R/316/61}, "Securing voting rights of ordinary minority and small shareholders by mobilising

Q. 60 $\{R/316/60\}$, number 2, "Making of a proposal of

economic benefits to Ilsung Pharmaceuticals for the

25 Samsung Securities retail organisation"?

purpose of securing voting rights"?

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unnecessary?

this effort

unnecessary? If they were in fact true these were

A. No, I'm not saying that. They might have done so or

would have been determined in a way that is not

they might not have done so, but then the merger ratio

beneficial to Samsung C&T shareholders, even without

MR GARIBALDI: So your theory is, if I understand, that the

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A. Yes.

MR STAFFORD: Let me ask you this. If the merger had been 1 mere fact that wanted to maintain control of the 1 2 group was enough of a signal for that the Cheil shares 2 rejected, would that be good news for minority 3 in which he had control would go up, and the SC&T shares 3 shareholders in Samsung C&T? A. If merger was rejected? 4 would go down in the expectation of a merger? 4 5 A. Exactly 5 Q. Yes? MR GARIBALDI: All right. This doesn't explain to me all A. That would have been bad news for minority shareholders. 6 6 7 that went on. 7 Q. It would be bad news for minority shareholders to learn 8 8 that the assets of SC&T were not going to be A. Pardon me? 9 MR GARIBALDI: All that the evidence shows and the 9 expropriated; is that your evidence? 10 10 allegations that surround this case, this is a movement A. No. You see, as I showed you, the wedge ratio hasn't 11 up and a movement down, but the ratios, what actually 11 changed over the years. 12 12 happened, and all those efforts, seem to go beyond your Now, if the merger is rejected, then the 13 theory. That's my problem. 13 expropriation risk is back on the table. A. Yes. So that I haven't really studied. I mean, all I'm 14 14 So, market knows that will come up with an 15 saying, that merger ratio would have been different if 15 alternative solution to increase his power. So the 16 the motivation of the merger was different. After all, 16 uncertainty for Samsung C&T came back to the table. So 17 this is a related party transaction within the 17 in other words, the expropriation risk is still there. 18 affiliated companies. 18 and that's not good for the minority shareholders. 19 So it's not like an arm's-length transaction between 19 Q. Let me ask you this: is it your evidence that the 2.0 20 continued existence of the wedge would compel two independent parties. 21 So the merger ratio, at the end, the question is if 2.1 embark on a further tunneling transaction? 22 the merger ratio was fair or unfair. That -- I mean, so 2.2 A. Can you repeat that question? I don't quite understand. 2.3 I think, Mr Garibaldi, what you're asking is that even 2.3 Would the continued existence of the wedge compel 2.4 2.4 to embark on a further tunneling transaction? with the market's expectation, the merger ratio was fair . If I understand you correctly. 25 A. That is possible. 113 115 1 MR GARIBALDI: (Inaudible). 1 Q. What matters, surely, is not whether wants to 2. 2 embark on a further tunneling transaction; I suggest to 3 MR GARIBALDI: Maybe I don't understand. 3 you that what matters is whether is in a position A. Maybe I misunderstand your question. to try a second tunneling transaction. Do you agree 5 MR GARIBALDI: My question is: this is a very complex 5 6 6 A. Well, what is important is how the market perceives the transaction. 7 7 A. Yes. it is. tunneling risk. $\ensuremath{\mathsf{Q}}.$ We will come to that in a moment. 8 8 MR GARIBALDI: And many things happened or are alleged to 9 9 Can I take you back, please, to tab 4 in the bundle, have happened. 10 10 volume 1. It's a document we've looked at briefly 11 MR GARIBALDI: And yet you say that the movement would have 11 12 happened anyway. 12 This is a document which I'd ask be put up in 13 13 A Yes Korean, because you wanted it in Korean last time. $\{\text{C}/413/1\}~\{\text{C}/413\text{K}/1\}.~$ Do you recognise this document as MR GARIBALDI: Right. So there is a certain lack of 14 14 15 explanation as far as I'm concerned about what is the 15 the one we looked at before? 16 purpose of all that happened, if the movement would have 16 A. Yes Q. And do you see in the third paragraph it is recording 17 been the same? 17 18 A. No, I'm not saying that the movement would have been the 18 as saying: 19 19 2.0 2.0 If the Samsung Group has actually made all these 21 21 efforts, and affected stock prices, then merger ratio

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was unnecessarily unfavourable to Samsung C&T

So I cannot comment on that.

MR GARIBALDI: Thank you.

shareholders. But that, the case, is still going on.

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a second tunneling transaction after a defeated merger

So do you think that the view of

is still irrelevant to your view?

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1	Α.	Well, if the merger was rejected, obviously that sends	1		merger was rejected.
2		a signal to family and the market. But then the	2		Given his motivation, the market believes that any
3		question is, the family will change its mind all of	3		transaction he comes up with is going to be beneficial
4		a sudden and then make a decision favourable to	4		to him.
5		a minority shareholders? I don't believe so. They're	5		So I cannot speculate on what transaction he will
6		going to come up with an alternative plan.	6		come up with. That is beyond my expertise.
7		I think what this $$ you know, what says here	7	Q.	Very well. Let's move forward in the bundle. This time
8		is that: I'm determined to go through with this	8		I think we are going to bundle 2, tab 15.
9		transaction. It doesn't mean that he's going to change	9		I should preface this, Professor Bae, by saying
10		his mind if the merger was rejected. That, I think, in	10		we're moving on to how significant the rejection of the
11		my view, is just a naive view.	11		merger would have been in the eyes of the market; do you
12	Q.	Can I just ask you then to turn forward in the same	12		understand?
13		bundle to tab 6. Again, this is a document that we saw	13	Α.	Yes.
14		previously, and I asked you to look at this couple of	14	Q.	Thank you.
15		elements of this.	15		So tab 15. It should be marked in the bottom
16		Do you want this document to be put up in Korean for	16		right—hand corner $\{C/585/1\}$.
17		you?	17		This is a Blue House handwritten memo. Would you
18	A.	Yes, please.	18		like this to be up in Korean? $\{C/585K/1\}$
19	Q.	Very well. It's $\{C/759/1\}$. $\{C/759K/1\}$	19	A.	Yes.
20		This is Samsung Securities giving advice to Samsung.	20	Q.	Do you see in the box at the top right—hand corner,
21		Could you turn to page 3 of that document $\{C/759/3\}$. Do	21		little numbered paragraph 1 in English:
22		you see the paragraph at the top of the page? The	22		
23		advice that was being given by Samsung Securities reads	23	Α.	Now, may I ask what this note is about? Who wrote this
24		as follows:	24		note?
25			25	Q.	This is a note written by
		117			119
		117			117
1			1		executive official to the Secretary of Civil Affairs at
2			2		the Blue House. It's an undated written memo.
3		Do you think that was relevant advice for Samsung	3	Α.	Okay.
4		Securities to give or is it beyond your expertise?	4		I'm just asking you to confirm the accuracy of what I'm
5	Α.		5		putting to you.
6	Q.	Very well:	6		The box in the top right—hand corner:
7			7		
8			8		That's accurately set out there; yes?
9			9	Α.	Yes.
10			10	Q.	And do you see within brackets in the left - hand column
11			11		below, a paragraph that reads:
12			12		
13			13	Α.	Yes.
14		Does that affect the view that you have just	14	Q.	And it reads:
15		articulated, that would come back with another	15		
16		unfavourable tunneling transaction?	16		
17					Mm-hm.
	A.	Now, I cannot speculate on what would have done	17	Α.	wiiii—iiiii.
18	A.	Now, I cannot speculate on what would have done if the merger was rejected. All I can say is that his	17 18	A. Q.	
	A.				
18	A.	if the merger was rejected. All I can say is that his	18		
18 19	A.	if the merger was rejected. All I can say is that his motivation to secure control power of Samsung Group,	18 19		
18 19 20	A.	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	18 19 20	Q.	
18 19 20 21 22	A.	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	18 19 20 21	Q.	
18 19 20 21 22 23	A.	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	18 19 20 21 22	Q.	Right.
18 19 20 21	A.	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.	18 19 20 21 22 23	Q.	Right. And so the outcome of the merger vote in the case of

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- 1 A. You mean the outcome of the merger?
- 2 Q. Yes
- 3 A. Now, where does it say that the outcome of the merger 4 will have this huge impact?
- 5 Q. I'm asking your opinion.
- 6 A. No, I disagree. Whatever the merger outcome is, it's
- $7\,$ $\,$ not going to have a huge impact on the Korean economy.
- 8 Why would --
- 9 Q. Significant impact?
- 10 A. No, I don't think -- merger rejection would not have had 11 the kind of impact that whoever this person is has in
- 12 mind. I disagree.
- 13 Q. Minor impact?
- 14 A. Well, again, I cannot speculate on the short-term or
- $15 \hspace{1cm} {\rm long-term\ effect,\ but\ not\ significant\ \ enough\ to\ change}$
- 16 the magnitude of discount to be disappeared.
- 17 Q. No impact?
- 18 A. No, I don't say no impact. I mean, it's an event, so
- 19 there is an impact to the market. What I'm saying is
- $20\,$ that that event, merger rejection, isn't going to change
- $21\,$ $\,$ the corporate governance in Korea in a way that your
- 22 Claimant describes. I completely disagree with that
- 23 statement.
- $24\,$ $\,$ Q. Let me ask you a few more questions about how the market
- 25 would have -- what the market would have learned and

- 1 inferred from this merger vote.
- 2 One thing that the market would know is that the
- 3 rejection of the merger meant that the family's
- 4 attempt to secure control of Samsung Electronics had
- 5 failed ; correct?
- 6 A. Yes.
- 7 Q. And the market would already know, because it knew about
- 8 the Everland tunneling, the market would also know that
- 9 the proposed merger had been part of the long—term 10 succession planning manoeuvre?
- 11 A. Yes
- 12 Q. And the market would also know that this merger was
- going to involve a very significant appropriation of
- $14 \hspace{1.5cm} \text{wealth from SC\&T shareholders to Cheil shareholders;} \\$
- 15 yes?
- 16 A. Yes.
- 17 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
- 20 a tunneling transaction; yes?
- 21 A. I'm sorry, I'm lost. Can you repeat the question?
- 22 Q. I'm referring to the SK merger.
- 23 A. Yes
- $24\,$ $\,$ Q. And in the SK merger, NPS voted against the merger?
- 25 A. Mm-hm.

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- Q. And the Samsung—Cheil merger, that vote happened a few
 weeks later; yes?
- 3 A. Ye
- $4\,$ $\,$ Q. So if the NPS voted again against a tunneling
- 5 transaction, it would be the second time in a matter of
- 6 weeks that the NPS had voted against such a transaction;
- 7 you agree?
- 8 A. Yes
- 9 Q. And the market would also infer, wouldn't it, that in
- voting against these transactions the NPS was upholding
- 11 its operating guidelines and principles of independence;
- 12 yes?
- 13 A. Yes
- $14\,$ $\,$ Q. And the market would also know that the NPS was
- upholding its operating principle of public benefit;
- 16 ves?
- 17 A. Well, there could be other interpretation, but yes,
- 18 I agree.
- 19 Q. And it would also know that the NPS was upholding its
- 20 operating principle of profitability; yes?
- 21 A. Profitability of which company? Samsung C&T or Cheil?
- 22 Q. Samsung C&T.
- $23\,$ $\,$ A. You see, the NPS is the largest investor in Korea, so
- they have a portfolio of whole different stocks. So
- 25 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.
- 3 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
- 6 know, they're going to have to look at the whole
- $7 \hspace{1.5cm} \hbox{portfolio} \; . \hspace{1.5cm} \hbox{So the decision could have been different} \; .$
 - Now, if I may, I would like to ask -- although I'm
- 9 not allowed to ask -- what happened to the SK merger
- 10 when --

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- 11 Q. You're right. I'm going to stick to my questions, if
- 12 you don't mind?

A. Okay. My apology.

- 14 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
- 20 Governance: A Response to Crisis".
- 21 Can I ask you to turn within that, please, to
- page 19, so the reference in the bottom right-hand
- 23 corner is $\{C/350/19\}$.
- 24 A. Page 19?
- 25 Q. Do you have that?

1	Α.	Yes.	1	simple as that.
2	Q.	And I'm going to ask you to look at the third paragraph	2	MR STAFFORD: Sir, would that be a convenient moment to
3	•	on the page that is in the middle of the page which	3	break? It's almost the end of a section. I have
4		starts with the words, "Another institutional investor".	4	another couple of sections, but if that would be
5		Do you see that paragraph?	5	convenient to you?
6	Α.	Yes.	6	THE PRESIDENT: It would be, thank you very much. We will
7	Q.	"Another institutional investor with large potential to	7	break now for an hour, and we will resume at 13.20.
8		improve Korean corporate governance is the NPF."	8	I should remind you, Professor Bae, you cannot speak
9		Which is the same —— you agree that's essentially	9	with anybody about your testimony during the lunch
10		the same as the NPS?	10	break. Of course you are free to go and $$
11	A.	Yes.	11	A. Yes, I understand, sir.
12	Q.	Thank you:	12	THE PRESIDENT: Please, there will be a lunch waiting for
13		"In December 2005, the NPF management committee	13	you, you will be shown where. Thank you very much.
14		included in its statement of proxy voting principles and	14	THE WITNESS: Thank you.
15		guidelines a clear declaration that proxy voting should	15	(12.21 pm)
16		be carried out for the sole purpose of enhancing	16	(The short adjournment)
17		long—term shareholder value."	17	(1.20 pm)
18		Then there's a section about the NPF being committed	18	THE PRESIDENT: Let's resume. Mr Stafford.
19		to disclosing its votes, and then it continues:	19	MR STAFFORD: Thank you very much, sir.
20		"Part of the promise comes from the realisation that	20	Good afternoon, Professor Bae.
21		the amount of assets under management by the $\ensuremath{NPF}\xspace-$ about	21	A. Good afternoon.
22		\$240 billion based on the exchange rate as of	22	Q. In your 2002 article, which we have in the bundle but
23		September 2007 $-$ represents almost 20% of the Korean	23	need not go to, you used cumulative abnormal return,
24		stock market's total capitalisation of \$1.2 trillion .	24	CAR, and you used it as an analytical tool, and my
25		With its current investment in domestic equity of	25	suggestion is that you used that as a tool to tell the
		125		127
1		\$37 billion , the NPF's impact on Korean corporate	1	difference between a value adding transaction and
2		governance could exceed the combined effect of CalPERS	2	a tunneling transaction; is that correct?
3		and other US public pension funds in strengthening the	3	A. That's correct.
4		accountability of US management and boards."	4	Q. Thank you.
5		Do you understand the points that being made in that	5	Now, I want to move on to another section entirely
6		paragraph?	6	of your report. In your report you conducted your own
7	A.	Yes, absolutely.	7	sum of the parts valuation of SC&T that's correct?
8	Q.	You do. A no vote by the NPS would have had an	8	A. Yes, that's correct.
9		immediate and important effect on corporate governance?	9	Q. And you had a disagreement with Mr Boulton as to the
10	A.	On the Samsung merger between Cheil and Samsung C&T?	10	number and basis of the sum of the parts calculation,
11	Q.	We're talking about when that merger has been voted	11	but nonetheless you agree with Mr Boulton that a sum of
12		down; the market would know the NPS's views on corporate	12	the parts valuation is a valid way of valuing $SC\&T$;
13		governance; do you agree?	13	that's correct?
14	A.	If the merger was rejected due to NPS vote, would market	14	A. On the contrary, the point of that exercise is to show
15		react in a way that your Claimant suggests? No,	15	that sum of the part valuation approach is subject to
16		I disagree.	16	a lot of assumptions and subject to biases. So no, that
17	Q.	You disagree.	17	that isn't my intention. That's exactly the opposite.
18	Α.	Because the ownership structure remains the same.	18	$\ensuremath{Q}.$ And where you part company with Mr Boulton fundamental
19		Now, let me elaborate on that point. My point is	19	is that Mr Boulton calculated his sum of the parts
20		simple. Professor Milhaupt suggests that the ownership	20	valuation using listed investments in SC&T at their

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25

A. Correct.

no change in governance, no change in discount. It's as $\label{eq:loss} 126$

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,

listed investments in Samsung affiliates for investment $$128$\,$

 $\ensuremath{\mathsf{Q}}.$ And the reason that you disagree with Mr Boulton's

approach is because you say $\ensuremath{\mathsf{SC\&T}}$ is not holding the

market price; that's correct?

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22

23

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- $1 \qquad \quad \text{purposes, but for the purposes of exercising control;} \\$
- 2 that's correct?
- 3 A. Correct.
- 4 Q. And instead you say that SC&T's listed investments
- 5 should be valued using the dividend income that the
- 6 affiliate shares would generate?
- A. No, I'm not saying it should be valued using a dividend
- 8 discount model. I'm simply showing that the alternative
- 9 assumption results in a completely different estimated
- 10 sum of the parts valuation.
- $11\,$ $\,$ Q. Indeed. So what you used was essentially a discounted
- $12 \hspace{1cm} \hbox{cash flow relating to dividend income rather than the} \\$
- 13 market value of the shares?
- 14 A. Yes.
- $15\,$ 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,
- $17\,$ and take you to page 74. So it's the bottom right—hand
- corner of the page, it has $\{G5/1/74\}$.
- 19 A. Bundle 1, tab 4?
- $20\,$ $\,$ Q. Tab 1. What you should be looking at is on the screen
- $21\,$ $\,$ in front of you and you will find that in your bundle as
- well, just to make sure you have the right page.
- 23 A. Appendix Figure 8, yes.
- $24\,$ $\,$ Q. If we look in the second half of the page, we see the
- 25 heading "Appendix Figure 8. Revised SOTP value of

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- 1 Samsung C&T"; do you see that?
- 2 A. Mm-hm.
- 3 Q. And the fourth line entry is listed investments?
- 4 A. Right
- 5 Q. And the first entry in numbers starts with the number
- 6 12, 12 trillion ?
- $7\quad \text{A. } \mathsf{Mm-hm}.$
- 8 Q. And that we see is Mr Boulton's valuation?
- 9 A. Yes.
- $10\,$ Q. Alongside it is 4,508,941, and that is your valuation of
- 11 listed investments?
- 12 A. Correct, from the perspective of Samsung C&T investors.
- $13\,$ $\,$ Q. Indeed. And the reason that you made that valuation,
- 14 the revision, is because you considered shares in
- Samsung Electronics and SDS were held for the purposes
- 16 of control by the family and were therefore
- 17 illiquid?
- 18 A. It's not tradeable, yes.
- 19 Q. Yes. And would you also regard as illiquid $\underline{\underline{}}$ any other
- shares held in Electronics and SDS by the \blacksquare family or
- 21 by other Samsung affiliates for the purposes of control?
- 22 A. Can you repeat that question?
- 23 Q. Yes. Would you regard as illiquid any other shares in
- 24 Electronics or SDS held by the \blacksquare family for purposes
- 25 of control?

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- 1 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 thoseholdings.
- $5\,$ $\,$ Q. Would you regard that all other shares in those -- in
- 6 Electronics and SDS not held for control by third
- $7 \hspace{1.5cm} \text{parties} \,, \,\, \text{would you regard those as shares held for} \\$

A. So what do you mean by a third party?

- 8 investment?
- Q. In other words, not family or not for the purposesof control by the family.
- 12 A. Well, I mean, it depends because the other party may,
- 13 you know, participate —— I mean, the other party may
- 14 invest for the purpose of control. So it depends.
- $15\,$ $\,$ 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
- 17 Claimant, would you say that these shares were held for
- 18 investment or control?
- 19 A. I cannot speculate on their objective. It's an activist
- $20\,$ hedge fund company. So it's not like a mutual fund or
- 21 typical investment company. I think they do both.
- 22 Q. So does it follow from your answers that whether a share
- 23 is illiquid, non-tradeable, or not depends on the
- 24 subjective intention of the owner?
- 25 A. Yes, I have to agree with that. But then you cannot

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- 1 really speculate on the intention.
- 2 Q. And does that mean that when we look at the entire
- 3 shareholding of SC&T, some part of the shareholding
- 4 should be regarded as illiquid because it's held for
- 5 control and the rest of the shareholding regarded as
- 6 tradeable because it would be held for the purposes of
 - 7 investment?
- 8 A. Yes, if the purpose is to realise capital gain, yes.
- 9 (1.28 pm)
- 10 (A short break for technical issue)
- 11 (1.31 pm)
- 12 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
- 15 it's held for control?
- 16 A. Yes.
- 17 Q. And the rest of the shareholding should be regarded as
- 18 tradeable because it would be held for the purposes of
- 19 investment?
- 20 A. Yes

2.2

- 21 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
- 24 $\{G1/1/62\}$. It's paragraph 139.
- 25 A. This is Professor Dow's report?

1 Q. Professor Dow's report.

(Pause)

- 2 A. Yes
- 3 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 4
- 5 yourself.
- 7

6

- $\ensuremath{\mathsf{Q}}.$ Do you agree that in that paragraph Professor Dow seems 8 9 to be dealing with this issue as if shares in SC&T were
- 10 tradeable and were liquid; is that your interpretation 11 of this paragraph?
- 12 A. I mean. SC&T shares are listed on the stock exchange.
- 13 Q. They are indeed.
- 14 A. They obviously should be traded.
- 15 Q. So do you agree with the way in which Professor Dow has described what he's done in paragraph 139? 16
- 17 A. This analysis is not relevant to my opinion.
- 18 Q. Verv well.
- 19 Around the world there are many companies that have 20 affiliates that are listed. You would agree with that?
- 21 A. Okay. So can you repeat that question?
- 2.2 Q. Many companies around the world hold affiliate shares?
- 2.3 A. Yes. But not necessarily listed company shares.
- 2.4 Q. You are saying that you know of none that are listed affiliate shares?

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- 1 A. Now, this is the key issue . I think this is the key
- 2 governance issue in Korean, or Chaebol companies. The
- 3 problem with the Chaebol is that they are holding stocks
- of affiliated companies which are listed. That creates 5 the conflict of interest between shareholder of the
- 6 affiliated company and the controlling shareholder.
- 7
- Now, take the example of Alphabet, which is 8 a holding company. None of the subsidiaries, none of 9 the affiliate companies are listed. So there is no
- 10 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
- 13 structure

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- I think Belgian companies are -- some companies have a similar structure, but as far as I know, no holding
- 16 companies in the US has a listed subsidiary.
- 17 Q. You earlier explained, and I think you agreed, that the 18 reason for the Korea discount was not the fact that
- 19
- affiliates were listed, but the behaviour and the risk 2.0 of the behaviour of Chaebol in embarking on tunneling
- 21 transactions?
- 2.2 A. I don't remember saying that.
- 23 Q. Is that your evidence though? Is that what you --

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- 24 A. Say it again?
- Q. The Korea discount is a reflection of the risk of

- 1 predatory transactions?
- 2 A. Part of the discount, yes.
- 3 Q. What part of the discount?
- 4 A. Now I think I presented that opinion in my presentation.
- 5 The problem of having listed holdings depresses the
- profitability, which is not good for the shareholder. 6
- 7 Why would manager hold non-profit-generating asset?
- 8 More than two-thirds of the other company assets? There
- 9 is no need.
- 10 Q. What part of the discount is referable to the risk of
- 11 predatory transactions?
- 12 That I don't think one can -- yeah. I'm not sure whether
- 13 anybody can separate the two discounts arising from two
- 14 different problems, because the fact that the company,
- 15 like a company like SC&T, has too many of the listed
- 16 holdings, that can be considered as a tunneling because
- 17 that sacrifice the opportunity for shareholder to make
- 18 more money. So that is kind of the tunneling.
- 19 So I cannot really -- I don't really believe that 2.0 one can separate which part is a tunneling, which part
- 21 is a holding company discount. It's all mixed up due to
- 22 the unique ownership structure in Korean Chaebols.
- 2.3 Q. We shall be hearing from Professor Boulton in due course
- 2.4 and his report addressing that topic.
- 2.5 Can we have a look at a paper which you relied on

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- which is called "Valuing Thinly Traded Assets". It's at 1
- 2. tab 31 in bundle 2.
- 3 A. Bundle 2?
- 4 Q. Yes, bundle 2, tab 31.
- 5
- 6 $\ensuremath{\mathsf{Q}}.$ Do you see the second page of that, which is marked
- 7 {G5/30/2}?
- 8 A. Yes.
- 9 Q. And on the left-hand column, under the word
- 10 "Introduction" it says:
- 11 "Thinly traded assets are often defined as
- 12 investments for which there is no liquid market
- available ." 13
- 14 Do you see that?
- 15 A Yes
- 16 Q. And then towards the bottom of that column there's
- 17 a series of bullet points; do you see that?
- 18 A. Yes
- 19 Q. And there is a list there of examples of what could be
- 2.0 called thinly traded assets?
- 21 A. Yes
- 2.2 Q. You've read that?
- 23 A. Yes
- 24 And do you agree that none of the examples given there
- 2.5 relates to listed affiliates of a holding company?

14

15

- A. No, I mean, why would Francis Longstaff talk about the
 Chaebol problem here? He's not discussing the Chaebol
 problem in this paper.
- 4 Q I'm ——

15

- 5 A. I'm just applying the main finding of his paper, which is that illiquidity is also associated with
- 7 a significant discount.
- 8 Q. I know you are, and my suggestion to you is that it is
 9 contrived to divide the shares in SC&T depending on the
 10 subjective motive of the owner of the shares.
- 11 A. I'm sorry, I don't quite follow your question.

purposes when valuing a company.

- 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
- 16 A. Yes, it should be, because the value is different from
- 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
- 24 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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- 1 Q. Now I'm going to take you to some analyst -- I beg your 2 pardon, sir.
- 3 MR GARIBALDI: I'm sorry. A commonsense question. Why
- $4\,$ would anyone other than Samsung invest in Samsung C&T if
- 5 the value is so low in your opinion --
- 6 A. Samsung C&T —
- 7 MR GARIBALDI: Since you don't count the shares that are
- $\,\,$ held for control, the value is very low.
- 9 A. Yes.
- 10 MR GARIBALDI: So why would anyone invest in that?
- 11 A. The investors are betting on the Samsung C&T core
- business, which is construction and trading.
- 13 MR GARIBALDI: I'm sorry, but I don't quite follow.
- $14 \quad \text{A. The main } --$
- $15\,$ $\,$ MR GARIBALDI: The income from that investment, from those
- 16 investments, is very small according to your own --
- 17 A. Yes.
- 18 MR GARIBALDI: To your own figures.
- 19 A. Correct.
- 20 MR GARIBALDI: Why would anyone invest in that?
- 21 A. That is exactly why the market discounts Samsung C&T
- stocks relative to SOTP value, because it's not worth
- 23 that much.
- $24\,$ MR GARIBALDI: Wouldn't the discount be much larger?
- 25 A. So, yes, I think the magnitude of discount should be

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1 around 40 to 50%, which is indeed the case.

- 2 MR GARIBALDI: I still don't understand the logic of an
- 3 investor investing in something that has very little
 4 value
- A. Can I use an analogy, if I may, to explain this concept?
 Now, suppose you are the CEO of construction

7 company. Your main business is construction.

8 Now, I'm the Samsung C&T shareholder, I mean the

9 construction company you manage, and you are the 10 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 22 \$1 billion, \$2 billion? No, the painting has worth to

you. It doesn't mean anything to me. So I'm not going to pay \$2 billion . I'll pay \$1 billion .

25 So the paintings in this analogy, it's like the

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1 holdings held by Samsung C&T in Samsung Electronics or

2 Samsung SDS

3 MR GARIBALDI: At the moment of —— suppose that you are

4 valuing that company for merger purposes, M&A market.

5 A. Right

 $\,$ 6 $\,$ MR GARIBALDI: How do you value that company? You value the

7 paintings or you don't value the paintings?

8 $\,$ A. If the new merged company, the controlling shareholder,

9 has no intention to liquidate their paintings, it's not

10 worth to me. It shouldn't be valued at the market

11 price.

12 MR GARIBALDI: But the paintings are there --

13 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.

16 A. Maybe. That's why the value is not zero. There is some

value, but it's not going to be market price because

18 I know your intention is you're not going to sell the

paintings, you're going to keep them, as long as I'm

20 investing in your company.

So I'm not willing to pay \$2\$ billion to your

22 company.

23 MR GARIBALDI: Thank you.

 $24\,$ MR STAFFORD: Let's see what advice and recommendations were

given to people who might buy or sell shares in Samsung

- 1 C&T. Would you take bundle 2 and go to tab 25.
- 2 A. Bundle 2? Bundle 2?
- 3 Q. It's tab 25. What you should have in front of you
- 4 is Bank of America Merrill Lynch in the right-hand top
- 5 right-hand corner; do you see that?
- A. Mm-hm. 6
- 7 Q. You will see immediately above that the date, which is
- 8 23 April 2015.
- 9 A. Mm-hm.
- 10 Q. And so that is at a time after the merger has been
- 11 announced, the merger proposal has been announced?
- 12 A. Is it? I think the merger announcement was May.
- 13 Q. Am I mistaken about that? I'll be corrected if I am.
- MR TURNER: 26 May 2015, sir. 14
- 15 MR STAFFORD: I am wrong and you are right.
- But let's have a look at -- and this is a document 16
- 17 which is issued by Bank of America analysts for people 18
- to read if they are thinking of buying or selling shares
- 19 in Samsung C&T; do you agree? $\{C/632/1\}$
- 20
- 21 Q. If we turn the page and go to $\{C/632/3\}$, do you see in
- 2.2 the top there is a table marked "Table 1: SOTP
- 2.3 valuation"; you see that?
- 2.4 A Yes
- 2.5 Q. And do you see the -- it is a sum of the parts

- 1 valuation, and then the fourth line entry is "listed
- 2 investment securities"?
- 3 A. Mm-hm.
- Q. And it's 9.3 trillion; that's correct?
- 5
- 6 Q. And 30% discount on market value?
- 7 A. Yes.
- 8 Q. And first of all, there is no difference there being
- 9 suggested in the -- no problem with the sum of the parts
- 10 being used as a valuation method, is there?
- 11 A. Can you repeat the question?
- 12 Q. The analysts are perfectly happy to use a sum of the
- 13 parts valuation when making recommendations and
- 14 conveying information to potential buyers and sellers?
- 15 A. Yes, this is a popular valuation approach among 16 analysts.
- 17 Q. And we will see that there is a 30% discount on market
- 18 value, and that would incorporate the Korea discount; do
- 19 you agree?
- 2.0 A. No. Not necessarily.
- Q. It would incorporate the holding company discount; do 21 2.2 you agree?
- A. I don't know the intention of the analyst applying 30% 23
- 2.4 discount. This is exactly proving my point. It's
- 25 arbitrary. SOTP valuation is not reliable, objective,

- unbiased estimate of the value. It depends on the
- 2 analyst. It's subject to assumption. And then I have
- 3 no idea where this 30% comes from.
- Q. Well, if this is arbitrary, then it is arbitrarily over 4
- 5 200% higher in its valuation of 9.3 billion than your
- valuation of 4.5 trillion? 6
- 7 A. No. Again, the point of my exercise is to show that
- 8 SOTP valuation is not subject to -- I mean, it is
 - subject to errors and estimation errors and depends on
- 10 the valuator's bias. It's not objective measure of 11
 - valuation approach.
- 12 I agree with Professor Dow. The best measure of the
 - value is market price.
- 14 Q. And if we turn to tab 26, we can see another analyst's
- 15 report, also dated, as I now am reminded, before the
- 16 merger announcement, 24 April 2015; do you see that?
- 17

13

- 18 Q. And it's going to be a similar point I make. If you
- 19 could turn to $\{C/634/6\}$; do you have that?
- 20
- 2.1 Q. And you will see there a single set of figures,
- 22 Figure 7, that's sum of the parts valuation; do you see
- 2.3
- 2.4 Α
- 25 Q. And do you see under number 3, investment assets, the

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- first such investment asset is "listed investment 1
- holdings"; do you see that? 2.
- 3 A. Yes.
- 4 Q. And the valuation given is 10.1 trillion Won?
- 5
- 6 Q. And if we go to the right-hand column, we see there a
- 7 23% discount to market price incorporating tax
- 8 implication.
- 9 A. Again, you're proving my point. Depending on the
- 10 analyst, they apply a different discount. So where does
- that come from? Is it a reliable measure? No, 11
- 12 absolutely not.
- Q. And then moving on to tab 27, this is $\{C/636/1\}$ and this 13
- 14 is Samsung Securities. Again, April 24, 2015. And if
- 15 you turn to the second page of this $\{C/636/2\}$, we see in
- 16 the right-hand column, towards the bottom of the page on
- 17 the screen, "Sum-of-the-parts valuation"?
- 18 A. Yes
- 19 $\ensuremath{\mathsf{Q}}.$ And do we see under value of investment securities, 30%
- 2.0 discount, listed subsidiaries, 9.29 trillion?
- 21 A Yes
- 2.2 Q. On the face of it, would you agree with me, each of
- 23 these analysts adopted the sum of the parts method?
- 24 A. Yes
- 2.5 Q. And on the face of it, none of the analysts used your

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1 discounted cash flow method? method, doesn't mean that what I'm saying is wrong. I'm 2 2 simply stating the SOTP valuation is subject to 3 Q. And each included both listed and unlisted affiliates in 3 assumptions and the intent of the valuator. It's 4 Samsung C&T? 4 a biased measure Now, looking at this NPS document, it says 5 A. Right. 5 Q. And with regard to listed entities, the approach that Yes, if it is sold 6 6 7 each analyst adopted was to start with the share price 7 out, it should be worth that much. But my opinion is 8 8 that family has no intention to sell and multiply it by the number of issued shares to reach 9 a final Figure? 9 Q. When you prepared your report were you provided with the 10 10 A. Right. NPS's own valuations of SC&T? A. Was I provided NPS document? 11 ${\sf Q}.\;$ And the share price -- sorry. And none of the analysts 11 treated the assets of SC&T as illiquid in these reports, 12 Evidence of their own valuation of SC&T? 12 13 A. Well, I mean, I cannot tell. I mean, they just list the 14 No? 14 Q. 15 listed subsidiary and apply the market price, and then 15 A. No Q. Were you provided with information from the evidence as 16 discount it 16 Q. Can we turn now to tab 30. This is not an analyst's 17 to how NPS changed its valuations? 17 18 report. Let me explain to you what this is. This is 18 A. No. I mean, as I mentioned in my presentation, I was a document prepared by the NPS research team and it's 19 19 instructed to comment on the Professor Milhaupt's 20 dated 30 June 2015. 20 opinion and the discount, whether it's going to 2.1 A. Yes. 21 disappear or not if the merger was rejected. 22 So the NPS decision, how NPS valuate Samsung C&T is 2.2 Q. Are you familiar with this document already? 23 2.3 A. No. not relevant to my analysis. 2.4 Q. Okay. 2.4 So I haven't looked at anything related to NPS. 25 A. First time to see this document. 25 Q. Which takes us to your report, which is tab 1, 145 147 1 Q. And could you turn on to the second page of that 1 and I would like you to go within your report to 2 document. Do you see in the right-hand column, under 2. paragraph 45. 3 the heading 3 A. Yes. ; do you see that heading? 4 Q. And the reference is $\{G5/1/27\}$. 5 A. Yes 5 A. 45, yes 6 $\ensuremath{\mathsf{Q}}.$ And then as you go down that column, you will see in 6 Q. Paragraph 45, where you say: 7 7 bold the number 2, "For this report, I do not need to, and do not, 8 8 otherwise comment on the Merger and its terms. I find A. Mm-hm. 9 Q. Do you see that? 9 it relevant only to note that the Merger is consistent 10 A. Mm-hm. 10 's having a motivation to gain control of 11 Q. And immediately below that, do you see 11 4.06% of Samsung Electronics. I consider that this 12 12 motivation would have remained even in the 13 13 A. Right. Counterfactual Scenario of the Merger rejection Q. And do you see described by Mr Boulton." 14 14 15 15 A. Yes 16 A. Right. 16 Q. Looking back on that, do you now think that it would Q. Can you see any evidence there that the NPS used your 17 have been better if you had looked at the merger and the 17 18 discounted cash flow method to value Samsung C&T shares? 18 terms of the merger? 19 A. No, I think I used, despite my intention of using DCF 19 A. I was aware of the terms of the merger. But it's not 2.0 2.0 method, an SOTP calculation. relevant to my analysis. 21 21 $\mathsf{Q}.\;$ In your report you make reference to the 2018 Hyundai Actually. I don't claim that my approach is right.

2.2

23

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2.5

transaction?

point. I have -- just because they don't use a DCF 146

subject to assumptions. And different assumptions, you

know, come up with different values. That's my whole

I'm just simply stating that the SOTP valuation is

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And you make the point that in certain respects that was

a scenario similar to the Samsung case?

2.2

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2.4

- 1 A. Exactly.
- 2 Q. And you make the further point that after the
- 3 restructuring proposals were withdrawn, the price of the 4 target entity went down and not up?
- 5 A. You mean Hyundai Mobis?
- 6 Q. Yes.
- 7 A. Yes.
- 8 Q. Is it your contention that that Hyundai transaction was9 also a clear case of attempted tunneling?
- A. It is consistent with the tunneling, yes. The nature of
 that merger, proposed transaction, benefit 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

- 1 table to the expropriation risk by family. It's
- $2 \hspace{1cm} \text{uncertain what's going to happen to that company,} \\$
- 3 Hyundai Mobis. Given that family has little
- 4 ownership, family has little incentive to increase
- the value of Hyundai Mobis because they have noincentive.
- 7 Q. So the expropriation risk persisted?
- 8 A. Yes, it's going to be back on the table, and this is9 why.
- 10 Q. And that is what the market would have perceived, in 11 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.
- 16 Q. Let's have a look at the context and the world in which 17 that took place.
- 18 A. Mm-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?
- 22 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

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- Chaebol families was still very considerable?
- 2 A. Can you repeat the question? Sorry.
- 3 Q. In the real world in 2018 the market would know, after
- 4 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?
- 7 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
- 10 had then taken place, arising out of the Samsung
- 11 scandal, the market would know that the way in which
- 12 had acted reflected the exercise of power by
- 13 Chaebol families?
- 14 A. Sorry, I --
- $15\,$ $\,$ Q. My fault. It's not a very well put together question.
- 16 A. Can you repeat?
- 17 Q. By 2018, Hyundai proposal being withdrawn, the market
- would know from the Samsung criminal trials that had
- 19 taken place --
- A. Can I ask you a question. Which criminal case are youtalking about?
- 22 Q. There's ex—President Messrs and
- 23 A. Okay, yes. Not the stock manipulation case.
- $24\,$ $\,$ Q. Not the stock manipulation. But they would know, the
- 25 market would know from those trials that the Chaebol

15

- family, amily, had power and was prepared to
- 2 use it for tunneling?
- 3 A. Yes, I believe so. The market always perceives that
- 5 Q. And in 2018 the market would know that NPS had backed
- the merger in Samsung?
- 7 A. In 2018?
- 8 Q. Yes.
- 9 A. Why would market wait until 2018 if this has been known?

 10 I mean, the NPS —
- 11 Q. It's a simple question: the market would know in 2018
- that the NPS had voted in favour of the Samsung merger?
- 13 A. Yes. I think that's a public information.
- Q. And the criminal trials of ____, ex-President ____,
- 15 Messrs and and those criminal trials would have
- $16 \hspace{1cm} \hbox{revealed publicly the steps that could be taken by} \\$
- a Chaebol family to support a tunneling transaction?
- 18 A. I don't understand your question.
- 19 Q. The information that came out about the behaviour of
- 20 , President , and Messrs and , --
- 21 A. Okay, yes.
- 22~ Q. $\,--$ revealed to the public and the market the influence
- 23 that a Chaebol family could exercise?
- 24 A. Yes
- $25\,$ $\,$ Q. And that's a very different world from the

1		counterfactual world that I have been putting to you,	1	questions for you.
2		isn't it?	2	A. Thank you.
3	Α.	Counterfactual world of Hyundai case or	3	THE PRESIDENT: Ms Tan, redirect, please?
4	Q.	Of Samsung case, where there is no merger because it is	4	MS TAN: No questions in redirect, sir.
5		defeated.	5	THE PRESIDENT: There will be questions from the tribunal.
6	Α.	So what you're asking is if there is no criminal	6	Mr Thomas.
7		activity on the part of family and former President,	7	Questions from THE TRIBUNAL
8		and if the merger was rejected, then you are saying that	8	MR THOMAS: Thank you.
9		the market take that news as a really good news, so that	9	As I understand it from reading the evidence on the
10		the discount of Samsung C&T is going to go away; is that	10	record, the phenomenon of Chaebols, it's a longstanding
11		your question?	11	phenomenon in Korea, as I understand it; is that
12	Q.	I'm asking you about the Hyundai merger against the	12	correct?
13	٦.	background of the Samsung merger being cancelled.	13	A. Yes, sir.
14	Α	Yes, the context is quite different, but the motivation	14	MR THOMAS: To the best of your knowledge, how far back
15	,	is exactly the same.	15	time does it date? Is it a phenomenon that emerged
16	0	I agree. The context is very different.	16	after the Korean war? When did these types of circular
17		Yes, I agree. Of course.	17	holdings begin to become established?
18		Now, let's just have a quick look at the content of the	18	A. I think the Chaebol structure emerged during the process
19	ų.	Hyundai proposal.	19	of economic development in 1960s under former
20		Did you believe that the Hyundai transaction was for	20	President —— I mean, I'm not talking about the lady
21		the purpose of strengthening control of the flagship	21	; her father. So that started from 1960s and
22		company?	22	because Korea was such a poor country, it has no
23	٨	Yes.	23	
			24	capital .
24 25		As with Samsung?	25	So a way to accumulate capital and make an
23	Α.	Yes.	23	investment is to create an organisational structure like
		153		155
1	Q.	And in the Samsung transaction the flagship company is	1	a Chaebol, helping each other.
2		Samsung Electronics?	2	So at the initial stage of the economic development,
3	A.	Yes.	3	I think a Chaebol contributed to the economic
4	Q.	And in the Hyundai transaction the flagship company is	4	development quite a lot.
5		Hyundai Motor Company?	5	But now, Korea now is in the stage of, you know,
6	A.	Yes.	6	advanced country. So the old organisational structure
7	Q.	And in the Hyundai transaction it was Hyundai Mobis that	7	is not beneficial to shareholders.
8		was holding the shares in the flagship, Hyundai Motor	8	So as far as I remember, it started from 1960s.
9		Company?	9	MR THOMAS: Okay. Now, I know you're not a lawyer, and
10	A.	Exactly, just like Samsung C&T.	10	I know you are a business Professor, but was there
11	Q.	But in the Hyundai merger, the proposal was to spin off	11	something distinctive in Korean capital markets law
12		part of Hyundai Mobis and then merge the spin-off	12	which prohibited — not prohibited; which permitted
13		company with Hyundai Glovis?	13	circular holdings? How did the law treat similar
14	A.	Yes, that's right, but then again the motivation is to	14	holdings?
15		have control power over Hyundai Motor.	15	A. So obviously the regulator noted the problem with the
16	Q.	So this was in fact re—organising the business, not	16	circular holdings. So they came up with several
17	-	re—organising the shareholding?	17	measures of the regulations preventing circular
18	Α.	Yes, its purpose is to re—organise, but the ultimate	18	holdings. So I don't think it's possible right now.
19		goal is to increase control power. I think even with	19	But then the problem is there is existing circular
20		the Samsung merger, I think one can argue that the	20	holdings which the government cannot remove in an
21		merger was for the purpose of the restructuring.	21	arbitrary way, because they could argue that it's

23

24

25

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

23

24

A. Absolutely.

asked you everything that I need to ask you.

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

1	government cannot do much about it.	1	very much.
2	MR THOMAS: Could we take a look at tab, I think it's tab 4.	2	If I can just ask one more question about that.
3	You've been taken to this by Mr Stafford. It's the	3	It's a prohibition on new circular shareholding. So how
4	meeting notes.	4	did the Korean regulators deal with existing circular
5	Can you take a look at the second full paragraph	5	shareholdings? Were they intended to be phased out or
6	beginning $\{C/413/1\}$.	6	was it: this practice will no longer continue?
7	A. Yes.	7	A. Again, I mean, I don't $$ I haven't really closely
8	MR THOMAS: Just read it to yourself, just to familiarise	8	followed up with the other regulation because that's not
9	yourself with it.	9	my expertise area. But since the financial crisis of
10	(Pause)	10	1997 in Asia, the Korea Government pushed Chaebol to
11	Now, you will see in the third line down there's	11	adopt the so-called holding company structure, so that
12	a reference to	12	the ownership structure becomes more transparent.
13	The question I have is the	13	But the trouble with Samsung, Samsung Electronics is
14	difference between a bill and a legislative Act. A bill	14	just way too big. So to adopt the holding company
15	will lead to a legislative Act.	15	structure by Samsung business group, it's going to cost
16	Can you shed any light on whether or not the bill to	16	too much. So because of the cost reason, they cannot
17	which I'm assuming Mr referred became law? And if	17	really adopt the holding company structure. I think
18	you don't know the answer, that's fine with me. I just	18	that's the dilemma has.
19	wondered whether you ——	19	So I don't know the details, but I think Mr Smith,
20	A. As far as I know, there are rules preventing circular	20	the fact witness, he proposed the restructuring to get
21	investment which applies to the largest Chaebols, whose	21	around that problem to Samsung, but I don't know the
22	asset size is —— I don't remember the exact Figure, but	22	details about it. But then that's the dilemma
23	then the largest Chaebols, they are not allowed to make	23	has.
24	a circular investment. I think that law is in effect	24	On the one hand he faces the pressure from the
25	right now. Yes.	25	government to adopt a holding company structure. On the
23	right now. Tes.	23	government to adopt a noiding company structure. On the
	157		159
1	MR THOMAS: Was it in effect at the time or was it?	1	other hand, where is the money coming from to make that
2	A. They keep changing the law, so I cannot tell for sure.	2	change?
3	But my guess is that law was still there in 2015.	3	MR THOMAS: Sorry, just one other question, as I listen to
4	MR THOMAS: Okay. I don't think I can take this much	4	this.
5	further .	5	I have also seen in a number of the materials that
6	MR STAFFORD: By your leave, may I ask the witness to have	6	have been filed in the case that there seems to be some
7	a look at another document to clarify an answer for you?	7	attachment to the idea of Chaebol because of the
8	MR THOMAS: That would be helpful.	8	economic success that Korea has undergone?
9	MR STAFFORD: Professor Bae, could you take up bundle 1, and	9	A. Yes.
10	go to tab 8, please. You will see that this is an OECD	10	MR THOMAS: Again, if this strays from your area of
11	report from October 2018 concerning large Korean	11	expertise, forgive me, and if it's outside your ——
12	business groups {C/541/1}.	12	A. Not at all, not at all.
13	Could I ask you to turn within that to {C/541/24}.	13	MR THOMAS: But my question is this: are there, within the
14	Do you have that?	14	Korean National Assembly, are there parties who support
15	A. Yes.	15	Chaebols, who say that this is the key to Korean
16	MR STAFFORD: You will see a table of key regulations	16	economic success?
17	imposed on the large business groups; do you see that?	17	A. That is absolutely beyond my expertise, but I have my
18	A. Yes.	18	personal opinion on that.
19	MR STAFFORD: If you look at the last entry in that table,	19	MR THOMAS: Please give it to me.
20	it reads:	20	A. They are all the same. They are under the influence of
21	"Prohibition of new circular shareholding."	21	Chaebol.
$_{\perp}$	Tombition of new circular shareholding.		
22	Date imposed, July 2014.	22	MR THOMAS: There are other legislative bodies in the world

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A. Yes.

like that, aren't there?

25 MR THOMAS: That's another confirmation.

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 $23\,$ $\,$ A. Yes, so my guess was correct.

24 MR STAFFORD: So does that assist you?

 $25\,$ MR THOMAS: That's very helpful, Mr Stafford. Thank you

1	A. It's an unfortunate reality, in my view.	1	give rise to any questions by the parties —— do they?
2	MR THOMAS: Thank you very much.	2	MR STAFFORD: No, thank you.
3 4	THE PRESIDENT: A couple of questions perhaps.	3	THE PRESIDENT: Then they don't. So Professor Bae, thank
	First, interesting you explained how the Chaebol	4	you very much.
5 6	structure was used to effectively pool capital in	5 6	THE WITNESS: Thank you. THE PRESIDENT: Your examination is concluded.
	a stage of the development of Korea, of the Korean		
7	economy, when there was not much capital around. So as	7	(The witness withdrew)
8	I understand, the idea with the circular ownership was	8	Housekeeping
9	to allow the shareholders to support each other with	9	THE PRESIDENT: That seems to bring us to an early end of
10	capital injections?	10	the day, which is probably welcome by many quarters in
11	A. Exactly.	11	this room.
12	THE PRESIDENT: That's the way it developed.	12	Is there anything else that either party would like
13	A. Yes, exactly.	13	to raise?
14	THE PRESIDENT: There are other ways of doing that in other	14	MR PARTASIDES: Only one matter, members of the tribunal.
15	parts of the world. People are using cooperatives to	15	I believe the tribunal were going to consider the
16	achieve the same, basically.	16	parties' slightly differing views on the length of the
17	A. Right. You're absolutely right.	17	oral closings on Friday. As that will be relevant to
18	THE PRESIDENT: But in a sense the Korean economy doesn't	18	our preparations, we on our side wondered whether the
19	need Chaebol structure anymore to create capital or to	19	tribunal had reached a conclusion on that yet.
20	accumulate capital in the market, because there is	20	THE PRESIDENT: We haven't, but now that you are reminding
21	sufficient capital.	21	us, we will. We will do that after this meeting.
22	A. Yes, yes, that's true.	22	Mr Turner?
23	THE PRESIDENT: Then I put this question to	23	MR TURNER: Nothing. Nothing else from our side, sir. We
24	Professor Milhaupt, so I should put this question to you	24	look forward to seeing everybody tomorrow morning at
25	as well then.	25	10 o'clock as for once is written in the original
	161		163
1	The distinction between the Korea discount and the	1	timetable.
2	holding company discount, you didn't discuss that in	2	THE PRESIDENT: Yes. We will go back to the original
3	your report extensively, but you mentioned that it came	3	timetable.
4	up during your cross—examination. What is your view on	4	So just to remind us of the position, it's one hour
5	that distinction?	5	or two hours, the parties' positions on the closing.
6	A. It's all related to the governance problem, but when we	6	And is there anything that either party would like to
7	say Korea discount, it's the valuation of Korean	7	add in terms of justifying their request or proposal for
8	companies, Chaebol companies, relative to similar	8	the time to be allocated for closings?
9	companies in, say, US or Canada, and the valuation	9	MR PARTASIDES: Let me add perhaps one thing, members of the
10	difference, we call that Korea discount.	10	tribunal, and that is, as I have given thought to our
11	Now, holding company discount is different, because	11	oral closing, it seems to me this is a case that would
12	we're not comparing the Chaebol companies with foreign	12	be particularly difficult to make oral submissions
13	companies. Holding company discount is the difference	13	limited to one hour that would be useful for this
14	between net asset value or SOTP value and the market	14	tribunal, and so we maintain our preference for
15	price.	15	a two—hour closing on our side.
16	So in Mr Boulton's report, that 40% discount is	16	THE PRESIDENT: Mr Turner?
17	a mix of, you know, discount due to a lot of problems.	17	MR TURNER: It won't surprise you to know, sir, that we
18	But as far as the definition is concerned, Korea	18	maintain our preference. We are worried about falling
19	discount is relative to foreign company valuation.	19	between two stools. We think we can give you the
20	Holding company discount is the difference between net	20	highlights in an hour. We don't think we can do justice
21	asset value and the market price. But then the discount	21	to the fortnight's hearing and the complicated issues in
22	all arises from the governance problem.	22	two hours. But we would then be trespassing or risking,

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very significantly risking, saying the same thing in

So that is what I said the other day. That is \mbox{still}

writing as we would have said on Friday to you.

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A. Thank you.

THE PRESIDENT: Okay. Thank you very much.

THE PRESIDENT: If the questions from the tribunal don't

1	our position. Obviously we are in the tribunal's hands.	1	briefly raise the question of the schedule for Thursday
2	THE PRESIDENT: On a related point, we haven't had a chance	2	with the parties?
3	to discuss this within the tribunal, so I'm simply	3	THE PRESIDENT: Yes, Thursday, a technical question.
4	putting the question for the parties to hear you on	4	The question is whether we can release the technical
5	this. As we indicated, the tribunal is likely to have	5	people, in particular on Thursday. It looks like
6	questions to the parties at the end of the hearing. We	6	Thursday will be a day off, fully. Based on the
7	don't know yet how many there will be. They can be	7	programme we anticipate that the examination of the
8	given to the parties at the end of the closings so that	8	quantum experts can be completed by close of business on
9	you will deal with them in your written submissions, or	9	Wednesday.
10	we can make an effort to give them to you so that you	10	MR PARTASIDES: That is still our expectation and so no
11	can address them as part of the oral closings, which may	11	objection at all to proceeding in that way.
12	complicate the oral closings though, I recognise that.	12	THE PRESIDENT: Okay. So Thursday will be a day off for the
13	But do the parties have any views or any preferences	13	technical people in particular. So we can confirm that
14	on getting a sense of the tribunal's questions?	14	now.
15	Again, the parties shouldn't read too much into the	15	If necessary, we can ——
16	tribunal's questions. They may well be focusing on	16	MR TURNER: Just for the transcript, so that I don't then
17	issues that we felt are not fully covered, rather than	17	challenge the arbitrators for making such a momentous
18	being the key questions for the tribunal to decide. So	18	decision without hearing from the Respondent, we
19	there is no suggestion that these are the key issues on	19	completely agree.
20	which we would like to hear you.	20	THE PRESIDENT: Okay, very good. I appreciate it.
21	MR PARTASIDES: Mr President, on our side, of course, we	21	Thank you very much.
22	would be very happy to hear any questions that the	22	(4.27 pm)
23	tribunal has. We're equally happy to deal with it in	23	(The hearing adjourned until Tuesday, 23 November 2021
		24	•
24 25	post—hearing briefs, as you prefer and would find most useful.	25	at 10.00 am)
25	usetui .	25	
	165		167
1	I would say that if you would want us to address	1	INDEX
2	questions in our oral closings, speaking for our side,	2	PAGE
3	certainly we would appreciate receiving those questions	3	PROFESSOR CURTIS MILHAUPT (called)6
4	before the end of Wednesday, in order to give us an	4	Presentation by PROFESSOR MILHAUPT7
5	appropriate opportunity to try and address them.	5	Cross—examination by MR LINGARD24
6	THE PRESIDENT: Mr Turner?	6	Questions from THE TRIBUNAL51
7	MR TURNER: Yes, I wholeheartedly echo my learned friend's	7	MR JAMES SMITH (recalled)61
8	wish to get questions sooner rather than later if there	8	Cross—examination by MR LINGARD62
9	are any. Clearly it's not a strict division between	9	Examination—in—chief by MR PARTASIDES68
10	questions before oral closings or questions in writing	10	Questions from THE TRIBUNAL69
11	afterwards. We're in the tribunal's hands. If the	11	Further cross—examination by MR LINGARD78
12	tribunal would like us to address questions orally on	12	PROFESSOR KEE—HONG BAE (called)81
13	Friday, we will do our best to do so, as long as the	13	Presentation by PROFESSOR KEE—HONG BAE82
14	tribunal allows us to have another go in writing if	14	Examination—in—chief by MS TAN92
15			•
	necessary or to supplement those answers in writing if	15	Cross—examination by MR STAFFORD94
16	necessary.	16	Questions from THE TRIBUNAL155
17	But we're in the tribunal's hands. I only echo my	17	Housekeeping163
18	learned friend's wish to get any such questions as soon	18	
19	as the tribunal can formulate them.	19	
20	THE PRESIDENT: Okay, understood.	20	
21	Okay. Very good. So we will revert to the parties	21	
22	as soon as possible in the course of the evening and in	22	
23	the meantime, I wish you a good evening and we'll see	23	
24	you tomorrow morning at 10 o'clock.	24	
25	TRIBUNAL SECRETARY: Mr President, I think you wanted to	25	

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