## OPUS<sub>2</sub>

Elliott Associates, L.P. v Republic of Korea

Day 8

November 24, 2021

Opus 2 - Official Court Reporters

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1	Wednesday, 24 November 2021	1	In my second report, paragraph 102, I'd like to add
2	(10.00 am)	2	two words, which are indicated in bold on this slide,
3	PROFESSOR JAMES DOW (called)	3	and delete the words that are indicated as crossed out.
4	THE PRESIDENT: Good morning. We have the examination of	4	The correct paragraph should read:
5	Professor Dow on the programme. Anything else that we	5	"In this but—for world, I am agnostic about whether
6	need to discuss before we start? Mr Partasides?	6	the discount would have risen or fallen; furthermore,
7	MR PARTASIDES: Not before we begin, Mr President. Thank	7	I do not think it is possible to confidently postulate
8	you.	8	a result with respect to the Merger outcome. I am also
9	THE PRESIDENT: Thank you. And Mr Turner?	9	agnostic about whether the SC&T share price would have
10	MR TURNER: Likewise, sir.	10	risen or fallen ."
11	THE PRESIDENT: Thank you.	11	Slide 4 ——
12	Good morning, Professor Dow.	12	THE PRESIDENT: Professor Dow, now that we are on the
13	THE WITNESS: Good morning.	13	corrections, can we go to page 72 of your second report?
14	THE PRESIDENT: As you know, you are appearing before the	14	I wouldn't be asking this unless there was a risk of
15	tribunal as an expert witness. So you are required to	15	confusion literally .
16	give your evidence in accordance with your sincere	16	On top of the page $$
17	belief . So for that purpose can I ask you, please, to	17	THE WITNESS: Sorry, do you mean —— excuse me, sir, do you
18	read the declaration for the record.	18	mean page 72, that is paragraphs $166/167$ ?
19	THE WITNESS: I solemnly declare upon my honour and	19	THE PRESIDENT: Yes, indeed.
20	conscience that my statement will be in accordance with	20	The second line of this page, and then
21	my sincere belief .	21	paragraph 166, the penultimate line, you are referring
22	THE PRESIDENT: Thank you very much.	22	to compounding factors, but do you mean confounding
23	I understand you will be making a presentation	23	factors? Because that's the term you use actually on
24	instead of a direct examination. So please go ahead.	24	the preceding page at the bottom. $\{G3/1/77\}$
25	THE WITNESS: Thank you, sir.	25	THE WITNESS: Thank you, sir. I believe I do mean
	1		3
1	Presentation by PROFESSOR JAMES DOW	1	confounding factors.
2	THE WITNESS: I'm going to present a slide deck.	2	THE PRESIDENT: I was a bit confounded by the language.
3	Shall I begin.	3	Please go ahead.
4	Mr President, members of the tribunal, thank you	4	THE WITNESS: Let's add a third correction then to that
5	very much for giving me the opportunity to present my	5	effect .
6	opinion in this case.	6	Passing to slide 4, my agenda for this morning is to
7	I start, slide 2, by presenting some of my	7	talk about the analysis of the newly produced swaps
8	qualifications . I have taught at a number of	8	transactions; then to proceed to my main damages
9	universities, including many years at London Business	9	analysis as of ten days ago.
10	School where I teach corporate finance and valuation.	10	Slide 4, please.
11	I have also taught asset pricing and corporate finance	11	I will introduce some key concepts in this
12	to the PhDs.	12	arbitration . I'll present my damages conclusions,
13	My research areas are connected with both financial	13	namely that there are no damages. I will then speak to
14	markets and corporate finance, and focus in a number of	14	Elliott 's damages on SC&T shares and I will say that
15	my papers, my primary focus is on price dislocations	15	they are implausible, and finally I will present some
16	that can arise when investors with different information	16	other opinions.
17	or views are constrained by limited capital, by cost of	17	Slide 5, please. The swaps.
18	carry, and by limited trading horizons.	18	My second report, Appendix E, relied on some
19	I have testified in a number of arbitrations	19	incomplete information from the Claimant listing sales
20	previously and had the honour of encountering some	20	of swaps, but there was no information on when those
21	members of the tribunal before. I have listed a few of	21	swaps were purchased. That new information has been
22	those arbitrations at the bottom of slide 2.	22	produced and I can now speak to that.
23	Passing to slide 3, I have a couple of corrections.	23	Slide 6. What are swaps? What are short sales?
24	In my first report, Figure 11, Figure 11 is a graph with	24	Swaps are financial contracts, financial

d. 25 derivatives, that allow

derivatives, that allow traders to gain economic

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two lines and the labels are interchanged.

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exposure equivalent to shares. A long swap is like owning a share, but does not afford voting rights to the owner.

A short swap, in economic terms, is equivalent to a short sale of shares. What is a short sale? In a short sale we reverse the usual order of transactions. We sell first and then later we buy.

Short sellers hope to profit from selling the shares at a higher price than the price at which they later buy back the shares.

The new production, on slide 7.

The new production shows that we can now compute Elliott 's trading profits on swaps. So we've had evidence of more swap transactions produced which were the other end of the transactions that were previously produced. In other words, we'd already seen sales and now we see the purchases. And we also have some SC&T swaps in that production which were not previously disclosed.

The trading summaries that we've been provided with look like  $\,--$  I show an extract at the bottom of slide 7. So each line in those spreadsheets shows, among other things, whether it is a buy or a sell  $\,--$  SS is short sale; BC buy to cover  $\,--$  and show the gross consideration, that is to say the amount of money that

changes hands, namely number of shares in the swap multiplied by the price.

To work out the profits or losses on the swaps, we simply add up that gross consideration column, and that is what Mr Smith did on Monday; that is equivalent to what Mr Smith did on Monday.

Slide 8.

Elliott profited from the Cheil swaps. It sold them high and bought them back low. On this graph I show that over the summer of 2015 Elliott sold shares in Cheil and bought them back later on, at a lower price.

Slide 9 shows that on my previous report, when I didn't know when the swaps had been bought, I had assumed they were sold previously. So I assumed they were long positions. In fact they were short positions. In either case there would be a profit because I thought the swaps had been bought on the way up for Cheil prices. As we see on slide 9, the price went up until the sales, whereas if we revert back to slide 8—excuse me, I hope that doesn't confuse—on slide 8 we saw that afterwards the price went down again. So they still bought at a low price.

On slide 10 I indicate the trading profits on swaps. They are mostly Cheil swaps, to be clear. There are only a few SC&T swaps.

We see that the trading profits on the swaps were 51.7 billion Won, which is \$43.1 million.

What was going on? On slide 11 we can see Elliott's bet. Elliott thought that the merger was a value transfer proposition. Under that theory, had the merger been rejected, as Elliott wanted, then that would have been bad for Cheil, they would have lost out on the value transfer, and that would have been good for SC&T because they would not have lost out on the value transfer.

Therefore, their trades are to sell short to Cheil and to buy SC&T. The expected outcome would be a gain in both cases

Slide 12 shows what actually happened. The merger was approved. According to the value transfer theory, they should have gained on Cheil and lost on SC&T. However, in both cases the share price happened to go down. So the net outcome is that, instead of the positions both losing money because their bet had gone in the wrong direction, they didn't actually lose money on both. They lost money on the SC&T shares, and that 49.2 is the number that gave rise to these arbitration proceedings, while making money on the Cheil swaps, which is the 51.7 gain.

So doubling down on the Cheil —— holding the Cheil

swaps as a doubling down ended up being profitable.

I note at the bottom of that slide that there are just a few —— and Mr Smith mentioned it actually on Monday. There are some transactions that don't close in the data, but I conjectured and Mr Smith confirmed that these transactions were offsetting Cheil and SC&T, which were collapsed, as he put it, after the shares were unified in September.

Slide 13, the economic implications of what we just saw.

First of all, Elliott's trades in SC&T and Cheil should be considered as a whole. Mr Smith managed the trades on a consolidated basis, not by legal entity. I believe he testified that he didn't know which Elliott entity the trades would be allocated to.

And also, focusing only on the SC&T loss, without netting off the gain from Cheil, could, from an economic point of view, create an opportunistic or windfall litigation gain from a trading strategy, a merger arbitrage that was an integrated bet.

I appreciate there may be legal reasons why the swaps and the SC&T shares are not treated in the same way, but from an economist's point of view, I view them as a whole.

If one allowed people to claim in  $% \left( 1\right) =\left( 1\right) \left( 1\right)$  arbitrations , you

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know, with a multi—leg strategy, investment strategy, if one allowed them to pick off only the ones that lost and claim damages, while putting aside the ones that gained, that would in my view create a potential for windfall litigation gains, and that is only because —— that would only be true in the case where the different legs of the transaction are integrated. If they were totally separate investments, then my point would not arise.

It's also worth mentioning that Elliott's investment thesis, the value transfer theory, turned out to be empirically incorrect, confirming that the value transfer theory is wrong. And also, I think more importantly even, or equally importantly, the market is always unpredictable. You can't quite be sure what the market is going to do. That is really the reason why I want to retain a degree of agnosticism as in the paragraph I corrected earlier. You can never be quite sure what the market is going to do.

I believe that Mr Boulton's counterfactual is implausibly deterministic, and that it is speculative to assume large profits on SC&T shares in the but for world.

Let me turn to my direct presentation on damages.

Slide 15. We will start with some key concepts.

Slide 16. Fair market value, market price and

efficient market.

Fair market value, an agreed standard of value for damages, is described in that paragraph here, which we have seen previously in this arbitration, I believe, and probably have also seen in many other arbitrations. Widely recognised and accepted standard of value.

Stock market price, the price at which investors buy and sell on the stock exchange.

Efficient market, the stock market rapidly reflects new information and there are no risk—free arbitrage opportunities. Economists like to say there's no such thing as a free lunch.

Mr Smith on Monday mentioned there was a tiny arbitrage that they'd profited from, but he mentioned that such things are rare, that the amount of money was small, and that the market — he wouldn't expect those kinds of arbitrage to persist, and I thoroughly agree with those statements.

When we say there are no risk—free arbitrage opportunities, there's no such thing. You can never reach absolute zero, so to speak. That's true in physics, but in financial markets one would not say that there are never, ever any arbitrage opportunities, but rather that they are very small and unlikely.

Slide 17. Mr Boulton's intrinsic value standard.

This is an important slide for me.

We see two versions that Mr Boulton gives of intrinsic value from his first and second reports, and I would like to add some comments to his statements of what he means by intrinsic value.

Intrinsic value is what an analyst thinks a share is worth having done some suitable analysis. Different analysts might end up with different views of the intrinsic value. Mr Boulton agrees that they can differ from the actual market price, and obviously from each other. Different people could have different views.

Actually it's completely normal for investors to form a view on intrinsic value and invest accordingly. That's what we all do. Those who think intrinsic value is below the market price might sell to those who think it is above the market price, for example.

That doesn't mean, however, that an investor will make profits equal to the difference between their view and the price or that they will make any profits at all. In the example I have just given, it is clear that only one side of the transaction can make profits and the other must lose.

So intrinsic value is something that every investor has in mind, or most investors do. Let me qualify that. There are many tracking funds that don't even think

about these things, but every investor that is trying to make money over above general market returns is forming a view on intrinsic value and investing accordingly.

Slide 18. Sum of the parts, net asset value. That means the sum of each component's value before considering the costs or benefits of the structure that holds them. These component values may be market prices, they may be estimated.

I have the following comments. Sum of the parts, net asset value, absolutely standard techniques. They are used interchangeably in this arbitration. That is fine with me.

Liabilities which reduce value should be included.

The "net" in net asset value refers to that.

There is often subjectivity in determining the net asset value or the sum of the parts, for example, unlisted components, tax liabilities , etc.

Mr Boulton and Mr Smith often interchange sum of the parts or net asset value with intrinsic value. And I will try not to do that in my answers to any questions I may be asked.

Now, I teach valuation and on slide 19 I demonstrate a lesson that I give always, and I gave it a week ago, last week, to my students.

Having covered the standard textbook stuff on

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valuation, namely discounted cash flow, multiples, weighted average cost of capital, etc, etc, I take a coin from my pocket, which last week was especially procured because I don't carry coins anymore nowadays, but I take one from my pocket and I say: how much is this coin worth? Here we have a 100 Korean Won coin, so the students reply: 100 Won.

I then pop it into a glass on the table, and I say: all right, this glass is a transparent corporate vehicle. It's a company. How much is the company worth? 100 Korean Won. And how much is one share out of 100 shares in the company worth, a 1% ownership? They say 1 Won. Then I say: well, let's think about that. What if in taking the coin out of the glass and passing it to shareholders there was a tax incurred? Then the company would be worth less than 100 Won.

What if I own a share in the company, however there is a controlling majority shareholder who owns 51 shares, and that person is intent on diverting money to companies in which they own 100% of the shares, for example by means of disadvantageous contracts that are not at market prices; what then would the value of the company be? And the answer is less than 100 Won.

What if the company is managed by an excellent manager, so that 100 Won that's sitting there right now

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could in the future turn into much more because there will be many excellent investments made, very good ideas for developing the future of the company. Then it could be more than 100 Won.

Of course, if the manager is squandering cash flow on pet projects, then it could be less.

Importantly also, I stress that there is often an unexplained residual. There may be a component to the discount that one cannot completely explain. Just as in medicine, one can pick out confidently certain risk factors that will determine whether a patient who gets COVID will have a successful outcome or not, but one cannot determine in any particular case exactly how likely that is.

There's always an unexplained residual.

So media reports recently described the Royal Dutch Shell structure. For over a hundred years Royal Dutch and Shell Transport and Trading, two different holding companies in the Netherlands and the United Kingdom, have both held shares in the Shell Oil company. They have been the sole owners, joint sole owners of the Shell Oil company. Obviously those shares have the same net asset value, but their prices have typically diverged, and persistently diverged over long periods of time, often by periods of up to 20%, and very frequently

of over 10%. Clearly the same net asset value, but not clear why they should be different.

That's an example of an unexplained residual.

Another one I would put before the tribunal is the long-term capital management bet on a convergence play between two different long-term government bonds, if I could put it in those terms. US Government bonds with the same cash flows on the same day, in the future, but one of those bonds was recently issued, so it was the current issue, the other bond was issued a long time ago, and therefore logic says these bonds should have the same value since they deliver the same cash from the same US Government on the same day, but they did trade at different prices. Long-term capital management thought that was such a no-brainer that they took enormous positions, selling the expensive one and buying the cheap one. And unfortunately for them, instead of converging, there was a divergence. Unfortunately also for the world's financial systems, since it caused a major financial crisis . So, again, unexplained residual

On slide 20, if the listed stock price is smaller than the net asset value, there is an NAV discount, and these discounts may be due to the factors I list there.

Judgment inherent in the net asset value estimate or

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possibly errors.

Expectations of future good and bad activities, as I highlighted with my coin example.

Costs of governance, I put it in bold because that is raised as an issue in this arbitration, including value captured by controlling interests at the expense of other shareholders.

Conglomerates and complex structures lead to maybe a lack of management focus or poor capital allocation. I would be happy to speak more to that if requested.

And in the media, Johnson and Johnson and GE, two conglomerates that are currently in the process of splitting up, are good examples of that.

Future taxes on existing gains, I have mentioned in the context of the coin.

 $\label{eq:main_main} \mbox{Market price manipulation, for we have heard} \\ \mbox{allegations of attempted manipulation.}$ 

And again, the unexplained residual.

Discounts are often persistent. We cannot assume they will go away, narrow, or grow in any given time frame. They're part of market value, and in an efficient market, absent manipulation, they are part of fair market value.

Slide 21, please.

I'm now going to speak to my damages conclusions.

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1	Let's take a simple hypothetical.	1	In Mr Boulton's first report, Boulton 1, he applies
2	On slide 22 I show a Tesla. Let us suppose that	2	a simple subtraction method. Damages are the value of
3	Mr Turner comes to this tribunal and complains that	3	the SC&T shares on the valuation date, 16 July 2015,
4	Ms Tan has stolen, taken, one of his shares in Tesla.	4	immediately before the alleged breach impact, minus the
5	Suppose that the tribunal finds that this taking was	5	price received for the shares.
6	wrong and asks me for my opinion on damages that would	6	This methodology makes sense. If the shares had
7	be due from Ms Tan to Mr Turner.	7	been expropriated, I believe it is the methodology one
8	What would be my answer to that? I would say, well,	8	would use.
9	let's look at the day when Mr Turner lost those shares	9	Now, on Mr Boulton's valuation date, the merger vote
10	to Ms Tan. What was the market price of that one share	10	was uncertain. On the date that we agree is the
11	that was taken on that day? That is my recommendation	11	valuation date, the market could not have known on that
12	for damages.	12	date whether $$ I don't think $$ whether the vote was
13	Now, I happen to have a personal view on the	13	going to go for or against.
14	intrinsic value of Tesla shares. I do. Mr Boulton	14	Nevertheless, he constructs a counterfactual as of
15	yesterday bought up Tesla, so I'm carrying on with his	15	that date in which the merger was not approved, and
16	example.	16	I have engaged with that counterfactual in my second
17	I do have a personal view of the intrinsic value of	17	report, even though I think it's simpler just to stick
18	Tesla shares, but that would not form part of my answer	18	to the approach in his first report and my first report.
19	to the tribunal. I wouldn't mention it and I wouldn't	19	So what is the but for scenario? What is the
20	think it should be part of my answer.	20	counterfactual? On slide 25 I show a tree of possible
21	That essentially is my approach to these damages in	21	outcomes. Korea could have taken different actions. If
22	this case, for it is actually a very similar case.	22	the tribunal finds that Korea acted wrongfully, then
23	So we could stop now or I could carry on, but	23	let's reverse that.
24	I should probably carry on because there are many other	24	If Korea takes different actions, the NPS vote could
25	issues that no doubt will be raised in cross-examination	25	be unchanged and then nothing changes, there are no
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1	and that have been raised in previous testimony and	1	damages. That's the first box on the right—hand side.
	•	2	This could have ended up with the NPS voting to
2	arguments.	3	•
	So let's pass to slide 23. SC&T shares — here are	4	reject, and the merger being approved anyway,
4 5	my conclusions. SC&T shares were traded in an efficient market. Since the fair market value of a stock traded	5	a possibility I highlight in my second report. Again,
6	in an efficient market is its stock price, SC&T's fair	6	nothing changes and no damages.
7		7	Also, the merger vote could have been to reject and
	market value was its stock price.	8	the merger could indeed have been rejected, in which
8	Manipulation can cause the share price to deviate		case, and I think this is the box we need to debate,
9	from fair market value, but when quantified, the alleged	9 10	because the other ones are not contentious; in that case
10	market manipulation had no significant impact on SC&T's	11	I say not much changes and no damages.
11	market value. That is very important.		So why do I say nothing much changes? I say that
12	Equally important, the merger ratio was based on	12	because of what we see on slide 26.
13	market prices. This means that EALP received the fair	13 14	What would the market have seen immediately after
14	market value when it exchanged shares in SC&T for shares		the counterfactual vote to reject the merger? They
15	in the merged entity. I have a footnote there. Some of	15	would have seen this picture, which is not the family
16	the shares were actually sold or given back in the	16	tree of Lucrezia Borgia's clan, complete with, or
	put back option at an appraisal price plus generous	17	possibly not complete with the transgenerational
17	internal		the analysis of Canadam by a life to all a second of the
18	interest .	18	incestuous offspring, but this is the ownership
18 19	Effectively , Elliott sold its SC&T shares at the	18 19	structure of the Samsung Group. This picture paints
18 19 20	Effectively, Elliott sold its SC&T shares at the market price and there are no damages from selling an	18 19 20	structure of the Samsung Group. This picture paints a picture of a corporate group, which most corporate
18 19 20 21	Effectively, Elliott sold its SC&T shares at the market price and there are no damages from selling an asset at fair market value; or in other words, there are	18 19 20 21	structure of the Samsung Group. This picture paints a picture of a corporate group, which most corporate governance experts would say is less than ideal, is
18 19 20	Effectively, Elliott sold its SC&T shares at the market price and there are no damages from selling an	18 19 20	structure of the Samsung Group. This picture paints a picture of a corporate group, which most corporate

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controlling family interest .

So that is why I say nothing much would have changed

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What is the damages methodology in this case? On

slide 24 I have summarised the methodology as I see it.

1 in the event of rejection. this merger in the counterfactual, there would 2 On slide 27 the drivers of the discount would not 2 nevertheless be potential for other governance risks as 3 have changed, the corporate governance issues would 3 I highlighted with that organigram of the Samsung Group 4 still have remained and there would be tax liabilities. 4 ownership structure. 5 it's worth mentioning, since tax is one of the issues in 5 I'm going to show that these assumptions are not plausible. They are implausible in the context of 6 this case 6 7 One example I give in my second report, towards the 7 Mr Boulton's own explanations for discounts, whether in general or specifically for SC&T. In the light of the 8 end, there is a section where I present experience from 8 9 other corporate governance reform initiatives, if reform 9 time series evidence, that is to say SC&T's own share 10 10 is the right word. price history. And in the light of the cross-section 11 The year before the SCT merger proposal and merger, 11 evidence, in other words the market value of other 12 12 the Samsung Group proposed a merger between Samsung Chaebols in Korea. 13 Heavy and Samsung Engineering. This merger in the face 13 Finally, and perhaps last but not least, shall we 14 say, simple logic shows that this could not be so. 14 of shareholder opposition did not proceed, yet the 15 discount remained roughly unchanged. That's one 15 Slide 31. 16 example. 16 A higher intrinsic value doesn't imply that the 17 Let me now pass to Elliott's claimed damages on the 17 market price is not the fair market value. We saw 18 SC&T shares, slide 28 and slide 29. 18 Mr Boulton speak to paragraphs 4.2.4 and 4.2.5 19 Elliott's damages claim is for 647 billion plus 19 vesterday. He proffers four reasons why the market 2.0 interest, and Elliott says SC&T's market price was at 2.0 price could be disconnected from the intrinsic value, 21 a large discount to its intrinsic value. 21 and I offer four comments in response to those reasons. 22 And what is the intrinsic value? It's the sum of 22 First reason, investors' perspectives may differ. 2.3 23 the parts in Mr Boulton's first report, or the sum of Absolutely. The market price represents the consensus 2.4 the parts minus 10% in Mr Boulton's second report. 2.4 view of different investors with different perspectives. Mr Boulton says, and Elliott says too, if the merger 2.5 Second, investors may react differently to 23 1 had been rejected, SC&T's market price would have 1 announcements. Absolutely. The market price reverted immediately to sum of the parts or sum of the 2 2 incorporates the buy and sell decisions of different parts minus 10%. 3 3 investors. That's why we rely on it. I'll note that the claimed damages are almost as Third, a listed share price may be affected by large as the 685 billion Won initial investment and 5 5 a perceived lack of alignment between the controlling 6 much, much bigger than Elliott's 49 billion trading loss 6 shareholder interests and others. Absolutely. The 7 7 on SC&T. It is in fact a 90% return over approximately market price must reflect all commercial risks, 8 8 including corporate governance concerns. three months, and if we annualise that, 90% over three months -- this is a rough calculation, the 9 Fourth, the share price may be affected by any 10 three months particularly -- but 90% over three months 10 anticipation of future events. Well, absolutely, it 11 is in fact 1,300%, an annualised return rate. 11 must do that because when you buy a share, you buy an 12 Also these damages obviously do not account for the 12 entitlement to future cash flows, many of which are in 13 13 profit from the swaps that was confirmed by the the long-term future. Tesla shares have a high price, 14 transactions released last week, which we were informed 14 not because Tesla is going to pay dividends this year -last week. 15 15 as Mr Boulton said vesterday. Tesla does not pay 16 Slide 30 16 dividends -- but because at some point in the distant 17 The Claimant relies on flawed assumptions about the 17 future. Tesla shares may return large value to its 18 discount presented as conclusions. Mr Boulton relies on 18 shareholders, and that of course is reflected in today's 19 two fundamental hypotheses or assumptions. 19 price because share prices must be inherently 2.0 The only reason for the discount of SC&T is that the 2.0 forward—looking. 21 21 price was depressed by the fear of this specific merger. Slide 32. Governance and tax caused much of the 2.2 and that rejection of this merger would have eliminated 2.2 SC&T discount. 2.3 23 the discount, the governance discount, with only what he We agree that governance was a primary driver of 2.4 calls a holding company discount of 10% remaining. 2.4 a discount. Mr Boulton says so and I say so.

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We also agree with Elliott that there was

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I say this specific merger because, having rejected

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a substantial future tax liability . Approximately 15% is Elliott's cost quantification of that tax liability . I give references there to Mr Smith's testimony and to Mr Boulton's second report.

A tax liability would reduce net asset value. If I take the coin out of the glass and return it to my students, but I take tax away in doing so, that will reduce the value of the corporate vehicle holding that coin, and it will be worth less than the coin on its own.

Slide 33. SC&T's NAV discount existed well before the SC&T—Cheil merger was anticipated. Here we are looking at evidence from the time series.

So this is what SC&T's discount has done over time. It's from the Claimant's statement of Reply, page 17, and I offer the following comment.

Beyond simply showing that this discount has been there for a while, sometimes turning into a premium, the human eye is quite good at finding trends in these pictures where none exist. It's a well—known psychological bias.

Also, one might have a theory that price reverts towards a long—term trend value, for example zero discount or some other discount. One might have a theory that price is reverting towards a long—term

trend and when it goes below the trend it will tend to drift back up to the trend, and when it goes above the trend it will tend to drift back down to the trend.

Two observations.

First, such behaviour would contradict semi—strong market efficiency. That's exactly the definition of semi—strong market efficiency which Mr Boulton and I, and indeed Professor Milhaupt, agree to be the case here, that the market was semi—strong efficient.

So it would contradict that, but more specifically, instead of just appealing to the general idea of efficiency, I did a statistical analysis to see whether the data show any evidence of reverting back anywhere, and a statistical analysis presented in Appendix D of my second report shows that movements in the SOTP discount, the net asset value discount, do not predict SC&T prices.

So when the discount has gone to a large value, statistically there is no evidence that it will then tend to go to a smaller value. And I test that at different horizons as well.

Let's look now at evidence from the cross—section, having looked at the time series . Slide 34 shows that net asset value discounts are common and persistent in Korea. Actually I don't know that anybody disputes that

in this case, but for the sake of completeness, I present the evidence.

First, LG and SK, as I discuss in my first report towards the end, there's a section on evidence from looking at other corporate governance reforms.

Even after corporate governance reforms, they continue to trade at large discounts of 35% in the case of SK and -- yes, it looks like nearly 50% in the case of LG.

Second, Elliott's net asset value models, which are their trading plans showing where they were hoping to get out of the positions, those show discounts of 32.8% to 44.6%

Now, Elliott separately does a tax calculation, and most other analysts in this case have done a single calculation which should be understood to include tax. As Mr Boulton said yesterday, analysts generally do it on a pre—tax basis and wrap any tax liabilities into the discount. I agree with that.

So the green bars, which were done by Elliott, having already taken off tax, I have now put back the tax liability that Elliott estimates, and so the total green bar, not just the heavy bit, but including the light bit, the total green bar includes —— shows that Elliott's models indicate that when they were planning

to exit, the discounts were to be in the 40s or 50s, depending on the date of the trading plan.

I review industry and academic evidence. One of the reports there shows 35%. And the comparables in Mr Boulton's holding company I say show a median of nearly 40% and a mean of a little more. I'm happy to follow Mr Boulton's preference for the median. And I have excluded a couple of companies with premiums for the reasons that I think they are anomalous, but I note that if we take the full sample —— because I think Mr Boulton's sample is skewed by the inclusion of a couple of anomalies with premiums. But even if we include them in the sample, the median is very similar to what's shown on this picture. So it makes little difference. And the median of course is Mr Boulton's preferred measure. We agree on that. I think that is appropriate.

Slide 35.

All this talk about price versus net asset value is a bit of a red herring. I have said that if the tribunal asked me to quantify damages in the case where Ms Tan takes a Tesla share from Mr Turner, I would rely on the market price of Tesla to give damages, and I said that's what I would do here, and that's essentially what I'm doing in my report.

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But actually this is a bit of a red herring because imagine that the tribunal told me to throw away the price and compute damages based on the net asset value. What would I have to do? I haven't been so instructed by the tribunal. So I haven't done that. I have followed my preferred method.

But if I had to do that, what would I do? Well. I would take the net asset value because that's all I would have. I would apply a reasonable discount because the market does that. And what would I do as a reasonable discount? I haven't formed a definitive studied answer to that because that is not my preferred method approach, but, for example, I might take 15%, which is the number shown in Elliott's net asset value calculation as the tax liability , and I might take further -- I would then take a further discount on top of that for corporate governance. You know, if I took Elliott 's numbers from its trading plan, some of them are as high as 42% on top of the 15%, some of them were at 20%. I would then reach a number which is not really that different to the market price on the valuation day, and obviously well below net asset value.

So really the whole question of price versus net asset value I think is a little bit of a red herring here. One should not make too much of it.

Page 36, tunneling. Tunneling is not price manipulation. We've heard allegations — the tribunal has, I wasn't listening, but I understand that the tribunal has heard allegations of price manipulation. Some of those allegations were rather what I would describe as tunneling. Professor Milhaupt uses that word

Tunneling is not price manipulation. Why not? Suppose a company is subject to risk of tunneling. Tunneling, in other words, value will be extracted through the means of contracts which are written at prices that are not the market prices for those contracts. It could be somebody claims management services for inflated fees. That would be a tunneling system. Or it could simply be the controller diverts contracts to their preferred wholly owned corporate entity, although that's not really tunneling, but it's similar.

If a company is subject to these risks, then its price will be low. Suppose I buy at that price. Have I bought at a manipulated price? Well, no. It is the tunneling risk that depressed the price, not the manipulation. In other words, the true value of the shares I bought were low because it really was not going to receive those cash flows. It was never going to

receive those cash flows.

Price manipulation means the shares were going to receive some value, but the price has been moved, so that it doesn't reflect that value.

So they're different .

Slide 37. Alleged manipulation and the merger ratio . Okay.

Confining ourselves to actual manipulation and not tunneling then, to cause damages, the alleged manipulation must occur after the shares were bought and must continue into the statutory merger ratio window, or must take place in the statutory merger ratio window. In other words, the merger ratio was constructed by averaging prices in the run—up to the merger announcement. That's a one—month period.

And so what am I saying here? If Elliott bought shares before the price was pushed down in a hypothetical manipulation, and therefore the shares were taken from Elliott at an artificially low price because the merger ratio was depressed, that would not cause damages because Elliott would have bought at the low price and had them taken at the low price, and would not have suffered relative to a counterfactual in which it would have bought at the fair price and sold at the fair price.

They would have had them taken at the low price, but they would have also bought them at the low price. That washes out.

So any allegation of manipulation that takes place before 2015, when Elliott started to buy shares, is of no relevance to the damages.

Obviously, any manipulation that is alleged that takes place after the merger ratio has been set also has no relevance for damages because it doesn't feed into the price of the transaction.

Slide 38.

Manipulation did not cause the SC&T discount. As we saw, the SC&T discount was large and the manipulation that I have been made aware of within that window, the only quantifiable thing was a Qatar contract which allegedly should have been disclosed earlier.

A straightforward calculation shows that the maximum possible impact would have been less than 2%. 2% is very generous. Let me explain how I got that 2%.

I said what was the revenue from the Qatar contract, what was a plausible margin, and therefore I estimated that earnings would have been, if memory serves me right, between 10 and 20 million a year higher for SC&T from the contract.

What multiple do we apply to earnings in that range,

1	looking at other countries in the industry? Reasonable	1	trip recently, and that watch, that was probably
2	multiples then give us that 2% Figure, a very small	2	a mistake. The hands on the watch just spin around
3	amount.	3	uselessly . If that was the case, in other words, if the
4	I'll just comment 2% is very generous because by	4	manipulation was so serious that we had to draw a line
5	applying a multiple, I've effectively said this is not	5	through the price, then of course I would not rely on
6	just one contract, it's a never—ending stream of Qatar	6	that watch. I would have to use another method, perhaps
7	contracts which grow at the same rate as the expected	7	a sundial or something, but that, I believe, is not the
8	growth of revenues of the companies in the multiple	8	case here because if I look at the manipulations that
9	sample.	9	were alleged within the time window, I don't see
10	So applying an EBIT multiple to the estimate of	10	anything which is so serious as to cause me to throw
11	increased revenue is very generous.	11	away the price.
12	I do confirm that with a statistical analysis, but	12	Slide 39. Fear of the merger could not cause the
13	the main calculation is what I have just explained.	13	discount. This is really almost my last topic.
14	It's completely implausible. Imagine there were	14	Mr Boulton says the stock price could be depressed
15	lots of pieces of manipulation. I think it's rather	15	due to market concerns of a predatory transaction. This
16	implausible that, even if many pieces of good news were	16	is contradicted by Mr Boulton's view that the market
17	improperly withheld, the market price adjusted to	17	wasn't expecting the merger to succeed and it's also
18	reflect those would happen to coincide with Mr Boulton's	18	contradicted, I believe, by the existence of discounts
19	SOTP.	19	long before this merger and across the Korean Chaebols,
20	I'll just say one other thing, which is, you know,	20	and I showed the tribunal that evidence earlier .
21	if my watch is slow, you know, if my watch runs a couple	21	Most importantly, let's look at logic. Fear of the
22	of minutes late or actually I'm not that careful when	22	merger is a circular and illogical theory, as I show on
23	I set it —	23	slide 40. That's because — this is really the key to
24	THE PRESIDENT: I think the understanding was that it would	24	the case. Elliott's damages approach would make perfect
25	be 30 minutes plus 20 minutes. So I think you should	25	sense in any country except Korea, or most countries
	·		
	33		35
1	start wrapping up.	1	except Korea. That's because in other countries Samsung
2	MR TURNER: Excuse me, sir. Mr Boulton yesterday took	2	could have chosen the merger ratio, effectively .
3	a third more time than he was allowed. As I mentioned	3	But here the merger ratio is set by Korean law to be
4	yesterday after Mr Boulton's presentation, we weren't	4	the market price. So let's review the logic.
5	taking any issue with that, there's plenty of time, and	5	I'm supposed to be frightened that I will get the
6	that I assumed that my learned friend would be equally	6	merger ratio price in the event of a merger, and yet if
7	indulgent were Professor Dow to run over.	7	I look forward to what would happen if the shares are
8	I trust that that is still the case. No objection	8	taken from me at this ratio, $ {\sf I} $ would effectively be
9	was made to that yesterday, and so I would like the	9	getting the market price.
10	tribunal to allow Professor Dow to finish his	10	So if I just set the same old market price I would
11	presentation.	11	have set anyway without any fear, then when the shares
12	MR PARTASIDES: Mr President, perhaps we could ask how much	12	are taken from me, they will be taken at the fair price,
13	longer we should expect?	13	and I have nothing to be frightened of.
14	THE WITNESS: Less than ten minutes.	14	The whole point of the regulated merger ratio in
15	MR PARTASIDES: No objection.	15	Korea, which I think is a very good law actually, is to
16	THE PRESIDENT: Okay. Please go on.	16	rely on market prices to set the ratio and protect
17	THE WITNESS: Thank you. My apologies for being slow.	17	against abusive nonmarket ratios. I would be happy to
18	Where was I. Manipulation did not cause the SC&T	18	say more about that.

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I speak to that.

What about the therapeutics theory. On page  $41\,$ 

Professor Milhaupt says Elliott could be providing

statement I give there from Mr Milhaupt as a quote, that

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a kind of therapy, and I completely agree with the

activism can potentially play a therapeutic role in

improving corporate governance.

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discount. Yes. I have quantified that.

So what I was saying was my watch is a little  $\,$  bit

off, perhaps, but how do I compensate for that if I need

to catch a train and I don't want to miss the train?

adjustment to the time that I have seen on the watch.

Now, I have another watch that I took on a climbing

I chuck in a couple of extra minutes, I make an

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But Mr Boulton strengthens that. He explicitly assumes convergence to intrinsic value in his second report, rapidly after rejection, except for the 10% discount remaining.

So what evidence is there of the therapeutic theory?

First of all slide 42. This is an implausible

First of all, slide 42. This is an implausible number, 5–15%. It's based on his flawed value transfer theory. He computes it, as he explained yesterday, by looking at the discount on the merged entity. And yet, the merged entity includes Elliott, the favoured vehicle in the Samsung family. Therefore, small discount.

A standalone SC&T would not have been in such a privileged position. Therefore, I say, bigger discount.

So Mr Boulton's estimate assumes his flawed value transfer theory. As shown by Elliott, tax alone accounts for 15%, nearly 15%. That is, Mr Boulton's entire discount could simply be explained by tax.

Market evidence. On slide 43, I give the case of Samsung's own experience the previous year when, not Elliott, but as a result of other shareholder resistance, a merger did not take place between Samsung Engineering and Samsung Heavy. When the merger was cancelled, as one can see from this graph, both companies' share prices fell.

A few years later, on slide 44, I describe how Elliott tried to block the Hyundai Motor group restructuring. They succeeded in blocking that, but the discount persisted, and Elliott estimates — in my second report, I show that Elliott estimates that discount after the merger at 42—82%. And Elliott sold at a substantial loss.

Other opinions. Very briefly, slide 46, Elliott's trading plans reveal it did not expect the discount to disappear and was surprised it widened, showing that discounts can widen as well as narrow, and showing also that Elliott's plan was to exit at post—tax discounts ranging from 40% to 27.5%, large discounts therefore when we add the tax.

The trading plan is shown on slide 47.

Finally, last slide, page 48, my slide, a few other opinions.

The excess discount is contradicted by evidence that the Cheil and SC&T shares moved in the same direction. I mentioned that already in the case of my analysis of the swaps. I give references there to my reports where I do that analysis .

Synergies were mentioned. I give those references here.

Finally, pre-judgment interest. I have a strong

view this. I think pre—judgment interest, or I should say pre—award interest, and indeed post—award interest, is often a forgotten part of damages because it's not the biggest ticket item, but still one should give interest on a reasonable basis and in many arbitrations interest is a very substantial part of the final award. And the 5% that Mr Boulton uses is not motivated economically, and it would not be possible, I believe, to motivate that on an economic basis.

So I would say that an economic basis should be the government's borrowing rate.

Finally, currency of award. I believe it's conventional, and I agree, I would be happy to explain why, to calculate damages in the local currency.

Thank you very much, Mr President, members of the tribunal. And I apologise for running over my time.

17 THE PRESIDENT: Thank you, Professor. Any follow-up?18 MR TURNER: No further questions.

THE PRESIDENT: Thank you very much. Then it's over to theClaimant.

Cross—examination by MS SNODGRASS

22 MS SNODGRASS: Professor Dow, good morning.

23 A. Good morning.

Q. Although I know that you are a very experienced
 testifying expert, I don't believe that your and my

paths have crossed before. So let me introduce myself.

My name is Elizabeth Snodgrass, I'm one of the

lawyers for the Claimants. I'm going to be asking you questions about the two opinions that you have provided in the case, and those two opinions, which you may already have there, they are also in the first two tabs in the binder that's been provided to you, and that's being passed out around the room.

I'm going to do my best to state my questions clearly and slowly and succinctly. I know you have been under some time pressure to get your presentation out. I have a terrible habit of speaking very quickly. If you find that I am speaking too quickly or my questions aren't clear, please let me know, and I'll slow down and try and restate them.

The binder that I have given you also contains some documents that I might take you to during the examination. But it doesn't contain all of the other experts' reports that we may look at during our discussion. If we need to look at those expert reports, they are going to be put up on the screen.

I may take you to a particular paragraph of those reports, but if you would like to look at anything in wider context or scroll around in those documents that you don't have in hard copy, please let me know and we

- 1 can make that facility available to you.
- 2 A. Yes, I will want to look at hard copies of Mr Boulton's 3 reports, if you ask me about that.
- 4 Q. Very good. We will make that available if we need to do 5 that
- All clear? 6
- 7 A. Thank you, yes.
- 8 Q. Very good.

9 So actually the first thing I will ask you to do is 10 just look at the beginning of your report, where you 11 refer to some of the experience that you have testifying 12 in investment arbitrations, which you have a significant 13 degree of experience doing; isn't that right? I'm going 14 to slow down - I'm sorry, terrible habit.

> If you could look at paragraph 4 of your first report  $\{G1/1/5\}$  where you provide a list of some previous testifying experience.

18 A. Yes.

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- 19 Q. And if we go down the list in that paragraph, we see  $first\ ,\ in\ Rompetrol\ Group\ versus\ Romania,\ you\ were$ 20
- 2.1 engaged by the Respondent, Romania; is that right?
- 2.2 A. Correct.
- 2.3  $\ensuremath{\mathsf{Q}}.$  And then in Perenco v Ecuador, you were appointed by the
- 2.4 Respondent, Ecuador?
- 25 A. Correct.

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- 1 Q. And in RosInvest Co versus the Russian Federation, you were appointed by the Respondent, Russia? 2
- 3 A. Correct. {G1/1/5}.
- Q. I'm going to skip over the Russian words because I'll
- 5 get them wrong. Yukos versus Russia, you were also
- 6 appointed by the Respondent, Russia?
- 7 A. Correct.
- 8 Q. And then in the three arbitrations initiated by the 9 former Yukos shareholders, Hulley Enterprises, Yukos 10 Universal and Veteran Petroleum Ltd against the Russian 11 Federation, you were appointed by the Respondent; is
- 12 that correct?
- 13 A Correct

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- Q. So in all of those investment arbitration engagements 14 15 that you highlight in paragraph 4, those were
  - appointments by the Respondent; is that correct?
- A. Correct. I have done other arbitrations where I was 17 18 appointed by the Claimant.
- 19 Q. Right, but you highlighted those appointments by the 2.0 Respondent.
- 21 And you were also engaged in Mason Management LLC 2.2 versus the Republic of Korea by the Respondent, the

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- 2.3 Republic of Korea; correct?
- 2.4 A Correct
- Q. And of course Korea has retained your services here.

So in addition to those cases being a series of 2

- appointments by Respondent states, I want to suggest
- 3 there's something else those cases have in common.
- 4 So in Rompetrol Group versus Romania, it's right 5 that you argued that there that the Claimant should be
- awarded no damages; is that correct? I can refresh your 6
- 7 memory?
- 8 A. It was a little while ago, but I believe that to be 9 correct.
- 10 Q. And also in Perenco versus Ecuador, you argued that the
- 11 Claimant was not entitled to any damages; is that
- 12 correct?
- 13
- Q. I can put it up on the screen if it would help? 14
- 15 A. Well, I'll take your word for it.
- 16 Q. And also in RosInvest Co versus the Russian Federation.
- 17 you argued for a zero damages award; is that correct?
- 18 A. That's correct.
- 19 Q. And next on the list in paragraph 4 is Yukos versus
- 20 Russia. That's a decision that's not on the record, but
- 2.1 do you recall that in that case Russia requested the
- 22 European Court of Human Rights to award zero damages?
- If my memory serves me well, the ECHR -- this is really 2.3
- 2.4 a legal matter, but I believe that the ECHR was never in
- 2.5 a position to award damages, so it was more a question

1 of liability .

2 Q. Yes, there was an analysis of financial loss and Russia

3 was putting forward that no financial loss arose

But in any event, in the arbitrations initiated by

5 Hulley, Yukos Universal and Veteran Petroleum, you also

- 6 argued for zero damages?
- 7 A. Correct, yes.
- 8 Q. And we know of course your position in this arbitration,
- 9 Professor, but just to confirm, in Mason versus Korea
- 10 your position is also that the claimants are entitled to
- 11 zero damages; isn't that right?
- 12 A. Mason versus Korea is a case that's very similar to this
- 13
- 14 Q. And your position there is zero damages?
- 15 A Yes

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- 16 Q. So in a run of, if I have counted correctly, some nine
- 17 cases involving different factual situations, different
  - investors, in different countries, you've consistently
- 19 reached the same conclusion: zero damages?
- A. Yes. Yes, that's true in those cases. 2.0
- 21 Q. Okav. So I wanted to ask some questions also about your 2.2 background.
- 23 I'm right to understand, as you said this morning, 2.4 that your background is in finance and economics; is
- 25 that correct?

- A. Correct.
- 2 Q. And you're currently a Professor of finance at the
- 3 London Business School?
- 4 A. I am
- 5 Q. And you joined the London Business School in 1989?
- 6 A. I did.
- 7 Q. And before that your PhD is in economics from Princeton?
- 8 A. Yes
- $9\,$   $\,$  Q. So you've spent most of your career, over the past
- 30 years, in Europe and the United States?
- 11 A. Yes.
- 12 Q. And --
- 13 A. All of it.
- $14\,$   $\,$  Q. And you do not therefore have any specific expertise on
- 15 Korea or the Korean economy?
- 16 A. Correct.
- 17 Q. And you state in fact at paragraph 6 of your first
- report  $\{G1/1/6\}$  that you consulted with a Professor Han to confirm, you say this:
- 20 "... to confirm my understanding of certain
- 21 Korean-specific issues."
- 22 Is that correct?
- 23 A. That's correct.
- $24\,$   $\,$  Q. And that's a reference to Professor Jungsuk Han of the
- 25 Stockholm School of Economics; correct?

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1 A. Yes.

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- 2 Q. And again, in paragraph 3 of your second report, you
- $\boldsymbol{3}$  then say you were supported in the preparation of your
- 4 report by consultants at the Brattle Group and again
- 5 Professor Jungsuk Han from the Stockholm School of
- 6 Economics?
- 7 A. That's correct.
- Q. Is it fair to say that Professor Han acted as
   a consultant on Korean economic matters for your report?
- 10 A. Well, let me describe the situation and then you can ——
  11 or the tribunal can form their view.
  - So Jungsuk is my former PhD student and my main research co—author, and we are in the habit of speaking on Zoom about our research project every week for a couple of hours.
  - And so when this case came along I asked the people at Freshfields whether I would be allowed to mention the case to him and they said, well, we would have to get him appointed. So we did that, and therefore that is reflected in those quotes.
- We had a brief conversation where he said, well,
  what are you working on these days, and I said, well,
  I'm actually working on a Korean case. It's in fact
- $24\,$  something to do with Samsung merger and Elliott, do you
- know anything about that? So that was a brief
  - 46

- conversation, and he gave me a few documents,
- $2 \hspace{1cm} \hbox{references}. \hspace{0.2cm} \hbox{I can't remember which ones but I'm sure} \\$
- 3 that information could be provided if you wish. And
- 4 that's really as far as it went.
- But we might have spoken again about it since then.
- 6 I don't recall
- 7 Q. Okay. So that was the extent of his input to your first
- 8 report?

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- 9 A. Very minimal, yes, both reports.
- $10\,$  Q. But that was the extent of his input at all .
  - So you don't identify in that report the
- 12 Korean—specific issues that you're relying on
- Professor Han for. We can't tell from the report what
- 14 issues you're relying on Professor Han for.
- $15\,$   $\,$  A. Well, I think I have represented to you the content of
- $16\,$  our conversation and I could try and recall more of it,
  - but it was very brief and at a very general level .
- 18 Q. Right. But your reports include extensive observations
- 19 about the Korean Chaebol and conglomerates?
- $2\,0\,$   $\,$  A. Yes, but I would say I did not rely on him for those.
- Q. So you weren't relying on Professor Han for those. Youwere relying on?
- 23 A. My own analysis.
- 24 Q. Your own analysis, notwithstanding that your expertise
- is in finance and economics and not the Korean economy?

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- 1 A. Correct.
- 2 Q. Okay.

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- Okay
- I want to turn now to questions of valuation
- methodology, and I think we can probably take some of this quite quickly.
- 7 I heard you this morning in your presentation agree,
- 8 I think -- I think we were already there on the basis of
- 9 your written reports —— that for purposes of our
- 10 discussion, we can use the terms sum of the parts and
- 11 net asset value or NAV effectively interchangeably;
- 12 right?
- 13 A. I agree
- 14 Q. And I think you accepted this morning that they are
- absolutely standard valuation techniques; yes?
- 16 A. Indeed
- 17 Q. And Mr Boulton used a sum of the parts or NAV analysis
- 18 to derive the intrinsic value of Samsung C&T and Cheil
- in his expert reports; correct?
- 20 A. His estimate, his view of intrinsic value, indeed.
- Q. Yes. And you're aware that analysts that valued SC&T
   generally utilised similar asset—based sum of the parts
- valuation methods to assess the value of SC&T; correct?
- 24 A. Absolutely.
- Q. And so by adopting a sum of the parts methodology,

- 1 Mr Boulton utilised the same methodology that market 2 participants utilised to value SC&T?
- 3 A. It is a standard methodology to obtain an intrinsic value in a case like this. 4
- 5 Q. And you would agree with me that those market participants were using those valuations based on sum of 6 7 the parts methodology, not as part of some theoretical
- exercise, but in order to guide real world investment 8
- 9 decisions, weren't they?
- 10 A. Yes. I don't know why you would think they would be theoretical anyway, but certainly they were intended as 11 12 a guide to real world investment decisions.
- 13 Q. I just wanted to focus on a word that you used to 14 criticise the sum of the parts valuation methodology as 15 used by Mr Boulton. That word is "subjective". I just 16 wanted to put it to you that I think by the word 17 subjective you mean that applying the sum of the parts 18 methodology requires the application of professional
- 19 judgment. There have to be modelling choices that are 2.0 made, and that the valuer will need to defend; is that
- 2.1
- 2.2 A. Correct. 2.3 Q. And that it seems to me is really another way of saying
- 2.4 that applying the sum of the parts methodology is the
- 25 subject for expert evidence that has to be debated; is

- 1 that fair?
- A. Well, I find that question a little broad. 2
- 3 Given that Mr Boulton presents a sum of the parts methodology and makes judgments about the inputs and 5 discounts to be applied, to that extent it is of course incumbent on him, and me, to debate those judgment 6
- 7 calls.
- 8 Q. But there's nothing more implied by the word subjective 9 than that they are an exercise of professional judgment 10
- 11 A. What more is implied?
- 12 Q. I'm asking whether there is anything more implied by 13 that word.
- A. In the arbitrations that I've taken part in, I think 14 15 "subjective" and "judgment" are pretty much

interchangeable pieces of terminology.

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- 18 A. But I suppose I might use subjective to emphasise that 19
- the judgment required is important and makes a big 2.0 difference, but I agree that in logical terms there's no 21 real difference between those terms.
- 2.2 Q. Right. So I'm interested in the sort of proliferation 23 of these contemporaneous sum of the parts valuations of 2.4 SC&T around the merger period.
- A. Mm-hm. 25

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- 1 Q. The investment banks and the other institutions that
- calculated these valuations, as we discussed, did so in 3 order to assist investors in deciding whether to buy or
- sell or hold SC&T shares, didn't they? 4
- A. Well, they're assisting, but I note they are sell side 5 analysts. 6
- 7 Q. So they may have only been assisting one of those 8 decisions then, is what you are saying. But they
- 9 were --
- 10 A. What —— sorry, excuse me.
- 11 Q. Go ahead?

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- 12 If you go down into the lobby of this hotel, you will
  - find a Swiss watch boutique, and if you go into that
- 14 boutique, you will find someone who is an expert on
- 15 Swiss watches who will give you very large amounts of
- information —— I haven't tried this —— about the 16
- 17 intrinsic worth of the different watches, and that
- 18 person will truly be an expert, I'm sure, but will also
- 19 have a sales motive. That's what I meant by stressing
- that it was a sell side analyst, as they are commonly 2.0
- called. 2.1
- 22 Q. Right. But these analysts were operating on the
- 23 understanding that that there was a value of SC&T that
- 2.4 could and should be calculated separately from the price
- 25 at which SC&T was trading on a given day; isn't that

- 1 right?
- 2 A. As I indicated in my slides, it is normal for investors
- 3 to form a view of intrinsic value. Different investors
- will form different views, and the market price reflects
- 5 the aggregate of those views.
- 6 So it is absolutely normal, as I said in my slides,
- 7 to have those views, to invest time in forming those 8
  - views, and to trade accordingly.
- 9 Q. Right. Indeed, you acknowledged in your second report 10 that there are potential mispricing opportunities in the
- 11 market?
- 12 A. Could you give me a reference for that?
- 13 Q. That's paragraph 136 of your second report.
- For the operator, it's  $\{G3/1/63\}.$ 14
- 15 A. I say the fund -- I agree that the funds management
- 16 industry plays an important role in collecting
- 17 information and identifying potential mispricing
- 18 opportunities. I say it's axiomatic that the profits
- 19 that can be extracted from these efforts become smaller 2.0
  - as markets become more efficient:
- 21 "The likelihood of any investment manager 2.2 consistently identifying and arbitraging [is] low."
- 23 That should be "is" low. Particularly after
- 2.4 transaction costs.
- 2.5 Q. Yes, but you have drawn attention to exactly what

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1 I wanted to take us to, which was that the funds 2 management industry plays a role in collecting 3 information, identifying potential mispricing 4 opportunities, and that in turn increases the accuracy 5 of market prices and market efficiency.

> I wanted to turn now to your opinion concerning market efficiency and this will involve a bit of jumping around in your reports, with an apology to everyone for

When it comes to valuing the Claimant's investment in SC&T shares, you say essentially we can take the market's word for it because SC&T shares traded in an active. liquid and efficient market. If you would like a reference, that's at paragraph 29 of your first report, but I think that's a pretty --

- 16 A. Yes. I'll agree with that.
- 17 Q. Yes. And you explain in an efficient market --
- 18 A. Sorry, if I could --
- 19
- 20 A. That doesn't mean that -- if I say that we can take the 2.1 market's word for it, that doesn't mean that hindsight 22 may not prove the market to be wrong.
- 2.3 So if I look at the market price, it's quite 2.4 possible that my own analysis leading to my intrinsic 25 value so-called would lead me to buy at less -- to buy

because I think it's worth more than the market price. It's quite possible that I would — events would prove me to be right and I would make lots of money.

But when I say we can take the market's word for it, I mean that we can -- you know, our first reference point should be the market price and anybody who wishes to argue otherwise has to prove that the market price is

Particularly in an arbitration, as I gave the example with the Tesla case, even if I've got my own estimate of what Tesla shares are worth, and I do have that and I do think I'm right, that doesn't mean that I would recommend to a tribunal that they should be taking my intrinsic value rather than the market price.

Q. I was actually asking a slightly different question.

So I was just asking about this question. So when you speak of market efficiency, you mean that a market is efficient in incorporating information to a company's share price; correct?

- 2.0 A. I think by definition.
- 2.1 Q. Yes. But what efficient does not mean is that a share price is more accurate in an efficient market than it is 2.3 in an inefficient market in the sense of the information 2.4 necessarily being correct that is being incorporated.
  - A. Well, I think I disagree. In an inefficient market

there could be a very strong presumption that market movements are predictable. Actually that is an immediate implication of an inefficient market.

So, example, some of my friends come from Brazil and they told me that when they started out trading you could sell in the evening and buy in the morning and consistently make a profit. No longer true. But that's an inefficient market. The price is clearly not reflecting information properly. One can have a directional view of where it will be heading.

On the contrary, in an efficient market the price doesn't really allow one to have a reliably accurate directional view on where -- which way the changes are

15 I hope that's an answer to your question, but please 16 push me further if you want.

17 Q. Let me ask you differently.

18 The shares of a company that's traded in an 19 efficient market is accurate as it relates to the 20 information that is disclosed and available to the 21 market, and if that information is inaccurate, then the 22 share price will also be to that extent --

- 23 A. Wrong.
- 2.4 O -- inaccurate: correct?
- 2.5 A. If people are given wrong information, if the market is

1 given wrong information, and if market participants 2 don't realise that it's wrong and don't suspect that 3 that might be going on, then absolutely, the market

price will be wrong.

5 Q. Right. So a determination of semi-strong market 6 efficiency tells us about the rapidity with which

7 a market reacts to information. It doesn't tell us 8

whether the market had complete or accurate information.

9 That's the only simple point I was --

10 A. Correct, because -- and this may be too much information 11 for some people in the room, but the terminology of 12 semi-strong refers to the market pricing efficiently 13 given public information and it says nothing about

14 information which is not public information.

15 Q. Right. While we're on the topic of accurate 16 information, I wanted to take to you a case that you

cite, the Delaware Supreme Court's 2017 decision in 17

18 DFC Global Corp versus Muirfield Value Partners. You

19 cite that in your first report. The case is actually at

2.0 tab 36 of the binder that's in front of you.

2.1 A. I have just broken my binder.

2.2 Q. I'm so sorry. I hate lever arch files . I've lived in

23 England for many years and I loved many things about it

but I do not miss lever arch files for one minute.

25 Tab 36.

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- 1 A. Tab 36. Could you also, if I may ask, highlight the place in my first report --
- Q. Yes, I will, if I can find the reference quickly.
   Paragraph 78 in your first report. {G1/28/1},
   {G1/1/36}.
- 6 A. If you just give me a minute to refresh my memory on paragraph 78.
- 8 Q. Of course. If people are looking in the cross bundle,
  9 the excerpt of the case that Professor Dow cites is on
  10 page 40 of the case. So {G1/28/42} in the Opus
  11 reference.
- 12 A. And you're taking me to tab 36 as well?
- 13 Q. Yes. tab 36.

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- 14 A. I've got both of them in front of me because I've gota hard copy of my report.
- Q. So in your report you write of the Delaware Supreme
   Court this is at paragraph 78 that the Delaware
   Supreme Court is widely recognised as the most
   sophisticated jurisdiction in the US for merger and
   corporate governance disputes. I'm not going to argue
   with that.

And then you go on to quote the court, and that's over the page, for the proposition -- and this is the highlighted text on  $\{G1/28/42\}$  -- that the most reliable evidence of value is that produced by a competitive

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market so long as interested buyers are given a fair opportunity to price and bid on the something in question; yes?

You note the comment about fair opportunity, but what I just wanted to draw your attention to is two paragraphs above the paragraph that you highlight here in your first report. So if you turn two pages back in the bundle,  $\{G1/28/40\}$ , do you see the paragraph that begins "As we shall discuss" on page 38 of the document, and the Opus reference,  $\{G1/28/40\}$ ?

- 11 A. "As we shall discuss"?
- 12 Q. Yes. So the court makes a couple of important caveats13 about the reliance on market price:

"As we shall discuss, we have little quibble with the economic argument that the price of a merger that results from a robust market check, against the backdrop of a rich information base and a welcoming environment for potential buyers, is probative of the company's fair value. But, not only do we see no licence in the statute for creating a presumption that the resulting price in such a situation is the 'exclusive', 'best', or 'primary' evidence of fair value, we do not share DFC's confidence in our ability to craft, on a general basis, the precise pre—conditions that would be necessary to invoke a presumption of that kind. We also see little

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need to do so, given the proven record of our Court of Chancery in exercising its discretion to give the deal price predominant, and indeed exclusive weight, when it determines, based on the precise facts before it that led to the transaction, that the deal price is the most reliable evidence of fair value."

And then I would just draw your attention to one more point in the case. Right at the very beginning of the opinion, with apologies to having everybody flip back, this is page 2 of the decision, the Opus reference is  $\{G1/28/3\}$ , you see the paragraph — the sentence that begins — sorry, I'm on the wrong page.  $\{G1/28/4\}$ , apologies. The carry—over paragraph, the first full sentence:

"Although there is no presumption in favour of the deal price, under the conditions found by the Court of Chancery, economic principles suggest that the best evidence of fair value was the deal price, as it resulted from an open process, informed by robust public information, and easy access to deeper, non—public information, in which many parties with an incentive to make a profit had a chance to bid."

Now, that was all laying some groundwork.

Given your reliance on DFC Global, what I'm drawing your attention to is the court emphasising the

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 $1 \qquad \quad \text{importance of whether a market price is fair in the} \\$ 

- $2 \qquad \quad \mathsf{factual} \ \, \mathsf{circumstances} \ \, \mathsf{of} \ \, \mathsf{a} \ \, \mathsf{particular} \ \, \mathsf{transaction} \, .$ 
  - Would you accept that's what the court is saying?
- 4 A. Could you please repeat the question?
- 5 Q. I said I'm drawing your attention to the fact that the
- 6 court is emphasising the importance of whether a market
- 7 price is fair in the circumstances of a particular
- 8 transaction rather than stating a general presumption
- 9 that a market price is fair.
- 10 A. I'm sorry. Because I'm not a lawyer, it's a bit hard
  11 for me to wrap my brain around the phraseology there,
  12 but I think on page 2 that is {G1/28/4} they are
  13 talking about a deal price I presume that's a merger,
  14 I don't know if it's a merger resulting from an open

15 process, not necessarily a market price. 16 But agreed that what they're saying there is that if 17 the deal price results from something like a market, 18 because I guess that's what they mean by an open 19 process, informed by robust information, public 2.0 information and easy access to deeper non-public 21 information, that's certainly strong evidence of fair 2.2 value. That is certainly sufficient -- a sufficient 23 condition for the deal price being fair value. I don't 2.4 think I could argue against that. That's got to be

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25 true.

1	Q. I mean, the reason I drew this case your attention,
2	Professor, is that you cited it in your report. So
3	apologies for asking you questions about the law whe
4	admittedly you're not legally trained.
5	But we did have assistance on what this case is
6	understood to mean from Professor Milhaupt, who is

understood to mean from Professor Milhaupt, who is trained as a lawyer, and he in his evidence -- were you here when Professor Milhaupt --

9 A. Yes, I was.

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10 Q. So you saw his testimony. He specifically drew 11 attention to the fact that endorsing market price as 12 a guide, the DFC Global court described a very important 13 precondition to treating market price as a reliable 14 guide to value

I just might draw your attention there to his testimony, which is at tab 43 of your binder. It's the third page of the excerpt in the cross binder, page 54 at the top. I'm sorry, I don't have the Opus reference for the transcript. It's  $\{Day6/54:1\}$ .

- 20 A. "There is no way that a Delaware court would have held 2.1 this transaction to be fair."
- 2.2 Q. Yes, sorry, I was actually going to draw your attention to -- that is what he said. I was going to draw your 2.3 2.4 attention to line 6. where he says:
- 25 "I saw a citation to the DFC Global case in the

- 1 ROK's opening statement cited for the proposition that 2 the Delaware courts trust the market."
- A. Yes. 3

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- Q. "... very important pre-condition which is set out in case. They trust the market price because they believed that the process was robust and conflict-free."
- 7 A. Right.
- $\ensuremath{\mathsf{Q}}.\ \ \ensuremath{\mathsf{I}}$  was going to ask you, given your reliance on DFC 8 Global, presumably you would accept that a similar 9 10 standard should be applied in the context of the 11 valuation that the tribunal should consider here. The 12 tribunal should consider the market price only if they could be confident that the process was robust and 13 conflict -free? 14
  - A. Okay. So I could have given you that one without the legal pain, but I appreciate it's necessary to go through that. I now understand. Completely, I think, we're in full agreement here.

This is like my watch. If I think the watch is totally smashed, I would have to draw a line through the market price, as Mr Boulton said, and the Delaware court would presumably do the same.

So if it's completely smashed, if the market price means nothing, I can't trust it . I totally agree, and I take the allegations of manipulation quite

seriously . It's just that I haven't seen -- and I don't

2 think that the allegations I have seen are such as to

3 tell me that the watch is smashed. In other words,

4 I have to draw a line through the market price.

MS SNODGRASS: Mr President, Lobserve it's 11.30. That 5 might be a convenient moment for us to have a coffee. 6

7 THE PRESIDENT: Yes, very good. Let's break for 15 minutes 8 until 11.45

9 I should remind, Professor, you cannot speak with 10 anybody about the case or your evidence during the 11 break.

12 THE WITNESS: May I go to the break—out room and get 13 a coffee, but of course not speak about the case?

THE PRESIDENT: Yes, of course. 14

15 (11.31 am)

16 (A short break)

17 (11.46 am)

18 THE PRESIDENT: Let's resume, Ms Snodgrass.

MS SNODGRASS: All right, Professor Dow, I think before the 19

20 break, where we had left it was with you indicating that

2.1 none of the allegations you had seen had led you to

22 believe, carrying on the analogy we've been using, that 23 the watch was smashed.

2.4 A Right

25 Q. Now, in your second report you indicate that you had

1 been made aware that the ROK has indicted others for manipulation of the SC&T share price and 2 3 other offences, and that's at footnote 39, which is to paragraph 25 of your second report, if you want to turn 5 that up. For the operator, it 's  $\{G3/1/15\}$ .

6 A. I'm sorry, paragraph 25?

7 Q. It's footnote 39, which is a footnote to text in 8 paragraph 25. And the reference there is the third 9 sentence after the citation in the footnote.

10 A. I see it.

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Q. Yes. And in that footnote you rely on the 11 12 characterisation of the indictment as stated in the 13 ROK's pleadings in this arbitration . You say:

> "I understand from counsel that the manipulation on which the indicted charges are based allegedly occurred after the Merger Announcement on 26 May 2015."

17 Then you cite statement of Rejoinder and Reply to defence to preliminary objections.

19 Now, my question for you is: allegations of price 20 manipulation would of course be a serious challenge to 21 a theory of valuation that is based on market price. 2.2 wouldn't it?

23 It would certainly be a serious challenge and it would 2.4 be a successful challenge if I concluded that the

2.5 manipulation worked during the window that I identified

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- 1 in my presentation earlier, the time interval, and was 2 very substantial during that time interval.
- 3 Q. And so too would allegations that a party had made false 4 or incomplete disclosures of price-sensitive information
- 5 to the market; that would also be a serious challenge to a theory of valuation that relied on market price, 6
- 7 wouldn't it?
- A. I'm sorry, but when I answered your previous question 8 9 I understood that your previous question did relate
- 10 specifically to manipulation in the form of false 11 disclosure.
- 12 Q. Okay. So you include in the phrase —— just so we're all 13
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- 15 Q. You include in the phrase "manipulation", false
- disclosures to the market or non-disclosure to the 16 17
- 18 A. Well, non-disclosure of materially important things, 19 ves
- $\ensuremath{\mathsf{Q}}.$  Okay, fine. I just wanted to make sure we're on the 20 2.1 same page. Very good.
- 2.2 A. Well, you know, non-disclosure of materially important
- 2.3 things in circumstances when they would normally be 2.4 disclosed
- 25 Q. Okay. So we agree that if it could be shown that the

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- 1 market price of SC&T had been manipulated or was
- 2 otherwise unreliable because it was based on false or
- 3 incomplete information, that that would be something
- that would mean the market price couldn't be trusted as
- 5 a proxy for fair value; right?
- A. Sorry, I don't have the transcript. If it could be 6
- 7 shown -- well, if the market -- if there was
- 8 demonstrated manipulation that could be quantified and 9
- allowed one to correct for in the market price, then 10 I could trust the market price as an input because
- 11 I could make that correction.
  - If the manipulation was so severe beyond a certain point, there would be a point where one would give up and the watch would be smashed, in my example.
  - So it's a question of judgment at looking at the specific instances of manipulation that one believes to
- 18 Q. So at the time when you wrote your second report, had 19 you been able to review the PPO's indictment?
- 2.0 A. I don't recall.

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- Q. Okay. Have you seen the PPO's indictment of 21 2.2 since you wrote your second report?
- 23 A. I believe I have been given that, but I have not read
- 2.4 all of it and I have seen a summary of it that I have 25 read. But I couldn't tell you right now -- it was

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- 1 a press release, I think. I couldn't tell you right now 2 what the reference number of that press release was
- 3 Q. So you understand that the indictment charges numerous
- 4 counts of market manipulation to encompass price
- 5 manipulation in a technical sense and also material
- non-disclosures, but you didn't -- you don't recall 6 7
  - having reviewed it in detail? My question is: why not?
- MR TURNER: Hang on, sorry. Perhaps Professor Dow could be 8 9 given a chance to answer the long comment that went 10 before the question, which was:
  - "So you understand that the indictment charges numerous counts of market manipulation to encompass price manipulation in a technical sense and also material non-disclosures..."
- 15 I don't think we have had Professor Dow's opinion as 16 to whether he does understand that the indictment covers 17 those things.
- 18 MS SNODGRASS: Fair enough.
  - Do you understand that. Professor Dow?
- 20 A. The -- let me answer that question by reference to the 21 press release, and I don't know if anybody could --
- 22 Q. We will be coming to the press release, don't worry.
- 23 A. Okay. So if we know the press release, then that's 2.4 good.
- 2.5 So the press release includes some things which to

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- 1 my mind are not relevant examples of price manipulation.
- 2 Therefore, I need to look specifically at the exact
- 3 instances of -- the definition of price manipulation
- that was in the press release, and particularly
- 5 I understand in the hearings of this tribunal last week,
- 6 include certain things that I don't consider to be price
- 7 manipulation but rather corporate governance events and
- 8 tunneling events, and they also include things which
- 9 were outside the relevant window such as the share
- 10 repurchases in August, I think they were.
- 11 So I would really need to look in detail at what the 12 allegations were and I have not seen anything that
- 13 changes my opinion.
- Q. But you didn't look in detail at what the allegations 14
- 15 were to determine whether they --
- 16 A. Well, the -- in writing my second report I relied mostly
- 17 on Mr Boulton's reports and some of the allegations
- 18 surfaced after I wrote my report, and so having looked
- 19 at those, I didn't -- I haven't seen anything that
- 2.0 relates to price manipulation in the relevant window,
- 21 but if I'm mistaken, I would be happy to -- you know.
- 2.2 I'm sure you will bring me to those and I'll be happy to
- 23
- 2.4 Very good. Let's go ahead and turn to the press release
- 25 that was issued by the Seoul Central District

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1 Prosecutors' Office, and that was at tab 22 of the 2 bundle that you have in front of you,  $\{C/698/1\}$  for the 3 transcript

> Now, this was issued on September 1, 2020, which was just short of four weeks before your second report, which was dated 27 September. And in the press release we see the prosecutors announcing the results of their investigation, we see this in the title, on Samsung Group's unlawful merger and accounting fraud case.

Could I draw your attention to the summary at the bottom of the first page where we see the ROK prosecutors explaining the process that led to the indictment of and others.

Could I just ask you to read the text inside the box after the arrow at the bottom of the page.

- 16 A The whole of that box?
- 17 Q. Yes, please.
- 18 A. "After the Criminal Investigation Review Committee of 19 the Prosecutors' Office made its recommendation of no 20 indictment, the investigative team heard a diverse set 21 of opinions from external experts in the legal, 22 financial, economic, and accounting fields and conducted 2.3 a complete re-examination of the details of the 2.4 investigation, the legal principles involved, and the 25 methods in which the case was handled.

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"Ultimately, upon a comprehensive review of the various views of academia and court precedent, the accuracy of the facts being proven by the evidence, importance and severity of the matter, the need to allay the peoples' suspicions through a judicial review, and the results of a review by the Chief Prosecutor's Conference that was made up of expert criminal investigators, the key individuals in charge were indicted."

Q. So if you will look at the top of page 4 of this document, the Opus reference is the same  $\{C/698/4\}$ , after the heading "Subjects of Investigation, Seized Materials ... ", we see a description of that comprehensive review. We see that the prosecutors conducted:

"860 interviews with roughly 300 individuals including Samsung Group personnel including external consultants, shareholders, investors, related experts, etc, in addition to the seizure/analysis of 22.7 million digital files, (23.7 TB) [I believe that's an abbreviation from terabytesl from servers/PCs."

Do you see that at the top of page 4?

- 23
- 2.4 Q. The first bullet.

So you will agree with me of course that an

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indictment is a statement of criminal charges of 2 allegations and not yet a conviction; right?

3 A. Agreed.

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Q. But you'll also agree with me that in this public statement we see the ROK's prosecutors stating that before returning this indictment, they extensively consulted external legal, financial, economic and accounting experts. They say that on the first page.

9 A. I agree.

10 Q. And the prosecutors also state that they conducted an 11 extensive and detailed investigation and determined, 12 they say on the first page, that the accuracy of the 13 facts was proven by the evidence, don't they?

14 A. I see that.

15 Q. So we can take this statement by the ROK prosecutors as 16 a statement that they considered there to be evidence

17 supporting the charges that they are pursuing, can't we?

18 A. Yes. I do agree.

19 Q. And would you also agree that actions can have an effect 20 on share prices even if they don't amount to a crime?

2.1 A. Well, absolutely. All kinds of actions can have an 22 effect on share prices.

2.3 Q. Right.

2.4 A. I mean, there doesn't have to be -- I mean, they could 2.5 be very good actions. So of course they don't have to

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1 he crimes

2 Q. Right. So if you could turn back to page 3 of the press 3 release, we see the prosecutors explaining in the pink box  $\{C/698/3\}$ , the pink shaded box, the context for the 5 investigation and the indictment, and the text in the 6 pink box refers to two Supreme Court judgments. Do you 7 see that? At the first asterisk bullet it states:

"The Supreme Court en banc judgment (issued August 29, 2019) first defined the term 'Succession Project', then expressly acknowledged that the merger between Cheil Industries and Samsung C&T in question was a part of the succession project ..."

13 Do you see that?

A. I see that. 14

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15 Q. And at the second asterisk bullet it states:

16 "... in the final appeal for the above judgment, the 17 Supreme Court's judgment (issued June 11, 2020) found 18 that the merger was advanced by Vice Chairman 19 , and that bribes were given to the 20

President of the Republic of Korea and

21 And there we have a translator's note:

2.2 ... in return for supporting the succession project 23 that involved the present merger, etc."

2.4 A. I see that.

2.5 Q. So do you understand from this that the context for the

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Opus 2 Official Court Reporters

- 1 indictment was the merger between SC&T and Cheil, that 2 is the subject matter of this arbitration?
- 3 A. I do.
- 4 Q. If you could turn with me now to page 9 of the press 5 release  $\{C/698/9\}$ , this is a summary of one set of the charges that was being brought for false disclosures and 6 7 accounting fraud.
- 8 Could you read the text at the first bullet point, 9 please
- 10 A. "In March 2015, false disclosures were made in the financial statements of Biologics for 2014 as the call 11 12 option rights held by Biogen, and other important 13 information regarding the [JV] agreement on governance 14 (event price/maturity date for call options), approval 15 rights over important decision, condition of having 52% 16 of general shareholders' votes, etc), were concealed due 17 to concerns that such information would have a negative 18 effect on the stock price of its parent company, Cheil 19 Industries, thereby interfering with the merger."
- $Q.\ I'm$  sorry, I don't recall , you had seen this press 20 2.1 release at the time you completed your second report or you had not? 2.2
- 2.3 A. I had not.
- 2.4 Q. You had not. So you were not aware when you wrote your second report --

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- 1 A. I don't think I had.
- 2. Q. You don't think you had?
- 3 A. I actually don't recall.
- Q. So were you aware, or do you recall, that in addition to 5 charges of price manipulation in a general sense, the 6 indictment covered charges of false disclosures and 7 accounting fraud?
- 8 A. Well, I was already aware of the Qatar contract 9 allegations . I don't know if they're covered by this 10
- 11 Q. Well -

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- 12 A. And I was aware of the Biogen issues at a general level, 13 and particularly because Mr Boulton in his first report, 14 when he does the valuation, his sum of the parts in his 15 first report, section 5, talks about Biogen and indeed 16 notes that there was a call option which could have an 17 effect on the value of that component, and that the 18 price, the strike price of that call option was not 19 known.
  - So I did review his analysis of Biogen and I didn't think that it could be quantified as being particularly relevant for the market price, but I also didn't think, and perhaps I don't have enough information really to form a definitive view, but my view then was I didn't have information enough to quantify it or that it would
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- be a large quantity if I did quantify it.
- 2 Q. Did you know at the time that the allegations in
- 3 relation to the Biogen issue dated back to before the
- 4 date of the merger announcement?
  - A. I don't recall.
- Q. Because the footnote that you included in your second 6 7 report indicated that the charges are based on conduct
- 8 that allegedly occurred after the merger announcement on 9
- 26 May, and here we have allegations that date to before 10 the date of the merger announcement.
- 11 A. Well. I stand corrected.
- 12 Q. Yes. And those allegations are that the activities that 13 are the basis for the indictment are specifically
- understood to have affected the market price of Cheil; 14 15
  - isn't that right?
- 16 A. Well. I don't know how much they would affect it because 17 one could be indicted for false disclosures which are 18 wrong. There's a separate matter of how big would be
- 19 the impact of those disclosures if proven.
- 2.0 So we could, if you like, review Mr Boulton's first 2.1 report, section 5, where he values the relevant
- component of SC&T and you could no doubt take me through 22
- that and say that -- we could have a discussion about 23 2.4 whether that's likely to have a big effect on the value
- 2.5 of SC&T. That could certainly be a useful exercise.

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- 1  $\ensuremath{\mathsf{Q}}.\ \ensuremath{\mbox{\,I'm}}$  putting to you, I think, a simpler proposition,
- 2 which is it is likely to have an effect on the price,
- 3 and it's an effect that you didn't take into account in
- your second report because it seems that you weren't 5
- 6 A. Well, it seems from my footnote that I was aware of it,
- 7 but I thought it was after the announcement date, if
- 8 I understood correctly, and I don't have my footnote in
- 9 front of me, but was my understanding of what you read 10 out from my report.
- 11 I did spend some time thinking about the call option 12 issue, and have done since then, but I don't really have
- 13 a view that it would make a big difference to the price.
- 14 In other words, I don't think of it as the thing that
- 15 would make me say the Biogen call option, which I think
- 16 is probably relatively small, would be the broken watch,
- 17 would be the thing, the rock climbing expedition that
- 18 makes the watch smash, if you like.
- 19 Q. But you didn't include any analysis of the Biogen call 2.0 option in your report?
- 21 Α.
- 2.2 And you thought it had occurred -- you thought that this
- 23 issue related to manipulation that occurred after the
- 2.4 date of the merger announcement date, when in fact it
- 25 was before the announcement date?

- 1 A. As I have stated.
- $2\,$   $\,$  Q. Yes. Could you turn with me to page 5 of the same
- document, please. {C/698/5} The text at the top of that page summarises the charge:
- "Unfair trading under the Capital Markets Act, price
   manipulation ( Future Strategy Office,
   members of Samsung C&T)."
  - If we look at the pink box, we see bullets that outline a high level timeline. Do you see those bullets?
- 11 A. I'm sorry, I'm looking at page 5  $\{C/698/5\}$ ? Yes, the 12 same page that I see on the screen.
- 13 Q. Yes, okay

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- 14 A. So those triangular bullets, you're representing thatthis is a timeline; is that it?
- Q. Well, it lays out a time period. I think I might be
   looking at the wrong page myself. Let me just take
   a minute to make sure I'm on the right page.
- Yes, sorry. It's after the pink box. After the pink box, three open bullets that summarise the timeline. If I would read my notes correctly it would help us both, Professor Dow.
- 23 Timeline after --
- 24 A. Go ahead, take your time.
- 25 Q. Timeline after the pink box. So we see in the timeline

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- $1\,$   $\,$   $\,$  in the text after the pink box, we see that the merger
- 2 between then Everland, which became Cheil, and SC&T
- $\label{eq:continuous} 3 \qquad \qquad \text{gained urgency after the illness of Chairman} \quad \text{in} \quad$
- 4 May 2014; correct?
- 5 A. Correct.
- 6 Q. And per the second bullet, and the Samsung office
- 7 in the spring of 2015, the quote is "established
- 8 a detailed plan to advance the merger". Are you with 9 me?
- 10 A. I am.
- 11 Q. And could you please read the third bullet.
- 12 A. "From May 2015, Samsung C&T gave a fraudulent
- justification for the merger (independent determination
- 14 by management for growth of the company), made
- fraudulent calculations of synergy figures, and
- 16 manipulated accounting firm reports to state that the
- merger ratio based on share price (1:0.35) was
- 18 appropriate."
- $\begin{array}{ccc} 19 & \text{Q.} & \text{And then could you take a look at the text at the} \\ 20 & \text{sub-bullet with the number 2.} & \text{Could you read that as} \end{array}$
- 21 well?
- 22 A. "During the announcement of the merger that took place
- 23 immediately after the Board of Directors meeting on
- 24 May 26, false information regarding the purpose,
- 25 background, and effects of the merger was disseminated

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- to investors through press releases and disclosures such as the securities filing report."
- 3 Q. And if we turn over the next page --
- 4 A. I have a question for information, or a pin, if you
- $\,\,$   $\,$   $\,$  like .  $\,$  I have said that any manipulation that would be
- 6 relevant would have to affect the merger ratio and
- 7 therefore such manipulation would have to take place
- 8 before the merger ratio had been computed. And I'm not
- 9 sure whether a press release on May 26, 2015 would feed
- $10\,$   $\,$  into the merger ratio because I know that the statutory
- 11 formula includes one component which is just before the
- 12 announcement, but I don't know that was taken -- I don't
- 13 know what time of day this announcement was. I don't
- 14 know when the last input to the formula was. That is
- something that would be worth looking at.
- $16\,$   $\,$  Q. Yes. But you see the reference to a detailed plan to
- 17 advance the merger during the course of the spring of
- 18 2015 in the text that we looked at?
- 19 A. Yes
- 20 Q. So leading up to the announcement of the merger?
- 21 A. Yes, above, yes, there. And I don't think that is
- 22 something I would question anyway, so. It is clear that
- the family wanted this merger to go ahead. Whether
- they wanted it to go ahead by fair means or foul, that's not for me to say, but that they were very keen for it

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- 1 to go ahead was certain.
- 2 Q. So in your opinion, manipulation of the share price,
- 3 just to make sure I understand your position,
- 4 manipulation of the share price after the merger
- 5 announcement date is immaterial?
- 6 A. Well, it doesn't feed into the price at which the shares
- 7 were taken, and to that extent I don't see how it could
- 8 be relevant.
- 9 Q. Could I just ask, why are we talking about the shares 10 being taken? This isn't an expropriation case.
- 11 A. I could -- what would be a better verb?
- 12 Q. Well, damages are being calculated by reference to the
- 13 value of shares and what the value of the shares would
- 14 be if the merger had not closed.
- 15 A. Well, I would say the price -- okay. If you don't like
- me saying -- I said "taken" because I thought that was,
- you know, sort of putting it in the starkest terms. But
- 18 I could say the price at which Elliott sold the shares,
- which is -- or the consideration Elliott received for
- the shares, which is Mr Boulton's valuation methodology:
- Value minus consideration.
- 22 Q. Well, no, the valuation methodology that Mr Boulton uses

- 23 is the price at which Elliott would have sold the
- 24 shares —
- 25 A. Value.

1	0	— if the merger had not proceeded.	1		performance. And we see under the heading "Weak
1 2			2		
3	A.	Mr Boulton computes damages based on value, and I use	3		business performances, etc of the Former SC&T", we see
		the term loosely because he and I disagree on value,	4		the court saying:
4		minus consideration received. Consideration received	4 5		"Other than the merger possibility with Cheil, the
5 6	^	means the money that Elliott got for the shares.	6		weak business performance of the Former SC&T as revealed
7		Yes, and the value —	7		by various objective indexes also appears to be the
	Α.	So value for him is net asset value minus 15%, 10%. For			cause of the fall in share price. However, as mentioned
8		me it is share price, or else net asset value minus	8		herein, the lower the share price of the Former SC&T was
9	^	a lot more than 10%.	9		formed, the more the Family would profit from the
10	Q.	Yes, but the A in the A minus B equals C equation,	10		merger in respect of which some of the press and
11		A being value, is what would the shares have been worth	11		securities companies raised suspicions that the weak
12		in the counterfactual scenario of the merger not having	12		business performance of the Former SC&T may have been
13		closed.	13		intended."
14	Α.	Well, in Mr Boulton's first report he doesn't speak	14		So here we see the court considering the possibility
15		about a counterfactual. In Mr Boulton's second report	15		that business decisions were taken that were
16		he talks —— in Mr Boulton's first report he just talks	16		deliberately suppressing the share price of SC&T
17		about intrinsic value on the valuation date. There's no	17		correct?
18		mention of counterfactual, I believe. And I'm sure you	18	Α.	I'm sorry, I'm just reviewing this document which
19		will correct me if I'm wrong.	19		I haven't seen before, although I'm sure it has been
20		In his second report he says what they would have	20		shown to me, as were many things.
21		been worth in the counterfactual, as you say, although	21		(Pause)
22		he still maintains his valuation date of the merger $$	22		I see that.
23		let $\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \$	23	Q.	Right. So the first issue the court considers is
24		valuation date, I think it's hard to see how in the	24		addressed under the heading 1, "Weak performances in
25		counterfactual the market would have known what the	25		supplying housing". There the court first observes, in
		81			83
1		shares $$ what the vote was going to be on that	1		the paragraph that's right after the heading, it says:
2		valuation date. So I don't completely understand that.	2		"With the recovery of the housing economy in the
3		But certainly he is taking his estimate in his	3		first half of 2015, major construction companies
4		counterfactual of the share value on 16 July, the	4		significantly expanded their supply of new housing.
5		Tuesday.	5		Yet, the Former SC&T did not do so."
6		That's the end of my sentence. I'm sorry.	6		Do you see that?
7	Q.	Okay. We'll come back to the counterfactual.	7	Α.	I see that.
8		Let me just find where we were. We were working our	8	Q.	And if you go with me to the next page, at the beginning
9		way through the ROK's prosecutors' announcement of their	9	•	of the first full paragraph $\{C/53/19\}$ , the court
10		indictment. I think we were nearly finished with that	10		observes:
11		document, but let me just check my notes before we move	11		"The Former SC&T supplied around 300 new houses for
12		on.	12		the first half of 2015. Yet on July 17, 2015, the date
13	Α.	I think I got it right in my previous sentence, but it	13		of the shareholders resolution for the merger, the
14		was a little bit long. I apologise for that.	14		Former SC&T announced that it had 'plans to supply
15	O	No worries.	15		a total of 10,994 apartment households in eight
16	٧.	All right.	16		locations of Seoul in the second half of 2015'. This is
17		So if you would turn with me, please, to exhibit	17		in contrast to the details of the modification to the
18		C-53, which is at tab 5 {C/53/1} of your bundle. This	18		housing business strategy as agreed by the Subject
19		is the Seoul High Court's decision in the appraisal	19		Company and actual performance in the first half of
					- Programment and the man of

So in this portion of the decision the court is

considering information about SC&T's share price

Q. Could you turn with me, please, to page 18 of this

the year so effectively that market commentators were  $$84$\,$ 

its activity in the housing sector in the first half of

Q. So the suggestion is that SC&T deliberately suppressed

2015."

A. I do.

Do you see that?

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A. Yes.

price litigation .

decision  $\{C/53/18\}$ .

1	describing it as having disappeared from the local
2	housing distribution market, and we see that as a quote
3	in the middle of the page after the first bullet point:
4	"The Former SC&T has disappeared from the local

"The Former SC&T has disappeared from the local housing distribution market..."

And then announcing immediately after the shareholder vote on the merger that it had plans for significant expansion of that business; correct?

A. Correct.

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- 10 Q. So my question to you, Professor Dow, is whether you
  11 agree that if that strategy were pursued, the effect on
  12 the SC&T share price would predictably be to suppress it
  13 in the first half of the year and boost it once the
  14 announcement were made?
- 15 A. Well, that sounds like tunneling to me, not 16 manipulation. Correct me if I am wrong —
- 17 Q. That wasn't my question. My question is: what would the predictable effect on the share price be?
- A. Well, suppressing the participation first of all,
   I note, and I think this is relevant, this document
   concludes with an opinion that the shares are worth
   66,602 per share.
- 23 Q. Professor Dow --
- A. I think that is relevant, because the court here has
   taken this into account and formed its view of what the

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shares were worth as a result of such considerations put in this report. And had Mr Boulton put forward such a number, I would have certainly engaged with that.

Now, if the Samsung family, shall we call it that, took business away from SC&T in the run—up to the merger, that's not manipulation; that is tunneling and that is why SC&T all along, as we saw in my time series evidence, traded at a discount, if true. That is one of the factors that fed into SC&T's discount.

So I said in my presentation earlier, tunneling is not manipulation, because if the family don't like -- you know, tunneling means that the controlling interests divert business to the bit of the company that they prefer. That's tunneling.

Manipulation is, given that the business has that environment or rather factors of its environment, do we cause shareholders and the market, do we cause the market to make wrong inferences about what will happen to that company?

So diversion of resources away from SC&T, I take to be a form of tunneling, although not a very egregious one actually. It's  $\dots$ 

And so I wouldn't call that price manipulation.

- $24\,$   $\,$  Q. I don't think I got an answer to the question.
- 25 A. The question was ...?

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- Q. If a strategy of suppressing business in the first half
  of the year and then making an announcement that there
  was going to be a boost in business in the second half
  of the year were pursued, the effect on the SC&T share
  price of that strategy would predictably be to suppress
  it in the first half of the year and boost it in the
  second half of the year; yes or no?
- 8 A. Well, that's hard to disagree with.
- 9 Q. Right.

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- 10 A. If I push it down at one time, I push it down. If
   11 I push it up at another time successfully, I push it up.
- Q. Just why does it matter to the analysis of damages
   whether the price was suppressed by tunneling, what you
   call tunneling, or by manipulation?
- 15 A. Yes. Okay. Important point.

First of all, I don't like the word "tunneling" very much because I think that in a corporate governance situation such as this one it's quite normal that the controlling family will do things that the non—controlling shareholders may disagree with.

That could of course include straight value transfer, tunneling, and it could also include, you know: I want my son to be CEO, the rest of the market doesn't think that's such a good idea, but I go ahead anyway, so that results in a lower market value.

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So these are — whether it's that sort of decision or whether it is actual diversion of value, for example, "I don't do housing with this company because I don't want to, I want the activity to happen in another part of my empire", and then later on circumstances have changed, so I reverse that decision. That is more akin to tunneling.

And what I'm saying — the question I was asked is: why isn't tunneling price manipulation? Well, that's simple, because if a family group has some businesses in it that don't get their fair share of resources, they're just not as valuable. It's not that the market is wrongly valuing those components. It's that they really aren't as valuable.

That is why I say that tunneling is not price manipulation, because tunneling reduces value and those other things I mentioned, such as succession plans that the market doesn't like, they also reduce value, but the market can properly reflect that in a low valuation.

That's not tunneling — that's not price manipulation.

- Q. So you've diagnosed the conduct that's described in this portion of the appraisal price litigation judgment as tunneling?
- 24 A. Yes.
- $25\,$   $\,$  Q. And you accept that that tunneling conduct affected the

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share price?

2	A.	I think tunneling is a bit strong because I think
3		it's $$ tunneling has a very negative connotation,
4		whereas a decision not to go ahead with the business
5		investment, I think that's well within the legitimate
6		purview of the controlling family.
7	Q.	If you accept that the reason for delaying the
8		announcement of housing projects was to manipulate the
9		share price, would you diagnose it as tunneling?
10	A.	Did you mean would I diagnose it as manipulation?
11	Q.	You can diagnose it as manipulation or as tunneling.
12		How would you diagnose it? Because the suggestion
13		surely in the appraisal price litigation is that it was
14		to affect the share price of SC&T.
15	A.	I'm not sure because, had the merger been rejected,
16		I would expect that SC&T would not have got that
17		increased activity that was announced in July.
18		So I think it's more complex $$
19	Q.	Let's take it in two halves $$
20	A.	because if the merger had not been rejected $$ had
21		not been accepted $$
22	Q.	Let's take it in two halves $$
23	A.	then the 20,000 $$ the 10 $-$ 11,000 new apartments would
24		likely never have been announced and therefore I don't
25		see

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1 Q. Let's take it in two halves. How about the decision to 2 withhold --3 A. If I may, please. If the merger had been rejected as Elliott wanted, 5 I would have thought that it's less likely that the 6 controlling interests would have given that housing 7 contract to SC&T, arguably. And that complicates 8 matters. That's all I wanted to say, so please continue 9 with your question. 10 Q. So let's take it in two halves.

The decision not to have any contracts announced in the first half of the year before the decision, before the vote on the merger, so we don't know the outcome of the vote on the merger, if the intention of that was to suppress the share price of SC&T, how would you diagnose that?

A. If I know that I'm going to announce — do the housing anyway, in either branch of the eventualities, rejection or acceptance, if I know that for sure, and I tell the market I'm not going to do it, that is manipulation. I think that's what you were trying to get at.

Again, I note that this document led to a conclusion that the shares were worth 66,000 and some, and so my inference would be the court thought, in terms of watches, it's more of a five—minute or two—minute

inaccuracy rather than smashing the thing completely.

- Q. But you didn't analyse any of this information?
- A. No, I didn't analyse it, absolutely.

4 THE PRESIDENT: Ms Snodgrass, if I may put a question in here because it's in the context.

Is there a distinction between reversible and irreversible tunneling or transfer of value in the sense that, prior to the merger, any tunneling or transfer of value from one company to another in the group is reversible because you may simply cancel the actions that caused the transfer of value; but once the merger takes place, and assuming it takes place at the point in time when as a result of tunneling the value of one company is higher than the other, the tunneling or the transfer of value becomes irreversible.

If the purpose of the actions taken by the controlling shareholder in preparation of that transfer of value -- was in preparation of that transfer of value, does it affect in any way your view as to whether that kind of transfer of value would qualify as market manipulation?

A. Wow. (Pause) I think reversibility comes into play.
 I have also thought of another consideration for that matter, which is what if the market before Elliott bought the shares thought that the housing contract was

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not going to be awarded, so the shares were already low then?

So let me go through your question.

If the housing decision in the first half of 2015 was don't build houses, and if that was an irreversible decision, then that certainly would be — I guess that would not be price — I'm not sure. Could that be a form of price manipulation? Because obviously this housing decision was reversible. So I think your question is , sir: if the housing decision had been irreversible , what would I have answered then.

I think it's difficult to say because ... but I suppose if the housing decision to take business away from SC&T or to fail to invest in SC&T was an irreversible and permanent decision, then ... I'm afraid I can't be sure because that would simultaneously cause a permanent loss of value to SC&T and it would affect the merger ratio.

I suppose it would not be manipulation because it would affect the merger ratio only to the extent that it reflected a permanent loss of value to SC&T.

So I think my answer to your question is: had the housing decision in the first half of 2015 been an irreversible decision, then that would be not manipulation, and I believe I just replied to

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1	Ms Snodgrass that because the housing manipulation was	1	the substance of my question. But let's say that some
2	reversible, it could be a form of manipulation, but one	2	of those actions are in the form of what you call
3	would also have to consider whether it would have been	3	tunneling.
4	reversed in practice, in both outcomes of the merger	4	A. Yes.
5	vote, if I $$ I'm sorry, that's a long answer to your	5	MR GARIBALDI: And some of those actions are in the form of
6	question, sir.	6	what you call market manipulation in the form of fraud,
7	MR GARIBALDI: Well, okay. I have one question that is	7	suppression of evidence, providing incorrect information
8	a follow—up.	8	to the market.
9	I just don't understand how it is possible to say	9	A. Yes.
10	that this decision not to build the houses in the first	10	MR GARIBALDI: Now, if you look at the totality of that, of
11	half of 2015 is reversible, because new houses can be	11	those actions, would you call the whole thing market
12	built in the second half of the year, but what it	12	manipulation?
13	matters is the reversibility of the effects on the	13	A. Well, to the extent that some of it clearly was price
14	merger ratio.	14	manipulation, I would call that part price manipulation.
15	Those effects on the merger ratio are irreversible	15	To the extent that some of it was tunneling —
16	if the merger goes through; isn't that right?	16	I think this is a key question actually. This is a key
17	A. That is right.	17	question. Let me explain why.
18	MR GARIBALDI: All right. Now, another question, and this	18	First of all , let me note I have not —— I do take
19	is a hypothetical.	19	the manipulation allegations very seriously . I do think
20	Suppose that in a scenario like this one there is	20	that if the tribunal believes certain manipulations
21	a —— let's call it a succession plan. And the plan	21	occurred and were successful, they should be quantified
22	consists of a series of actions which have the intent of	22	and the market price should be adjusted. But it's my
23	depressing the share price of Samsung C&T and increasing	23	view that they don't amount to the broken watch; rather
24	the share price of Cheil.	24	they amount to the little adjustment to the watch.
25	Let us also suppose that some of those actions are	25	Having said that, let me link this to a very
23		23	
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1	lawful and some are unlawful in the sense that they	1	important part of Mr Boulton's analysis because he says
2	consist of feeding incorrect or incomplete or fraudulent	2	after the merger he looks at the discount of the
3	information to the market. Let's suppose that.	3	combined entity which he estimates at $5\!-\!15\%$ and then
4	Now, would it be correct, once you have all the	4	gets 10, and he says that would also have been the
5	evidence, would it be correct to look at the totality of	5	discount in the but for world.
6	the actions in furtherance of this plan, and would you	6	So as I said in my opening presentation, I think
7	refer to that as market manipulation?	7	that in the but for world, SC&T would not have been at
8	A. I don't have the transcript in front of me. So with	8	the top of the food chain, so to speak, in the Samsung
9	that caveat, because I don't recall the full text of	9	empire, and would not have benefited from such favoured
10	your question $$ thank you, I have just been shown the	10	treatment, because Cheil was, I think, the favoured
11	transcript .	11	vehicle .
12	Could I see the beginning of the question on the	12	So I do agree that manipulation via tunneling, if
13	transcript , please? Thank you.	13	I may call it that, that you're alluding to in your
14	(Pause).	14	question, would require an adjustment to the merger
15	And then the rest of the question, please.	15	ratio for the purposes of damages, if that tunneling
16	So I agree we should look at the totality of	16	would have been reversed in the counterfactual. But if
17	actions, as you asked me. Indeed —— and then there's	17	that so—called tunneling, succession plan, whatever, as
18	another part of your question which is some of those	18	you said in your question, would not have been reversed
19	actions are lawful and some are unlawful. And because	19	in the counterfactual, then I'm not sure, and I think
20	I'm not a lawyer ——	20	members of the tribunal are probably quite capable of
21	MR GARIBALDI: Let me rephrase ——	21	doing the mental analysis better than me, sort of here
22	A. — I can't really speak to that distinction .	22	on the hoof, but I think I would not call that
44	A. I can t reany speak to that distillction.	22	on the noor, but I think I would not call that

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manipulation because in the counterfactual Elliott would

be left with an independent  $\ensuremath{\mathsf{SC\&T}}$  that would not be so

favoured, and therefore  $--\ {\rm I'm}$  sorry, that's a long

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MR GARIBALDI: Let me rephrase that so as not to get you --

MR GARIBALDI: No, no, no, I don't want you to ignore that,

A. I can just ignore that --

1			1		Later to the Control of the Control
1 2	M	answer, but I hope that answers your question. R GARIBALDI: Thank you.	1 2		namely that an independent SC&T would not be expected to get such contracts very often in the counterfactual, but
3		5 SNODGRASS: So we were looking at the Korean court's	3		having moved to the top of the food chain after the
4	IVI	decision in the appraisal price litigation , which had	4		merger approval, that's exactly what you would expect to
5		identified examples of activities that were designed to,	5		happen, that they would become a favoured vehicle for
6		and the court found had an influence on SC&T share	6		the family.
7		price, and we talked about the activity in the housing	7		So I would like to make clear I'm not defending —
8		sector. And there is a section of the appraisal price	8		well, I'm not defending anything except my point of
9		litigation decision which relates to the Qatar contract,	9		view, but I'm above all not defending the arrangements
10		which you did take into account in your analysis, and	10		of the family and the Samsung Group. When
11		the last thing I wanted to draw your attention to there	11		I presented the picture in my presentation I made it
12		is at page 21 {C/53/21} of the appraisal price	12		clear that I thought that was a bad picture from the
13		litigation decision, which essentially tells a similar	13		point of view of a shareholder. It's not a clean
14		story in the construction sector as the story we were	14		corporate governance structure. It is liable —— you
15		just exploring in the housing sector.	15		know, it's why these companies trade at a discount, in
16		We see under the heading (3) on page 21 the court	16		my view.
17		finding that:	17	0	I may just want to pick up on one point that you said
18		"Sometime from around the end of 2014 to the	18	ų.	there. You suggested that an independent SC&T wouldn't
19		beginning of 2015, certain construction projects ran by	19		in the ordinary course have gotten these contracts.
20		the Former Samsung C&T were shifted to Samsung	20		If I could just turn your attention to page 22 of
21		Engineering"	21		the court's judgment $\{C/53/22\}$ . We see there the
22		Do you see that?	22		carryover paragraph, or the paragraph that starts at the
23		And then we see on the rest of that page and over on	23		top of the page. If you read the paragraph there, it
24		page 22 {C/53/22} the court referring to reports by the	24		actually describes what was happening with the contracts
25		media and analysis of securities companies, and at the	25		that had originally been SC&T contracts as
		97	23		99
		,,,			"
1		end of the first bullet point the court recording:	1		"unprecedented". So it says:
2		"Those in the financial circles are raising	2		"On the contrary"
3		suspicions that Samsung Group is deliberately reducing	3		We read there:
4		new contracts and shifting construction projects to	4		" it may actually happen to be the case that they
5		other affiliate companies due to the merger between	5		would give the key investment sector in Samsung
6		Cheil and the Former SC&T."	6		Electronics such as semi-conductors and display
7		Do you see that?	7		technologies to Samsung Engineering or any other outside
8	A.	I don't see that, but I will take that $$	8		construction company. According to the media reports,
9	Q.	Sorry, that's on page 21. I might have misled you by	9		for the second phase constructions for the
10		referring you to page 22. It's at the end of the first	10		KRW 400 billion Samsung Electronics Vietnam investment
11		bullet point in the middle of $\{C/53/21\}$ .	11		project, the company in charge was changed to Samsung
12		It's just a similar $$	12		Engineering as of February 2015, of which the first
13	A.	Similar point.	13		stage was completed by the Former SC&T and Cheil. This
14	Q.	point. My question was whether that was a narrative	14		kind of change is unprecedented. The Former SC&T was in
15		that you'd been aware of when you prepared your second	15		charge during the initial construction phase of the
16		report?	16		construction project by Samsung Electronics of
17	Α.	Well, I was just thinking about that. Price	17		a research institute within Seoul University, but also
18		manipulation doesn't really enter into Mr Boulton's	18		dropped out in the middle and now is taken over by
19		second report. There's a brief reference to it. And so	19		Samsung Engineering. Samsung Group can at any time
20		while I engaged with the things that he did say, it	20		control the performance of the Former SC&T. The
21		wasn't the focus of my second report.	21		performance of the construction sector in particular can
22	$\circ$	So you didn't analyse the possible influence on SC&T's	22		be influenced greatly depending on the status of

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construction orders retained by Samsung Electronics and

The suggestion there seems to be that there was  $% \left\{ 1\right\} =\left\{ 1\right\} =\left\{$ 

on the potential for  $% \left( 1\right) =\left( 1\right) \left( 1\right) =\left( 1\right) \left( 1\right) \left($ 

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share price of this kind of decision-making in the

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A. No, I didn't. My point would be the same, I think,

construction sector either?

1	something	g unusual happening with Samsung Construction	1		of the Former SC&T shares due to the merger plan with
2	and that	it being dropped out of these contracts was	2		Cheil", and at the end of the first paragraph, under the
3	targeted	at Samsung Construction in this time period.	3		sub-heading (1), "Analysis of the share price before the
4	Wouldn't	you agree?	4		date of the board resolution for this merger", we see
5	A. That is the	he suggestion.	5		the conclusion at the end of the paragraph:
6	Q. And you	would agree, I would assume, that losing those	6		" the prospect of the consummation of a merger
7	=	nt construction orders would have had	7		between the Former SC&T and Cheil becoming a real
8	•	e impact on the share price of SC&T in this	8		possibility in the near future began to be discussed
9	period?	·	9		among securities market participants following the
10	•	t depends on whether the market thought this	10		listing of Cheil on the securities market on
11		tuff was to be expected or whether the market	11		December 18, 2014'.
12		kling that something like this would happen,	12		"According to the following analysis by securities
13		f the market thought that this kind of thing	13		companies and press reports, this is believed to be one
14		e expected, then the price would have been lower	14		of the reasons why the Former SC&T share value did not
15		; while if the market had no inkling, then it	15		appreciate during the period from January 2, 2015 to
16	J	t have been reflected in the previous price all	16		May 22, 2015, unlike the other construction industry
17		herefore, it would not have been reflected in	17		shares."
18	•	at which Elliott bought its shares.	18		Do you see that?
19	•	market commentator describing this kind of	19	Α.	Yes, I do.
20		s "unprecedented", if that gives you any	20		And the court then refers at the bullet points that
21	insight?		21	٦.	follow on pages 16 and 17 to that analysis by securities
22	•	<ul> <li>I think the tribunal is qualified to interpret</li> </ul>	22		companies. And if I could ask you to turn to the first
23		as well as me, if not better.	23		bullet on $\{C/53/17\}$ , so the first dark bullet point.
24	_	RASS: That takes me to the end of a section of	24		The court refers there to an analysis dated March 25,
25		t's a few minutes before 1 o'clock. I wonder	25		2015 by Kyobo Securities to the effect that:
		101			103
		202			100
1	whether i	t might be a convenient time?	1		"One reason for the weak share price of the Former
2	THE PRESID	DENT: Whenever it's convenient around this time.	2		$\ensuremath{\text{S\&T}}$ [I think that's just a mistranslation] is due to the
3	So let's	break now for an hour and we will resume at	3		view that the Former SC&T shares are at the losing end
4	2 o'clock		4		of Samsung Group's restructuring process. The share
5	Profe	ssor, the same rule continues to apply.	5		prices are extremely undervalued at the moment, and
6	THE WITNE	SS: Of course.	6		a sharp rise in share price would be possible even with
7	THE PRESID	DENT: I think you will be shown to a room where	7		just an improvement in the investor sentiment in
8	you can h	nave your lunch. Thank you very much.	8		relation to ownership restructuring."
9	THE WITNE	SS: Thank you, sir.	9		My question to you is whether you would agree with
10	(12.54 pm)		10		that analysis . (Pause)
11		(The short adjournment)	11	A.	I think that this analysis is the fear of the merger
12	(2.00 pm)		12		theory, and I don't agree with the fear of the merger
13	MS SNODGF	RASS: Professor Dow, before we broke for lunch we	13		theory.
14	had tab 5	of the bundle that you have in front of you	14	Q.	So you don't think that the share prices were extremely
15	open. Th	nat's exhibit $C-53$ { $C/53/1$ }.	15		undervalued at the moment and you don't think that
16	So in	addition to identifying the strategies that	16		a sharp rise in share prices would be possible even with
17	Samsung	Group used to depress SC&T's share price, in the	17		just an improvement in investor sentiment in relation to $% \left( 1\right) =\left( 1\right) \left( $
18	appraisal	price litigation , the Seoul High Court also	18		ownership restructuring?
19	recognise	d that SC&T shares were undervalued in the	19		And you don't think that one reason for the weak
20	run—up t	o the merger because of the threat of the merger	20		share price of former SC&T is due to the view that the
			21		former SC&T shares are at the losing end of Samsung

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Group's restructuring process?

A. Well, there's two interpretations of the first sentence,

said I don't believe that's a viable theory.

and one interpretation is fear of the merger, which I've

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So if you could go with me to  $\{C/53/16\}$  of the

appraisal price litigation decision. That's also on 16

On page 16 we see the heading C, "The undervaluation

in the Opus reference.

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1	In other words, fear of a transaction happening at
2	the market price logically should not depress the market
3	price.
4	So if that is the theory, then I don't agree with
5	it.
6	"The share prices are extremely undervalued at the
7	moment"
8	I don't really know what to say about that.
9	I haven't formed my own opinion of intrinsic value at
10	that point. I'll just note that nobody disputes that
11	shares here trade at big discounts to net asset value.
12	So if that's what's meant, I don't know.
13	But I don't think that is $$ that's not really $$
14	you know, it's difficult to unpick this couple of
15	sentences, but if the sentences are just saying there's
16	a big discount to net asset value, then I don't know.
17	And:

"... a sharp rise in share price would be possible even with just an improvement in investor sentiment in relation to ownership restructuring."

I don't know what that means. Does that mean that, as Elliott says, or Mr Boulton says, if investors thought the merger was going to be cancelled, there would be an improvement? I don't know.

I don't know what that means really. It's just

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1 something that an analyst has said, so. They say those 2 kinds of things all the time.

- 3 Q. So you don't --
- A. I don't read much into it.
- 5 Q. So you don't have an opinion on that question?
- A. Well, my opinion is, if it's fear of the merger, you 6 7 know my view on fear of the merger.

Do I think they're undervalued at the moment? I don't particularly think so. I don't think they were extremely undervalued at the moment. I think that's my testimony I've already given, even though I didn't do a valuation on that date. But I did provide an opinion on valuation date. So to that extent. I don't think they were extremely undervalued, no.

As I showed in my presentation this morning. I think the whole issue of share price versus net asset value is a bit of a red herring because even if one started from net asset value, I don't think a realistic discount would take you very far from the share price.

2.0  $\ensuremath{\mathsf{Q}}.$  Sorry, we're just getting the transcript . My transcript 21 is not showing up. So I'm getting it fixed so I can 2.2 make sure I see what you're saying.

Excellent, thank you.

I believe you said, notwithstanding I didn't have the transcript in front of me, that you said that nobody

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disputes that there was a discount at this time. And I believe in your expert reports, and I'm referring now specifically to paragraphs 111 and 112 of your second expert report, which is at {G3/1/52}, you attribute that discount to many rational economic reasons.

One of those reasons, as you explain specifically at paragraph 112, by reference to studies that you quote, is the risk that minority shareholders will be targeted by unfair or predatory transactions like the merger.

You say there:

"... it is rational for minority shareholders to discount the prices of group firms when they anticipate diversion of cash flows to controlling shareholders (what Prof Milhaupt calls tunneling).'

Is that right?

17 A. What I say there is right. I don't agree with what you 18 said before, where you -- I don't have -- if I could 19 have the transcript for a minute:

20 "One of those reasons, as [I] explain specifically 21 at paragraph 112, by reference to the studies that you 22 quote, is the risk that minority shareholders will be 23 targeted by unfair or predatory transactions like the 2.4 merger.'

That is not what I said in paragraph 112, and it is

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1 not what I believe, because my evidence was that the 2 merger taking place at market prices cannot be an unfair 3 or predatory transaction.

So to put it in simple terms, I completely disagree with Professor Milhaupt's statement that he made on Monday, that the merger is classic tunneling.

7 Q. You also then disagree with Professor Bae, who is an 8 expert on Korean tunneling transactions, who in his 9 evidence confirmed his view that the Cheil-SC&T merger 10 was, from the perspective of SC&T shareholders, 11 a tunneling transaction. For the transcript, the 12 reference is  $\{Day6/94:22\}$  through  $\{Day6/95:3\}$ . Do you 13 recall Professor Bae's evidence to that effect?

A. I do recall; I don't agree with him. 14

15 Q. But in your reports you do specifically argue that in 16 the period leading up to the merger SC&T shares priced 17 in the risk of a merger at a merger ratio that

18 undervalued SC&T and overvalued Cheil?

19 A. Could you show me if I say that, please?

 $\ensuremath{\mathsf{Q}}.$  Yes, first report, paragraph 36. The reference for the 2.0 21 Opus operator is  $\{G1/1/15-16\}$ .

2.2 A. Yes, that is not at all what you said because if I could 23 see the transcript? If I could see the transcript of 24 what the question was?

25 Q. I'm sorry, paragraph 35, apologies, of your first

1		report.	1		benchmark, namely an adjusted price.
2	Α.	You asked me:	2		However, the price at the time Elliott bought it
3		"You specifically argue that [blah, blah, blah] SC&T	3		would then have been depressed and, as I say in
4		shares priced in the risk at a merger ratio that	4		paragraph 35:
5		undervalued SC&T and overvalued Cheil?"	5		"It paid a price reflecting that possibility, and
6		And I don't believe I said that the merger ratio	6		therefore, from an economic perspective, it could not be
7		undervalued SC&T and overvalued Cheil.	7		said to have suffered damages from that eventuality
8	Q.	We can omit those words, but it is your argument that in	8		coming to pass"
9		the period leading up to the merger, SC&T shares priced	9	Q.	What eventuality?
L 0		in the risk of the merger at the merger ratio, full	10	A.	The eventuality of the merger.
L1		stop.	11	Q.	Right. So I read that to say —— perhaps I have
L2	A.	That's got to be true.	12		misunderstood you $$ that the price at which EALP bought $$
L3	Q.	So to the extent that the market appreciated, rightly or	13		in priced in the risk of the merger.
L4		wrongly, that the merger ratio was unfair to SC&T	14		Have I misunderstood you?
L5		shareholders, it was pricing in that risk?	15	A.	Well, it prices in everything. I mean, prices at any
L6	A.	Well, I think the simpler statement of my views would be	16		point in time have to price in everything including
L7		what you previously said, namely that $$ or what I say	17		possible mergers and possible everything else. Possible
L8		in this paragraph, that the price factored in everything	18		tunneling.
L9		to do with the risk of the merger. I don't like the	19	Q.	So it would include the risk of the merger?
20		hypothesis that the merger was predatory, which I think	20	A.	Yes.
21		was implied by your second question.	21	Q.	Okay. So I think, although I say this with some
22	Q.	To the extent that the difference between SC&T's market	22		trepidation, that on that basis you would agree with
23		price and its net asset value resulted from the market's	23		Mr Boulton that some part of the discount that was
24		appreciation that SC&T was vulnerable to a merger that	24		observed between $$ or that could be observed between
25		was unfair, that was a tunneling transaction, then that	25		SC&T's share price and the net asset value estimation of
		109			111
1		risk would have been priced in to the market price; yes?	1		its value resulted from that risk, the risk of the
2	A.	But I don't think it was a tunneling transaction. So if	2		merger. I know you don't like the theory, but that some
3		you ask me, if it was a tunneling transaction, or if	3		part of the observed discount was attributable to that
4		there is a tunneling transaction, is that priced in, of	4		risk?
5		course. But my evidence has been that this is not	5	A.	Well, it's not that I don't like the theory, because in
6		a tunneling transaction.	6		my report I say if the tribunal finds that, say, the
7	Q.	What did you mean when you said in paragraph 35:	7		Qatar contract should have been disclosed earlier, then
8		${G1/1/15}$	8		the tribunal could adjust the price and that would give
9		" EALP made this investment with full awareness	9		rise to small damages, I guess, and possibly many other
L O		of the risk that the Merger would occur."	10		things come into play.
L1		What were you trying to convey there?	11		So to that extent I obviously do agree and I'm
L2	A.	Just that the $$ well, to give you one example, in my	12		$\operatorname{not}$ $$ you know, I'm $\operatorname{not}$ disputing that to that extent
L3		presentation this morning I said imagine a price $$ and,	13		the price could have been too low, and therefore some
L4		by the way, price manipulation, I agree, in the way that	14		adjustment would have been required.
L5		I have defined price manipulation, would create a value	15	Q.	I think —
L6		transfer within the window of time that I set out this	16	A.	So the main difference between myself and Mr Boulton
L7		morning and should require an adjustment to the price.	17		is $$ well, one of the differences between myself and
18		Okay So I want to make that clear	1.8		Mr Boulton is that his NAV discount is just implausibly

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before Elliott acquired the shares. Then the price was too low, relative to what I have said was the right  $110 \label{eq:10}$ 

A. So let's suppose that price manipulation took place

yes, it's paragraph 35, isn't it?

Q. Paragraph 35, yes.

Let's suppose that a price manipulation took place

before Elliott acquired the shares. Could you remind  $--\,$ 

I don't think would be a good idea, but if I had to do  $$\operatorname{112}$$ 

large, and another difference is that he draws a line  $% \left( 1\right) =\left( 1\right) \left( 1\right)$ 

allegations I have seen aren't enough for me to draw

asset value approach, which to be perfectly honest

But even if I did, and even if I were to use a net

through the price, whereas in my judgment the

a line through the price.

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- 1 that, if the tribunal said that's what you have to do, 2 I would say: okay, if I have to start with net asset 3 value, apply a more realistic discount, rather than the 4 very small aspirational discount that Mr Boulton
- 5 advocates.
- Q. But to be clear, you quantified the impact of only one 6 7 alleged incident of manipulation of the price, the Qatar 8
- 9 A. That's completely clear, I hope, from my report.
- 10 Q. Yes. So one of the --
- 11 A. And if the tribunal were to ask me, "We have another 12 instance we would like you to quantify". I could look at
- 13 that and if the tribunal wanted such a quantification,
- 14 I could perform that.
- 15 Q. Yes. So I think it's fair to say that a theme of your 16 analysis is the assertion that the Claimant knew about
  - the risk of the merger and specifically you take the
- 17 18 view that EALP knew that the merger was likely to occur;
- isn't that right? If it would assist you, I can take 19
- 20 you to what I'm talking about.
- 21 A. If you could just take me to the transcript, or I could
- 22 just be taken to the transcript of your question,
- 2.3
- 2.4 Q. I could just repeat it. I said it's fair to say that
- 25 a theme of your analysis is the assertion that the

- 1 Claimant knew about the risk of the merger and
- 2 specifically you take the view that EALP knew that the
- 3 merger was likely to occur. And I can take you to what
- I'm talking about in your reports if that would assist 5
- 6 A. Yes, that would assist me.
- $\ensuremath{\mathsf{Q}}.$  Okay. So at paragraph 122 of your first report, which 7 8 is  $\{G1/1/57\}$ , Opus reference. You say:
- 9 ... EALP not only knew the Merger had been 10 announced and --
- 11 A. Paragraph?
- 12 Q. 122.
- 13 A Yes
- Q. "... EALP not only knew the Merger had been announced 14 15 and the Merger Ratio had been set, it knew the market
- 16 was supporting the Merger, and it was accepting the risk
- 17 that the Merger would happen."
- 18 Do you see that?
- 19 A. Yes, thank you very much. I understand what you're 2.0 getting at.
- 2.1 Q. Then if you look at paragraph 202 of your second report, 2.2 which is  $\{G3/1/94\}$  for the Opus report?
- 23 A. Paragraph 202?
- 2.4 Q. 202. You're attributing to EALP --
- A. Got it. So I'm here saying --

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- 1 Q. Let me just finish . Let me just finish , please --2 knowledge that the merger would occur.
- 3 A. Okay -

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4 Q. I'm not finished.

> And so then in that section of your second report you go on to address some of the evidence concerning whether the Claimant knew that the merger would occur and you offer your conclusions concerning what that evidence shows.

My question to you is whether you accept that it is ultimately for the tribunal to weigh that factual evidence and draw those conclusions?

So here I'm saying that if the Claimant bought some shares after the merger was already known, for example the 3.4 million shares on 3 June, I'm saying that since they already knew at that time that the merger was very likely if not certain to happen, they can't complain that the shares they bought at that time were -- you 19 know, there was a loss in relation to those shares, given that the share price on 3 June must have 21 incorporated that expectation.

> And I also say that any other shares they bought, at whatever time, that were bought in the expectation of occurrence of the merger, if that led to the share prices being low, then indeed they bought them cheaply,

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so they can't be compensated for the cheap price. And I totally accept that it is for the tribunal to decide whether the shares or which shares among the purchases made by Elliott, I totally accept that the tribunal should decide whether some of the shares purchased by Elliott were purchased at a price reflecting near certainty or high likelihood of the merger occurring.

If the merger were to depress the value -- this is a separate argument from other arguments I have made in the case. If the merger were to depress the value for whatever reason, and Elliott bought the shares when that had already happened, then they shouldn't claim for the drop in value which they actually benefited from in the form of a low price.

That's what I'm saying there, and I totally agree it's for the tribunal to make that determination.

- 18 Q. So you say in your first report that you offered 19 a similar opinion in the RosInvest Co arbitration, and 20 that's at paragraph 124 of your first report, if that 21 assists?
- 2.2 A. Yes
- 23 Q. {G1/1/57-58}.

2.4 You say that the tribunal in RosInvest Co accepted 25 your position in that case?

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- 1 A. That is true.
- Q. I might ask you if you would to turn to tab 32 of the
- 3 big binder that you have there, if I could get there.

4 It's a massive chunk of paper to turn. 5

If you'll turn to paragraph 665 of the excerpt  $\{1/51/273\}$ . So we don't have all of RosInvest Co. In deference to Mr Turner's concern to his reputation with his children, we didn't print the entire award. But if you need to say any part of it that's not excerpted, do

MR TURNER: I shall tell my children. 11

let me know.

MS SNODGRASS: Yes, I'll tell my daughter as well, who has 12 13 plenty of bones to pick with me these days.

> Paragraph 665, please. As the tribunal puts it there, citing your work -- it's  $\{I/51/273\}$ , a little bit further up the excerpt:

"The Dow Report 1 submitted by Respondent persuasively identifies that the market knew of both the seizure of Yukos' YNG shares and the announcement of the Ministry of Justice's intention to sell those shares. The market was fully informed of Respondent's likely action in respect of Yukos from July 2004, well before Claimant's purchase of the shares on 16 November and 1 December 2004. Accordingly, at the two points in time

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when Claimant purchased the shares, the market had

- 'priced in' the likelihood and effect of the Russian 1
- 2 Federations actions in respect of Yukos." 3
- So that's the priced-in-the-risk argument?
- 4
- Q. So given your familiarity with these issues, you're no doubt aware that the focus of the analysis in that case
- 7 was whether the Claimant had purchased the shares at
- 8 a price that accounted for the action by the Respondent 9 state, the action that constituted a breach of the
- 10 Treaty; correct?
- 11
- 12 Q. So you accept that, putting to one side the issue of the 13 3.4 million shares which were purchased after the date 14 of the EGM --
- 15 A. Well, this section is mostly about those, I think.
- Q. Yes; the merger occurring was not a certainty when the 17 Claimant purchased its SC&T shares that were subject to 18 appraisal rights; correct?
- 19 A. Correct.
- 2.0 Q. And in any event what's at issue in this case is the 21 ROK's wrongdoing or alleged wrongdoing, its interference 2.2 in and its subversion of the NPS process that led to the
- 2.3 vote in favour of the merger. 24 So that conduct is separate from Samsung's
- 25 misconduct, whether you want to call it tunneling or
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- price manipulation; right?
  - A. It's a separate piece of conduct.
- 3 Q. And so this case, I suggest, is unlike the situation in
- 4 RosInvest Co where the wrongful act by the Respondent
- 5 state, the seizure of shares and the announcement as to the intention of what to do with them, had already taken 6
- 7 place and was already known before the Claimant acquired
- 8 the investment; right?
- 9 A. Well, this section is entitled -- and I'm referring to 10 my first report, right above the paragraph you quoted, 11 right above paragraph 122, the title of that section or

12 subsection reads: {G1/1/57}

> "EALP Cannot Show an Economic Loss with Respect to the 3.4 Million Shares It Purchased after the Merger Announcement "

And that is my position, and that is, unless I'm missing something, that is the analogy with the RosInvest Co case, that Elliott -- in fact it was an Elliott entity, I believe, in the RosInvest Co case purchased some shares which it claimed were damaged at a price reflecting that damage, and then made a legal claim for compensation for that damage at a low price reflecting that damage.

So to the extent that the same thing happened here in respect of those 3.4 million shares, I think the

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argument carries over.

Now, in the question, I think Ms Snodgrass built in an extension of that, and you will correct me if I am wrong, I hope, that: what do we do when there's a probability priced in, but not certainty?

Well, I don't have a magic formula for what we do in that case, but I suppose it's something in between what we would do if there was no such argument and what we would do if it's a certainty. I guess.

But I'll remind the tribunal that this section is -it's in the section in my second report called "Miscellaneous Issues". That is not my main argument, but I think it is important. It is important to note that Elliott bought shares in June and I'm talking about

15 those shares. 16 Q. So the analogy you're drawing is between a case in which 17 what was at issue was governmental misconduct that was

18 known about and that affected the value of the shares --19 that's the RosInvest Co case -- and in this situation an

2.0 event that affected the value of the shares that was not 21 governmental misconduct. It was not the breach that is

2.2 complained of?

23 I don't follow your logic there because surely you 2.4 allege that the government misconduct contributed to the 2.5 merger being approved.

1	Q. I do, but are you aware, Professor Dow, that on the	1	The merger was approved, Elliott bought the shares,
2	evidence in this case the government's misconduct was at	2	it had no clue it was the government and, had the market
3	the time concealed and not known to either the Claimant	3	known that it was government involvement at some level,
4	or the market? And I'm suggesting that's a material	4	they would have been horrified and the share price would
5	distinction between this and the case to which you seek	5	have been very different. Then there would be damages.
6	to draw an analogy.	6	And so I guess it's not for me to unravel that.
7	A. So you're suggesting that Elliott bought the shares on	7	It's for the tribunal, but I don't know, and I guess
8	June 3, 2015, after the merger was approved, at a price	8	it's further complicated by the fact that in Korea the
9	that was low because of government misconduct, but the	9	Chaebols are closely integrated with the government, as
10	market didn't know that it was low because of government	10	I understand it, and as Professor Bae testified in
11	misconduct, the market knew whatever it knew; and that	11	response to the very last question he was asked in his
12	Elliott thought —— obviously Elliott thought this was	12	testimony.
13	a very bad merger, but if you then said to Elliott ,	13	So if there's a —— you know, if there's very tight
14	"A-ha, but the reason is government misconduct", that	14	links between the government and the Chaebols, I don't
15	would have made a difference? Let me think that	15	know to what extent the tribunal will be able to
16	through.	16	separate those things, but that would be a question for
17	THE PRESIDENT: May I put the same question in different	17	the tribunal.
18	terms, and going back to your language in paragraph 122,	18	And also, I suppose, thinking through
19	that Elliott was accepting the risk that the merger	19	a counterfactual, the only one that would give rise to
20	would happen.	20	damages for these shares would be a counterfactual in
21	Assume the Claimant's case is correct that in the	21	which the market, knowing that the merger had been
22	end the merger happened because of government	22	pushed through by the government rather than pushed
23	interference. Would you still say that Elliott accepted	23	through by Samsung, would take a very different view of
24	the risk that the merger would happen? Would they have	24	the appropriate price.
25	accepted the risk that the merger would happen because	25	I don't see why it would take any different view.
	121		123
1	of government interference or as a result of government	1	I'm thinking on the hoof here. I don't see why it would
2	interference? What is the risk that they actually	2	make a difference, but if the tribunal reasons that it
3	accepted when they purchased the shares? The commercial	3	would make a difference, and if $$ I mean, bear in mind
4	risk that the merger would happen, or the legal risk	4	this is only a back—up argument, so to speak, relating
5	that the government might interfere with the merger?	5	to if damages were to be awarded anyway on the other
6	A. Well, I'm an economist. So —	6	shares, then indeed the tribunal could make an
7	THE PRESIDENT: It may be a legal issue. If it's in your	7	adjustment for that.
8	view a legal issue, then just say that. That's entirely	8	I hope that's clear because it's quite a complicated
9	fine.	9	answer.
10	A. Yes. I would just say to the tribunal we need to	10	THE PRESIDENT: Well, I have no idea what the answer is.
11	construct an appropriate counterfactual and in the	11	That's why I'm asking.
12		12	
13	RosInvest Co case, where the government action was	13	A. Well, I don't know — I don't know to what extent one
	common knowledge, the counterfactual would be no bad act by the Russian Government, therefore Elliott would not	14	can separate the consequences of the Korean State's actions from Samsung's actions. That's what I'm saying.
14 15	•	15	, ,
$_{\perp}$	have been able to buy cheaply, because they bought at	Τ.Э	Construct a counterfactual. Ms Snodgrass is

didn't link that to the government. Not sure it would have made any difference to the price whether or not it was the government; okay? So

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suspected something fishy had gone on, maybe, but it

a distressed price, RosInvest Co and Elliott Company,

counterfactual: so the merger went ahead, Elliott bought

I believe. You will correct me if I am wrong.

In this case, what would have been the

the shares anyway, it didn't like the merger, it

then no damages.

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inviting me, I suppose, to construct —— and you are,

was pushed through, it was a horrible merger, the price

 $\mbox{fell}$  , for whatever reason, that's how it happened, but

had the market known it was because of the President's

involvement or the government's involvement, then the

participation by the government, could then potentially

That further drop in price, caused by the

incremental severity of the problem reflecting

price should have fallen even further.

 $\operatorname{sir}\ --$  to construct a counterfactual in which the merger

1	give rise to damages had the tribunal already decided
2	that damages were due on the other shares, not the $3.4$
3	that we're talking about here.

So maybe that's a bit clearer . I apologise if it's 4 5 not, but I am doing my best under the -

THE PRESIDENT: I'm sure it's helpful. Whether it's more 6 7 helpful for counsel than for the tribunal, we'll see.

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THE PRESIDENT: But we'll still have the benefit of argument 9 10 from counsel. So we'll still have a chance to be 11 further informed.

12 A. Yes.

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THE PRESIDENT: Thank you very much. And apologies for 13 14

15 MS SNODGRASS: No problem.

16 A. I'm glad I'm not a lawver.

MS SNODGRASS: To be clear, I wasn't inviting consideration 17 18 of that counterfactual. But I did want to just clarify 19

> You've said a couple of times that the merger was approved and then Elliott finished acquiring its shares.

In fact what happened on 26 May was the merger was announced, and on 3 June Elliott acquired 3.4 million additional shares. Does any of that change your analysis?

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1 A. Oh, you're absolutely right.

Q. The merger wasn't approved until 17 July.

3 A. Correct. Correct. So I guess that takes us to the grey area that I referred to previously, where the merger was 5 very likely, but not 100%.

> And then, I'm not going to quantify this, but then to the extent that the market thought the merger was going to happen, there would be no damages. To the extent that the market thought the merger might fail. there could potentially be damages had the tribunal already decided that the older shares, if you'll allow me to call them that, the shares purchased earlier, were liable for damages.

I hope that's clear.

Q. On what basis do you consider that the merger was very likely as of the date of the merger announcement?

A. I don't want to offer an opinion and I should not have said "very likely", but obviously quite likely, somewhat likely, and it's not for me to quantify that probability because I think the tribunal will have heard lots of evidence to decide whether that was a high probability

2.2 or a low probability.

23 Q. So when you said in your second report that Elliott knew 2.4 that the merger would occur, you don't mean to say that 25 there was certainty?

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A. Could you take me to the paragraph?

Q. That's at paragraph 202 of your second report, that it

3 bought shares with knowledge that the merger would occur 4  $\{G3/1/94\}$ . You didn't mean to indicate there was

5 certainty at that time that the merger would occur?

A. Correct. 6

7 Q. Okav.

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2.0

A. With the knowledge of a risk or -- if I had changed 8 9 that, saying "cannot be" -- well, actually that 10 statement is true, but what is not true is the certainty 11 that the merger would occur, and maybe I develop that 12 further.

13 Yes, so I do develop that further; thank you. 14 So the statement I make in 202 is correct. In 15 paragraph 205 I say: {G3/1/95}

"These actions suggest that EALP had perceived there to be a heightened possibility of a merger after 2 March 2015. Thus, following the logic of my arguments in [the other case], to the extent EALP is eligible for damages ..."

21 In other words, if the tribunal decides that for the 22 older shares.

23 " ... I calculate only damage to shares that were 2.4 acquired by EALP ...'

2.5 So what I'm doing there is I say there's

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1 a heightened possibility and I'm treating it as

2 a certainty by excluding those shares. And if it's just

3 a high probability but not a certainty, as I said

before, I suppose the tribunal has to find some sort of

5 halfway house, or would have to find some sort of 6 halfway house.

7 You will forgive me that I'm a bit blasé about 8 liability, because, like Mr Boulton, I see my role as 9 a damages expert to assume liability before I even start 10

The degree of certainty that Elliott did or didn't have 11 12 about this seems to be significant to your damages 13 analysis?

A. Well, this is not my main damages analysis. To be 14 15 clear, this is a miscellaneous issue on damages and I'm

saying that if the tribunal decides to award damages at

17 all, then it should consider whether to exclude the

18 shares purchased later on.

19 Q. And in expressing the views that you state in

2.0 paragraph 205, when you express those views, were you

21 aware that in March of 2015 Elliott had met with the

2.2 NPS, who had indicated that they wouldn't support the

23 merger on the current proposed terms?

2.4 A. I believe so.

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 $\ensuremath{\mathsf{Q}}.$  And you are aware that in April of 2015 Elliott had met 2.5

1 with SC&T, who had indicated they weren't looking at 1 right? 2 a merger with Cheil? 2 A. Yes 3 A. I will take that -- let's assume that. I don't recall, 3 Q. And you explain this event study at paragraph 174 of 4 but I presume so, yes. 4 your second report which for the operator is  $\{G3/1/81\}$ . 5 Q. Okav 5 A. My second report, paragraph? A. I think it's for the tribunal to form its assessment of Q. 174. 6 6 7 what Elliott would have thought the likelihood of merger 7 Where you say: 8 "I have performed an independent market test of 8 to have been 9 Q. Okay, thank you. 9 Mr Boulton QC's Excess Discount Theory. His theory, 10 So in his second report Mr Boulton seeks to quantify 10 based on the presumption that the Merger was unfair for 11 how much of the discount between SC&T's market price and 11 SC&T shareholders, makes two predictions, and both tests 12 12 its sum of the parts value is attributable to concerns must be satisfied by the market data for his Excess 13 about the merger that was in fact being pursued by 13 Discount Theory to be true. "a. First, his theory predicts that SC&T's share Samsung and the family. That's what he defines as 14 14 15 the excess discount; right? I can take you to it if you 15 price should go up when the market receives news 16 would like? 16 indicating the merger is less likely to occur, and 17 17 A. Yes, please, because it's good to be precise. opposite news should cause a decline in share price 18 Q. Very good. You don't have a hard copy of Mr Boulton's 18 ('Test 1'). 19 19 "b. Second, his theory predicts that the share price 20 A. Perhaps I could just have one. 2.0 of Cheil should move in the opposite direction to SC&T's 2.1 Q. I'll give you mine. 21 share price on these days, to reflect the likelihood of 2.2 A. I can see one coming round here. 22 the alleged transfer of value from SC&T to Cheil Q. You've got one? Excellent. I've got multiple copies of 23 shareholders ('Test 2')." 2.3 2.4 Mr Boulton's report, you won't be surprised to know. 2.4 {G3/1/82}. 25 I carry it with me everywhere. 2.5 So in your view, if these tests were satisfied, that 131 A. Are we looking at the second report? 1 would be robust empirical support for Mr Boulton's Q. The second report, paragraph 2.5.7. That's  $\{F5/1/17\}$ . 2 analysis of the excess discount; yes? 3 A. Paragraph 2.5.7. 3 A. No, because the excess -- okay, so what I'm testing here Q. (III), which is over on the next page  $\{F5/1/18\}$ . That's is what I called in my presentation this morning the 5 just a summary of his definition of the excess discount 5 value transfer theory, namely that the merger is an and his calculation of the excess discount. There's 6 event that would transfer value between the two 6 7 7 obviously a longer analysis of that later in the report. companies. And that's mostly what it was about. MR GARIBALDI: It disappeared from my screen. 8 8 So this is one leg of my analysis but there are MS SNODGRASS: Mine too. 9 9 others, for example that Korean Chaebol companies trade 10 MR TURNER: Opus has censored Mr Boulton's report, very 10 at discounts anyway, which are much bigger than the 10%11 sensibly, but I wouldn't mind seeing it if the question 11 Mr Boulton postulates. 12 is being put. 12 So this is one leg of my analysis, not the whole 13 13 MS SNODGRASS: I think it's coming back.  $\{F5/1/18\}$ . analysis. 14 14 Q. Okay. So I thought you were --So --A. Sorry, I was at the wrong page. 15 15 A. It's a sense check, if you like. Q. This really wasn't a major point. It was mainly just to 16 Q. I thought you were testing his excess discount theory. 16 say he has this concept which is this excess discount, 17 17 That's what it says in your report. Is that the same

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things?

which is part of the observed discount, but not all of

19 it --

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2.0 A. That's the bit that would have gone away had the merger 21 been rejected.

- 2.2 Q. Yes, and in your second report you subject Mr Boulton's
- 23 analysis of the excess discount to empirical scrutiny?
- A. Yes. 24
- 2.5 Q. To test whether it is supported by market data; is that

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2.4 So this is looking at statistical data, so it is 2.5 saying, I suppose, it's examining the proposition that

thing as the value transfer theory or are they different

A. It is -- yes, I guess there are two legs to his excess

discount theory, and sort of one part is: was there

an excess discount at all? And the other part is: how

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big was the excess discount?

- 1 there is a big excess discount. I think it's a fair
- 2 statement to say that this is a statistical test of the
- 3 proposition that there is a big excess discount.
- 4 Q. Okay. In conducting the event study you selected seven
- 5 dates to test and found that they all fail your test. This is your test 1, and your test 2 for that matter? 6
- 7 A. They all fail one or both tests.
- 8 Q. One or both tests, yes.
- 9 So I would like to look a little more closely at 10 that analysis and at your conclusion, starting with 11 test 1.
- 12 A. Yes.
- 13 Q. Which is, just to remind everybody, that SC&T's share
- price should go up when news indicating that the merger 14 15
  - is less likely to occur is released; okay?
- 16 So --
- 17 A. Let me just make sure I have the negatives and the 18 positives in the right order.
- 19 Q. Yes. Share price should go up when news indicating the
- 20 merger is less likely hits the market.
- 2.1 We can go back. It's on --
- 2.2 A. I agree. I agree. So merger less likely, on the theory 2.3 that merger is bad, price goes up.
- 2.4 Q. Yes. So the first event is Elliott's filing of its
- 25 first injunction application on 9 June. So you would
  - 133
- 1 agree that that was an event that was at least
- 2 calculated to make the merger less likely, wouldn't you?
- 3 A. Second event? Oh, third event, sorry. 9 June. It's the third row in that table 5.
- Q. Yes. That's the first event I'd like to talk about. 5
- 6 A. Elliott's first injunction -- let me make sure I get 7 this.
- Q. The question was -- Professor Dow? 8
- 9 A. Yes.
- 10 Q. The question was whether that was an event that was at
- 11 least calculated to make the merger less likely;
- 12
- A. Yes. I say that in table 5. "Effect on Merger 13
- Probability", the third row, "Decrease". In other 14
- 15 words, Elliott's first injunction lowers the probability
- 16 of the merger.
- Q. So Elliott first announced its injunction application 17
- 18 against the extraordinary general meeting in a press
- 19 release on 9 June, which happens to be in the bundle, if 2.0
- you would like to look at it. It's at tab 6, exhibit 21 C-193. I don't think you need look at it. but it's
- 2.2 there if you would like to.  $\{C/193/1\}$ .
- 2.3 We can go back to the table you were looking at.
- 2.4  ${G3/1/83}$

You point out at the end of trading on 9 June the

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- 1 SC&T share price had declined by 3.5%. So you contend 2
  - that test 1 was failed; right?
- 3 A. Yes, because something that lowers the chance of merger, 4
- according to Mr Boulton's theory, should be good for the 5 share price. And it went down, so it fails the test.
- Q. I have lost my page, but according to Figure 10 in your 6 7 first report, the SC&T share price went up again on
- 8 10 June; correct?
- 9 A. Figure?
- 10 Q. 10 in your first report --
- THE PRESIDENT: Table 5 also shows that because it also 11
- 12 shows 10 June.
- 13 A. Yes. Table 5 also shows 10 June, I agree.
- MS SNODGRASS: And the event that you associate with that 14
- 15 share price increase on 10 June in your event study is
- 16 SC&T's sale of treasury shares to KCC: correct? And we
- 17 see that from the notation on Figure 10. Apologies for
- 18 all the flipping around.  $\{G1/1/46\}$
- 19 A. "SC&T sells 5% stake to KCC."
- 20 Q. Yes?
- 2.1 Could you please turn in the bundle to tab 23 which
- 2.2 is exhibit C-759.  $\{C/759/1\}$ .
- 2.3 A. I see it.
- 2.4 Q. Is this a document that you've seen before?
- 25 A. I haven't looked at it, to be perfectly honest, or

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- 1 I don't recall that I have.
- 2 Q. Okay. So take what time you need with it. It's
- 3 a document that's dated 10 June 2015. It was prepared
- by Samsung Securities. It's entitled "Market Forecast
- Analysis (DRAFT)". I'm not surprised you haven't seen 5
- 6 it; it was only recently disclosed by the ROK to the
- 7 Claimant

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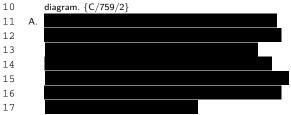
12

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If you could turn to the second page of the document and read the text at the first dashed bullet under the



Q. So this contemporaneous analysis by Samsung Securities

18 19 suggests that 2.0 21 2.2 , doesn't it?

23 Well, let me first of all point out there is an error in 2.4 the paragraph I have just read.

2.5 Q. What's the error?

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The committee there

Τ.	A. The error is that —— I believe I m right —— this is in
2	June. So it is after the merger ratio has been
3	computed. But I think what is meant is that the share
4	price of SC&T went up, which we do see, as,
5	Mr President, you pointed out, in table 5 of my report
6	on 10 June. We do see that the share price of SC&T went
7	up by 10.3%

So I think that is what the analyst means by saying that It's not It is the share price of SC&T, although there's also a Cheil price in there too.

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THE PRESIDENT: Do we know when the press release was issued? There's a time difference here. If it was issued in the US or was it issued in Seoul?

MS SNODGRASS: It was issued in Hong Kong. I do know that. I don't believe there's evidence on the record as to the exact time. I think it was late morning, but that's not on the record.

But if the injunction application which made the merger less likely prompted an increase in SC&T's share price, which is what this analysis suggests, then that event would in fact pass your test 1 and not fail it; right?

2.4 A. Well, in other words, look at table 5  $\{G3/1/83\}$ . 25 Suppose one thinks the reaction on 10 June of plus 10%

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- 1 was a reaction to Elliott's first injunction on 9 June, 2 that would indeed be a pass, is what you're saying.
- 3 Q. Yes.
- A. So, my comments. What time of day in Korea was 5 Elliott's first injunction released to the market? 6 Because if it was released after the close on 9 June, 7 then you are right and the price movement on 10 June 8 conflates the reaction to two events, Elliott's first 9 injunction and treasury shares sold to KCC.

If Elliott's first injunction was first disclosed to the market on 9 June, then you are wrong or, rather, the Samsung Securities analyst is wrong because the information was already in the price on 9 June.

So it doesn't really matter what they say, but it was previously in the price and it's the minus 3.5 and not the 10.3.

So I don't know if you know or anyone knows when this legal injunction was released to the market.

- Q. You didn't verify the time of the release of the information to the market when you conducted your event 21 study, did you?
- 2.2 A. No
- 23 Q. And that would have been relevant to determining how you 2.4 should evaluate that data for your event study, wouldn't 25

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1 A. Well, I obviously thought it was before the close, but

if you tell me I'm wrong, then I can look at that.

- 3 Q. I would like instead to look at what we know about 4 SC&T's sale of treasury shares to KCC because I think it
- 5 will shed some light on this.
- 6 A. Yes.

2

- 7 Q. So we agree that this was an event that made the merger 8 more likely to occur?
- 9 A. Yes. For reasons that I don't recall right now, so --
- 10 Q It was because ——
- 11 A. -- forgive me.
- 12 Q. — they were considered to be an ally likely to vote 13 with Samsung in favour of the merger.
- 14 A. Thank you. I have seen that recently.
- 15 Q. They were a shareholder in Cheil as well.
- 16 A Yes
- 17 Q. And as we were just discussing, the price of SC&T shares
- 18 increased on June 10, which was the day the deal
- 19 occurred. So on your analysis, test 1 was failed; yes?
- 20 A. Because the treasury shares were sold to KCC on 10 June. 21 Q. But we do have information about when that news was
- 22 released to the market.
- 2.3 A. When was that released to the market?
- 2.4 Q. If you will turn to tab 8, exhibit C/199, we have some
- 25 information about that  $\{C/199/1\}$ .

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1 So tab 8, C-199, is a press release that Elliott put 2

3 MR TURNER: I beg your pardon, did you say tab 8? Sorry, I had phased out for a moment.

MS SNODGRASS: Tab 8. 5

6 So, this is a press release that Elliott put out to 7 announce its intention to file an application to, in

8 American English, enjoin, or in British English, injunct

9 the sale.

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2.4

- 10 MR TURNER: Other way round, I would have thought --
- 11 MS SNODGRASS: Is it the other way around?

12 MR TURNER: -- but I don't think it matters for the purposes

13 of this cross-examination.

14 MS SNODGRASS: I lived there so long I can't remember which 15 way is, quote, right, and which way is, quote, wrong.

16 A. They were trying to stop it.

17 Q. They were trying to stop it, exactly.

18 If you would look at the very small text at the 19 bottom of the page, footnote 2, the second sentence of 2.0 that footnote indicates that the sale of treasury shares 21 to KCC was disclosed just before the market closed on 2.2 10 June. It says there:

"The proposed sale was disclosed just before the close of market on 10th June 2015."

25 So the market didn't know about the sale of treasury

- 1 shares during trading hours on 10 June, did it?
- 2 A. Well, it says here that they did know. If you represent
- 3 to me that just before is not long enough, I guess we
- 4 have to look at trades that took place in the last short
- 5 period of time before closing. Maybe you have done that. 6
- 7 Q. Did you do that?
- 8 A. No.
- 9 Q. Did you investigate when this information was made
- 10 available to the market?
- 11 A. I assumed it was made available on 10 June. Wrong as it
- 12 was. I assumed it was made available on 10 June and was 13 incorporated on the closing price of 10 June.
- 14 Q. But this tends to confirm the analysis by the Samsung
- 15 Securities analyst that the explanation for the price
- rise on 10 June was Elliott's first injunction filing on 16
- 9 June, not the KCC treasury share sale? 17
- 18 A. Well, I don't think so, because it is really a matter of
- 19 fact of when the Elliott first injunction was released
- 20 to the market and when the treasury shares -- and
- 2.1 whether the sale price  $\,--\,$  sorry, whether  $\,--\,$  so it's
- 22 really a matter -- it's not really -- who cares about
- 2.3 the Samsung analyst -- sorry, the analyst, I can't
- 2.4 remember which -- what was the name of that --
- affiliation of that analyst?

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- 1 Q. Samsung Securities?
- A. Samsung Securities analyst, I don't care about that.
- 3 What I care about is when exactly is "just before", were
- there trades after that price, or was it like 30 seconds
- 5 before? Or was it five minutes before? When was just
- 6 before?

8

- 7 And the other question is: when was the Elliott
  - first injunction declared to the market? Was it before closing? Was it after closing?
- 9 10 I would tend to think that just before closing is
- 11 before closing and that's the end of it. But if you
- 12 represent to me that just before was, you know, a few
- 13 seconds, then I completely agree that one would have to
- look at that again. 14
- 15 Q. But these aren't questions that your event study 16 answers?
- 17 A. No, as I say, my event study identifies those events in
- 18 table 5 with the dates shown in table 5. 19 Q. And what happened to SC&T shares on 11 June, which was
- 2.0 the first trading day on which the market, assuming that 21

this was immediately prior to close of the market, first

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- 2.2 trading day on which the market had the chance to
- 2.3 assimilate the news of the SC&T sale of treasury shares
- 2.4 to KCC?
- 25 A. Well, I don't want to assume that, because I've been

- 1 told, you have informed me, that it was released on the 2 10th
- 3 Q. Just before the market closed.
- 4 A. Hypothetically, if it had been released after closing on
  - the 10th, then the answer would be that the movement of
- 7.9 negative share price movement would conflate 6
- 7 Elliott 's second injunction and the treasury share
- 8 event, always assuming of course that Elliott's second
- 9 injunction was indeed released to the market before
- 10 closing on 11th, as I have assumed for my event study. 11
- Q. So fourth on your list, I believe, is the 10 July leak 12 of the NPS decision to vote in favour of the merger.
- 13
- A. Sixth on my list? 14
- 15 Q. Sixth, sorry, I'm miscounting. Fourth on my list --
- 16 actually third on my list. Sixth on your list.
- 17 A. Paragraph 175 of my second report, (f).
- 18 Q. Yes.
- A. Subparagraph (f), and on table 5, 10 July, NPS decision 19
- 20
- 21 Q. But I'm going to ask you about an event that you don't
- 2.2 address that would appear to clear your confidence
- 2.3 interval to constitute a market moving event as set
- 2.4 out -- and we have got to go back to your first report
- 25 for this -- in Figure 10 of your first report  $\{G1/1/46\}$ .

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- 1 A. I happen to be looking at that.
- 2 Q. This is going to be on a spreadsheet that is probably
- 3 going to have to be put up on a screen. So the Opus
- reference is  $\{G1/56/1\}$  and I say with trepidation we're
- 5 going to have to look at some rows in a spreadsheet to
- 6 find your confidence interval and show that this clears
- 7 8
  - So if we can go to row 87 in this spreadsheet.
- 9 All right, this fills me with terror. I hate 10
- 11

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- 12 Q. But I think we can do it if we do it together.
- 13 A. We'll support each other.
- Q. There we go. 14
- 15 So as we can see from columns C and D. I'm right to
  - understand, am I, that you set the confidence interval
- 17 at approximately plus or minus 3.3% excess returns for
- 18 SC&T; have I understood that correctly?
- 19 A. Can we go to the --
- 2.0 Q. Can we go to the top so we can see the headings. That
- 2.1 would be fair enough.
- 2.2 A. I'm not going to ask you to hide the intervening rows.
- 23 Q. I wouldn't know how to do that. I'm not driving the 24 cursor anyway.
- 2.5 A. It's quite easy actually. I can tell whoever is doing

9

- 1 it.
- 2 Q. But do you agree that --
- 3 A. Sorry, I didn't look because I was ...
- 95% confidence interval (lower), 95% confidence interval (upper) and residuals. So B we have the excess return, column B we have the excess return. That's the return of SC&T net of market movements or net of my model. And so that is telling us the abnormal or excess return of SC&T on each date and the 95% upper and lower
- confidence intervals define what is beyond the normal range for an abnormal return, if I may put it that way.
- 12 Q. And that's set at approximately plus or minus 3.3%.
- 13 A. So it's a little bit above the 95% range. If there had14 been nothing untoward that day, this kind of movement,
- 3.8%, that's the second column there, column B, the 3.8%
- $16 \hspace{1cm} \text{in column B would represent a daily movement of SC\&T,} \\$
- 17 after controlling for overall market movements. That is
- a little bit more than we would expect to see at the 95% confidence interval . In other words, if this was just
- randomness, it would happen a little bit less than 5% of
- 21 the time.
- 22 Q. But it's outside the --
- 23 A. Yes.
- 24 Q. interval that you said?
- 25 A. Yes, agreed.

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- $1\,$   $\,$  Q. But you didn't consider the market movement on this date
- $2 \hspace{1cm} \text{in your event study, did you?} \\$
- 3 A. Let me go back. We need to be precise.
- 4 Q. Yes
- 5 A. So the date is 24th of --
- 6 Q. June.
- 7 A. -- June, and I don't see that in table 5.
- 8 So I think the answer to your question, unless I'm 9 over—simplifying, is, no, I didn't.
- 10 Q. Now, at paragraph 164 of your first report, which is on
- Opus reference  $\{G1/1/76\}$ , which is internal page 72 of
- 12 the report, you reference the SK merger which in that
- paragraph you describe as occurring almost
- simultaneously with the SC&T and Cheil merger, and
- indeed it was. It was happening on 24 June.
- 16 A. If you'll give me a moment --
- 17 Q. Yes, sorry
- 18 A. Because having -- I mean, like you, spreadsheets take up
- quite a lot of my brain. So I have now got to clear
- $20 \hspace{1.5cm} \text{that memory } --$
- 21 Q. Understood.
- 22 A. -- and return to normal thinking processes, if you don't 23 mind.
- Okay, so 164 we're talking about?
- $25\,$   $\,$  Q. Yes. There's a reference there to the SK merger, and

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1 you describe it as occurring almost simultaneously, in

- the first line there, almost simultaneously with the
- 3 SC&T—Cheil merger. And in that paragraph you offer some 4 analysis of its discount to NAV; yes?
- 5 A. Well, an analyst performs those tasks and estimates it at between 20 and 35%.
- Q. Yes. And indeed SK is one of the two companies that you
   compare to calculate a typical discount to NAV for such
  - companies; yes?
- 10 A. Among the different pieces of evidence I look at, that 11 is one of them.
- 12 Q. So were you aware, based on the information that you had
- about SK, that on 24 June, the date we're talking about
- $14\,$   $\,$  on the event -- I'm suggesting is relevant to the event
- study, the NPS's Experts Voting Committee had decided
- 16 that it would vote against the SK merger that you refer
- 17 to here on this paragraph?
- 18 A. I'm sure that I've been shown documents with that
- 19 content, but I certainly had not processed that. So
- sitting before you now, I represent that I was not aware of that
- 22 Q. Okay. So presumably you weren't aware that the SK
- $23\,$  merger had several parallels to the proposed SC&T and
- 24 Cheil merger?
- 25 A. Well, I did think it had parallels. That's why I use it

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- 1 as a comparable company.
- $2\,$   $\,$  Q. Right. But you didn't include the date of the NPS vote
- 3 on that merger in your event study?
- 4 A. Absolutely true.
- 5 Q. Okay. But you accept -- or do you accept -- that the
- 6 NPS's vote on the SK merger would have been understood
- 7 by the market to increase the likelihood that the NPS
- 8 would vote against the SC&T—Cheil merger?
- 9 A. Again, there are double negatives and things in my
- 10 brain, but I think what you're saying is had I done --
- what would happen to table 5 if I added an extra row.
- 12 Q. Yes
- 13 A. And that extra row related to the -- remind me of the
- 14 event.
- 15 Q. 24 June.
- 16 A. 24 June on which -- could you remind me, the NPS --
- 17 Q. The NPS voted against the SK merger.
- 18 A. Voted against SK. So voting against SK on 24 June might
- be taken to be relevant for SCT and therefore might be
- $20\,$  grounds for having another row in my table 5.
- 21 Q. That is the suggestion.
- 22 A. Might be, yes. You know, on the hoof, I'm -- I have to
- think about it some more, but let's say it could be
- $24\,$  included in table 5. Then I think you've said to me
- 25 that if I did include it in table 5 and again, there

- 1 are too many negatives for me to process -- but I think
- 2 you're saying to me that if I did include it in table 5,
- 3 it would pass test 1.
- 4 Q. Yes, because the share price closed up 4% on the day.
- 5 I can show you that document -- a document indicating
- 6
- 7 A. Didn't we look at the spreadsheet already?
- 8 Q. Yes, we did.
- 9 A. So what about Cheil, I wonder?
- 10 Q. I can show you that. There was a decline of about 4%.
- 11 A. Is that one significant?
- 12 Q. Is that one significant? I don't know. It's your event 13 study. Professor.
- 14 A. I don't know. I would have to have the spreadsheet
- 15 back, but this time it would have to be the Cheil tab. Q. But test 1. I think, is movement in SC&T share price: 16
- ves? Test 2 is divergence in the two? 17
- 18 A. Let's look at Cheil.
- 19 Q. All right. So --
- A. Since we are going there, we might as well. In for 20 2.1 a penny, in for a pound.
- 2.2 Q. Well, I'm not sure we need to, actually. I think the
- 2.3 point I wanted to make has been made, which is that this
- 2.4 is an event in the period of time that you were
- 25 evaluating that should have been taken into account in

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- 1 your event study.
- A. Well, I mean, I picked some events that I thought were 2
- 3 clearly relevant, and I agree that there may be other
- events that were clearly relevant which I didn't think
- 5 of putting in . You've suggested one of them. I would
- have to think some more about whether it's right to put 6
- it in or whether there's some other stuff going on.
- 8 I mean, you've made a sensible argument. I'd have
- 9 to consider that in more than five minutes. I think. 10 But if I did put it into table 5, then it would pass in
- 11 the first test column and we don't know what it's going
- 12 to do in the second test column because you don't want
- 13 to look at that. So absolutely, we agree, I think, on
- 14 all that.
- 15 Q. Right. Can we move on to another event, which is the 16 10 July leak of the NPS's decision to reject the SK
- 17 merger precedent and vote in favour of the Cheil/SC&T
- 18 merger.
- 19 Now, on your test this disclosure should have led to 2.0 the share price of SC&T declining, whereas in fact on
- 21 your analysis the share price increased; yes? 2.2 If we go back to -- if I can get the right page in
- 23 24
- A. So on 10 July people found out that NPS was going to 25

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back the merger and that should increase the probability

- 1 of the merger and, according to Mr Boulton, that is bad 2
  - for the share price. Q. Well, actually do you recall when -- or do you know when
- 4 the decision of the Investment Committee of the NPS was
- 5 actually made?
- A. What time of day? 6 7 Q. What time of day?
- A. I do not know or I do not recall. 8
- 9 Q. Right. So you didn't investigate that when you did your
- 10 event study?
- 11 A. Well, I thought it was made before the close of trade.
- 12 If you tell me that I'm wrong, then --
- 13
- 14 A. I see
- 15 Q. So the Investment Committee meeting began at 3 o'clock,
- 16 which we know from the document at tab 8, the minutes of
- 17 that meeting. And we know also from the minutes of the
- 18 meeting that the vote occurred later that afternoon or
- 19 evening, after 5.40 pm local time, and we know that the
- 2.0 trading hours were from 9 to 3 pm. So we know that the
- 2.1 vote did not occur during trading hours on 10 July.
- 2.2 A. Okay
- Q. We also know that the first trading day on which the 2.3
- 2.4 market was able to incorporate this information was the
- 25 following Monday, 13 July, and we find that on 13 July

- 1 we have a very small increase in SC&T share price up by
- 2. just under 1%.
- 3 A. Instead of 1.3.
- Q. But that's within the range of statistical or not
- 5 statistically significant, according to your parameters;
- 6 correct?
- A. Okay. 7
- 8 Q. So each --
- 9 A. So we can change  $--\ I$  mean, if you're right, and if,
- 10 etc -- I would have to do more checks, but for this row,
- 11 10 July, we can change -- there are two fails ending in
- 12 a joint test to fail . We can change the first fail to
- 13 a pass. The second one is still a fail and the joint
- 14 test is still a fail, unless you're going to tell me
- 15 about Cheil.

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- 16 Q. And we could add an event that would also be a pass?
- 17 A. No, because if we added the Monday, we would also have
  - to look at -- sorry, the Monday --
- 19 Well, no, no. Sorry, we would have to check what
- 2.0 Cheil did on the Monday. So I've got 2% here, but
- 21 you're telling me that's the Friday and it should have
- 2.2 been Monday. So what we need to do is look at what
- 23 Cheil did on the Monday. Perhaps you've done that. 24
- Q. I think the general point I'm putting to you is that the 2.5 market reaction to news that made the merger more likely

- 1 was more consistent with Mr Boulton's hypothesis or 2 Mr Boulton's theory than your event study, your original 3 event study, led us to believe? A. Well -- well, I am not so sure because in my table 5 4 I've got a full row of fails and I don't think you've 5 said anything about the Cheils. So there are only two 6 7 that could change, which are 10 June and 11 June, and 8 right now I can't even remember whether we agreed that 9 those are the two that should change. And so at most --10 so I don't really recall, but you would have to remind 11 me. What did we end up agreeing with for 10th and
- 11 June? 13 Q. I knew I should have brought us a blank table to keep 14 score on and I didn't do that. I did think about doing 15 it but I haven't.
- A. Yes, yes. 16

- MS SNODGRASS: I'm about to move on to a different topic. 17 18 I can begin it and go for 10 or 15 minutes before the 19 break or we could take a break now. It's --
- THE PRESIDENT: Perhaps it depends on how much time you 20 2.1 still think you will need.
- MS SNODGRASS: I think probably about an hour and a bit. 2.2 2.3 Maybe not that much.
- 2.4 THE PRESIDENT: We will have a break now then and start the last hour with a fresh mind.

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- 1 MS SNODGRASS: I think so THE PRESIDENT: We break for 15 minutes until 15.35. 3 (3.20 pm)
- (3.35 pm)

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- THE PRESIDENT: Let's go on, Ms Snodgrass. 6
- MS SNODGRASS: Thank you. 7

So at the end of our last session you were asking about the Cheil position in relation to your event study. I just wanted to pick up on that.

(A short break)

So for test 2, market movements in Cheil's share price, you set a confidence interval of plus or minus 6.8%, which I can show you  $\{G1/56/1\}$ , we can share that on the screen, which is another spreadsheet, Output 3.

15 If you scroll up and look at the headings.

16 A. 6.8%.

Q. Yes. Sorry, plus or minus 6.8%. I might have said that 17 18

> If we scroll down to rows 68 through 80 -- I don't know if we can see all of those on one screen -- we see that for all of the event dates that you have selected except for the first, the merger announcement date, all of those dates are within that confidence interval, aren't thev?

> > 154

So the first date, the merger announcement date?

1 A. First date, merger announcement, we see a 14.66 2 residual, which is bigger than 6.8.

3 Q. Yes. But if we look at the other dates selected in your 4 event study, so 4 June at row 75, 9 June at row 78,

5 10 June, and on down, they're all --

A. Let's do them one at a time. 6

> So 4 June, residual 3.7. It's an insignificant movement.

9 Q. Yes. 9 June?

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10 A. Let me -- let me, let me ...

9 June, no movement —— no residual movement.

12 So I have put that as a fail because it didn't do 13 what it was supposed to do, but it doesn't confirm the 14 theory. I think.

15 So your point -- perhaps I should let you proceed.

16  $\ensuremath{\mathsf{Q}}.\ \ \ensuremath{\mathsf{I}}$  was just asking the question whether these market 17 movements were statistically significant or not by 18 reference to the confidence interval that you yourself 19

20 A. So I think that what I have done in table 5  $\{G3/1/83\}$ ,

21 and I would have to double-check, is that when the price

22 doesn't move much at all, and therefore doesn't move in the way the theory said it should move, I've recorded 23

2.4 that as a fail

25 Q. All right. We can put the spreadsheet away. I have to

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1 say I'm personally grateful for that.

A. I'm glad we went back to it. 2.

3 Q. Very good.

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Now, I understand that in your second report you did not express an opinion concerning what the impact of

6 SC&T shareholders rejecting the merger at the

7 extraordinary general meeting would have been on the

8 SC&T share price; correct?

9 I can say that again.

10 A. Yes, please.

11 Q. In your second report you did not express an opinion 12 concerning what the impact of SC&T's shareholders

13 rejecting the merger would have been on the SC&T share

14 price. You were agnostic about that.

15 A. Well, today I said I don't think it would have made much 16 difference.

Q. But in your second report, which was my question? 17

18 A. Yes. I said I was agnostic, meaning — I guess I meant

19 I didn't really see what evidence there was one way or

2.0 another, and therefore I was agnostic about which way it

21 would have gone.

2.2 Q. But we've just seen that when events occurred that made

23 the merger less likely to proceed, SC&T's share price

2.4 increased?

25 A. I don't see that because my table 5 shows the contrary

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and you have asked me — you have questioned some of the numbers and results in table 5, but — and again, we didn't keep a score card, but from memory there were certainly some of the points you made which I did not accept, and I think there was, from memory again, there was one of the points you made when I did accept, you said it had been — the leak had happened after 3 pm, and therefore one would have to look at 11 July; is that right?

And I actually don't recall whether you took me to the spreadsheet of 11 July, but perhaps you did, and if so, the transcript will show whether I ended up saying it was significant or not.

- Q. So you don't accept that there's evidence that when events occurred that made the merger less likely to proceed, SC&T's share price increased?
- A. There doesn't seem to be much evidence because on the
  face of it, if you change a couple of rows in table 5,
  it wouldn't provide strong evidence to the contrary of
  what I'm asserting in that section.

Correct me if I am wrong on that.

Q. Could you turn back with me to exhibit C-53 {C/53/1}, which is at tab 5 in the bundle you have in front of you. This is the Seoul High Court decision in the appraisal price litigation, which we've looked at

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- 1 before.
- A. Yes.
  - Q. If you turn to page 17 of that, which is {C/53/17} Opus reference. We've got an analysis there that's endorsed by the court of Hanhwa Investment & Securities dated June 15, 2015, carrying over from 17 to 18. The analysis is actually on the top of 18. It says:

"If this merger were to fail, we recommend a hold strategy for the Former SC&T shareholders. The appeal of the undervaluation of the Former SC&T will gain attention, thus leading to normalisation of share prices. It appears that the potential upturn in share price will reach 40%."

Do you see that?

- 15 A. I do see that.
- 16 Q. Let's also turn, please --
- 17 A. Let me just comment.
- 18 Q. There wasn't actually a question.
- 19 A. A hold strategy -- a hold strategy --
- 20 Q. There actually wasn't a question, Professor Dow.
- A. Well, I do have to comment because a hold strategy is
   notoriously analyst—speak for not a very good thing to
   hold.

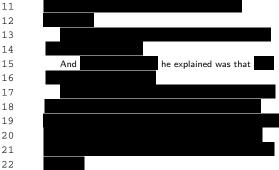
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24 Q. Shall we turn to exhibit C-510, please. That's at tab 15.  $\{C/510/1\}$ .

A. I'm there.

Q. So this is the testimony of a Mr
 a member of the NPS research team, who prepared the
 meeting materials for the NPS Investment Committee
 meeting on 10 July 2015. This is his testimony to the
 Seoul Central District Court.

If you could turn to page 15 of that testimony,  $\{C/510/12\}$  is the Opus reference, and let me find where it is on the document. At the bottom of the page, the answer at the bottom of the page, Mr explains that



23 Do you see that?

- 24 A. I do.
- 25 Q. Now, these observations parallel the conclusion reached

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- by Mr Boulton on the basis of his analysis that once the threat of the predatory merger, or the merger if you don't like the term "predatory", is removed, the share price would rise, and rise significantly, don't they?
- A. These analysts say the share price would have gone up a lot, and that is also what Mr Boulton thinks, and Mr Boulton indeed looked to the skyrocket man for support for his thesis.
- 9 Q. So just to be clear, the skyrocket man is not an analyst. He's a member of the research team of the share management division at the NPS. Does that change your opinion of his analysis at all?
- A. Well, I don't think the tribunal should I mean, the short answer is no, but I think the better answer is
   I don't think the tribunal should look to me for
   a prediction of what would have happened in the
   counterfactual, because the tribunal has already heard
   about this skyrocket report, so there's nothing new
   there.

Does it change my mind? Not really.

Would rejection have led to an increase in the SC&T share price? I argued in my presentation this morning that I don't really think so, but -- and I gave the argument to support that that the corporate governance structure of Samsung is unfavourable and that SC&T

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independent simply I don't think would have changed that overnight. I just don't think would.

But I think I have seen the same evidence that the tribunal has seen at this point. I don't think I can add anything more to what I have already shown to the tribunal or what the tribunal has heard in learning from this report.

So I don't want to add anything to what has already been said because I think I have said it all already.

- Q. So it's not clear to me whether you are in fact agnostic and don't have a view, or you're offering halfway conclusions as to what would be likely to happen with the share price?
- 14 A. Okay. So --
- 15 Q. So can you clarify?
- 16 A Yes I would love to

So when I spoke about discounts in my presentation this morning, I did that glass analogy and the coin in the glass, and I said that there's always an unexplained residual. I gave the example of Shell.

One can never be too confident in predicting what share prices will do. So an analyst predicts --I appreciate that he is not a sell side analyst but a member of the NPS team. Somebody predicts that, you know.

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That's a prediction. That's what that person thinks is going to happen. Share prices are notoriously hard to predict. And I don't like to say for sure what I think is going to happen because I know that I will be wrong a lot of the time if I make such predictions.

If I was a hedge fund manager, perhaps I would take a more relaxed view. I would make predictions, I would be happy to trade on those predictions and, you know, some of them would be wrong, some of them would be right, and that would be fine.

But as I am here before the tribunal, I think I have to give a quantification of how precise any predictions I might make would be, and anybody who tells you that they know what the share price is going to do tomorrow, and they know this for sure, is not being realistic. Somebody can express an opinion about what they think the share price is going to do tomorrow. They might be right; they might be wrong.

Likewise, what would have happened to the share price in a counterfactual, anybody who tells you that they have a clear picture of what would have happened is not being realistic. They can tell you their idea. They might be right; they might be wrong.

In that sense I'm agnostic.

There's also a sense in which I think it wouldn't

have changed very much on balance of probabilities. And 2 that's because Mr Boulton's discount, which he 3 triangulates or supports with the rocket man, is an 4 implausible discount. 15%, which is the bigger of his range, he says 5-15, 15% is already what Elliott says 5

> So when Mr Boulton says only 5-15% would be left, even if we took the 15%, as opposed to the 10% which he ends up using, even if we took his 15%, then we would be saying SC&T would have traded the very next day at no discount apart from the tax liability . I don't think that is at all plausible

should be in the discount just for an allowance for tax.

That's what I have to say

Q. So, Professor Dow, you're agnostic but you do have 14 15 opinions about what is likely to happen, and if I can, 16 I will take to you one of the opinions you express in 17 your second report, where you suggest, and this is at 18 paragraph 172(c) of your second report  $\{G3/1/80\}$ , that 19 the reason you don't think -- one of the reasons you 2.0 don't think the discount would be ameliorated if the 21 merger were rejected is, you say:

22 "Because the threat of future predatory transactions 23 is not cured by the Merger rejection ... ' 2.4 Is that right?

25 A. Correct. That's my Borgia family tree.

1 Q. And you go on and you say in the paragraph above that 2 that's because, or another reason is because after the 3 merger SC&T would also continue to have been controlled by the family; is that right?

5 A. Could you give me the quote?

6 Q. Paragraph 172(b), the second sentence:

"Since SC&T would also continue to have been controlled by the family, this is another reason that Mr Boulton QC should have included the risk of such predatory transactions in his SC&T Holding Company Discount."

12 A. Yes, Mr Boulton says that, and actually in my 13 presentation this morning I made the point that it would 14 not actually have been control, because there's 15 a difference between having a two-thirds majority in 16 favour of the merger and having a simple majority and, 17 indeed, having a two-thirds majority in favour of other 18 restructurings.

19 So my second sentence of 172, paragraph (b), where 2.0 I say "Since", I should have said:

21 "Since, according to Mr Boulton, ...

2.2 And then the sentence as it stands. Thank you for 23 bringing that to my attention.

2.4 Q. Sorry, let me make sure I understand what you're 25 suggesting.

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1 You're suggesting that Mr Boulton considered that proceeding, wouldn't they? 2 SC&T would continue to have been controlled by the 2 A. Well, indeed. If they had -- if the merger had -- yes. 3 family? 3 If the merger had been prevented, then they would have 4 A. Am I wrong?: 4 prevented it from proceeding, I think you just asked me. Or did you say something different? "Mr Boulton QC states that 'in the Counterfactual 5 5 Scenario, Cheil would continue to have been controlled Q. No, I think -- I think you've answered the question 6 6 by the family' ... " 7 7 8 Q. Yes, Cheil. 8 So when you say that SC&T, in the counterfactual, 9 A. Oh, sorry, sorry, sorry: 9 SC&T would also continue to have been controlled by the family, you can't have meant that they had 10 "Since SC&T would also continue to have been 1.0 controlled by the family ... 11 11 sufficient --12 Forgive me, I read Mr Boulton's quote wrong: 12 A. Two-thirds majority. 13 "Since SC&T would also continue to have been 13 controlled by the family ... " 14 14 15 Yes, that is what I say in 172(b). 15 16 Q. So you're making a contention there that after the 16 17 merger SC&T would also continue to have been controlled 17 18 by the family; yes? 18 Q. No. I'm asking the question I asked. A. No, in the counterfactual, I think, we're talking about? 19 19 20 have been accepted another time. 20 21 A. So in the counterfactual I am saying that SC&T would 2.1 2.2 continue to have been controlled by the family. 22  $\mathsf{Q}.\;\;\mathsf{So}\;\mathsf{you}\;\mathsf{accept},\;\mathsf{I}\;\mathsf{think},\;\mathsf{that}\;\mathsf{together}\;\mathsf{the}\;\;$  family and 2.3 23 2.4 Samsung affiliates did not have enough shareholder votes 2.4 25 to approve the merger on their own; right? 2.5 transaction like the merger, can you?

165 1 A. Yes, although I do make an argument that in my second 2 report. I do make an argument that had they known that 3 there was pushback from -- had there been pushback from NPS, had they been unable to control NPS, they might 5 have expended more energy elsewhere. Q. But you appreciate that that's a question of factual 6 7 evidence and what would have happened on the basis of 8 information about the Korean economy and political 9 economy that's outside of your expertise? 10 A. I do, and I drew that possibility to the attention of 11 the tribunal. I don't want to say that that is a strong 12 argument, but simply drawing attention to that. 13 Q. Okay You also agree, I think, that if the NPS had 14 15 abstained, had not attended the EGM, and everything else had been the same, Samsung and the family would not 16 17 have had the votes for the merger to carry; is that 18 correct? 19 A. Correct. It would have been more than 50%, I think, but 2.0 less than two-thirds. 21 Q. And so you would agree that if all the other

2.2 shareholders had acted the same way, but the NPS alone 23 had acted differently, minority shareholders would have 2.4 had negative control of the company, or at least 25 sufficient negative control to prevent the merger from

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-- control to force through a transaction like the A. Well, you are saying if the merger was rejected once, it must have been rejected always. Or you're suggesting to A. Well, I say if the merger was rejected once, it might Q. I asked: when you say that SC&T, in the counterfactual, SC&T would also continue to have been controlled by the family, you can't have meant that they had sufficient control to force through a predatory 167 A. Well, I just said they might have been able to. They

- might have been able to bring up a merger. I don't want 2 3 to say it's a predatory transaction because I don't think it was, but they might have been able to bring 5 forth further mergers and that might have been
- 6 successful. 7  $\ensuremath{\mathsf{Q}}.$  But a merger that was equally damaging to the very same 8 minority shareholders that had voted no to this merger, 9 you would accept that the risk of that merger being 10 accepted by the very same group of minority
- 11 shareholders, the very next day, was substantially 12 reduced, wouldn't you?
- 13 A. Well, I don't think the very next day is a plausible
- 14 counterfactual. But possibly a year later, who knows. 15 Q. Within the near term?
- 16 17 Q. Within a period of time --
- A. Frankly, had it been rejected on May -- sorry.
- 18 A. June 17, I believe was the date.
- 19 Q. Within a period of time that this information would have 2.0 been instantaneously incorporated in the market price.
- 21 A. I'm sorry. I think I haven't answered your previous 2.2 question and now you're asking me another question.
- 23

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24 A. So you said would it have been plausible -- could you 2.5 repeat your question, please?

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1	Q.	I'm asking: would it have been plausible to think that
2		a group of minority shareholders who had rejected
3		a merger on these terms, because it was disadvantageo
4		to them, would, in the near term, by which I mean
5		a period of time short enough to be instantaneously
6		reflected in the share price, turn around and approve
7		a merger that was equally damaging to their interests?
8		Is that plausible?
9	A.	Well, I don't understand that question because the
10		merger vote was on $$ you will correct me if I'm
11		wrong $$ 17 July.
12	$\circ$	That's correct

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13 A. The Wednesday. And you are saying: and according to Mr Boulton and me, whatever reaction would have happened 14 15 would have taken place on the -- well, Mr Boulton I'm not sure, but I certainly think it should have taken 16 17 place by the Thursday morning, the 19th --

18 MR TURNER: Sorry, can I just interrupt for one second. 19 I looked this up because my learned friend said that the 20 10th was a Friday, which meant that the following week 2.1 when we had been talking about Wednesdays couldn't be 22 right, and so I looked it up and the valuation date, the 2.3 16th, is a Thursday, and the 17th is a Friday.

2.4 I'm sure this doesn't change anybody's evidence, but I just felt we should be talking about the right day of

1 the week if we're talking about them at all. THE PRESIDENT: It's on record now. 2 3

A. I stand corrected. I am very sorry to have introduced confusion, because I had looked it up and I must have got it wrong.

So. Friday, the merger vote. Whether Friday evening or Monday morning, the reaction to the merger vote. You are surely not asking me: what if there had been another proposal on the same Friday or over the

11 MS SNODGRASS: No, I'm actually putting to you that it's 12 implausible to think there would have been one.

13 A. It absolutely would have been very implausible that there would have been one over the weekend. 14

15 Q. And then I'm putting it to you that there would have 16 been a reaction in the market price, a positive reaction 17 in the market price. The bad news, a merger that is 18 detrimental to the interests of SC&T shareholders, is 19 not going to happen. My suggestion is that would be 2.0 reflected in the SC&T share price?

21 A. Well. I don't agree that it would have been — sorry. 2.2 Could I see the transcript, please?

23 Your question is premised on the following 2.4 statement:

> "The bad news, a merger that is detrimental to the 170

1 interests of SC&T shareholders, is not going to happen." 2

And you then asked:

3 "My suggestion is that would be reflected in the

SC&T share price?" 4

Here is my answer to your question.

I don't accept your premise because, as you know,

that's not my view of the transaction.

Nevertheless, in response to the question, would whatever reaction was going to happen be reflected in the SC&T share price, obviously yes, Mr Boulton

11 and I agree it would take place quickly.

12 Q. Can I just ask one follow—up on that. You don't accept 13 that the risk of the merger was reflected in the SC&T 14 share price? I thought we'd established before lunch or

15 before our break that you did?

16 A. Whatever risk it posed --

17 Q. Was priced in?

18 A. Whatever risk it posed. That doesn't mean I think it 19 was a negative. It means whatever risk it posed was

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2.1 Q. So whatever risk it posed was priced in?

22 A. Yes.

2.3 Q. When that risk, whatever it was, doesn't materialise.

2.4 that is also priced in?

2.5 A. Yes, absolutely.

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1 Q. Instantaneously?

A. Well, absolutely. 2.

3 Q. Okay.

A. But if the bad thing -- if the thing that is revealed 5 not to happen -- not to be going to happen is not such

6 a bad thing, then we don't see the skyrocket.

7  $\mathsf{Q}.\;\;\mathsf{Right.}\;\;\mathsf{I}\;\;\mathsf{understand}\;\mathsf{your}\;\;\mathsf{evidence}\;\mathsf{on}\;\;\mathsf{that.}\;\;\mathsf{Thank}\;\mathsf{you}.$ 8

Okay. I want to turn now to the issue of the

9 discount --

10 A. Yes.

11 -- which Mr Boulton applies.

12 A. This is the key issue actually.

13 Q. Now, you heard Mr Boulton's evidence yesterday. So you

heard him explain what this residual holding company

15 discount is and how it was calculated: ves?

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17  $\ensuremath{\mathsf{Q}}.$  You therefore also heard him explain that a general

18 Korea discount is incorporated into his sum of the parts 19

valuation by virtue of the fact that he uses Korean 2.0 market prices and Korean comparables for components of

2.1 that sum of the parts valuation, and I'm happy to put

2.2 a transcript reference --

23 No, no, I'll clarify that what is meant, I think, by

a Korea discount there is that -- I mean the proximity

2.5 with North Korea was mentioned and therefore I think

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1 it's not a doubt in this arbitration that the multiples 2 of a Korean company in South Korea could be lower than 3 the multiples of companies somewhere else.

> And that is nothing to do with the holding company structure. That would be true of any company that has nothing to do with a Chaebol. Apparently that is the

 $\mathsf{Q}.\ \mathsf{I}$  think  $\mathsf{I}$  would prefer to put the excerpt of the transcript up because I don't think Mr Boulton was speaking about a general Korea discount in such narrow

Just so we're all on the same page, could we have transcript {Day7/178:6} through {Day7/179:4}. I don't mean to linger over this point, but I don't think he was defining the Korea discount in such a narrow way.

- 16 A Which line do we wish to look at?
- 17 Q. If we start at line 6 on page 178, he says:

"... I've already reflected a Korea discount in the way that I have valued the sum of the parts.

"So, two examples. I value the trading companies by reference to comparables in Korea. To the extent that those comparables are already subject to the Korea discount, that's in my comparable, it's in my sum of the parts valuation.

"I have valued the listed investments by reference

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to their market prices. To the extent that those listed prices are affected by the Korea discount, they are lower.

"And therefore my sum of the parts valuation builds in the Korea discount."

He's not there referring to the geopolitical Korea  $\mathsf{risk}\,.$  He is referring to whatever Korea risk there is reflected in market prices in Korea; correct?

A. I guess he's referring to the valuation ratios, the multiples, that any company in Korea would have which is not part of a Chaebol. And separate from complications that arise if it is in a Chaebol.

And you're quite right that the geopolitical risk is perhaps only one of those risks.

- 15 Q. I don't think that's fair. I don't think he is 16 separating out complications that arise if it's in 17 a Chaebol. I think he takes those entities as he finds 18 them. Takes the market price of those entities as he 19 finds them. I think that is the point that he's making, 2.0 actually
- 2.1 A. I think that's -- I think I can take that point and then 2.2 it's nevertheless true that -- yes, I think that's fair. 23
- 2.4 Q. So I wanted to turn, if we could, please, to 25 paragraph 46 of your second expert report  $\{G3/1/23\}$ ,

which summarises arguments that you make in support of 2 the argument that the discount Mr Boulton applies is too

- 3
- 4 A Yes
- 5 Q. By reference to a number of comparisons. Let me just catch up with myself here. 6
- 7 A. But I would like to point out, even if the companies in 8 the sum of the parts are themselves depressed by
- 9 a holding company discount, which he calls the Korea
- 10 discount, it is still going to be true that once you put
- 11 those pieces inside a holding company themselves, there
- 12 could well be a further holding company discount, as
- 13 I call it, not in the narrow sense that he defines it.
- 14 Q. So looking at paragraph 46 of your second report?
- 15 A. Yes
- 16 Q. You identify, and also over the next page, you've got 17 Figure 7, which depicts a number of these comparisons ——
- 18 A Yes
- 19  ${\sf Q}.\ --$  that you draw as support for the argument that the
- 20 discount that Mr Boulton applies is too low.
- 21 A. Yes
- 22 Q. And the first comparison you draw is in text in
- 23 paragraph 46(a) and in the Figure it's the first two
- 2.4

2.5 You point out that EALP's NAV calculations in the

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period 2007 to 2014 range from a premium of 25.8 to 1

2. a discount of 34.3.

- A. Correct. 3
- 4 Q. Now, you would agree that the average of those figures 5 would yield a discount of 8.65%; correct?
- 6 A. I haven't done the maths, but while a straight average 7
- of those two numbers might yield a discount of 8.65%, 8 I refer to you my presentation this morning where
- 9 I showed the time series of the discount of SC&T and you
- 10 will see, you will recall no doubt from that -- the
- 11 tribunal will recall no doubt from that time series that
- 12 SC&T has usually been at a discount, and sometimes been
- 13 at a premium. And so if you ask me what was the
- 14 average, and I don't think I have done a calculation —
- 15 in fact I know I haven't — but it's clear that if you
- 16 took the average, it would be a lot less than the
- 17 straight average of 34.3 negative, and 25.8 positive.
- 18 Q. That sounds a lot like a point that Mr Boulton was
- 19 making, that a simple average isn't necessarily that
- 2.0 informative, unless you know what's driving a particular 21 discount or a premium at a given time.

2.2 But let's look at --

- 23 A. That is a different point. I'm just saying if you take 2.4 an average, you have to take the correct average.
- 25 Q. Let's look at paragraph 46(b) and the next two bars in

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- 1 Figure 7  $\{G3/1/24\}$ , where you point to EALP's NAV 2 calculations from November 2014 to February 2015, and
- 3 I'm using round figures, they range between 33 and 45%.
- 4 A. As I say in that paragraph.
- 5 Q. The first question that I wanted to put to you about
- this comparison is that you understand that Elliott's 6
- 7 NAV calculation included all discounts, any and all of
- 8 a holding company discount, a generalised Korea
- 9 discount, specific pressure on the share price that was
- 10 exerted from time to time by any number of factors. So 11
- it  $\,\mbox{didn't}\,$  seek to disaggregate any components of the 12 discount, right: it just measured a total discount?
- 13 A. The only person who has tried to decompose the
- 14 discounts, I believe, is Mr Boulton, and to some extent 15 myself.
- 16 Q. So I'm asking you, in what way then is this a fair
- 17 comparison to Mr Boulton's analysis of the excess
- 18 discount in which he has disaggregated, or sought to.
- 19 the specific risk of the predatory merger and where he
- 20 deals with the Korea discount in the sum of the parts 2.1 analysis?

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- 2.2 A. Well, this picture shows very clearly that Korean 2.3 companies don't trade -- taken in the round, this
- 2.4 evidence confirms my view that Korean companies simply
- 25 don't trade at 10% discounts to net asset value.

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- Let's look at that. Every bar is below and if we took the weighted average of the first two bars -- every bar is below except for the first two bars, and if we took the weighted average of the minimum and the maximum, with weighting according to how much time was spent, in other words weighting of that picture I showed you this morning, I have no doubt that would also lie below.
  - So my point is discounts of 5-15% never happen in Korea.
  - Now, therefore I think that supports the view that they weren't at all likely to happen following a counterfactual merger rejection. And I strengthen that view by noting that Elliott has estimated the tax liability —— none of these analysts, as Mr Boulton yesterday, break out separately tax and other, except Elliott does so. But the tax liability , according to Elliott , is 15% —— I think it was 14.7 —— which is of course bigger than the 10% that Mr Boulton uses.
  - So I say that the evidence in this picture tells me that 10% is implausible, and particularly when one views that an allowance for tax would already outweigh the

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- 24 Q. I don't think you answered my question, Professor Dow.
- 25 The question I was asking you was not about this whole

- picture. The question I was asking you was about the
  - third and fourth bars in this picture. And the question
- 3 I was asking you was: do you understand that the
- 4 discount depicted in that picture incorporates a number
- 5 of different discounts, and that the discount to which
- you are comparing it and saying, look, this shows 6
- 7 Mr Boulton's discount is too small, is only part of the
- 8 discount that is depicted in those bars? That's the
- 9 question I'm putting to you.
- 10 A. I think I did answer that question, because --
- 11 Q. I'm sorry, I didn't hear an answer to my question.
- 12 A. Maybe we can check the transcript.
- 13 I believe I started out by saying that the only 14 person who has attempted a decomposition of the total
- 15 discount in these proceedings is Mr Boulton and to some 16 extent myself.
- 17  ${\sf Q}.\;\;{\sf So}\;{\sf you}\;{\sf accept}\;{\sf --}\;{\sf well},$  so then you accept that it's not
- 18 a fair comparison, or it's not an exact comparison at 19 the least, between the two bars here and the discount to
- 20
- which you are comparing it, Mr Boulton's residual
- 2.1 holding company discount?
- 22 A. No. I'm saying that Mr Boulton's claimed 10% simply
- 23 doesn't look plausible at all in light of the fact that
- 2.4 it's smaller than any other experience in Korea.
- 2.5 Now, if you want to make the point that the

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- 1 counterfactual is something that's never been seen
- 2 before, and therefore evidence of what has happened is
  - not relevant anyway, well, I don't know what to say.
- Q. The point I was making is that aspects of the discount 5 are reflected elsewhere in Mr Boulton's analysis, but
- 6 I think I have already made that point.
- 7 Can we turn to the third comparison that you draw
- 8 and paragraph 46(c), the fifth and sixth bars in
- 9 Figure 7.
- 10 A. Yes

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- 11 You point to the selling levels in the trading plans in 12 place from time to time for the Claimant.
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- 14 Q. And you describe those in paragraph 46(c) as "implied
- 15 estimates of SC&T's expected long-term holding company
- 16 discounts". That's a quotation.
- 17 A. Yes. That is a quotation.
- 18 Q. Now, the words "implied estimates" were no doubt
- 19 carefully chosen, Professor Dow, because of course the
  - words "holding company discount" doesn't appear anywhere

- 21 on Elliott's trading plans, do they?
- 2.2 If -- no, but it's implied. I think it's a very good
- 23 implication. I could explain if you would like?
- 24 Q. Well, no, I think I'll ask you. In fact it was put to
- 25 Mr Smith in cross-examination last week that in

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- calculating their NAV estimates, Elliott did not in fact even apply a holding company discount properly
- 3 so-called; isn't that right?
- 4 A. Discounts I'm sorry, discounts are discounts. What
- 5 are you saying they should have done?
- Q. Well, we see Mr Smith explaining what they did do inevidence, which was on {Day3/44:1-9}.
- evidence, which was on {Day3/44:1-9}.
   A. But, correct me if I am wrong, when somebody computes
- 9 the NAV discount, they simply look at the NAV and they 10 look at the share price and the NAV discount is a gap
- between the NAV and the share price. And that is of
- 12 course what Elliott did.
- $13\,$   $\,$  Q. Yes, and that discount will incorporate, as I said at
- the outset of this discussion, any number of discounts,not necessarily a holding company discount?
- $16\,$   $\,$  A. Well, a holding company discount, as you define it, is
- $17 \hspace{1cm} \hbox{the discount that would apply in the counterfactual.} \\$
- 18 I think we agree on that.
- Q. I think we're in the situation where our labelling isobscuring clarity. But I think what you are criticising
- 21 Mr Boulton for is a level of discount that is too low in
- 22 circumstances where Mr Boulton has deliberately tried to
- 23 exclude from the discount elements that Elliott
- 24 understandably and intentionally did include, and I'm
- pointing out that that's an unfair comparison.

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- 1 A. No, it's a fair comparison, because Mr Boulton says that
- 2 he thinks the discount would have gone down to 10%, and
- 3 Elliott trading plan shows that Elliott were planning to
- $4 \hspace{1cm} \hbox{completely close out their positions at discounts far in} \\$
- $\,\,$   $\,$   $\,$  excess of 10%, and therefore implicitly they did not
- 6 hold the view that the share price was going to
- 7 immediately jump to 10% discount.
- 8 Q. Did you hear --
- 9 A. Implicitly they held the view that the share price would 10 presumably have narrowed, but not to 10%.
- Q. Did you hear the evidence of Mr Smith or did you readthe evidence of Mr Smith?
- 13 A. Yes, I did. I watched on Zoom, I read some and I saw
- 15 Q. So you heard his evidence or read his evidence about the
- 16 significance of the unwind part of the —
- 17 A. Yes.
- 18 Q. -- trading plans?
- 19 A. He said they don't matter at all.
- $20\,$  Q. And there's no evidence in the record that the reference
- 21 to 20% in one version of the trading plan or the
- 22  $\,$  reference to 27.5% in another reflected a view on what
- 23 the holding company discount or any other discount was
- 24 likely to be over time?
- $25\,$   $\,$  A. Well, I didn't really know what to make of Mr Smith's

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1 evidence because one way of interpreting it would be

- 2 that the unwind plan -- unwind part of the plan was
- 3 something they never did, and was never part of any
- $4 \hspace{1.5cm} \hbox{calculation and never formed a basis for any of} \\$ 
  - Elliott 's decision-making.

If that is the case, what can I say? I simply invite the tribunal to form their own opinion on whether the unwind part of the trading plan contained any

information or not.

If, as Mr Smith said, it was not very informative, then no doubt the tribunal will apply a suitable degree of scepticism or put less weight on my Figure 7 green and purple bars, which are indeed extracted from the

14 Elliott trading plan.

So I took them from the Elliott trading plan, but if Mr Smith says that doesn't mean anything at all, or doesn't mean very much, and if the tribunal thinks that's the correct interpretation, then obviously the tribunal will put less weight on those bars.

Q. Are you in a position to give any evidence on the meaning of the trading plans?

- A. Well, when I saw the trading plans I thought they must mean something, because otherwise what were they doing
- 24 there.
- 25 Q. And we now have Mr Smith's evidence as to what they were

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- 1 doing there.
- 2 A. Mr Smith's evidence, I don't really understand it, but
- 3 he said there's no point in even having that unwind,
- 4 effectively , because it doesn't mean anything. So if
- 5 the tribunal feels that that's the correct
- 6 interpretation of the trading plans, as I have said,
- $7 \hspace{10mm} \hbox{they will interpret them accordingly}.$
- $8\,$   $\,$  Q. So finally in paragraph 46(d), and the final two bars in
- 9 Figure 7. {G3/1/24}
- 10 A. Yes
- 11 Q. You refer to the average and median net asset value
- 12 discounts for the Korean holding companies referred to
- in Mr Boulton's report?
- 14 A. I do
- 15 Q. Mr Boulton had responded to your first report's analysis
- of two Korean holding companies by identifying
- 17 additional firms in his analysis; yes?
- 18 A. If you say so, yes.
- 19 Q. And he noted that holding company discounts, including
- 20 in this broader sample, are occasionally holding company
- 21 premiums?
- 22 A. He does.
- 23 Q. And he had found a median and a mean of 35% and 15% from
- $24\,$  his expanded sample. Is that ...?
- A. The numbers sound right because the 35 is close to 39,

- and the 15 is close to his upper bound on what he calls the holding company discount.
- ${f Q}.$  But your calculations excluded some of those companies,  ${f a} {f manely} --$
- 5 A. Correct.
- 6 Q. those that traded at a premium?
- 7 A. Correct.

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- 8 Q. And arrive at a different mean and a different median?
- 9 A. As noted in footnote 57.
- 10 Q. Why did you exclude companies that trade at a premium?
  - A. Okay. I thought they were anomalous, first reason.

Second reason, I think the median is probably a more robust guide, and so in circumstances where the mean and median diverge significantly, it can be useful to revisit the analysis, possibly — this is an indication of outliers — possibly remove the outliers or possibly remove — possibly rely simply on the median.

Now, Mr Boulton, I would like to make clear, gave testimony yesterday that he agrees with that view. He prefers the median. I believe we can bring up his testimony if need be. And also, if one looks —— I invite the tribunal to consult Mr Boulton's first report, section 5, where in analysing multiples, he repeatedly follows a process of discarding data where the median and mean are different, and of preferring the

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1 median to the mean.

Following that process, therefore, one would do what I have done, but even if we include the discarded companies, then, as Ms Snodgrass has just pointed out, the median in Mr Boulton's full sample, 35—point—something, if I recall correctly, is very close

to the median that we see in the truncated sample, 39.

So while I think it's appropriate to throw out those anomalous cases of premiums, the tribunal doesn't have to agree with me. The tribunal can take the full sample, applying the median, which both Mr Boulton and I agree is the more appropriate of the two ——

Mr Boulton said so yesterday, and it's also what he does in his report —— and the median then would be 35.

15 I think you said, Ms Snodgrass, instead of 39.

16 Q. Did you investigate why the companies that you treated 17 as anomalous were trading at premiums?

A. No. For that matter, nor does Mr Boulton investigate
 why the companies he discards in his multiples analysis
 were discarded, or ...

Q. Did you consider that they might be part of a merger
couple, for lack of a better word, that one might be
benefiting from a premium in anticipation of benefiting
from a tunneling merger, for lack of a better
description, and the other suffering from a discount for

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- 1 the same reason?
- 2 A. No, I did not.
- 3 Q. And you --
- 4 A. But I don't believe in tunneling mergers, so, as in
- Korea we know they are prohibited by law because of the very good rule that market prices set the merger ratio.
- 7 Q. Right.

8 In your reports, Professor Dow, you express
9 scepticism about the prospects for shareholder activism
10 meaningfully to mitigate what you describe in your first
11 report as the persistent perceived discount which is
12 based on various legitimate factors. This is at

paragraph 60 of your first report which is {G1/1/75}.

14 A. Paragraph 60 of my first report?

Q. Yes. Let me get that in front of me as well. I am
 actually going to go to another paragraph in your second
 report where you express a similar sentiment.

In paragraph 71 of your second report, which is at  $\{G3/1/33\}$ , you argue that the discount that's attributable to, among other things, Chaebol's convoluted share structure is too deep—rooted to be mitigated by an activist campaign; is that right?

23 A. Are we reading from paragraph 71?

Q. Let me look. Yes, I'm looking at second report,

25 paragraph 71.  $\{G3/1/33\}$ 

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1 MR TURNER: But you're not suggesting, Ms Snodgrass, that 2 you're reading from it in the question that you've just

put?

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MS SNODGRASS: No, I'm referring to "deep—rooted structural
 reasons for the NAV discount in Korea". That is

6 paragraph 71 of your second report:

"These include, but are not limited to, 'rational concern that the controlling families could use the company's funds for the benefits of their private interests at the expense of outside minority

11 investors'.'

12 A. I think I can agree with that.

before, Professor?  $\{R/61/1\}$ .

16 A. I think I have quite recently seen it .

Q. Yes, you might recall it because it featured in the
 Respondent's opening submissions in this arbitration, so
 you might have seen it last week.

It's an internal NPS document that was prepared in May 2014, titled "Review of the Possibility of Corporate Governance Reform of Major Groups". Do you see that there at the top of the page?

In this document the ROK considers a series of case studies regarding corporate reform in Korea and the

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1	impact on share prices that such reform has had and
2	could have had.
3	I would ask you if you would, please, to turn to

I would ask you if you would, please, to turn to page 5, which is the same reference on the Opus transcript {R/61/5}.

transcript {R/61/5}.

MR TURNER: Sorry, just for the transcript, it's a slip of the tongue by my learned friend. We agree this is a document, unless anybody is going to take this against me for not having raised the point, we agree this is a document produced by the NPS. We do not agree it was produced by the ROK in any sense other than produced in these proceedings. Lest I be taken to give our attribution argument away by not challenging that no doubt inadvertent remark by my learned friend.

doubt inadvertent remark by my learned friend.
 MS SNODGRASS: I'm not that subtle, Mr Turner.

16 Understood.

So if you could look at the table in the middle of page 5, please. It's an example relating to the creation of a holding company in the SK Group; correct?

20 A. Yes

 $21\,$   $\,$  Q. And you see that there are three columns in the table;

22 correct?

23 A. I do.

Q. And in the second column there are two subcolumns. The
 second column, "SK Group's Combined Market

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- Capitalisation" has two subcolumns, "Absolute Return"
  and "Relative Return"?
- 3 A. Yes.

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- Q. And the third column under "KOSPI", we again see
- "Absolute Return", and we say that the third column --
- 6 if I'm reading this correctly -- is the difference
- 5 between the absolute return and relative return columns;
- 8 correct?
- 9 A. Let me check.
- 10 (Pause).
- 11 Correct
- Q. So I understand this to be a calculation of SK Group's
   combined market capitalisation against the performance
   of the KOSPI over the same period?
- 15 A So do I
- Q. So could you read the second row, the far left cell that
   begins "3 months after transition to the holding
   company".
- 19 A. Absolute return?
- 20 Q. Yes.
- 21 A. 142.5. Relative, 98.3. Absolute return on the KOSPI, 22 44.2.
- Q. So we see an example of what the NPS in the text
   paragraphs above the table describes, at the second
- dashed bullet point, as a "surge in enterprise value",

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- in response to a corporate restructuring; correct?
- 2 A. I disagree

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- 3 Q. You disagree?
- 4 A. Yes. Could you show me where they say that?
  - Q. They say that in the text that begins:

"SK Group's market capitalisation, which stood at about KRW 11.9 trillion 3 months prior to the transition into the holding company, recorded about

8 into the holding company, recorded about 9 KRW 21.8 trillion after the transition , showing a surge

10 in enterprise value."

11 A. I missed — I believe you said something about in 12 response to an event. Maybe we could look at the 13 transcript?

17 A. Sorry, your question originally said a "'surge in

enterprise value', in response to a corporate restructuring".

20 Q. That's what my sentence was.

21 A. And I disagreed with that. And now you are saying

again, "'a surge in enterprise value', in response to a corporate restructuring".

24 Please show me where the NPS says it was "in 25 response", I quote, "to a corporate restructuring".

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- $1\,$   $\,$  Q. So you're denying the causal connection?
- A. Well, I note that you misquoted the report and I suspect that the reason they did not use the wording you used is

that it is difficult to attribute cause and effect over three—month period to a specific event. That is why

6 when we do event studies you will have noticed we look

7 at very short periods of time, and that is why earlier 8 this afternoon we were discussing the few minutes before

9 the close.

So over a three—month period, an event study is
notoriously imprecise. It could do still give
background information, and I have used such long—term
returns in the same way in my report, so it could be
useful for background information, but it is a not
a precise estimate of the response to an event.

Q. But for an investor who was holding a share on, I forgetwhat day of the week we decided it was, a Friday?

18 A. Yes.

19 Q. Who was expecting information to be instantaneously 20 incorporated into a share price on the Monday, we are

21 talking about a very short period of time, the point you

are making about the time horizon is of less

23 significance; yes?

A. We do event studies on short periods because over a very short period, if there's a big movement relative to the

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index, it's very likely to be in response to the event we've isolated. It's unlikely that other significant things would have arrived at exactly that moment, although possible, of course.

Over a longer period such as three months, it's very likely that other significant events would have happened, and therefore the response to the event in question gets confounded with all those other things.

Q. Just give me a minute. (Pause).

So could you turn to paragraph 76 of your second report, please.  $\{G3/1/38\}$ . I'm looking for the sentence.

I think I've got the wrong reference.

14 (Pause

I've got the wrong reference in my notes. So I will come back to this point.

Can I ask you just a more open -- a point that's not tethered to your report.

Is it fair to say, Professor Dow, that you disagree that Samsung's adoption of the restructuring proposals that have been discussed or were put together by EALP would have predictably released additional value either by reducing the discount or increasing the NAV of SC&T?

A. I think we're really talking about decreasing the
 discount here. First time I have heard anyone say

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1 increasing the NAV.

Do I agree that I think in the counterfactual the discount would have sharply reduced? Yes, I have said that I do disagree with that. I have said that I don't think it would have changed very much or at least it would certainly not have changed as much as Mr Boulton said it would.

Q. Okay. So let me just take you to Mr Smith's brief description of the proposal from the transcript, {Day3/85:4–9}. We have Mr Smith explaining what was envisaged in terms of a restructuring. He says at line 4 to 9:

"... importantly step 3 was a merger between three companies, Cheil Industries, Samsung C&T, and the holding company created from the second step to create a sort of top holding company, which step we envisaged to happen on the basis of effectively net asset value."

Do you see that?

19 A. I do see that.

 $\begin{array}{lll} 20 & Q. & \hbox{Could you turn, please, to page 15 of exhibit R-61,} \\ 21 & \hbox{which is the one we've been looking at } \{R/61/15\}. & \hbox{This} \\ 22 & \hbox{is where the NPS is assessing impact on stock prices of} \\ 23 & \hbox{various re-organisation scenarios for the Samsung Group.} \\ \end{array}$ 

24 A. Mm-hm. Yes.

 $25\,$   $\,$  Q. Scenario 2 involves the conversion of the Samsung Group

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into a holding company structure and it contains comment section on the right of the table.

The first sentence says:

"In the event of a split of Samsung C&T's shares in Samsung Electronics, the 30–40% discount on the value of Samsung Electronics which is currently given to it is expected to disappear."

8 So that's the ROK writing about addressing Samsung 9 Electronics' discount --

MR TURNER: Excuse me, sir. It is not the ROK writing aboutanything at all .

12 MS SNODGRASS: Apologies. It's the NPS writing about it.

On our submission it is the ROK. I appreciate that the

14 ROK takes a different position

But that is the NPS writing about addressing Samsung
Electronics' discount in 2014; right?

17~ A. If you can understand the rest of that box --

Q. I'm not asking you about the rest of that box. I'masking you about the first sentence.

A. Well, I can't help noticing the rest of that box, and I represent to the tribunal that the rest of that box is a complete mess.

But if you are asking me to note that the first sentence says that the discount will disappear in that scenario, I can't disagree. That is exactly what the

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first sentence says.

Q. So I'm asking: would you accept on this basis that the
 NPS considered that there were realistic prospects for

4 reforming the Samsung Group and the Chaebols' convoluted

5 share structure that would have reduced the discount and 6 released additional value?

 $7\,$  A. Well, given their completely incoherent remainder of the

8 box, I'm not sure what to conclude, but based on the 9 first sentence, that's of course what one would 10 conclude.

11 Q. So I'm turning now I think to the last topic I wanted to 12 cover with you. And I just wanted to make sure

13 I understand your position concerning the counterfactual 14 scenario.

First I wanted to ask about your correction to paragraph 102 of your second report which was highlighted on slide 3 of your presentation, sorry.

18 A. Yes.

 $\begin{array}{lll} 19 & \text{Q. I guess my question is an open one.} & \text{What is the} \\ 20 & \text{significance of the changes you have made to} \end{array}$ 

21 paragraph 102?

22 A. Thank you. I think the question of counterfactual

 $23\,$  here -- as you've kindly given me an open question I'll

24 take the opportunity to give an open-ended answer.

25 I think the question of the counterfactual here has

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entered in a slightly odd way because Mr Boulton maintains that the valuation date is 16 July, which I believe I was informed was a Thursday. And in his first report there is no mention of any counterfactual.

In his second report the counterfactual appears and mysteriously it seems to apply on the Thursday, even though the bad act which we're supposed to remove on the Thursday, I don't actually see how that could have affected stock prices on the Thursday, but perhaps people who are more experienced than me in these matters can formulate a view on that. And maybe can make sense of that.

Therefore, the whole question of the counterfactual is sort of slipped in on the second round.

Nevertheless, I know what a counterfactual is and in my second report I think there was a little bit of a tension between wanting to value on the Thursday when I couldn't see how the counterfactual could be any different because the bad act having been removed -- sorry, alleged bad act, but as I'm a damages analyst, I tend to just assume liability a lot of the time.

In the counterfactual, the alleged bad act having been removed, I couldn't quite get my head around the fact that that was supposed to nevertheless influence the valuation on the Thursday, even though I don't see

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how it could have had an impact until later on.

So, still , my view of the counterfactual is clear. In that paragraph of my second report I note that in the counterfactual there might perhaps have been alternative outcomes, and not just in the presentation I gave this morning, I highlighted the yellow box at the bottom right—hand corner which is rejection, and mostly today we've been talking about rejection.

I highlighted that in the counterfactual perhaps other things could have happened which did not lead to rejection

Given that the counterfactual involves the complex interplay between the actions of Korea which are complained of in this case, and the actions of the Samsung Group which are not the basis of the complaint, well given that, I think it's useful to highlight to the tribunal, and for the reasons that I say in my second report, following that paragraph, that one might also wish to consider — the tribunal might also wish to consider alternative counterfactuals.

But the outcome in those alternative counterfactuals, the cases where the merger would have gone ahead anywhere, are pretty clear. There's no damages. So really the argument has to be, and the area where we disagree, I disagree with Mr Boulton, relates

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to the counterfactual of when the merger was rejected;would have been rejected.

Q. I think I was asking a narrower question. I was trying
 to understand the significance of having changed the
 word "because", "[comma] because", to the word
 "furthermore"?

7 A. Because --

8 Q. I was wondering whether I was right to understand that 9 in the original formulation of paragraph 102, there was 10 a connection, a logical connection between the first

statement and the second statement, and you are meaning to convey some different meaning or relationship between

those statements in the revised paragraph 102?

14 A. I'm going to look at my corrections --

15~ Q. So have you changed your view or is it a --

16 A. No, I haven't changed my view. It is a clarification 17 because I thought that paragraph was not well worded.

18 If you could -- may we look at my slide on the screen? Is that something we can get? Or perhaps I'll 20 find it on my desk.

21 MR TURNER: Sir, I'm assuming you've all got a copy of --

THE PRESIDENT: We have a copy. Page 3 of your presentation.

24 A. I haven't got it, I'm afraid. Or I do, but who knows

where. They aren't stapled and so they're all over the

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1 place.

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TRIBUNAL SECRETARY: Mr Chairman, we have a clean copy which
 we could share.

4 MR TURNER: I will want that back at some point.

A. You will be welcome to it, sir. I'll autograph it foryou if you like.

Okay. So your question is does that change the meaning, did I change my mind. Okay, answer: I didn't change my mind, but I thought it was badly drafted because the way it's drafted originally seems to say that the whole point I'm making is that the merger might not have been rejected in the counterfactual, and actually that's a small part of what I'm saying because, as we saw today, the real area of disagreement between me and Mr Boulton is what would happen in the event of a rejection, what would have happened in the event of a rejection.

So I think it is badly drafted in the original.

19 I think the new version is clear. And certainly in the20 context of what I said today.

21 MS SNODGRASS: Thank you for that clarification.

So you identify the real area of disagreement between you and Mr Boulton as what would happen in the event of a rejection --

25 A. Well, unless one wants to take his damages methodology

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- in a logical fashion as of 16 July, and say that we don't even need to look at a counterfactual, we just look at market price.
- 4 Q. I hadn't actually finished putting the question.
- 5 A. I'm sorry.
- 6 Q. You identify the real area of disagreement between you 7 and Mr Boulton as what would happen in the event of 8 a rejection, but I wrote down earlier that you said, 9 "I don't like to say for sure what I think was going to
- 9 "I don't like to say for sure what I think was going to 1.0 happen"?
- 11 A. Correct.

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- Q. So your position is a position of not having an opinionabout what was going to happen in the counterfactual?
- A. My opinion is that anybody who confidently states that stock prices are going to be any particular value tomorrow is not being realistic at all . Anybody who says, I know enough about what's going on with the discount to tell you confidently what it will do tomorrow or in a counterfactual, is simply not being at all realistic .

My position, however, is that I can confidently say I don't think, on balance of probabilities and weighing all the different outcomes that could have happened, I think I have made it clear that I don't think it would have changed very much on balance.

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- Q. So you don't have an opinion or you do have an opinion?
- A. I have an opinion on what would have happened, on average, weighting all the possible outcomes. I have an opinion on that.

If you ask me to say: give me a number for the stock price at the time immediately following — you know: in the counterfactual, give me a number, I want a number, I have to say anybody who gives you a number is not being realistic, and I'm putting that politely. Anybody who gives you a single number with a high degree of confidence has no idea how stock prices behave.

Q. Well, to put the point politely, Professor, you do appreciate that giving me a number or giving the tribunal a number really is the central damages question in the case, because of course Claimant says we have shares, they have shares that would have traded at a higher price if the merger was rejected. They say the discount would have reduced if the merger was rejected. And the central quantum question in the case therefore is by how much would that discount have reduced? By how much would that price have increased? And so giving the tribunal a number really is the question —

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- 23 A. Right.
- 24 Q. that has to be answered.
- A. Let me give the tribunal a number.

Method 1. Produce a valuation on 16 July, the valuation date. Method 1 says take the stock price. If the tribunal thinks the stock price was out because of manipulation, method 1 says adjust the stock price, if it's the watch that is a few minutes slow.

Method 1 says if the tribunal thinks that the watch was smashed, the stock price had no useful validity, which I think is extreme, but if the tribunal takes that view, go to the NAV, apply a typical and realistic and plausible market discount, and that will give you a number not 100 miles away from the stock price anyway. That's method 1.

Method 2, second round of reports. Construct a counterfactual. I say in the counterfactual the stock price on average, considering the balance of probabilities , would not have changed very much. It might have gone up, it might have gone down, because that's what stock prices do. I can even quantify you the -- I could even make an attempt to quantify the standard deviation of such a prediction, but I don't think that would be what I'm being asked to do here.

Am I confident that my method 2 prediction, not very different from the stock price on the 16th, am I confident that that's a reasonable prediction, considering the range of possible outcomes? Yes.

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1 Would I say it's identically zero difference from
2 the stock price on the 16th? No. But what I can say
3 with confidence is that the stock price in the
4 counterfactual, considering the range of possible
5 outcomes and their probabilities, in my opinion, would
6 not have been very different from what it actually was
7 on the 16th.

- 8 Q. But did you perform any of that analysis in any of your 9 reports?
- 10 A. Well, I believe that both my reports, my presentation
  11 this morning and the conversation we have had today
  12 support that analysis. And we can go through it if you
  13 like, and I'm willing to take as long as you would like,
  14 but I hope that the conversation we've had today would
  15 be useful to the tribunal even if we don't do that.

MS SNODGRASS: I have no further questions.

17 THE PRESIDENT: Thank you very much. Redirect?

18 MR TURNER: Yes, a few questions, sir.

19 Re-examination by MR TURNER

20 MR TURNER: I'm going to move my learned friend's enormous 21 ring—binder, lever arch file .

Professor Dow, at the very beginning of your cross—examination you talked to Ms Snodgrass about analysts and you said that they were sell side analysts and you gave an analogy of a Swiss watch shop.

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1		Can you explain to the tribunal what a sell side
2		analyst is?
3	A.	Investment banks —— brokers, really. Brokers employ
4		people to be analysts. They put out recommendations to
5		investors. They attend briefings from the company. And
6		in these briefings the CFO or the CEO will present
7		financial results and will talk about future plans, and
8		the analysts can ask questions. And then they write
9		reports presenting their analysis.
L O		These reports are very detailed. They include,
L1		typically they include net asset value or sum of the
L2		parts type calculations, but they go beyond that. They
L3		would do detailed multiples analysis. They would do
L4		discounted cash flow analysis . They would actually
L5		produce consensus cash flow estimates for companies for
L6		the next few years.
L7		So that's very helpful, but at the end of the day,
L8		the analysts are subject to pressure from the companies
L9		they cover, and $\boldsymbol{I}$ wish $\boldsymbol{I}$ had a hot dinner for every time
20		one of my students has come to me and said, you know,
21		$I^{\prime}m$ doing your course because $I$ used to be an analyst
22		and I just couldn't take it any longer because I was fed
23		up with my boss chewing me out because my boss had just
24		been shouted at on the phone for 45 minutes by the CEO
25		of this company that you'd told the market was a sell.
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So analysts are obviously reluctant to -- I don't want to put it that way, but analysts' forecasts tend to be somewhat biased upwards, and that is a documented fact that I present in my report.

Let me see if it's the first or second report.

I will find it difficult to find that, I think, but let me look at the figures, and that might be a guide. (Pause).

I'm just going to take one minute to see if I can find the Figure in question because there is a Figure where I show the analysts' reports, compare them to the share price, and give a footnote to the research, the documents, that analysts' reports are generally biased in an upward direction.

Well, I cannot find it . But perhaps if I've got the list of references at the end of my report, I might find it there.

(Pause).

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19 MR TURNER: We suggest you might be thinking of footnote 138 20 of your first report on page 61.  $\{G1/1/65\}$ 

A. That's a useful suggestion since I was looking through
 my second report. And that is indeed the footnote which
 is useful in that context.

So on page 61 we see the target price given by the analysts. It's always above the actual price. Page 61

1 of my first report.

(Pause).

On page 61 I show a graph of the actual stock price versus the target price. That's the analysts' target price.

I say that:

" ... quite typical for many stocks. It has been documented that stock analysts tend to give optimistic views of the stocks they cover. This pattern has been documented in the US for some of the largest companies in the world [and the small ones too], as well as in Korea."

Footnote 138, I give a reference to three papers -- two papers which demonstrate that, including the Hong and Kubik paper is very detailed and comprehensive. And the second paper is specific to Korea.

 $\begin{array}{lll} 17 & Q. & \text{Thank you very much.} & \text{Can I ask you to turn to your} \\ 18 & & \text{second report at page } 10. & \{G3/1/15\}. & \text{You were taken to} \\ 19 & & \text{footnote } 39 \text{ by my learned friend earlier today.} & \text{Do you} \\ 20 & & \text{remember those discussions?} \end{array}$ 

21 A. Honestly?

Q. Okay, well, let me — it's been a very long day,
 Professor Dow. Let me remind you.

24 This footnote says:

25 "While I am aware that a recent indictment against

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alleges manipulation by the Samsung Group of the SC&T share price, I understand from counsel that the manipulation on which the indicted charges are based allegedly occurred after the Merger Announcement ..."

Do you remember, I ask with trepidation, but do you remember a discussion with my learned friend
Ms Snodgrass about an allegation of the manipulation of the Cheil share price in relation to Biogen?

9 A. Yes, I do.

Q. And you said in the light of that discussion that you
 stood corrected in relation to this footnote; do you
 remember that? Vaguely?

13 A. Vaguely, yes. Rather vague actually.

Q. Do you see a mention of the alleged manipulation of theCheil share price in this footnote?

16 A. I do not.

17 Q. And can you turn to paragraph 109 of the same report. 18 It's on page 46  $\{G3/1/51\}$ .

19 Is this where you dealt with the Biogen issue?

20 A. Yes

21 Q. You were asked some questions by my learned friend about 22 hindsight and you talked about how hindsight might show 23 that -- I think the phrase you used was that the market

price was wrong. Do you remember that discussion?

25 A. Somewhat.

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1	Q.	Can you tell the tribunal how hindsight might affect the	1	MR TURNER: then should they be looked at together?	
2		accuracy of the market price at which a share was	2	Do you remember that discussion you had with the	
3		bought?	3	learned arbitrator Mr Garibaldi?	
4	Α.	Well, I'm afraid I don't remember enough about the	4	A. So I do. So shall I speak to that question, sir?	
5		conversation to situate my answer in the context of that	5	Q. Yes, please.	
6		conversation.	6	A. Well, so I distinguished two different things.	
7		However, with hindsight one can always say that	7	Tunneling and price manipulation. And I said price	
8		a decision was a good one or a bad one and maybe one can	8	manipulation within the time window that I identified,	
9		always say that the outcome that happened could have	9	namely beginning of 2015 up until the merger	
10		been foreseen.	10	announcement when the ratio was set, price manipulation	
11		So an analysis with hindsight is very different from	11	within such a window, if it happened, can give rise to	
12		an analysis based on the information available at the	12	damages and should be offset or accounted for by an	
13		time of a trading decision.	13	adjustment to the valuation that results from the share	
14		I don't know if that answers your question, sir.	14	price.	
15	Q.		15	Now, Mr Garibaldi has asked $$ but I also said	
16	٩.	answer — how hindsight affected the accuracy of the	16	tunneling is not price manipulation. I mean, Samsung	
17		market price at the moment that you bought the shares.	17	company has, shall we say, horrible corporate governance	
18	Δ	If I buy some shares at a certain price on a certain	18	for the sake of argument, and I'm not using the right	
19	,	theory, I suppose hindsight could help me to confirm or	19	words, but I think everybody knows what I mean. Samsur	nσ
20		reject that theory. I can't say any more than that.	20	has problematic corporate governance and that can give	'6
21	0	Very good.	21	rise to tunneling or other things that reduce the value	
22	۷.	There were questions both from my learned friend	22	of companies in the Samsung Group.	
23		Ms Snodgrass and from Mr Garibaldi about the difference	23	If that's part of the same —— so the question then	
24		that you drew in your evidence—in—chief, for want of	24	is, if the same person, the same entity, is perpetrating	
25		a better word, your presentation, between tunneling and	25	these two different actions, the tunneling action and	
		209	23		
		209		211	
1		price manipulation.	1	the manipulation action, should they be taken in the	
2		Now, this is where my having given you my copy may	2	round? Well, I think, unless I misunderstood the	
3		leave me at a disadvantage, but I believe it was on	3	question, sir, my answer would have to be, well, I do	
4		slide 36, but my note may be unreliable, and if it is,	4	maintain my position that they are separate things, and	
5		I'm sure you'll find it in the copy that I gave you.	5	that the damages calculation should require removal of	
6	Α.	Tunneling is not price manipulation $$	6	the manipulation and should make an allowance for that,	
7	Q.	From memory ——	7	but the tunneling was never going to give rise to	
8	A.	— was the title of slide 36.	8	damages, and therefore should not be removed.	
9	Q.	<ul> <li>that sounds right. So I had got the right reference,</li> </ul>	9	I don't know if that is a better answer to your	
10		I'm relieved.	10	question, sir, or to you, Mr Turner.	
11	Α.	If you're not going to use the rest of my presentation,	11	MR TURNER: I cannot answer that question either on my	
12		I can give you back your copy.	12	behalf or on behalf of Mr Garibaldi. It is your answer.	
13	Q.	It's fine. If that reference is right, then I have	13	A. It is my answer.	
14		confidence in my later reference.	14	Q. And I will go on to my next question, unless	
15		Have you got slide 36 in front of you?	15	Mr Garibaldi has a follow-up question from that?	
16	Α.	I have, yes.	16	MR GARIBALDI: No, my question was answered the first time	e,
17	Q.	Do you remember the questions, in particular the	17	thank you.	
18		question from Mr Garibaldi, which was: where there was	18	A. Thank you.	

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those actions are part of a programme or plan  $\dots$ 210

MR GARIBALDI: Not quite. My question was: when all of

what you call tunneling and also what you call price

or the events in the round.

sir, but if I'm not --

manipulation, whether you should look at the transaction

I think I'm representing your question accurately,

have it on the screen for reference, but I would like you to look at the chart  $\{G3/1/24\}$ , where you were talking to the Elliott bars, for want of a better description, the fifth and sixth bars in your chart. 212

MR TURNER: Professor Dow, just quite recently you were

discussing with my learned friend Ms Snodgrass

paragraph 46 of your second report.  ${G3/1/23}$ . We can

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- 1 A. Yes, the trading plans.
- Q. The trading plans. Can you tell the tribunal whether
- 3 the discounts that you represent in that chart are
- 4 before tax or after tax?
- 5 A. They must be exclusive of tax because they are smaller than I know them to be once they include tax. 6
- 7 Q. If you can pick up my copy of your presentation again
- and turn to slide 34, do you have that? 8
- 9 A. I have it.
- 10 Q. Is that what you corrected with the light green addition 11 to the dark green bars on that slide?
- 12 A. Yes, that is what I corrected with those light green
- 13 sections indicated on my slide 34. That is an
- 14 additional allowance for tax and therefore I ask the
- 15 tribunal to replace those two bars in Figure 7 -- those
- 16 are the third and fourth bars in Figure 7 -- with the
- 17 numbers on slide 34

- 18 And just to clarify, the reason why I think it needs
- 19 to be done with the tax added on, as I have shown in
- 2.0 slide 34, is that, as Mr Boulton stated yesterday,
- everybody except Elliott does it on that basis. 22 Analysts normally apply discounts to pre-tax sum of the
- 2.3 parts; whereas Elliott had done it to post-tax sum of
- 2.4 the parts, and therefore my Figure 7 is deficient and
- the situation is better described by my slide 34.
  - 213
- 1 Q. If you stay on that slide, you remember being taken to
- 2 an NPS document from 2014 that my learned friend
- 3 Ms Snodgrass showed you, where there was some analysis
- of the effect of restructuring of Chaebol groups; do you
- 5 remember that?
- 6 A. I'm afraid, sir, I have seen a number of documents this
- 7 afternoon.
- Q. I had better get my enormous file back then. 8
- 9 You were taken -- I haven't even got a note of it 10 now. It's tab 26. R-61.
- 11 A. Oh, I've got it in front of me open at that page.
- 12 Q. Well, I was going to ask you to turn to  $\{R/61/5\}.$
- 13 A Yes
- 14 Q. You can see that there is a discussion of SK Group. Do
- 15 you remember being taken to that discussion by my 16
  - learned friend Ms Snodgrass?
- 17
- 18 Q. Can you look at your slide 34 and tell the tribunal at
- 19 what discount SK Group trades to its NAV?
- 2.0 A. We see in slide 34 that SK Group trades at a 35%
- 2.1 discount to its NAV.
- 2.2 Q. Can I ask the operator to bring up Professor Bae's
- report, which is  $\{G5/1/67\},$  at page about 67. 23
- 2.4 Not bad. Let's go up one  $\{G5/1/68\}$ . No. Down two.

214

25 Can somebody else me here? It's got SK in it. Down

- a few more.  $\{G5/1/63\}$ . No.
- 2 A. The one that has SK in it?
- 3 Q. I think we're going the wrong way. 66, I'm told
- 4  $\{G5/1/66\}$ . 66 in the Opus numbering. Et voilà.
- 5 Is that your understanding of the SK Group
- structure? 6

9

- 7 A. Yes. it is.
- Q. And if you can go to slide 67, or page 67, I'm sorry, of 8
  - this  $\{G5/1/67\}$ , is this your understanding of the LG
- 10 Group ownership structure?
- 11 A. Yes, that is my understanding.
- 12 Q. And on your slide 34 can you tell the tribunal at what 13
  - discount LG Corporation trades?
- 14 A. LG Corporation trades at 49% discount to net asset 15
- 16 Q. Is it your evidence that the SK and LG corporate
- 17 structures that we have just looked at are more akin to
- 18 a standard holding company structure?
- 19 A. Yes, that is my evidence. They are cleaner ownership
- 20
- 2.1 Q. Now, Ms Snodgrass also asked you a question about your
- opinion that the family would have the same control 2.2
- 2.3 of SC&T after the merger -- sorry, after the merger had
- 2.4 hypothetically been rejected as it had before.
- 25 A. I remember that line of questioning.
- ${\sf Q}.\$  In your opinion -- how can you justify that opinion in 1
- 2 the hypothesis put by Ms Snodgrass, that the merger had
  - been rejected?
- A. I'm sorry, could you please repeat the question?
- 5 Q. Yes. Can you explain to the tribunal  $\,--\,$
- 6 A. Yes.

3

- 7 Q. -- why you consider that there would have been the same
- 8 degree of control in the event that the merger had been
- 9 rejected as in the actual event that the merger was
- 10 approved?
- 11 A. Well, I believe that the Samsung Group would have had -
- 12 or the family, I think your question was -- the  $\,$
- ald have had the -- I mean, the shareholding 13
- would have all been similar. The shareholding levels 14
- 15 would have all been similar. So nothing much would have
- 16 changed in the shareholder register. So nothing much
- 17 would have changed in terms of control.
- 18 Q. In your opinion -- I think you may have answered this
- 19 question just now, but I haven't got a clear note of
- 20 it -- in your opinion what would have happened to the
- 21 discount to NAV of SC&T's market price in that 2.2 hypothesis?
- 23 Of the counterfactual?
- 24 Q. Of Mr Boulton's counterfactual.
- 2.5 A. I believe I finished my testimony by saying to the

1	tribunal that in my opinion it would not have changed	1	and I
2	much or would not have changed at all. But let's say	2	To some extent I'll explain why my presentation
3	would not have changed much.	3	diverges from my reports in a few places or in some
4	MR TURNER: Thank you very much, Professor Dow. I have no	4	places.
5	more questions.	5	First, there are the swaps. I didn't know about the
6	Questions from THE TRIBUNAL	6	swaps in quite the same way as I do now. I didn't see
7	MR GARIBALDI: Professor Dow, there is a lot to digest in	7	that Elliott had a view that this was all part and
8	your two reports and on the testimony you have given	8	parcel of the same plan. I totally understand that from
9	today. This is something that the tribunal will have to	9	a legal point of view the swaps may or may not be
10	do particularly because it seems to me that what you	10	relevant. That's not for me to say.
11	have said to has gone beyond your report in some	11	Now, you ask me: what about situations where
12	respects. I will not characterise as changes or as	12	I appear to concede $$ indeed I do concede $$ that
13	expansions, but there have been differences between what	13	damages could be due. And what are they, how much
14	you said in writing and what you said today.	14	damages, what is going on, could I explain it to you.
15	So that raises issues of trying to organise our	15	MR GARIBALDI: In summary.
16	minds to attempt the task of understanding your opinion.	16	A. In summary. Simply put $$
17	It seems to me from what I have read and heard that,	17	MR GARIBALDI: I say in summary because you don't quantify
18	to go to the most basic structure, you have a set of	18	them. Your presentation, both the written one and the
19	legal theories, or legal $$ I'm sorry, economic theories	19	oral one, as far as this potential damages that we are
20	or economic conceptions, and then you have a set $$	20	talking about, is silent on quantification.
21	a universe of facts and assumptions. Some are	21	A. Excellent.
22	established facts and some are assumptions. And you	22	MR GARIBALDI: So it is conceptual, and I would like you to
23	apply the economic theories to those facts and come to	23	summarise conceptually what it is.
24	a conclusion or to a series of conclusions.	24	A. Yes, okay.
25	The main conclusion is that there is no damages.	25	So the key slides from my presentation, I think, and
	217		219
1	But then you have added a number of subsidiary	1	there are probably more than two, but I think they're
2	conclusions which suggest the possibility that in some	2	slides 22 and 35. And slide 22, I'll tell you, just
3	cases there might be damages?	3	shows a picture of a car. You don't need to look at it.
4	A. Absolutely.	4	But you may recall $$ and that's all it shows. You may
5	MR GARIBALDI: Now, the first observation that I would like	5	recall that I said that if somebody took a Tesla share
6	to make, and it's a general one, is I have talked about	6	from Mr Turner, if Ms Tan took his one share in Tesla,
7	a universe of facts and assumptions. It is not clear to	7	how would I look at damages.
8	me at this point what that universe of facts and	8	Okay. And the second one is 35, that all of this
9	assumptions consists of. I'm not sure what is it that	9	talk about net asset value in the reports, where
10	you are taking as facts, what you are taking as	10	I defend the price against looking at net asset value,
11	assumptions.	11	is a bit of a red herring, because common sense tells me
12	It would be helpful $$ I say that to both parties $$	12	net asset value minus a reasonable discount is not very
13	if that universe is made explicit in argument at some	13	far from the price anyway.
14	point.	14	Okay.
15	Now, here comes my question.	15	Now, what it boils down to, sir, and to answer your
16	I understand, particularly from what you have said	16	question about how to reach small damages and why
17	today, that there are circumstances or hypothetical	17	I don't do that, it's not uncommon in arbitrations that
18	circumstances that might lead you to the conclusion that	18	the but for world is something the tribunal needs to
19	the damages were not zero, but rather materially more	19	specify.
20	than zero.	20	So what I have given as a roadmap to the tribunal is

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A. Thank you, sir. I'm sorry that I have not been clear,

changed, should have changed or should be established,

so that in your opinion the damages would materially be

Could you summarise what circumstances should have

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If the tribunal thinks that the market price was

a little bit off because of manipulation or a moderate

amount off because of manipulation, let the tribunal

one avenue for awarding damages would be if the

tribunal  $\,--\,$  it's my slow watch example.

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more than zero?

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make an attempt to quantify that, and make an adjustment to the market price. Then let the tribunal apply standard methodology proposed by Mr Boulton, which is value minus price paid, where value is the market price subject to such a small adjustment or a moderate adjustment. I hope that's clear.

Now, if for some reason the tribunal doesn't like the market price at all, it's my broken watch example, the tribunal could operate instead in terms of net asset value. But I don't like that particularly because I actually think a common sense discount on to net asset value would take you pretty well in the region of the market price anyway, and so why not rely on an adjustment to the market price.

But if you do want to start with net asset value, go ahead, look at my report, and make your own mind up about what is a suitable net asset value discount.

I think it would be a lot bigger than  $\ensuremath{\mathsf{Mr}}$  Boulton says it is.

What kind of adjustments would the tribunal need to make if it feels that manipulation gave rise to damages? I think that's really what could give rise to damages in my framework.

Here the tribunal has heard a lot of evidence, the last week, about attempted manipulation. I hadn't heard

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all that evidence. I also don't know whether the tribunal will find that this attempted manipulation should be considered as documented and reach a conclusion accordingly. I don't know the tribunal will find that some things should be included as an adjustment and others not. I don't know that.

I note that some of the manipulations that I have seen -- I'm trying to keep it short -- should be excluded in my view because they happen after May 26, before 2015, or they were tunneling.

I note also that there was the put back option where the court looked at the share price in 2014, December, I believe, and said: let's just work with that. I note that for the purpose of the tribunal. Possibly an avenue that the tribunal could take. I don't want to say that's a good avenue, but that would be an avenue.

Of the manipulations that I have seen, which can easily be quantified, much was made of the Qatar contract in earlier submissions, but that isn't significant at all, as I hope you agree, but it really couldn't account for more than 1 or 2%.

If the tribunal thinks other manipulations were of a similar order of magnitude, perhaps that would be a guide to the decision.

I don't know if I have helped you enough, sir, or 222

1 been clear enough.

2 MR GARIBALDI: Yes. No, I appreciate that, and I think you 3 have restated pretty much what you said before.

There is one question which has been presented to the tribunal which is not related to this point that we are talking about. That is that the decision of the NPS to vote in favour of the merger was leaked immediately after it was taken, and that was several days —— I don't have the dates in my mind —— before the actual extraordinary shareholders meeting where the merger was approved.

I would like to have your opinion about whether it would be appropriate or not appropriate to take as the valuation date the day before the vote of the NPS, which is therefore before the market took cognisance of their results to that vote.

17 A. Sir, if I'm not mistaken, the valuation date -- I'm not quite sure what the question is.

19 MR GARIBALDI: The question is --

20 A. I thought the valuation date was the date before the vote of the NPS; is that -- oh, no, the vote of the NPS,

22 I understand. Not the shareholders' vote.

23~ MR GARIBALDI: That's right. There is a difference of -- 24~ I don't have the dates in my mind, but from an economic

standpoint, would it be a good idea or a bad idea to

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1 move the valuation date to the date before the vote of

2 the NPS?

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3 A. Given that it was leaked?

4 MR GARIBALDI: Given that it was leaked.

5 A. That's an interesting idea. It seems consistent with 6 but less extreme than what the court decided, or the 7 assessors decided in the case of the put back option, to 8 move back to December.

I can't say on economic grounds that it would be a bad thing. So I don't have any particular objection to that, and I say that in the situation where I have no idea whether the price on the date you recommend was higher or lower than the price on the agreed valuation date.

15 MR GARIBALDI: All right. Thank you very much.

16 MR THOMAS: Just one area that I would like to ask you17 about.

Could you take a look at your second expert report and it's page 14, Figure 5. I think that Mr Smith was cross—examined on this earlier in the week, but my recollection is beginning to get a little overloaded {G3/1/19}.

23 I just wanted you, Professor Dow, to relate this 24 apparent, what you say is an error --

25 A. Yes.

1	MR THOMAS: —— in the modelling to the valuations that took	1 2	very much when this piece was suddenly listed at a high
2	place after this correction that you say was made.	3	price? Presumably it didn't change very much because
	A. Okay. So let me explain the issue and then you will	4	the market had already done its own maths and was
4 5	tell me if I have answered your question, sir.	5	already in the marketplace valuing the SDS component at a much higher price than the formulaic number that was
	So Elliott, as everybody else does, when doing the	6	
6 7	net asset value, values the listed companies at their	7	in the Elliott spreadsheet.
	market price and the unlisted components using another	8	I mean, after all, the market was going to have to
8	method such as multiples.	8	do that maths anyway after the flotation date. So they
9	Now, here we had a component that was unlisted and		would have been doing it carefully in the run—up to the
10	became listed. When it became listed its market price	10	flotation, and that means it wasn't really news to the
11	suddenly became available and was obviously a better	11	market for SDS — sorry, for SCT. It wasn't really news
12	value than the multiples value because we tend to think	12	that this previously lowly valued component was now
13	that market prices are better, more accurate, than	13	valued more because the market had been valuing it the
14	valuations based on multiples.	14	way it wanted to all along.
15	So Elliott revised its spreadsheet to replace the	15	I don't know if that's a good answer to your
16	old value with the market price, and there was an	16	question. That's the best I can do at this late hour.
17	intermediate period on that Figure. You can see there's	17	But it's a spurious change in the net asset value that
18	a flat line just before it jumps up on Figure 5.	18	results simply from an apples—to—oranges comparison,
19	There's an intermediate period where Elliott used the	19	because the thing that was being valued, shall we say
20	price that was discussed in the IPO documentation.	20	wrongly before, is now being valued more accurately.
21	Okay.	21	MR THOMAS: I had that point before, but I'm not sure if
22	Like a lot of companies, when it was listed the	22	I advanced very much further. But it's been a long day
23	price was quite high, shall we say, it was higher than	23	and we will leave it at that. Thank you.
24	the price that accompanied the documentation. So that	24	THE PRESIDENT: I hesitate to make it a bit longer.
25	flat portion, it jumped up a lot from that. And it was	25	A. Of course, go ahead, sir.
	225		227
1	also higher than EALP's analysis had suggested.	1	THE PRESIDENT: Staying on that Figure at pages 14 and 15,
2	So it was a better price.	2	the corrected EALP analysis that you are doing here on
3	Now, that meant $$ and let me get this right $$	3	the basis of the multiplier 2.5 going backwards from the
4	Elliott 's $$ so SC&T's price didn't move in all this.	4	correction date of November 2014 is hypothetical because
5	SC&T's price didn't react particularly . It might have	5	we don't know ——
6	moved a little bit. It didn't react particularly to	6	A. Yes. It's a rough adjustment.
7	this.	7	THE PRESIDENT: It's a rough estimate.
8	But the net asset value jumped.	8	A. Yes. $\{G3/1/19-20\}$ .
9	(Pause).	9	I mean, it's not an error for Elliott to have failed
10	Let me make sure I've got this the right way round.	10	to know the listing price in advance, because nobody
11	THE PRESIDENT: Next page may help, Figure 6. {G3/1/20}.	11	knew that. It's an error in interpreting the jump $$
12	A. So the net asset value discount —— thank you, sir.	12	sorry, the fall in the net asset value to have
13	The net asset value discount narrowed according to	13	interpreted that as being a real $$ a significant
14	the way they were calculating it, but not really. If we	14	change.
15	allow for the fact that it was just a revaluation, in	15	THE PRESIDENT: Yes, and the question whether how far before
16	other words it was an apples—to—oranges comparison, and	16	the November date it extends in the past is an estimate.
17	if we rebase it as an apples—to—apples comparison, then	17	A. Yes. Absolutely.
18	there isn't much change in the net asset value discount,	18	So what Elliott should have done ideally would be to
19	Figure 6.	19	look at its —— you know, the spreadsheet set off a red
20	So there was a spurious change in the net asset	20	light: wow, the discount has changed a lot. What
21	value that didn't necessarily correspond to a real	21	Elliott should have done is said: well, actually there's
22	economic change, just because of essentially a different	22	a reason for that. We're not valuing on an

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 ${\sf apples-to-apples}\ comparison.$ 

THE PRESIDENT: Okay. Maybe just before we finish, just to

make sure that we have understood your evidence on some

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method for calculating the net asset value applied.

Now, why didn't the SDS -- sorry, why didn't the

valuation of the company of SC&T, why didn't that change

1		of the key	/ points	correctly
2	Δ	Vac		

3 THE PRESIDENT: In a semi-strong efficient market the share

price reflects all the information in the market that is 4

available to the market? 5

A. Yes. 6

THE PRESIDENT: It doesn't reflect necessarily private 7

8 information that is not in the market?

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THE PRESIDENT: There may be some insider trading going on, 10 11 but given the volumes, it wouldn't have an impact on the

12 price?

13 A. Well, that's a very big question and --

THE PRESIDENT: I thought you said earlier that the way 14 15

a semi-strong market is defined is that it doesn't -- it 16 draws a line between publicly available information and 17

private information?

18 A. Absolutely. Absolutely. And as you said, if there was 19 insider trading, people trading with better information, 20

it wouldn't have had much influence on the price.

2.1 I just suppose that depends how many people had the

2.2 information and how big their trades were. 2.3 THE PRESIDENT: And the more there are individuals in the

2.4 market who have private information, the more likely it

25 is that it will become public very quickly?

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1 A Yes

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2 THE PRESIDENT: Okay. But that's the distinction you are 3 making in principle between public and private

A. Yes. That's absolutely right, and therefore in a market where there are a lot of traders, semi-strong efficiency is a pretty basic criterion . It just means that you -you know, it's like my Brazilian friends who used to make money by selling in the evening and buying back in the morning. That's a pretty basic failure of a market to predict price movements, if that's always or

systematically the case. So semi-strong efficiency is a very basic condition that a good market —— a liquid market, we would expect to follow

15 16 THE PRESIDENT: Would the information available in 17 a semi-strong efficient market also incorporate relative 18 information in the share price; not only information 19 about the assets of a particular company but also 2.0 information about its competitors, other companies in 21 the group --

2.2 A. It certainly would.

23 THE PRESIDENT: -- and their performance in the market?

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24 A. It would incorporate everything; everything that's

25 relevant.

THE PRESIDENT: The market wouldn't make a difference 1

between whether the information is correct or incorrect,

3 as long as it doesn't know whether it's correct or -- it

4 doesn't know that it's incorrect? It would incorporate 5 information that is incorrect in the price if it doesn't

know, if there is no collective understanding that the 6

7 information is not correct?

8 A. Okay. Simple answer: you are absolutely right. If the 9 market has the wrong information, then it incorporates

10 the wrong information.

11 THE PRESIDENT: But if the market learns later that the 12 information is actually incorrect, there would be an 13

There would be an adjustment. Only caveat I would make, 14 15

and I don't want to make complexities, is if the market

16 thought all along that it was quite likely that the

17 information was incorrect anyway, maybe that wouldn't 18 have a big effect on the price.

19 THE PRESIDENT: And the market would incorporate ——

20 a semi-strong efficient market would incorporate all the

21 information that is available to the market as a result

22 of any event, whether or not that event qualifies

2.3 legally as legal or illegal action?

2.4 Absolutely, yes. And of course it's not that uncommon

2.5 in the context of a merger or anything else for ...

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1 I mean, while there are regulations it's not that

2 uncommon for the company's management to be selling the 3

merger to the market, shall we say, by prioritising the favourable view in its communications. That's part of

5 the process. And the market of course knows that's the

6 case and makes a suitable adjustment.

7 So I guess the allegation must be in this case --8 you know, or the question for the tribunal is, you know,

9 to what extent potentially did things go beyond that.

10 THE PRESIDENT: So market manipulation, in very simple 11 terms, it means disclosure of information to the market

12 knowingly that is incorrect?

A. Absolutely. So -- absolutely. You know, if I have 13 a company that I own and I'm floating it on the stock 14

15 market and I just don't tell people that there's some

16 very bad news coming along soon, I'll be able to float it at a high price, which is the wrong price, and the 17

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price would be incorrect and that would be seriously

19 misleading price manipulation.

2.0 THE PRESIDENT: Okay. Very good. Thank you very much,

21 Professor.

2.2 A. Thank you, sir, and members of the tribunal.

THE PRESIDENT: That concludes your examination, Professor. 23

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Thank you very much for your time. It's been a long

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1	THE WITNESS: Thank you.	1	INDEX
2	THE PRESIDENT: Thank you.	2	PAGE
3	(The witness withdrew)	3	PROFESSOR JAMES DOW (called)1
4	Housekeeping	4	Presentation by PROFESSOR JAMES DOW2
5	THE PRESIDENT: For the parties, I don't think we are done	5	Cross-examination by MS SNODGRASS39
6	yet. I think it would be useful to revisit the	6	Re-examination by MR TURNER204
7	programme for Friday and firm it up.	7	Questions from THE TRIBUNAL217
8	It is the tribunal's ruling that both parties will	8	Housekeeping233
9	have two hours for the closing statements. I'm not sure	9	
10	whether you have had a chance to discuss between counsel	10	
11	when to start, when to break for lunch and so on.	11	
12	Mr Partasides?	12	
13	MR PARTASIDES: The quick answer is we have not yet, members	13	
14	of the tribunal. I suppose what would be useful for us	14	
15	as we think about how best to organise our day is to	15	
16	know whether the tribunal intends to make use of any	16	
17	part of the day after the oral submissions, for example	17	
18	by tribunal deliberations .	18	
19	If that is the case, then we may organise ourselves	19	
20	around that.	20	
21	If that isn't the case, then it may be $$ and this	21	
22	is a proposal I haven't discussed with our friends	22	
23	opposite $$ that we would begin at 10 am until midday,	23	
24	and then we would hear from the Respondent from 1 pm to	24	
25	3 pm.	25	
	233		235
1	But that really depends on whether the tribunal had		236
2	intended to make any use of the afternoon themselves.		
3	THE PRESIDENT: Probably whether or not we start at 9 or 10		
4	wouldn't make a difference. So I think we would be		
5	happy to start at 10, if the Respondent is.		
6	MR TURNER: That is fine by us. We hadn't discussed it but		
7	we had exactly the same thoughts.		
8	THE PRESIDENT: Okay. So we start at 10 until noon, the		
9	Claimant's opening. Then at $1\ \text{o'clock}$ , we have a lunch		
10	break. We start at $1$ , continue until $3$ , and then we can		
11	discuss any housekeeping issues such as post—hearing		
12	submissions, deadlines, length, font, and all the key $$		
13	MR PARTASIDES: Margin size, as well.		
14	THE PRESIDENT: It would be useful if you could discuss in		
15	the meantime and try and reach agreement on those		
16	issues .		
17	MR PARTASIDES: Very well.		
18	THE PRESIDENT: Okay. Anything else?		
19	MR PARTASIDES: Not for us, thank you.		
20	MR TURNER: Nor for us, thank you very much.		
21	THE PRESIDENT: Thank you. And we will meet again on		
22	Friday. Thank you very much.		
23	(5.55 pm)		
24	(The hearing adjourned until Friday, 26 November 2021		
25	at 10.00 am)		

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