

# OPUS2

Elliott Associates, L.P. v Republic of Korea

Day 8

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Opus 2 - Official Court Reporters

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1 Wednesday, 24 November 2021  
 2 (10.00 am)  
 3 PROFESSOR JAMES DOW (called)  
 4 THE PRESIDENT: Good morning. We have the examination of  
 5 Professor Dow on the programme. Anything else that we  
 6 need to discuss before we start? Mr Partasides?  
 7 MR PARTASIDES: Not before we begin, Mr President. Thank  
 8 you.  
 9 THE PRESIDENT: Thank you. And Mr Turner?  
 10 MR TURNER: Likewise, sir.  
 11 THE PRESIDENT: Thank you.  
 12 Good morning, Professor Dow.  
 13 THE WITNESS: Good morning.  
 14 THE PRESIDENT: As you know, you are appearing before the  
 15 tribunal as an expert witness. So you are required to  
 16 give your evidence in accordance with your sincere  
 17 belief. So for that purpose can I ask you, please, to  
 18 read the declaration for the record.  
 19 THE WITNESS: I solemnly declare upon my honour and  
 20 conscience that my statement will be in accordance with  
 21 my sincere belief.  
 22 THE PRESIDENT: Thank you very much.  
 23 I understand you will be making a presentation  
 24 instead of a direct examination. So please go ahead.  
 25 THE WITNESS: Thank you, sir.

1

1 Presentation by PROFESSOR JAMES DOW  
 2 THE WITNESS: I'm going to present a slide deck.  
 3 Shall I begin.  
 4 Mr President, members of the tribunal, thank you  
 5 very much for giving me the opportunity to present my  
 6 opinion in this case.  
 7 I start, slide 2, by presenting some of my  
 8 qualifications. I have taught at a number of  
 9 universities, including many years at London Business  
 10 School where I teach corporate finance and valuation.  
 11 I have also taught asset pricing and corporate finance  
 12 to the PhDs.  
 13 My research areas are connected with both financial  
 14 markets and corporate finance, and focus in a number of  
 15 my papers, my primary focus is on price dislocations  
 16 that can arise when investors with different information  
 17 or views are constrained by limited capital, by cost of  
 18 carry, and by limited trading horizons.  
 19 I have testified in a number of arbitrations  
 20 previously and had the honour of encountering some  
 21 members of the tribunal before. I have listed a few of  
 22 those arbitrations at the bottom of slide 2.  
 23 Passing to slide 3, I have a couple of corrections.  
 24 In my first report, Figure 11, Figure 11 is a graph with  
 25 two lines and the labels are interchanged.

2

1 In my second report, paragraph 102, I'd like to add  
 2 two words, which are indicated in bold on this slide,  
 3 and delete the words that are indicated as crossed out.  
 4 The correct paragraph should read:  
 5 "In this but—for world, I am agnostic about whether  
 6 the discount would have risen or fallen; furthermore,  
 7 I do not think it is possible to confidently postulate  
 8 a result with respect to the Merger outcome. I am also  
 9 agnostic about whether the SC&T share price would have  
 10 risen or fallen."  
 11 Slide 4 --  
 12 THE PRESIDENT: Professor Dow, now that we are on the  
 13 corrections, can we go to page 72 of your second report?  
 14 I wouldn't be asking this unless there was a risk of  
 15 confusion literally.  
 16 On top of the page --  
 17 THE WITNESS: Sorry, do you mean -- excuse me, sir, do you  
 18 mean page 72, that is paragraphs 166/167?  
 19 THE PRESIDENT: Yes, indeed.  
 20 The second line of this page, and then  
 21 paragraph 166, the penultimate line, you are referring  
 22 to compounding factors, but do you mean confounding  
 23 factors? Because that's the term you use actually on  
 24 the preceding page at the bottom. {G3/1/77}  
 25 THE WITNESS: Thank you, sir. I believe I do mean

3

1 confounding factors.  
 2 THE PRESIDENT: I was a bit confounded by the language.  
 3 Please go ahead.  
 4 THE WITNESS: Let's add a third correction then to that  
 5 effect.  
 6 Passing to slide 4, my agenda for this morning is to  
 7 talk about the analysis of the newly produced swaps  
 8 transactions; then to proceed to my main damages  
 9 analysis as of ten days ago.  
 10 Slide 4, please.  
 11 I will introduce some key concepts in this  
 12 arbitration. I'll present my damages conclusions,  
 13 namely that there are no damages. I will then speak to  
 14 Elliott's damages on SC&T shares and I will say that  
 15 they are implausible, and finally I will present some  
 16 other opinions.  
 17 Slide 5, please. The swaps.  
 18 My second report, Appendix E, relied on some  
 19 incomplete information from the Claimant listing sales  
 20 of swaps, but there was no information on when those  
 21 swaps were purchased. That new information has been  
 22 produced and I can now speak to that.  
 23 Slide 6. What are swaps? What are short sales?  
 24 Swaps are financial contracts, financial  
 25 derivatives, that allow traders to gain economic

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1 exposure equivalent to shares. A long swap is like  
 2 owning a share, but does not afford voting rights to the  
 3 owner.  
 4 A short swap, in economic terms, is equivalent to  
 5 a short sale of shares. What is a short sale? In  
 6 a short sale we reverse the usual order of transactions.  
 7 We sell first and then later we buy.  
 8 Short sellers hope to profit from selling the shares  
 9 at a higher price than the price at which they later buy  
 10 back the shares.  
 11 The new production, on slide 7.  
 12 The new production shows that we can now compute  
 13 Elliott's trading profits on swaps. So we've had  
 14 evidence of more swap transactions produced which were  
 15 the other end of the transactions that were previously  
 16 produced. In other words, we'd already seen sales and  
 17 now we see the purchases. And we also have some SC&T  
 18 swaps in that production which were not previously  
 19 disclosed.  
 20 The trading summaries that we've been provided with  
 21 look like -- I show an extract at the bottom of slide 7.  
 22 So each line in those spreadsheets shows, among other  
 23 things, whether it is a buy or a sell -- SS is short  
 24 sale; BC buy to cover -- and show the gross  
 25 consideration, that is to say the amount of money that

1 changes hands, namely number of shares in the swap  
 2 multiplied by the price.  
 3 To work out the profits or losses on the swaps, we  
 4 simply add up that gross consideration column, and that  
 5 is what Mr Smith did on Monday; that is equivalent to  
 6 what Mr Smith did on Monday.  
 7 Slide 8.  
 8 Elliott profited from the Cheil swaps. It sold them  
 9 high and bought them back low. On this graph I show  
 10 that over the summer of 2015 Elliott sold shares in  
 11 Cheil and bought them back later on, at a lower price.  
 12 Slide 9 shows that on my previous report, when  
 13 I didn't know when the swaps had been bought, I had  
 14 assumed they were sold previously. So I assumed they  
 15 were long positions. In fact they were short positions.  
 16 In either case there would be a profit because I thought  
 17 the swaps had been bought on the way up for Cheil  
 18 prices. As we see on slide 9, the price went up until  
 19 the sales, whereas if we revert back to slide 8 --  
 20 excuse me, I hope that doesn't confuse -- on slide 8 we  
 21 saw that afterwards the price went down again. So they  
 22 still bought at a low price.  
 23 On slide 10 I indicate the trading profits on swaps.  
 24 They are mostly Cheil swaps, to be clear. There are  
 25 only a few SC&T swaps.

1 We see that the trading profits on the swaps were  
 2 51.7 billion Won, which is \$43.1 million.  
 3 What was going on? On slide 11 we can see Elliott's  
 4 bet. Elliott thought that the merger was a value  
 5 transfer proposition. Under that theory, had the merger  
 6 been rejected, as Elliott wanted, then that would have  
 7 been bad for Cheil, they would have lost out on the  
 8 value transfer, and that would have been good for SC&T  
 9 because they would not have lost out on the value  
 10 transfer.  
 11 Therefore, their trades are to sell short to Cheil  
 12 and to buy SC&T. The expected outcome would be a gain  
 13 in both cases.  
 14 Slide 12 shows what actually happened. The merger  
 15 was approved. According to the value transfer theory,  
 16 they should have gained on Cheil and lost on SC&T.  
 17 However, in both cases the share price happened to go  
 18 down. So the net outcome is that, instead of the  
 19 positions both losing money because their bet had gone  
 20 in the wrong direction, they didn't actually lose money  
 21 on both. They lost money on the SC&T shares, and that  
 22 49.2 is the number that gave rise to these arbitration  
 23 proceedings, while making money on the Cheil swaps,  
 24 which is the 51.7 gain.  
 25 So doubling down on the Cheil -- holding the Cheil

1 swaps as a doubling down ended up being profitable.  
 2 I note at the bottom of that slide that there are just  
 3 a few -- and Mr Smith mentioned it actually on Monday.  
 4 There are some transactions that don't close in the  
 5 data, but I conjectured and Mr Smith confirmed that  
 6 these transactions were offsetting Cheil and SC&T, which  
 7 were collapsed, as he put it, after the shares were  
 8 unified in September.  
 9 Slide 13, the economic implications of what we just  
 10 saw.  
 11 First of all, Elliott's trades in SC&T and Cheil  
 12 should be considered as a whole. Mr Smith managed the  
 13 trades on a consolidated basis, not by legal entity.  
 14 I believe he testified that he didn't know which Elliott  
 15 entity the trades would be allocated to.  
 16 And also, focusing only on the SC&T loss, without  
 17 netting off the gain from Cheil, could, from an economic  
 18 point of view, create an opportunistic or windfall  
 19 litigation gain from a trading strategy, a merger  
 20 arbitrage that was an integrated bet.  
 21 I appreciate there may be legal reasons why the  
 22 swaps and the SC&T shares are not treated in the same  
 23 way, but from an economist's point of view, I view them  
 24 as a whole.  
 25 If one allowed people to claim in arbitrations, you

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

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

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

23 Let me turn to my direct presentation on damages.

24 Slide 15. We will start with some key concepts.

25 Slide 16. Fair market value, market price and

9

1 efficient market.

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

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

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

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

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

25 Slide 17. Mr Boulton's intrinsic value standard.

10

1 This is an important slide for me.

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

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

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

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

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

11

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

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

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

13 Liabilities which reduce value should be included.  
14 The "net" in net asset value refers to that.

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

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

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

25 Having covered the standard textbook stuff on

12

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

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

17 What if I own a share in the company, however there  
18 is a controlling majority shareholder who owns  
19 51 shares, and that person is intent on diverting money  
20 to companies in which they own 100% of the shares, for  
21 example by means of disadvantageous contracts that are  
22 not at market prices; what then would the value of the  
23 company be? And the answer is less than 100 Won.

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

13

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

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

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

15 There's always an unexplained residual.

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

14

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

3 That's an example of an unexplained residual.

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

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

25 Judgment inherent in the net asset value estimate or

15

1 possibly errors.

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

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

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

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

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

16 Market price manipulation, for we have heard  
17 allegations of attempted manipulation.

18 And again, the unexplained residual.

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

24 Slide 21, please.

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

16

1 Let's take a simple hypothetical.  
 2 On slide 22 I show a Tesla. Let us suppose that  
 3 Mr Turner comes to this tribunal and complains that  
 4 Ms Tan has stolen, taken, one of his shares in Tesla.  
 5 Suppose that the tribunal finds that this taking was  
 6 wrong and asks me for my opinion on damages that would  
 7 be due from Ms Tan to Mr Turner.  
 8 What would be my answer to that? I would say, well,  
 9 let's look at the day when Mr Turner lost those shares  
 10 to Ms Tan. What was the market price of that one share  
 11 that was taken on that day? That is my recommendation  
 12 for damages.  
 13 Now, I happen to have a personal view on the  
 14 intrinsic value of Tesla shares. I do. Mr Boulton  
 15 yesterday bought up Tesla, so I'm carrying on with his  
 16 example.  
 17 I do have a personal view of the intrinsic value of  
 18 Tesla shares, but that would not form part of my answer  
 19 to the tribunal. I wouldn't mention it and I wouldn't  
 20 think it should be part of my answer.  
 21 That essentially is my approach to these damages in  
 22 this case, for it is actually a very similar case.  
 23 So we could stop now or I could carry on, but  
 24 I should probably carry on because there are many other  
 25 issues that no doubt will be raised in cross-examination

1 and that have been raised in previous testimony and  
 2 arguments.  
 3 So let's pass to slide 23. SC&T shares -- here are  
 4 my conclusions. SC&T shares were traded in an efficient  
 5 market. Since the fair market value of a stock traded  
 6 in an efficient market is its stock price, SC&T's fair  
 7 market value was its stock price.  
 8 Manipulation can cause the share price to deviate  
 9 from fair market value, but when quantified, the alleged  
 10 market manipulation had no significant impact on SC&T's  
 11 market value. That is very important.  
 12 Equally important, the merger ratio was based on  
 13 market prices. This means that EALP received the fair  
 14 market value when it exchanged shares in SC&T for shares  
 15 in the merged entity. I have a footnote there. Some of  
 16 the shares were actually sold or given back in the  
 17 put back option at an appraisal price plus generous  
 18 interest.  
 19 Effectively, Elliott sold its SC&T shares at the  
 20 market price and there are no damages from selling an  
 21 asset at fair market value; or in other words, there are  
 22 no damages from being forced to surrender an asset at  
 23 fair market value.  
 24 What is the damages methodology in this case? On  
 25 slide 24 I have summarised the methodology as I see it.

1 In Mr Boulton's first report, Boulton 1, he applies  
 2 a simple subtraction method. Damages are the value of  
 3 the SC&T shares on the valuation date, 16 July 2015,  
 4 immediately before the alleged breach impact, minus the  
 5 price received for the shares.  
 6 This methodology makes sense. If the shares had  
 7 been expropriated, I believe it is the methodology one  
 8 would use.  
 9 Now, on Mr Boulton's valuation date, the merger vote  
 10 was uncertain. On the date that we agree is the  
 11 valuation date, the market could not have known on that  
 12 date whether -- I don't think -- whether the vote was  
 13 going to go for or against.  
 14 Nevertheless, he constructs a counterfactual as of  
 15 that date in which the merger was not approved, and  
 16 I have engaged with that counterfactual in my second  
 17 report, even though I think it's simpler just to stick  
 18 to the approach in his first report and my first report.  
 19 So what is the but for scenario? What is the  
 20 counterfactual? On slide 25 I show a tree of possible  
 21 outcomes. Korea could have taken different actions. If  
 22 the tribunal finds that Korea acted wrongfully, then  
 23 let's reverse that.  
 24 If Korea takes different actions, the NPS vote could  
 25 be unchanged and then nothing changes, there are no

1 damages. That's the first box on the right-hand side.  
 2 This could have ended up with the NPS voting to  
 3 reject, and the merger being approved anyway,  
 4 a possibility I highlight in my second report. Again,  
 5 nothing changes and no damages.  
 6 Also, the merger vote could have been to reject and  
 7 the merger could indeed have been rejected, in which  
 8 case, and I think this is the box we need to debate,  
 9 because the other ones are not contentious; in that case  
 10 I say not much changes and no damages.  
 11 So why do I say nothing much changes? I say that  
 12 because of what we see on slide 26.  
 13 What would the market have seen immediately after  
 14 the counterfactual vote to reject the merger? They  
 15 would have seen this picture, which is not the family  
 16 tree of Lucrezia Borgia's clan, complete with, or  
 17 possibly not complete with the transgenerational  
 18 incestuous offspring, but this is the ownership  
 19 structure of the Samsung Group. This picture paints  
 20 a picture of a corporate group, which most corporate  
 21 governance experts would say is less than ideal, is  
 22 problematic, and presents risks of value transfer  
 23 between different entities at the behest of the  
 24 controlling family interest.  
 25 So that is why I say nothing much would have changed

1 in the event of rejection .  
 2 On slide 27 the drivers of the discount would not  
 3 have changed, the corporate governance issues would  
 4 still have remained and there would be tax liabilities ,  
 5 it 's worth mentioning, since tax is one of the issues in  
 6 this case.  
 7 One example I give in my second report, towards the  
 8 end, there is a section where I present experience from  
 9 other corporate governance reform initiatives , if reform  
 10 is the right word.  
 11 The year before the SCT merger proposal and merger,  
 12 the Samsung Group proposed a merger between Samsung  
 13 Heavy and Samsung Engineering. This merger in the face  
 14 of shareholder opposition did not proceed, yet the  
 15 discount remained roughly unchanged. That's one  
 16 example.  
 17 Let me now pass to Elliott's claimed damages on the  
 18 SC&T shares, slide 28 and slide 29.  
 19 Elliott 's damages claim is for 647 billion plus  
 20 interest , and Elliott says SC&T's market price was at  
 21 a large discount to its intrinsic value.  
 22 And what is the intrinsic value? It 's the sum of  
 23 the parts in Mr Boulton's first report, or the sum of  
 24 the parts minus 10% in Mr Boulton's second report.  
 25 Mr Boulton says, and Elliott says too, if the merger

1 had been rejected, SC&T's market price would have  
 2 reverted immediately to sum of the parts or sum of the  
 3 parts minus 10%.  
 4 I 'll note that the claimed damages are almost as  
 5 large as the 685 billion Won initial investment and  
 6 much, much bigger than Elliott's 49 billion trading loss  
 7 on SC&T. It is in fact a 90% return over approximately  
 8 three months, and if we annualise that, 90% over  
 9 three months — this is a rough calculation, the  
 10 three months particularly — but 90% over three months  
 11 is in fact 1,300%, an annualised return rate.  
 12 Also these damages obviously do not account for the  
 13 profit from the swaps that was confirmed by the  
 14 transactions released last week, which we were informed  
 15 last week.  
 16 Slide 30.  
 17 The Claimant relies on flawed assumptions about the  
 18 discount presented as conclusions. Mr Boulton relies on  
 19 two fundamental hypotheses or assumptions.  
 20 The only reason for the discount of SC&T is that the  
 21 price was depressed by the fear of this specific merger,  
 22 and that rejection of this merger would have eliminated  
 23 the discount, the governance discount, with only what he  
 24 calls a holding company discount of 10% remaining.  
 25 I say this specific merger because, having rejected

1 this merger in the counterfactual, there would  
 2 nevertheless be potential for other governance risks as  
 3 I highlighted with that organigram of the Samsung Group  
 4 ownership structure.  
 5 I'm going to show that these assumptions are not  
 6 plausible. They are implausible in the context of  
 7 Mr Boulton's own explanations for discounts, whether in  
 8 general or specifically for SC&T. In the light of the  
 9 time series evidence, that is to say SC&T's own share  
 10 price history. And in the light of the cross-section  
 11 evidence, in other words the market value of other  
 12 Chaebols in Korea.  
 13 Finally, and perhaps last but not least, shall we  
 14 say, simple logic shows that this could not be so.  
 15 Slide 31.  
 16 A higher intrinsic value doesn't imply that the  
 17 market price is not the fair market value. We saw  
 18 Mr Boulton speak to paragraphs 4.2.4 and 4.2.5  
 19 yesterday. He proffers four reasons why the market  
 20 price could be disconnected from the intrinsic value,  
 21 and I offer four comments in response to those reasons.  
 22 First reason, investors' perspectives may differ.  
 23 Absolutely. The market price represents the consensus  
 24 view of different investors with different perspectives.  
 25 Second, investors may react differently to

1 announcements. Absolutely. The market price  
 2 incorporates the buy and sell decisions of different  
 3 investors. That's why we rely on it.  
 4 Third, a listed share price may be affected by  
 5 a perceived lack of alignment between the controlling  
 6 shareholder interests and others. Absolutely. The  
 7 market price must reflect all commercial risks,  
 8 including corporate governance concerns.  
 9 Fourth, the share price may be affected by any  
 10 anticipation of future events. Well, absolutely, it  
 11 must do that because when you buy a share, you buy an  
 12 entitlement to future cash flows, many of which are in  
 13 the long-term future. Tesla shares have a high price,  
 14 not because Tesla is going to pay dividends this year —  
 15 as Mr Boulton said yesterday, Tesla does not pay  
 16 dividends — but because at some point in the distant  
 17 future, Tesla shares may return large value to its  
 18 shareholders, and that of course is reflected in today's  
 19 price because share prices must be inherently  
 20 forward-looking.  
 21 Slide 32. Governance and tax caused much of the  
 22 SC&T discount.  
 23 We agree that governance was a primary driver of  
 24 a discount. Mr Boulton says so and I say so.  
 25 We also agree with Elliott that there was

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

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

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

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

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

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

25

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

4 Two observations.

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

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

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

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

26

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

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

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

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

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

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

27

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

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

18 Slide 35.

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

28



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

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

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

29

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

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

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

30

1 receive those cash flows.

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

5 So they're different.

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

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

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

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

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

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

11 Slide 38.

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

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

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

25 What multiple do we apply to earnings in that range,

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1 looking at other countries in the industry? Reasonable  
2 multiples then give us that 2% Figure, a very small  
3 amount.

4 I'll just comment 2% is very generous because by  
5 applying a multiple, I've effectively said this is not  
6 just one contract, it's a never-ending stream of Qatar  
7 contracts which grow at the same rate as the expected  
8 growth of revenues of the companies in the multiple  
9 sample.

10 So applying an EBIT multiple to the estimate of  
11 increased revenue is very generous.

12 I do confirm that with a statistical analysis, but  
13 the main calculation is what I have just explained.

14 It's completely implausible. Imagine there were  
15 lots of pieces of manipulation. I think it's rather  
16 implausible that, even if many pieces of good news were  
17 improperly withheld, the market price adjusted to  
18 reflect those would happen to coincide with Mr Boulton's  
19 SOTP.

20 I'll just say one other thing, which is, you know,  
21 if my watch is slow, you know, if my watch runs a couple  
22 of minutes late or actually I'm not that careful when  
23 I set it —

24 THE PRESIDENT: I think the understanding was that it would  
25 be 30 minutes plus 20 minutes. So I think you should

33

1 start wrapping up.

2 MR TURNER: Excuse me, sir. Mr Boulton yesterday took  
3 a third more time than he was allowed. As I mentioned  
4 yesterday after Mr Boulton's presentation, we weren't  
5 taking any issue with that, there's plenty of time, and  
6 that I assumed that my learned friend would be equally  
7 indulgent were Professor Dow to run over.

8 I trust that that is still the case. No objection  
9 was made to that yesterday, and so I would like the  
10 tribunal to allow Professor Dow to finish his  
11 presentation.

12 MR PARTASIDES: Mr President, perhaps we could ask how much  
13 longer we should expect?

14 THE WITNESS: Less than ten minutes.

15 MR PARTASIDES: No objection.

16 THE PRESIDENT: Okay. Please go on.

17 THE WITNESS: Thank you. My apologies for being slow.

18 Where was I. Manipulation did not cause the SC&T  
19 discount. Yes. I have quantified that.

20 So what I was saying was my watch is a little bit  
21 off, perhaps, but how do I compensate for that if I need  
22 to catch a train and I don't want to miss the train?  
23 I chuck in a couple of extra minutes, I make an  
24 adjustment to the time that I have seen on the watch.

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

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1 trip recently, and that watch, that was probably  
2 a mistake. The hands on the watch just spin around  
3 uselessly. If that was the case, in other words, if the  
4 manipulation was so serious that we had to draw a line  
5 through the price, then of course I would not rely on  
6 that watch. I would have to use another method, perhaps  
7 a sundial or something, but that, I believe, is not the  
8 case here because if I look at the manipulations that  
9 were alleged within the time window, I don't see  
10 anything which is so serious as to cause me to throw  
11 away the price.

12 Slide 39. Fear of the merger could not cause the  
13 discount. This is really almost my last topic.

14 Mr Boulton says the stock price could be depressed  
15 due to market concerns of a predatory transaction. This  
16 is contradicted by Mr Boulton's view that the market  
17 wasn't expecting the merger to succeed and it's also  
18 contradicted, I believe, by the existence of discounts  
19 long before this merger and across the Korean Chaebols,  
20 and I showed the tribunal that evidence earlier.

21 Most importantly, let's look at logic. Fear of the  
22 merger is a circular and illogical theory, as I show on  
23 slide 40. That's because — this is really the key to  
24 the case. Elliott's damages approach would make perfect  
25 sense in any country except Korea, or most countries

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1 except Korea. That's because in other countries Samsung  
2 could have chosen the merger ratio, effectively.

3 But here the merger ratio is set by Korean law to be  
4 the market price. So let's review the logic.

5 I'm supposed to be frightened that I will get the  
6 merger ratio price in the event of a merger, and yet if  
7 I look forward to what would happen if the shares are  
8 taken from me at this ratio, I would effectively be  
9 getting the market price.

10 So if I just set the same old market price I would  
11 have set anyway without any fear, then when the shares  
12 are taken from me, they will be taken at the fair price,  
13 and I have nothing to be frightened of.

14 The whole point of the regulated merger ratio in  
15 Korea, which I think is a very good law actually, is to  
16 rely on market prices to set the ratio and protect  
17 against abusive nonmarket ratios. I would be happy to  
18 say more about that.

19 What about the therapeutics theory. On page 41  
20 I speak to that.

21 Professor Milhaupt says Elliott could be providing  
22 a kind of therapy, and I completely agree with the  
23 statement I give there from Mr Milhaupt as a quote, that  
24 activism can potentially play a therapeutic role in  
25 improving corporate governance.

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1 But Mr Boulton strengthens that. He explicitly  
 2 assumes convergence to intrinsic value in his second  
 3 report, rapidly after rejection, except for the 10%  
 4 discount remaining.  
 5 So what evidence is there of the therapeutic theory?  
 6 First of all, slide 42. This is an implausible  
 7 number, 5–15%. It's based on his flawed value transfer  
 8 theory. He computes it, as he explained yesterday, by  
 9 looking at the discount on the merged entity. And yet,  
 10 the merged entity includes Elliott, the favoured vehicle  
 11 in the Samsung family. Therefore, small discount.  
 12 A standalone SC&T would not have been in such  
 13 a privileged position. Therefore, I say, bigger  
 14 discount.  
 15 So Mr Boulton's estimate assumes his flawed value  
 16 transfer theory. As shown by Elliott, tax alone  
 17 accounts for 15%, nearly 15%. That is, Mr Boulton's  
 18 entire discount could simply be explained by tax.  
 19 Market evidence. On slide 43, I give the case of  
 20 Samsung's own experience the previous year when, not  
 21 Elliott, but as a result of other shareholder  
 22 resistance, a merger did not take place between Samsung  
 23 Engineering and Samsung Heavy. When the merger was  
 24 cancelled, as one can see from this graph, both  
 25 companies' share prices fell.

1 A few years later, on slide 44, I describe how  
 2 Elliott tried to block the Hyundai Motor group  
 3 restructuring. They succeeded in blocking that, but the  
 4 discount persisted, and Elliott estimates -- in my  
 5 second report, I show that Elliott estimates that  
 6 discount after the merger at 42–82%. And Elliott sold  
 7 at a substantial loss.  
 8 Other opinions. Very briefly, slide 46, Elliott's  
 9 trading plans reveal it did not expect the discount to  
 10 disappear and was surprised it widened, showing that  
 11 discounts can widen as well as narrow, and showing also  
 12 that Elliott's plan was to exit at post-tax discounts  
 13 ranging from 40% to 27.5%, large discounts therefore  
 14 when we add the tax.  
 15 The trading plan is shown on slide 47.  
 16 Finally, last slide, page 48, my slide, a few other  
 17 opinions.  
 18 The excess discount is contradicted by evidence that  
 19 the Cheil and SC&T shares moved in the same direction.  
 20 I mentioned that already in the case of my analysis of  
 21 the swaps. I give references there to my reports where  
 22 I do that analysis.  
 23 Synergies were mentioned. I give those references  
 24 here.  
 25 Finally, pre-judgment interest. I have a strong

1 view this. I think pre-judgment interest, or I should  
 2 say pre-award interest, and indeed post-award interest,  
 3 is often a forgotten part of damages because it's not  
 4 the biggest ticket item, but still one should give  
 5 interest on a reasonable basis and in many arbitrations  
 6 interest is a very substantial part of the final award.  
 7 And the 5% that Mr Boulton uses is not motivated  
 8 economically, and it would not be possible, I believe,  
 9 to motivate that on an economic basis.  
 10 So I would say that an economic basis should be the  
 11 government's borrowing rate.  
 12 Finally, currency of award. I believe it's  
 13 conventional, and I agree, I would be happy to explain  
 14 why, to calculate damages in the local currency.  
 15 Thank you very much, Mr President, members of the  
 16 tribunal. And I apologise for running over my time.  
 17 THE PRESIDENT: Thank you, Professor. Any follow-up?  
 18 MR TURNER: No further questions.  
 19 THE PRESIDENT: Thank you very much. Then it's over to the  
 20 Claimant.  
 21 Cross-examination by MS SNODGRASS  
 22 MS SNODGRASS: Professor Dow, good morning.  
 23 A. Good morning.  
 24 Q. Although I know that you are a very experienced  
 25 testifying expert, I don't believe that your and my

1 paths have crossed before. So let me introduce myself.  
 2 My name is Elizabeth Snodgrass, I'm one of the  
 3 lawyers for the Claimants. I'm going to be asking you  
 4 questions about the two opinions that you have provided  
 5 in the case, and those two opinions, which you may  
 6 already have there, they are also in the first two tabs  
 7 in the binder that's been provided to you, and that's  
 8 being passed out around the room.  
 9 I'm going to do my best to state my questions  
 10 clearly and slowly and succinctly. I know you have been  
 11 under some time pressure to get your presentation out.  
 12 I have a terrible habit of speaking very quickly. If  
 13 you find that I am speaking too quickly or my questions  
 14 aren't clear, please let me know, and I'll slow down and  
 15 try and restate them.  
 16 The binder that I have given you also contains some  
 17 documents that I might take you to during the  
 18 examination. But it doesn't contain all of the other  
 19 experts' reports that we may look at during our  
 20 discussion. If we need to look at those expert reports,  
 21 they are going to be put up on the screen.  
 22 I may take you to a particular paragraph of those  
 23 reports, but if you would like to look at anything in  
 24 wider context or scroll around in those documents that  
 25 you don't have in hard copy, please let me know and we

1 can make that facility available to you.  
 2 A. Yes, I will want to look at hard copies of Mr Boulton's  
 3 reports, if you ask me about that.  
 4 Q. Very good. We will make that available if we need to do  
 5 that.  
 6 All clear?  
 7 A. Thank you, yes.  
 8 Q. Very good.  
 9 So actually the first thing I will ask you to do is  
 10 just look at the beginning of your report, where you  
 11 refer to some of the experience that you have testifying  
 12 in investment arbitrations, which you have a significant  
 13 degree of experience doing; isn't that right? I'm going  
 14 to slow down — I'm sorry, terrible habit.  
 15 If you could look at paragraph 4 of your first  
 16 report {G1/1/5} where you provide a list of some  
 17 previous testifying experience.  
 18 A. Yes.  
 19 Q. And if we go down the list in that paragraph, we see  
 20 first, in Rompetrol Group versus Romania, you were  
 21 engaged by the Respondent, Romania; is that right?  
 22 A. Correct.  
 23 Q. And then in Perenco v Ecuador, you were appointed by the  
 24 Respondent, Ecuador?  
 25 A. Correct.

1 Q. And in RosInvest Co versus the Russian Federation, you  
 2 were appointed by the Respondent, Russia?  
 3 A. Correct. {G1/1/5}.  
 4 Q. I'm going to skip over the Russian words because I'll  
 5 get them wrong. Yukos versus Russia, you were also  
 6 appointed by the Respondent, Russia?  
 7 A. Correct.  
 8 Q. And then in the three arbitrations initiated by the  
 9 former Yukos shareholders, Hulley Enterprises, Yukos  
 10 Universal and Veteran Petroleum Ltd against the Russian  
 11 Federation, you were appointed by the Respondent; is  
 12 that correct?  
 13 A. Correct.  
 14 Q. So in all of those investment arbitration engagements  
 15 that you highlight in paragraph 4, those were  
 16 appointments by the Respondent; is that correct?  
 17 A. Correct. I have done other arbitrations where I was  
 18 appointed by the Claimant.  
 19 Q. Right, but you highlighted those appointments by the  
 20 Respondent.  
 21 And you were also engaged in Mason Management LLC  
 22 versus the Republic of Korea by the Respondent, the  
 23 Republic of Korea; correct?  
 24 A. Correct.  
 25 Q. And of course Korea has retained your services here.

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

1 of liability.  
 2 Q. Yes, there was an analysis of financial loss and Russia  
 3 was putting forward that no financial loss arose.  
 4 But in any event, in the arbitrations initiated by  
 5 Hulley, Yukos Universal and Veteran Petroleum, you also  
 6 argued for zero damages?  
 7 A. Correct, yes.  
 8 Q. And we know of course your position in this arbitration,  
 9 Professor, but just to confirm, in Mason versus Korea  
 10 your position is also that the claimants are entitled to  
 11 zero damages; isn't that right?  
 12 A. Mason versus Korea is a case that's very similar to this  
 13 one.  
 14 Q. And your position there is zero damages?  
 15 A. Yes.  
 16 Q. So in a run of, if I have counted correctly, some nine  
 17 cases involving different factual situations, different  
 18 investors, in different countries, you've consistently  
 19 reached the same conclusion: zero damages?  
 20 A. Yes. Yes, that's true in those cases.  
 21 Q. Okay. So I wanted to ask some questions also about your  
 22 background.  
 23 I'm right to understand, as you said this morning,  
 24 that your background is in finance and economics; is  
 25 that correct?

1 A. Correct.  
 2 Q. And you're currently a Professor of finance at the  
 3 London Business School?  
 4 A. I am.  
 5 Q. And you joined the London Business School in 1989?  
 6 A. I did.  
 7 Q. And before that your PhD is in economics from Princeton?  
 8 A. Yes.  
 9 Q. So you've spent most of your career, over the past  
 10 30 years, in Europe and the United States?  
 11 A. Yes.  
 12 Q. And —  
 13 A. All of it.  
 14 Q. And you do not therefore have any specific expertise on  
 15 Korea or the Korean economy?  
 16 A. Correct.  
 17 Q. And you state in fact at paragraph 6 of your first  
 18 report {G1/1/6} that you consulted with a Professor Han  
 19 to confirm, you say this:  
 20 "... to confirm my understanding of certain  
 21 Korean-specific issues."  
 22 Is that correct?  
 23 A. That's correct.  
 24 Q. And that's a reference to Professor Jungsuk Han of the  
 25 Stockholm School of Economics; correct?

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

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1 conversation, and he gave me a few documents,  
 2 references. I can't remember which ones but I'm sure  
 3 that information could be provided if you wish. And  
 4 that's really as far as it went.  
 5 But we might have spoken again about it since then.  
 6 I don't recall.  
 7 Q. Okay. So that was the extent of his input to your first  
 8 report?  
 9 A. Very minimal, yes, both reports.  
 10 Q. But that was the extent of his input at all.  
 11 So you don't identify in that report the  
 12 Korean-specific issues that you're relying on  
 13 Professor Han for. We can't tell from the report what  
 14 issues you're relying on Professor Han for.  
 15 A. Well, I think I have represented to you the content of  
 16 our conversation and I could try and recall more of it,  
 17 but it was very brief and at a very general level.  
 18 Q. Right. But your reports include extensive observations  
 19 about the Korean Chaebol and conglomerates?  
 20 A. Yes, but I would say I did not rely on him for those.  
 21 Q. So you weren't relying on Professor Han for those. You  
 22 were relying on?  
 23 A. My own analysis.  
 24 Q. Your own analysis, notwithstanding that your expertise  
 25 is in finance and economics and not the Korean economy?

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

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

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1 that fair?  
 2 A. Well, I find that question a little broad.  
 3 Given that Mr Boulton presents a sum of the parts  
 4 methodology and makes judgments about the inputs and  
 5 discounts to be applied, to that extent it is of course  
 6 incumbent on him, and me, to debate those judgment  
 7 calls.  
 8 Q. But there's nothing more implied by the word subjective  
 9 than that they are an exercise of professional judgment  
 10 and --  
 11 A. What more is implied?  
 12 Q. I'm asking whether there is anything more implied by  
 13 that word.  
 14 A. In the arbitrations that I've taken part in, I think  
 15 "subjective" and "judgment" are pretty much  
 16 interchangeable pieces of terminology.  
 17 Q. Right.  
 18 A. But I suppose I might use subjective to emphasise that  
 19 the judgment required is important and makes a big  
 20 difference, but I agree that in logical terms there's no  
 21 real difference between those terms.  
 22 Q. Right. So I'm interested in the sort of proliferation  
 23 of these contemporaneous sum of the parts valuations of  
 24 SC&T around the merger period.  
 25 A. Mm--hm.

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1 Q. The investment banks and the other institutions that  
 2 calculated these valuations, as we discussed, did so in  
 3 order to assist investors in deciding whether to buy or  
 4 sell or hold SC&T shares, didn't they?  
 5 A. Well, they're assisting, but I note they are sell side  
 6 analysts.  
 7 Q. So they may have only been assisting one of those  
 8 decisions then, is what you are saying. But they  
 9 were --  
 10 A. What -- sorry, excuse me.  
 11 Q. Go ahead?  
 12 A. If you go down into the lobby of this hotel, you will  
 13 find a Swiss watch boutique, and if you go into that  
 14 boutique, you will find someone who is an expert on  
 15 Swiss watches who will give you very large amounts of  
 16 information -- I haven't tried this -- about the  
 17 intrinsic worth of the different watches, and that  
 18 person will truly be an expert, I'm sure, but will also  
 19 have a sales motive. That's what I meant by stressing  
 20 that it was a sell side analyst, as they are commonly  
 21 called.  
 22 Q. Right. But these analysts were operating on the  
 23 understanding that that there was a value of SC&T that  
 24 could and should be calculated separately from the price  
 25 at which SC&T was trading on a given day; isn't that

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

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1 I wanted to take us to, which was that the funds  
 2 management industry plays a role in collecting  
 3 information, identifying potential mispricing  
 4 opportunities, and that in turn increases the accuracy  
 5 of market prices and market efficiency.  
 6 I wanted to turn now to your opinion concerning  
 7 market efficiency and this will involve a bit of jumping  
 8 around in your reports, with an apology to everyone for  
 9 that.  
 10 When it comes to valuing the Claimant's investment  
 11 in SC&T shares, you say essentially we can take the  
 12 market's word for it because SC&T shares traded in an  
 13 active, liquid and efficient market. If you would like  
 14 a reference, that's at paragraph 29 of your first  
 15 report, but I think that's a pretty --  
 16 A. Yes, I'll agree with that.  
 17 Q. Yes. And you explain in an efficient market --  
 18 A. Sorry, if I could --  
 19 Q. Yes.  
 20 A. That doesn't mean that -- if I say that we can take the  
 21 market's word for it, that doesn't mean that hindsight  
 22 may not prove the market to be wrong.  
 23 So if I look at the market price, it's quite  
 24 possible that my own analysis leading to my intrinsic  
 25 value so-called would lead me to buy at less -- to buy

1 because I think it's worth more than the market price.  
 2 It's quite possible that I would -- events would prove  
 3 me to be right and I would make lots of money.  
 4 But when I say we can take the market's word for it,  
 5 I mean that we can -- you know, our first reference  
 6 point should be the market price and anybody who wishes  
 7 to argue otherwise has to prove that the market price is  
 8 wrong.  
 9 Particularly in an arbitration, as I gave the  
 10 example with the Tesla case, even if I've got my own  
 11 estimate of what Tesla shares are worth, and I do have  
 12 that and I do think I'm right, that doesn't mean that  
 13 I would recommend to a tribunal that they should be  
 14 taking my intrinsic value rather than the market price.  
 15 Q. I was actually asking a slightly different question.  
 16 So I was just asking about this question. So when  
 17 you speak of market efficiency, you mean that a market  
 18 is efficient in incorporating information to a company's  
 19 share price; correct?  
 20 A. I think by definition.  
 21 Q. Yes. But what efficient does not mean is that a share  
 22 price is more accurate in an efficient market than it is  
 23 in an inefficient market in the sense of the information  
 24 necessarily being correct that is being incorporated.  
 25 A. Well, I think I disagree. In an inefficient market

1 there could be a very strong presumption that market  
 2 movements are predictable. Actually that is an  
 3 immediate implication of an inefficient market.  
 4 So, example, some of my friends come from Brazil and  
 5 they told me that when they started out trading you  
 6 could sell in the evening and buy in the morning and  
 7 consistently make a profit. No longer true. But that's  
 8 an inefficient market. The price is clearly not  
 9 reflecting information properly. One can have  
 10 a directional view of where it will be heading.  
 11 On the contrary, in an efficient market the price  
 12 doesn't really allow one to have a reliably accurate  
 13 directional view on where -- which way the changes are  
 14 going to go.  
 15 I hope that's an answer to your question, but please  
 16 push me further if you want.  
 17 Q. Let me ask you differently.  
 18 The shares of a company that's traded in an  
 19 efficient market is accurate as it relates to the  
 20 information that is disclosed and available to the  
 21 market, and if that information is inaccurate, then the  
 22 share price will also be to that extent --  
 23 A. Wrong.  
 24 Q. -- inaccurate; correct?  
 25 A. If people are given wrong information, if the market is

1 given wrong information, and if market participants  
 2 don't realise that it's wrong and don't suspect that  
 3 that might be going on, then absolutely, the market  
 4 price will be wrong.  
 5 Q. Right. So a determination of semi-strong market  
 6 efficiency tells us about the rapidity with which  
 7 a market reacts to information. It doesn't tell us  
 8 whether the market had complete or accurate information.  
 9 That's the only simple point I was --  
 10 A. Correct, because -- and this may be too much information  
 11 for some people in the room, but the terminology of  
 12 semi-strong refers to the market pricing efficiently  
 13 given public information and it says nothing about  
 14 information which is not public information.  
 15 Q. Right. While we're on the topic of accurate  
 16 information, I wanted to take to you a case that you  
 17 cite, the Delaware Supreme Court's 2017 decision in  
 18 DFC Global Corp versus Muirfield Value Partners. You  
 19 cite that in your first report. The case is actually at  
 20 tab 36 of the binder that's in front of you.  
 21 A. I have just broken my binder.  
 22 Q. I'm so sorry. I hate lever arch files. I've lived in  
 23 England for many years and I loved many things about it  
 24 but I do not miss lever arch files for one minute.  
 25 Tab 36.

1 A. Tab 36. Could you also, if I may ask, highlight the  
 2 place in my first report --  
 3 Q. Yes, I will, if I can find the reference quickly.  
 4 Paragraph 78 in your first report. {G1/28/1},  
 5 {G1/1/36}.  
 6 A. If you just give me a minute to refresh my memory on  
 7 paragraph 78.  
 8 Q. Of course. If people are looking in the cross bundle,  
 9 the excerpt of the case that Professor Dow cites is on  
 10 page 40 of the case. So {G1/28/42} in the Opus  
 11 reference.  
 12 A. And you're taking me to tab 36 as well?  
 13 Q. Yes, tab 36.  
 14 A. I've got both of them in front of me because I've got  
 15 a hard copy of my report.  
 16 Q. So in your report you write of the Delaware Supreme  
 17 Court -- this is at paragraph 78 -- that the Delaware  
 18 Supreme Court is widely recognised as the most  
 19 sophisticated jurisdiction in the US for merger and  
 20 corporate governance disputes. I'm not going to argue  
 21 with that.  
 22 And then you go on to quote the court, and that's  
 23 over the page, for the proposition -- and this is the  
 24 highlighted text on {G1/28/42} -- that the most reliable  
 25 evidence of value is that produced by a competitive

1 market so long as interested buyers are given a fair  
 2 opportunity to price and bid on the something in  
 3 question; yes?  
 4 You note the comment about fair opportunity, but  
 5 what I just wanted to draw your attention to is two  
 6 paragraphs above the paragraph that you highlight here  
 7 in your first report. So if you turn two pages back in  
 8 the bundle, {G1/28/40}, do you see the paragraph that  
 9 begins "As we shall discuss" on page 38 of the document,  
 10 and the Opus reference, {G1/28/40}?  
 11 A. "As we shall discuss"?  
 12 Q. Yes. So the court makes a couple of important caveats  
 13 about the reliance on market price:  
 14 "As we shall discuss, we have little quibble with  
 15 the economic argument that the price of a merger that  
 16 results from a robust market check, against the backdrop  
 17 of a rich information base and a welcoming environment  
 18 for potential buyers, is probative of the company's fair  
 19 value. But, not only do we see no licence in the  
 20 statute for creating a presumption that the resulting  
 21 price in such a situation is the 'exclusive', 'best', or  
 22 'primary' evidence of fair value, we do not share DFC's  
 23 confidence in our ability to craft, on a general basis,  
 24 the precise pre-conditions that would be necessary to  
 25 invoke a presumption of that kind. We also see little

1 need to do so, given the proven record of our Court of  
 2 Chancery in exercising its discretion to give the deal  
 3 price predominant, and indeed exclusive weight, when it  
 4 determines, based on the precise facts before it that  
 5 led to the transaction, that the deal price is the most  
 6 reliable evidence of fair value."  
 7 And then I would just draw your attention to one  
 8 more point in the case. Right at the very beginning of  
 9 the opinion, with apologies to having everybody flip  
 10 back, this is page 2 of the decision, the Opus reference  
 11 is {G1/28/3}, you see the paragraph -- the sentence that  
 12 begins -- sorry, I'm on the wrong page. {G1/28/4},  
 13 apologies. The carry-over paragraph, the first full  
 14 sentence:  
 15 "Although there is no presumption in favour of the  
 16 deal price, under the conditions found by the Court of  
 17 Chancery, economic principles suggest that the best  
 18 evidence of fair value was the deal price, as it  
 19 resulted from an open process, informed by robust public  
 20 information, and easy access to deeper, non-public  
 21 information, in which many parties with an incentive to  
 22 make a profit had a chance to bid."  
 23 Now, that was all laying some groundwork.  
 24 Given your reliance on DFC Global, what I'm drawing  
 25 your attention to is the court emphasising the

1 importance of whether a market price is fair in the  
 2 factual circumstances of a particular transaction.  
 3 Would you accept that's what the court is saying?  
 4 A. Could you please repeat the question?  
 5 Q. I said I'm drawing your attention to the fact that the  
 6 court is emphasising the importance of whether a market  
 7 price is fair in the circumstances of a particular  
 8 transaction rather than stating a general presumption  
 9 that a market price is fair.  
 10 A. I'm sorry. Because I'm not a lawyer, it's a bit hard  
 11 for me to wrap my brain around the phraseology there,  
 12 but I think on page 2 -- that is {G1/28/4} -- they are  
 13 talking about a deal price -- I presume that's a merger,  
 14 I don't know if it's a merger -- resulting from an open  
 15 process, not necessarily a market price.  
 16 But agreed that what they're saying there is that if  
 17 the deal price results from something like a market,  
 18 because I guess that's what they mean by an open  
 19 process, informed by robust information, public  
 20 information and easy access to deeper non-public  
 21 information, that's certainly strong evidence of fair  
 22 value. That is certainly sufficient -- a sufficient  
 23 condition for the deal price being fair value. I don't  
 24 think I could argue against that. That's got to be  
 25 true.



1 Q. I mean, the reason I drew this case your attention,  
 2 Professor, is that you cited it in your report. So  
 3 apologies for asking you questions about the law when  
 4 admittedly you're not legally trained.  
 5 But we did have assistance on what this case is  
 6 understood to mean from Professor Milhaupt, who is  
 7 trained as a lawyer, and he in his evidence -- were you  
 8 here when Professor Milhaupt --  
 9 A. Yes, I was.  
 10 Q. So you saw his testimony. He specifically drew  
 11 attention to the fact that endorsing market price as  
 12 a guide, the DFC Global court described a very important  
 13 precondition to treating market price as a reliable  
 14 guide to value.  
 15 I just might draw your attention there to his  
 16 testimony, which is at tab 43 of your binder. It's the  
 17 third page of the excerpt in the cross binder, page 54  
 18 at the top. I'm sorry, I don't have the Opus reference  
 19 for the transcript. It's {Day6/54:1}.  
 20 A. "There is no way that a Delaware court would have held  
 21 this transaction to be fair."  
 22 Q. Yes, sorry, I was actually going to draw your attention  
 23 to -- that is what he said. I was going to draw your  
 24 attention to line 6, where he says:  
 25 "I saw a citation to the DFC Global case in the

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1 ROK's opening statement cited for the proposition that  
 2 the Delaware courts trust the market."  
 3 A. Yes.  
 4 Q. "... very important pre-condition which is set out in  
 5 case. They trust the market price because they believed  
 6 that the process was robust and conflict-free."  
 7 A. Right.  
 8 Q. I was going to ask you, given your reliance on DFC  
 9 Global, presumably you would accept that a similar  
 10 standard should be applied in the context of the  
 11 valuation that the tribunal should consider here. The  
 12 tribunal should consider the market price only if they  
 13 could be confident that the process was robust and  
 14 conflict-free?  
 15 A. Okay. So I could have given you that one without the  
 16 legal pain, but I appreciate it's necessary to go  
 17 through that. I now understand. Completely, I think,  
 18 we're in full agreement here.  
 19 This is like my watch. If I think the watch is  
 20 totally smashed, I would have to draw a line through the  
 21 market price, as Mr Boulton said, and the Delaware court  
 22 would presumably do the same.  
 23 So if it's completely smashed, if the market price  
 24 means nothing, I can't trust it. I totally agree,  
 25 and I take the allegations of manipulation quite

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1 seriously. It's just that I haven't seen -- and I don't  
 2 think that the allegations I have seen are such as to  
 3 tell me that the watch is smashed. In other words,  
 4 I have to draw a line through the market price.  
 5 MS SNODGRASS: Mr President, I observe it's 11.30. That  
 6 might be a convenient moment for us to have a coffee.  
 7 THE PRESIDENT: Yes, very good. Let's break for 15 minutes  
 8 until 11.45.  
 9 I should remind, Professor, you cannot speak with  
 10 anybody about the case or your evidence during the  
 11 break.  
 12 THE WITNESS: May I go to the break-out room and get  
 13 a coffee, but of course not speak about the case?  
 14 THE PRESIDENT: Yes, of course.  
 15 (11.31 am)  
 16 (A short break)  
 17 (11.46 am)  
 18 THE PRESIDENT: Let's resume, Ms Snodgrass.  
 19 MS SNODGRASS: All right, Professor Dow, I think before the  
 20 break, where we had left it was with you indicating that  
 21 none of the allegations you had seen had led you to  
 22 believe, carrying on the analogy we've been using, that  
 23 the watch was smashed.  
 24 A. Right.  
 25 Q. Now, in your second report you indicate that you had

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1 been made aware that the ROK has indicted [REDACTED] and  
 2 others for manipulation of the SC&T share price and  
 3 other offences, and that's at footnote 39, which is to  
 4 paragraph 25 of your second report, if you want to turn  
 5 that up. For the operator, it's {G3/1/15}.  
 6 A. I'm sorry, paragraph 25?  
 7 Q. It's footnote 39, which is a footnote to text in  
 8 paragraph 25. And the reference there is the third  
 9 sentence after the citation in the footnote.  
 10 A. I see it.  
 11 Q. Yes. And in that footnote you rely on the  
 12 characterisation of the indictment as stated in the  
 13 ROK's pleadings in this arbitration. You say:  
 14 "I understand from counsel that the manipulation on  
 15 which the indicted charges are based allegedly occurred  
 16 after the Merger Announcement on 26 May 2015."  
 17 Then you cite statement of Rejoinder and Reply to  
 18 defence to preliminary objections.  
 19 Now, my question for you is: allegations of price  
 20 manipulation would of course be a serious challenge to  
 21 a theory of valuation that is based on market price,  
 22 wouldn't it?  
 23 A. It would certainly be a serious challenge and it would  
 24 be a successful challenge if I concluded that the  
 25 manipulation worked during the window that I identified

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

1 market price of SC&T had been manipulated or was  
 2 otherwise unreliable because it was based on false or  
 3 incomplete information, that that would be something  
 4 that would mean the market price couldn't be trusted as  
 5 a proxy for fair value; right?  
 6 A. Sorry, I don't have the transcript. If it could be  
 7 shown -- well, if the market -- if there was  
 8 demonstrated manipulation that could be quantified and  
 9 allowed one to correct for in the market price, then  
 10 I could trust the market price as an input because  
 11 I could make that correction.  
 12 If the manipulation was so severe beyond a certain  
 13 point, there would be a point where one would give up  
 14 and the watch would be smashed, in my example.  
 15 So it's a question of judgment at looking at the  
 16 specific instances of manipulation that one believes to  
 17 have occurred.  
 18 Q. So at the time when you wrote your second report, had  
 19 you been able to review the PPO's indictment?  
 20 A. I don't recall.  
 21 Q. Okay. Have you seen the PPO's indictment of [REDACTED]  
 22 since you wrote your second report?  
 23 A. I believe I have been given that, but I have not read  
 24 all of it and I have seen a summary of it that I have  
 25 read. But I couldn't tell you right now -- it was

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

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

1 Prosecutors' Office, and that was at tab 22 of the  
 2 bundle that you have in front of you, {C/698/1} for the  
 3 transcript.  
 4 Now, this was issued on September 1, 2020, which was  
 5 just short of four weeks before your second report,  
 6 which was dated 27 September. And in the press release  
 7 we see the prosecutors announcing the results of their  
 8 investigation, we see this in the title, on Samsung  
 9 Group's unlawful merger and accounting fraud case.  
 10 Could I draw your attention to the summary at the  
 11 bottom of the first page where we see the ROK  
 12 prosecutors explaining the process that led to the  
 13 indictment of [REDACTED] and others.  
 14 Could I just ask you to read the text inside the box  
 15 after the arrow at the bottom of the page.  
 16 A. The whole of that box?  
 17 Q. Yes, please.  
 18 A. "After the Criminal Investigation Review Committee of  
 19 the Prosecutors' Office made its recommendation of no  
 20 indictment, the investigative team heard a diverse set  
 21 of opinions from external experts in the legal,  
 22 financial, economic, and accounting fields and conducted  
 23 a complete re-examination of the details of the  
 24 investigation, the legal principles involved, and the  
 25 methods in which the case was handled.

1 "Ultimately, upon a comprehensive review of the  
 2 various views of academia and court precedent, the  
 3 accuracy of the facts being proven by the evidence,  
 4 importance and severity of the matter, the need to allay  
 5 the peoples' suspicions through a judicial review, and  
 6 the results of a review by the Chief Prosecutor's  
 7 Conference that was made up of expert criminal  
 8 investigators, the key individuals in charge were  
 9 indicted."  
 10 Q. So if you will look at the top of page 4 of this  
 11 document, the Opus reference is the same {C/698/4},  
 12 after the heading "Subjects of Investigation, Seized  
 13 Materials ...", we see a description of that  
 14 comprehensive review. We see that the prosecutors  
 15 conducted:  
 16 "860 interviews with roughly 300 individuals  
 17 including Samsung Group personnel including [REDACTED],  
 18 external consultants, shareholders, investors, related  
 19 experts, etc, in addition to the seizure/analysis of  
 20 22.7 million digital files, (23.7 TB) [I believe that's  
 21 an abbreviation from terabytes] from servers/PCs."  
 22 Do you see that at the top of page 4?  
 23 A. I see that.  
 24 Q. The first bullet.  
 25 So you will agree with me of course that an

1 indictment is a statement of criminal charges of  
 2 allegations and not yet a conviction; right?  
 3 A. Agreed.  
 4 Q. But you'll also agree with me that in this public  
 5 statement we see the ROK's prosecutors stating that  
 6 before returning this indictment, they extensively  
 7 consulted external legal, financial, economic and  
 8 accounting experts. They say that on the first page.  
 9 A. I agree.  
 10 Q. And the prosecutors also state that they conducted an  
 11 extensive and detailed investigation and determined,  
 12 they say on the first page, that the accuracy of the  
 13 facts was proven by the evidence, don't they?  
 14 A. I see that.  
 15 Q. So we can take this statement by the ROK prosecutors as  
 16 a statement that they considered there to be evidence  
 17 supporting the charges that they are pursuing, can't we?  
 18 A. Yes, I do agree.  
 19 Q. And would you also agree that actions can have an effect  
 20 on share prices even if they don't amount to a crime?  
 21 A. Well, absolutely. All kinds of actions can have an  
 22 effect on share prices.  
 23 Q. Right.  
 24 A. I mean, there doesn't have to be -- I mean, they could  
 25 be very good actions. So of course they don't have to

1 be crimes.  
 2 Q. Right. So if you could turn back to page 3 of the press  
 3 release, we see the prosecutors explaining in the pink  
 4 box {C/698/3}, the pink shaded box, the context for the  
 5 investigation and the indictment, and the text in the  
 6 pink box refers to two Supreme Court judgments. Do you  
 7 see that? At the first asterisk bullet it states:  
 8 "The Supreme Court en banc judgment (issued  
 9 August 29, 2019) first defined the term 'Succession  
 10 Project', then expressly acknowledged that the merger  
 11 between Cheil Industries and Samsung C&T in question was  
 12 a part of the [REDACTED] succession project ..."  
 13 Do you see that?  
 14 A. I see that.  
 15 Q. And at the second asterisk bullet it states:  
 16 "... in the final appeal for the above judgment, the  
 17 Supreme Court's judgment (issued June 11, 2020) found  
 18 that the merger was advanced by Vice Chairman  
 19 [REDACTED], and that bribes were given to the  
 20 President of the Republic of Korea and [REDACTED] ..."  
 21 And there we have a translator's note:  
 22 "... in return for supporting the succession project  
 23 that involved the present merger, etc."  
 24 A. I see that.  
 25 Q. So do you understand from this that the context for the

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

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1 A. I don't think I had.  
 2 Q. You don't think you had?  
 3 A. I actually don't recall.  
 4 Q. So were you aware, or do you recall, that in addition to  
 5 charges of price manipulation in a general sense, the  
 6 indictment covered charges of false disclosures and  
 7 accounting fraud?  
 8 A. Well, I was already aware of the Qatar contract  
 9 allegations. I don't know if they're covered by this  
 10 indictment.  
 11 Q. Well --  
 12 A. And I was aware of the Biogen issues at a general level,  
 13 and particularly because Mr Boulton in his first report,  
 14 when he does the valuation, his sum of the parts in his  
 15 first report, section 5, talks about Biogen and indeed  
 16 notes that there was a call option which could have an  
 17 effect on the value of that component, and that the  
 18 price, the strike price of that call option was not  
 19 known.  
 20 So I did review his analysis of Biogen and I didn't  
 21 think that it could be quantified as being particularly  
 22 relevant for the market price, but I also didn't think,  
 23 and perhaps I don't have enough information really to  
 24 form a definitive view, but my view then was I didn't  
 25 have information enough to quantify it or that it would

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1 be a large quantity if I did quantify it.  
 2 Q. Did you know at the time that the allegations in  
 3 relation to the Biogen issue dated back to before the  
 4 date of the merger announcement?  
 5 A. I don't recall.  
 6 Q. Because the footnote that you included in your second  
 7 report indicated that the charges are based on conduct  
 8 that allegedly occurred after the merger announcement on  
 9 26 May, and here we have allegations that date to before  
 10 the date of the merger announcement.  
 11 A. Well, I stand corrected.  
 12 Q. Yes. And those allegations are that the activities that  
 13 are the basis for the indictment are specifically  
 14 understood to have affected the market price of Cheil;  
 15 isn't that right?  
 16 A. Well, I don't know how much they would affect it because  
 17 one could be indicted for false disclosures which are  
 18 wrong. There's a separate matter of how big would be  
 19 the impact of those disclosures if proven.  
 20 So we could, if you like, review Mr Boulton's first  
 21 report, section 5, where he values the relevant  
 22 component of SC&T and you could no doubt take me through  
 23 that and say that -- we could have a discussion about  
 24 whether that's likely to have a big effect on the value  
 25 of SC&T. That could certainly be a useful exercise.

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1 Q. I'm putting to you, I think, a simpler proposition,  
 2 which is it is likely to have an effect on the price,  
 3 and it's an effect that you didn't take into account in  
 4 your second report because it seems that you weren't  
 5 aware of it?  
 6 A. Well, it seems from my footnote that I was aware of it,  
 7 but I thought it was after the announcement date, if  
 8 I understood correctly, and I don't have my footnote in  
 9 front of me, but was my understanding of what you read  
 10 out from my report.  
 11 I did spend some time thinking about the call option  
 12 issue, and have done since then, but I don't really have  
 13 a view that it would make a big difference to the price.  
 14 In other words, I don't think of it as the thing that  
 15 would make me say the Biogen call option, which I think  
 16 is probably relatively small, would be the broken watch,  
 17 would be the thing, the rock climbing expedition that  
 18 makes the watch smash, if you like.  
 19 Q. But you didn't include any analysis of the Biogen call  
 20 option in your report?  
 21 A. No.  
 22 Q. And you thought it had occurred -- you thought that this  
 23 issue related to manipulation that occurred after the  
 24 date of the merger announcement date, when in fact it  
 25 was before the announcement date?

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1 A. As I have stated.  
 2 Q. Yes. Could you turn with me to page 5 of the same  
 3 document, please. {C/698/5} The text at the top of  
 4 that page summarises the charge:  
 5 "Unfair trading under the Capital Markets Act, price  
 6 manipulation (██████████, Future Strategy Office,  
 7 members of Samsung C&T)."  
 8 If we look at the pink box, we see bullets that  
 9 outline a high level timeline. Do you see those  
 10 bullets?  
 11 A. I'm sorry, I'm looking at page 5 {C/698/5}? Yes, the  
 12 same page that I see on the screen.  
 13 Q. Yes, okay.  
 14 A. So those triangular bullets, you're representing that  
 15 this is a timeline; is that it?  
 16 Q. Well, it lays out a time period. I think I might be  
 17 looking at the wrong page myself. Let me just take  
 18 a minute to make sure I'm on the right page.  
 19 Yes, sorry. It's after the pink box. After the  
 20 pink box, three open bullets that summarise the  
 21 timeline. If I would read my notes correctly it would  
 22 help us both, Professor Dow.  
 23 Timeline after --  
 24 A. Go ahead, take your time.  
 25 Q. Timeline after the pink box. So we see in the timeline

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

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

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

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1 Q. -- if the merger had not proceeded.  
 2 A. Mr Boulton computes damages based on value, and I use  
 3 the term loosely because he and I disagree on value,  
 4 minus consideration received. Consideration received  
 5 means the money that Elliott got for the shares.  
 6 Q. Yes, and the value --  
 7 A. So value for him is net asset value minus 15%, 10%. For  
 8 me it is share price, or else net asset value minus  
 9 a lot more than 10%.  
 10 Q. Yes, but the A in the A minus B equals C equation,  
 11 A being value, is what would the shares have been worth  
 12 in the counterfactual scenario of the merger not having  
 13 closed.  
 14 A. Well, in Mr Boulton's first report he doesn't speak  
 15 about a counterfactual. In Mr Boulton's second report  
 16 he talks -- in Mr Boulton's first report he just talks  
 17 about intrinsic value on the valuation date. There's no  
 18 mention of counterfactual, I believe. And I'm sure you  
 19 will correct me if I'm wrong.  
 20 In his second report he says what they would have  
 21 been worth in the counterfactual, as you say, although  
 22 he still maintains his valuation date of the merger --  
 23 let me see -- the day before the vote, and that  
 24 valuation date, I think it's hard to see how in the  
 25 counterfactual the market would have known what the

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1 shares -- what the vote was going to be on that  
 2 valuation date. So I don't completely understand that.  
 3 But certainly he is taking his estimate in his  
 4 counterfactual of the share value on 16 July, the  
 5 Tuesday.  
 6 That's the end of my sentence. I'm sorry.  
 7 Q. Okay. We'll come back to the counterfactual.  
 8 Let me just find where we were. We were working our  
 9 way through the ROK's prosecutors' announcement of their  
 10 indictment. I think we were nearly finished with that  
 11 document, but let me just check my notes before we move  
 12 on.  
 13 A. I think I got it right in my previous sentence, but it  
 14 was a little bit long. I apologise for that.  
 15 Q. No worries.  
 16 All right.  
 17 So if you would turn with me, please, to exhibit  
 18 C-53, which is at tab 5 {C/53/1} of your bundle. This  
 19 is the Seoul High Court's decision in the appraisal  
 20 price litigation.  
 21 A. Yes.  
 22 Q. Could you turn with me, please, to page 18 of this  
 23 decision {C/53/18}.  
 24 So in this portion of the decision the court is  
 25 considering information about SC&T's share price

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1 performance. And we see under the heading "Weak  
 2 business performances, etc of the Former SC&T", we see  
 3 the court saying:  
 4 "Other than the merger possibility with Cheil, the  
 5 weak business performance of the Former SC&T as revealed  
 6 by various objective indexes also appears to be the  
 7 cause of the fall in share price. However, as mentioned  
 8 herein, the lower the share price of the Former SC&T was  
 9 formed, the more the [REDACTED] Family would profit from the  
 10 merger in respect of which some of the press and  
 11 securities companies raised suspicions that the weak  
 12 business performance of the Former SC&T may have been  
 13 intended."  
 14 So here we see the court considering the possibility  
 15 that business decisions were taken that were  
 16 deliberately suppressing the share price of SC&T;  
 17 correct?  
 18 A. I'm sorry, I'm just reviewing this document which  
 19 I haven't seen before, although I'm sure it has been  
 20 shown to me, as were many things.  
 21 (Pause)  
 22 I see that.  
 23 Q. Right. So the first issue the court considers is  
 24 addressed under the heading 1, "Weak performances in  
 25 supplying housing". There the court first observes, in

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1 the paragraph that's right after the heading, it says:  
 2 "With the recovery of the housing economy in the  
 3 first half of 2015, major construction companies  
 4 significantly expanded their supply of new housing.  
 5 Yet, the Former SC&T did not do so."  
 6 Do you see that?  
 7 A. I see that.  
 8 Q. And if you go with me to the next page, at the beginning  
 9 of the first full paragraph {C/53/19}, the court  
 10 observes:  
 11 "The Former SC&T supplied around 300 new houses for  
 12 the first half of 2015. Yet on July 17, 2015, the date  
 13 of the shareholders resolution for the merger, the  
 14 Former SC&T announced that it had 'plans to supply  
 15 a total of 10,994 apartment households in eight  
 16 locations of Seoul in the second half of 2015'. This is  
 17 in contrast to the details of the modification to the  
 18 housing business strategy as agreed by the Subject  
 19 Company and actual performance in the first half of  
 20 2015."  
 21 Do you see that?  
 22 A. I do.  
 23 Q. So the suggestion is that SC&T deliberately suppressed  
 24 its activity in the housing sector in the first half of  
 25 the year so effectively that market commentators were

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1 describing it as having disappeared from the local  
 2 housing distribution market, and we see that as a quote  
 3 in the middle of the page after the first bullet point:  
 4 "The Former SC&T has disappeared from the local  
 5 housing distribution market..."  
 6 And then announcing immediately after the  
 7 shareholder vote on the merger that it had plans for  
 8 significant expansion of that business; correct?  
 9 A. Correct.  
 10 Q. So my question to you, Professor Dow, is whether you  
 11 agree that if that strategy were pursued, the effect on  
 12 the SC&T share price would predictably be to suppress it  
 13 in the first half of the year and boost it once the  
 14 announcement were made?  
 15 A. Well, that sounds like tunneling to me, not  
 16 manipulation. Correct me if I am wrong --  
 17 Q. That wasn't my question. My question is: what would the  
 18 predictable effect on the share price be?  
 19 A. Well, suppressing the participation -- first of all,  
 20 I note, and I think this is relevant, this document  
 21 concludes with an opinion that the shares are worth  
 22 66,602 per share.  
 23 Q. Professor Dow --  
 24 A. I think that is relevant, because the court here has  
 25 taken this into account and formed its view of what the

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1 shares were worth as a result of such considerations put  
 2 in this report. And had Mr Boulton put forward such  
 3 a number, I would have certainly engaged with that.  
 4 Now, if the Samsung family, shall we call it that,  
 5 took business away from SC&T in the run-up to the  
 6 merger, that's not manipulation; that is tunneling and  
 7 that is why SC&T all along, as we saw in my time series  
 8 evidence, traded at a discount, if true. That is one of  
 9 the factors that fed into SC&T's discount.  
 10 So I said in my presentation earlier, tunneling is  
 11 not manipulation, because if the family don't like --  
 12 you know, tunneling means that the controlling interests  
 13 divert business to the bit of the company that they  
 14 prefer. That's tunneling.  
 15 Manipulation is, given that the business has that  
 16 environment or rather factors of its environment, do we  
 17 cause shareholders and the market, do we cause the  
 18 market to make wrong inferences about what will happen  
 19 to that company?  
 20 So diversion of resources away from SC&T, I take to  
 21 be a form of tunneling, although not a very egregious  
 22 one actually. It's ...  
 23 And so I wouldn't call that price manipulation.  
 24 Q. I don't think I got an answer to the question.  
 25 A. The question was ...?

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1 Q. If a strategy of suppressing business in the first half  
 2 of the year and then making an announcement that there  
 3 was going to be a boost in business in the second half  
 4 of the year were pursued, the effect on the SC&T share  
 5 price of that strategy would predictably be to suppress  
 6 it in the first half of the year and boost it in the  
 7 second half of the year; yes or no?  
 8 A. Well, that's hard to disagree with.  
 9 Q. Right.  
 10 A. If I push it down at one time, I push it down. If  
 11 I push it up at another time successfully, I push it up.  
 12 Q. Just -- why does it matter to the analysis of damages  
 13 whether the price was suppressed by tunneling, what you  
 14 call tunneling, or by manipulation?  
 15 A. Yes. Okay. Important point.  
 16 First of all, I don't like the word "tunneling" very  
 17 much because I think that in a corporate governance  
 18 situation such as this one it's quite normal that the  
 19 controlling family will do things that the  
 20 non-controlling shareholders may disagree with.  
 21 That could of course include straight value  
 22 transfer, tunneling, and it could also include, you  
 23 know: I want my son to be CEO, the rest of the market  
 24 doesn't think that's such a good idea, but I go ahead  
 25 anyway, so that results in a lower market value.

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1 So these are -- whether it's that sort of decision  
 2 or whether it is actual diversion of value, for example,  
 3 "I don't do housing with this company because I don't  
 4 want to, I want the activity to happen in another part  
 5 of my empire", and then later on circumstances have  
 6 changed, so I reverse that decision. That is more akin  
 7 to tunneling.  
 8 And what I'm saying -- the question I was asked  
 9 is: why isn't tunneling price manipulation? Well,  
 10 that's simple, because if a family group has some  
 11 businesses in it that don't get their fair share of  
 12 resources, they're just not as valuable. It's not that  
 13 the market is wrongly valuing those components. It's  
 14 that they really aren't as valuable.  
 15 That is why I say that tunneling is not price  
 16 manipulation, because tunneling reduces value and those  
 17 other things I mentioned, such as succession plans that  
 18 the market doesn't like, they also reduce value, but the  
 19 market can properly reflect that in a low valuation.  
 20 That's not tunneling -- that's not price manipulation.  
 21 Q. So you've diagnosed the conduct that's described in this  
 22 portion of the appraisal price litigation judgment as  
 23 tunneling?  
 24 A. Yes.  
 25 Q. And you accept that that tunneling conduct affected the

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

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1 Q. Let's take it in two halves. How about the decision to  
 2 withhold —  
 3 A. If I may, please.  
 4 If the merger had been rejected as Elliott wanted,  
 5 I would have thought that it's less likely that the  
 6 controlling interests would have given that housing  
 7 contract to SC&T, arguably. And that complicates  
 8 matters. That's all I wanted to say, so please continue  
 9 with your question.  
 10 Q. So let's take it in two halves.  
 11 The decision not to have any contracts announced in  
 12 the first half of the year before the decision, before  
 13 the vote on the merger, so we don't know the outcome of  
 14 the vote on the merger, if the intention of that was to  
 15 suppress the share price of SC&T, how would you diagnose  
 16 that?  
 17 A. If I know that I'm going to announce — do the housing  
 18 anyway, in either branch of the eventualities, rejection  
 19 or acceptance, if I know that for sure, and I tell the  
 20 market I'm not going to do it, that is manipulation.  
 21 I think that's what you were trying to get at.  
 22 Again, I note that this document led to a conclusion  
 23 that the shares were worth 66,000 and some, and so my  
 24 inference would be the court thought, in terms of  
 25 watches, it's more of a five-minute or two-minute

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1 inaccuracy rather than smashing the thing completely.  
 2 Q. But you didn't analyse any of this information?  
 3 A. No, I didn't analyse it, absolutely.  
 4 THE PRESIDENT: Ms Snodgrass, if I may put a question in  
 5 here because it's in the context.  
 6 Is there a distinction between reversible and  
 7 irreversible tunneling or transfer of value in the sense  
 8 that, prior to the merger, any tunneling or transfer of  
 9 value from one company to another in the group is  
 10 reversible because you may simply cancel the actions  
 11 that caused the transfer of value; but once the merger  
 12 takes place, and assuming it takes place at the point in  
 13 time when as a result of tunneling the value of one  
 14 company is higher than the other, the tunneling or the  
 15 transfer of value becomes irreversible.  
 16 If the purpose of the actions taken by the  
 17 controlling shareholder in preparation of that transfer  
 18 of value — was in preparation of that transfer of  
 19 value, does it affect in any way your view as to whether  
 20 that kind of transfer of value would qualify as market  
 21 manipulation?  
 22 A. Wow. (Pause) I think reversibility comes into play.  
 23 I have also thought of another consideration for that  
 24 matter, which is what if the market before Elliott  
 25 bought the shares thought that the housing contract was

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1 not going to be awarded, so the shares were already low  
 2 then?  
 3 So let me go through your question.  
 4 If the housing decision in the first half of 2015  
 5 was don't build houses, and if that was an irreversible  
 6 decision, then that certainly would be — I guess that  
 7 would not be price — I'm not sure. Could that be  
 8 a form of price manipulation? Because obviously this  
 9 housing decision was reversible. So I think your  
 10 question is, sir: if the housing decision had been  
 11 irreversible, what would I have answered then.  
 12 I think it's difficult to say because ... but  
 13 I suppose if the housing decision to take business away  
 14 from SC&T or to fail to invest in SC&T was an  
 15 irreversible and permanent decision, then ... I'm afraid  
 16 I can't be sure because that would simultaneously cause  
 17 a permanent loss of value to SC&T and it would affect  
 18 the merger ratio.  
 19 I suppose it would not be manipulation because it  
 20 would affect the merger ratio only to the extent that it  
 21 reflected a permanent loss of value to SC&T.  
 22 So I think my answer to your question is: had the  
 23 housing decision in the first half of 2015 been an  
 24 irreversible decision, then that would be not  
 25 manipulation, and I believe I just replied to

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1 Ms Snodgrass that because the housing manipulation was  
2 reversible , it could be a form of manipulation, but one  
3 would also have to consider whether it would have been  
4 reversed in practice, in both outcomes of the merger  
5 vote, if I — I'm sorry, that's a long answer to your  
6 question, sir .

7 MR GARIBALDI: Well, okay. I have one question that is  
8 a follow-up.

9 I just don't understand how it is possible to say  
10 that this decision not to build the houses in the first  
11 half of 2015 is reversible , because new houses can be  
12 built in the second half of the year, but what it  
13 matters is the reversibility of the effects on the  
14 merger ratio.

15 Those effects on the merger ratio are irreversible  
16 if the merger goes through; isn't that right?

17 A. That is right .

18 MR GARIBALDI: All right. Now, another question, and this  
19 is a hypothetical.

20 Suppose that in a scenario like this one there is  
21 a — let's call it a succession plan. And the plan  
22 consists of a series of actions which have the intent of  
23 depressing the share price of Samsung C&T and increasing  
24 the share price of Cheil.

25 Let us also suppose that some of those actions are

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1 lawful and some are unlawful in the sense that they  
2 consist of feeding incorrect or incomplete or fraudulent  
3 information to the market. Let's suppose that.

4 Now, would it be correct, once you have all the  
5 evidence, would it be correct to look at the totality of  
6 the actions in furtherance of this plan, and would you  
7 refer to that as market manipulation?

8 A. I don't have the transcript in front of me. So with  
9 that caveat, because I don't recall the full text of  
10 your question — thank you, I have just been shown the  
11 transcript .

12 Could I see the beginning of the question on the  
13 transcript, please? Thank you.

14 (Pause).

15 And then the rest of the question, please.

16 So I agree we should look at the totality of  
17 actions, as you asked me. Indeed — and then there's  
18 another part of your question which is some of those  
19 actions are lawful and some are unlawful. And because  
20 I'm not a lawyer —

21 MR GARIBALDI: Let me rephrase —

22 A. — I can't really speak to that distinction .

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

24 A. I can just ignore that —

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

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1 the substance of my question. But let's say that some  
2 of those actions are in the form of what you call  
3 tunneling.

4 A. Yes.

5 MR GARIBALDI: And some of those actions are in the form of  
6 what you call market manipulation in the form of fraud,  
7 suppression of evidence, providing incorrect information  
8 to the market.

9 A. Yes.

10 MR GARIBALDI: Now, if you look at the totality of that, of  
11 those actions, would you call the whole thing market  
12 manipulation?

13 A. Well, to the extent that some of it clearly was price  
14 manipulation, I would call that part price manipulation.

15 To the extent that some of it was tunneling —  
16 I think this is a key question actually. This is a key  
17 question. Let me explain why.

18 First of all, let me note I have not — I do take  
19 the manipulation allegations very seriously. I do think  
20 that if the tribunal believes certain manipulations  
21 occurred and were successful, they should be quantified  
22 and the market price should be adjusted. But it's my  
23 view that they don't amount to the broken watch; rather  
24 they amount to the little adjustment to the watch.

25 Having said that, let me link this to a very

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1 important part of Mr Boulton's analysis because he says  
2 after the merger he looks at the discount of the  
3 combined entity which he estimates at 5–15% and then  
4 gets 10, and he says that would also have been the  
5 discount in the but for world.

6 So as I said in my opening presentation, I think  
7 that in the but for world, SC&T would not have been at  
8 the top of the food chain, so to speak, in the Samsung  
9 empire, and would not have benefited from such favoured  
10 treatment, because Cheil was, I think, the favoured  
11 vehicle .

12 So I do agree that manipulation via tunneling, if  
13 I may call it that, that you're alluding to in your  
14 question, would require an adjustment to the merger  
15 ratio for the purposes of damages, if that tunneling  
16 would have been reversed in the counterfactual. But if  
17 that so-called tunneling, succession plan, whatever, as  
18 you said in your question, would not have been reversed  
19 in the counterfactual, then I'm not sure, and I think  
20 members of the tribunal are probably quite capable of  
21 doing the mental analysis better than me, sort of here  
22 on the hoof, but I think I would not call that  
23 manipulation because in the counterfactual Elliott would  
24 be left with an independent SC&T that would not be so  
25 favoured, and therefore — I'm sorry, that's a long

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1 answer, but I hope that answers your question.  
 2 MR GARIBALDI: Thank you.  
 3 MS SNODGRASS: So we were looking at the Korean court's  
 4 decision in the appraisal price litigation, which had  
 5 identified examples of activities that were designed to,  
 6 and the court found had an influence on SC&T share  
 7 price, and we talked about the activity in the housing  
 8 sector. And there is a section of the appraisal price  
 9 litigation decision which relates to the Qatar contract,  
 10 which you did take into account in your analysis, and  
 11 the last thing I wanted to draw your attention to there  
 12 is at page 21 {C/53/21} of the appraisal price  
 13 litigation decision, which essentially tells a similar  
 14 story in the construction sector as the story we were  
 15 just exploring in the housing sector.  
 16 We see under the heading (3) on page 21 the court  
 17 finding that:  
 18 "Sometime from around the end of 2014 to the  
 19 beginning of 2015, certain construction projects ran by  
 20 the Former Samsung C&T were shifted to Samsung  
 21 Engineering ..."  
 22 Do you see that?  
 23 And then we see on the rest of that page and over on  
 24 page 22 {C/53/22} the court referring to reports by the  
 25 media and analysis of securities companies, and at the

1 end of the first bullet point the court recording:  
 2 "Those in the financial circles are raising  
 3 suspicions that Samsung Group is deliberately reducing  
 4 new contracts and shifting construction projects to  
 5 other affiliate companies due to the merger between  
 6 Cheil and the Former SC&T."  
 7 Do you see that?  
 8 A. I don't see that, but I will take that --  
 9 Q. Sorry, that's on page 21. I might have misled you by  
 10 referring you to page 22. It's at the end of the first  
 11 bullet point in the middle of {C/53/21}.  
 12 It's just a similar --  
 13 A. Similar point.  
 14 Q. -- point. My question was whether that was a narrative  
 15 that you'd been aware of when you prepared your second  
 16 report?  
 17 A. Well, I was just thinking about that. Price  
 18 manipulation doesn't really enter into Mr Boulton's  
 19 second report. There's a brief reference to it. And so  
 20 while I engaged with the things that he did say, it  
 21 wasn't the focus of my second report.  
 22 Q. So you didn't analyse the possible influence on SC&T's  
 23 share price of this kind of decision-making in the  
 24 construction sector either?  
 25 A. No, I didn't. My point would be the same, I think,

1 namely that an independent SC&T would not be expected to  
 2 get such contracts very often in the counterfactual, but  
 3 having moved to the top of the food chain after the  
 4 merger approval, that's exactly what you would expect to  
 5 happen, that they would become a favoured vehicle for  
 6 the [REDACTED] family.  
 7 So I would like to make clear I'm not defending --  
 8 well, I'm not defending anything except my point of  
 9 view, but I'm above all not defending the arrangements  
 10 of the [REDACTED] family and the Samsung Group. When  
 11 I presented the picture in my presentation I made it  
 12 clear that I thought that was a bad picture from the  
 13 point of view of a shareholder. It's not a clean  
 14 corporate governance structure. It is liable -- you  
 15 know, it's why these companies trade at a discount, in  
 16 my view.  
 17 Q. I may just want to pick up on one point that you said  
 18 there. You suggested that an independent SC&T wouldn't  
 19 in the ordinary course have gotten these contracts.  
 20 If I could just turn your attention to page 22 of  
 21 the court's judgment {C/53/22}. We see there the  
 22 carryover paragraph, or the paragraph that starts at the  
 23 top of the page. If you read the paragraph there, it  
 24 actually describes what was happening with the contracts  
 25 that had originally been SC&T contracts as

1 "unprecedented". So it says:  
 2 "On the contrary ..."  
 3 We read there:  
 4 "... it may actually happen to be the case that they  
 5 would give the key investment sector in Samsung  
 6 Electronics such as semi-conductors and display  
 7 technologies to Samsung Engineering or any other outside  
 8 construction company. According to the media reports,  
 9 for the second phase constructions for the  
 10 KRW 400 billion Samsung Electronics Vietnam investment  
 11 project, the company in charge was changed to Samsung  
 12 Engineering as of February 2015, of which the first  
 13 stage was completed by the Former SC&T and Cheil. This  
 14 kind of change is unprecedented. The Former SC&T was in  
 15 charge during the initial construction phase of the  
 16 construction project by Samsung Electronics of  
 17 a research institute within Seoul University, but also  
 18 dropped out in the middle and now is taken over by  
 19 Samsung Engineering. Samsung Group can at any time  
 20 control the performance of the Former SC&T. The  
 21 performance of the construction sector in particular can  
 22 be influenced greatly depending on the status of  
 23 construction orders retained by Samsung Electronics and  
 24 on the potential for profitability."  
 25 The suggestion there seems to be that there was

1 something unusual happening with Samsung Construction  
 2 and that it being dropped out of these contracts was  
 3 targeted at Samsung Construction in this time period.  
 4 Wouldn't you agree?  
 5 A. That is the suggestion.  
 6 Q. And you would agree, I would assume, that losing those  
 7 significant construction orders would have had  
 8 a negative impact on the share price of SC&T in this  
 9 period?  
 10 A. Well, that depends on whether the market thought this  
 11 kind of stuff was to be expected or whether the market  
 12 had no inkling that something like this would happen,  
 13 because if the market thought that this kind of thing  
 14 was to be expected, then the price would have been lower  
 15 all along; while if the market had no inkling, then it  
 16 would not have been reflected in the previous price all  
 17 along. Therefore, it would not have been reflected in  
 18 the price at which Elliott bought its shares.  
 19 Q. We see a market commentator describing this kind of  
 20 change as "unprecedented", if that gives you any  
 21 insight?  
 22 A. I will — I think the tribunal is qualified to interpret  
 23 that just as well as me, if not better.  
 24 MS SNODGRASS: That takes me to the end of a section of  
 25 cross. It's a few minutes before 1 o'clock. I wonder

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1 whether it might be a convenient time?  
 2 THE PRESIDENT: Whenever it's convenient around this time.  
 3 So let's break now for an hour and we will resume at  
 4 2 o'clock.  
 5 Professor, the same rule continues to apply.  
 6 THE WITNESS: Of course.  
 7 THE PRESIDENT: I think you will be shown to a room where  
 8 you can have your lunch. Thank you very much.  
 9 THE WITNESS: Thank you, sir.  
 10 (12.54 pm)  
 11 (The short adjournment)  
 12 (2.00 pm)  
 13 MS SNODGRASS: Professor Dow, before we broke for lunch we  
 14 had tab 5 of the bundle that you have in front of you  
 15 open. That's exhibit C-53 {C/53/1}.  
 16 So in addition to identifying the strategies that  
 17 Samsung Group used to depress SC&T's share price, in the  
 18 appraisal price litigation, the Seoul High Court also  
 19 recognised that SC&T shares were undervalued in the  
 20 run-up to the merger because of the threat of the merger  
 21 itself, and I want to look at that analysis with you.  
 22 So if you could go with me to {C/53/16} of the  
 23 appraisal price litigation decision. That's also on 16  
 24 in the Opus reference.  
 25 On page 16 we see the heading C, "The undervaluation

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1 of the Former SC&T shares due to the merger plan with  
 2 Cheil", and at the end of the first paragraph, under the  
 3 sub-heading (1), "Analysis of the share price before the  
 4 date of the board resolution for this merger", we see  
 5 the conclusion at the end of the paragraph:  
 6 "... the prospect of the consummation of a merger  
 7 between the Former SC&T and Cheil becoming a real  
 8 possibility in the near future began to be discussed  
 9 among securities market participants following the  
 10 listing of Cheil on the securities market on  
 11 December 18, 2014'.  
 12 "According to the following analysis by securities  
 13 companies and press reports, this is believed to be one  
 14 of the reasons why the Former SC&T share value did not  
 15 appreciate during the period from January 2, 2015 to  
 16 May 22, 2015, unlike the other construction industry  
 17 shares."  
 18 Do you see that?  
 19 A. Yes, I do.  
 20 Q. And the court then refers at the bullet points that  
 21 follow on pages 16 and 17 to that analysis by securities  
 22 companies. And if I could ask you to turn to the first  
 23 bullet on {C/53/17}, so the first dark bullet point.  
 24 The court refers there to an analysis dated March 25,  
 25 2015 by Kyobo Securities to the effect that:

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1 "One reason for the weak share price of the Former  
 2 S&T [I think that's just a mistranslation] is due to the  
 3 view that the Former SC&T shares are at the losing end  
 4 of Samsung Group's restructuring process. The share  
 5 prices are extremely undervalued at the moment, and  
 6 a sharp rise in share price would be possible even with  
 7 just an improvement in the investor sentiment in  
 8 relation to ownership restructuring."  
 9 My question to you is whether you would agree with  
 10 that analysis. (Pause)  
 11 A. I think that this analysis is the fear of the merger  
 12 theory, and I don't agree with the fear of the merger  
 13 theory.  
 14 Q. So you don't think that the share prices were extremely  
 15 undervalued at the moment and you don't think that  
 16 a sharp rise in share prices would be possible even with  
 17 just an improvement in investor sentiment in relation to  
 18 ownership restructuring?  
 19 And you don't think that one reason for the weak  
 20 share price of former SC&T is due to the view that the  
 21 former SC&T shares are at the losing end of Samsung  
 22 Group's restructuring process?  
 23 A. Well, there's two interpretations of the first sentence,  
 24 and one interpretation is fear of the merger, which I've  
 25 said I don't believe that's a viable theory.

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1 In other words, fear of a transaction happening at  
 2 the market price logically should not depress the market  
 3 price.  
 4 So if that is the theory, then I don't agree with  
 5 it.  
 6 "The share prices are extremely undervalued at the  
 7 moment ..."  
 8 I don't really know what to say about that.  
 9 I haven't formed my own opinion of intrinsic value at  
 10 that point. I'll just note that nobody disputes that  
 11 shares here trade at big discounts to net asset value.  
 12 So if that's what's meant, I don't know.  
 13 But I don't think that is -- that's not really --  
 14 you know, it's difficult to unpick this couple of  
 15 sentences, but if the sentences are just saying there's  
 16 a big discount to net asset value, then I don't know.  
 17 And:  
 18 "... a sharp rise in share price would be possible  
 19 even with just an improvement in investor sentiment in  
 20 relation to ownership restructuring."  
 21 I don't know what that means. Does that mean that,  
 22 as Elliott says, or Mr Boulton says, if investors  
 23 thought the merger was going to be cancelled, there  
 24 would be an improvement? I don't know.  
 25 I don't know what that means really. It's just

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1 something that an analyst has said, so. They say those  
 2 kinds of things all the time.  
 3 Q. So you don't --  
 4 A. I don't read much into it.  
 5 Q. So you don't have an opinion on that question?  
 6 A. Well, my opinion is, if it's fear of the merger, you  
 7 know my view on fear of the merger.  
 8 Do I think they're undervalued at the moment?  
 9 I don't particularly think so. I don't think they were  
 10 extremely undervalued at the moment. I think that's my  
 11 testimony I've already given, even though I didn't do  
 12 a valuation on that date. But I did provide an opinion  
 13 on valuation date. So to that extent. I don't think  
 14 they were extremely undervalued, no.  
 15 As I showed in my presentation this morning, I think  
 16 the whole issue of share price versus net asset value is  
 17 a bit of a red herring because even if one started from  
 18 net asset value, I don't think a realistic discount  
 19 would take you very far from the share price.  
 20 Q. Sorry, we're just getting the transcript. My transcript  
 21 is not showing up. So I'm getting it fixed so I can  
 22 make sure I see what you're saying.  
 23 Excellent, thank you.  
 24 I believe you said, notwithstanding I didn't have  
 25 the transcript in front of me, that you said that nobody

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1 disputes that there was a discount at this time.  
 2 And I believe in your expert reports, and I'm referring  
 3 now specifically to paragraphs 111 and 112 of your  
 4 second expert report, which is at {G3/1/52}, you  
 5 attribute that discount to many rational economic  
 6 reasons.  
 7 One of those reasons, as you explain specifically at  
 8 paragraph 112, by reference to studies that you quote,  
 9 is the risk that minority shareholders will be targeted  
 10 by unfair or predatory transactions like the merger.  
 11 You say there:  
 12 "... it is rational for minority shareholders to  
 13 discount the prices of group firms when they anticipate  
 14 diversion of cash flows to controlling shareholders  
 15 (what Prof Milhaupt calls tunneling)."  
 16 Is that right?  
 17 A. What I say there is right. I don't agree with what you  
 18 said before, where you -- I don't have -- if I could  
 19 have the transcript for a minute:  
 20 "One of those reasons, as [I] explain specifically  
 21 at paragraph 112, by reference to the studies that you  
 22 quote, is the risk that minority shareholders will be  
 23 targeted by unfair or predatory transactions like the  
 24 merger."  
 25 That is not what I said in paragraph 112, and it is

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1 not what I believe, because my evidence was that the  
 2 merger taking place at market prices cannot be an unfair  
 3 or predatory transaction.  
 4 So to put it in simple terms, I completely disagree  
 5 with Professor Milhaupt's statement that he made on  
 6 Monday, that the merger is classic tunneling.  
 7 Q. You also then disagree with Professor Bae, who is an  
 8 expert on Korean tunneling transactions, who in his  
 9 evidence confirmed his view that the Cheil-SC&T merger  
 10 was, from the perspective of SC&T shareholders,  
 11 a tunneling transaction. For the transcript, the  
 12 reference is {Day6/94:22} through {Day6/95:3}. Do you  
 13 recall Professor Bae's evidence to that effect?  
 14 A. I do recall; I don't agree with him.  
 15 Q. But in your reports you do specifically argue that in  
 16 the period leading up to the merger SC&T shares priced  
 17 in the risk of a merger at a merger ratio that  
 18 undervalued SC&T and overvalued Cheil?  
 19 A. Could you show me if I say that, please?  
 20 Q. Yes, first report, paragraph 36. The reference for the  
 21 Opus operator is {G1/1/15-16}.  
 22 A. Yes, that is not at all what you said because if I could  
 23 see the transcript? If I could see the transcript of  
 24 what the question was?  
 25 Q. I'm sorry, paragraph 35, apologies, of your first

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1 report.  
 2 A. You asked me:  
 3 "You specifically argue that [blah, blah, blah] SC&T  
 4 shares priced in the risk ... at a merger ratio that  
 5 undervalued SC&T and overvalued Cheil?"  
 6 And I don't believe I said that the merger ratio  
 7 undervalued SC&T and overvalued Cheil.  
 8 Q. We can omit those words, but it is your argument that in  
 9 the period leading up to the merger, SC&T shares priced  
 10 in the risk of the merger at the merger ratio, full  
 11 stop.  
 12 A. That's got to be true.  
 13 Q. So to the extent that the market appreciated, rightly or  
 14 wrongly, that the merger ratio was unfair to SC&T  
 15 shareholders, it was pricing in that risk?  
 16 A. Well, I think the simpler statement of my views would be  
 17 what you previously said, namely that -- or what I say  
 18 in this paragraph, that the price factored in everything  
 19 to do with the risk of the merger. I don't like the  
 20 hypothesis that the merger was predatory, which I think  
 21 was implied by your second question.  
 22 Q. To the extent that the difference between SC&T's market  
 23 price and its net asset value resulted from the market's  
 24 appreciation that SC&T was vulnerable to a merger that  
 25 was unfair, that was a tunneling transaction, then that

1 risk would have been priced in to the market price; yes?  
 2 A. But I don't think it was a tunneling transaction. So if  
 3 you ask me, if it was a tunneling transaction, or if  
 4 there is a tunneling transaction, is that priced in, of  
 5 course. But my evidence has been that this is not  
 6 a tunneling transaction.  
 7 Q. What did you mean when you said in paragraph 35:  
 8 {G1/1/15}  
 9 "... EALP made this investment with full awareness  
 10 of the risk that the Merger would occur."  
 11 What were you trying to convey there?  
 12 A. Just that the -- well, to give you one example, in my  
 13 presentation this morning I said imagine a price -- and,  
 14 by the way, price manipulation, I agree, in the way that  
 15 I have defined price manipulation, would create a value  
 16 transfer within the window of time that I set out this  
 17 morning and should require an adjustment to the price.  
 18 Okay. So I want to make that clear.  
 19 Let's suppose that a price manipulation took place  
 20 before Elliott acquired the shares. Could you remind --  
 21 yes, it's paragraph 35, isn't it?  
 22 Q. Paragraph 35, yes.  
 23 A. So let's suppose that price manipulation took place  
 24 before Elliott acquired the shares. Then the price was  
 25 too low, relative to what I have said was the right

1 benchmark, namely an adjusted price.  
 2 However, the price at the time Elliott bought it  
 3 would then have been depressed and, as I say in  
 4 paragraph 35:  
 5 "It paid a price reflecting that possibility, and  
 6 therefore, from an economic perspective, it could not be  
 7 said to have suffered damages from that eventuality  
 8 coming to pass ..."  
 9 Q. What eventuality?  
 10 A. The eventuality of the merger.  
 11 Q. Right. So I read that to say -- perhaps I have  
 12 misunderstood you -- that the price at which EALP bought  
 13 in priced in the risk of the merger.  
 14 Have I misunderstood you?  
 15 A. Well, it prices in everything. I mean, prices at any  
 16 point in time have to price in everything including  
 17 possible mergers and possible everything else. Possible  
 18 tunneling.  
 19 Q. So it would include the risk of the merger?  
 20 A. Yes.  
 21 Q. Okay. So I think, although I say this with some  
 22 trepidation, that on that basis you would agree with  
 23 Mr Boulton that some part of the discount that was  
 24 observed between -- or that could be observed between  
 25 SC&T's share price and the net asset value estimation of

1 its value resulted from that risk, the risk of the  
 2 merger. I know you don't like the theory, but that some  
 3 part of the observed discount was attributable to that  
 4 risk?  
 5 A. Well, it's not that I don't like the theory, because in  
 6 my report I say if the tribunal finds that, say, the  
 7 Qatar contract should have been disclosed earlier, then  
 8 the tribunal could adjust the price and that would give  
 9 rise to small damages, I guess, and possibly many other  
 10 things come into play.  
 11 So to that extent I obviously do agree and I'm  
 12 not -- you know, I'm not disputing that to that extent  
 13 the price could have been too low, and therefore some  
 14 adjustment would have been required.  
 15 Q. I think --  
 16 A. So the main difference between myself and Mr Boulton  
 17 is -- well, one of the differences between myself and  
 18 Mr Boulton is that his NAV discount is just implausibly  
 19 large, and another difference is that he draws a line  
 20 through the price, whereas in my judgment the  
 21 allegations I have seen aren't enough for me to draw  
 22 a line through the price.  
 23 But even if I did, and even if I were to use a net  
 24 asset value approach, which to be perfectly honest  
 25 I don't think would be a good idea, but if I had to do

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

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

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1 Q. Let me just finish. Let me just finish, please --  
 2 knowledge that the merger would occur.  
 3 A. Okay --  
 4 Q. I'm not finished.  
 5 And so then in that section of your second report  
 6 you go on to address some of the evidence concerning  
 7 whether the Claimant knew that the merger would occur  
 8 and you offer your conclusions concerning what that  
 9 evidence shows.  
 10 My question to you is whether you accept that it is  
 11 ultimately for the tribunal to weigh that factual  
 12 evidence and draw those conclusions?  
 13 A. So here I'm saying that if the Claimant bought some  
 14 shares after the merger was already known, for example  
 15 the 3.4 million shares on 3 June, I'm saying that since  
 16 they already knew at that time that the merger was very  
 17 likely if not certain to happen, they can't complain  
 18 that the shares they bought at that time were -- you  
 19 know, there was a loss in relation to those shares,  
 20 given that the share price on 3 June must have  
 21 incorporated that expectation.  
 22 And I also say that any other shares they bought, at  
 23 whatever time, that were bought in the expectation of  
 24 occurrence of the merger, if that led to the share  
 25 prices being low, then indeed they bought them cheaply,

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1 so they can't be compensated for the cheap price.  
 2 And I totally accept that it is for the tribunal to  
 3 decide whether the shares or which shares among the  
 4 purchases made by Elliott, I totally accept that the  
 5 tribunal should decide whether some of the shares  
 6 purchased by Elliott were purchased at a price  
 7 reflecting near certainty or high likelihood of the  
 8 merger occurring.  
 9 If the merger were to depress the value -- this is  
 10 a separate argument from other arguments I have made in  
 11 the case. If the merger were to depress the value for  
 12 whatever reason, and Elliott bought the shares when that  
 13 had already happened, then they shouldn't claim for the  
 14 drop in value which they actually benefited from in the  
 15 form of a low price.  
 16 That's what I'm saying there, and I totally agree  
 17 it's for the tribunal to make that determination.  
 18 Q. So you say in your first report that you offered  
 19 a similar opinion in the RosInvest Co arbitration, and  
 20 that's at paragraph 124 of your first report, if that  
 21 assists?  
 22 A. Yes.  
 23 Q. {G1/1/57-58}.  
 24 You say that the tribunal in RosInvest Co accepted  
 25 your position in that case?

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1 A. That is true.  
 2 Q. I might ask you if you would to turn to tab 32 of the  
 3 big binder that you have there, if I could get there.  
 4 It's a massive chunk of paper to turn.  
 5 If you'll turn to paragraph 665 of the excerpt  
 6 {1/51/273}. So we don't have all of RosInvest Co. In  
 7 deference to Mr Turner's concern to his reputation with  
 8 his children, we didn't print the entire award. But if  
 9 you need to say any part of it that's not excerpted, do  
 10 let me know.  
 11 MR TURNER: I shall tell my children.  
 12 MS SNODGRASS: Yes, I'll tell my daughter as well, who has  
 13 plenty of bones to pick with me these days.  
 14 Paragraph 665, please. As the tribunal puts it  
 15 there, citing your work -- it's {1/51/273}, a little bit  
 16 further up the excerpt:  
 17 "The Dow Report 1 submitted by Respondent  
 18 persuasively identifies that the market knew of both the  
 19 seizure of Yukos' YNG shares and the announcement of the  
 20 Ministry of Justice's intention to sell those shares.  
 21 The market was fully informed of Respondent's likely  
 22 action in respect of Yukos from July 2004, well before  
 23 Claimant's purchase of the shares on 16 November and  
 24 1 December 2004. Accordingly, at the two points in time  
 25 when Claimant purchased the shares, the market had

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1 'priced in' the likelihood and effect of the Russian  
 2 Federations actions in respect of Yukos."  
 3 So that's the priced-in-the-risk argument?  
 4 A. Totally.  
 5 Q. So given your familiarity with these issues, you're no  
 6 doubt aware that the focus of the analysis in that case  
 7 was whether the Claimant had purchased the shares at  
 8 a price that accounted for the action by the Respondent  
 9 state, the action that constituted a breach of the  
 10 Treaty; correct?  
 11 A. Yes, indeed.  
 12 Q. So you accept that, putting to one side the issue of the  
 13 3.4 million shares which were purchased after the date  
 14 of the EGM --  
 15 A. Well, this section is mostly about those, I think.  
 16 Q. Yes; the merger occurring was not a certainty when the  
 17 Claimant purchased its SC&T shares that were subject to  
 18 appraisal rights; correct?  
 19 A. Correct.  
 20 Q. And in any event what's at issue in this case is the  
 21 ROK's wrongdoing or alleged wrongdoing, its interference  
 22 in and its subversion of the NPS process that led to the  
 23 vote in favour of the merger.  
 24 So that conduct is separate from Samsung's  
 25 misconduct, whether you want to call it tunneling or

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1 price manipulation; right?  
 2 A. It's a separate piece of conduct.  
 3 Q. And so this case, I suggest, is unlike the situation in  
 4 RosInvest Co where the wrongful act by the Respondent  
 5 state, the seizure of shares and the announcement as to  
 6 the intention of what to do with them, had already taken  
 7 place and was already known before the Claimant acquired  
 8 the investment; right?  
 9 A. Well, this section is entitled -- and I'm referring to  
 10 my first report, right above the paragraph you quoted,  
 11 right above paragraph 122, the title of that section or  
 12 subsection reads: {G1/1/57}  
 13 "EALP Cannot Show an Economic Loss with Respect to  
 14 the 3.4 Million Shares It Purchased after the Merger  
 15 Announcement."  
 16 And that is my position, and that is, unless I'm  
 17 missing something, that is the analogy with the  
 18 RosInvest Co case, that Elliott -- in fact it was an  
 19 Elliott entity, I believe, in the RosInvest Co case --  
 20 purchased some shares which it claimed were damaged at  
 21 a price reflecting that damage, and then made a legal  
 22 claim for compensation for that damage at a low price  
 23 reflecting that damage.  
 24 So to the extent that the same thing happened here  
 25 in respect of those 3.4 million shares, I think the

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1 argument carries over.  
 2 Now, in the question, I think Ms Snodgrass built in  
 3 an extension of that, and you will correct me if I am  
 4 wrong, I hope, that: what do we do when there's  
 5 a probability priced in, but not certainty?  
 6 Well, I don't have a magic formula for what we do in  
 7 that case, but I suppose it's something in between what  
 8 we would do if there was no such argument and what we  
 9 would do if it's a certainty, I guess.  
 10 But I'll remind the tribunal that this section is --  
 11 it's in the section in my second report called  
 12 "Miscellaneous Issues". That is not my main argument,  
 13 but I think it is important. It is important to note  
 14 that Elliott bought shares in June and I'm talking about  
 15 those shares.  
 16 Q. So the analogy you're drawing is between a case in which  
 17 what was at issue was governmental misconduct that was  
 18 known about and that affected the value of the shares --  
 19 that's the RosInvest Co case -- and in this situation an  
 20 event that affected the value of the shares that was not  
 21 governmental misconduct. It was not the breach that is  
 22 complained of?  
 23 A. I don't follow your logic there because surely you  
 24 allege that the government misconduct contributed to the  
 25 merger being approved.

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1 Q. I do, but are you aware, Professor Dow, that on the  
 2 evidence in this case the government's misconduct was at  
 3 the time concealed and not known to either the Claimant  
 4 or the market? And I'm suggesting that's a material  
 5 distinction between this and the case to which you seek  
 6 to draw an analogy.

7 A. So you're suggesting that Elliott bought the shares on  
 8 June 3, 2015, after the merger was approved, at a price  
 9 that was low because of government misconduct, but the  
 10 market didn't know that it was low because of government  
 11 misconduct, the market knew whatever it knew; and that  
 12 Elliott thought — obviously Elliott thought this was  
 13 a very bad merger, but if you then said to Elliott ,  
 14 "A—ha, but the reason is government misconduct", that  
 15 would have made a difference? Let me think that  
 16 through.

17 THE PRESIDENT: May I put the same question in different  
 18 terms, and going back to your language in paragraph 122,  
 19 that Elliott was accepting the risk that the merger  
 20 would happen.

21 Assume the Claimant's case is correct that in the  
 22 end the merger happened because of government  
 23 interference. Would you still say that Elliott accepted  
 24 the risk that the merger would happen? Would they have  
 25 accepted the risk that the merger would happen because

1 of government interference or as a result of government  
 2 interference? What is the risk that they actually  
 3 accepted when they purchased the shares? The commercial  
 4 risk that the merger would happen, or the legal risk  
 5 that the government might interfere with the merger?

6 A. Well, I'm an economist. So —

7 THE PRESIDENT: It may be a legal issue. If it's in your  
 8 view a legal issue, then just say that. That's entirely  
 9 fine.

10 A. Yes. I would just say to the tribunal we need to  
 11 construct an appropriate counterfactual and in the  
 12 RosInvest Co case, where the government action was  
 13 common knowledge, the counterfactual would be no bad act  
 14 by the Russian Government, therefore Elliott would not  
 15 have been able to buy cheaply, because they bought at  
 16 a distressed price, RosInvest Co and Elliott Company,  
 17 I believe. You will correct me if I am wrong.

18 In this case, what would have been the  
 19 counterfactual: so the merger went ahead, Elliott bought  
 20 the shares anyway, it didn't like the merger, it  
 21 suspected something fishy had gone on, maybe, but it  
 22 didn't link that to the government.

23 Not sure it would have made any difference to the  
 24 price whether or not it was the government; okay? So  
 25 then no damages.

1 The merger was approved, Elliott bought the shares,  
 2 it had no clue it was the government and, had the market  
 3 known that it was government involvement at some level,  
 4 they would have been horrified and the share price would  
 5 have been very different. Then there would be damages.

6 And so I guess it's not for me to unravel that.

7 It's for the tribunal, but I don't know, and I guess  
 8 it's further complicated by the fact that in Korea the  
 9 Chaebols are closely integrated with the government, as  
 10 I understand it, and as Professor Bae testified in  
 11 response to the very last question he was asked in his  
 12 testimony.

13 So if there's a — you know, if there's very tight  
 14 links between the government and the Chaebols, I don't  
 15 know to what extent the tribunal will be able to  
 16 separate those things, but that would be a question for  
 17 the tribunal.

18 And also, I suppose, thinking through  
 19 a counterfactual, the only one that would give rise to  
 20 damages for these shares would be a counterfactual in  
 21 which the market, knowing that the merger had been  
 22 pushed through by the government rather than pushed  
 23 through by Samsung, would take a very different view of  
 24 the appropriate price.

25 I don't see why it would take any different view.

1 I'm thinking on the hoof here. I don't see why it would  
 2 make a difference, but if the tribunal reasons that it  
 3 would make a difference, and if — I mean, bear in mind  
 4 this is only a back-up argument, so to speak, relating  
 5 to if damages were to be awarded anyway on the other  
 6 shares, then indeed the tribunal could make an  
 7 adjustment for that.

8 I hope that's clear because it's quite a complicated  
 9 answer.

10 THE PRESIDENT: Well, I have no idea what the answer is.  
 11 That's why I'm asking.

12 A. Well, I don't know — I don't know to what extent one  
 13 can separate the consequences of the Korean State's  
 14 actions from Samsung's actions. That's what I'm saying.

15 Construct a counterfactual. Ms Snodgrass is  
 16 inviting me, I suppose, to construct — and you are,  
 17 sir — to construct a counterfactual in which the merger  
 18 was pushed through, it was a horrible merger, the price  
 19 fell, for whatever reason, that's how it happened, but  
 20 had the market known it was because of the President's  
 21 involvement or the government's involvement, then the  
 22 price should have fallen even further.

23 That further drop in price, caused by the  
 24 incremental severity of the problem reflecting  
 25 participation by the government, could then potentially



1 give rise to damages had the tribunal already decided  
 2 that damages were due on the other shares, not the 3.4  
 3 that we're talking about here.  
 4 So maybe that's a bit clearer. I apologise if it's  
 5 not, but I am doing my best under the ---  
 6 THE PRESIDENT: I'm sure it's helpful. Whether it's more  
 7 helpful for counsel than for the tribunal, we'll see.  
 8 A. Yes.  
 9 THE PRESIDENT: But we'll still have the benefit of argument  
 10 from counsel. So we'll still have a chance to be  
 11 further informed.  
 12 A. Yes.  
 13 THE PRESIDENT: Thank you very much. And apologies for  
 14 interrupting.  
 15 MS SNODGRASS: No problem.  
 16 A. I'm glad I'm not a lawyer.  
 17 MS SNODGRASS: To be clear, I wasn't inviting consideration  
 18 of that counterfactual. But I did want to just clarify  
 19 the chronology.  
 20 You've said a couple of times that the merger was  
 21 approved and then Elliott finished acquiring its shares.  
 22 In fact what happened on 26 May was the merger was  
 23 announced, and on 3 June Elliott acquired 3.4 million  
 24 additional shares. Does any of that change your  
 25 analysis?

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1 A. Oh, you're absolutely right.  
 2 Q. The merger wasn't approved until 17 July.  
 3 A. Correct. Correct. So I guess that takes us to the grey  
 4 area that I referred to previously, where the merger was  
 5 very likely, but not 100%.  
 6 And then, I'm not going to quantify this, but then  
 7 to the extent that the market thought the merger was  
 8 going to happen, there would be no damages. To the  
 9 extent that the market thought the merger might fail,  
 10 there could potentially be damages had the tribunal  
 11 already decided that the older shares, if you'll allow  
 12 me to call them that, the shares purchased earlier, were  
 13 liable for damages.  
 14 I hope that's clear.  
 15 Q. On what basis do you consider that the merger was very  
 16 likely as of the date of the merger announcement?  
 17 A. I don't want to offer an opinion and I should not have  
 18 said "very likely", but obviously quite likely, somewhat  
 19 likely, and it's not for me to quantify that probability  
 20 because I think the tribunal will have heard lots of  
 21 evidence to decide whether that was a high probability  
 22 or a low probability.  
 23 Q. So when you said in your second report that Elliott knew  
 24 that the merger would occur, you don't mean to say that  
 25 there was certainty?

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1 A. Could you take me to the paragraph?  
 2 Q. That's at paragraph 202 of your second report, that it  
 3 bought shares with knowledge that the merger would occur  
 4 {G3/1/94}. You didn't mean to indicate there was  
 5 certainty at that time that the merger would occur?  
 6 A. Correct.  
 7 Q. Okay.  
 8 A. With the knowledge of a risk or --- if I had changed  
 9 that, saying "cannot be" --- well, actually that  
 10 statement is true, but what is not true is the certainty  
 11 that the merger would occur, and maybe I develop that  
 12 further.  
 13 Yes, so I do develop that further; thank you.  
 14 So the statement I make in 202 is correct. In  
 15 paragraph 205 I say: {G3/1/95}  
 16 "These actions suggest that EALP had perceived there  
 17 to be a heightened possibility of a merger after  
 18 2 March 2015. Thus, following the logic of my arguments  
 19 in [the other case], to the extent EALP is eligible for  
 20 damages ..."  
 21 In other words, if the tribunal decides that for the  
 22 older shares:  
 23 "... I calculate only damage to shares that were  
 24 acquired by EALP ..."  
 25 So what I'm doing there is I say there's

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1 a heightened possibility and I'm treating it as  
 2 a certainty by excluding those shares. And if it's just  
 3 a high probability but not a certainty, as I said  
 4 before, I suppose the tribunal has to find some sort of  
 5 halfway house, or would have to find some sort of  
 6 halfway house.  
 7 You will forgive me that I'm a bit blasé about  
 8 liability, because, like Mr Boulton, I see my role as  
 9 a damages expert to assume liability before I even start  
 10 work.  
 11 Q. The degree of certainty that Elliott did or didn't have  
 12 about this seems to be significant to your damages  
 13 analysis?  
 14 A. Well, this is not my main damages analysis. To be  
 15 clear, this is a miscellaneous issue on damages and I'm  
 16 saying that if the tribunal decides to award damages at  
 17 all, then it should consider whether to exclude the  
 18 shares purchased later on.  
 19 Q. And in expressing the views that you state in  
 20 paragraph 205, when you express those views, were you  
 21 aware that in March of 2015 Elliott had met with the  
 22 NPS, who had indicated that they wouldn't support the  
 23 merger on the current proposed terms?  
 24 A. I believe so.  
 25 Q. And you are aware that in April of 2015 Elliott had met

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1 with SC&T, who had indicated they weren't looking at  
 2 a merger with Cheil?  
 3 A. I will take that -- let's assume that. I don't recall,  
 4 but I presume so, yes.  
 5 Q. Okay.  
 6 A. I think it's for the tribunal to form its assessment of  
 7 what Elliott would have thought the likelihood of merger  
 8 to have been.  
 9 Q. Okay, thank you.  
 10 So in his second report Mr Boulton seeks to quantify  
 11 how much of the discount between SC&T's market price and  
 12 its sum of the parts value is attributable to concerns  
 13 about the merger that was in fact being pursued by  
 14 Samsung and the [REDACTED] family. That's what he defines as  
 15 the excess discount; right? I can take you to it if you  
 16 would like?  
 17 A. Yes, please, because it's good to be precise.  
 18 Q. Very good. You don't have a hard copy of Mr Boulton's  
 19 report?  
 20 A. Perhaps I could just have one.  
 21 Q. I'll give you mine.  
 22 A. I can see one coming round here.  
 23 Q. You've got one? Excellent. I've got multiple copies of  
 24 Mr Boulton's report, you won't be surprised to know.  
 25 I carry it with me everywhere.

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1 A. Are we looking at the second report?  
 2 Q. The second report, paragraph 2.5.7. That's {F5/1/17}.  
 3 A. Paragraph 2.5.7.  
 4 Q. (III), which is over on the next page {F5/1/18}. That's  
 5 just a summary of his definition of the excess discount  
 6 and his calculation of the excess discount. There's  
 7 obviously a longer analysis of that later in the report.  
 8 MR GARIBALDI: It disappeared from my screen.  
 9 MS SNODGRASS: Mine too.  
 10 MR TURNER: Opus has censored Mr Boulton's report, very  
 11 sensibly, but I wouldn't mind seeing it if the question  
 12 is being put.  
 13 MS SNODGRASS: I think it's coming back. {F5/1/18}.  
 14 So --  
 15 A. Sorry, I was at the wrong page.  
 16 Q. This really wasn't a major point. It was mainly just to  
 17 say he has this concept which is this excess discount,  
 18 which is part of the observed discount, but not all of  
 19 it --  
 20 A. That's the bit that would have gone away had the merger  
 21 been rejected.  
 22 Q. Yes, and in your second report you subject Mr Boulton's  
 23 analysis of the excess discount to empirical scrutiny?  
 24 A. Yes.  
 25 Q. To test whether it is supported by market data; is that

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1 right?  
 2 A. Yes.  
 3 Q. And you explain this event study at paragraph 174 of  
 4 your second report which for the operator is {G3/1/81}.  
 5 A. My second report, paragraph?  
 6 Q. 174.  
 7 Where you say:  
 8 "I have performed an independent market test of  
 9 Mr Boulton QC's Excess Discount Theory. His theory,  
 10 based on the presumption that the Merger was unfair for  
 11 SC&T shareholders, makes two predictions, and both tests  
 12 must be satisfied by the market data for his Excess  
 13 Discount Theory to be true.  
 14 "a. First, his theory predicts that SC&T's share  
 15 price should go up when the market receives news  
 16 indicating the merger is less likely to occur, and  
 17 opposite news should cause a decline in share price  
 18 ('Test 1').  
 19 "b. Second, his theory predicts that the share price  
 20 of Cheil should move in the opposite direction to SC&T's  
 21 share price on these days, to reflect the likelihood of  
 22 the alleged transfer of value from SC&T to Cheil  
 23 shareholders ('Test 2')."  
 24 {G3/1/82}.  
 25 So in your view, if these tests were satisfied, that

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1 would be robust empirical support for Mr Boulton's  
 2 analysis of the excess discount; yes?  
 3 A. No, because the excess -- okay, so what I'm testing here  
 4 is what I called in my presentation this morning the  
 5 value transfer theory, namely that the merger is an  
 6 event that would transfer value between the two  
 7 companies. And that's mostly what it was about.  
 8 So this is one leg of my analysis but there are  
 9 others, for example that Korean Chaebol companies trade  
 10 at discounts anyway, which are much bigger than the 10%  
 11 Mr Boulton postulates.  
 12 So this is one leg of my analysis, not the whole  
 13 analysis.  
 14 Q. Okay. So I thought you were --  
 15 A. It's a sense check, if you like.  
 16 Q. I thought you were testing his excess discount theory.  
 17 That's what it says in your report. Is that the same  
 18 thing as the value transfer theory or are they different  
 19 things?  
 20 A. It is -- yes, I guess there are two legs to his excess  
 21 discount theory, and sort of one part is: was there  
 22 an excess discount at all? And the other part is: how  
 23 big was the excess discount?  
 24 So this is looking at statistical data, so it is  
 25 saying, I suppose, it's examining the proposition that

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1 there is a big excess discount. I think it's a fair  
 2 statement to say that this is a statistical test of the  
 3 proposition that there is a big excess discount.  
 4 Q. Okay. In conducting the event study you selected seven  
 5 dates to test and found that they all fail your test.  
 6 This is your test 1, and your test 2 for that matter?  
 7 A. They all fail one or both tests.  
 8 Q. One or both tests, yes.  
 9 So I would like to look a little more closely at  
 10 that analysis and at your conclusion, starting with  
 11 test 1.  
 12 A. Yes.  
 13 Q. Which is, just to remind everybody, that SC&T's share  
 14 price should go up when news indicating that the merger  
 15 is less likely to occur is released; okay?  
 16 So --  
 17 A. Let me just make sure I have the negatives and the  
 18 positives in the right order.  
 19 Q. Yes. Share price should go up when news indicating the  
 20 merger is less likely hits the market.  
 21 We can go back. It's on --  
 22 A. I agree. I agree. So merger less likely, on the theory  
 23 that merger is bad, price goes up.  
 24 Q. Yes. So the first event is Elliott's filing of its  
 25 first injunction application on 9 June. So you would

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1 agree that that was an event that was at least  
 2 calculated to make the merger less likely, wouldn't you?  
 3 A. Second event? Oh, third event, sorry. 9 June. It's  
 4 the third row in that table 5.  
 5 Q. Yes. That's the first event I'd like to talk about.  
 6 A. Elliott's first injunction -- let me make sure I get  
 7 this.  
 8 Q. The question was -- Professor Dow?  
 9 A. Yes.  
 10 Q. The question was whether that was an event that was at  
 11 least calculated to make the merger less likely;  
 12 correct?  
 13 A. Yes. I say that in table 5. "Effect on Merger  
 14 Probability", the third row, "Decrease". In other  
 15 words, Elliott's first injunction lowers the probability  
 16 of the merger.  
 17 Q. So Elliott first announced its injunction application  
 18 against the extraordinary general meeting in a press  
 19 release on 9 June, which happens to be in the bundle, if  
 20 you would like to look at it. It's at tab 6, exhibit  
 21 C-193. I don't think you need look at it, but it's  
 22 there if you would like to. {C/193/1}.  
 23 We can go back to the table you were looking at.  
 24 {G3/1/83}  
 25 You point out at the end of trading on 9 June the

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

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1 I don't recall that I have.  
 2 Q. Okay. So take what time you need with it. It's  
 3 a document that's dated 10 June 2015. It was prepared  
 4 by Samsung Securities. It's entitled "Market Forecast  
 5 Analysis (DRAFT)". I'm not surprised you haven't seen  
 6 it; it was only recently disclosed by the ROK to the  
 7 Claimant.  
 8 If you could turn to the second page of the document  
 9 and read the text at the first dashed bullet under the  
 10 diagram. {C/759/2}  
 11 A. [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 Q. So this contemporaneous analysis by Samsung Securities  
 19 suggests that [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED], doesn't it?  
 22 [REDACTED]  
 23 A. Well, let me first of all point out there is an error in  
 24 the paragraph I have just read.  
 25 Q. What's the error?

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1 A. The error is that -- I believe I'm right -- this is in  
 2 June. So it is after the merger ratio has been  
 3 computed. But I think what is meant is that the share  
 4 price of SC&T went up, which we do see, as,  
 5 Mr President, you pointed out, in table 5 of my report  
 6 on 10 June. We do see that the share price of SC&T went  
 7 up by 10.3%.

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

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

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

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

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

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1 was a reaction to Elliott's first injunction on 9 June,  
 2 that would indeed be a pass, is what you're saying.

3 Q. Yes.

4 A. So, my comments. What time of day in Korea was  
 5 Elliott's first injunction released to the market?  
 6 Because if it was released after the close on 9 June,  
 7 then you are right and the price movement on 10 June  
 8 conflates the reaction to two events, Elliott's first  
 9 injunction and treasury shares sold to KCC.

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

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

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

19 Q. You didn't verify the time of the release of the  
 20 information to the market when you conducted your event  
 21 study, did you?

22 A. No.

23 Q. And that would have been relevant to determining how you  
 24 should evaluate that data for your event study, wouldn't  
 25 it?

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1 A. Well, I obviously thought it was before the close, but  
 2 if you tell me I'm wrong, then I can look at that.

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

6 A. Yes.

7 Q. So we agree that this was an event that made the merger  
 8 more likely to occur?

9 A. Yes. For reasons that I don't recall right now, so --

10 Q. It was because --

11 A. -- forgive me.

12 Q. -- they were considered to be an ally likely to vote  
 13 with Samsung in favour of the merger.

14 A. Thank you. I have seen that recently.

15 Q. They were a shareholder in Cheil as well.

16 A. Yes.

17 Q. And as we were just discussing, the price of SC&T shares  
 18 increased on June 10, which was the day the deal  
 19 occurred. So on your analysis, test 1 was failed; yes?

20 A. Because the treasury shares were sold to KCC on 10 June.

21 Q. But we do have information about when that news was  
 22 released to the market.

23 A. When was that released to the market?

24 Q. If you will turn to tab 8, exhibit C/199, we have some  
 25 information about that {C/199/1}.

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

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

5 MS SNODGRASS: Tab 8.

6 So, this is a press release that Elliott put out to  
 7 announce its intention to file an application to, in  
 8 American English, enjoin, or in British English, injunct  
 9 the sale.

10 MR TURNER: Other way round, I would have thought --

11 MS SNODGRASS: Is it the other way around?

12 MR TURNER: -- but I don't think it matters for the purposes  
 13 of this cross-examination.

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

16 A. They were trying to stop it.

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

18 If you would look at the very small text at the  
 19 bottom of the page, footnote 2, the second sentence of  
 20 that footnote indicates that the sale of treasury shares  
 21 to KCC was disclosed just before the market closed on  
 22 10 June. It says there:  
 23 "The proposed sale was disclosed just before the  
 24 close of market on 10th June 2015."  
 25 So the market didn't know about the sale of treasury

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

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1 Q. Samsung Securities?  
 2 A. Samsung Securities analyst, I don't care about that.  
 3 What I care about is when exactly is "just before", were  
 4 there trades after that price, or was it like 30 seconds  
 5 before? Or was it five minutes before? When was just  
 6 before?  
 7 And the other question is: when was the Elliott  
 8 first injunction declared to the market? Was it before  
 9 closing? Was it after closing?  
 10 I would tend to think that just before closing is  
 11 before closing and that's the end of it. But if you  
 12 represent to me that just before was, you know, a few  
 13 seconds, then I completely agree that one would have to  
 14 look at that again.  
 15 Q. But these aren't questions that your event study  
 16 answers?  
 17 A. No, as I say, my event study identifies those events in  
 18 table 5 with the dates shown in table 5.  
 19 Q. And what happened to SC&T shares on 11 June, which was  
 20 the first trading day on which the market, assuming that  
 21 this was immediately prior to close of the market, first  
 22 trading day on which the market had the chance to  
 23 assimilate the news of the SC&T sale of treasury shares  
 24 to KCC?  
 25 A. Well, I don't want to assume that, because I've been

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

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1 A. I happen to be looking at that.  
 2 Q. This is going to be on a spreadsheet that is probably  
 3 going to have to be put up on a screen. So the Opus  
 4 reference is {G1/56/1} and I say with trepidation we're  
 5 going to have to look at some rows in a spreadsheet to  
 6 find your confidence interval and show that this clears  
 7 it.  
 8 So if we can go to row 87 in this spreadsheet.  
 9 All right, this fills me with terror. I hate  
 10 spreadsheets.  
 11 A. Me too.  
 12 Q. But I think we can do it if we do it together.  
 13 A. We'll support each other.  
 14 Q. There we go.  
 15 So as we can see from columns C and D, I'm right to  
 16 understand, am I, that you set the confidence interval  
 17 at approximately plus or minus 3.3% excess returns for  
 18 SC&T; have I understood that correctly?  
 19 A. Can we go to the --  
 20 Q. Can we go to the top so we can see the headings. That  
 21 would be fair enough.  
 22 A. I'm not going to ask you to hide the intervening rows.  
 23 Q. I wouldn't know how to do that. I'm not driving the  
 24 cursor anyway.  
 25 A. It's quite easy actually. I can tell whoever is doing

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1 it .  
 2 Q. But do you agree that --  
 3 A. Sorry, I didn't look because I was ...  
 4 95% confidence interval (lower), 95% confidence  
 5 interval (upper) and residuals. So B we have the excess  
 6 return, column B we have the excess return. That's the  
 7 return of SC&T net of market movements or net of my  
 8 model. And so that is telling us the abnormal or excess  
 9 return of SC&T on each date and the 95% upper and lower  
 10 confidence intervals define what is beyond the normal  
 11 range for an abnormal return, if I may put it that way.  
 12 Q. And that's set at approximately plus or minus 3.3%.  
 13 A. So it's a little bit above the 95% range. If there had  
 14 been nothing untoward that day, this kind of movement,  
 15 3.8%, that's the second column there, column B, the 3.8%  
 16 in column B would represent a daily movement of SC&T,  
 17 after controlling for overall market movements. That is  
 18 a little bit more than we would expect to see at the 95%  
 19 confidence interval. In other words, if this was just  
 20 randomness, it would happen a little bit less than 5% of  
 21 the time.  
 22 Q. But it's outside the --  
 23 A. Yes.  
 24 Q. -- interval that you said?  
 25 A. Yes, agreed.

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

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

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

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

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

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

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1 we have a very small increase in SC&T share price up by  
 2 just under 1%.  
 3 A. Instead of 1.3.  
 4 Q. But that's within the range of statistical or not  
 5 statistically significant, according to your parameters;  
 6 correct?  
 7 A. Okay.  
 8 Q. So each --  
 9 A. So we can change -- I mean, if you're right, and if,  
 10 etc -- I would have to do more checks, but for this row,  
 11 10 July, we can change -- there are two fails ending in  
 12 a joint test to fail. We can change the first fail to  
 13 a pass. The second one is still a fail and the joint  
 14 test is still a fail, unless you're going to tell me  
 15 about Cheil.  
 16 Q. And we could add an event that would also be a pass?  
 17 A. No, because if we added the Monday, we would also have  
 18 to look at -- sorry, the Monday --  
 19 Well, no, no. Sorry, we would have to check what  
 20 Cheil did on the Monday. So I've got 2% here, but  
 21 you're telling me that's the Friday and it should have  
 22 been Monday. So what we need to do is look at what  
 23 Cheil did on the Monday. Perhaps you've done that.  
 24 Q. I think the general point I'm putting to you is that the  
 25 market reaction to news that made the merger more likely

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1 was more consistent with Mr Boulton's hypothesis or  
 2 Mr Boulton's theory than your event study, your original  
 3 event study, led us to believe?  
 4 A. Well — well, I am not so sure because in my table 5  
 5 I've got a full row of fails and I don't think you've  
 6 said anything about the Cheils. So there are only two  
 7 that could change, which are 10 June and 11 June, and  
 8 right now I can't even remember whether we agreed that  
 9 those are the two that should change. And so at most —  
 10 so I don't really recall, but you would have to remind  
 11 me. What did we end up agreeing with for 10th and  
 12 11 June?  
 13 Q. I knew I should have brought us a blank table to keep  
 14 score on and I didn't do that. I did think about doing  
 15 it but I haven't.  
 16 A. Yes, yes.  
 17 MS SNODGRASS: I'm about to move on to a different topic.  
 18 I can begin it and go for 10 or 15 minutes before the  
 19 break or we could take a break now. It's —  
 20 THE PRESIDENT: Perhaps it depends on how much time you  
 21 still think you will need.  
 22 MS SNODGRASS: I think probably about an hour and a bit.  
 23 Maybe not that much.  
 24 THE PRESIDENT: We will have a break now then and start the  
 25 last hour with a fresh mind.

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1 MS SNODGRASS: I think so.  
 2 THE PRESIDENT: We break for 15 minutes until 15.35.  
 3 (3.20 pm)  
 4 (A short break)  
 5 (3.35 pm)  
 6 THE PRESIDENT: Let's go on, Ms Snodgrass.  
 7 MS SNODGRASS: Thank you.  
 8 So at the end of our last session you were asking  
 9 about the Cheil position in relation to your event  
 10 study. I just wanted to pick up on that.  
 11 So for test 2, market movements in Cheil's share  
 12 price, you set a confidence interval of plus or minus  
 13 6.8%, which I can show you {G1/56/1}, we can share that  
 14 on the screen, which is another spreadsheet, Output 3.  
 15 If you scroll up and look at the headings.  
 16 A. 6.8%.  
 17 Q. Yes. Sorry, plus or minus 6.8%. I might have said that  
 18 wrong.  
 19 If we scroll down to rows 68 through 80 — I don't  
 20 know if we can see all of those on one screen — we see  
 21 that for all of the event dates that you have selected  
 22 except for the first, the merger announcement date, all  
 23 of those dates are within that confidence interval,  
 24 aren't they?  
 25 So the first date, the merger announcement date?

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1 A. First date, merger announcement, we see a 14.66  
 2 residual, which is bigger than 6.8.  
 3 Q. Yes. But if we look at the other dates selected in your  
 4 event study, so 4 June at row 75, 9 June at row 78,  
 5 10 June, and on down, they're all —  
 6 A. Let's do them one at a time.  
 7 So 4 June, residual 3.7. It's an insignificant  
 8 movement.  
 9 Q. Yes. 9 June?  
 10 A. Let me — let me, let me ...  
 11 9 June, no movement — no residual movement.  
 12 So I have put that as a fail because it didn't do  
 13 what it was supposed to do, but it doesn't confirm the  
 14 theory. I think.  
 15 So your point — perhaps I should let you proceed.  
 16 Q. I was just asking the question whether these market  
 17 movements were statistically significant or not by  
 18 reference to the confidence interval that you yourself  
 19 set.  
 20 A. So I think that what I have done in table 5 {G3/1/83},  
 21 and I would have to double-check, is that when the price  
 22 doesn't move much at all, and therefore doesn't move in  
 23 the way the theory said it should move, I've recorded  
 24 that as a fail.  
 25 Q. All right. We can put the spreadsheet away. I have to

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1 say I'm personally grateful for that.  
 2 A. I'm glad we went back to it.  
 3 Q. Very good.  
 4 Now, I understand that in your second report you did  
 5 not express an opinion concerning what the impact of  
 6 SC&T shareholders rejecting the merger at the  
 7 extraordinary general meeting would have been on the  
 8 SC&T share price; correct?  
 9 I can say that again.  
 10 A. Yes, please.  
 11 Q. In your second report you did not express an opinion  
 12 concerning what the impact of SC&T's shareholders  
 13 rejecting the merger would have been on the SC&T share  
 14 price. You were agnostic about that.  
 15 A. Well, today I said I don't think it would have made much  
 16 difference.  
 17 Q. But in your second report, which was my question?  
 18 A. Yes. I said I was agnostic, meaning — I guess I meant  
 19 I didn't really see what evidence there was one way or  
 20 another, and therefore I was agnostic about which way it  
 21 would have gone.  
 22 Q. But we've just seen that when events occurred that made  
 23 the merger less likely to proceed, SC&T's share price  
 24 increased?  
 25 A. I don't see that because my table 5 shows the contrary

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

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

14 Q. So you don't accept that there's evidence that when  
 15 events occurred that made the merger less likely to  
 16 proceed, SC&T's share price increased?

17 A. There doesn't seem to be much evidence because on the  
 18 face of it, if you change a couple of rows in table 5,  
 19 it wouldn't provide strong evidence to the contrary of  
 20 what I'm asserting in that section.

21 Correct me if I am wrong on that.

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

1 before.

2 A. Yes.

3 Q. If you turn to page 17 of that, which is {C/53/17} Opus  
 4 reference. We've got an analysis there that's endorsed  
 5 by the court of Hanhwa Investment & Securities dated  
 6 June 15, 2015, carrying over from 17 to 18. The  
 7 analysis is actually on the top of 18. It says:  
 8 "If this merger were to fail, we recommend a hold  
 9 strategy for the Former SC&T shareholders. The appeal  
 10 of the undervaluation of the Former SC&T will gain  
 11 attention, thus leading to normalisation of share  
 12 prices. It appears that the potential upturn in share  
 13 price will reach 40%."

14 Do you see that?

15 A. I do see that.

16 Q. Let's also turn, please —

17 A. Let me just comment.

18 Q. There wasn't actually a question.

19 A. A hold strategy — a hold strategy —

20 Q. There actually wasn't a question, Professor Dow.

21 A. Well, I do have to comment because a hold strategy is  
 22 notoriously analyst-speak for not a very good thing to  
 23 hold.

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

1 A. I'm there.

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

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

11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]

15 And [REDACTED] he explained was that [REDACTED]

16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]

21 [REDACTED]  
 22 [REDACTED]

23 Do you see that?

24 A. I do.

25 Q. Now, these observations parallel the conclusion reached

1 by Mr Boulton on the basis of his analysis that once the  
 2 threat of the predatory merger, or the merger if you  
 3 don't like the term "predatory", is removed, the share  
 4 price would rise, and rise significantly, don't they?

5 A. These analysts say the share price would have gone up  
 6 a lot, and that is also what Mr Boulton thinks, and  
 7 Mr Boulton indeed looked to the skyrocket man for  
 8 support for his thesis.

9 Q. So just to be clear, the skyrocket man is not an  
 10 analyst. He's a member of the research team of the  
 11 share management division at the NPS. Does that change  
 12 your opinion of his analysis at all?

13 A. Well, I don't think the tribunal should — I mean, the  
 14 short answer is no, but I think the better answer is  
 15 I don't think the tribunal should look to me for  
 16 a prediction of what would have happened in the  
 17 counterfactual, because the tribunal has already heard  
 18 about this skyrocket report, so there's nothing new  
 19 there.

20 Does it change my mind? Not really.

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

1 independent simply I don't think would have changed that  
 2 overnight. I just don't think would.  
 3 But I think I have seen the same evidence that the  
 4 tribunal has seen at this point. I don't think I can  
 5 add anything more to what I have already shown to the  
 6 tribunal or what the tribunal has heard in learning from  
 7 this report.  
 8 So I don't want to add anything to what has already  
 9 been said because I think I have said it all already.  
 10 Q. So it's not clear to me whether you are in fact agnostic  
 11 and don't have a view, or you're offering halfway  
 12 conclusions as to what would be likely to happen with  
 13 the share price?  
 14 A. Okay. So --  
 15 Q. So can you clarify?  
 16 A. Yes, I would love to.  
 17 So when I spoke about discounts in my presentation  
 18 this morning, I did that glass analogy and the coin in  
 19 the glass, and I said that there's always an unexplained  
 20 residual. I gave the example of Shell.  
 21 One can never be too confident in predicting what  
 22 share prices will do. So an analyst predicts --  
 23 I appreciate that he is not a sell side analyst but  
 24 a member of the NPS team. Somebody predicts that, you  
 25 know, [REDACTED]

1 [REDACTED] That's a prediction. That's what that person  
 2 thinks is going to happen. Share prices are notoriously  
 3 hard to predict. And I don't like to say for sure what  
 4 I think is going to happen because I know that I will be  
 5 wrong a lot of the time if I make such predictions.  
 6 If I was a hedge fund manager, perhaps I would take  
 7 a more relaxed view. I would make predictions, I would  
 8 be happy to trade on those predictions and, you know,  
 9 some of them would be wrong, some of them would be  
 10 right, and that would be fine.  
 11 But as I am here before the tribunal, I think I have  
 12 to give a quantification of how precise any predictions  
 13 I might make would be, and anybody who tells you that  
 14 they know what the share price is going to do tomorrow,  
 15 and they know this for sure, is not being realistic.  
 16 Somebody can express an opinion about what they think  
 17 the share price is going to do tomorrow. They might be  
 18 right; they might be wrong.  
 19 Likewise, what would have happened to the share  
 20 price in a counterfactual, anybody who tells you that  
 21 they have a clear picture of what would have happened is  
 22 not being realistic. They can tell you their idea.  
 23 They might be right; they might be wrong.  
 24 In that sense I'm agnostic.  
 25 There's also a sense in which I think it wouldn't

1 have changed very much on balance of probabilities. And  
 2 that's because Mr Boulton's discount, which he  
 3 triangulates or supports with the rocket man, is an  
 4 implausible discount. 15%, which is the bigger of his  
 5 range, he says 5-15, 15% is already what Elliott says  
 6 should be in the discount just for an allowance for tax.  
 7 So when Mr Boulton says only 5-15% would be left,  
 8 even if we took the 15%, as opposed to the 10% which he  
 9 ends up using, even if we took his 15%, then we would be  
 10 saying SC&T would have traded the very next day at no  
 11 discount apart from the tax liability. I don't think  
 12 that is at all plausible.  
 13 That's what I have to say.  
 14 Q. So, Professor Dow, you're agnostic but you do have  
 15 opinions about what is likely to happen, and if I can,  
 16 I will take to you one of the opinions you express in  
 17 your second report, where you suggest, and this is at  
 18 paragraph 172(c) of your second report {G3/1/80}, that  
 19 the reason you don't think -- one of the reasons you  
 20 don't think the discount would be ameliorated if the  
 21 merger were rejected is, you say:  
 22 "Because the threat of future predatory transactions  
 23 is not cured by the Merger rejection ..."  
 24 Is that right?  
 25 A. Correct. That's my Borgia family tree.

1 Q. And you go on and you say in the paragraph above that  
 2 that's because, or another reason is because after the  
 3 merger SC&T would also continue to have been controlled  
 4 by the [REDACTED] family; is that right?  
 5 A. Could you give me the quote?  
 6 Q. Paragraph 172(b), the second sentence:  
 7 "Since SC&T would also continue to have been  
 8 controlled by the [REDACTED] family, this is another reason  
 9 that Mr Boulton QC should have included the risk of such  
 10 predatory transactions in his SC&T Holding Company  
 11 Discount."  
 12 A. Yes, Mr Boulton says that, and actually in my  
 13 presentation this morning I made the point that it would  
 14 not actually have been control, because there's  
 15 a difference between having a two-thirds majority in  
 16 favour of the merger and having a simple majority and,  
 17 indeed, having a two-thirds majority in favour of other  
 18 restructurings.  
 19 So my second sentence of 172, paragraph (b), where  
 20 I say "Since", I should have said:  
 21 "Since, according to Mr Boulton, ..."  
 22 And then the sentence as it stands. Thank you for  
 23 bringing that to my attention.  
 24 Q. Sorry, let me make sure I understand what you're  
 25 suggesting.

1 You're suggesting that Mr Boulton considered that  
 2 SC&T would continue to have been controlled by the [REDACTED]  
 3 family?  
 4 A. Am I wrong?:  
 5 "Mr Boulton QC states that 'in the Counterfactual  
 6 Scenario, Cheil would continue to have been controlled  
 7 by the [REDACTED] family' ..."  
 8 Q. Yes, Cheil.  
 9 A. Oh, sorry, sorry, sorry:  
 10 "Since SC&T would also continue to have been  
 11 controlled by the [REDACTED] family ..."  
 12 Forgive me, I read Mr Boulton's quote wrong:  
 13 "Since SC&T would also continue to have been  
 14 controlled by the [REDACTED] family ..."  
 15 Yes, that is what I say in 172(b).  
 16 Q. So you're making a contention there that after the  
 17 merger SC&T would also continue to have been controlled  
 18 by the [REDACTED] family; yes?  
 19 A. No, in the counterfactual, I think, we're talking about?  
 20 Q. Yes, yes.  
 21 A. So in the counterfactual I am saying that SC&T would  
 22 continue to have been controlled by the [REDACTED] family.  
 23 Q. So you accept, I think, that together the [REDACTED] family and  
 24 Samsung affiliates did not have enough shareholder votes  
 25 to approve the merger on their own; right?

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

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1 proceeding, wouldn't they?  
 2 A. Well, indeed. If they had -- if the merger had -- yes.  
 3 If the merger had been prevented, then they would have  
 4 prevented it from proceeding, I think you just asked me.  
 5 Or did you say something different?  
 6 Q. No, I think -- I think you've answered the question  
 7 I asked.  
 8 So when you say that SC&T, in the counterfactual,  
 9 SC&T would also continue to have been controlled by the  
 10 [REDACTED] family, you can't have meant that they had  
 11 sufficient --  
 12 A. Two-thirds majority.  
 13 Q. -- control to force through a transaction like the  
 14 merger, can you?  
 15 A. Well, you are saying if the merger was rejected once, it  
 16 must have been rejected always. Or you're suggesting to  
 17 me.  
 18 Q. No, I'm asking the question I asked.  
 19 A. Well, I say if the merger was rejected once, it might  
 20 have been accepted another time.  
 21 Q. I asked: when you say that SC&T, in the counterfactual,  
 22 SC&T would also continue to have been controlled by the  
 23 [REDACTED] family, you can't have meant that they had  
 24 sufficient control to force through a predatory  
 25 transaction like the merger, can you?

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

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1 Q. I'm asking: would it have been plausible to think that  
 2 a group of minority shareholders who had rejected  
 3 a merger on these terms, because it was disadvantageous  
 4 to them, would, in the near term, by which I mean  
 5 a period of time short enough to be instantaneously  
 6 reflected in the share price, turn around and approve  
 7 a merger that was equally damaging to their interests?  
 8 Is that plausible?

9 A. Well, I don't understand that question because the  
 10 merger vote was on -- you will correct me if I'm  
 11 wrong -- 17 July.

12 Q. That's correct.

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

18 MR TURNER: Sorry, can I just interrupt for one second.  
 19 I looked this up because my learned friend said that the  
 20 10th was a Friday, which meant that the following week  
 21 when we had been talking about Wednesdays couldn't be  
 22 right, and so I looked it up and the valuation date, the  
 23 16th, is a Thursday, and the 17th is a Friday.  
 24 I'm sure this doesn't change anybody's evidence, but  
 25 I just felt we should be talking about the right day of

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1 the week if we're talking about them at all.

2 THE PRESIDENT: It's on record now.

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

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

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

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

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

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

23 Your question is premised on the following  
 24 statement:  
 25 "The bad news, a merger that is detrimental to the

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1 interests of SC&T shareholders, is not going to happen."  
 2 And you then asked:  
 3 "My suggestion is that would be reflected in the  
 4 SC&T share price?"  
 5 Here is my answer to your question.  
 6 I don't accept your premise because, as you know,  
 7 that's not my view of the transaction.  
 8 Nevertheless, in response to the question, would  
 9 whatever reaction was going to happen be reflected in  
 10 the SC&T share price, obviously yes, Mr Boulton  
 11 and I agree it would take place quickly.

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

16 A. Whatever risk it posed --

17 Q. Was priced in?

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

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

22 A. Yes.

23 Q. When that risk, whatever it was, doesn't materialise,  
 24 that is also priced in?

25 A. Yes, absolutely.

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1 Q. Instantaneously?

2 A. Well, absolutely.

3 Q. Okay.

4 A. But if the bad thing -- if the thing that is revealed  
 5 not to happen -- not to be going to happen is not such  
 6 a bad thing, then we don't see the skyrocket.

7 Q. Right. I understand your evidence on that. Thank you.  
 8 Okay. I want to turn now to the issue of the  
 9 discount --

10 A. Yes.

11 Q. -- which Mr Boulton applies.

12 A. This is the key issue actually.

13 Q. Now, you heard Mr Boulton's evidence yesterday. So you  
 14 heard him explain what this residual holding company  
 15 discount is and how it was calculated; yes?

16 A. Yes.

17 Q. You therefore also heard him explain that a general  
 18 Korea discount is incorporated into his sum of the parts  
 19 valuation by virtue of the fact that he uses Korean  
 20 market prices and Korean comparables for components of  
 21 that sum of the parts valuation, and I'm happy to put  
 22 a transcript reference --

23 A. No, no, I'll clarify that what is meant, I think, by  
 24 a Korea discount there is that -- I mean the proximity  
 25 with North Korea was mentioned and therefore I think

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

4 And that is nothing to do with the holding company  
5 structure. That would be true of any company that has  
6 nothing to do with a Chaebol. Apparently that is the  
7 case.

8 Q. I think I would prefer to put the excerpt of the  
9 transcript up because I don't think Mr Boulton was  
10 speaking about a general Korea discount in such narrow  
11 terms.

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

16 A. Which line do we wish to look at?

17 Q. If we start at line 6 on page 178, he says:

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

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

25 "I have valued the listed investments by reference

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

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

6 He's not there referring to the geopolitical Korea  
7 risk. He is referring to whatever Korea risk there is  
8 reflected in market prices in Korea; correct?

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

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

15 Q. I don't think that's fair. I don't think he is  
16 separating out complications that arise if it's in  
17 a Chaebol. I think he takes those entities as he finds  
18 them. Takes the market price of those entities as he  
19 finds them. I think that is the point that he's making,  
20 actually.

21 A. I think that's -- I think I can take that point and then  
22 it's nevertheless true that -- yes, I think that's fair.  
23 I think that's fair.

24 Q. So I wanted to turn, if we could, please, to  
25 paragraph 46 of your second expert report {G3/1/23},

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

4 A. Yes.

5 Q. By reference to a number of comparisons. Let me just  
6 catch up with myself here.

7 A. But I would like to point out, even if the companies in  
8 the sum of the parts are themselves depressed by  
9 a holding company discount, which he calls the Korea  
10 discount, it is still going to be true that once you put  
11 those pieces inside a holding company themselves, there  
12 could well be a further holding company discount, as  
13 I call it, not in the narrow sense that he defines it.

14 Q. So looking at paragraph 46 of your second report?

15 A. Yes.

16 Q. You identify, and also over the next page, you've got  
17 Figure 7, which depicts a number of these comparisons --

18 A. Yes.

19 Q. -- that you draw as support for the argument that the  
20 discount that Mr Boulton applies is too low.

21 A. Yes.

22 Q. And the first comparison you draw is in text in  
23 paragraph 46(a) and in the Figure it's the first two  
24 bars.

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

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1 period 2007 to 2014 range from a premium of 25.8 to  
2 a discount of 34.3.

3 A. Correct.

4 Q. Now, you would agree that the average of those figures  
5 would yield a discount of 8.65%; correct?

6 A. I haven't done the maths, but while a straight average  
7 of those two numbers might yield a discount of 8.65%,  
8 I refer to you my presentation this morning where  
9 I showed the time series of the discount of SC&T and you  
10 will see, you will recall no doubt from that -- the  
11 tribunal will recall no doubt from that time series that  
12 SC&T has usually been at a discount, and sometimes been  
13 at a premium. And so if you ask me what was the  
14 average, and I don't think I have done a calculation --  
15 in fact I know I haven't -- but it's clear that if you  
16 took the average, it would be a lot less than the  
17 straight average of 34.3 negative, and 25.8 positive.

18 Q. That sounds a lot like a point that Mr Boulton was  
19 making, that a simple average isn't necessarily that  
20 informative, unless you know what's driving a particular  
21 discount or a premium at a given time.

22 But let's look at --

23 A. That is a different point. I'm just saying if you take  
24 an average, you have to take the correct average.

25 Q. Let's look at paragraph 46(b) and the next two bars in

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

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1 Let's look at that. Every bar is below and if we  
 2 took the weighted average of the first two bars — every  
 3 bar is below except for the first two bars, and if we  
 4 took the weighted average of the minimum and the  
 5 maximum, with weighting according to how much time was  
 6 spent, in other words weighting of that picture I showed  
 7 you this morning, I have no doubt that would also lie  
 8 below.  
 9 So my point is discounts of 5–15% never happen in  
 10 Korea.  
 11 Now, therefore I think that supports the view that  
 12 they weren't at all likely to happen following  
 13 a counterfactual merger rejection. And I strengthen  
 14 that view by noting that Elliott has estimated the tax  
 15 liability — none of these analysts, as Mr Boulton  
 16 yesterday, break out separately tax and other, except  
 17 Elliott does so. But the tax liability, according to  
 18 Elliott, is 15% — I think it was 14.7 — which is of  
 19 course bigger than the 10% that Mr Boulton uses.  
 20 So I say that the evidence in this picture tells me  
 21 that 10% is implausible, and particularly when one views  
 22 that an allowance for tax would already outweigh the  
 23 10%.  
 24 Q. I don't think you answered my question, Professor Dow.  
 25 The question I was asking you was not about this whole

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

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1 counterfactual is something that's never been seen  
 2 before, and therefore evidence of what has happened is  
 3 not relevant anyway, well, I don't know what to say.  
 4 Q. The point I was making is that aspects of the discount  
 5 are reflected elsewhere in Mr Boulton's analysis, but  
 6 I think I have already made that point.  
 7 Can we turn to the third comparison that you draw  
 8 and paragraph 46(c), the fifth and sixth bars in  
 9 Figure 7.  
 10 A. Yes.  
 11 Q. You point to the selling levels in the trading plans in  
 12 place from time to time for the Claimant.  
 13 A. Yes.  
 14 Q. And you describe those in paragraph 46(c) as "implied  
 15 estimates of SC&T's expected long-term holding company  
 16 discounts". That's a quotation.  
 17 A. Yes. That is a quotation.  
 18 Q. Now, the words "implied estimates" were no doubt  
 19 carefully chosen, Professor Dow, because of course the  
 20 words "holding company discount" doesn't appear anywhere  
 21 on Elliott's trading plans, do they?  
 22 A. If — no, but it's implied. I think it's a very good  
 23 implication. I could explain if you would like?  
 24 Q. Well, no, I think I'll ask you. In fact it was put to  
 25 Mr Smith in cross-examination last week that in

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

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

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1 evidence because one way of interpreting it would be  
 2 that the unwind plan — unwind part of the plan was  
 3 something they never did, and was never part of any  
 4 calculation and never formed a basis for any of  
 5 Elliott's decision-making.

6 If that is the case, what can I say? I simply  
 7 invite the tribunal to form their own opinion on whether  
 8 the unwind part of the trading plan contained any  
 9 information or not.

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

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

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

22 A. Well, when I saw the trading plans I thought they must  
 23 mean something, because otherwise what were they doing  
 24 there.

25 Q. And we now have Mr Smith's evidence as to what they were

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1 doing there.

2 A. Mr Smith's evidence, I don't really understand it, but  
 3 he said there's no point in even having that unwind,  
 4 effectively, because it doesn't mean anything. So if  
 5 the tribunal feels that that's the correct  
 6 interpretation of the trading plans, as I have said,  
 7 they will interpret them accordingly.

8 Q. So finally in paragraph 46(d), and the final two bars in  
 9 Figure 7. {G3/1/24}

10 A. Yes.

11 Q. You refer to the average and median net asset value  
 12 discounts for the Korean holding companies referred to  
 13 in Mr Boulton's report?

14 A. I do.

15 Q. Mr Boulton had responded to your first report's analysis  
 16 of two Korean holding companies by identifying  
 17 additional firms in his analysis; yes?

18 A. If you say so, yes.

19 Q. And he noted that holding company discounts, including  
 20 in this broader sample, are occasionally holding company  
 21 premiums?

22 A. He does.

23 Q. And he had found a median and a mean of 35% and 15% from  
 24 his expanded sample. Is that ...?

25 A. The numbers sound right because the 35 is close to 39,

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1 and the 15 is close to his upper bound on what he calls  
 2 the holding company discount.  
 3 Q. But your calculations excluded some of those companies,  
 4 namely --  
 5 A. Correct.  
 6 Q. -- those that traded at a premium?  
 7 A. Correct.  
 8 Q. And arrive at a different mean and a different median?  
 9 A. As noted in footnote 57.  
 10 Q. Why did you exclude companies that trade at a premium?  
 11 A. Okay. I thought they were anomalous, first reason.  
 12 Second reason, I think the median is probably a more  
 13 robust guide, and so in circumstances where the mean and  
 14 median diverge significantly, it can be useful to  
 15 revisit the analysis, possibly -- this is an indication  
 16 of outliers -- possibly remove the outliers or possibly  
 17 remove -- possibly rely simply on the median.  
 18 Now, Mr Boulton, I would like to make clear, gave  
 19 testimony yesterday that he agrees with that view. He  
 20 prefers the median. I believe we can bring up his  
 21 testimony if need be. And also, if one looks --  
 22 I invite the tribunal to consult Mr Boulton's first  
 23 report, section 5, where in analysing multiples, he  
 24 repeatedly follows a process of discarding data where  
 25 the median and mean are different, and of preferring the

1 median to the mean.  
 2 Following that process, therefore, one would do what  
 3 I have done, but even if we include the discarded  
 4 companies, then, as Ms Snodgrass has just pointed out,  
 5 the median in Mr Boulton's full sample,  
 6 35--point--something, if I recall correctly, is very close  
 7 to the median that we see in the truncated sample, 39.  
 8 So while I think it's appropriate to throw out those  
 9 anomalous cases of premiums, the tribunal doesn't have  
 10 to agree with me. The tribunal can take the full  
 11 sample, applying the median, which both Mr Boulton  
 12 and I agree is the more appropriate of the two --  
 13 Mr Boulton said so yesterday, and it's also what he does  
 14 in his report -- and the median then would be 35,  
 15 I think you said, Ms Snodgrass, instead of 39.  
 16 Q. Did you investigate why the companies that you treated  
 17 as anomalous were trading at premiums?  
 18 A. No. For that matter, nor does Mr Boulton investigate  
 19 why the companies he discards in his multiples analysis  
 20 were discarded, or ...  
 21 Q. Did you consider that they might be part of a merger  
 22 couple, for lack of a better word, that one might be  
 23 benefiting from a premium in anticipation of benefiting  
 24 from a tunneling merger, for lack of a better  
 25 description, and the other suffering from a discount for

1 the same reason?  
 2 A. No, I did not.  
 3 Q. And you --  
 4 A. But I don't believe in tunneling mergers, so, as in  
 5 Korea we know they are prohibited by law because of the  
 6 very good rule that market prices set the merger ratio.  
 7 Q. Right.  
 8 In your reports, Professor Dow, you express  
 9 scepticism about the prospects for shareholder activism  
 10 meaningfully to mitigate what you describe in your first  
 11 report as the persistent perceived discount which is  
 12 based on various legitimate factors. This is at  
 13 paragraph 60 of your first report which is {G1/1/75}.  
 14 A. Paragraph 60 of my first report?  
 15 Q. Yes. Let me get that in front of me as well. I am  
 16 actually going to go to another paragraph in your second  
 17 report where you express a similar sentiment.  
 18 In paragraph 71 of your second report, which is at  
 19 {G3/1/33}, you argue that the discount that's  
 20 attributable to, among other things, Chaebol's  
 21 convoluted share structure is too deep--rooted to be  
 22 mitigated by an activist campaign; is that right?  
 23 A. Are we reading from paragraph 71?  
 24 Q. Let me look. Yes, I'm looking at second report,  
 25 paragraph 71. {G3/1/33}

1 MR TURNER: But you're not suggesting, Ms Snodgrass, that  
 2 you're reading from it in the question that you've just  
 3 put?  
 4 MS SNODGRASS: No, I'm referring to "deep--rooted structural  
 5 reasons for the NAV discount in Korea". That is  
 6 paragraph 71 of your second report:  
 7 "These include, but are not limited to, 'rational  
 8 concern that the controlling families could use the  
 9 company's funds for the benefits of their private  
 10 interests at the expense of outside minority  
 11 investors'."  
 12 A. I think I can agree with that.  
 13 Q. So if you could turn to exhibit R-61 at tab 26 of the  
 14 bundle. Have you had a chance to review this document  
 15 before, Professor? {R/61/1}.  
 16 A. I think I have quite recently seen it.  
 17 Q. Yes, you might recall it because it featured in the  
 18 Respondent's opening submissions in this arbitration, so  
 19 you might have seen it last week.  
 20 It's an internal NPS document that was prepared in  
 21 May 2014, titled "Review of the Possibility of Corporate  
 22 Governance Reform of Major Groups". Do you see that  
 23 there at the top of the page?  
 24 In this document the ROK considers a series of case  
 25 studies regarding corporate reform in Korea and the



1 impact on share prices that such reform has had and  
 2 could have had.  
 3 I would ask you if you would, please, to turn to  
 4 page 5, which is the same reference on the Opus  
 5 transcript {R/61/5}.  
 6 MR TURNER: Sorry, just for the transcript, it's a slip of  
 7 the tongue by my learned friend. We agree this is  
 8 a document, unless anybody is going to take this against  
 9 me for not having raised the point, we agree this is  
 10 a document produced by the NPS. We do not agree it was  
 11 produced by the ROK in any sense other than produced in  
 12 these proceedings. Lest I be taken to give our  
 13 attribution argument away by not challenging that no  
 14 doubt inadvertent remark by my learned friend.  
 15 MS SNODGRASS: I'm not that subtle, Mr Turner.  
 16 Understood.  
 17 So if you could look at the table in the middle of  
 18 page 5, please. It's an example relating to the  
 19 creation of a holding company in the SK Group; correct?  
 20 A. Yes.  
 21 Q. And you see that there are three columns in the table;  
 22 correct?  
 23 A. I do.  
 24 Q. And in the second column there are two subcolumns. The  
 25 second column, "SK Group's Combined Market

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

1 in response to a corporate restructuring; correct?  
 2 A. I disagree.  
 3 Q. You disagree?  
 4 A. Yes. Could you show me where they say that?  
 5 Q. They say that in the text that begins:  
 6 "SK Group's market capitalisation, which stood at  
 7 about KRW 11.9 trillion 3 months prior to the transition  
 8 into the holding company, recorded about  
 9 KRW 21.8 trillion after the transition, showing a surge  
 10 in enterprise value."  
 11 A. I missed -- I believe you said something about in  
 12 response to an event. Maybe we could look at the  
 13 transcript?  
 14 Q. So I said: here is an example of what the NPS describes  
 15 as a "surge in enterprise value", in response to  
 16 a corporate restructuring; correct? And you said --  
 17 A. Sorry, your question originally said a "'surge in  
 18 enterprise value', in response to a corporate  
 19 restructuring".  
 20 Q. That's what my sentence was.  
 21 A. And I disagreed with that. And now you are saying  
 22 again, "'a surge in enterprise value', in response to  
 23 a corporate restructuring".  
 24 Please show me where the NPS says it was "in  
 25 response", I quote, "to a corporate restructuring".

1 Q. So you're denying the causal connection?  
 2 A. Well, I note that you misquoted the report and I suspect  
 3 that the reason they did not use the wording you used is  
 4 that it is difficult to attribute cause and effect over  
 5 a three-month period to a specific event. That is why  
 6 when we do event studies you will have noticed we look  
 7 at very short periods of time, and that is why earlier  
 8 this afternoon we were discussing the few minutes before  
 9 the close.  
 10 So over a three-month period, an event study is  
 11 notoriously imprecise. It could do still give  
 12 background information, and I have used such long-term  
 13 returns in the same way in my report, so it could be  
 14 useful for background information, but it is a not  
 15 a precise estimate of the response to an event.  
 16 Q. But for an investor who was holding a share on, I forget  
 17 what day of the week we decided it was, a Friday?  
 18 A. Yes.  
 19 Q. Who was expecting information to be instantaneously  
 20 incorporated into a share price on the Monday, we are  
 21 talking about a very short period of time, the point you  
 22 are making about the time horizon is of less  
 23 significance; yes?  
 24 A. We do event studies on short periods because over a very  
 25 short period, if there's a big movement relative to the

1 index, it's very likely to be in response to the event  
 2 we've isolated. It's unlikely that other significant  
 3 things would have arrived at exactly that moment,  
 4 although possible, of course.  
 5 Over a longer period such as three months, it's very  
 6 likely that other significant events would have  
 7 happened, and therefore the response to the event in  
 8 question gets confounded with all those other things.  
 9 Q. Just give me a minute. (Pause).  
 10 So could you turn to paragraph 76 of your second  
 11 report, please. {G3/1/38}. I'm looking for the  
 12 sentence.  
 13 I think I've got the wrong reference.  
 14 (Pause).  
 15 I've got the wrong reference in my notes. So I will  
 16 come back to this point.  
 17 Can I ask you just a more open -- a point that's not  
 18 tethered to your report.  
 19 Is it fair to say, Professor Dow, that you disagree  
 20 that Samsung's adoption of the restructuring proposals  
 21 that have been discussed or were put together by EALP  
 22 would have predictably released additional value either  
 23 by reducing the discount or increasing the NAV of SC&T?  
 24 A. I think we're really talking about decreasing the  
 25 discount here. First time I have heard anyone say

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1 increasing the NAV.  
 2 Do I agree that I think in the counterfactual the  
 3 discount would have sharply reduced? Yes, I have said  
 4 that I do disagree with that. I have said that I don't  
 5 think it would have changed very much or at least it  
 6 would certainly not have changed as much as Mr Boulton  
 7 said it would.  
 8 Q. Okay. So let me just take you to Mr Smith's brief  
 9 description of the proposal from the transcript,  
 10 {Day3/85:4-9}. We have Mr Smith explaining what was  
 11 envisaged in terms of a restructuring. He says at  
 12 line 4 to 9:  
 13 "... importantly step 3 was a merger between three  
 14 companies, Cheil Industries, Samsung C&T, and the  
 15 holding company created from the second step to create  
 16 a sort of top holding company, which step we envisaged  
 17 to happen on the basis of effectively net asset value."  
 18 Do you see that?  
 19 A. I do see that.  
 20 Q. Could you turn, please, to page 15 of exhibit R-61,  
 21 which is the one we've been looking at {R/61/15}. This  
 22 is where the NPS is assessing impact on stock prices of  
 23 various re-organisation scenarios for the Samsung Group.  
 24 A. Mm-hm. Yes.  
 25 Q. Scenario 2 involves the conversion of the Samsung Group

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1 into a holding company structure and it contains  
 2 a comment section on the right of the table.  
 3 The first sentence says:  
 4 "In the event of a split of Samsung C&T's shares in  
 5 Samsung Electronics, the 30-40% discount on the value of  
 6 Samsung Electronics which is currently given to it is  
 7 expected to disappear."  
 8 So that's the ROK writing about addressing Samsung  
 9 Electronics' discount --  
 10 MR TURNER: Excuse me, sir. It is not the ROK writing about  
 11 anything at all.  
 12 MS SNODGRASS: Apologies. It's the NPS writing about it.  
 13 On our submission it is the ROK. I appreciate that the  
 14 ROK takes a different position.  
 15 But that is the NPS writing about addressing Samsung  
 16 Electronics' discount in 2014; right?  
 17 A. If you can understand the rest of that box --  
 18 Q. I'm not asking you about the rest of that box. I'm  
 19 asking you about the first sentence.  
 20 A. Well, I can't help noticing the rest of that box,  
 21 and I represent to the tribunal that the rest of that  
 22 box is a complete mess.  
 23 But if you are asking me to note that the first  
 24 sentence says that the discount will disappear in that  
 25 scenario, I can't disagree. That is exactly what the

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1 first sentence says.  
 2 Q. So I'm asking: would you accept on this basis that the  
 3 NPS considered that there were realistic prospects for  
 4 reforming the Samsung Group and the Chaebols' convoluted  
 5 share structure that would have reduced the discount and  
 6 released additional value?  
 7 A. Well, given their completely incoherent remainder of the  
 8 box, I'm not sure what to conclude, but based on the  
 9 first sentence, that's of course what one would  
 10 conclude.  
 11 Q. So I'm turning now I think to the last topic I wanted to  
 12 cover with you. And I just wanted to make sure  
 13 I understand your position concerning the counterfactual  
 14 scenario.  
 15 First I wanted to ask about your correction to  
 16 paragraph 102 of your second report which was  
 17 highlighted on slide 3 of your presentation, sorry.  
 18 A. Yes.  
 19 Q. I guess my question is an open one. What is the  
 20 significance of the changes you have made to  
 21 paragraph 102?  
 22 A. Thank you. I think the question of counterfactual  
 23 here -- as you've kindly given me an open question I'll  
 24 take the opportunity to give an open-ended answer.  
 25 I think the question of the counterfactual here has

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1 entered in a slightly odd way because Mr Boulton  
 2 maintains that the valuation date is 16 July, which  
 3 I believe I was informed was a Thursday. And in his  
 4 first report there is no mention of any counterfactual.  
 5 In his second report the counterfactual appears and  
 6 mysteriously it seems to apply on the Thursday, even  
 7 though the bad act which we're supposed to remove on the  
 8 Thursday, I don't actually see how that could have  
 9 affected stock prices on the Thursday, but perhaps  
 10 people who are more experienced than me in these matters  
 11 can formulate a view on that. And maybe can make sense  
 12 of that.

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

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

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

1 how it could have had an impact until later on.  
 2 So, still, my view of the counterfactual is clear.  
 3 In that paragraph of my second report I note that in the  
 4 counterfactual there might perhaps have been alternative  
 5 outcomes, and not just in the presentation I gave this  
 6 morning, I highlighted the yellow box at the bottom  
 7 right-hand corner which is rejection, and mostly today  
 8 we've been talking about rejection.

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

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

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

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

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

7 A. Because --

8 Q. I was wondering whether I was right to understand that  
 9 in the original formulation of paragraph 102, there was  
 10 a connection, a logical connection between the first  
 11 statement and the second statement, and you are meaning  
 12 to convey some different meaning or relationship between  
 13 those statements in the revised paragraph 102?

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

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

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

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

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

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

24 A. I haven't got it, I'm afraid. Or I do, but who knows  
 25 where. They aren't stapled and so they're all over the

1 place.  
 2 TRIBUNAL SECRETARY: Mr Chairman, we have a clean copy which  
 3 we could share.

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

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

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

18 So I think it is badly drafted in the original.  
 19 I think the new version is clear. And certainly in the  
 20 context of what I said today.

21 MS SNODGRASS: Thank you for that clarification.

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

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

1 in a logical fashion as of 16 July, and say that we  
 2 don't even need to look at a counterfactual, we just  
 3 look at market price.  
 4 Q. I hadn't actually finished putting the question.  
 5 A. I'm sorry.  
 6 Q. You identify the real area of disagreement between you  
 7 and Mr Boulton as what would happen in the event of  
 8 a rejection, but I wrote down earlier that you said,  
 9 "I don't like to say for sure what I think was going to  
 10 happen?"  
 11 A. Correct.  
 12 Q. So your position is a position of not having an opinion  
 13 about what was going to happen in the counterfactual?  
 14 A. My opinion is that anybody who confidently states that  
 15 stock prices are going to be any particular value  
 16 tomorrow is not being realistic at all. Anybody who  
 17 says, I know enough about what's going on with the  
 18 discount to tell you confidently what it will do  
 19 tomorrow or in a counterfactual, is simply not being at  
 20 all realistic.  
 21 My position, however, is that I can confidently say  
 22 I don't think, on balance of probabilities and weighing  
 23 all the different outcomes that could have happened,  
 24 I think I have made it clear that I don't think it would  
 25 have changed very much on balance.

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1 Q. So you don't have an opinion or you do have an opinion?  
 2 A. I have an opinion on what would have happened, on  
 3 average, weighting all the possible outcomes. I have an  
 4 opinion on that.  
 5 If you ask me to say: give me a number for the stock  
 6 price at the time immediately following — you know: in  
 7 the counterfactual, give me a number, I want a number,  
 8 I have to say anybody who gives you a number is not  
 9 being realistic, and I'm putting that politely. Anybody  
 10 who gives you a single number with a high degree of  
 11 confidence has no idea how stock prices behave.  
 12 Q. Well, to put the point politely, Professor, you do  
 13 appreciate that giving me a number or giving the  
 14 tribunal a number really is the central damages question  
 15 in the case, because of course Claimant says we have  
 16 shares, they have shares that would have traded at  
 17 a higher price if the merger was rejected. They say the  
 18 discount would have reduced if the merger was rejected.  
 19 And the central quantum question in the case therefore  
 20 is by how much would that discount have reduced? By how  
 21 much would that price have increased? And so giving the  
 22 tribunal a number really is the question —  
 23 A. Right.  
 24 Q. — that has to be answered.  
 25 A. Let me give the tribunal a number.

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1 Method 1. Produce a valuation on 16 July, the  
 2 valuation date. Method 1 says take the stock price. If  
 3 the tribunal thinks the stock price was out because of  
 4 manipulation, method 1 says adjust the stock price, if  
 5 it's the watch that is a few minutes slow.  
 6 Method 1 says if the tribunal thinks that the watch  
 7 was smashed, the stock price had no useful validity,  
 8 which I think is extreme, but if the tribunal takes that  
 9 view, go to the NAV, apply a typical and realistic and  
 10 plausible market discount, and that will give you  
 11 a number not 100 miles away from the stock price anyway.  
 12 That's method 1.  
 13 Method 2, second round of reports. Construct  
 14 a counterfactual. I say in the counterfactual the stock  
 15 price on average, considering the balance of  
 16 probabilities, would not have changed very much. It  
 17 might have gone up, it might have gone down, because  
 18 that's what stock prices do. I can even quantify you  
 19 the — I could even make an attempt to quantify the  
 20 standard deviation of such a prediction, but I don't  
 21 think that would be what I'm being asked to do here.  
 22 Am I confident that my method 2 prediction, not very  
 23 different from the stock price on the 16th,  
 24 am I confident that that's a reasonable prediction,  
 25 considering the range of possible outcomes? Yes.

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1 Would I say it's identically zero difference from  
 2 the stock price on the 16th? No. But what I can say  
 3 with confidence is that the stock price in the  
 4 counterfactual, considering the range of possible  
 5 outcomes and their probabilities, in my opinion, would  
 6 not have been very different from what it actually was  
 7 on the 16th.  
 8 Q. But did you perform any of that analysis in any of your  
 9 reports?  
 10 A. Well, I believe that both my reports, my presentation  
 11 this morning and the conversation we have had today  
 12 support that analysis. And we can go through it if you  
 13 like, and I'm willing to take as long as you would like,  
 14 but I hope that the conversation we've had today would  
 15 be useful to the tribunal even if we don't do that.  
 16 MS SNODGRASS: I have no further questions.  
 17 THE PRESIDENT: Thank you very much. Redirect?  
 18 MR TURNER: Yes, a few questions, sir.  
 19 Re-examination by MR TURNER  
 20 MR TURNER: I'm going to move my learned friend's enormous  
 21 ring-binder, lever arch file.  
 22 Professor Dow, at the very beginning of your  
 23 cross-examination you talked to Ms Snodgrass about  
 24 analysts and you said that they were sell side analysts  
 25 and you gave an analogy of a Swiss watch shop.

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1 Can you explain to the tribunal what a sell side  
 2 analyst is?  
 3 A. Investment banks — brokers, really. Brokers employ  
 4 people to be analysts. They put out recommendations to  
 5 investors. They attend briefings from the company. And  
 6 in these briefings the CFO or the CEO will present  
 7 financial results and will talk about future plans, and  
 8 the analysts can ask questions. And then they write  
 9 reports presenting their analysis.  
 10 These reports are very detailed. They include,  
 11 typically they include net asset value or sum of the  
 12 parts type calculations, but they go beyond that. They  
 13 would do detailed multiples analysis. They would do  
 14 discounted cash flow analysis. They would actually  
 15 produce consensus cash flow estimates for companies for  
 16 the next few years.  
 17 So that's very helpful, but at the end of the day,  
 18 the analysts are subject to pressure from the companies  
 19 they cover, and I wish I had a hot dinner for every time  
 20 one of my students has come to me and said, you know,  
 21 I'm doing your course because I used to be an analyst  
 22 and I just couldn't take it any longer because I was fed  
 23 up with my boss chewing me out because my boss had just  
 24 been shouted at on the phone for 45 minutes by the CEO  
 25 of this company that you'd told the market was a sell.

1 So analysts are obviously reluctant to — I don't  
 2 want to put it that way, but analysts' forecasts tend to  
 3 be somewhat biased upwards, and that is a documented  
 4 fact that I present in my report.  
 5 Let me see if it's the first or second report.  
 6 I will find it difficult to find that, I think, but  
 7 let me look at the figures, and that might be a guide.  
 8 (Pause).  
 9 I'm just going to take one minute to see if I can  
 10 find the Figure in question because there is a Figure  
 11 where I show the analysts' reports, compare them to the  
 12 share price, and give a footnote to the research, the  
 13 documents, that analysts' reports are generally biased  
 14 in an upward direction.  
 15 Well, I cannot find it. But perhaps if I've got the  
 16 list of references at the end of my report, I might find  
 17 it there.  
 18 (Pause).  
 19 MR TURNER: We suggest you might be thinking of footnote 138  
 20 of your first report on page 61. {G1/1/65}  
 21 A. That's a useful suggestion since I was looking through  
 22 my second report. And that is indeed the footnote which  
 23 is useful in that context.  
 24 So on page 61 we see the target price given by the  
 25 analysts. It's always above the actual price. Page 61

1 of my first report.  
 2 (Pause).  
 3 On page 61 I show a graph of the actual stock price  
 4 versus the target price. That's the analysts' target  
 5 price.  
 6 I say that:  
 7 " ... quite typical for many stocks. It has been  
 8 documented that stock analysts tend to give optimistic  
 9 views of the stocks they cover. This pattern has been  
 10 documented in the US for some of the largest companies  
 11 in the world [and the small ones too], as well as in  
 12 Korea."  
 13 Footnote 138, I give a reference to three papers —  
 14 two papers which demonstrate that, including the Hong  
 15 and Kubik paper is very detailed and comprehensive. And  
 16 the second paper is specific to Korea.  
 17 Q. Thank you very much. Can I ask you to turn to your  
 18 second report at page 10. {G3/1/15}. You were taken to  
 19 footnote 39 by my learned friend earlier today. Do you  
 20 remember those discussions?  
 21 A. Honestly?  
 22 Q. Okay, well, let me — it's been a very long day,  
 23 Professor Dow. Let me remind you.  
 24 This footnote says:  
 25 "While I am aware that a recent indictment against

1 [REDACTED] alleges manipulation by the Samsung Group of the  
 2 SC&T share price, I understand from counsel that the  
 3 manipulation on which the indicted charges are based  
 4 allegedly occurred after the Merger Announcement ..."  
 5 Do you remember, I ask with trepidation, but do you  
 6 remember a discussion with my learned friend  
 7 Ms Snodgrass about an allegation of the manipulation of  
 8 the Cheil share price in relation to Biogen?  
 9 A. Yes, I do.  
 10 Q. And you said in the light of that discussion that you  
 11 stood corrected in relation to this footnote; do you  
 12 remember that? Vaguely?  
 13 A. Vaguely, yes. Rather vague actually.  
 14 Q. Do you see a mention of the alleged manipulation of the  
 15 Cheil share price in this footnote?  
 16 A. I do not.  
 17 Q. And can you turn to paragraph 109 of the same report.  
 18 It's on page 46 {G3/1/51}.  
 19 Is this where you dealt with the Biogen issue?  
 20 A. Yes.  
 21 Q. You were asked some questions by my learned friend about  
 22 hindsight and you talked about how hindsight might show  
 23 that — I think the phrase you used was that the market  
 24 price was wrong. Do you remember that discussion?  
 25 A. Somewhat.

1 Q. Can you tell the tribunal how hindsight might affect the  
2 accuracy of the market price at which a share was  
3 bought?  
4 A. Well, I'm afraid I don't remember enough about the  
5 conversation to situate my answer in the context of that  
6 conversation.  
7 However, with hindsight one can always say that  
8 a decision was a good one or a bad one and maybe one can  
9 always say that the outcome that happened could have  
10 been foreseen.  
11 So an analysis with hindsight is very different from  
12 an analysis based on the information available at the  
13 time of a trading decision.  
14 I don't know if that answers your question, sir.  
15 Q. Not completely, because I asked -- it may be your  
16 answer -- how hindsight affected the accuracy of the  
17 market price at the moment that you bought the shares.  
18 A. If I buy some shares at a certain price on a certain  
19 theory, I suppose hindsight could help me to confirm or  
20 reject that theory. I can't say any more than that.  
21 Q. Very good.  
22 There were questions both from my learned friend  
23 Ms Snodgrass and from Mr Garibaldi about the difference  
24 that you drew in your evidence--in--chief, for want of  
25 a better word, your presentation, between tunneling and

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1 price manipulation.  
2 Now, this is where my having given you my copy may  
3 leave me at a disadvantage, but I believe it was on  
4 slide 36, but my note may be unreliable, and if it is,  
5 I'm sure you'll find it in the copy that I gave you.  
6 A. Tunneling is not price manipulation --  
7 Q. From memory --  
8 A. -- was the title of slide 36.  
9 Q. -- that sounds right. So I had got the right reference,  
10 I'm relieved.  
11 A. If you're not going to use the rest of my presentation,  
12 I can give you back your copy.  
13 Q. It's fine. If that reference is right, then I have  
14 confidence in my later reference.  
15 Have you got slide 36 in front of you?  
16 A. I have, yes.  
17 Q. Do you remember the questions, in particular the  
18 question from Mr Garibaldi, which was: where there was  
19 what you call tunneling and also what you call price  
20 manipulation, whether you should look at the transaction  
21 or the events in the round.  
22 I think I'm representing your question accurately,  
23 sir, but if I'm not --  
24 MR GARIBALDI: Not quite. My question was: when all of  
25 those actions are part of a programme or plan ...

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1 MR TURNER: ... then should they be looked at together?  
2 Do you remember that discussion you had with the  
3 learned arbitrator Mr Garibaldi?  
4 A. So I do. So shall I speak to that question, sir?  
5 Q. Yes, please.  
6 A. Well, so I distinguished two different things.  
7 Tunneling and price manipulation. And I said price  
8 manipulation within the time window that I identified,  
9 namely beginning of 2015 up until the merger  
10 announcement when the ratio was set, price manipulation  
11 within such a window, if it happened, can give rise to  
12 damages and should be offset or accounted for by an  
13 adjustment to the valuation that results from the share  
14 price.  
15 Now, Mr Garibaldi has asked -- but I also said  
16 tunneling is not price manipulation. I mean, Samsung  
17 company has, shall we say, horrible corporate governance  
18 for the sake of argument, and I'm not using the right  
19 words, but I think everybody knows what I mean. Samsung  
20 has problematic corporate governance and that can give  
21 rise to tunneling or other things that reduce the value  
22 of companies in the Samsung Group.  
23 If that's part of the same -- so the question then  
24 is, if the same person, the same entity, is perpetrating  
25 these two different actions, the tunneling action and

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1 the manipulation action, should they be taken in the  
2 round? Well, I think, unless I misunderstood the  
3 question, sir, my answer would have to be, well, I do  
4 maintain my position that they are separate things, and  
5 that the damages calculation should require removal of  
6 the manipulation and should make an allowance for that,  
7 but the tunneling was never going to give rise to  
8 damages, and therefore should not be removed.  
9 I don't know if that is a better answer to your  
10 question, sir, or to you, Mr Turner.  
11 MR TURNER: I cannot answer that question either on my  
12 behalf or on behalf of Mr Garibaldi. It is your answer.  
13 A. It is my answer.  
14 Q. And I will go on to my next question, unless  
15 Mr Garibaldi has a follow-up question from that?  
16 MR GARIBALDI: No, my question was answered the first time,  
17 thank you.  
18 A. Thank you.  
19 MR TURNER: Professor Dow, just quite recently you were  
20 discussing with my learned friend Ms Snodgrass  
21 paragraph 46 of your second report. {G3/1/23}. We can  
22 have it on the screen for reference, but I would like  
23 you to look at the chart {G3/1/24}, where you were  
24 talking to the Elliott bars, for want of a better  
25 description, the fifth and sixth bars in your chart.

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1 A. Yes, the trading plans.  
 2 Q. The trading plans. Can you tell the tribunal whether  
 3 the discounts that you represent in that chart are  
 4 before tax or after tax?  
 5 A. They must be exclusive of tax because they are smaller  
 6 than I know them to be once they include tax.  
 7 Q. If you can pick up my copy of your presentation again  
 8 and turn to slide 34, do you have that?  
 9 A. I have it.  
 10 Q. Is that what you corrected with the light green addition  
 11 to the dark green bars on that slide?  
 12 A. Yes, that is what I corrected with those light green  
 13 sections indicated on my slide 34. That is an  
 14 additional allowance for tax and therefore I ask the  
 15 tribunal to replace those two bars in Figure 7 -- those  
 16 are the third and fourth bars in Figure 7 -- with the  
 17 numbers on slide 34.  
 18 And just to clarify, the reason why I think it needs  
 19 to be done with the tax added on, as I have shown in  
 20 slide 34, is that, as Mr Boulton stated yesterday,  
 21 everybody except Elliott does it on that basis.  
 22 Analysts normally apply discounts to pre-tax sum of the  
 23 parts; whereas Elliott had done it to post-tax sum of  
 24 the parts, and therefore my Figure 7 is deficient and  
 25 the situation is better described by my slide 34.

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1 Q. If you stay on that slide, you remember being taken to  
 2 an NPS document from 2014 that my learned friend  
 3 Ms Snodgrass showed you, where there was some analysis  
 4 of the effect of restructuring of Chaebol groups; do you  
 5 remember that?  
 6 A. I'm afraid, sir, I have seen a number of documents this  
 7 afternoon.  
 8 Q. I had better get my enormous file back then.  
 9 You were taken -- I haven't even got a note of it  
 10 now. It's tab 26, R-61.  
 11 A. Oh, I've got it in front of me open at that page.  
 12 Q. Well, I was going to ask you to turn to {R/61/5}.  
 13 A. Yes.  
 14 Q. You can see that there is a discussion of SK Group. Do  
 15 you remember being taken to that discussion by my  
 16 learned friend Ms Snodgrass?  
 17 A. Yes, I do.  
 18 Q. Can you look at your slide 34 and tell the tribunal at  
 19 what discount SK Group trades to its NAV?  
 20 A. We see in slide 34 that SK Group trades at a 35%  
 21 discount to its NAV.  
 22 Q. Can I ask the operator to bring up Professor Bae's  
 23 report, which is {G5/1/67}, at page about 67.  
 24 Not bad. Let's go up one {G5/1/68}. No. Down two.  
 25 Can somebody else me here? It's got SK in it. Down

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1 a few more. {G5/1/63}. No.  
 2 A. The one that has SK in it?  
 3 Q. I think we're going the wrong way. 66, I'm told  
 4 {G5/1/66}. 66 in the Opus numbering. Et voilà.  
 5 Is that your understanding of the SK Group  
 6 structure?  
 7 A. Yes, it is.  
 8 Q. And if you can go to slide 67, or page 67, I'm sorry, of  
 9 this {G5/1/67}, is this your understanding of the LG  
 10 Group ownership structure?  
 11 A. Yes, that is my understanding.  
 12 Q. And on your slide 34 can you tell the tribunal at what  
 13 discount LG Corporation trades?  
 14 A. LG Corporation trades at 49% discount to net asset  
 15 value.  
 16 Q. Is it your evidence that the SK and LG corporate  
 17 structures that we have just looked at are more akin to  
 18 a standard holding company structure?  
 19 A. Yes, that is my evidence. They are cleaner ownership  
 20 structures.  
 21 Q. Now, Ms Snodgrass also asked you a question about your  
 22 opinion that the [REDACTED] family would have the same control  
 23 of SC&T after the merger -- sorry, after the merger had  
 24 hypothetically been rejected as it had before.  
 25 A. I remember that line of questioning.

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1 Q. In your opinion -- how can you justify that opinion in  
 2 the hypothesis put by Ms Snodgrass, that the merger had  
 3 been rejected?  
 4 A. I'm sorry, could you please repeat the question?  
 5 Q. Yes. Can you explain to the tribunal --  
 6 A. Yes.  
 7 Q. -- why you consider that there would have been the same  
 8 degree of control in the event that the merger had been  
 9 rejected as in the actual event that the merger was  
 10 approved?  
 11 A. Well, I believe that the Samsung Group would have had --  
 12 or the [REDACTED] family, I think your question was -- the [REDACTED]  
 13 family would have had the -- I mean, the shareholdings  
 14 would have all been similar. The shareholding levels  
 15 would have all been similar. So nothing much would have  
 16 changed in the shareholder register. So nothing much  
 17 would have changed in terms of control.  
 18 Q. In your opinion -- I think you may have answered this  
 19 question just now, but I haven't got a clear note of  
 20 it -- in your opinion what would have happened to the  
 21 discount to NAV of SC&T's market price in that  
 22 hypothesis?  
 23 A. Of the counterfactual?  
 24 Q. Of Mr Boulton's counterfactual.  
 25 A. I believe I finished my testimony by saying to the

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1 tribunal that in my opinion it would not have changed  
 2 much or would not have changed at all. But let's say  
 3 would not have changed much.  
 4 MR TURNER: Thank you very much, Professor Dow. I have no  
 5 more questions.  
 6 Questions from THE TRIBUNAL  
 7 MR GARIBALDI: Professor Dow, there is a lot to digest in  
 8 your two reports and on the testimony you have given  
 9 today. This is something that the tribunal will have to  
 10 do particularly because it seems to me that what you  
 11 have said to has gone beyond your report in some  
 12 respects. I will not characterise as changes or as  
 13 expansions, but there have been differences between what  
 14 you said in writing and what you said today.  
 15 So that raises issues of trying to organise our  
 16 minds to attempt the task of understanding your opinion.  
 17 It seems to me from what I have read and heard that,  
 18 to go to the most basic structure, you have a set of  
 19 legal theories, or legal — I'm sorry, economic theories  
 20 or economic conceptions, and then you have a set —  
 21 a universe of facts and assumptions. Some are  
 22 established facts and some are assumptions. And you  
 23 apply the economic theories to those facts and come to  
 24 a conclusion or to a series of conclusions.  
 25 The main conclusion is that there is no damages.

1 But then you have added a number of subsidiary  
 2 conclusions which suggest the possibility that in some  
 3 cases there might be damages?  
 4 A. Absolutely.  
 5 MR GARIBALDI: Now, the first observation that I would like  
 6 to make, and it's a general one, is I have talked about  
 7 a universe of facts and assumptions. It is not clear to  
 8 me at this point what that universe of facts and  
 9 assumptions consists of. I'm not sure what is it that  
 10 you are taking as facts, what you are taking as  
 11 assumptions.  
 12 It would be helpful — I say that to both parties —  
 13 if that universe is made explicit in argument at some  
 14 point.  
 15 Now, here comes my question.  
 16 I understand, particularly from what you have said  
 17 today, that there are circumstances or hypothetical  
 18 circumstances that might lead you to the conclusion that  
 19 the damages were not zero, but rather materially more  
 20 than zero.  
 21 Could you summarise what circumstances should have  
 22 changed, should have changed or should be established,  
 23 so that in your opinion the damages would materially be  
 24 more than zero?  
 25 A. Thank you, sir. I'm sorry that I have not been clear,

1 and I ...  
 2 To some extent I'll explain why my presentation  
 3 diverges from my reports in a few places or in some  
 4 places.  
 5 First, there are the swaps. I didn't know about the  
 6 swaps in quite the same way as I do now. I didn't see  
 7 that Elliott had a view that this was all part and  
 8 parcel of the same plan. I totally understand that from  
 9 a legal point of view the swaps may or may not be  
 10 relevant. That's not for me to say.  
 11 Now, you ask me: what about situations where  
 12 I appear to concede — indeed I do concede — that  
 13 damages could be due. And what are they, how much  
 14 damages, what is going on, could I explain it to you.  
 15 MR GARIBALDI: In summary.  
 16 A. In summary. Simply put —  
 17 MR GARIBALDI: I say in summary because you don't quantify  
 18 them. Your presentation, both the written one and the  
 19 oral one, as far as this potential damages that we are  
 20 talking about, is silent on quantification.  
 21 A. Excellent.  
 22 MR GARIBALDI: So it is conceptual, and I would like you to  
 23 summarise conceptually what it is.  
 24 A. Yes, okay.  
 25 So the key slides from my presentation, I think, and

1 there are probably more than two, but I think they're  
 2 slides 22 and 35. And slide 22, I'll tell you, just  
 3 shows a picture of a car. You don't need to look at it.  
 4 But you may recall — and that's all it shows. You may  
 5 recall that I said that if somebody took a Tesla share  
 6 from Mr Turner, if Ms Tan took his one share in Tesla,  
 7 how would I look at damages.  
 8 Okay. And the second one is 35, that all of this  
 9 talk about net asset value in the reports, where  
 10 I defend the price against looking at net asset value,  
 11 is a bit of a red herring, because common sense tells me  
 12 net asset value minus a reasonable discount is not very  
 13 far from the price anyway.  
 14 Okay.  
 15 Now, what it boils down to, sir, and to answer your  
 16 question about how to reach small damages and why  
 17 I don't do that, it's not uncommon in arbitrations that  
 18 the but for world is something the tribunal needs to  
 19 specify.  
 20 So what I have given as a roadmap to the tribunal is  
 21 one avenue for awarding damages would be if the  
 22 tribunal — it's my slow watch example.  
 23 If the tribunal thinks that the market price was  
 24 a little bit off because of manipulation or a moderate  
 25 amount off because of manipulation, let the tribunal



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

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

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

18 I think it would be a lot bigger than Mr Boulton  
19 says it is.

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

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

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

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

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

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

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

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

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1 been clear enough.

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

4 There is one question which has been presented to  
5 the tribunal which is not related to this point that we  
6 are talking about. That is that the decision of the NPS  
7 to vote in favour of the merger was leaked immediately  
8 after it was taken, and that was several days — I don't  
9 have the dates in my mind — before the actual  
10 extraordinary shareholders meeting where the merger was  
11 approved.

12 I would like to have your opinion about whether it  
13 would be appropriate or not appropriate to take as the  
14 valuation date the day before the vote of the NPS, which  
15 is therefore before the market took cognisance of their  
16 results to that vote.

17 A. Sir, if I'm not mistaken, the valuation date — I'm not  
18 quite sure what the question is.

19 MR GARIBALDI: The question is —

20 A. I thought the valuation date was the date before the  
21 vote of the NPS; is that — oh, no, the vote of the NPS,  
22 I understand. Not the shareholders' vote.

23 MR GARIBALDI: That's right. There is a difference of —  
24 I don't have the dates in my mind, but from an economic  
25 standpoint, would it be a good idea or a bad idea to

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1 move the valuation date to the date before the vote of  
2 the NPS?

3 A. Given that it was leaked?

4 MR GARIBALDI: Given that it was leaked.

5 A. That's an interesting idea. It seems consistent with  
6 but less extreme than what the court decided, or the  
7 assessors decided in the case of the put back option, to  
8 move back to December.

9 I can't say on economic grounds that it would be  
10 a bad thing. So I don't have any particular objection  
11 to that, and I say that in the situation where I have no  
12 idea whether the price on the date you recommend was  
13 higher or lower than the price on the agreed valuation  
14 date.

15 MR GARIBALDI: All right. Thank you very much.

16 MR THOMAS: Just one area that I would like to ask you  
17 about.

18 Could you take a look at your second expert report  
19 and it's page 14, Figure 5. I think that Mr Smith was  
20 cross-examined on this earlier in the week, but my  
21 recollection is beginning to get a little overloaded  
22 {G3/1/19}.

23 I just wanted you, Professor Dow, to relate this  
24 apparent, what you say is an error —

25 A. Yes.

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1 MR THOMAS: — in the modelling to the valuations that took  
 2 place after this correction that you say was made.  
 3 A. Okay. So let me explain the issue and then you will  
 4 tell me if I have answered your question, sir.  
 5 So Elliott, as everybody else does, when doing the  
 6 net asset value, values the listed companies at their  
 7 market price and the unlisted components using another  
 8 method such as multiples.  
 9 Now, here we had a component that was unlisted and  
 10 became listed. When it became listed its market price  
 11 suddenly became available and was obviously a better  
 12 value than the multiples value because we tend to think  
 13 that market prices are better, more accurate, than  
 14 valuations based on multiples.  
 15 So Elliott revised its spreadsheet to replace the  
 16 old value with the market price, and there was an  
 17 intermediate period on that Figure. You can see there's  
 18 a flat line just before it jumps up on Figure 5.  
 19 There's an intermediate period where Elliott used the  
 20 price that was discussed in the IPO documentation.  
 21 Okay.  
 22 Like a lot of companies, when it was listed the  
 23 price was quite high, shall we say, it was higher than  
 24 the price that accompanied the documentation. So that  
 25 flat portion, it jumped up a lot from that. And it was

1 also higher than EALP's analysis had suggested.  
 2 So it was a better price.  
 3 Now, that meant — and let me get this right —  
 4 Elliott's — so SC&T's price didn't move in all this.  
 5 SC&T's price didn't react particularly. It might have  
 6 moved a little bit. It didn't react particularly to  
 7 this.  
 8 But the net asset value jumped.  
 9 (Pause).  
 10 Let me make sure I've got this the right way round.  
 11 THE PRESIDENT: Next page may help, Figure 6. {G3/1/20}.  
 12 A. So the net asset value discount — thank you, sir.  
 13 The net asset value discount narrowed according to  
 14 the way they were calculating it, but not really. If we  
 15 allow for the fact that it was just a revaluation, in  
 16 other words it was an apples-to-oranges comparison, and  
 17 if we rebase it as an apples-to-apples comparison, then  
 18 there isn't much change in the net asset value discount,  
 19 Figure 6.  
 20 So there was a spurious change in the net asset  
 21 value that didn't necessarily correspond to a real  
 22 economic change, just because of essentially a different  
 23 method for calculating the net asset value applied.  
 24 Now, why didn't the SDS — sorry, why didn't the  
 25 valuation of the company of SC&T, why didn't that change

1 very much when this piece was suddenly listed at a high  
 2 price? Presumably it didn't change very much because  
 3 the market had already done its own maths and was  
 4 already in the marketplace valuing the SDS component at  
 5 a much higher price than the formulaic number that was  
 6 in the Elliott spreadsheet.  
 7 I mean, after all, the market was going to have to  
 8 do that maths anyway after the flotation date. So they  
 9 would have been doing it carefully in the run-up to the  
 10 flotation, and that means it wasn't really news to the  
 11 market for SDS — sorry, for SCT. It wasn't really news  
 12 that this previously lowly valued component was now  
 13 valued more because the market had been valuing it the  
 14 way it wanted to all along.  
 15 I don't know if that's a good answer to your  
 16 question. That's the best I can do at this late hour.  
 17 But it's a spurious change in the net asset value that  
 18 results simply from an apples-to-oranges comparison,  
 19 because the thing that was being valued, shall we say  
 20 wrongly before, is now being valued more accurately.  
 21 MR THOMAS: I had that point before, but I'm not sure if  
 22 I advanced very much further. But it's been a long day  
 23 and we will leave it at that. Thank you.  
 24 THE PRESIDENT: I hesitate to make it a bit longer.  
 25 A. Of course, go ahead, sir.

1 THE PRESIDENT: Staying on that Figure at pages 14 and 15,  
 2 the corrected EALP analysis that you are doing here on  
 3 the basis of the multiplier 2.5 going backwards from the  
 4 correction date of November 2014 is hypothetical because  
 5 we don't know —  
 6 A. Yes. It's a rough adjustment.  
 7 THE PRESIDENT: It's a rough estimate.  
 8 A. Yes. {G3/1/19-20}.  
 9 I mean, it's not an error for Elliott to have failed  
 10 to know the listing price in advance, because nobody  
 11 knew that. It's an error in interpreting the jump —  
 12 sorry, the fall in the net asset value to have  
 13 interpreted that as being a real — a significant  
 14 change.  
 15 THE PRESIDENT: Yes, and the question whether how far before  
 16 the November date it extends in the past is an estimate.  
 17 A. Yes. Absolutely.  
 18 So what Elliott should have done ideally would be to  
 19 look at its — you know, the spreadsheet set off a red  
 20 light: wow, the discount has changed a lot. What  
 21 Elliott should have done is said: well, actually there's  
 22 a reason for that. We're not valuing on an  
 23 apples-to-apples comparison.  
 24 THE PRESIDENT: Okay. Maybe just before we finish, just to  
 25 make sure that we have understood your evidence on some

1 of the key points correctly .  
 2 A. Yes.  
 3 THE PRESIDENT: In a semi—strong efficient market the share  
 4 price reflects all the information in the market that is  
 5 available to the market?  
 6 A. Yes.  
 7 THE PRESIDENT: It doesn't reflect necessarily private  
 8 information that is not in the market?  
 9 A. Correct.  
 10 THE PRESIDENT: There may be some insider trading going on,  
 11 but given the volumes, it wouldn't have an impact on the  
 12 price?  
 13 A. Well, that's a very big question and —  
 14 THE PRESIDENT: I thought you said earlier that the way  
 15 a semi—strong market is defined is that it doesn't — it  
 16 draws a line between publicly available information and  
 17 private information?  
 18 A. Absolutely. Absolutely. And as you said, if there was  
 19 insider trading, people trading with better information,  
 20 it wouldn't have had much influence on the price.  
 21 I just suppose that depends how many people had the  
 22 information and how big their trades were.  
 23 THE PRESIDENT: And the more there are individuals in the  
 24 market who have private information, the more likely it  
 25 is that it will become public very quickly?

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1 A. Yes.  
 2 THE PRESIDENT: Okay. But that's the distinction you are  
 3 making in principle between public and private  
 4 information?  
 5 A. Yes. That's absolutely right, and therefore in a market  
 6 where there are a lot of traders, semi—strong efficiency  
 7 is a pretty basic criterion . It just means that you —  
 8 you know, it's like my Brazilian friends who used to  
 9 make money by selling in the evening and buying back in  
 10 the morning. That's a pretty basic failure of a market  
 11 to predict price movements, if that's always or  
 12 systematically the case.  
 13 So semi—strong efficiency is a very basic condition  
 14 that a good market — a liquid market, we would expect  
 15 to follow .  
 16 THE PRESIDENT: Would the information available in  
 17 a semi—strong efficient market also incorporate relative  
 18 information in the share price; not only information  
 19 about the assets of a particular company but also  
 20 information about its competitors, other companies in  
 21 the group —  
 22 A. It certainly would.  
 23 THE PRESIDENT: — and their performance in the market?  
 24 A. It would incorporate everything; everything that's  
 25 relevant .

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1 THE PRESIDENT: The market wouldn't make a difference  
 2 between whether the information is correct or incorrect ,  
 3 as long as it doesn't know whether it's correct or — it  
 4 doesn't know that it's incorrect? It would incorporate  
 5 information that is incorrect in the price if it doesn't  
 6 know, if there is no collective understanding that the  
 7 information is not correct?  
 8 A. Okay. Simple answer: you are absolutely right. If the  
 9 market has the wrong information, then it incorporates  
 10 the wrong information.  
 11 THE PRESIDENT: But if the market learns later that the  
 12 information is actually incorrect , there would be an  
 13 adjustment?  
 14 A. There would be an adjustment. Only caveat I would make,  
 15 and I don't want to make complexities, is if the market  
 16 thought all along that it was quite likely that the  
 17 information was incorrect anyway, maybe that wouldn't  
 18 have a big effect on the price .  
 19 THE PRESIDENT: And the market would incorporate —  
 20 a semi—strong efficient market would incorporate all the  
 21 information that is available to the market as a result  
 22 of any event, whether or not that event qualifies  
 23 legally as legal or illegal action?  
 24 A. Absolutely, yes. And of course it's not that uncommon  
 25 in the context of a merger or anything else for ...

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1 I mean, while there are regulations it's not that  
 2 uncommon for the company's management to be selling the  
 3 merger to the market, shall we say, by prioritising the  
 4 favourable view in its communications. That's part of  
 5 the process. And the market of course knows that's the  
 6 case and makes a suitable adjustment.  
 7 So I guess the allegation must be in this case —  
 8 you know, or the question for the tribunal is, you know,  
 9 to what extent potentially did things go beyond that.  
 10 THE PRESIDENT: So market manipulation, in very simple  
 11 terms, it means disclosure of information to the market  
 12 knowingly that is incorrect?  
 13 A. Absolutely. So — absolutely. You know, if I have  
 14 a company that I own and I'm floating it on the stock  
 15 market and I just don't tell people that there's some  
 16 very bad news coming along soon, I'll be able to float  
 17 it at a high price, which is the wrong price, and the  
 18 price would be incorrect and that would be seriously  
 19 misleading price manipulation.  
 20 THE PRESIDENT: Okay. Very good. Thank you very much,  
 21 Professor.  
 22 A. Thank you, sir, and members of the tribunal.  
 23 THE PRESIDENT: That concludes your examination, Professor.  
 24 Thank you very much for your time. It's been a long  
 25 day.

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1 THE WITNESS: Thank you.  
 2 THE PRESIDENT: Thank you.  
 3 (The witness withdrew)  
 4 Housekeeping  
 5 THE PRESIDENT: For the parties, I don't think we are done  
 6 yet. I think it would be useful to revisit the  
 7 programme for Friday and firm it up.  
 8 It is the tribunal's ruling that both parties will  
 9 have two hours for the closing statements. I'm not sure  
 10 whether you have had a chance to discuss between counsel  
 11 when to start, when to break for lunch and so on.  
 12 Mr Partasides?  
 13 MR PARTASIDES: The quick answer is we have not yet, members  
 14 of the tribunal. I suppose what would be useful for us  
 15 as we think about how best to organise our day is to  
 16 know whether the tribunal intends to make use of any  
 17 part of the day after the oral submissions, for example  
 18 by tribunal deliberations.  
 19 If that is the case, then we may organise ourselves  
 20 around that.  
 21 If that isn't the case, then it may be -- and this  
 22 is a proposal I haven't discussed with our friends  
 23 opposite -- that we would begin at 10 am until midday,  
 24 and then we would hear from the Respondent from 1 pm to  
 25 3 pm.

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1 But that really depends on whether the tribunal had  
 2 intended to make any use of the afternoon themselves.  
 3 THE PRESIDENT: Probably whether or not we start at 9 or 10  
 4 wouldn't make a difference. So I think we would be  
 5 happy to start at 10, if the Respondent is.  
 6 MR TURNER: That is fine by us. We hadn't discussed it but  
 7 we had exactly the same thoughts.  
 8 THE PRESIDENT: Okay. So we start at 10 until noon, the  
 9 Claimant's opening. Then at 1 o'clock, we have a lunch  
 10 break. We start at 1, continue until 3, and then we can  
 11 discuss any housekeeping issues such as post-hearing  
 12 submissions, deadlines, length, font, and all the key --  
 13 MR PARTASIDES: Margin size, as well.  
 14 THE PRESIDENT: It would be useful if you could discuss in  
 15 the meantime and try and reach agreement on those  
 16 issues.  
 17 MR PARTASIDES: Very well.  
 18 THE PRESIDENT: Okay. Anything else?  
 19 MR PARTASIDES: Not for us, thank you.  
 20 MR TURNER: Nor for us, thank you very much.  
 21 THE PRESIDENT: Thank you. And we will meet again on  
 22 Friday. Thank you very much.  
 23 (5.55 pm)  
 24 (The hearing adjourned until Friday, 26 November 2021  
 25 at 10.00 am)

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