Elliott Associates, L.P. v Republic of Korea

Day 7

November 23, 2021

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Tuesday, 23 November 2021
(10.00 am)
MR RICHARD BOULTON (called)
THE PRESIDENT: Good morning, all, and welcome to the seventh day of the hearing.
Anything that needs to be discussed in terms of housekeeping before we start?
MR PARTASIDES: No housekeeping on our side, thank you, Mr President.
MR TURNER: Nor from our side, sir.
THE PRESIDENT: Thank you very much.
Good morning, Mr Boulton.
THE WITNESS: Good morning, sir.
THE PRESIDENT: And welcome.
THE WITNESS: Thank you.
THE PRESIDENT: You know of course how this works, but we still need to go through the formalities, which are not only formalities, although they are made in accordance with certain formalities.
So as you know, as an expert witness, you will be required to express your opinion in accordance with your sincere belief.
THE WITNESS: Yes.
THE PRESIDENT: For that purpose, I would kindly ask you to make the declaration that you have there in front of you

for the record, please.
THE WITNESS: Of course. I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.
THE PRESIDENT: Thank you very much. I understand you will be making a presentation. So the floor is yours.
Presentation by MR RICHARD BOULTON
THE WITNESS: I will, sir. Thank you very much.
Good morning, all.
What I'm going to cover within my allotted time are eight topics set out on this contents page. If we skip through, the next slide is simply the section header. And then on the next slide, slide 4, I outline my qualifications and experience.
I won't dwell on this other than to make two points. First, I am a very experienced quantum expert and I think that may be relevant to some of the calculations and certainly some of the criticisms Professor Dow makes of my work; and secondly, I draw the attention of the tribunal to the fact that I'm a barrister, and I do that because I want to be absolutely clear that I do not intend to express any opinions on a matter of law, and if I do, I'm overtreading what I should be doing.
My history in fact is that I was 20 years an accountant before deciding to retrain as a barrister,

and I have continued to do work as an accountant. So I'm 40 years an accountant and 15 a barrister, if you like.
Next slide, please.
Section 2, I deal very succinctly, I hope, with a summary of my overall views and my assessment. So first of all I just set out the figures of my conclusion which is that Elliott suffered damages, including interest, of some $500–600 million.
The tribunal probably understands the reasoning behind why a loss arose, but in essence it's because the merger took place at a point in time when SCT was significantly undervalued in the market and simultaneously Cheil was overvalued in the market, and the tribunal has heard evidence on why that may have arisen, but it appears clear that a very significant contributor to that was that the market anticipated that a transaction like this would happen.
In other words, the market saw that there would be a transfer of value from SCT to Cheil, and the natural response to that is to depress the value of SCT because it's about to lose out in a transaction, and to increase the value of Cheil.
It may well be that market manipulations, to the extent they took place and are eventually established,

also contributed to the undervaluation of SCT and the overvaluation of Cheil.
When I come to look at damages, I'm applying what is the entirely normal framework, and it's a simple comparison in principle between what would have happened in the counterfactual and what actually happened.
In this case, that's as simple as saying: what would the value of the SCT shares that Elliott held have been worth if the merger hadn't gone through? Obviously my essential proposition is it seems to me they would have been worth more than they were in the market because of the market response to the merger being called off, and the comparison of what they would have been worth is what they were in fact worth in terms of what Elliott managed to sell those shares for.
If the merger would have taken place in any event, then I would conclude that Elliott's loss is nil, because there would not have been that impact on the but for price.
I do present my conclusions in a range, and that's because of course valuations have room for reasonable people to disagree, but there is a particular assumption to be made as to what sort of level of discount would have applied to SCT shares if the merger hadn't gone through, and in my view it's difficult to be precise on

that, and so I present my figures in a range.

Finally, I mention in the bottom bullet that trading gains and losses do not fall within my assessment of damages because they don't impact the basic assessment of what would the shares have been worth and what were they actually sold for.

So that, if you like, is the summary of my entire presentation. To put a little bit of colour on that, I start with a section on market prices.

My only point here is that although market prices are obviously forged between hundreds or thousands of investors on daily trading, and therefore very frequently provide relevant information as to value, one cannot rely on market prices in a context where information is being withheld or the market itself is being manipulated. And this, if you like, is a major point of diversion between Professor Dow and I because he continues to rely upon market prices as being the only answer to the question, and I believe that you have to do a fundamental assessment of value because there is sufficient evidence that the market prices here were affected, not just by market manipulation, but also by the very fact of the merger itself. And so when you're looking at the but for, what would the shares have been worth if the merger hadn't gone ahead, you get no

evidence from market prices because market prices don't reflect that.

I do think it's important to recognise that the allegations that are made about market manipulation appear to be very broad and very deep and extend over a significant period of time, and make it very difficult to rely upon market prices as being an absolute indicator of value.

Next section deals with why the loss arises and I have mentioned this in brief terms in my introduction slide, and I go through that a little bit more slowly in the next five slides.

First of all, as a result of merger rumours and market manipulation, as I have already told the tribunal, the share price of SCT was depressed. It started going down really from around the time of Cheil's listing in late 2014, and analysts, who are the black dots on this chart, consistently calculated that the target price for SCT should be higher than was observed in the market. And so analysts throughout this period continued to think that SCT was undervalued in the market.

Second slide, or next slide in this section, which is slide 11.

So what this means is that the day before the merger

announcement, which is what this slide shows, SCT has a significant discount from what I think its intrinsic value was and what the market value was. So my calculation of intrinsic value is the dark blue bar on the left and what it was worth in the market is the brighter blue bar and one can see there's a significant discount, it's somewhere around 40% or more, in SCT's value.

And on the other side of the coin or this transaction, when one looks at Cheil, my valuation of what Cheil was worth is very much lower than its market value.

So essentially one has a reasonably equal and certainly opposite discount and premium, and that reflects the fact of the expected transfer of value from SCT to Cheil. So Cheil shareholders are going to benefit, so their shares are worth more than the value of their assets at the time. SCT shareholders are going to suffer, and therefore in the market their shares are worth less than the intrinsic value of what they own.

Another way of looking at this is in terms of the value transfer it gives rise to. And what actually happens as at the merger date is that the merger under the statutory formula transfers value from the shareholders of SCT to the shareholders of Cheil. And

that's because what is ultimately allocated to the companies under the merger ratio is about 75% of the value to Cheil and about 25% of the value to SCT.

But if you did it on an intrinsic value basis, SCT shareholders should have owned more than 50% of the value of the ultimate company. And so that slice with the red arrow essentially transfers from the SCT shareholders to the Cheil shareholders under the statutory merger ratio.

I have some words on the next slide which essentially make the same point in word rather than visual terms, but what I show is that if you look at the statutory merger ratio, SCT has 25.9% ultimate shareholding in the combined company. If you'd done it on intrinsic value, or certainly my calculations of that, then SCT shareholders would have had 57.4% of the combined company, and that's an immediate transfer, and it's a permanent transfer.

Once that's happened, the SCT shareholders no longer own 100% of SCT. They're given the equivalent of 25% of the combined company, and that's a very substantial diminution of value. And you can't -- there's no market mechanism to make that good. So once the merger is approved, that transfer has happened.

Finally on this, I put some numbers to the scale of that transfer, and looking at the SCT shareholders as a whole, I calculate that somewhere between 8.6 and 9.6 trillion Won was transferred from the shareholders of SCT to the shareholders of Cheil, and when one then applies Elliott's 6.94% shareholding to those numbers, one says that what Elliott suffered in that value transfer was somewhere around 600 billion Won.

I'm sorry, I'm quite good with maths, but when you start dealing in trillions, I get a little slower to work out what I'm looking at.

Now, this is only a rationalisation. This is not my calculation of damages. But it's an explanation as to why damages are on the scale that they are, because this transfer affecting all of the SCT shareholders is a 9 trillion Won transfer.

My actual calculation of damages is more precise, and that's because it takes into account the actual sums that were received by Elliott when they sold the shares, rather than the immediate value transfer between the companies. But they are in the same order of magnitude, so this works for me as a good cross-check.

Next section, please, is section 5., simply a summary of how I assess damages in this case, and I have four slides on this topic.

The first slide sets out -- slide 16 -- my approach

and my instructions. My instructions reflect what I have described to the tribunal as being my comparison of the actual and the but for, because I have been asked to work out what the value was of Elliott's shareholdings on 16 July 2015, which is the day before the merger vote date.

I note here what I don't think should be in dispute, which is what intrinsic value is. Intrinsic value is a measure. It's an analytical measure of value which doesn't look just to something like market prices, but is attempting to make a judgment as to what the underlying value is of an asset.

And market prices can be an indicator of intrinsic value, but they can also depart, and they depart if there are rumours affecting value, market sentiment is affecting value, market manipulation is affecting value, or simply the market doesn't have full information.

Slide 2 of 4, which is slide 17.

How did I assess intrinsic value? I performed what's called a sum of the parts valuation.

Now, this is not an esoteric approach. This is a standard valuation approach to dealing with groups or diversified companies, and all that sum of the parts means is that you apply the appropriate valuation methodology to the different parts that make up the

business.

So where, as in this case, one has trading businesses, one typically values those using either discounted cash flow or market multiples. The tribunal will be very familiar with those approaches in valuation.

Where one has listed investments, one typically values them according to what their market price is. Where one has other assets that aren't listed, one may have to apply other approaches, which may include looking at book value in the accounts, although one really does that where there is no better information.

I think the tribunal has already seen that a number of market participants used a sum of the parts valuation approach. I have put a list in the third bullet of some of the market analysts who use this approach. I can't, sitting here, think of any market analysts who weren't using a sum of the parts valuation approach when they were calculating what they thought the target price of the shares should be.

I'll come back to the fourth bullet, but I'll just talk through the build-up.

So what this valuation chart shows is how I build up value. So SCT construction, in the dark blue, and then SCT trading business, in the light blue, are the two

main trading parts of SCT, and those I value on the basis of comparable companies in the Korean market.

And I mention that because there's been some talk about the Korean discount, and it's relevant to note that as I build up value, when I'm looking at comparables, I'm looking at companies that are, I think, certainly for the most part, and I think almost all of them, are Korean companies, and therefore to the extent there is a Korean discount, those comparables are affected by it as well, and therefore in my build-up of value I'm already taking account of that.

The same applies when you get to the listed investments in the yellow block, because I'm looking at what the market price of those listed investments is. Again, they are Korean companies. To the extent there is a Korea discount, which is depressing the value of all listed companies in Korea, then my listed investments, which include two major Samsung entities, are already reflecting that discount.

There are then some smaller business entities, general and BioLogics, in the next two columns, and then in what on my sheet is a sort of browny-purple are the unlisted investments, where one has to look harder for information as to their value. And that, if you like, gets you to the total gross value from which there are then deductions.

The first deduction, which brings the line down, is net debt. So from the value arrived at so far, one deducts the debt that the company has, and arrive at what the orange block is, which is -- this is the sum of the parts valuation.

Then I apply what is called HoldCo discount, which is to say that although that is my assessment of what SCT was worth based on valuation methodologies, I need to reflect the fact that SCT would quite likely, indeed very probably, have had some kind of discount applied in the market as a Korean holding company.

And that, I should note, is something that I did not do in my first report. This was something that Professor Dow pointed out, that when looking through the various types of discount, he thought that I should have discounted my sum of the parts value to say in fact what you could realise in the market is less than that sum of the parts value.

That was an omission in my first report. I read his report. I thought that he was right, not totally, not in quantum terms, but he's right on the principle, and therefore that's a deduction that I introduce in my second report.

Having made that discount, I then arrive at my

conclusion on intrinsic value.

If we go to the next slide, I deal a little bit with discounts on this slide. And on this slide I try not to put labels on them because I think there's a great risk of confusion with various people, not just in this case, but commentators, who apply different labels to different discounts, and I'm guilty of the same in my reports. To make it clear what I'm talking about, I use defined terms.

But, standing back, the issue is that SCT's market price was about 40% below my calculation using the sum of the parts. And lots of explanations are put forward for this and the tribunal has heard many of them already, about whether it's because the investments are being held long term; whether it's because of a Korea discount -- I would say I have already reflected that; whether it's because of a holding company discount and the like.

But the real question that I have tried to answer and, respectfully, I think the heart of the question for the tribunal is: if there was a 40% discount at the time that it looked likely the merger would go through, what would have happened to that discount if the merger had not gone through?

So the quantum question that I have tried to answer

is: how much of that 40% discount would have unwound if the merger was rejected?

And that's company-specific. That's not about what would have been the broad effect on Chaebols and governance in Korea and overall market discounts. It's a very specific question that asks: if the merger had been rejected, how much would the SCT share price have gone up? And I think it's absolutely plain, for reasons I'll come on to, that the SCT share price would have gone up because some of that 40% discount reflected fear of what was happening in the merger. Take the merger away, and there's no reason for that discount to be at 40%.

What I also say on this slide, in the fourth bullet, is that I don't think one should be trying to derive a standard holding company discount from average data across various companies. Professor Dow comes up with an average from looking at two companies, but it's always the same. When you actually look at what's going on with individual companies, you discover that the discounts are specific to the particular situation of that company at that time.

So, although one can compute, mathematically, averages, it's not very meaningful when you're asking a question that's specific to one situation.

When I'm asking what would have happened to the discount in SCT, I need to look at SCT specifically, not five or ten or 15 other companies.

So in order to work out what discount would have remained if the merger didn't go through, I have looked at the merged entity, and one gets data from SCT and Cheil immediately post-merger, and one can see on a combined basis how the market valued them, and the discount applied to that combined entity immediately after the merger was about 5%.

I have looked at other periods, extending it for a month or two, looking for the highest that discount ever went, and I think it got to 13 or 14%, and so my conclusion is that the discount that would have applied to SCT in the market was somewhere between 5 and 15%, hence the range.

The last bullet on this slide I have mentioned already.

How does this come through into a calculation of damages? I'll just talk through the low column, which has the higher discount.

So I arrive at a sum of the parts valuation of SCT which is 18 trillion Korean Won. If I apply a 15% discount in my low damages column, then that arrives at an intrinsic value of 15.7 trillion Won. Multiply that by SCT's shares -- or divide by SCT's shares to arrive at an intrinsic value per share, which is the 98,000 Figure, and multiply that by Elliott's shareholding of something over 11 million shares, and the intrinsic value of Elliott's shareholding after taking account of the holding company discount is therefore something over -- this is where I get my trillions confused, but I think it's somewhere over a trillion Korean Won, 1,091,261.

From that I deduct the amounts that were actually received by Elliott. You saw this Figure briefly yesterday, tribunal, in the further cross-examination of Mr Smith, but this is the Figure I use which is the gross amount that was received by Elliott.

There was some debate about taxes. The net Figure after all taxes is somewhere in the 585 rather than 636, but I have deducted the gross amount.

There's certainly room to argue that Elliott's loss should be computed by what they received after tax because the shares that were the subject of the Settlement Agreement had tax imposed on them, but I have not taken that into account.

I think in my report I describe them as withholding taxes. I think, having looked at the Settlement Agreement again, there are other taxes.

So net damages is the difference between what the shares would have been worth and what they received and I have done a calculation of interest. That's a bit out of date, but my view is that always interest is better calculated in the light of what, if any, is the award made by the tribunal.

That whole table works in millions of Korean Won, and then I translate that into dollars. So that's $502 million.

The right-hand column is similar, but with a lower discount.

In section 6, I was asked in my first report to examine whether it was likely that the merger of SCT and Cheil would give rise to substantial synergies. This doesn't appear to me to be an issue that's featured large so far in the oral hearing, unless I have missed it, but it was relevant as to whether there was a genuine reason for the market to be positive about the merger.

I did quite a lot of analysis in my first report, looking at whether in principle one would expect synergies to arrive, and the short answer is no. Yes, of course, when you put two large companies together, there is the potential for some financial benefits in terms of how they manage debt or gearing, but really

these are very different trading businesses, and one cannot see that combining them would be of benefit at the revenue line, and when it comes to listed investments, there's no synergies to be gained.

As part of that, I note that my assessment is that although NPS held shares in Cheil as well as SCT, it was not in its economic best interests to vote for the merger.

THE PRESIDENT: Can I just ask. In that table, that's revenue in 2014. Would you know what the profit was during that year?

THE WITNESS: I do in the sense that it will be in my reports, but sitting here now, no, not at all, sir.

THE PRESIDENT: Okay. I'm sure counsel will revert to that in due course.

THE WITNESS: Although -- I suppose what I would say in the context of synergies, there are two places that one would typically look for synergies -- three. So, are there financial benefits in things like gearing? Are there revenue synergies that arise from being able to use the power of one brand or combine forces to be bigger in, say, the construction market? Answer on that one: no, because they are very different construction companies.

And then there are cost synergies where putting

companies together can allow you to streamline and remove layers of costs, but profits is a sort of mathematical consequence; looking at the profit line probably doesn't help you determine what synergies there might be.

Next slide, I simply cite some of the evidence that I have seen, that what was talked about as expected synergies at the time of the merger have no substance. I had already arrived at that conclusion by analysing the fundamentals, but it subsequently appears that there's quite significant evidence that the proclamations that huge synergies were expected were back-of-the-envelope or forced to come to an answer rather than being bottom-up, as they should have been.

Section 7 is my summary to Professor Dow's report. As I've mentioned in passing, his key theoretical argument is that the share prices is the most reliable indicator of fair market value. And he has a number of other arguments that I set out on this slide and I deal with in the subsequent slides.

So if we go on to slide 25, Professor Dow and I agree that the Korean market is likely to be semi-strong efficient. I say likely only because the analysis that Professor Dow does to establish that is flawed, but it's still very likely that for a very liquid share in a market such as the Korean market, it's an efficient market.

But efficiency here means that new information about a stock is immediately in the share price. So what it doesn't mean is that the share price is an accurate indicator of value. So if you give false information to the market, it will immediately be absorbed into the share price, but that will no longer be a good indicator of value. So one needs more than an efficient market to be able to rely on the share price, and the fourth bullet sets out a paragraph from Professor Dow's report where he makes that very point, with which I agree.

One of the consequences, on slide 26, please, of Professor Dow's approach is that he doesn't actually, in my view, assess damages in this case, because he doesn't look at a counterfactual in which the merger was not approved. So he never asks himself: what would have been the value of these shares if the merger hadn't gone through?

He expresses himself to be broadly agnostic on that question, but he never considers the implications as to what happens to the share price if the merger doesn't go through, and therefore he can't do a comparison of the actual with the but for.

He ends up in what is, in my view, a logical loop

whereby you could never suffer any damages because the market price is right and therefore you buy and sell at the market price, and by definition he is in an argument that says damages are nil in this case, but they will be nil in every case that involves any sort of transaction of this sort.

Slide 27, please. This is simply a chart that I use to say that I'm with Professor Dow to this extent: that market efficiency means that the market will react to news, and the big news here in the but for case is that the merger wouldn't have gone through.

So if the SCT share price is depressed by the threat of the merger, which I heard Professor Bae to say it was yesterday, and you remove that threat, then the share price has to respond, and the only direction it can respond is upwards.

Now, of course there is room for argument about how much upwards, which is why I say the question is how much it goes up, but it does seem to me there's no room to argue that the share price would not have gone up, because everybody agrees that it was down because of the threat of the merger.

Maybe some people will say it would have stayed down to some extent because of the threat of another predatory transaction, but a lot of what's happened to

the SCT share price appears to be specific to this transaction, and when you take that off the table, the share price only has one way to go, and that is up.

So all I'm valuing is that immediate response to the merger not going through. I'm not looking at the longer impact of Elliott's grand plan. I'm not, for example, thinking about whether the signal sent to the market would have meant that corporate governance improved and discounts generally in the market reduced. I'm also not looking at what the implications would have been for the long-term value of SCT. Its net asset value may well have climbed through changes that came about as a result of the merger being rejected, but those are not included in my calculation. They're longer term upside that may well have arisen, but they are more difficult to quantify and more speculative and I don't include them.

As to the question as to whether market prices respond swiftly to new information, I have given two examples. One comes from Professor Bae, and he does an analysis of the stock price movement in Samsung Life Insurance. This is simply as the market gets to understand the potential implications of a proposed revision to the Insurance Business Act for its shareholdings, and what one sees is there are 10%, 6%, 21% successive day rises in the share price in response

to a proposed revision of the law.

So all I use this for is to say markets respond fast and they respond dramatically if there is big news, and a merger being rejected is clearer cut news than a proposed revision to a law.

The right-hand chart is from Professor Dow, where he and I disagree with what it's showing, but what we can agree is that the market is responding fast to signals about whether the merger is likely to go through.

So, for example, when SCT sells a 5% stake to KCC, that's seen in the market as being to a friendly -- someone who will vote for the merger, and that makes the merger more likely to happen, and what happens is the share price drops significantly.

What this is telling us is this: if the market sees something that shifts the dial on whether the merger will go through, and, you know, it gets 10% more likely, for example, and the market jumps 5 or 10% on that news, that is telling you that the market thinks whether the merger goes through or not is of enormous interest.

If something moving the dial affects the share price 10%, as several of these do, then absolute news, the merger has not gone through, is going to have a more dramatic effect.

Now, I'm only two or three minutes from my half-hour, I think, so moving swiftly on.

Slide 29. Professor Dow relies on two companies for his standard discount. I have explained why I think you have to look at each individual company and understand the specific circumstances of its discount or premium, rather than using an average and then applying that to the specific SCT.

I make that point on the next slide, slide 30. This is taken from a UBS analyst report, and it shows their estimate of SCT's premium or discount over a 15-year period.

What one can see in the difference between the market price and -- it's showing the NAV discount, and the NAV discount, which is the brown line, has been a premium in some periods and a discount in others.

There's a substantial discount in the last three years or so, but in other periods it's been no discount or a very significant premium.

So what this tells you is you can't look at SCT and say: it's always going to have a 20% or a 30% or any other Figure for a discount. Its discount to net asset value varies according to what's happening to that company at that time.

So on my next slide I make the point that Professor Dow did not analyse the components of the

observed discount. He recognises there was a 40% discount, but he doesn't ask himself how much of that would have gone away if the merger had not gone through. And the figures on this slide I have referred to already in what I think would have been the continuing holding company discount and what I term the excess discount, which is simply a label to say that this much of the discount was specific to the merger and would have gone away.

The next slide, I may fall foul of Mr Turner's rule that I have to talk in detail to a slide for it to be admitted, but it really summarises points that I have made around the key areas of difference between Professor Dow.

But I want to mention my response to Professor Bae. So I'll move on to slide 33 and 34, and I have only two slides to end my presentation, both on Professor Bae.

The first says Professor Bae appears to be concerned with an idea that if shares are held for the long term, they are illiquid or non-tradeable. And that's surprising to me because it doesn't meet the definition of illiquid. These are still liquid shares. They can be traded. They can be sold for cash.

Valuers don't look at subjective intent. I don't intend to sell my house, but if an estate agent tells me

that it's worth -- I invent the Figure -- £1 million, it's worth £1 million even if my intent is to hold it as my family home.

Also, Professor Bae only looks at dividends and he doesn't look at what shares provide in the way of control; ability to extract cash. He doesn't consider share repurchases. And he ends up at this very surprising conclusion that a controlling stake somehow ends up as being less valuable than a single share in the market, and that falls completely foul of any understood finance theory about the value of larger stakes.

Then I have underlined the last sub-bullet in the second section, and this seems to me the key flaw in Professor Bae's analysis.

He says that the shares held by SCT have to be very heavily discounted because they're held for the long term, but he values them on the basis of dividends. And yet, if you're a single shareholder in the market, what else are you getting from holding those shares? You're still getting the same cash flows, dividends or share repurchases. There's no rational reason why those shares are worth more to me as an individual buyer in the market than they are to SCT. If anything, they seem to me likely to be worth less.

In the last bullet I make a number of criticisms of his dividend discount model. It's really not a model that people would use nowadays to value shares very often because many companies don't pay dividends. It's well understood. Tesla -- I believe I'm right -- has never paid a dividend and has a massive valuation. And that's because people buy and sell shares not just on the dividend yield.

Then finally my last slide responds to something he said yesterday, and on the right-hand side I have reproduced from his presentation his chart which is saying that the Hyundai Glovis/Mobis transaction was very similar to SCT and Cheil, and the research I have done suggests that's actually very wrong.

In this transaction I think [redacted] in fact had some shares in Mobis. Mobis did own shares in Hyundai Motor, and to that extent one might think it's very similar to SCT owning shares in Samsung Electrics.

But in fact in this transaction, Mobis was splitting into two and a spun-off business was being put into the transaction, and as far as I can see, and I have seen the contemporaneous merger valuation report of PricewaterhouseCoopers, the listed investments were not going into the transaction. So fundamentally different in that it wasn't providing [redacted] with the shares in

Hyundai Motor.
Because Mobis was a spun-off entity for this transaction, it had no market value, and the merger ratio was calculated: listed price of Glovis and intrinsic value of Mobis. So one doesn't have any potential for the same transfer. And, indeed, the spun-off Mobis was going to get 61.5% of the merged entity. So it's very different from SCT getting 25%.
I use that example simply because my experience is you have to be terribly careful trying to say: here is a similar transaction and the share price of SCT will behave in this way because this looks a little bit similar. Because what you find is when you dig, every transaction is different, and it's really dangerous to try and read across and say: this gives you an indication of what would have happened to SCT.
So thank you very much for your patience.
THE PRESIDENT: Thank you very much, Mr Boulton.
Any follow-up questions, Ms Snodgrass?
MS SNODGRASS: No further questions on direct.
THE PRESIDENT: Thank you very much. Then it's for the Respondent, cross-examination, please.
Cross-examination by MR TURNER
MR TURNER: Thank you, sir. Good morning, Mr Boulton.
A. Good morning.

Q. Just for the record, and there's absolutely no complaint from our side, we have plenty of time, but that was somewhat over 40 minutes. It isn't an issue at all, but just for the record. I'm sure that if there's any -- if any indulgence is needed for Professor Dow tomorrow, it will be forthcoming.
You should have two files on your desk. One of them contains your two reports and we'll spend most of our time, I suspect, on that file. And volume 2, which therefore begins at tab 3, is a selection of documents that we will refer to from time to time.
We'll also refer to other expert reports and one or two witness statements. I have not put those into the bundle, as you heard us discuss yesterday, and we will show those on the screen.
I trust that I have the Opus references right and therefore we will be able to get to those quickly.
A. I'm entirely comfortable of course with all of that, other than very occasionally one needs to see context for a paragraph that is being shown on a screen. But we will deal with that if we have to.
Q. We will deal with that if we need to. We can go up and down. We have, as I say, plenty of time. But obviously -- I say obviously, I hope it is obvious, but if it isn't, I'm saying it now: I'm not trying to

mislead you by showing you a line out of context. If you need to look at more context, please do so.
A. Thank you.
Q. Just by way of introduction, my learned friend, my friend, Mr Stafford said yesterday that you were a Professor, but this was a slip of the tongue, I imagine?
A. I noted and was complimented, but indeed I claim no such academic prowess.
Q. You began your career as a chartered accountant?
A. Yes.
Q. And you left -- in fact, you became very senior in Arthur Andersen; as I understand it, you were at head office in Chicago as the world number 2?
A. That's right. I did 45 trips a year to the States for three years. It was ...
Q. Rather you than me, although we all forget actually the lives we led before the pandemic. I'm coping very badly with being away from home for a fortnight now, which is the first time for a very long time.
A. Yes, you and me both.
Q. You left Arthur Andersen in what I assume was the great exodus after the Enron -- where people ended up mainly in other accountancy firms, but you went to the Bar?
A. No, actually, I didn't. I left Andersen in June 2001

and Enron hit in November 2001, is my memory. So my timing was, from a personal point of view, very fortunate. From my colleagues, I watched the devastation, but I had already decided that I needed a new challenge.
Q. And you had decided to go to the Bar at that point then in fact?
A. Yes.
Q. If I remember well from the CV at the end of your first report -- you needn't go to it because you will know these dates --
A. I hope so.
Q. -- you have been a barrister since 2004?
A. Yes.
Q. Again, we're not going to pick hairs about this at all, and all of the arithmetic we will do will be with a calculator, with which I hope you have been provided, but --
A. I haven't, but I don't tend to need one.
Q. Oh, well, that would be splendid if you don't. But I hope there will be one in due course provided to you.
But you said you'd been a barrister for 15 years. It's actually a couple of years more than 15 years.
A. Yes. Well -- yes. Undeniable maths. I don't need a calculator for that. I think in my report I said

15 years because that was --
Q. Well, there you are. There you are. That's a complete explanation of that.
You are a barrister and you are Queen's Counsel. I know that when I'm doing French work, whether in the courts or in arbitration, I don't tend to say that I am, because it is of no relevance. You are not suggesting to the tribunal that your qualification as a barrister or the fact that you have taken silk in England is of any relevance to what you are talking to the tribunal today about?
A. I wholly agree.
Q. You are here in your capacity as a chartered accountant?
A. Yes.
Q. And that's why, on slide 4 -- again, we needn't go back to it, we've all got hard copies -- you say "I do not opine on the legal issues in this case".
A. Yes, I hope that's true, but that's certainly my intent.
Q. So when on slide 6 you say in the last bullet point:
"Trading gains and losses do not affect this assessment of damages."
That is not a legal conclusion?
A. No.
Q. That is: it doesn't enter into my arithmetic conclusion?
A. Well, it's probably one of those issues that's on the

borderline that is in part a legal issue, but quantum experts could have a view on it. I'm certainly meaning here that I have not taken them into account.
Q. As a matter of fact?
A. As a matter of arithmetic. But also my understanding would be that what happened in terms of trading gains and losses is not part of comparing the but for and the actual, except that I do note that to the extent that Elliott had short swaps in Cheil, then those would have increased in value if the merger had not gone through, but that potential loss by I do not know which Elliott entity has not been taken into account by me in my calculation.
Q. So did you understand -- and if you didn't, because it's outside your expertise -- did you understand Mr Smith's evidence in his fourth witness statement and yesterday to be that the swaps were nonetheless part of the same transaction?
A. So it's not an issue that I have looked at in any detail because it appears to have gathered some focus over the last few days whilst I have been engaged on other things. But I did understand his -- it's probably not for me to put into terms what he was saying because he would be clearer on it. But I would certainly -- if you stand back and say the transaction is Elliott's

investments in SCT, then one would think that although there might be what I think he called alpha and beta elements to it, one could certainly take a view that they're all related to what's going to happen in this merger.
So if at the time the merger is live you're entering into trades, whether long or short, you know, I could understand a view that they are all related.
But the motivations as to why particular elements are entered into and whether they are independent, in that they are separate arbitrage opportunities or whether they are hedging of the main position, seems to me really a matter for Mr Smith.
Q. You suggest, and probably quite rightly, that we should rely on Mr Smith's evidence in that respect?
A. Yes, definitely.
Q. Very good.
We're agreed, aren't we -- you're a fellow of the academy of experts I see as well -- we're agreed that your job here today is to help the arbitrators and not in any other way to seek to defend a position that may be taken by the Claimant. You're here as an independent expert?
A. Absolutely, and if you've tracked my speeches and writings, you will know that that is my number 1 flag

that I carry, because I am concerned that too many experts forget that that is their duty and if I have any mission, it's to try and change that.
Q. Well, we share that mission. It's important for arbitrators to be able to have confidence in the independence of experts, because from my perspective, of course, that helps me to be able to tell the arbitrators that the evidence that I'm adducing is independent, and so I'm glad that we're on the same page.
So we'll go to your presentation from time to time as well and keep that to hand, Mr Boulton.
By the way, what you generously referred to as Mr Turner's rule about referring to the content of the slides is actually the learned arbitrator's rule. But I am happy to adopt it. Perhaps it will become as famous as the Scott schedule or the Redfern schedule in due course.
Can we go to your slide 19 -- we have lost the transcript. Has nobody else lost it? Is it just us?
THE PRESIDENT: It's working for us.
MR TURNER: So we just need to sign back in. Would you bear with me for one second.
A. I do not have it.
Q. No, you don't, apparently. The witnesses don't.
A. I don't get it? That's fine.

THE PRESIDENT: Let's have a technical break to sort it out.
(Pause).
MR TURNER: Very good. Sorry about that. I think that wasn't a generalised technical problem. It was only our technical problem. Thank you for bearing with us.
THE PRESIDENT: Mr Boulton, you have the transcript as well?
A. I do not, but I'm informed witnesses don't get that luxury. So that's fine, sir.
THE PRESIDENT: Okay.
MR TURNER: If we ever have to, I shall have to do laboriously reading a question out to you again. I hope you'll bear with me if that happens.
A. I'll try not to make you do that.
Q. I had asked you to turn up slide 19.
A. Yes.
Q. And this is your damages calculation. I had a quick look at this last night and the two numbers in the first bold row, EALP's net damages, they look like the same numbers as in your second report; is that right?
A. I hope so.
Q. And we will both have the difficulty that you encountered in your presentation about working out how many a million million is, but I'm sure we will cope with that. But these are 454.8 million million, or trillion, as a 15% discount off your sum of the parts

valuation and a 583.2 million million, or trillion, as your calculation if you take only a 5% discount off the sum of the parts valuation.
A. Yes, if you were saying -- I'm not sure, and this is where sometimes one wants the transcript, that your million millions were right. But we are looking at the figures.
Q. Thousand millions. They may be thousand millions. They are thousand millions.
A. If you put a point before the 882, then they are thousands of millions.
Q. 454,000 million?
A. Yes.
Q. 583,000 million?
A. Yes.
Q. Good. It's a long time since I dealt even in francs, which were 6-point-something to the euro, and so I do get a bit confused here as well. So please forgive me. But those are the same numbers as in your second report?
A. Yes.
Q. But they are not the numbers that are sought by the Claimant as damages, are they?
A. I think I remember hearing that at one point from something I saw from the Respondent, but it's not a check that I have specifically done.

Q. Can you have a look at your second report, Appendix 11-3, which is, for those of us who are using the hard copy, very, very nearly two pages from the end of Mr Boulton's second report. I apologise, I have not got Opus references for your reports, Mr Boulton, because we are looking at the hard copies. So my apologies to the operator.
Can you see Appendix 11-3? Are the arbitrators with us at 11-3?
If you look at 11-3.2.1? {F5/1/224}
A. Yes.
Q. You have presented a calculation of the implied loss to EALP assuming no holding company discount.
A. Yes.
Q. And that is -- I take a deep breath -- 647 billion Korean Won?
A. Yes. It will be some ... yes, it is.
Q. And if you go across the page -- it's the opposite page in my copy, I'm not sure if it will be for anybody else -- to 11-3.4.1 {F5/1/225} under the heading "Conversion into US Dollars", you have the number that we saw on the page before, 647 billion Korean Won?
A. Yes.
Q. And you have a US dollar Figure in the next column which you have converted at an exchange rate of 1,119 Korean

Won to the dollar, being the prevailing exchange rate on 30 June 2020?
A. Yes.
Q. And you come up with a number of -- and this is rather more straightforward, luckily, although still not a small number -- $539,836,168?
A. Yes.
Q. And if we go on Opus to the Claimant's Reply, it's {B/6/390}, this is my learned friend's request for relief. Paragraph 617b. Are you there, Mr Boulton? Have you got it on the screen? It's on my screen.
A. Yes, I'm with you. I can see where this is going and I'm just waiting to say yes to your question.
Q. Well, the anticipation builds, doesn't it? It's always an exciting moment. I won't get very many yeses from you during the course of the day so we will treasure this one.
At b --
A. Don't be so pessimistic.
Q. I always find that's better because then you can only be happily surprised. A bit like your opinion that the price can only go up.
Anyway, I digress. 617b my learned friend asks the tribunal to:
"Order Korea to pay EALP damages for the loss caused

to EALP by Korea's breaches in an amount of ..."
And there we are, $539,836,168, which is the number that we have just seen in 11-3.4.1, isn't it?
A. Yes.
Q. There, that went very smoothly. Thank you very much, Mr Boulton.
You express no opinion on that, I imagine. That's just a matter for my learned friend?
A. I'm just looking at where in my report I explain that I have done this alternative calculation in my Appendix.
Q. I'm sure it's there because you have got an Appendix and you can deal with that in re-examination.
A. Well, no, I was actually trying to make a point that I thought was helpful to you, but --
Q. Ah?
A. And that is, if you're asking me whether my opinion on the amount of the loss would embrace the $539 million, then the answer is no. My opinion is based on the 5-15% range.
Q. That's what I had understood, but thank you for confirming it.
Again, my question is: you express no view -- I assume, but tell me if I'm wrong -- on my learned friend's nonetheless advancing the Figure that you have in your 11-3.4.1 as his claim?

A. Well, I think I was halfway to expressing a view by telling you that it wasn't what my conclusion was on damages. So I think that is a view. But I would caveat it that there may be legal arguments that are being advanced as to why that's the right number that I'm not familiar with.
Q. Very good.
Can we agree, as we've started so well on the agreeing, that the standard of damages that you have been asked to assess is the fair market value of Elliott's investment in SCT?
A. Yes.
Q. For the transcript, let us, just to make that point good, go to your second report and we'll begin at paragraph 2.2.3. {F5/1/12}.
You say:
"Professor Dow contends that [FMV] is the appropriate basis."
And you don't express an opinion in that paragraph.
But if we go a couple of pages on to 2.4.1 {F5/1/15}, so we again have Professor Dow contending that instead of intrinsic value, FMV is the standard of value, and:
"Professor Dow argues that SCT's Pre-Merger Listed Price is the best indicator of ... FMV."

And you still don't express an opinion, but you are distinguishing FMV from intrinsic value in that paragraph, aren't you?
A. Well, I'm more referring to the fact that Professor Dow is drawing a distinction.
Q. Okay.
A. So I was checking what my instructions were and I think my instructions are based on what Elliott's shares would have been worth in the counterfactual.
Now, I'm happy to apply a fair market value label to that because what they would have been worth should, in my view, represent their fair market value. I happened to derive that by reference to my calculation of intrinsic value rather than market prices, but one of the problems is that Professor Dow defines fair market value essentially in a circular fashion to get to market price.
So we're not using it in the same way, so that's a big gulf between us in how we're approaching this case.
Q. If we close the circle, and go to, still in your second report, paragraph 4.2.3, {F5/1/29}, you say:
"Since it is not possible to observe what SCT's FMV would have been in the Counterfactual Scenario, it is necessary to perform an independent valuation in order

to calculate this value."
A. Yes.
Q. And you call that "intrinsic value" in inverted commas in that paragraph, but what you are doing is calculating, when you say "this value", you are calculating FMV in your counterfactual scenario; yes?
A. Well, I mean, I fully accept that I did agree to your first question after a pause. But I need to be careful as to how the terms are being used in these reports.
I don't, sitting here now, think that my calculation of intrinsic value should be different from fair market value because I'm trying to calculate what Elliott could have sold its shares for, and a good indicator of that would be, well, what is the fair market value of those shares. So I don't feel that there should be any difference.
The difficulty is that the way that Professor Dow uses the term, he appears to me to be defining it in terms of market price, pre-merger, and I have difficulty with that.
So if you look at where the debate is starting here in 4.2.2, Professor Dow argues that the pre-merger listed price is a more reliable indicator of FMV.
Now, I don't think that's right, and I'm saying in order to observe -- because you can't observe fair

market value in the counterfactual scenario, which is 4.2.3, I have to calculate it. I calculate it by intrinsic value, but I think I'm still trying to get to the same answer, which is what is the fair market value of the shares.
Q. If I can try to summarise that, the debate is whether fair market value is your sum of the parts calculation, which you call intrinsic value, or the market price?
A. Well, that is a piece of the debate, but the problem is that there is no market price in the counterfactual scenario. Because you can't observe it, you have to calculate it. Once you have to calculate it, you have to find a way to do that, and the way I do it is sum of the parts less a discount to get to intrinsic value.
Q. Okay. I have your answer.
Can we go to your first report, paragraph 1.6.1, which begins at the bottom of page 3, but we will need to turn the page to page 4 as well. {F3/1/9-10}. The bottom of page 3 is important because it sets out what your instructions were. Do you remember that?
A. Yes, I do.
Q. And they instructed you, Messrs Three Crowns, Kobre & Kim, and KL Partners, to value, one -- or ask you for your opinion on, sorry, my grammar is going to pot -- setting out your opinion as to:

"(I) the value of Elliott's shareholding in SCT on 16 July 2015, the day before the Merger Vote Date ..."
Which you define as "the Valuation Date". Yes?
A. Yes.
Q. And that's what you repeated in your slides this morning, isn't it?
A. I think I did, yes.
Q. I think you did too, so we won't flick through and find that again now.
Secondly, having reached your opinion as to the value of Elliott's shareholding on 16 July 2015, the valuation date:
"The loss suffered by Elliott as a result of the Merger."
Agreed?
A. Yes.
Q. We will talk about this a little later this morning, but you agree that there was a market price for SC&T on 16 July 2015?
A. Yes. Assuming it wasn't a weekend, but yes, and there would then be the last trading day. I'm assuming it wasn't because of when the merger vote was, but yes.
Q. I take your point. I don't know either, but we know where we are?
A. We do.

Q. But you don't use it. I mean, you don't, do you? Yes or no, Mr Boulton?
A. It's not that simple.
Q. No, excuse me, because I think we have to get a bit of a ground rule here. I know --
A. I do not use it for what?
Q. You do not use it to calculate the intrinsic value or the fair market value of SC&T in order to calculate the Claimant's loss, do you?
A. Correct. And I hesitated, just to explain why I hesitated, because I do have calculations that look at value on that date and indeed charts that look at listed price on that date. So you did put a question, "You don't use it", and the answer is more complex. I apologise if I should have skipped that.
Q. No, it's quite right. Precision is all. I sometimes -- I had forgotten I was talking to a lawyer as well as an accountant, and we do need to be very precise in the ways that we deal with this.
You are further instructed in 1.6.2 to calculate interest on any loss at a rate equivalent to 5% a year; yes?
A. Yes.
Q. And we needn't go to it, unless it's controversial, but you again repeat, and I refer for the transcript to your

second report, paragraph 11.2.5 {F5/1/87}, when you calculate interest, it is on instructions because you are told interest is a matter for the tribunal to decide; yes?
A. Yes.
Q. So, still in your first report, you go on after chapter 1 to chapter 2, which is traditional, I agree, and this is the executive summary, and I would like to take you to paragraph 2.1.5. {F3/1/11} Are you there?
A. Yes.
Q. This is your valuation of SCT. This changes a little in your second report because you conduct a further sum of the parts valuation in your second report to value the shareholding of SC&T in Cheil and that leads to a slight reduction in the overall sum of the parts number, but this is a summary of where you were in your first report; is that right?
A. That is right. The two main adjustments, maybe the only two, are, as you say, a sum of the parts valuation of Cheil and also I deduct a discount in my second report that did not appear in my first report.
Q. Yes, absolutely, and we will talk about that, obviously. But for the sum of the parts valuation, this is what you did, and the change, apart from what you call the holding company discount, is the different approach to

the valuation of the holding of SC&T in Cheil; yes?
A. Yes, sitting here now, that's the only change I can remember.
Q. And it's the only one I have found. If you can think of any more, you will let me know in due course.
Then in the next paragraph, 2.1.6, you calculate the value of Elliott's interest, which is sum of the parts value into the number of outstanding shares to arrive at an equity value per share, and it's slightly less. It's 115,000-odd in your second report and here it's 116,000-odd. And then you multiply that number by the number of Elliott's shares and you get the value, you say, of Elliott's interest in SC&T expressed as an impossible number in Korean Won; yes?
A. Yes.
Just to be clear, you gave a Figure in my second report that you said was 115.
Q. Yes.
A. That I think will be before deducting the discount. So like for like, there would be a bigger difference. I move down 15 or 20% in my second report.
Q. Yes, indeed. You have moved down a little from 116,000-odd to 115,000-odd in your second report as a result of the adjustment to your sum of the parts valuation; yes?

A. Yes.
Q. And then you apply a holding company discount?
A. Yes.
Q. As you define it, capital H holding, capital C company, capital D discount, for the transcript?
A. Indeed.
Q. And then you look at the traded price in 2.1.8 on the valuation date, 69,300 Won a share, and you calculate that the shares were trading at a 41% discount to your assessment of their intrinsic value?
A. Yes.
Q. Agreed?
A. Yes.
Q. Then you take -- it's all simple maths at this point. 2.1.9, you look at the proceeds received by Elliott?
A. Yes.
Q. And we're agreed, aren't we, that that is how you calculate Elliott's loss. You take the gross proceeds that they say they have received and you deduct that from what you say was the value of their shareholding?
A. Yes.
Q. And that's just a simple subtraction then to get to the loss Figure in 2.1.11?
A. Yes.
Q. There is no mention in your first report of

a counterfactual, is there?
A. Sitting here now, I do not recall. I'm happy for you to tell me you've done a word search and that word doesn't appear.
Q. I'm not clever enough to do word searches, Mr Boulton. I'm from the wrong generation to be able to do word searches, but I don't believe it does.
My understanding is that this is the total of your calculation of the loss. You take the day before the merger; yes?
A. Yes.
Q. On which the traded price was 69,300 Won a share; yes?
A. Yes, I think so.
Q. It's in your 2.1.8.
A. Yes, I'm sorry, I'm just not -- I'm being distracted by thinking about the counterfactual question. I'll listen to your questions.
Q. I don't want you to answer the wrong question by mistake. So do say if you're not -- if your attention is wandering. I've got a very boring voice, I'm afraid. There's nothing I can do about it.
Where had we got to? Yes. On the valuation date, the market price was 69,300 Won a share. But you just take your sum of the parts price. You work out what that would represent as the value of Elliott's interest.

You deduct from that valuation the proceeds that Elliott has received. And you say that is the net loss to Elliott on the valuation date; agreed?
A. Yes, I think so.
Q. Then, if we go to your second report, and I would like you to go to paragraph 2.2.4 {F5/1/12}. Page 3 of the report. I'm afraid there will be a bit of flipping around inside. I'll try and give page numbers as I go to different paragraphs, sir.
You say:
"It does not appear to [you] that Professor Dow has explicitly considered any form of counterfactual scenario."
But I think we agree that you hadn't either in your first report, had you?
A. Well, I'm accepting from you that it may be that I hadn't used that term, but I was doing the same comparison between intrinsic value and actual amounts received, and the intrinsic value is: what are these shares worth if the merger doesn't go through.
Q. Okay. You are still valuing on the valuation date though. We saw that -- we agreed -- in your presentation this morning, and it is also the defined term in your second report in the glossary; yes?
A. As far as I remember, yes.

Q. 16 --
A. That would make sense.
Q. 16 July, the day before the merger?
A. That's my recollection, yes.
Q. And we agree, and we'll come back to this in a minute, but we agree that on 16 July the merger had not happened; yes?
A. Yes.
Q. Indeed --
A. If that's the merger vote day, then by definition, yes.
Q. The merger vote date was the 17th?
A. Yes.
Q. You valued the day before?
A. Just before, yes.
Q. By definition, purely factually, the merger vote had not happened on that valuation date. We agree with that?
A. Yes.
Q. Okay. Now, you -- sorry to go back to your first report to look at the way in which you have gone about your sum of the parts valuation. Can I ask you to go to your first report at paragraph 5.4.2. This is in the first report of Mr Boulton, page 33 {F3/1/39}. You have set out in the paragraph before the listed holdings, and you say:
"The listed investments are traded on active markets

and each therefore has an observable share price as at the Valuation Date."
A. Yes.
Q. And:
"The observable share price of a company with reasonably liquid shares, listed on an active exchange, can generally be accepted as an indicator of that company's market value."
A. Yes.
Q. Just pausing there before I ask you a question about that paragraph, you say -- we don't have to go to it because it would take us too long, but in your second report at 4.2.10 {F5/1/31} you say by reference to this paragraph, 5.4.2, that:
"... the Listed Price of a company with reasonably liquid shares, listed on an active exchange, can generally be accepted as an indicator of that company's FMV."
Do you remember saying that in your second report?
A. Well, I'm reading it now, so yes.
Q. And FMV, we agree, you define as fair market value?
A. Well, that's its -- that's what it stands for as an acronym.
Q. And we've just looked at, and let's go back to 5.4.2 {F3/1/39} where you don't use the words fair market

value, despite this being the paragraph that you reference in 4.2.10 of your second report. You just say "market value", don't you?
A. Yes, I do.
Q. So you accept that in general the market value is the fair market value?
A. I accept that the market price of a share can generally in a liquid market be accepted as an indicator of fair market value.
Q. And it's fair market value for the listed investments in your sum of the parts valuation; yes?
A. My starting point is their market price, if that's what you mean.
Q. Well, it's your ending point too for the listed securities?
A. Well, it's not because I apply a discount to the whole of the sum of the parts valuation.
Q. Well --
A. But you are right, in building up the sum of the parts, I take market prices for the listed investments.
Q. Very good. And you agree, we have seen the way in which your two reports deal with this concept, that generally market value on an active exchange for reasonably liquid shares is fair market value?
A. Is generally an indicator of the company's market value

or fair market value, yes.
Q. And the exception --
A. But it's not a "it's always the same".
Q. And the exception in your opinion is Samsung C&T?
A. No, no, no. The exception is every instance where there are other factors affecting the market price, which would include a diversion of sentiment or where there is material non-public information. So market price of shares only reflects information that's known. Very, very frequently there is material information that is not known, which means that market price is not fair market value, and of course if there is market manipulation, then one no longer relies on market prices.
So broadly speaking, there are all sorts of reasons why people do not rely simply on market price. But where we started, market price is a good indicator in a liquid market of market value. You then have to investigate.
Q. Well, that's a very long answer. We may come back to bits of it in due course.
Can I take you to the next paragraph of your first report, 5.4.3, which is page 34 {F3/1/40}.
This is what I meant by except SC&T, Mr Boulton:
"In the case of SC&T [you say], the fact that its

capitalisation was lower than the market value of its listed investments on the Valuation Date was a strong indicator that its share price was not a fair reflection of the intrinsic value."

Yes?

A. Yes.

Q. In other words, because there was a discount to your calculation, the market price is not the fair market price; is that a fair summary?

A. No, I don't think that's exactly the same. Obviously directionally it is, but, as you say, this is specific to SCT, and I'm not just saying there was a discount. I'm saying when you look at SCT at this date, its market capitalisation is less than simply its listed investments, and that's putting aside that it's got substantial operating businesses.

So what one thinks is there is something else going on here that merits greater investigation into SCT rather than simply saying: well, I'll take that market price of its shares as being what I use.

Q. Earlier in your first report you have explained the question of discounts and what you call in fact the disconnect between the intrinsic value, as you define it, and the market price, don't you?

A. I think, in general terms, as to reasons why there may

be a disconnect, yes.

Q. If we go to page 17 of your first report, and paragraph 4.2.4 {F3/1/23}, yes?

A. Yes.

Q. "In some cases, the market value of an asset may differ from the intrinsic value ... In broad terms, such disconnect is often caused by the market's reaction to events affecting the asset, or the market's view of expected risks and/or future performance of the asset."

And those reactions may not reflect the true state of the asset, etc. That's your opinion?

A. Yes, that would be --

Q. That's your opinion?

A. -- a generally accepted hypotheses as to why prices may diverge.

Q. I see. That isn't just a description of how the market works, then? Because it seems to me that you will have -- we agree, don't we, I mean, we will come on to it again, but an efficient market means -- and I have learned an interesting term during the course of this proceeding, which is a "semi-strong efficient market"; I didn't know that before this case -- but we agree that that means that the market represents the collective wisdom of all participants and reacts quickly to new information; yes?

A. It means the latter half of what you put to me. Most people would say that the market reflects the collective wisdom of market participants, but that's not, I don't think, inherent in the definition of semi-strong efficient. Efficiency is about whether the market reacts to information.

Q. Are you saying that you do or do not adhere to the suggestion that the market reflects the collective wisdom of market participants?

A. I think that is true, and I would accept it. I had to answer the way I did because you put to me that that was the definition of semi-strong efficient, which it isn't.

Q. Very good, and you've required me to be precise again, and that's all to the good.

So what you have described in 4.2.4 is that, isn't it? The market has reacted. The collective wisdom of the market participants to events affecting the asset and the market's view of expected risks and/or future performance of the assets. That is the collective wisdom of the market. That gives rise to the market price, and it is by definition, therefore, the fair market value, isn't it?

A. No.

Q. Okay.

A. So there are proponents, and I think this is directly

relevant to your question, forgive me. There are people who believe that the market is everything, and the market price is always right, and they are on the extreme of this idea that the collective wisdom of thousands of investors is to be preferred to anything else.

But --

Q. Sorry to interrupt. Please carry on afterwards. But just to be clear what you are saying, when you say preferred to anything else, what you mean is: preferred to the individual opinion of one analyst, such as yourself?

A. No -- well, that would be included in what I'm saying, but the proponents of that think the market is always right. And so every single fair value case that you get anywhere in the world that looks at transactions and says did they happen at a fair value, the proponents of the market say, yes, because you can tell from the market price.

Q. Okay.

A. Most people would take a more nuanced view and say that market prices do reflect collective wisdom, but when you see a share price move, and I'll draw in the air a graph of a share price, over a year, they would not say that intrinsic value of the shares has gone like that (indicates) on each day of the year. They would recognise that what is moving markets, daily, weekly, monthly, annually, is creating differences from what the real intrinsic value of the company was. And you hope over time those reconcile and move broadly in line.

Q. So the next paragraph, 4.2.5, gives examples of the reasons for such a disconnect. Are these in your opinion exhaustive or are they just examples and there may be many others?

A. They weren't intended to be exhaustive, and if I write "may include", I probably would have said: here is a few examples.

Q. Okay. Can you think of any others just before we go into them?

A. Well, I can't until I have read them because then I won't know what else there is.

Q. Very good.

A. I'll let you know if I think of one as we go through them.

Q. Let's go through them. So:

"Examples of the reasons for such a disconnect ..."

And that is the disconnect, in your opinion, between the intrinsic value as you define it and the market price are:

"(I) Investors' perspectives and objectives may

differ ..."

Yes?

A. Yes.

Q. And that's kind of obvious, isn't it, because people buy and sell shares. One person who is selling a share thinks it's a sell, it will go down, and the person buying it thinks the opposite. I'm thinking of Elliott by way of example; agreed? That's just the market working; yes?

A. Yes, it is, but if somebody has to liquidate a position because of a crisis somewhere else, that's a market action that will give rise to a variation in the share price that may not be related to a change in intrinsic value.

Q. We will have a look at all this on the transcript in due course, Mr Boulton. That's a very interesting answer:

"(II) Different investors may react differently to announcements regarding an asset ..."

So if we posit a company which is quoted where there is an announcement that, let us say, they are in arbitration proceedings before a very learned tribunal of Messrs Heiskanen, Thomas and Garibaldi, in which they seek to recover $707 million, that may encourage some investors to think that the $707 million is in the bag and other investors to think it's not worth betting on

that as a sensible outcome. That's different investors reacting differently to announcements. That's just the market operating, isn't it?

A. It's an example of different investors having different views. It doesn't really deal with the reacting differently to announcements, but.

Q. They react differently. Some of them buy because they think the 707 million is in the bag and some of them sell because they think that it's not, and that will cause the demise of the company. That's different investors reacting differently to an announcement. That's just, I put it to you again, the operation of the market, isn't it?

A. It is to an extent, but generally one would think that the market is fully informed and the market would understand that an announcement of a $500 million claim did not mean that the money was in the bag.

So of course there may be an irrational investor who is treating that as fact, but the market view probably wouldn't be.

Q. Okay:

"(III) A listed share price may be affected by a perceived lack of alignment between the interests of the controlling shareholders ... and the interests of other investors ..."

Again, the perception in your example exists and it is reflected in the share price and the share price therefore reflects the views of the market and is the fair market price; agreed?

A. No. These are questions where you appear to be trying to throw in "and is therefore a fair market price" at the end, which is not what I'm saying. A listed price may be affected by a perceived lack of alignment, yes. But that isn't --

Q. Just to be clear, you say that if I think there isn't a lack of alignment, and my learned friend Ms Snodgrass thinks there is, that difference means that the share price is not the fair market price of the company; is that your opinion?

A. No.

Q. Okay.

A. No, what I'm saying is that different investors may have different perspectives, and there may be underlying facts that are different from those perspectives. So one investor may think there's a lack of alignment. One may think there isn't. There is a reality as to whether or not there is that alignment.

And so market participants' views do not always reflect what's actually happening.

Q. Mm-hm:

"(IV) The share price may be affected by any anticipation of future events that may lead to the intrinsic value of the company not being returned to the current shareholders."
A. Yes.
Q. I may fear that there will be a conflict in the country where I own shares, and that may well affect the intrinsic value of the company because my factory or the company's factory may be reduced to a pile of ashes. That would certainly affect the intrinsic value of the company. Would taking that anticipation of future events into account mean that the share price of that company did not reflect its fair market value?
A. In itself, no, because one has to take into account potential future events.
MR TURNER: Sir, I'm conscious of the time. I'll finish this topic in a couple of questions if you and, more importantly, the court reporters will bear with me.
MR GARIBALDI: I have a question on this.
Mr Boulton, there have been cases in the past in which -- I'm going to give this as hypotheticals. Let's suppose a pharmaceutical company makes a certain product and there is a report that is published -- it could be in a professional journal or it could be a hoax or it could be variations of that -- to the effect that that

product causes cancer. And it turns out to be false. How do you analyse that situation within the framework of this paragraph 4.2.5?
A. So the report that the drug in trials or whatever is causing cancer will undoubtedly be taken into account by investors and on the facts as you give them, one would think it would have to have a negative impact on the share price.
If the underlying truth was that that had not been established, it was a false rumour or a false report, then the intrinsic value of the pharmaceutical company would not be affected because there was no merit in that. So you would have a short-term perhaps disconnect between the share price that is reacting to that news, and the intrinsic value that does not reflect that because it's false information.
So it's one of the reasons why market prices can only be relied on where they have complete information and accurate information. Does that answer your question, sir?
MR GARIBALDI: Yes, thank you.
MR TURNER: Now, for the statements in paragraphs 4.2.4 and 4.2.5 of your first report, you cite no authority, no commentary, no data. It's just your opinion; yes?
A. That appears to be right, yes.

Q. You do cite an authority in paragraph 4.2.1 on page 16 {F3/1/22}.
A. Yes.
Q. For the definition of intrinsic value.
A. Yes.
Q. You cite the American Society of Appraisers, Opinions of the College of Fellows, Definitions of Standards of Value, which is the Claimant's exhibit C-89 --
A. Yes.
Q. -- as authority for that.
We have got that in our bundle under tab 5. It is {C/89], and if we can begin on {C/89/1}, which is -- it's the first page of the extract of the exhibit, Mr Boulton, but it's page 6 on the internal. No doubt the person who decided which to put in just began at page 6 of this document.
A. Yes. You probably don't need context because this is the definitions section.
Q. I imagine that's right. Was it your decision to put this in, in this way?
A. No.
Q. So it begins "Definitions of Standards of Value", and you have quoted paragraph 4D, which, if you go in, is on internal page 9, at {C/89/4} in Opus; yes?
A. I'm sorry, I missed the internal page?

Q. Internal page 9.
A. Thank you.
Q. D, "Intrinsic or Fundamental Value"?
A. Yes.
Q. And you have quoted the first introductory paragraph to that section in your report; yes?
A. Yes, that looks like that's correct.
Q. If we go back to page 1 or internal page 6 {C/89/1}, but the first page of this extract, we have the definition under paragraph A of "Fair Market Value"?
A. Yes, we do.
Q. And you don't quote that, do you?
A. No, I don't.
Q. But it repays a bit of reading, I think. And it begins:
"The most widely recognised and accepted standard of value is fair market value. It is the standard that applies [I add, in brackets, this is an American publication] to all federal and state tax matters, such as estate taxes, gift tax, inheritance taxes, income taxes, and ad valorem taxes. It is also the legal standard of value in many other - though not all - valuation situations. The general definition of fair market value is almost universally accepted as the cash, or cash-equivalent, price at which property would change hands between [our old friends] a willing buyer and

a willing seller, both being adequately informed of the relevant facts and neither being compelled to buy or to sell."
Do you agree with that definition?
A. Yes, it's frequently used.
Q. And in the next --
A. And all of the relevant valuation bodies have definitions of fair market value, and they essentially contain the same notions within them.
Q. Mm-hm. And then if you go two paragraphs down, there's a paragraph that begins "The concept of fair market value"; do you see that?
A. Yes, I do.
Q. "The concept of fair market value also assumes prevalent economic and market conditions at the date of the particular valuation. One often hears statements such as 'I couldn't get anywhere near the value of my house if I put it on the market today' or 'The value of XYZ Company stock is really much more (or less) than the price it's selling for on the New York Stock Exchange today'. The standard of value contemplated by such statements is some standard other than fair market value, since the concept of fair market value means the cash or cash-equivalent price at which a transaction could be expected to take place under conditions

existing at the valuation date."
Do you agree with that?
A. Yes, I do.
Q. And if we go back to internal page 9, {C/89/4}, to intrinsic value, as you have defined it in your first report, there are some little helpful definitions here as well:
"The Handbook for Financial Decision Makers defines intrinsic value as follows ..."
Blah, blah, blah. Third sentence, just over halfway down:
"It is a subjective value in the sense that the analyst must apply his own [or her own, I assume] individual background and skills to determine it, and estimates of intrinsic value will vary from one analyst to the next."
Agreed?
A. I didn't spot where you were reading but what you were reading sounded sensible.
Q. Right. It's in the little indent under "Handbook for Financial Decision Makers".
A. Thank you.
Q. Four lines down, sentence beginning "It is a subjective value". Are you there?
A. Yes, I am. Yes. It says distinguished from the current

market price of the stock; yes, I understand that.
Q. Lorie and Hamilton, the author, or the College of Fellows, go on to say:
"... comment on the notion of intrinsic value as follows ..."
And then we have a further indented quote; do you see that?
A. Yes, I do.
Q. "The purpose of security analysis is to detect differences between the value of a security as determined by the market and a security's 'intrinsic value' -- that is [helpfully defined for us], the value that the security ought to have and will have when other investors have [and I like this bit] the same insight and knowledge as the analyst."
Agreed?
A. Yes.
Q. And just to complete this thought, two paragraphs down:
"Further concurrence on the meanings of intrinsic value and fundamental value is found in the following definitions from an authority in the accounting field."
Is this you? I assume not, Mr Boulton. But another authority?
A. I also assume not.
Q. Another authority in the accounting field:

"Intrinsic value. The amount that an investor considers, on the basis of an evaluation of available facts, to be the 'true' or 'real' worth of an item, usually an equity security. The value that will become the market value when other investors [or we should perhaps say if other investors] reach the same conclusions."
We agree with all of that, don't we, Mr Boulton?
A. I see what you're putting to me. I understand the point. But I think you're trying to draw a distinction between fair market value and intrinsic value that doesn't exist in the context of what I'm trying to do.
Q. Okay.
A. And that's because -- sorry, I don't want you to think that I have thought of this during the break. And that's because the necessity to focus on intrinsic value is because I conclude that the market price at the valuation date is not reliable, because it embeds the risk of this transaction. One therefore has to do a calculation of what the shares will be worth when the merger doesn't go through, which is that what will happen -- what will investors reach as to the conclusion as to value, and that's distinct from market price of the shares, and therefore I thought it more helpful to look at it as intrinsic value, but I'm not saying that

that is some far-off dream from what other investors will consider once the merger doesn't go through.
So I think my intrinsic value and fair market value will align when the merger doesn't go through.
Q. But they are not the same beforehand; that's your evidence?
A. Of course they are not, because the market value thinks the merger is going to go through, and that's going to extract 9 trillion Won of value out of SCT.
MR TURNER: Sir, that would be a convenient moment for a break.
THE PRESIDENT: Thank you very much. We break until noon.let's make it 12.05.
(11.49 am)
(A short break)
(12.06 pm)
THE PRESIDENT: Okay, let's resume, Mr Turner.
MR TURNER: Thank you, sir.
So the factors that lead you, Mr Boulton, to explain the disconnect, as you call it, between SC&T's market value and intrinsic value are set out in your first report at paragraph 4.2.6, as I understand it; is that right? {F3/1/23}
A. Yes, although, as you can see from the paragraph, what I was citing there were the arguments that had been

advanced in the Statement of Claim by the Claimant.
If it's helpful to repeat that, I think paragraph 4.2.6 is describing what the Claimant had at that stage put forward as being reasons for the disconnect, and I'm identifying them and referencing the Statement of Claim.
As with so much of this, you get, in my view, a better, certainly a more explicit consideration of some of these factors in my second report, by which time I have had the chance to see more evidence and Professor Dow's report and can present my analysis in a fuller context.
Q. Okay. Do you agree with these factors that you've set out in 4.2.6, that the disconnect is explained by "poor management and corporate governance practices"; yes?
A. I don't have an expert view on that. I understand the views of Elliott as to how corporate governance practices would feed in. I have seen and certainly in my second report I would specifically identify the second and third reasons as being ones that I identify and try and address.
Q. So the second one being:
"The Samsung Group artificially suppressing the share price of SCT ..."
A. Yes.

Q. "... for example, by withholding the disclosure of the Qatar facility D IWPP project from the market ..."
Yes?
A. Yes, that was the specific example that had been cited at that stage. What I have obviously seen now is wider evidence of market manipulation affecting both SCT and Cheil's shares.
Q. We will come on to it later, but that's what you set out on your slide 8; is that right?
A. Probably. That's what I'm referring to in the main paragraph on slide 8, yes.
Q. And (III):
"Market concerns that the Merger would be forced upon shareholders of SC&T."
A. Yes.
Q. And that is different from (I), poor management and corporate governance practices?
A. It's certainly different from poor management. One could understand that corporate governance concerns about the threat of disconnects between shareholders and company is related in part to the specific concerns about the merger.
Q. So you are saying there is in fact an overlap between (I) and (III) in your 4.2.6; have I understood you properly?

A. I'm saying that would be my view that there might be an interaction between specific concerns about the merger and corporate governance generally, but in this paragraph I'm explicitly citing what the Claimant has said and therefore I can't talk to how the Claimant is seeing the overlap between those two. I'm just reporting this is what they say.
Q. And nor do I, for these purposes, have an interest in what the Claimant says.
I'm asking you, looking at those factors, where you say one of the factors that you say causes the disconnect is market concerns that the merger would be forced upon shareholders of SC&T, and another factor is poor management and corporate governance practices, I'm asking you, you who have valued the company in your reports, to tell the tribunal where they coincide, what proportion of the disconnect relates in your opinion to (I) as opposed to (III). That kind of analysis seems to me to fall within your bailiwick rather than being a matter of what the Claimant alleges. But correct me if I am wrong.
A. Generally I think that's fair, but as you know from my second approach, I have been focusing on the extent to which the discount would unwind, and that is identifying the market concerns, whether arising from market

manipulation or from the merger itself, and the impact that has on the share price.

I understand that there may be residual concerns if the merger does not go through relating to the threat of other transactions or corporate governance issues in Korea. I would have taken those into account in a combination of my sum of the parts valuation by reference to other Korean companies, and the holding company discount I apply.

Q. Just to be clear about your evidence, your evidence is that your holding company discount, as defined in your second report, includes some Korea-specific poor management and corporate governance practices, and is not just a proxy for the standard holding company discount that you may find in all markets.
Have I understood your evidence rightly?

A. It is -- I think so, but to ensure that we're clear, I have quantified the residual holding company discount by reference to what is happening specifically to these companies in Korea. And therefore it's not a generalised holding company discount by reference to literature on holding companies around the world.

Q. If you go to 4.2.7, the next paragraph, you say that you "have not sought to quantify the effect of the above factors on SCT's share price". Is that still the case?

A. No. No, because, as you know, in my second report I'm focusing much more explicitly on the question as to how much of the discount in SC&T's share price would have remained if the merger had not gone through.

In my first report I implicitly assumed that the discount would have unwound. In the light of Professor Dow's evidence and other things I have seen, I thought that that was not a good assumption. And so I changed my approach to analyse the issue much more specifically about what happens when this merger does not go through.

Q. But we're agreed, aren't we, that, for example, you haven't quantified the effect of the alleged non-disclosure of the what I will just call the Qatar contract, but we know what we're talking about, I hope?

A. I have not sought -- short answer, yes, I haven't tried to look at the exact impact that that would have on the share price.

Q. And if I have understood your evidence, (I) and (III), poor management and corporate governance practices, and market concerns that the merger would be forced upon shareholders of SC&T, that, you say, you have quantified then in your second report, and that is the excess discount, capitalised, that you have deducted from what you call the observed discount; have I understood that

rightly?

A. No, I don't think you have. I think I was quite explicit that I have made no consideration specific to poor management.

This is one paragraph saying this is what the Claimant puts forward as factors to explain the disconnect. In my second report I analyse the share price specifically in the context of market manipulation as a backdrop, and by reference to what would have been the impact of the merger not going through. So the focus is very much on point (III).

Point (II) is relevant as a context point as to how reliable the share prices are concerned, and corporate governance practices are relevant to the extent that they inform both my valuation on a sum of the parts basis by reference to other Korean companies, and by reference to listed investments which are listed in Korea, and by reference to the fact that my holding company discount is looking at SCT and Cheil, and therefore is Korean-based.

Q. So your evidence is that the listed price, the share price, the market price for SC&T is not before the merger -- I'm not trying to fool you about saying, ha ha, after the merger -- but is not, at the time that you're looking at it, the fair market value; agreed?

That's what you say.

A. Yes.

Q. The Claimant bought its shares in SC&T at the market price.

A. Yes.

Q. And somebody sold those shares to the Claimant at that price?

A. Yes.

Q. But that was not the fair market price?

A. Well, it may have been -- it was the market price. To the extent that there is market manipulation, one cannot rely on the market price as being fair market value.

Of course, the share price also reflects the potential for the merger, but that is properly being taken into account by the market. So that's not a reason for saying it's not fair market value. Market participants recognise there is a potential merger, and that will be taken into account in the market price.

So my concern is more about market manipulation.

Q. Okay. So you have said:

"... the share price also reflects the potential for the merger, but that is properly being taken into account by the market. So that's not a reason for saying it's not fair market value. Market participants recognise there is a potential merger, and that will be taken into account in the market price."

So we are only left with manipulation as a reason for not taking the market price as the fair market price; agreed? That's just what you've said, Mr Boulton.

A. You've read back to me what I said. I didn't see the need to correct it as you went through it. But this is of course dealing with the period up to the merger. That doesn't give you the answer to the question: what would have happened to the share price if the merger hadn't gone through.

Q. So fair market price up to the merger, but you still need to look at a counterfactual; is that your evidence?

A. No, you're constantly trying to frame things in the way that you know is not how I put them.

It's not fair market price up to the merger. You have a share that there are very serious allegations of market manipulation.

As far as I'm concerned, that's enough to put a line through the idea that that's a fair market price, and any time you try to get me to say it's a fair market price, if I say yes, I am mistaken and carried along by the way you put the question, because it cannot be a fair market price if the price is being manipulated.

Q. So just to be clear, the market price has properly

reflected the fear of the merger, but the manipulation or the allegations of manipulation are such that you cannot -- you draw a line through, you've said, the market price as the fair market price. I have your evidence rightly?

A. I'm saying it is not fair.

Q. It's not fair.

A. It's the market price.

Q. Because of these very serious allegations, I believe you said, of manipulation?

A. Where you have such serious allegations you would not rely upon the market price.

Q. Now, you don't agree, therefore, that you can correct or adjust the market price if there are proved allegations of manipulation?

A. One could try to do it, but I think that would be a very theoretical exercise unless one had all of the evidence as to all instances of market manipulation, and a basis on which one could then quantify what the effect of each of those was, and I do not think that that sounds likely to be practicable.

Q. One approach, I'm not commending it or advancing it, but I'm saying there is one approach which was adopted by the Seoul High Court in the buyback litigation that we have heard a little bit about over the last ten days;

one approach would be to go back to the market price before there were those allegations of manipulation.

A. That is right. And if you can go back far enough to be sure that there are no examples of market manipulation, you will have a better baseline. The further back you go, the greater the difficulty you then have in rolling that forward to the valuation date to work out what the share price would have been but for the manipulation.

Q. Let's be clear about terminology. Market manipulation is a criminal offence; yes?

A. So I understand it. It certainly is in most countries. My understanding, it is in Korea.

Q. Whereas what Professor Milhaupt called tunneling, that is to say a controlling shareholder preferring business to be done by one company rather than another company within the group, for example, that is not a criminal offence -- sorry, I shouldn't be suggesting what Korean law says about one thing or another. That isn't necessary.

Let me go back to the point.

So having market sensitive information and refusing to disclose it, that could be called market manipulation; agreed?

A. Yes.

Q. Knowing of the award of a construction contract to

a construction company and not disclosing it to the market could be seen as market manipulation because it could be price-sensitive information; yes?

A. Yes, certainly from a UK perspective, that would be right.

Q. A controlling shareholder controlling two companies and preferring one over the other in bidding for contracts is a different matter. It is seen. It's not concealed from the market. It is seen by the market. Company A gets contracts, company B does not get contracts. And the market reacts to that known information; yes?

A. Yes. There are two layers there, though, aren't there. The market reacts to the information as to which company has in fact won contracts. The market may not know -- your example, it may be hypothetical -- that there is an unseen owner directing contracts one way or the other. You know, there might be all sorts of reasons why that would be improper. I have no idea whether it could be illegal in Korea, but without full disclosure, you could end up on the wrong side of all sorts of shareholder actions, for example.

Q. Let's pick up that point. Let's say it is known. Let's say both of the companies are members of the same Chaebol. That is precisely the sort of risk, corporate governance risk, that gives rise to a discount as

Professor Milhaupt explained, isn't it?
A. I'm not an expert on that, but that sounds sensible.
Q. So we need to be clear what we're talking about when we're talking about manipulation that renders a market price unreliable; agreed?
A. That's what I had been referring to, yes.
Q. And you'd been referring therefore to the first of my examples, the withholding of price-sensitive information from the market, rather than the tunneling, which is the corporate governance risk that exists, sadly, perhaps, but exists in South Korea; yes?
A. Yes, that is right. I wasn't referring as narrowly as to how you put the first half of that, withholding information. Providing false information would all be aspects of manipulation. But I wasn't referring to the broader tunneling issues.
Q. Now, if those -- no, let me come back to that.
Let us consider the value of SC&T at your valuation date, the day before the merger.
You've had it in your first report, but we've also got the Claimant's exhibit of the list of market prices, and as we'll refer to it later, we will refer to it as well today. It is -- now, I mean, I'm sorry.
It's under tab 6 and it's exhibit C-256, and I would like us to go to page 11. {C/256/11}.

This is, I'm sorry to say, a deeply user-unfriendly document. There are three columns. The first column is a column of dates. The second column is a column of, I represent to you, SC&T share prices, and the third column is Cheil share prices.
A. That's clear from page 1.
Q. If we're on page 11 and we go two-thirds of the way down, we have 16 July 2015; yes?
A. Yes.
Q. Are you there?
A. Yes, of course.
Q. We seem to be, in the light of our discussion earlier this morning about whether that was a trading day, we seem luckily to find that it was a trading day?
A. Yes.
Q. And it has a price, and it's 69,300 Korean Won a share.
A. Yes.
Q. As at the valuation date, your evidence is that the market did not believe that the merger would happen.
A. Where is that my evidence?
Q. I hope I've got this right. In your report. It's the second report.
A. It seems to be very unlikely to be a black-and-white issue. There would be varying views in the market and one can see that.

Q. Okay. Well, let's have a look at the references that I've got. They may not be good ones.
Your second report, paragraph 2.2.7, page 4. {F5/11/13}.
A. Yes.
Q. Before the merger there had been speculation regarding the potential routes through which the consolidation of control by [redacted] might be achieved. As late as February, only three months before the merger announcement, market analysts considered it unlikely that a merger between SCT and Cheil would take place.
So there's that.
A. So you were putting to me on the day before the vote.
Q. Yes.
A. So that's obviously very different.
Q. Okay. Then let's go on page 13 to paragraph 2.8.4 {F5/1/22}. Again:
"Market analysts were of the opinion that the Merger was not likely to take place, due to strong opposition from investors. I also understand --"
A. Yes, sorry, could I point out that the footnote appears to be from a Macquarie document dated 9 February 2015.
Q. Yes. Yes, agreed. If we go to 9.2.2, again, your answer is this is not the day before the merger? {F5/1/82}

A. No, it's the same date of 9 February 2015.
Q. So you give no evidence about what the market thought as at the valuation date?
A. The only evidence I give on that is that I cite the movements in the share price in this period as being indicative of new news changing the market's view, but I have no personal view on precisely what the market expected on that exact date.
Q. So --
A. If you ask me, sitting now, I'm aware that it had been leaked by this date that the NPS vote was in favour of the merger.
Q. Okay.
A. That seems to me to indicate that people may have recognised at this date that the merger would go through, but that's really a factual question for other people.
Q. Okay. Okay. Your opinion does not depend upon whether the market thought that the merger was more likely or less likely to happen on the valuation date?
A. Well, it would have an impact because if the market thought that the merger definitely wouldn't happen, then the merger not happening would have a smaller impact on the share price.
So it is part of the context, which is why you have

to track what is happening.
Q. Okay. But that wasn't a relevant enquiry for you to make in your valuation on the valuation date?
A. I didn't seek to come to a view on exactly what the market thought because factual witnesses and contemporaneous documents are better evidence of that.
Q. Okay.
Now, you know, don't you, that the merger ratio was set by operation of law?
A. Yes.
Q. That's how Korean law works?
A. Yes.
Q. Everybody seems to agree that a sophisticated investor investing in the Korean market, certainly if they invest hundreds of millions of US dollars, knows what the law is in that respect; do you agree with that?
A. That sounds entirely reasonable.
Q. And so looking at this from a purely economic perspective, not in any way a legal perspective, which is a debate to be had elsewhere, buying shares in a company subject to a given regulatory environment is, economically speaking, an assumption of risk in relation to that regulatory environment, isn't it?
A. I don't know that I would focus on it in that context, but maybe yes. Generally buying or selling shares in

a market entails an appreciation of risk. Things may turn out differently from what you expect. That is always the case.
Q. And before the merger announcement, we have seen from the paragraphs of your second report that we've just been to, the market seemed to think, you say, that the merger was unlikely?
A. The citations you took me to appear to have been February and March, and it appears that the analyst view at that time was that the merger was unlikely to go through.
Q. And we know, don't we ‐‐
A. But ‐‐ sorry ‐‐ this is pre‐announcement of course. So it was recognised as being a potential event about which people had concerns and which certainly was affecting the market price of the shares, but the analysts, at least in the early part of the year, appear to have been of the view that it was less likely than not, shall we say, to go through.
Q. And Mr Smith was astonished when the merger was announced, wasn't he?
A. I believe that's his evidence.
Q. It comes at a later part of my notes and I'll find the reference in a moment for the transcript, but we agree?
A. I think I remember reading in the transcript that he'd

talked about taking his son round a primary school on the date of something that was very surprising. If it was the announcement of the merger, then we're on the same page.
Q. It's under tab 17, but you don't have to turn it up, but for the transcript, {Day3/33:20}.
A. Yes.
Q. Now, after Mr Smith's astonishment and the merger ratio being set, the Claimant bought more shares, didn't it?
A. Yes.
Q. Was that, in your economic opinion, a rational thing to do?
A. I can certainly think of good reasons to do so. For example, if buying more shares would give you greater voting power to make sure that the merger didn't happen, that would be entirely rational. There may be many other reasons. I'm not a trader. I rely on Mr Smith.
Q. No, of course. Of course.
If you believed that the merger ratio was unfavourable to SC&T shareholders; yes?
A. Yes.
Q. And that if the merger was rejected the share price would increase; yes?
A. Yes.
Q. Do you follow my ‐‐

A. So far, yes.
Q. And you buy shares in order to make it less likely that the merger would take place; yes?
A. So far I'm with you.
Q. You are betting on a given outcome, aren't you? It might go one way; it might go another way?
A. Well, as I said in my general answer, nothing in life, and particularly in investments, is certain. And so you will inevitably recognise that there is a risk that things will not turn out as you hope they will.
Q. You would imagine that that would be a willing and rational acceptance of that risk, wouldn't you?
A. Well, I think you would understand that there was that risk. I don't know that that would encompass the risk of wrongdoing, for example. You may be going to come on to what Professor Dow says, but Professor Dow uses this as a launchpad to put forward some theory that if you identify there is a risk there, damages must be nil. And that's not an economic theory. And it doesn't grapple with what I'm grappling with, which is maths.
It's: if the merger hadn't gone through, then would you have made more money? And if that's a loss that is related to wrongdoing, then recognising that there's a risk the merger will go through has in my view no impact on the economics of that loss.

Q. Okay. You deal towards the end of your second report with Professor Dow's suggestion that Elliott could have mitigated its loss, and you deal with this in your section 9.3, which is on page 74 of your second report.
A. Yes.
Q. So you introduce the point in 9.3.1 {F5/1/83}.
You say in 9.3.2 that you have instructions about the law, so we won't go there. And 9.3.3, you say:
"Further, I understand that EALP purchased additional SCT shares following rumours of the potential Merger in order to increase its voting power, such that it could use this additional influence in its efforts to prevent the Merger. I consider that this was a mitigation strategy through which EALP sought to protect the value of its existing investment in SCT shares."
A. Yes.
Q. You've accepted that in so doing it was taking a risk; yes?
A. Yes, I think so.
Q. And we know, don't we, that immediately after the merger announcement, the price went up?
A. We do.
Q. And if we've still got the same page of our tab 6 open, it's {C/256/10} for the transcript.

MR GARIBALDI: What tab?
MR TURNER: 6, sir. Internal page 10, but it's also Opus page 10.
So the price the day before the merger announcement -- the merger was announced on 26 May. The price the day before is two-thirds of the way down page 10: 55,300 Korean Won for each SC&T share.
And if we go a little bit further down, we see the date of 5 June 2015. The price had gone up to 76,100. I represent to you that that is a 37.8% or so increase?
A. Sorry, are you saying from the 25th or from the 26th? I just want to be clear what you're measuring.
Q. The day before the merger announcement. So unaffected by the merger having been announced. 25 May, 55,300, to 5 June, 76,100. And that is, just mathematically, about a 38% increase; yes?
A. Yes.
Q. And that to sell one's shares at that level, in the light of the risk of the merger's taking place, might be thought to be a reasonable and rational step in mitigation, rather than buying more shares. What do you think?
A. Well, one can understand with 100% hindsight that selling shares on 5 June would have been better than not doing so. I don't want to trespass on legal issues, but

in terms of mitigation, the arguments, at least as they're applied by economists, tend to be about whether this was something that should have been done, and I think you can only answer that by looking forward from that date, rather than looking back with the knowledge that the merger went through, and that you left a potential gain on the table.
Q. Okay.
Now, if we go back to your second report and we turn to paragraph -- excuse me -- 2.7.4 --
A. I'm so sorry. I hate to interrupt you, but there is another aspect to that of course which is that there's a risk again of failing to take into account the wrongdoing. I of course assume there was wrongdoing, and that without wrongdoing the merger would not have gone through.
If that's right, then in my view selling shares on 5 June would not have been a good mitigation strategy. It would have been missing out on the upside of the merger not going through.
So it's very hard for me to think that there was some failure to mitigate.
Q. Very good.
2.7.4, page 12, second report {F5/1/21}.
So this is the section in which you look at the NPS

also having a position in Cheil.
A. Yes.
Q. And what you do to summarise, but tell me if I'm being unfair in my summary, is in the paragraphs that follow, you say that they didn't have enough of an offsetting position in Cheil to justify voting their SC&T shares in favour of the merger?
A. Yes, so my understanding was that the Respondent had argued that you had to look at the position in the round to understand whether what the NPS did was economically rational. I look at that and say, well, NPS had 11.2% of SCT, suffering a massive disbenefit; it has 4.8% of Cheil, gets the upside. When you net the two, NPS is a net loser.
Q. Yes, understood.
Can I ask you to go to your bundle and turn to tab 15 which is an NPS investment management analysis document dated 10 July 2015. It's {R/127} for the transcript, and I would like you to go to page 8 of it {R/127/11}. Are you at page 8?
A. At least one finger is, yes.
Q. Tell me when you're ready?
A. No, I'm ready. I'm just getting the context, looking at what else is in the document, checking the date.
Q. So all I wanted to point out to you was on page 8, the

second half of the page, very nearly, is a list of the 17 companies within the Samsung Group in which the NPS had holdings; do you see that?
A. Yes, I do.
Q. And what I suggest to you is that, rather than simply looking at the positions of the NPS in SCT and Cheil, you should have regard in considering the rationality of the NPS's decision to their holdings in the whole group. Do you agree with that?
A. I would agree that that would be an alternative perspective, to say that there could be wider impacts on NPS's holdings in Samsung or indeed the Korean economy, and that in principle those might be relevant.
Q. And you go on in your report in paragraph 2.7.8 to say that: {F5/1/22}
"EALP did not hold any offsetting position in Cheil."
Do you see that?
A. Remind me of the paragraph? I'm sure you're right.
Q. 2.7.8, page 13. It's just under the paragraphs that we have just been looking at.
A. Yes, I see that.
Q. Was that on instruction that you said that?
A. Yes, I think it must have been.
Q. And your report was dated 17 July 2020?

A. Yes.
Q. By which time the Claimant had disclosed some, although, as we discovered last week, by no means all, of the transactions that it did have in Cheil?
A. That may well be right. I don't remember the dates, but yes, I'm happy to take your ...
Q. But they didn't tell you?
A. Well, reading that sentence, my understanding was clearly that they didn't have an offsetting position. I can't remember a specific instruction to that effect or conversation about that, but I would not have written that without getting that understanding from somewhere.
Q. I mean, at the very lowest level, knowing how these things work, a draft of your second report would have been seen by counsel and probably the client, and nobody said: oh, hang on a minute, Mr Boulton, what about all our short swaps in Cheil?
A. Yes. So that certainly didn't happen. Normally, if I'm doing something on instruction, I would write "I'm instructed that ...", and so I believe I would have done something to confirm that, but since you're putting to me that it may be wrong, I can't rely on having done that.
I would say that I'm not sure that short swaps are an offsetting position. It's not the same as you hold

shares in SCT, you hold shares in Cheil, so where you lose on SCT, you gain on Cheil, which was the exercise I had done for NPS.
But if Elliott had a long position in Cheil, then I would regard that as an offsetting position. If it had short swaps in Cheil, that seems to me to go in the same direction.
Q. You don't feel at all that -- well, sorry. You said I understand that -- or you're putting to me that that may be wrong. You understand it is wrong?
A. I have seen some evidence this week which I understood -- maybe my focus is wrong -- primarily to involve short swaps in Cheil.
Q. And you do not consider those to be offsetting positions in Cheil?
A. No, not in the sense I was looking at this, because an offsetting position, as I show clearly here, is that if SCT is losing, Cheil is gaining, and so your net position is a true net.
If Elliott has short swaps in Cheil, then it seems to me that those are going to go up in value if the merger doesn't go through, and therefore they're not offsetting.
But if I'm misunderstanding what Elliott holds, please show it to me and I can revise my opinion if

I need to.
Q. But if that is the position, you still consider that this sentence is accurate, that: {F5/1/22}
"EALP did not hold any offsetting position in Cheil."
A. If they have short swaps, it may still be accurate because of what offsetting position means. But I completely accept that I was not aware when I wrote this of the full extent of Elliott's investments, and therefore, you know, if necessary, I would certainly be happy to revise that.
My understanding, sitting here today, is there is not a long position in Cheil that would need to be netted off the long position in SCT.
Q. Do I understand it that you did not, in preparing yourself to give evidence today, you did not look at the various documents relating to these transactions that have been disclosed and summarised in spreadsheets over the last ten days?
A. I have looked at Mr Smith's fourth witness statement and I have seen some spreadsheets that show how positions were closed out, and I haven't had the time to do a full verification exercise, but I have seen spreadsheets that explain the figures that were put in Mr Smith's fourth witness statement about which you cross-examined him.

Q. Okay.
A. So the closing out of the positions and then the net gains and losses.
Q. Okay.
A. So I understand where those figures come from. Are they complete? I have no way of verifying that without, you know, starting a full audit.
Q. Indeed. And so, I mean, I don't want to ask you questions about whether there was an overall trading profit if you have not looked at those documents in detail, Mr Boulton?
A. I have looked at the summary spreadsheets that show the closing out of all of the positions.
Q. Okay.
A. And I have seen that they add up to figures that then appear in Mr Smith's witness statement.
Q. And your evidence earlier to the tribunal was that in any event you don't consider trading profits or losses to be relevant to your loss calculations?
A. I don't think they feed into that calculation of what would have happened if the merger had not gone through.
Q. Okay.
A. And that of course, to be clear, is largely because those gains and losses are the same in the actual and the counterfactual.

Q. Now, you talked a little before the break about your view that the allegations of market manipulation justify drawing a line through the market price as the fair market price. Do you remember saying that or words to that effect?
A. Yes, I do. Almost exactly those words, I think.
Q. You in your report, and I'll simply run through a list -- I'm very happy to go to the paragraphs if that is helpful -- you say that you understand that there may have been manipulation. I refer there to your first report, paragraph 4.2.7 {F3/1/24}, and your second report, paragraph 3.2.4 {F5/1/26}
A. Yes.
Q. You talk about outstanding allegations, and I refer to your second report in paragraphs 2.2.8, 2.2.9, 3.3.5 and 4.2.18 (II), which, you say, if true -- and again, 2.2.8, 3.3.6 and 4.2.18 (II) -- would justify the rejection of the market price.
A. Yes.
Q. These are allegations, aren't they?
A. Yes. Though, they go beyond what one would typically think of as allegations in that they are put forward, in the indictment in particular, with an enormous amount of detail to support them following an extensive period of investigation.

Now, I'm careful in my language because I don't think it's my role to opine on what may be found at the end of further criminal trials, nor indeed am I in a position to do so because you are seeing what essentially the prosecutor is putting forward.
But the extent and duration of the evidence that is put forward to support the indictment is very serious. And that, it seems to me -- and to some degree I have seen more of it since I wrote my second report because there was some quite recent information available then, and I have had more chance to read the indictment at length, etc, and the colour that that provides suggests to me that there was a long-term serious intent to mislead the market.
Q. Now, I assume that in looking at all of those allegations you have been careful to distinguish between the two categories that we talked about earlier, namely allegations of what Professor Milhaupt called tunneling, and withholding information, disclosing false information, and the like.
A. I think I do understand that distinction, as I said to you earlier, and what has been concerning me is not the general threat of tunneling, but rather the items that I list on slide 8.
Now, slide 8 was taken directly from the

Respondent's press release on the indictment, but it seems to me that that focuses on one of the two categories you're putting to me.
Q. Yes.
A. And these are the ones -- the types of allegation that are of concern to me in terms of the market price.
Q. Now, two points. You will agree with me, Mr Boulton -- and I raised this point in opening -- that this is an indictment that has been put forward by the prosecutor and it is, I suggest, not appropriate in a country that is subject to the rule of law, such as the Republic of Korea, to say that that is endorsed by the Republic of Korea before it has been examined by the courts. Do you agree with that?
A. I'm not an expert on Korea, and certainly Korean Government, but if the prosecutor is an arm of the state, for want of a better word, and is putting this forward in an indictment as being the considered view, then that appears to me to reflect the Respondent's view.
If I'm failing to grapple with or understand the intricacies of how these offices are organised in Korea, I'm happy for you to correct me.
Q. But we all agree -- and I give these references simply for the transcript -- as my learned friend Mr Stafford

very properly recognised yesterday when he was cross-examining Professor Bae on allegations in indictments -- and the references are {Day6/105:22} to {Day6/106:2} -- these are allegations that are the subject of ongoing criminal proceedings and have not been proved, and, as the learned arbitrator Mr Garibaldi said, and the reference is {Day6/56:10-12}, to try allegations of market manipulation would of course require the evidence to be proved.
A. So that's all true, of course, but in due course in trials, whether that evidence meets the criminal standards under the law as it relates to the particular defendants is of course unknown. But when you read the evidence, does it on its face suggest that whoever was guilty of it, whether or not it was a criminal offence, does it suggest that there were very significant attempts to manipulate the prices of the stock? Yes, on its face it clearly demonstrates that, and that for me is enough to say -- I have to be terribly careful in thinking that the market price is truly that consensus view of informed investors.
Q. Do you understand the operation of the Capital Markets Act in Korea when setting the merger ratio to use the prices of -- and I simplify a little, but I hope well enough for these purposes -- the price for the month

before the announcement date, the week before the announcement date and the day before the announcement date?
A. Yes.
Q. And so in order for the merger ratio to be affected by any manipulation, it would have to take place in that time frame; yes?
A. Yes.
Q. And in order for --
A. No, I'm so sorry. No. If manipulation has taken place, for example, dissemination of false information, just to take the first example, if that had happened three months earlier but was still embedded in the share price, then it would still affect the merger ratio.
Q. Well, that's interesting, isn't it. So let's look at the Claimant, which began buying shares in SC&T in January 2015. That's the evidence. You understand that?
A. I'll take that from you, yes.
Q. And if there had been manipulation at that point, the price has gone down, and the Claimant buys at the lower price; agreed?
A. Yes.
Q. And so in order for --
A. But not -- and yes, I'm sorry to interrupt you -- but of

course, if the manipulation was increasing the price of Cheil, then that is affecting the ratio as well, if that's being bumped up, but isn't affecting what the Claimant is buying at.
So absolutely, if the price of SCT is being suppressed, then that is affecting the price at which you buy, but its effect on the merger ratio may be of much greater value than the impact on the share price. I haven't thought that through. I need to.
Q. And so far as affecting the price at which the Claimant bought its shares in SC&T is concerned, and how that fits into the merger ratio, the manipulation would have to happen after the Claimant had bought the shares and within the period that's taken into account for the merger ratio; yes?
A. Subject to what I have said about the Cheil shares, yes, I think that's right.
Q. And --
A. But yes, in simple terms, if the SCT price is depressed, then Elliott, what we're talking about here, is buying at a lower value.
What I don't know is how that flows through the consequences into the merger ratio, where the merger ratio, by setting a transfer of value, has very large economic effects, and I haven't done the maths through

as to how a small shift in the share price in January, whether those offset.
Q. Have you looked though -- I assume you have looked -- at when the alleged manipulations took place, to be sure that they could have had these effects that render, in your view, the market price to be unreliable?
A. I have read the evidence and my recollection is that the indictment at least focuses on manipulations in the period around the merger. I think I have seen mentions of earlier questions, but I think the focus is closer to the merger time.
Q. For example, the Qatar contract, you have seen that Professor Dow has looked at what the effect would have been, if any, on SC&T's share price, and has quantified that, and you have not.
I put it to you that it is more appropriate, in the light of allegations of manipulation of that sort, to adjust the market price than to throw it out completely and substitute for it your own subjective opinion as to the value of the company.
A. Well, I think I have given my answer to this. I don't agree. For example, I don't agree with the way that Professor Dow quantifies the impact of this. In particular, I seem to recall he does an event study of when the news is actually given to the market, where you

have a great deal of other noise. He's looking for an excess return, and he's measuring the impact on the combined SCT-Cheil entity, which is very much larger than if it had been announced on SCT.

So, you know, Professor Dow and I can disagree about how you measure that impact and indeed we do, but that's for a single identified example, and if reasonable people can differ, then you have to identify every single example of market manipulation and try to reach a view as to the impact of that example, and then you have to look at the cumulative impact of all of the examples, including the impact on market sentiment of a direction that a company appears to be going, if its revenues are falling, for example, and that, it seems to me, is every bit as subjective, and I would say more subjective and more difficult, than doing my sum of the parts valuation.

MR TURNER: Well, I will allow Professor Dow to defend his --

A. Of course.

MR TURNER: -- analysis tomorrow.

I think, sir, looking at the time, the time has run away with me somewhat. It's 1.10. There's a natural break here. I'm happy to come back in an hour's time?

THE PRESIDENT: Very good. Let's break now also to make

sure we have a warm lunch rather than a colder one.

So we will resume at 2.10.

THE WITNESS: Sir, for the record, I know that I cannot speak to anyone about my evidence.

THE PRESIDENT: Very good.

MS SNODGRASS: Might I just ask Mr Turner if he is able to give us any indication, so we can plan the afternoon, about how much longer he thinks he is going to be?

MR TURNER: 30 years ago in my old firm, a litigation partner, who became a Court of Appeal judge, so he was hoist by his own petard, in giving a discussion of a case he was working on, said he would be five minutes and then it took much longer and he said: pace, Mr Boulton, sorry, that was a barristerial five minutes.

I hope I will not be more than a couple of hours after lunch.

THE PRESIDENT: Very good. Thank you. Enjoy the lunch.

(1.10 pm)

(The short adjournment)

(2.07 pm)

THE PRESIDENT: It looks like everybody is ready, so we can start ahead of time, unless there are objections.

Mr Turner.

MR TURNER: My two minutes of further contemplation having been ripped from me, I am happy to go on, sir.

Mr Boulton, can we consider again the position at the valuation date, 16 July 2015.

The market price, as we saw, for SC&T was 69,300 Korean Won per share. What would the valuation be of a claim brought by Elliott hypothetically for an expropriation of its shareholding on that date?

A. It probably trespasses on matters of law, but as quantum experts typically approach expropriation claims, they would either be valuing the shares at that date or they would be doing an ex post valuation of the value at some subsequent date, which tribunals, in my experience, apply in circumstances where the value at the date of expropriation wouldn't provide full reparation.

Q. Let me be more precise in my hypothesis. The tribunal has found that that is the capital V, capital D, Valuation Date, as in your definition.

A. Yes.

So a starting point in many cases would be what is the market value of those shares on that date.

I say the starting point because expropriation cases give rise to layers of complexity and one often ends up somewhere other than the starting point.

Q. So let's look at --

A. Following that down, and you appreciate the difficulty of considering something that I have not previously

considered, where if I was doing an expropriation case, one would have months and months of work and long reports; but if one tries to put that into the present circumstances, it seems to me that I would be looking also at what were those shares worth, what would they have been realised for subsequently.

But it's very hard to hypothesise because one is working with a sentence worth of assumptions.

Q. Okay. Let's look at some further numbers.

We've already seen that within a week or so of the merger announcement the price had gone up 38%.

A. Sorry, it peaked at 38% above the value, yes.

Q. Yes, sorry, I wasn't meaning to imply anything other than at that date, Mr Boulton.

Now, going back to the market price at the announcement date, it may help to open our file at tab 6 again and go to page 10. For the transcript, {C/256/10}.

You will see two-thirds of the way down page 10 that the price on the announcement date of 26 May 2015 was 63,500 Korean Won a share. Have you situated that in the columns?

A. Yes, I see that.

Q. And you in your second report, before applying your holding company discount, you arrive at a sum of the

parts valuation that is of 115,391 Korean Won a share. Does that sound -- I can do the maths with you if you like?
A. I can't remember numbers like that in terms of on what date. I'm very happy for you to ask me to assume that.
Q. Very good.
Are you also happy to assume, or we could do the sum together and you have put one version of it in your footnote 21 in your second report, but are you also prepared to accept that as at 26 May 2015, your sum of the parts valuation of 115,391 Won a share is an implied discount to the market price of 45%?
A. Do you have that the wrong way round? Do you mean that the market price is at an implied discount to the sum of the parts value?
Q. That is certainly what I meant to say. If I said it the wrong way round, my apologies, Mr Boulton. But yes, exactly. The actual sum comes out at 44.97%, but I'm happy to go through that, or ask you to do on your calculator?
A. Oh, I do have a calculator. No, that looks right.
Q. So if we then look at the price that we looked at earlier of 76,100 Won per share on 5 June, I represent to you that that is an implied discount by reference to your sum of the parts valuation of 34%; does that sound

right to you?
A. Yes, it's 40 over 115. So that's slightly over 34 -- 35%, yes.
Q. It's 34.05%, with the precise numbers. But we're in that order of magnitude.
A. Yes.
Q. And again, if we can go to Professor Dow's report, which will be only on the screen, and if we can go -- so Professor Dow's report is at {G3/1} for the Opus operator, and if we go to {G3/1/16}, we should be on page 11 of Professor Dow's report.
A. Second report, yes.
Q. Second report.
We see three numbers in columns in a bar chart, which is Figure 3 of Professor Dow's second report.
The number that I want to draw your attention to here is the number in the middle column, which is Elliott's June 2015 analysis.
A. Yes.
Q. That comes from, for the transcript, C-395 {C/395/1}, which we can go to if you doubt the number, but that is the source of -- it's a spreadsheet, I'm afraid, but I represent to you --
A. I'm very happy to accept that.
Q. -- and to the learned arbitrators that that's where that

number comes from.
A. Someone somewhere will be shouting if it isn't, but I'm very happy to accept that.
Q. I always work on that assumption as well, and it's usually proved right.
Again, I represent to you that that number, Elliott's NAV analysis at that date, when compared to the trading prices that we have just looked at, namely 63,500 on 26 May and 76,100 on 5 June -- are you with me?
A. Yes.
Q. The equivalent implied discounts to Elliott's NAV calculation from C-395 would be 32.1% and 18.6%. Does that seem right to you?
A. Yes. Yes, certainly within -- rounded to the nearest percentage, that is what I get, sir, yes.
Q. I'm very impressed by the facility, but you are a chartered accountant --
A. I'm an accountant.
Q. -- so I shouldn't be impressed. I am impressed anyway, but --
A. You should be impressed if I was here as a barrister, but I'm not.
Q. Yes, a numerate lawyer. It is a rarity indeed. You've no idea of the time it has taken me to get to grips with

these formulae, and nor will I tell you because I would be embarrassed.
Elliott itself, again I represent to you, but we can go to the documents if you like, calculated a discount of around 40%. It's your observed discount, if you will, Mr Boulton. And for the transcript, we've got C-395 {C/395/1} which I have just referred to. We also have C-374 {C/374/1} on 5 March 2015, their trading plan, and C-684, the 27 March trading plans. There were two of those. {C/684/1}.
We can go to them and look at the precise numbers, but do you accept that we are talking about an identification of a discount of around 40%?
A. Yes, I think so. Certainly my 40% discount, I think, was the figures you'd given to me earlier. So that would be from a sum of the parts value of 115,391 down to 76,100. So that's where the 40% comes from.
I agree with the maths on the Elliott discounts, although I would caution that you've got to be a little bit careful because they're not all at the same date.
So you can compare the 93,532 to the market value at 25 May, which is your 34% discount, but if you start comparing it to market value in the middle of July, then the SOTP valuation would be wrong, and indeed we know it would be because the market price of listed investments

within SCT is going up over that period.
Q. Indeed the price is different. I hadn't gone to the July price. The July price again, 16 July, is 69,300, and that wasn't one of the numbers that I had picked out. But yes, of course I accept that.
We're talking in general terms here.
A. Yes.
Q. And what I suggest is that these various estimates and these various implied discounts show that there is a significant degree of subjectivity in the assessment of the sum of the parts, the net asset value number, and therefore the calculation of the implied discount.
Do you agree with that?
A. I half-agree because of course I agree that there is an element of subjectivity to doing a sum of the parts valuation. Different people could make different choices.
But the way you put the question I think risks confusing valuations at different dates, and so the fact that the percentages are changing doesn't mean that that's because the sum of the parts valuations are subjective. It's because there are other moving parts, such as the market price of listed investments, or such as the SCT share price because it's on a different day.
So of course the discounts will change over time.

Q. And you remember in Professor Dow's second report, and if we can go to {G3/1/18}. If we look at paragraph 32 of Professor Dow's second report, this is where he begins to examine Elliott's perceived widening of the discount in November 2014. You remember this?
A. I do, yes.
Q. And do you remember -- I don't think you were in the room during the first cross-examination of Mr Smith, but have you read the transcript where my learned friend Mr Lingard took Mr Smith to Elliott's trading plans, to go through this phenomenon with him?
A. I don't think I have been through that. That may have been the first day of Mr Smith's testimony.
And I certainly read the second day, but I don't recall that.
Q. It was, and let's go to tab 17. Tab 17 contains several extracts from the transcript of Day 3. If we can go to numbered page 54. {Day3/54:1}
Now, I represent that the context of the short extract that we will look at was Mr Smith confirming that the purported widening of the discount was a revaluation of Samsung SDS following its listing. You remember, that's the phenomenon that Professor Dow explains?
A. I remember Professor Dow identifying that as being

a reason for the change, yes.
Q. And this is just Mr Smith's acceptance of this. If you look at line 13 on page 54 {Day3/54:13}:
"You describe your first investment in Samsung C&T right around this time ... and in the second sentence you note that you'd assessed that the shares of SC&T were trading at a significant discount, and then in the third sentence you refer to an increased discount; do you see that?
"Answer: Yes.
"Question: You don't here refer to the listing of Samsung SDS as a reason for that increase, but in fact this purportedly increased discount you describe here was due to that 70-some percent increase in valuation of Samsung SDS from yours one day to the market's the next; that's right, isn't it?"
And over the page on page 55, line 1:
"That would have been ..."
It's recorded as "a fair", but I think you can agree that's Mr Smith accepting the proposition put to him by Mr Lingard?
A. Yes.
Q. In other words, subjective choices can make a very significant difference in a net asset value?
A. Yes. I think in this context it was, if I remember

correctly, it was about the fact that this particular entity was listed, and so for the first time you have evidence from the market as to its value which superseded what -- the estimates that had been made before that.
Q. Yes.
A. So what you would expect to happen is the market price would change because there's new information, listing of subsidiary, or of something that shares are held in, and change in the sum of the parts. Whether that changes the discount will depend on whether they move in step. But yes, of course, new information will change the discount.
Q. So there was a subjective valuation of the holding in Samsung SDS by Elliott?
A. Yes.
Q. The market gave the price the next day on the listing, and of course that was the new value that had to go in. The market price had to replace the subjectively arrived at estimation; yes?
A. In that context, yes, I would agree.
Q. And you have made your own subjective choices in your sum of the parts valuation, haven't you?
A. Yes, I have. I have done that in part by making sure that I understand what all of other market commentators

and analysts have done, and I have ensured as far as possible that it's rooted in objective data from comparable companies.

But anyone who does valuations for a living will agree that there are elements of subjective choice.

Q. And if we go on back to Professor Dow's second report, {G3/1}, and go on to page 61, which should be page 55 in the original -- I'm one out, my apologies. Please go back to {G3/1/60}.

Actually, that's an excellent illustration of my bad mathematical skills because I was told there was a gap of 5 between the page numbers of the report and the Opus numbers, and I managed to add 5 to 55 and get 61. So there we are.

Anyway, page 55 of Professor Dow's second report, and there, admittedly, they are at different dates, but you will see the significant differences over a period of a month and a half between your valuation on the right and Elliott's valuation on the left?

A. Yes. Can I interpose to say you're almost asking me to ignore the change in dates, but if you look at line C, which is the listed investments, I think a significant part of that movement is date driven, although some of it may also be tax treatment driven.

Q. In fact it is the other way round. It is nearly all tax

because what you have done is you have decided to put the listed investments into your sum of the parts valuation before tax; agreed?

A. Yes.

Q. And Elliott always deducted tax when it did its sum of the parts valuations; agreed?

A. I recall it did in this instance, yes.

Q. And we can go to it, but Mr Smith confirmed that that was what Elliott did. We can go to the -- we've got tab 17 open and we can go to page 44 of Day 3's transcript {Day3/44:1}.

At line 4 Mr Smith says:

"That's correct, but we've taken off taxes on any gain as between these amounts and the acquisition costs for Samsung of these stakes ... So we hadn't applied a holding company discount, but we've taken a discount for tax."

And I represent to you that he said the same at paragraph 19 of his second witness statement.

A. Yes.

Q. Now, we may need -- so that's a big difference, right, between what Elliott did --

A. Yes.

Q. -- and what you did?

A. Yes.

Q. And I am not here to say that you are right and Elliott is wrong or vice versa, but that's a subjective choice; agreed?

A. Yes, I think that's right. I think one has to make sure that one then reflects what one has done elsewhere in the calculation, for example to discount, and I did do a cross-check against realisation discounts. But you are right, it's a choice that the modeller makes, the valuer makes, and in this case I made the choice that it wasn't appropriate to deduct tax.

Q. And you will remember the lengthy cross-examination of Professor Bae yesterday where my learned friend Mr Stafford took him to a number of reports by analysts. Do you remember that?

A. Yes.

Q. And what Mr Stafford was showing Professor Bae was that the analysts were valuing the listed securities at a market price; agreed? You may not remember.

A. That's certainly my memory from the analysts. I'm not sure when I was sitting in for Professor Bae whether I could see what was being shown.

Q. My point is not really what my learned friend Mr Stafford was showing Professor Bae, but the fact is that those analysts' reports came up with different net asset values for SC&T, didn't they?

A. I'm sure they did. They would have done, yes.

Q. And that is shown, if we go back to your presentation, if we look at slide 10 of your presentation, you have a wavy blue line which is the share price of SC&T, and you have a large number of little black dots, if they are black -- grey dots? Not sure -- dots which are analysts' assessments of the net asset value; yes?

A. I can't recall if they term that value as net asset value, if it's their target prices, but yes, that is their indications of value that you would compare to the market price of the shares.

Q. And you list a whole number of them in your report as showing that sum of the parts valuations are standard and widespread?

A. Yes, indeed they are.

Q. And if we go -- what you haven't done on this is to put your valuation. So if we can go back to Professor Dow's second report, {G3/1} and go to Opus page 17 -- oh dear. It's my arithmetic again. No, there it is, it's the right one. Figure 4. {G3/1/17}

A. Yes.

Q. So it's a different way of showing what you have shown on your slide 10. There's the wavy line, which is SC&T's share price. There is an average analyst target price rather than the many dots -- that's very good,

having both of them together -- the many dots that we have on your slide 10.
We have Elliott's June 2015 NAV analysis, and then we have your number at the top?
A. So remind me, that number as pictured by Professor Dow, is that before or after a holding company discount?
Q. Before.
A. So therefore you're not comparing like with like, are you?
Q. Well, all --
A. Sorry, I shouldn't criticise you. Professor Dow, if that's right, is not comparing like with like because the average analyst target prices are after the discounts that they include in their valuations, and the market price is after the discount that we see observed in the marketplace.
So if you were doing a like with like comparison, you would be looking at what I say the price would have been after a discount and if the merger hadn't gone through, and every single price up to that last line is in a world where the merger is potential, may happen, we're in the merger period and is affecting the price.
So comparing as though -- you know, to make a jury point that my Figure is higher, without taking into account either of those two points, makes this a piece

of advocacy and not a piece of analysis.
Q. Well, I have that, and we will come and do some analysis of your number now, because you have said that in order to be properly comparable, your number, if I have understood, summarising, but tell me if I haven't, you should apply the holding company discount that you do apply because there was a discount in SC&T's share price?
A. No, because my conclusion is that when the merger didn't go through, the share price would have gone up, but it would not have gone up to intrinsic value or -- sorry, it would not have gone up to the sum of the parts value because there would have continued to be a discount.
Q. It would have gone up to 85% or 95% of the sum of the parts value?
A. Correct.
Q. Okay.
Now, you have made your choice, as we established just now, not to discount the listed holdings for tax, but what you do is you do your cross-check -- I think you referred to it just now -- for capital gains tax, share transfer tax and transaction costs to provide comfort for your residual holding company discount. That's right, isn't it?
A. Yes. Put generally, that sounds a fair way to describe

it.
Q. And if we go to page 53 of your first report {F3/1/53}, you summarise this in paragraph 6.7.10. Did I say first report? I meant second report, please forgive me. Page 53 of your second report. {F5/1/62}.
A. Thank you. That's my 53, not ...
Q. Yes, it's your 53. You have a hard copy.
A. The operator has found it. That's fine.
Q. Yes, but you have a hard copy in front of you.
6.7.10:
"Finally, I calculate SCT's Total Asset Sale Costs by summing up ..."
Blah, blah, and you have a table, Figure 14, that does that.
A. Yes.
Q. And it comes up with what you call a realisation discount for SC&T of 16%?
A. Yes.
Q. Of the sum of the parts value?
A. Yes.
Q. And that realisation discount is supposed to represent what would happen if all of the assets were sold; is that right?
A. Yes.
Q. Now --

A. Which is, you know, a sort of mental exercise. It's not suggesting -- it's a cross-check, as you fairly put to me, I think, and it's not suggesting that that was a likely or intended strategy.
Q. No, no, and that is not the thrust of my questioning.
Now, we are agreed that Elliott had no models where the discount observed in SC&T fell below 20%. You agree with that?
A. As a matter of fact, I have no idea, but I don't remember seeing anything that was that low.
Q. And Mr Smith confirmed this on Day 3, page 77 at lines 19 to 24, but we don't need to go to it {Day3/77:19-24}.
Now, this was modelled by Elliott with its smallest discount of 20%, among other times, on 16 January 2015. I refer, for the transcript, to Mr Smith's second witness statement at paragraph 25. The trading plan concerned is C-368 {C/368/1} and the date of 16 January comes from footnote 28 in Mr Smith's second witness statement.
Now, that 20% discount was modelled with Elliott having made its net asset valuation on an after tax basis. Do you follow that?
A. Yes.
Q. That, I suggest to you, meant that an equivalent before

tax net asset value never showed a discount of less than 32%. 31.7% exactly. I can take you through all of the calculations if you would like.
A. It depends what you're then putting to me because I can't tell that that's true from what you've given me because it depends on the assumptions made about the level of taxes applied by Elliott and to which of the investments. The cross-check, using an asset sales strategy that I used, was all of the businesses of Elliott, I believe.
Q. Yes. All we can do, because we do not have -- your sum of the parts valuation and Elliott's net asset value models are not on precisely the same basis. You have made --
A. Understood.
Q. -- a subjective choice. We have to do the best we can to try to reconcile the numbers that you come up with.
A. Mr Turner, I'm not criticising at all. I'm simply saying I can't agree to 32% because I have no idea how you arrive at that.
Q. That is completely understood and let us go to tab 19 of your bundle, which is C-369. {C/369/1}.
Can we go to page 2, {C/369/2} for the transcript.
My advice -- I don't know whether your eyes are as bad as mine, Mr Boulton, but my advice is that the A3

hard copy is easier than the copy on the screen.
A. I didn't even look at the screen. It's just a blur to me.
Q. Top left, Samsung -- it says "Corp" but we are agreed, I represent to you, that this is Samsung C&T, construction and trading?
A. Yes.
Q. NAV analysis today, January 16, 2015. Do you see that at the top left?
A. Yes, I do.
Q. And do you see the number of outstanding shares as adjusted? It's under common shares, on the left at the top, still?
A. 151.4 million.
Q. 151.4 million.
At the bottom of this page you see Elliott's NAV calculation and it's right at the bottom. There's NAV -- bottom left, "NAV" in bold?
A. Yes.
Q. I invite the learned arbitrators to shout if they aren't following this as well. We have the number of 14,380,254. I strongly suspect that to be in millions, as we have discussed before, Mr Boulton, but you can see the number as it appears on the document.
A. Yes, I can.

Q. And if you run your finger up that column you see that that is after tax -- MV, I represent to you is market value?
A. Yes, I can't immediately see the after tax bit, but --
Q. Sorry. Right at the top, underneath the descriptions, including the number of outstanding shares that we went to earlier, there is a row headed "Listed Securities". Can you see that? About a third of the way down on the left?
A. Yes.
Q. Listed securities. Then there's whole list of them, mainly beginning with Samsung?
A. Yes.
Q. Then we go along the row that says listed securities and we see a number of columns, and the one that is directly above the net asset value number of 14 million-odd that we just looked at is headed "After-tax MV"; do you see that?
A. I do, thank you. And I can see that is after tax because you can see it working across from a pre-tax MV and then applying a capital gains tax rate.
Q. You are ahead of me. Probably you have more facility with spreadsheets of this sort than I do.
So 14,380,254 million is the after-tax NAV that Elliott has calculated, and if we divide 151.4 million

shares by that number, we get -- and you have a calculator if you want to do it -- 94,966 Won per share?
A. I think again you've probably got your division the wrong way round.
Q. I may have expressed it the wrong way. I promise the sum has been done the right way.
A. And the answer you got, please, was?
Q. 94,966.
A. Thank you.
Q. So you have already seen that there is a column for the listed securities headed "Pre-tax MV", and that gives a total, if you go to pre-tax MV and go down to the bottom in the line that is called "Total Listed Securities", you see a number of 11,953,224, which is again expressed in millions of Korean Won?
A. Yes.
Q. Are you there?
A. Yes. So you have about 2.5 million of tax impacts.
MR GARIBALDI: Sorry, can you repeat that?
MR TURNER: Yes. In the rows that are headed "Listed Securities", it's on page 2, sir.
MR GARIBALDI: Go ahead.
MR TURNER: Sir, there is some writing in the top left-hand corner which gives the date and the number of

outstanding shares of 151.4 million. Below that there is a row or a number of rows headed "Listed Securities". Yes? If you go along listed securities, that row there, you see the two columns that we have been discussing are "Pre-tax MV", then two other columns headed "Cost basis" and "Capital Gains Tax Rate" and then a column headed "After-tax MV".

If you go down to the bottom of the column in listed securities under pre-tax MV, you have the 11,953,224 number, and under the after-tax MV, 9,490,620.

Mr Boulton is already there, but that is a difference between the two of 2,462,604, which you divide by 151.4 million outstanding shares to get a tax adjustment of 16,266 Won a share.

Does that arithmetic look okay to you?

A. Yes, because you've got about 2.4, 2.5 million, ignoring all the zeros, of tax, and that has an impact on your value after tax of 14.38. That's about a sixth. So a sixth of the 94,966 you are putting to me is about 16,000. So it seems right.

Q. Then in order to get a -- because we've got the NAV calculation of the after-tax number. You have to add the after-tax number of 94,966 to the deduction for tax of 16,266 to get the pre-tax NAV per share which is 111,232.

Luckily, all of these numbers will be on the transcript, so we can look at them later. I'm not expecting everyone to remember them now.

But that is how we arrive at Elliott's pre-tax NAV. Do you see that?

A. Yes, I do, and I can see that the Figure you gave me, although there was some rounding, is the 94.966 added to the 16.266.

Q. Yes.

A. It's not quite fair in my view to call it Elliott's pre-tax NAV because they didn't do a pre-tax NAV. Their chosen way of doing it was post tax.

Q. I have reverse-engineered it and you have seen how I have done it.

A. Yes, I understand that.

Q. So if Elliott's lowest modelled discount was 20% compared to the after-tax NAV on 16 January 2015, that would be a 20% discount to 94,966; yes?

A. It would be, although you're now applying discounts from a different date to your market value.

Q. No, this is all on 16 January 2015.

A. I'm sorry. You'd given me a reference for the 20% which was from a different NAV analysis, but if they're the same date ...

I just don't understand if we have a NAV analysis

with a 20% discount why we wouldn't have done this computation within that spreadsheet, because then there would be greater integrity to the calculation.

Q. Because it's the same date. The one is on a trading plan. This is the next asset value that they have come up with. It's the same date. This has got the tax calculation that enables us to arrive at a before-tax NAV.

A. But forgive me, I'm obviously ignorant of the underlying detail, but the 20% to which you refer must have come from a different calculation than this, unless it wasn't a calculated discount.

Q. It was a calculated discount. It was using the 94 -- we can go to it in a moment just to square the circle, if that would help.

But let me continue with what I am putting to you and we will see whether we agree at least in principle.

A. Yes, thank you, but I think you've noted my marker that I don't see it at the moment.

Q. I have noted your marker.

The reference is C-369 and it's in the bundle and we can look at it.

A. 368, I think you said earlier.

Q. 368. {C/368/1}

So we have the after-tax NAV of 94,966, and we have

a 20% discount which gives a Figure of 75,973 a share; agreed?

A. If you're saying 20% off 95,000 is 75,000 --

Q. 76,000. It's --

A. If it's 76, then yes, I agree 20% off that. But I'm not ... Again, I've got the same problem that the 20% seems to come from a different calculation. So applying it to this one isn't working for me. But yes, mathematically.

Q. And therefore the smallest discount for which Elliott modelled in its trading plans was the discount between the pre-tax number of its SOTP calculation of 111,232 Won per share, and the number that we arrived at by applying a 20% discount to the after-tax NAV, which is 75,973 Won per share, and that implies a discount from the before-tax value of 31.7 -- call it 32 --%.

A. Yes.

Q. I accept your point that the 20% discount comes from a trading plan and the NAV is from the NAV calculation, but we can go to tab 8, which is C-368 {C/368/1}. Have you got that?

A. I'm looking at C-368. I haven't spotted 20%, but you will show me where it is.

Q. I will. I will. I had marked the date at one point. It's in Mr Smith's witness statement. I'm sorry, of

course. That's how we know. To remind everybody, it is in footnote 28 in Mr Smith's second witness statement that we know that the date of this is 16 January {D1/2/14}.
A. Yes.
Q. And if you go to the middle column and the unwind plan.
A. Yes.
Q. You see the first column under "Unwind Plan" is "Unwind at"?
A. Yes.
Q. And you see a number of minus 20% halfway down?
A. Yes.
Q. "Unwind LMV", 30.78 in the yellow column next to it. And if you go all the way across, tracing it carefully with your ruler to make sure that you're on the same line, you see that at that point you have unwound 100% in the last column headed "Full Plan Cumulative"; do you see that?
A. Yes, I do.
Q. And as I have said, Mr Smith confirmed that there were no trading plans that foresaw a discount of less than 20%. We've got that reference in the transcript.
A. So my difficulty has been that when you first put the 20% to me, I didn't understand that to be Figure rooted in the unwind plans and at what level one might start to

unwind.
So I had taken it from you as being a calculation at 20%. So what you are now in fact comparing is the actual discount that Elliott was estimating and we can see in the top right-hand corner that's 42.16% when this was prepared, which is quite similar to the other document that we were looking at.
But against that context there's a plan to unwind at 20%. And assuming they are consistent and coherent Elliott analyses, one assumes that that 20% is using a discount that has applied tax in arriving at the discount.
Q. And so what we find is that, using the smallest foreseen discount that Elliott modelled, when you are looking at the pre-tax NAV per share, that represents a discount of 32%.
What I'm saying is this, Mr Boulton. Let me situate this --
A. I think I can get there. You're asking me to compare a plan around levels at which one might unwind with calculations that are based -- of a discount based on what was in the market at the moment, and you are saying that because Elliott is deducting tax in its calculations, its discount is smaller than it would otherwise have been. And if you were to compare them

like for like, would you have to gross up this 20% for the tax impact, and you're telling me that that would get you to about 30, 32%.
Q. Correct. And if we do the same for your calculation, and I accept that your calculation is at a different date, and that your 16% realisation discount takes account of not only capital gains tax, but we saw that it was a not dissimilar number --
A. I think capital gains tax is the big --
Q. Is the big thing.
A. -- piece of that.
Q. If we do the same calculation, so in other words we take your gross Figure, your pre -- so your NAV, which is calculated before tax, is 18,510,678 million Won. It's in Figure 14, but you know -- I mean, these numbers don't change in your second report.
Your realisation discount is 2,968,235. We have just seen that in your Figure 14 on page 53. Your net asset value after the realisation discount is therefore 15,542,443. 18.5 minus 2.9; right?
A. Yes, yes, I'm with you. Sorry, I'm waiting to say "but", but I'll let you get to your question.
Q. You will say the "but" at the appropriate time, but I just want to be sure that we're all following the calculation.

Therefore, if we take the lowest discount for which Elliott modelled, which is 20%, we have to apply a 20% discount to the closest equivalent that we have for you for an after-tax NAV -- that is 15,542,443 million Korean Won -- and if we apply that 20% discount to that number, we get 12,433,954 million Korean Won. The implied discount between that number, 12,433,954, and your pre-tax NAV of 18,510,678 is 33%, 32.8 to be precise.
Now, I'm not suggesting that that is the right discount. I'm not suggesting that there is a perfect apples-and-apples comparison between the Elliott NAV and yours in other respects. But I am saying that your conclusion, that your cross-check, with 16% realisation costs, bolsters, supports, your conclusion that the maximum residual discount would be 15%, is obviously wrong, because the implied discount, when you compare to what Elliott was doing after tax, is in fact twice as much at 33%. That is what I am suggesting.
A. I will try to be succinct. As you would expect, I don't accept that for a moment, and that's because there's an awful lot of apples and oranges going on there.
So you're bringing me down to a calculation that mixes things on many levels. It mixes an Elliott discount with mine. It mixes an Elliott discount that

is in an unwind plan rather than in their valuation. And then it tries to force that into my calculation at a different date, and then in my calculation you made me double-discount for the same points.

So starting, using rounded figures, the 18.5 million, you deducted 16% or so for realisation costs to get to 15.5, which you said was my after-tax NAV, but it's not how I would look at it, and then you imposed another level of discount on that.

Now, I would say if you start from my sum of the parts valuation of 18.5 and wish to take into account all of the realisation costs, then why would you need to impose a further level of discount? That was my cross-check on my 5-15%.

So to ask me to use that cross-check in full and then impose another layer of discount is not consistent with what I have told you I think is the right answer here.

Q. Well --

A. So I do see it a bit as playing with numbers, to be honest.

Q. I understand your answer. I have not added a double discount. I have transformed your number into the nearest that we can get to an after-tax number to compare it with Elliott's net asset valuation, and

applied the lowest foreseen discount that Elliott modelled to that, and that gives an overall discount of 33%. As in Elliott's case, if you get back to a before-tax number, it implied an overall discount of 32%.

That is what I'm suggesting, that therefore your 16% realisation check does not support your 15% maximum holding company discount.

I accept that you disagree.

A. Yes, I do disagree, and there's a lot going on there. You know, the unwind plan is in January; the merger is, to the extent thought about, a hangover, and none of these answer the question I'm addressing, which is what would the discount have been in the market if the merger had gone away.

And that's not a question that I understand anyone is trying to answer in the Elliott part of the calculations or the unwind plan.

I have a standalone separate piece of analysis that says: if the merger doesn't go through, how much do the shares go up, what level of discount will there remain.

Although Elliott deducted tax off the listed investments, which is highly conservative, I don't think that was the general approach. Analysts do apply discounts to the listed investments, but I don't recall,

sitting here, that they do an after-tax analysis.

MR TURNER: I commend Mr Smith's evidence to you in that respect.

THE PRESIDENT: Mr Turner, maybe I ask my question here to give you a chance then to follow up with Mr Boulton.

Mr Boulton, your understanding of the 20% in the unwind plan, is that a discount or is it simply a percentage of the value at which Elliott would sell the shares?

A. So my understanding is that in principle in the unwind plan Elliott is building up a stake in SCT and has a part of the model that deals with at what price levels one might seek to unwind that position.

Now, this is a factual matter, but my understanding from Mr Smith is that that wasn't what was actually the operable part of the plan when it came to SCT, and certainly one can see that when you get into the period of the merger, what matters is whether the merger is going to go through rather than day-to-day changes in the level of discounts.

But I see that as we're buying shares at a 40% discount, and within the spreadsheet, they say if the price goes down to only a 20% discount, ie the price has gone up, then one could unwind.

THE PRESIDENT: It may be that it's a factual matter, what

the 20% represents, but I just wanted to put the question now so, Mr Turner, in the event you want to follow up on that, that's fine, but it may be that it's for submission by counsel on Friday.

MR TURNER: I think the effect of it is for submission. Whether it's on Friday or in writing, we will see.

THE PRESIDENT: We'll see.

MR TURNER: Or both. I think we are all agreed that the trading plan represents a complete unwinding, so the end of the sale of the position when the discount to NAV has reached 20%.

Mr Smith said in evidence last week that Elliott did not use the trading plan for unwinding, only for building a position up. We take a different view of the significance of the trading plans, but that was Mr Smith's evidence, but I think we are all agreed that the 20% number in the trading plan represents a discount to net asset value, as calculated by Elliott.

So I will not debate the factual question further with Mr Boulton.

Now, I was struck that in your presentation this morning, Mr Boulton, you very properly accepted that you had changed your mind between your first and second reports about the persistence of a discount even in an efficient market. And that's your position.

A. Yes. I don't think the rider "even in an efficient market" is relevant, but you're absolutely right. I changed my position, and that was on reading Professor Dow's evidence.
Q. And to be absolutely fair to you, you say this clearly in your second report at paragraph 4.2.21: {F5/1/33}
"I revise my position."
A. Yes.
Q. So this brings me on to the question of how you put your first report together.
You believed that the discount would wholly disappear and you calculated damages on that assumption in your first report. That's right, isn't it?
A. I think the way it's -- broadly, yes, but I think that was implied rather than explicit, and I think this was a failure to focus my mind sufficiently on the issue of what would the shares have been worth in the market if the merger hadn't gone through.
So I was starting with a more conceptual framework and saying what is intrinsic value. Implicit in that was you could sell them for that, and I didn't address my mind to whether that was in fact the case taking into account the discounts that one sees in Korea.
Q. Now, that's troubling, it seems to me, because there are -- you didn't consider either any kind of generic

holding company discount, nor did you consider a Korea-specific discount. I mean, that's right, isn't it?
A. I think that's right. I think I was aware of the fact that there are discounts in Korea. I believe I referred to them in my first report, but I probably ceased on the basis that those were reflected in the listed investments and in the comparables.
But you are right to say that I gave too little consideration to the issue of discounts generally in my first report, and that was a failing of that report.
Q. And yet in your second report not only do you revise your position, as you say, and accept that there would be a residual discount, even in your counterfactual, but you feel able to break the discount down into what you call a holding company discount and an excess discount, and to quantify both of those elements.
A. That's correct. That's correct, yes.
Q. Now, in the context where you did not look at discounts at all in your first report, and where you had to revise your position in your second report, it seems as though you have become -- well, I use the word, the only word that one can use -- an expert in the Korean capital markets, between your first and second reports, to allow you to make that quantification; is that how you see

yourself?
A. No.
Q. Because neither Professor Milhaupt nor Professor Bae, when asked, could break the discount, the observed discount in Korea, down into a generic holding company discount and a Korea-specific discount. Do you remember that?
A. I don't remember that either of them gave evidence on quantification.
Q. If we go to tab 18 of your bundle we have extracts from yesterday's transcript.
If I can ask you to turn in to page 59, it's the second page. Mine are all back-to-back. I don't know if yours are as well. I assume they are? {Day6/59:1}
A. Yes, they are.
Q. This is while Professor Milhaupt was giving evidence, and at the bottom of page 59 of yesterday's transcript at line 23 {Day6/59:23} you have a question from the President:
"So in those instances where we are discussing a company in a Chaebol structure that acts in effect as a holding company, how would you distinguish between a Korean discount and a holding company discount in those circumstances?"
And Professor Milhaupt says:

"Well, it's admittedly challenging ... one of the interesting features of this case is it's, to my knowledge, the first case that would require actually separating out those components. And my understanding is that the expert, the valuation expert for the Claimant, his analysis is doing exactly that, separating [them] out ..."
But you have just told us that you aren't an expert in Korean capital markets.
A. Yes. But this is a valuation question, and the question is: based on the evidence of value in this case, can I address the question as to how much the share price would have arisen when you take away the impact of the merger on the share price.
All of the tools that I have at my disposal there are the ones that a valuer would normally have, and so I can look at the stock prices over time. I can look at comparable companies. I can look at the way that the market price has reacted to news about the merger. I can look at the impact of the transfer of value between SCT and Cheil and the impact that that clearly observably had on the share prices of both SCT and Cheil, the discount and the premium. And I can use my valuation skills to determine what I think would have happened when you removed the merger from that picture.

I accept that as part of that context I have had to understand and read about the differing views of different people about the Korean economy and market prices in Korea. But I am the only expert who appears to have tried to answer what I think is the fundamental question, which is: what would have happened to the share price when the merger didn't go through. And I think I'm doing that on the basis of normal valuation skills.
Q. In other words, you don't need to be a Korea expert to separate that out?
A. It clearly helps to have an understanding of the Korean market, and that is why I refine my calculations between my first and my second reports to take into account the evidence of Professor Bae, Professor Milhaupt and Professor Dow. I mean, Professor Dow is the one who actually speaks at length about the Korea discount, and I don't understand him either to be an expert on Korea. But that doesn't mean that I don't read what he says about it, check it against the literature, absorb it, and use that as part of my analysis.
Q. So just to be absolutely clear on this point, in your first report you assume that there will be no residual discount?
A. Implicitly, yes, because my calculation of damages in my

first report was for the difference between what Elliott received, the actual, and what the intrinsic value was of the shares. And so implicitly I was assuming that the loss was based on what the intrinsic value was.
Q. In your second report --
A. In my second report --
Q. Let me ask --
A. -- I have taken account of --
Q. Mr Boulton, let me just put the proposition to you and then you can answer the question.
In your second report, having read Professor Dow's report, you agree that there should be a discount; yes?
A. Yes.
Q. And although Professor Milhaupt, the Claimant's Korea capital markets expert, says that his understanding is that this is the first -- to his knowledge, this is the first case that would require separating out the components identified by the President, he says that you nonetheless have been able to do that and you confirm that you have done that purely as a valuation expert and not as a Korea expert; is that right?
A. Well, I was halfway through an answer that would have articulated that in the way that I wished to.
I think you have the substance of my evidence. I don't fully accept the way you turn it around, but let

me put it another way.
There's no economic literature about excess discounts because there's a difference between observable phenomena across an economy and the analysis one does in a piece of litigation, and in every piece of litigation where one is comparing the actual with the counterfactual, one has to do an equivalent analysis.
I put a label on this, called excess discount, which is simply to make sure the reader of my reports understands that I'm talking about the bit of the discount that would have gone away if the merger didn't go through. But one wouldn't expect people generally to be writing about that.
What one does have is people writing about observable discounts in the Korean economy, and they have different views about what a normal level might be and what are the constituent parts of that.
But what I'm doing is not different from what Elliott was doing as an investor and looking at the discount and whether it was too high, and it's not different from what I'm doing when analysts look at the market price, do their own bottom-up valuation, calculate their own discount, and set a target price that is above the value of the shares in the market that day.

So my analysis is entirely of a piece with what market participants were doing.
Q. Okay.
Now, your evidence is that all that would have been left of the observed discount in your counterfactual if the merger had not happened would be the 5-15% that you call the holding company discount?
A. Yes.
Q. And your evidence is that the share price would have adapted right away?
A. Yes.
Q. Now, again, just to stick with Professor Milhaupt, he wasn't able to identify a time horizon for any changes in the share price that the rejection of the merger would have given rise to, was he?
A. I don't believe he quantified them, but I should also say that my reading of Professor Milhaupt's reports and listening to his evidence, the focus was on the longer term changes that come from reducing predatory risk and the risk of tunneling and Chaebol corporate governance, and that is an issue that both he and I think Professor Bae comment on, but it's clearly hard to quantify and put time horizons on.
I am measuring a different thing, which is the short-term market reaction when a share that has been

depressed by a predatory merger suddenly gets the news that that merger has not gone through. That's a specific quantum issue that is not what I understood Professor Milhaupt's evidence to be directed to.

Q. If we look at what Professor Milhaupt said, it's the first extract from yesterday's transcript under tab 18, page 40 of yesterday's transcript {Day6/40:1}, and if we go down to {Day6/40:15}, Professor Milhaupt was asked by my learned friend Mr Lingard:

"... just to make sure I have your response to my specific question, sir, you have not considered the magnitude of that immediate reaction in the stock price?

"Answer: That's correct.

"Question: Would you expect it to effectively be doubling the stock price overnight, Professor?

"Answer: I have undertaken no effort to gauge or to measure the magnitude."

But you have, Mr Boulton. You have measured how much the price would increase and it is from the level from the day before the merger, your valuation date, of 69,300 to between 85 and 95% of 115,000. That's right, isn't it?

A. Yes, it is. And that's because the news that the merger didn't go through is obviously highly relevant news and the market responds instantly to that news.

Shareholders in SCT, who were about to get 25-point-something% of the merged entity when their valuation merited more than half, are no longer being subject to that 9 trillion Won value transfer. That's enormous news for the stock price of SCT.

Q. Now, it's right, isn't it, that in your counterfactual, the merger having been rejected, everything, the structure of SC&T, the legal and regulatory environment in Korea, the incentives on [redacted] to gain control over Samsung Electronics, all of those things would have been the same from 17 to 18 July 2015, had the merger been rejected. That's right, isn't it?

A. That is right. The SCT structure would have been as it was previously. So obviously it would have been very different from part of the combined entity. I make no assumptions about changes in the regulatory environments or [redacted]'s incentives, although I would note that it seems unlikely that there could be an equivalent merger plan immediately to be implemented.

So incentives, I don't comment on how they change, but I'm not aware of a view that they change. The practicality of a predatory transaction such as this might be very much reduced.

Q. The reason that you give for the dramatic increase in share price from one day to the next, despite all of

these other things remaining the same, is that there would have been a majority of shareholders that had shown itself that it would now wrest control from the Samsung Group; is that a fair summary of what you say?

A. That's a piece of it. That's a market signalling piece. The more immediate impact is that you're not being forced into a predatory merger. You're not giving away -- I repeat the point, but it is important: you're not giving away 9 trillion Won of value to Cheil's shareholders.

Q. If we look at your second report on page 45, paragraph 6.5.10 {F5/1/54}. Sorry, the paper we're using to produce all of these is very shiny and I find it quite hard to turn the pages.

If we're all there, 6.5.10, the second sentence of that paragraph:

"I consider that the rejection of the Merger would have signalled to the market that SCT was controlled by a rational shareholder group which was interested in maximising value for the benefit of all shareholders (potentially resulting in a smaller discount for SCT). By contrast, in the Counterfactual Scenario, Cheil would have remained under the control of the [redacted] family ..."

Etc.

So it does seem to me that you're putting your eggs

in the basket of a controlling rational shareholder group?

A. I certainly cite that, but of course the passage you're putting to me is about the holding company discount for SCT and Cheil, and here I'm looking at whether they should get the same discount.

So my empirical data that I use to come up with 5-15% is what happened to the merged entity post merger, and that's the level at which it was trading. It seems to me that's the best evidence you can start with as to the level at which SCT would have been trading.

I then consider whether there's a reason to differentiate SCT from the merged entity, and this is the paragraph in which I'm looking at that problem.

Q. Again, you refer to a -- well, let's go to paragraph 6.7.2 {F5/1/60}, which is on page 51. This is in the context of the asset sales strategy cross-check that we've already talked about.

If you go to the second sentence which begins at the end of the fourth line down:

"This is because, once it was clear that a majority of the shareholders of SCT wanted to operate the company for the benefit of all the shareholders, rather than the controlling family ..."

Etc.

A. Yes.

Q. Again, that is your core assumption, isn't it, that there would have been a group of rational shareholders who would have controlled the company?

A. I don't think it's my core assumption. I think it's a relevant indicator which I'm using in the context of the cross-check. I'm not even sure that it's right that it would be a majority of shareholders, but it would be a sufficient body to vote against transactions of this sort.

Q. Now, can I ask the operator -- apologies, I should have put it in my bundle -- to put up the Claimant's opening slide 33. I'm told it's {J/1/33}.

Do you see that?

A. I do, yes.

Q. Now, as you know, there were all sorts of supermajorities that Korean law required for approval of the merger of overall numbers of shareholders and shareholders attending the EGM and so on. And you can see dotted lines there, but for the purposes of my question, can you just look at the group of shareholders who voted in favour of the merger without taking the NPS into account? That's the --

A. So that's the sort of olive/taupe --

Q. Olivey-beige kind of nondescript colour?

A. Yes, and stop before I get to the shaded "NPS".

Q. Correct.

A. And the top line that we're looking at results at the EGM.

Q. The better line, I suggest, is the middle line, because it has a number on it.

A. Okay.

Q. Which is 56.3%.

A. I'm looking at it.

Q. So my question is: there was a majority, even without the NPS, in favour of the merger at the EGM. Is it not therefore rather optimistic to assume that if the merger had been rejected, that there would have been a continuing majority, and -- who knows for other purposes whether a super-majority would have been needed -- that would have sent the signal that you refer to in your second report to justify the very steep increase in the share price?

A. So I already recognised when you took me to this paragraph that in fact it isn't a majority. So I agree with you on that. But does that affect my analysis? No, not at all, because, as I have said, my core assumption, rather than the cross-check paragraphs you're taking me to, is that the transaction would not have happened. It was a predatory transaction, which would have transferred enormous value. If that doesn't happen, SCT shareholders are much better off than they were the day before and the share price has to rise to reflect that.

MR TURNER: Okay.

Sir, I'm not going to finish in a time that is reasonable for the court reporters. We've been going for an hour and a half. If the court reporters would like us to take a break now -- they're nodding -- then I suggest we do, and I will then wrap up after a coffee break.

THE PRESIDENT: Very good. Let's break for 15 minutes until 15.50.

(3.36 pm)

(A short break)

(3.50 pm)

THE PRESIDENT: Can we resume, Mr Turner.

MR TURNER: Can I ask you, Mr Boulton, to turn to page 29 of your second report. This is where you deal with what you say would happen -- 29 for the operator -- to SCT's listed price in your counterfactual scenario {F5/1/38}.

You say in 5.3.2:

"If, as Professor Dow concludes, the market was semi-strong form efficient, I consider that, in the Counterfactual Scenario, news that the Merger had been

rejected would have been incorporated into SCT's Listed Price, thereby causing it to adjust to Intrinsic Value."

And by that you mean your sum of the parts valuation less either 5%, or between 5 and 15% discount; agreed?

A. Yes.

Q. And then in 5.3.3 you adduce the only authority for that proposition which is a contemporaneous analysis, you say, performed by the NPS that if the merger had been rejected, SCT's listed price would have skyrocketed; yes?

A. Yes, I see that.

Q. The reference for that is exhibit C-510, {C/510/1}, transcript of court testimony of [redacted], and we can go to that. It's at tab 12 and on the screen, indeed.

Let us go to page, I think it is 17 -- no, it's 16, I'm sorry {C/510/16} of the Opus.

It doesn't look right, does it? Perhaps it was 17. {C/510/17}. Can we try 17. It's on internal page 15 for those of us with a hard copy, and let's just stick with that for the time being. We have got it in hard copy in tab 12.

So what you're referring to is the answer given at the bottom of that page, isn't it, Mr Boulton:

[redacted]

[redacted] {C/510/12}

That's what you based your reference on in your paragraph 5.3.3, isn't it?
A. Yes, it is.
Q. Do you know what the analyst meant when he said [redacted]
A. Well, I haven't spoken to the analyst about it. I would understand that to be market demand for those shares.
Q. Okay. Did you look at the next page of this evidence?
A. Yes, I did.
Q. And if you go to the next page, internal page 16 {C/510/13}, the answer at the bottom of the page:

[redacted]

Are you there?
A. Yes.
Q. [redacted]

[redacted]

Do you see that?
A. Yes, I do. That's of course dealing with Samsung Group companies generally, not SCT.
Q. Right. But just taking that point, and first going back to a discussion we had before lunch about the NPS's holdings in 17 Samsung Group companies, you said that might indeed be something that they would take into account in deciding how to vote; do you remember that?
A. I said I could understand an alternative view that suggested that might be relevant. I didn't see any evidence that they had done the analysis on that basis, and I was responding to the Respondent's argument on the point, which wasn't about wider Samsung Group.
Q. No, no, very good. Just, there is somebody whose view you have quoted in support of your instantaneous jump in share price opinion who makes that point?
A. Yes.
Q. [redacted]

[redacted]
A. I note that.
Q. You note that. Okay. And as you also ––
A. But as I have said before, but because you're asking me again, I am focused, because my computation of Elliott's loss is focused on what would have happened to their shares in SCT.
Q. Okay. Did you also note this analyst's opinion that:

[redacted]
A. Yes. It's always dangerous reading a transcript of an interview because it's not entirely clear to me whether he was saying that was his view at the time or whether that –– well, or whether that was his current view. It can't be his current view because that has now happened, but he's saying: [redacted]
Q. [redacted]; yes.
A. Of course that could include paying fair value for them.
Q. My point is simply: this is the only authority that you cite in support of your instantaneous near doubling of the share price opinion, and it's not quite as clear cut

perhaps as one might think from your paragraph 5.3.3, is it?
A. I think that's possibly true. I certainly think it's dangerous to rely too much on sound bytes. I included it as a cross–check, that somebody else in an important role, in the sense of they were with NPS, perceived the potential for skyrocket, because I thought one of the issues was, do shares actually behave in a way that dramatic, as yesterday we saw the description of what would happen to the Cheil shares as being that they would plummet. They are dramatic words which are consistent with my view that the market reaction in an efficient market will be dramatic.
Q. And if we turn to tab 3 of your file, your cross–examination bundle, this is C–30, which is the ISS research paper from 3 July 2015 {C/30/1}, and if we go to page {C/30/2}, in the middle at the top there's a paragraph that begins "From the unaffected date". Do you see that?
A. Yes, I haven't spotted what this paper is calling the unaffected date, but I'm sure it's in here.
Q. By all means, if you would like to read more of it before I go to the sentence ––
A. No, no, that's fine. If we need it, I'll tell you.
Q. Okay. So in the middle of that paragraph:

"... we estimate that a standalone Samsung C&T would have declined by 7.3% without the merger announcement."

Fine:

"Given that the stock increased by 19.9% since the unaffected date, we estimate that the short term downside may be as much as 22.6% if the deal does not go through."

A. Yes.

Q. You haven't referred to this in your report at this point, have you, Mr Boulton? This opinion that there would be a short-term decrease if the merger did not happen of as much as 22.6%?

A. I do not recall if it's one of the many, many papers to which I have referred, but I'm happy to take your word for it that I haven't.

Of course, this estimate is on an assumption that the SCT share price would have followed the market. So they are saying if you assume the unaffected share price just follows the market, it would have declined. Because it's increased, there is an exposure to that.

If you're simply following market movements, I don't quarrel with that logic, but there is no consideration in this passage to what the impact would be on SCT from the removal of a merger --

Q. Well --

A. -- that was supposed to transfer value.

Can you also help me, was this one of the -- were ISS one of the parties that it was suggested in the indictment had been subjected to significant pressure?

Q. Not to my knowledge, Mr Boulton, but I stand to be corrected if that is not the case.

A. Thank you.

Q. ISS recommended that the shareholders should vote against the merger, and they said in this standalone sentence at the end, this is specifically if the merger does not go through, they estimate a short-term downside may be as much as 22.6%?

A. I see that. You're right to point that out to me, thank you.

Q. Do you think that should be taken off over and above your 15% holding company discount for the next day's trading, Mr Boulton?

A. No.

Q. Okay.

Now, can we go back to Professor Dow's second report at {G3/1/89}. Are we on page 84? We are. This is page 84 of Professor Dow's second report, and I would like to refer you to -- are you there, sorry? I know you're reading the ISS report, Mr Boulton.

A. I was just spotting that the conclusion is put in more rounded terms than what you were asking me to read. So there's some discussion of short-term downside risk, but actually the longer term upside -- the longer term view is more positive. But apologies.

Q. I was focusing on your opinion, which was the next day.

So if we're with Professor Dow's second report, {G3/1/89}, if we can look at paragraph 190, Professor Dow raises another Samsung Group merger between Samsung Heavy Industries and Samsung Engineering, the year before the SC&T-Cheil merger.

A. Yes.

Q. Do you see that?

A. I do.

Q. I simply put it to you, if you turn the page, {G3/1/90}, Professor Dow explains that, as shown in his Figure 20, which is now on the screen, the prices of both companies increased on the day that the merger was proposed. And then, paragraph 191:

"Shareholders, including the NPS, opposed the merger. As a result, on 19 November ... the Samsung Group announced that this merger would not proceed. On that day, the price of Samsung Heavy Industries ... declined by 6.4% and Samsung Engineering ... by 9.3%."

You know the example of Hyundai that Professor Bae has also put forward and that you dealt with in your

presentation.

A. Yes.

Q. What the tribunal is faced with is your opinion that there would be a very significant increase in the share price the day after the merger was rejected; yes?

A. Yes.

Q. Which Professor Milhaupt could not himself quantify. We saw the extract of the transcript from yesterday; yes?

A. He didn't seek to quantify it, yes. He did say that the news would be instantaneously within the share price, but yes.

Q. And you have sought, and Professor Milhaupt sought yesterday with both, and you have sought today with Hyundai, to distinguish those two actual events with actual prices showing a decline in the share prices of the participants to failed mergers. You have sought to distinguish those events from the case before the tribunal today, haven't you?

A. Yes, although as a valuer, if you're using comparables, you have to show that the comparable is genuinely comparable for it to be meaningful. And so I would say that if the Respondent's experts want to say that these are any form of guide to what would have happened to SCT's share price, you would have to do a great deal of analysis to show those similarities, and the one that

I investigated, because it had been raised several times last week, or yesterday, was Hyundai, and as soon as you dig below the surface, it's not at all comparable.
And so, as a valuer, does one say this happened in a different year and a different industry to another merger, and therefore that's what would have happened to SCT? You don't begin to do that because you haven't established that they are properly comparable.
SCT, we know, was subject to a massive value transfer. When that goes away, the only thing that can happen is that the share price goes up.
Q. Again, that is your opinion. It is supported in your report by one word taken from the evidence given by an NPS analyst and we've looked at --
A. No. No, Mr Turner. It's not supported by one word. You have taken me to one paragraph, but it's supported by 60 or 70 pages of close analysis about what this transaction was doing and what the transfer of value was away from SCT. That is the support for the conclusion that the share price will jump.
A single sentence mentioning that somebody else said skyrocket, that's not the support for the conclusion. The conclusion is based on valuation principles.
Q. It is your opinion that that is what would have happened. There are two examples of Chaebol mergers

where the opposite has happened. You do not think they have any relevance to the tribunal's analysis at all; is that right?
A. I do not have many facts before me on Samsung Heavy Industries. I have investigated the facts of Hyundai, including finding, which is available on the web, the PricewaterhouseCoopers' merger valuation report on that transaction, and it shows, for the reasons I summarised in my slide, that it is a totally different animal from SCT and Cheil.
There is no transfer of the underlying crown jewel assets. The Mobis spinout entity was getting 61.5% of the whole. There is no evidence of a value transfer that was being thwarted.
So it tells you nothing about the share price of SCT.
Q. Okay, well --
A. And my conjecture is that any parallel you find from a different year with a different company in a different transaction suffers the same shortcomings, because we all know that when you get into a specific case, it has all sorts of layers of detail that are what drive the conclusions you reach.
Q. Okay. Now, let me turn to your finding that some discount would have remained even had the merger been

rejected, and you quantify that at between 5 and 15%.
A. Yes.
Q. To be sure that we're talking about the same thing, and I believe you said this earlier but please correct me if I have misremembered, this is the generic holding company discount?
A. Well, yes and no. It isn't generic because I made very plain in my presentation that I think all of these discounts are specific to the circumstances of the company. And so I showed a slide that showed SCT's discount over the years and it is premium in times, it's discount in others. It's a large discount in the last two years or so before this transaction. But it's moving because the specific situation of the company changes.
So it would be wrong to apply a generic discount as though it was standard or uniform across all companies. You have to analyse the specifics, is my view.
Q. You arrive at your conclusion by looking at holding company discounts of comparable holding companies as you have found them and there's a table of those findings on page 40 of your second report? {F5/1/49}
A. No, that's incorrect.
Q. Okay.
A. I arrive at my conclusion by analysing the actual

observed discount for SCT and Cheil, the combined entity, post merger. So putting together a company that had an excess premium and a company that was heavily discounted, they merge, and then the market says: how much are we going to discount the combined entity, offsetting that discount and premium against the sum of the parts valuation. And it was about 5% but at times it was as high as 14%. That's where my 5-15% range comes from.
Q. And you seek support -- I accept that correction, Mr Boulton. I was trying to synthesise, to summarise too much.
You support that finding with your comparable holding company analysis that begins on page 39 and has your table on page 40. That's right, isn't it? {F5/1/48-49}?
A. Yes, I think I'm doing this in response to Professor Dow, from memory, but correct me if I am wrong.
Q. You are, in that he referred to LG Corporation and SK Holdings and you said that a larger sample was needed, and you provided that sample after you had analysed and rejected some.
Do you remember why you rejected some of the comparable companies, Mr Boulton?

A. Sitting here now, no. They will be explained in my report.
Q. It's not explained in your report. You have explained why you chose some; you don't explain why you rejected others. I wondered if you could help us? If you can't remember, that's fine.
A. I can't remember sitting here. I would certainly have provided that. I thought it was in Appendix 6.1, but if you tell me it's not there.
Q. Then if I'm mistaken, my learned friend will take you to it.
You set out the comparables that you use in your Figure 6 on page 40 and you come up with a mean of 15.2% and a median of 35.5% {F5/1/49}. Those are very different numbers, aren't they, to each other?
A. Yes.
Q. And it's −−
A. I'm sorry, ask me again. I was looking for the support and I found some, but I'm worried that I'm just saying yes because I'm always so keen to agree with you.
Q. Which is an excellent habit of any witness, which I encourage. But I will ask the question again.
The number for the mean of your analysis and the number for the median are very different, aren't they?
A. Yes, they are.

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Q. As a general rule, the closer they are, the more they support each other; you would agree with that?
A. If they were a long way apart, I would want to look at why that might be so.
Q. And it's usually so because there will be outliers that will affect the mean?
A. That I think is a fair generalisation. One typically uses medians, but it is specific, because you want to make sure that you're making sense of the whole.
Q. And one might think that the reason that the mean is only 15% while the median 35% in your analysis is because, in arriving at those numbers, you have included the two companies at the top of your list that have significant holding company premiums?
A. That is likely to be the case, yes.
Q. Which both you and Professor Dow think are very unusual?
A. Yes. He says anomalous and I say unusual.
Q. Just as a matter of arithmetic, if one were to take those companies out of the list −− Professor Dow does this in his second report, it's not my original thinking, I'm sorry to say this, it's paragraph 184(c) of his second report {G3/1/87}; but if you take those holding company premiums out, you get a mean of 43.2% and a median of 39.3%.
Shall we go to Professor Dow's report or do you accept those numbers as his calculation?

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A. They will clearly both go up and you're removing 85%, divided by 13.
THE PRESIDENT: There's also SK C&C at 148.9%. That also seems positive, unless it's a typo.
A. Yes, I think it is, sir.
MR TURNER: No, I think it is a premium, and it may well be that that has been taken out. Let us look at what Professor Dow actually did. It's {G3/1/87}.
Is that, he asks with bated breath, page 82? It is page 82.
A. It is, yes.
Q. And it's (b) at the top of that page. (c), I'm sorry.
A. (c) In the middle of the page. Yes.
Q. So Professor Dow has taken all of the premiums out?
A. Yes.
Q. And that −−
A. Would you like to know why that's the wrong thing to do?
Q. No doubt you will tell me. I'm simply putting to you that if you do that, and we've agreed that Professor Dow thinks they are anomalies and you think they're unusual, you get a mean of 43.2% and a median of 39.3%, which are indeed very similar as numbers, aren't they, and they support each other therefore?
A. I don't think you can refer to them as supporting each other except in the sense that it might make you happier about relying upon them. But they are different mathematical calculations, and the data is the data. So one doesn't say: that one is accurate because it's close to the other. If you're using them, you may draw some comfort from the fact that they're close.

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Q. To be fair to you, you were going to tell me why Professor Dow was wrong?
A. Yes, because what this actually shows is that the discounts or premia vary enormously, and they vary with the specific circumstance of the company.
So if, for example, one finds a very high premium, there will be a specific reason for that, which may well be the equivalent of Cheil. Cheil would have had a very significant premium, and that's because it's about to benefit from a transaction.
SCT had a very big discount because it was about to suffer from a premium.
And so if you remove the premia, why aren't you also removing the discounts for those companies that were going to suffer the other half of those transactions? And all that drives you back to is to realise that all of these discounts and premia change over time and they reflect the specific circumstances of the company at that time.

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And that's why I say why not look at the merged entity to work out the discount, rather than look at companies that are all in their own situations and will all doubtless have had varying discounts and premia over time, as SCT itself did.

So I simply feel that taking an average is all very well, but what's in that, what's in the basket, and why is that average relevant to SCT? And I don't think it is.

Q. So again you didn't like -- you thought that Professor Dow's example of LG Corporation was not an appropriate way to assess what a continuing premium would be because you thought it was -- because it was a larger than average discount. His two examples, LG Corporation and SK Holdings?

A. No, no, not at all. I don't like it because it's a larger than average discount; I don't like it because it was selected on the basis of only two companies and I have no basis to think that they -- either of them -- are a good guide to the position of SCT.

Q. I mean, the difficulty we have, Mr Boulton, is that there is a phenomenon of a Korea discount. You accept that, although you didn't accept it in your first report; yes?

A. Yes.

Q. We have had evidence from Professor Bae and Professor Milhaupt as to the reasons for that; yes?

A. Yes, we have.

Q. And neither of them is able to disaggregate that from a generic holding company discount, we agree?

A. That's what I understand their evidence to be, yes.

Q. And you have attempted nonetheless to do so; yes?

A. Not quite because, as I have said already, 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 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. I'm then taking that and taking another discount which I call holding company discount.

Q. But you say that didn't --

A. So it is not right to suggest that I have not taken account of a phenomenon that is Korea-wide, which is

that shares trade at lower values than they do on other exchanges.

Q. So the excess discount that you say would disappear is not a Korea discount in that case; is that right, Mr Boulton?

A. That's correct. The longer term consequences of the merger following through for Korea discounts, for net asset values, etc, are not in my calculation. That's all potential upside, but I don't quantify it.

Q. And the 5-15% that you keep, you say that is not, though, the generic holding company discount that Professor Milhaupt, for example, spoke of yesterday?

A. Well, I don't think it is, sitting here now, but I appreciate that people use the terminology in different ways, and you can't always disentangle the Korea discount from the holding company discount, and people, probably including me, sometimes have used them interchangeably to mean the same sort of thing.

But what I can tell you is that I have two layers of discount, one in the sum of the parts valuation and another with the 5-15% discount.

Q. Can we -- and this will be the last few questions and then we can all thankfully draw a line under this cross-examination. Can we go to Professor Bae's report {G5/1/64}.

So I think that's large enough for us now to see the by now notorious Samsung ownership structure chart from 1 April 2015, and we agreed a little while ago, didn't we, Mr Boulton, that this would have looked exactly the same the day after the merger, had the merger been rejected?

A. Assuming nothing had changed between April and July, yes.

Q. I represent to you that that is the position.

Can we go to -- this is 64, which means I can't do the maths, the arithmetic.

Can we go to three pages on, which should be the LG Group ownership structure. It is. {G5/1/67}.

This is LG Group, where you see a conventional holding company structure; do you see that?

A. Yes, I can see it as a picture. I can't read anything, but that's fine.

Q. Quite. Well, look at the size of mine!

It is at the very least a much cleaner looking diagram with arrows generally pointing downwards?

A. Yes.

Q. And yet LG Group, as Professor Dow pointed out, trades at a 40% discount to net asset value; you understand that?

A. Yes.

Q. But -- and by definition -- its holdings of the companies underneath, on your analysis of how you conducted your sum of the parts valuation, would include the discounts that are attributable to those companies. That's right, isn't it?
A. Yes. I don't know -- well, sorry, I can't say yes because I don't know, but what I do not know is how much of the net asset value of the LG Group is made up of its investments and how much of it by its trading businesses.
Q. Okay.
A. But if I've failed to answer your question, put it to me again. I might have missed the point.
Q. The point is -- let's take it at its lowest level, Mr Boulton: a clean holding company structure --
A. Yes.
Q. -- as shown by LG Group still trades at a 40% discount. You are suggesting that even within the spaghetti junction of the Samsung organisational structure that we saw at page 64 of this report {G5/1/64} there would have been only, for SC&T, a discount of between 5 and 15%?
A. Yes. Yes, and of course that's because the SCT-Cheil merged entity, which is within what you call the spaghetti junction of the Samsung ownership structure, did trade at that level of discount post merger. And so

if you're asking me, do I prefer to take my discount from the LG Group structure or from Cheil and SCT, I think Cheil and SCT are a better guide to SCT.
Q. Well, we have your opinion, Mr Boulton. Bear with me one second.
A. Of course. (Pause).
MR TURNER: You will all be relieved to know that we can all leave it there. Thank you very much. Thank you, Mr Boulton.
THE PRESIDENT: Thank you, Mr Turner.
Ms Snodgrass?
MS SNODGRASS: No questions on redirect.
THE PRESIDENT: No questions.

Questions from THE TRIBUNAL

MR GARIBALDI: Mr Boulton, I have questions on two topics. Let me take the one that you touched upon most recently first. That has to do with the pre-tax versus post-tax valuation.
I'm trying to understand the implications of these two approaches to valuation in this particular case. In most of the cases I have been involved in, the matter is more straightforward. We have a discounted cash flow analysis which is done, most of the time it is done on a post-tax basis, so the result is post tax.
So we know that if there is an award, it is

a post-tax award.
Now, in this particular case I am a little bit puzzled because the pre-tax versus post-tax seems to, as I understand, and correct me if I am wrong, seems to have to do with the taxes that are due upon liquidation of the asset; is that correct?
A. Yes, my understand is that the valuer question is: do I allow for the taxes that would be paid if I sell these listed investments in my valuation? And so that's a valuing choice as to whether you assume the investments are going to continue to be held and defer the issue of tax for another day, or whether you're looking at, what could I realise for these if I sold them tomorrow, in which case tax might be payable.
MR GARIBALDI: To be consistent, you have to do that in the actual scenario and also in the counterfactual scenario; correct?
A. I think it only comes in on the counterfactual, sir, because it's -- the debate between Mr Turner and I essentially goes as to whether you should be discounting your sum of the parts valuation to take into account tax as one of your steps, and that is about working out what the shares would have traded at. In other words, in the market would people be applying tax in arriving at their sum of the parts or, ultimately,

the market price of the shares, or not? The evidence is I think that for the most part analysts don't, but they do apply a discount, and it's one of the arguments that is used for saying: you need a discount in here somewhere because you can't simply realise the value of all of your listed investments without paying some tax.
So it's an argument for saying there needs to be a discount.
MR GARIBALDI: Please explain to me again why that reasoning does not apply to the actual scenario. You are taking into account the market price of these shares on the valuation date and why is that not discounted for taxes as well?
A. Well, I suppose what I would say is it's implicitly taken into account. On the actual side one is looking at what did Elliott actually receive for its shares.
MR GARIBALDI: Ah.
A. And that's a based broadly on the market value at the date they sold them subject to the appraisal thing.
MR GARIBALDI: Yes, okay.
A. And the value they obtained in the shares presumably takes into account the market's view on how do you take into account tax. But that's a sort of de facto: this is what you actually got.
On the counterfactual side you are saying what would

you have been able to sell them for, and there it's a relevant question to ask, in arriving at the value that the shares would have had in the market, how would the market have treated the potential tax on liquidation.

So one is sort of embedded in the calculation, and one is theoretical.

MR GARIBALDI: All right. I didn't realise that. But doesn't that mean that -- doesn't that suggest that the right way to calculate in the counterfactual scenario is post tax?

A. I don't think so, sir, except to the extent that one says that the market would have said it should be a post-tax calculation. But the analysts are not looking at the shares on the basis of liquidating investments. They are valuing the investments at market price and then applying a discount, and that's the equivalent of me valuing the investments at full price and then discounting the whole sum of the parts calculation.

I'm sorry to raise a sort of semi-new topic, but if you just apply a discount to the investments, then analysts often apply a 20 or 30% discount to the listed investments. I have applied my discount to the total valuation, so a bigger number, and so applying a 15%

discount there is mathematically like applying a 25% discount to the investment piece of it.

And the question is: is that adequate to cover for the tax exposure on the investments? In the round, I think it is, but I understand the arguments.

MR GARIBALDI: My second question has to do with your presentation. Towards the end, on slide 34, I think I understand the first two bullet points. {J/21/34}. I would like you to explain the third bullet point more fully, if you would.

A. So, what Professor Bae does is say that if SCT is holding the shares in Samsung Group entities for the long term, then you can't rely on the listed market prices. And he says that's because Samsung SCT is not going to sell them and therefore they're illiquid.

So in order to replace the listed price with something, he says: I've done my own calculation based on expected dividends. And so he comes up with a valuation that is about a third -- less than a half, certainly -- of the market price, and says: well, that's all that SCT can expect because they're holding these shares long term and they're only going to get dividends.

In the last bullet I'm saying: well, to be frank, this is a back-of-an-envelope calculation. It's done

without a model, in one and a half pages, and it makes enormous finger-in-the-air assumptions about, well, I'll use R minus G, which is the discount rate, I'll use 5%. I have no idea where that comes from, but it is obviously an incorrect Figure.

He takes the dividends in 2014 and he assumes they would grow at GDP. Well, people use GDP for long-term growth in the terminal period, but very rarely use GDP for short-term, and so he takes no account of were dividends expected to increase.

In fact, when you look at it, dividends went up eightfold in the next seven years.

So he's picked a year where the dividends were tiny and ignored any potential that they would grow much more rapidly.

He's ignored share repurchases, which we know these entities did, and which would return cash to the shareholders. So really, I'm being quite rude about that calculation and saying you can't use a finger in the air, page and a half of text, to replace 100 pages of careful analysis. I just don't think it's a proper calculation, sir.

MR GARIBALDI: Thank you.

THE PRESIDENT: A couple of further questions, sir.

You were taken by counsel to a number of instances

where you referred to the analysts' reports who took the view that the merger was unlikely, at least at some point in the course of the spring of 2015.

A. Yes.

THE PRESIDENT: At the same time, it looks like the market though, the broader market, took the view that the merger was likely, which was then reflected in the gap, as you describe it, the gap between the SOTP valuation and the market price.

A. Yes.

THE PRESIDENT: Can you enlighten us a little bit on why the analysts took a different view from the market in terms of how likely the merger was? Is it because they are more sophisticated investors or is there a deeper explanation, assuming that it's not deep enough?

A. Some of this would become conjecture, so I'll be quite careful in answering it.

I think in this whole period --

THE PRESIDENT: I recognise it may be a question of fact rather than expert opinion, but if you can enlighten us, that would be helpful.

A. I think in this whole period it's quite hard to disentangle different themes. You do see analysts around February/March saying on balance we don't think this transaction will go through, because they see that it would be value-destroying and they would anticipate opposition.

At the same time the market price of the shares -- the discount has widened. The market price appears to be going down. And that suggests the market is at least worried about the transaction.

So how I would interpret it is you've got competing views in the market, but there's enough of a risk of a transaction that that is affecting the share price.

THE PRESIDENT: There are sort of cross-currents of information?

A. Yes, because analysts can say, we don't think this will happen, but if you're an SCT shareholder, you're very worried about the downside risk if it does, and that is going to affect the share price, even if analysts are being a bit more bullish about it.

THE PRESIDENT: The second question goes to the Claimant's claim which is that the state, the government, through various organs and instruments, interfered with -- or intervened with the merger vote, and that is the alleged breach in this case from a legal perspective.

In the course of your analysis, did you see any evidence or did you look for any evidence of this governmental interference prior to the merger vote, whether any information suggesting that there might be

government interference, potentially by illegal means, in the merger vote?

A. No, sir, it's not something I looked for or considered, and the reason is classic quantum expert. I come into this on the assumption that liability is proven, and therefore the lawyers are saying there is government interference, this is a breach of obligations, they have a claim. And I come in and say, if that's right, what is the damage as a result of that vote going through.

But as I also say, if the vote wouldn't have gone through anyway, or if there was no such interference, then my calculation of damages is essentially nil, because that interrupts the starting assumption for me.

THE PRESIDENT: So when you selected the date of valuation, the date before the vote, which is usually selected by valuation experts in order to avoid the impact of the breach on the valuation of the asset, you selected that date based on the instruction of counsel, or did you select it on the basis that that would be the proper date based on valuation standards?

A. I was instructed to use that date, but my understanding is that it represents the point before the damage is suffered, because it's the vote going through that means the merger happens, and that's what damages SCT's share price.

So I think it's the same. I think it's consistent with a normal quantum analysis based on expropriation. I'm valuing it immediately before the act that destroys value. The act that destroys value is the vote -- the merger goes through, and the legal case, but not part of my evidence, is that there is wrongdoing that means that that happens.

THE PRESIDENT: Okay. That may be more of a question for counsel and for oral argument as to whether there was any evidence of an impending government intervention in the merger vote in the market before the date of the valuation. But that is something that can be addressed later.

I think there are no further questions from the panel. So thank you very much for your evidence, Mr Boulton. You are released, free to go.

THE WITNESS: Thank you very much, sir. Thank you very much to all of you, and Mr Turner too.

(The witness withdrew)

THE PRESIDENT: Do we have any other business before we close for today?

MR PARTASIDES: Not on our side, thank you.

MR TURNER: Not from our side, sir.

THE PRESIDENT: Very good. Another early closure, or relatively early. We start tomorrow at 10 o'clock. Thank you very much.

(4.45 pm)

(The hearing adjourned until Wednesday, 24 November 2021 at 10.00 am)

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