

IN THE MATTER OF AN ARBITRATION UNDER THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA AND THE UNCITRAL ARBITRATION RULES

PCA Case No. 2018-55

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In the Matter of Arbitration Between: :

MASON CAPITAL L.P. and MASON MANAGEMENT LLC, :

Claimants, :

and :

THE REPUBLIC OF KOREA, :

Respondent. :

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HEARING ON THE MERITS, Volume 5

Friday, March 25, 2022

New York International Arbitration Center
620 8th Avenue
16th Floor Conference Room
New York, New York

The hearing in the above-entitled matter came on at 8:42 a.m. (EDT) before:

PROFESSOR DR. KLAUS SACHS, President of the Tribunal
THE RT. HON. DAME ELIZABETH GLOSTER, Co-Arbitrator
PROFESSOR PIERRE MAYER, Co-Arbitrator

ALSO PRESENT:

Registry and Administrative Secretary to the
Tribunal:

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P R O C E E D I N G S

1
2 PRESIDENT SACHS: We will now open the session.
3 And as discussed, we will start today's program with the
4 debate on the questions that Pierre Mayer asked you on the
5 first day of the Hearing, and the first question is to the
6 Claimants, so who will take the floor?

7 MS. VAZOVA: I will address that, Mr. Chairman.

8 PRESIDENT SACHS: So, please proceed.

9 MS. VAZOVA: So, Professor Mayer's first
10 question, in relation to CLA-15, which is the Seoul High
11 Court's conviction of President ██████ for bribery was as
12 follows: Are there other places in the Judgment or
13 another one by a Korean court to this effect that can be
14 taken as evidence that Korea has, as its purpose,
15 expropriating value from the Minority Shareholders for the
16 benefit of the ██████ Family?

17 So, we have three references in response to this
18 question. They come from CLA-13, CLA-14 and CLA-15.

19 Starting with CLA-13, which is the Seoul
20 District Court conviction of Minister ██████ and CIO ██████,
21 on Page 50 of the exhibit. The Court recognized that the
22 structure of the Merger could lead to the benefits
23 conferred only on ██████ and the Samsung Group Major
24 Shareholders at the expense of the SC&T Shareholders.

25 Then on Page 52 of the exhibit, the Court went

1 on to say that, unlike other SC&T Shareholders who could
2 not affect the outcome of the Merger, there is a causal
3 relationship between NPS's support for the Merger and
4 benefits to [REDACTED] and other Samsung Group Major
5 Shareholders.

6 Now, that's a lower-court decision, but these
7 particular facts were affirmed by the Seoul High Court on
8 appeal, and where that is evident from the record is
9 Exhibit CLA-14 which is the High Court's affirmance, on
10 Page 48 of the exhibit.

11 Moving on to Exhibit CLA-14, which is the Seoul
12 High Court decision, so--and the references in that
13 document are Pages 45 and 48 of the exhibit.

14 Just to explain briefly, in the context of
15 sentencing [REDACTED] for breach of trust of the NPS, the
16 Court finds that when CIO [REDACTED] helped [REDACTED] push
17 through the Merger, he was at least aware that [REDACTED]
18 would gain a profit and the NPS would incur a
19 corresponding loss. And then the Court also goes on to
20 recognize, on Page 48, that the Merger would result in a
21 loss to SC&T's Shareholders generally, not just
22 specifically to the NPS.

23 And then finally CLA-15, which is the Seoul High
24 Court conviction of President [REDACTED]. There are a number of
25 references in that exhibit on Pages 4, 12 to 13, and

1 Page 15. Again I'll just very briefly describe what these
2 are.

3 They're all descriptions of the purpose and
4 effect of ██████'s succession plan, which, as I noted in
5 my Opening Remarks on Monday, the Court found to
6 specifically include the SC&T-Cheil Merger. The Court
7 explains in some detail that the purpose of the succession
8 plan was to consolidate control over the Samsung Group for
9 the ██████ Family at the lowest cost possible. And then the
10 Court goes on to find that President ██████ solicited and
11 received bribes in order to help Mr. ██████ implement that
12 plan, including specifically the Merger.

13 So, we believe that between those different
14 references, that addresses Professor Mayer's question,
15 but, of course, happy to take any questions or any
16 follow-up.

17 ARBITRATOR MAYER: Not from me. I don't know if
18 someone else wants to say something about this. Yes?

19 MR. VOLKMER: Unless the Tribunal would like--

20 PRESIDENT SACHS: Yes, please.

21 MR. VOLKMER: Okay. So briefly, Professor Mayer
22 and Mr. Chairman, we, of course, disagree with the premise
23 advanced by Mason that the Merger itself was an extraction
24 of value from SC&T's Shareholders. We say it was not,
25 because it was conducted a market price, and it was in

1 accordance with the ratio fixed at that market price, as
2 you heard yesterday from Professor Dow. And it certainly
3 wasn't value-extractive for a shareholder like Mason, who
4 bought their Shares after the Merger was announced in full
5 knowledge of the terms of the Merger.

6 Now, as for court references, the Korean courts
7 in the Merger Annulment case and the Elliott Injunction
8 case rejected the argument that the purpose of the Merger
9 was to extract value, was to benefit Cheil at the expense
10 of SC&T, and the references for that are R-177 at Page 14,
11 and R-242 at Page 10.

12 ARBITRATOR MAYER: Thank you.

13 PRESIDENT SACHS: Thank you.

14 MR. VOLKMER: Excuse me, Mr. Chairman, to add
15 one thing or two points.

16 Of course, if the purpose of the Merger itself
17 was not to extract value, then the purpose of Korea's
18 conduct cannot have been to extract value.

19 As for the High Court Decision that was
20 mentioned in the case against President [REDACTED], there is a
21 reference that suggests that the Blue House's concern or
22 purpose was to stabilize the Samsung Group's corporate
23 governance, not to extract value. That's reflected in a
24 report prepared by the Blue House in 2014, and that is
25 quoted in the High Court Decision, where the High Court

1 says that "the absence of the Samsung Group's Chairman,
2 Mr. [REDACTED], is being prolonged and the Samsung Group
3 accounts for a significant portion of our economy.
4 Samsung Group cannot falter in the midst of the succession
5 process. The Government will figure out what the Samsung
6 Group needs in the succession process and give help to the
7 extent possible while inducing it to make more
8 contribution to the national economy." That's R-258 at
9 PDF Page 29.

10 And we would say that stabilizing Samsung's
11 governance and supporting a succession plan is a purpose
12 very different from expropriating value. So, even if it
13 were possible to characterize the Merger as expropriating
14 or extracting value, we would say that that is, at most,
15 an incidental or indirect consequence of the purpose of
16 stabilizing the corporate governance of the group.

17 ARBITRATOR MAYER: Thank you.

18 Mr. Chairman, you want to ask anything else--

19 PRESIDENT SACHS: I will ask you whether you are
20 satisfied--

21 (Overlapping speakers.)

22 PRESIDENT SACHS: --with these statements. I
23 am, but I note that in the second paragraph of the written
24 version of your question number one, you refer to the
25 Pages 86 and 103 of CLA-15, and you said that it was not

1 entirely clear to you what the Court says here. And then
2 later you say "my question is let's not discuss now at
3 least but maybe later". Do you think this is a question
4 we should discuss now, or did you mean that the Parties
5 should address it in their Post-Hearing Briefs?

6 ARBITRATOR MAYER: Well, I meant at that time
7 that we might be discussing during the Hearing, but given
8 that we are on Friday and it's a long day, I think
9 Post-Hearing Briefs may be the right place.

10 PRESIDENT SACHS: Okay. Then we turn to
11 Question 2, which goes to both Parties.

12 Who wants to start? Claimant?

13 MS. LAMB: I can start.

14 PRESIDENT SACHS: Yes, please.

15 MS. LAMB: Professor Mayer, I believe you said
16 your question was prompted by our discussion of the ILC
17 Articles. You had in mind Article 31, and, in particular,
18 Paragraph 10 of the Commentary, so just to sort of anchor
19 us, as it were, back in that provision, CLA-166.

20 So, Article 31(1) of the ILC Articles, of
21 course, is the statement that the responsible State is
22 under an obligation to make full reparation for the injury
23 caused by the Internationally Wrongful Act.

24 And in Paragraph 10 of the Commentary, which we
25 find on Page 92 of the ILC Articles, there is then a

1 discussion of the various terms that are used to describe
2 the link which must exist between the wrongful act and the
3 injury; for example, reference may be made to the
4 formulation attributable to the wrongful act as the
5 proximate cause, damage which is too indirect, remote,
6 uncertain, and so on.

7 And then over the page, we're told that other
8 factors may also be relevant - whether the State organs
9 deliberately caused the relevant harm; and then, Professor
10 Mayer, to your point, or whether the harm caused was
11 within the ambit of the rule which was breached having
12 regard to the purpose of the rule, and I believe that it
13 was that concept, if you will, that prompted your
14 question. So just before I get into the hypothesis that
15 you put forward.

16 So, just taking that formulation whether the
17 harm caused was within the ambit of the rule that was
18 breached having regard to the purpose of the rule, well,
19 the first step, of course, is to ask ourselves what is the
20 relevant rule that the commentaries are referring to here.
21 It is, of course, the international obligation of Korea,
22 itself under Article 11.5 of the Treaty, to accord to
23 investments of foreign investors the minimum standard of
24 treatment, including, of course, the
25 fair-and-equitable-treatment standard.

1 So, the question for us is whether Mason's harm
2 was within the ambit of Korea's own
3 minimum-standard-of-treatment obligation, having regard to
4 the scope and purpose of that international obligation.

5 Of course, we went through the content of that in Opening.

6 The question is not as Mr. Friedland sought to
7 suggest in Opening: Did NPS have a duty of care to Mason
8 under its Rules. That, with respect, is a strawman
9 argument, which is why I didn't address it in Opening.

10 For the avoidance of doubt, we did, contrary to what was
11 suggested, address it in our papers. I invite you to look
12 again, at your leisure, at Paragraph 319 of our Reply.

13 Very briefly, what we said there was that this
14 argument too is without merit, not least because it is
15 based on Korea's continued mischaracterization of the
16 facts. Mason is not seeking to hold the NPS responsible
17 for losses arising from any legitimate exercise of the
18 NPS's Voting Rights. Rather, Mason seeks to recover
19 losses suffered as a result of the Blue House, the
20 Ministry of Health and Welfare, and the NPS's criminal
21 scheme to transfer billions of dollars of value from SC&T
22 to Cheil at the expense of other Shareholders including
23 Mason. Because the losses claimed are the actual,
24 foreseeable and intended consequences of Korea's actions,
25 the proximity requirement is satisfied.

1 So, the scope and purpose of the relevant rule,
2 Professor Mayer, in our respectful submission, is the
3 international rule. That's confirmed, we say not least by
4 the ILC Commentary itself. Picking up from where we just
5 left off, the Commentary continues: "The requirement of a
6 causal link is not necessarily the same in relation to
7 every breach of an international obligation." We drop to
8 a footnote. We see that the case cited there is one from
9 the Iran-U.S. Claims Tribunal and, indeed, the relevant
10 rule to which this is citing was the breach of the treaty
11 itself, the Algiers Accord, and further confirmation if it
12 is needed can be found in the S.D. Myers Case, which we
13 have in Authority RLA-93. That's the Second Partial Award
14 on remedies, on damages.

15 There is a discussion from Para 94 onwards which
16 confirms that the key to these cases is the but-for test,
17 and that all of the natural consequences of the breach of
18 the minimum standard of treatment are recoverable as long
19 as they are not too remote.

20 Specifically, Paragraphs 159 to 60: "Damages
21 are recoverable if they were caused by the event, whatever
22 that was if the acts engaged the minimum standard of
23 treatment"--here they do--"and the losses are not too
24 remote."

25 Professor Mayer, your hypothesis was, in

1 essence, that the wrongful acts remain the same, but we
2 are to assume that the Government did all of the things
3 that we say it did, not because the President was in a
4 corrupt scheme but instead because the President
5 considered that what was good for Samsung was good for
6 Korea. Well, the conduct in that hypothesis would still
7 be within the scope and ambit of the rule under the facts
8 of our case because the methods used in the hypothesis
9 still undermine the rule of law, and that decision and
10 rationale on our facts were still arbitrary--or is still
11 arbitrary and it is still idiosyncratic.

12 The factual predicate to your question, sir,
13 does not change the fact that the President's Order
14 followed and well-understood by those in her chain of
15 command, regardless of its motivation would not have been
16 a good-faith exercise of decision-making powers consistent
17 with the rule of law. She did not have the right to
18 intervene in the Merger Vote. She was still subverting
19 the machinery of State to impose her will, to the
20 detriment of the rule of law and those making investment
21 decisions. So this would not be a case in which it would
22 be appropriate to accord any deference at all because
23 there was somehow good-faith regulation of matters within
24 a State's border.

25 Her decision to intervene on an individual

1 business transaction outside the structures, Rules, and
2 policies safeguarding the independence of the NPS is, in
3 our submission, precisely the type of arbitrary conduct
4 that undermines the Investment landscape. Had the
5 President wanted to change those structures so that she
6 could lawfully impose her whim, she would have needed to
7 go through a legislative process so that the merits and
8 demerits of having such a right of intervention and the
9 risk of abuse of it could be debated democratically and
10 openly, including as to the risk that that will create for
11 market confidence and the impact on investor confidence.
12 And had she done that, rather than acted in the shadows,
13 market participants would have known of the risk of
14 idiosyncratic political interference when choosing whether
15 or not to invest in a Korean company, including one in
16 which the NPS has a very substantial influence.

17 As to the specific motivations for her decision
18 in your hypothesis, well, of course, there are myriad
19 cases in which an organ of the State has resolved to take
20 a certain action such as nationalizing a protected
21 investment because it considers it to be in the sovereign
22 interest, and that can violate any number of standards
23 under a treaty, whether it amounts to an improper taking,
24 unfair unequitable treatment, denial of justice. It all
25 just depends on the modus through which the objective is

1 realized.

2 So, in sum, we don't actually even need to show
3 that she intended to benefit ██████████, though, of course,
4 we say she did. In the hypothesis, we would simply be
5 examining whether her determination that the Merger was,
6 with respect, as she euphemistically says in the Blue
7 House memo "██████████." We will be
8 examining whether that was, indeed, still arbitrary
9 idiosyncratically, whether it was made rationally, and
10 whether it was made in good faith.

11 To conclude, sir, given everything we know about
12 the utter lack of economic and business rationale for this
13 Merger, we would still say that, indeed, that was a
14 decision taken in flagrant violation of Korea's
15 commitments under the Treaty.

16 ARBITRATOR MAYER: Thank you for this very
17 detailed answer. Thank you.

18 I guess Mr. Volkmer would like to say something.

19 MR. VOLKMER: Excuse me. So, we just heard that
20 the NPS's Shareholder vote and the NPS's duties under its
21 guidelines are a strawman, and we would say that, of
22 course, Claimants wish that it were a strawman, but it is
23 at the very core of their case. It is NPS's vote, and the
24 NPS's compliance or non-compliance with its guidelines
25 that are at the core of Mason's case. So, we say that we

1 cannot divorce the act that caused--allegedly caused--the
2 harm, namely the NPS's Shareholder vote, from the
3 Government's conduct.

4 So, our answer, then, to Professor Mayer's
5 question remains that there is no proximate effect between
6 the Government's conduct in the scenario described in the
7 question and the harm caused, and that is for the reasons
8 discussed on Monday. Under the guidelines, the NPS owed
9 no duty to Mason. It owed a duty only to Korean
10 pensioners. And if the NPS exercised its shareholder
11 voting rights in breach of the guidelines due to
12 government interference, then Korean pensioners, but not
13 Mason, may have a basis to complain. Any harm to Mason
14 would be too remote because that harm would not be within
15 the ambit of the rule breached as described in Article 31,
16 or the commentary to Article 31.

17 That's all I propose to say.

18 ARBITRATOR MAYER: Thank you, thank you.

19 Now, I guess we come to the--unless there is a
20 reply. No.

21 We come to the third question. I don't know who
22 starts.

23 MS. VAZOVA: I'm happy to start.

24 ARBITRATOR MAYER: Good.

25 MS. VAZOVA: So, Professor Mayer's third

1 question was as follows: Assuming there was some illegal
2 pressure from, let's say, Korea on the NPS, then the
3 question is--and it is debated: Would NPS have voted Yes
4 in the absence of such pressure or not? And my question
5 is, who has the burden of proof?

6 So, we would respectfully submit that the debate
7 perhaps arises from the fact that there are effectively
8 two questions nested into Professor Mayer's question.
9 The, shall we call it, threshold question of whether the
10 NPS actually approved the Merger because of illegal
11 pressure. We bear the burden of that. We would submit
12 that we have readily discharged that burden two and three
13 times over.

14 The second question, and that's the direct
15 question asked by the Professor, is: Would the NPS have
16 voted Yes anyways in the absence of such pressure? In
17 other words, did the illegal pressure make a difference to
18 the outcome of the vote?

19 Now, Korea says no, it doesn't because look at
20 all these reasons why the NPS could have voted Yes
21 anyways. The burden of proving that, in our respectful
22 submission, lies squarely with Korea. It is their
23 defense. We have already made out our affirmative case.
24 In the actual world, there was corruption. Korea approved
25 the Merger because of the pressure that was exerted on the

1 NPS as a result of that corruption. So now, it is Korea
2 that needs to show if it wants to defend against our
3 affirmative case, that in the hypothetical and
4 counterfactual world, in which there was no corruption,
5 Korea--the NPS would have approved the Merger anyways.

6 But even if the burden is placed at our feet,
7 which we very firmly reject that in principle, we think we
8 have readily discharged that burden as well. Before we
9 started this Hearing--I'm just looking at CLA-14, at
10 Page 43--the Seoul High Court had already found that, but
11 for the manufactured synergy, the Investment Committee at
12 a minimum would not have approved the Merger. The outcome
13 of that, and I think Respondent admitted as much in their
14 Opening remarks, then the Merger would have gone to the
15 Expert Committee for resolution. And we would
16 respectfully submit that after the evidence we have heard
17 over the past couple of days, including in particular from
18 Mr. [REDACTED] and Professor Dow yesterday, the Tribunal can
19 comfortably conclude that absent illegal pressure and had
20 the Merger vote been referred to the Expert Committee, the
21 NPS would not have approved the Merger regardless of who
22 bears the burden of proof on that issue.

23 ARBITRATOR MAYER: Thank you. Is it again
24 Mr. Volkmer? Yes.

25 MR. VOLKMER: Yes.

1 So, we're not sure that we can make out a
2 meaningful distinction between the two questions that were
3 just formulated. And let's go just back to what Mason
4 asserts in its submissions.

5 Mason asserts that the Korean Government caused
6 the Investment Committee to vote in favor of the Merger
7 and that the Investment Committee would not have voted for
8 the Merger in the absence of pressure by the Government--
9 and I'm quoting from Mason's Reply at Paragraph 304. So,
10 that is Mason's assertion, so Mason must prove it. Mason
11 must show that the Investment Committee wouldn't have
12 voted Yes, but for the alleged pressure. This is
13 consistent with the usual requirement under international
14 law that Claimants bear the burden of proving the facts on
15 which their case relies, including facts relating to
16 causation. There is no reason to depart from that
17 principle here.

18 Even if Mason could show that the Investment
19 Committee would have voted for the Merger because of
20 pressure from the Government, this would not show that,
21 absent pressure, the Committee necessarily would have
22 voted against the Merger, and that's because there are
23 other outcomes that would have been possible. For
24 example, there could have been no majority for any of the
25 voting options, and in that that case, as we've just

1 heard, there would have been a referral to the Special
2 Committee because the decision would have been difficult
3 to make for the Investment Committee.

4 Now, Mason doesn't even try to prove that the
5 Investment Committee, at least seven members, would have
6 voted against the Merger, and Mason instead argues that
7 the Merger should not have been referred to the Investment
8 Committee in the first place. According to Mason, the
9 Merger should have been referred to the Special Committee;
10 and, if it had been referred, the Special Committee would
11 have voted against it. And that's in Paragraph 305 of the
12 Reply.

13 So, on its own case, Mason has the burden of
14 showing that if the Merger had been referred to the
15 Special Committee, it is more likely than not that the
16 Special Committee would have voted against it.

17 Now, on Monday, we referred you to Bilcon v.
18 Canada, that was RLA-174, which considered a causation
19 scenario analogous to the one described in Professor
20 Mayer's question. So, briefly on Bilcon: The Tribunal
21 was presided by Judge Bruno Simma. The Tribunal found
22 that Canada had breached its NAFTA obligations by
23 conducting an arbitrary environmental assessment for a
24 quarry project, which arbitrary assessment resulted in the
25 project being denied environmental approvals. The

1 Claimants claimed lost profits on the basis that, if the
2 environmental assessment had been conducted properly, then
3 the Project would have received approvals, would have
4 proceeded, and would have generated profits.

5 Canada argued lack of causation because the
6 necessary approvals may never have been granted anyway,
7 even if the environmental assessment had been conducted
8 properly.

9 The Bilcon Tribunal observed that it was
10 "confronted with a situation of factual uncertainty where,
11 in the view of one of the Parties, the same injury would
12 have occurred even in the absence of unlawful conduct,"
13 and the Tribunal held that in such a situation, it remains
14 the Claimants' burden to prove causation in "all
15 probability" or "with a sufficient degree of certainty."
16 And that's in Paragraph 1110 of that Decision.

17 Now, on the facts, the Tribunal found that there
18 was a realistic possibility that the Project would have
19 been approved as a result of a hypothetical
20 NAFTA-compliant environmental assessment. But it cannot
21 be said that this outcome would have occurred "in all
22 probability" or "with a sufficient degree of certainty."
23 And that's because there were several potential grounds on
24 which the necessary environmental approvals could have
25 been denied even if there had been a properly conducted

1 environmental assessment. And you can find that
2 discussion in Paragraphs 168 to 174 of the Award.

3 The only injury established with sufficient
4 certainty was that the Claimants had been deprived of an
5 opportunity to have a fair and non-arbitrary environmental
6 assessment. But any injury resulting from the outcome of
7 that assessment was too uncertain.

8 We say that the same applies to our case. In
9 the Bilcon Tribunal's words, you are confronted with a
10 situation of factual uncertainty, because it is uncertain
11 how the NPS would have decided on the Merger but for the
12 alleged pressure from the Korean Government. In that
13 situation, Mason has the burden of showing that, but for
14 the alleged interference, the NPS, in all probability, or
15 with a sufficient degree of certainty, would have voted
16 against the Merger. And we say that, based on the record
17 of this arbitration, Mason cannot discharge that burden.

18 ARBITRATOR MAYER: Thank you very much.
19 Anything else from anybody? Not from me anyway. No.

20 Well, I was very interested in your answers,
21 both--the three of you, so thank you.

22 PRESIDENT SACHS: Yes. I think that was
23 helpful. It was a, sort of, mini oral argument--Closing
24 Argument and certainly helpful. Thank you very much.

25 So, we will proceed with the program of today,

1 which means that we will hear Professor Wolfenzon first.

2 MS. LAMB: Sir, just very briefly before we hear
3 from the Professor. I still owe Dame Elizabeth one
4 reference, so can I just read that in now before we start
5 on the much more interesting material?

6 PRESIDENT SACHS: Please.

7 MS. LAMB: It's the reference to the Interest
8 Rate that raised your question, Dame Elizabeth. Mr. Pape
9 erroneously said in his Opening that the statutory source
10 that he cited was the post-judgment rate. It was not. It
11 was the pre-judgment rate in Korea and the reference in
12 our materials is CLA-53, and it's Article 379 of that
13 statute.

14 ARBITRATOR GLOSTER: Thank you very much,
15 indeed. That clears that point up. Thank you.

16 PRESIDENT SACHS: Okay. May we then ask
17 Professor Wolfenzon to join us?

18 PROFESSOR DANIEL WOLFENZON, CLAIMANTS' WITNESS, CALLED

19 PRESIDENT SACHS: So, are we all set?

20 Good morning, Professor Wolfenzon. Before we
21 give you the floor for your presentation, in front of you
22 is a declaration for expert witnesses. Could you please
23 read that Declaration for the record.

24 REALTIME STENOGRAPHER: There is no microphone
25 on.

1 PRESIDENT SACHS: You have to switch the
2 microphone on.

3 THE WITNESS: This--yes. Yes, okay.

4 PRESIDENT SACHS: Yes.

5 THE WITNESS: Should I read it again?

6 PRESIDENT SACHS: Could you repeat, please.

7 THE WITNESS: Of course. I solemnly declare
8 upon my honor and conscience that my statement will be in
9 accordance with my sincere belief.

10 PRESIDENT SACHS: Thank you very much.

11 Now, you will give us your presentation. You'd
12 submitted two Expert Reports to these proceedings dealing
13 with the valuation of conglomerates. And so, we invite
14 you to make your presentation.

15 DIRECT PRESENTATION

16 THE WITNESS: Yes. So, good morning, Members of
17 the Tribunal, good morning, everyone. My name is Daniel
18 Wolfenzon, and I'm here to present my opinions on the
19 case.

20 So, let me start with my qualifications. I am a
21 Professor of Finance and Economics at Columbia Business
22 School, currently Chair of the Finance Division and
23 Faculty Director of the Global Family Enterprise Program.
24 I have a Ph.D. in Economics from Harvard University.

25 And since my days in the Ph.D. program, I have

1 been interested in studying business groups and family
2 firms, and I've published the papers that I list here.

3 These papers studied the complex ownership
4 structure of groups, the reason why these structures form
5 in the first place, the valuation impact of these complex
6 ownership structures, and in other papers, I've also
7 developed formulas and algorithms to summarize these
8 complex ownership structure.

9 Let me give you a brief overview of what I'm
10 planning to talk about today. So, I will start describing
11 the mechanics of stock-for-stock Mergers, and I will
12 explain why the Exchange Ratio was unfavorable to SC&T
13 Shareholders. I will explain that, for this reason, the
14 Stock Price did not reflect the Intrinsic Value of SC&T.
15 That's going to be Part 1.

16 Given this fact, I am going to explain that the
17 alternative method is to use the SOTP, the Sum Of The
18 Parts. I will be very brief here because you heard about
19 this method yesterday.

20 The method consists simply in adding the parts
21 of a holding company, and there is this view that a
22 holding-company discount should be applied to the Sum Of
23 The Parts. So, in the third part of my presentation
24 today, I am going to explain why no holding company needs
25 to be applied to the Dr. Duarte-Silva valuation.

1 There is more agreement here than is apparent.
2 I agree that some of the factors that have been mentioned
3 impact the value of holding companies. Undoubtedly, the
4 Korean discount is a well-established fact. It's also
5 well-established that Korean companies have severe
6 governance issues.

7 What I believe is the main disagreement, is that
8 I think that these effects should be included at the
9 moment when the parts are valued as opposed to at the very
10 end of the process with a subjective discount.

11 So, as I said, let me start with talking about
12 stock-for-stock Mergers. So--and this is--I'm going to go
13 quickly over this. So, in a stock-for-stock Merger, an
14 acquirer issues new Shares that it then exchanges for
15 Shares of the target at some specified Exchange Ratio.

16 So, what I have here is a stock-for-stock Merger
17 in figures. So here, the red firm is merging with the
18 blue firm. These rectangles here represent the value of
19 these firms as a stand-alone. And when they merge, there
20 are no synergies, the total value of the combined entity
21 is just the sum of these two pieces. Now, what I have on
22 the left is, you know, if you want, what happens prior to
23 the Merger. On the right, you have what happens after.
24 Once the two firms are combined, what fraction of the
25 total value is receiv--what faction of the total value is

1 received by the target Shareholders. All the acquired
2 Shareholders depend critically on this Exchange Ratio.

3 Now, I have here a red line, which is what the
4 Exchange Ratio determines. So, below the red line, that
5 is the part of the value that goes to the target
6 Shareholders; above the line goes to the acquired
7 Shareholders.

8 Now, based on the Exchange Ratio, that makes
9 these transactions fair for both groups of Shareholders.
10 So, you can see it here in the--in the--in the
11 illustration. The reason why I say this is fair is that,
12 as you see from this illustration, the Shareholders of the
13 grain--of the green firm, to call it one way, they
14 contribute the same amount to the combined entity as they
15 get out, and the same is true for the Shareholders of the
16 blue entity.

17 Now, I have to say that when prices reflect the
18 Intrinsic Value of the firm, this Exchange Ratio is simply
19 share--the ratio of the prices. Now, if for whatever
20 reason--and we're going to go through those reasons in a
21 second--the Exchange Ratio is lower, then have you a
22 situation like the one I'm presenting here. In this
23 situation, the target Shareholders lose some value, and
24 the reason is, as you can see, the contribution to value,
25 the green rectangle, is much higher--or higher, than what

1 they get out of this combination, and so this loss is
2 represented there in the dark gray square.

3 The other side of the same coin is that the
4 Shareholders of the blue firm obtain more than what they
5 put in. You can see that they--they are receiving
6 everything above the red line, so they get, in addition to
7 their contribution, again, this dark gray area.

8 All right. So this is, in general, what happens
9 at the combination, you know--and what I'm showing you
10 here is simply just this graph but scaled by numbers for
11 SC&T and Cheil. I have to say, I took these numbers from
12 Dr. Duarte-Silva's calculation out of the last day of
13 trading for SC&T and Cheil. What can you see--and
14 then--and the red line, which is the--what determines the
15 distribution of value between acquirers and target
16 Shareholders post-merger. I just computed with the
17 Exchange Ratio and the number of Shares. And so, as you
18 can see, SC&T Shareholders contributed 57 percent of the
19 total Equity Value but obtain only 29 percent.

20 Now, as I was telling you, this is post-merger,
21 and you probably remember from yesterday, this
22 graph--sorry, this figure that Dr. Duarte-Silva presented.
23 This--mechanically, this is what happens at Merger on the
24 left. And as you can see on the right, if you go back
25 weeks and months, what you see is that that value transfer

1 is embedded in the prices of SC&T and Cheil. And you see
2 that, you know, kind of, confirming this idea, you know,
3 the magnitude of the discount is very similar to the
4 magnitude of the premium.

5 Now, I left an important element in all of this
6 story which is, I didn't tell you how the Exchange Rate is
7 computed. Now, in many countries, like the U.S., for
8 example, the acquirer is free to offer any Exchange Ratio.
9 And, of course, they will offer an Exchange Ratio that is
10 attractive to the target.

11 In contrast, in Korea, this Exchange Ratio is
12 set by a formula and the formula is an average of Stock
13 Prices of the target and the acquirer over the last month,
14 week, and day. Now, if these Stock Prices reflected
15 Intrinsic Values, then the Exchange Ratio would be fair,
16 as I mentioned in my Slide 5. However, if Stock Prices do
17 not reflect Intrinsic Value, the Exchange Ratio of this
18 formula could still lead to unfavorable Exchange Ratio for
19 target or acquirer Shareholders.

20 So, what I want to talk about now is, what are
21 the reasons why the Stock Price deviated from Intrinsic
22 Values in this case. I'm going to, you know, mention two:
23 One is the threat of a value transfer; the other one is
24 the timing of the Merger Announcement.

25 So, the threat of value transfer, I show you in

1 this Figure 4 before, the one that Dr. Duarte-Silva showed
2 you yesterday, that there was a value transfer embedded in
3 the Shares. The--if you remember, the green area was very
4 similar to the blue area, so th--this--this was a
5 symmetric figure. And so, that is a good indication that
6 there is a value transfer going on. It would be very
7 difficult to think that this is just a coincidence.

8 Now, Professor Dow, you know, claims that, you
9 know, this theory is circular. To some extent, you know,
10 there is an element of circularity, but I want to argue
11 that this is not a logical flaw. Let me just walk you
12 through what, you know, economists called a
13 self-fulfilling prophecy. Which is essentially that, once
14 expectations actually caused the ex--you know, the--the
15 expectations itself. So, the idea here is, imagine that
16 investors expect a Merger at a low Exchange Ratio for
17 whatever reason I'm going to, you know, perhaps tell
18 you--I have time--I'll tell you why I think this is a
19 reasonable expectation.

20 So, if they expect a lower--a Merger at a lower
21 Exchange Ratio, they will then--would be expecting a value
22 transfer, as I explained before. This, in turn, will
23 depress Stock Prices today, and the [REDACTED] Family, seeing
24 these prices, would find it attractive to go ahead with
25 the Merger, confirming the initial expectations; right?

1 I hope this doesn't sound too academic. We see
2 examples of this in the real world every day. For
3 example, current debate about inflation expectations
4 actually causing inflations.

5 Now, why would anybody believe that there's
6 going to be a Merger and an exchange at an unfair Exchange
7 Ratio? Well, you know, it's been known for a long time
8 that there was going to be a succession in the Samsung
9 Group. There was no need for a heart attack to happen;
10 right? People get old and die, and there is a need to
11 transfer the control to--to--to the family members.

12 Actually, I have a quote here from a very
13 interesting paper that Professor Bae wrote in 2002. Oh,
14 well, he actually--even in 2002, he was aware that, you
15 know, there was a gradual, you know, movement towards a
16 transfer of group chairmanship in the--in the Samsung
17 Group.

18 Now, SC&T was, you know, very likely to be
19 involved, it was a key to succession. And then, the other
20 fact that might have, kind of, made people believe that
21 this was a likely scenario is that stock-for-stock mergers
22 are at a--a common mechanism to transfer control to the
23 next generation in Korea. I think I have to speed up.

24 The other potential mechanism is simply the
25 timing of the Merger. So, it is--it is in--it would

1 benefit the [REDACTED] Family to announce the Merger when the
2 price of SC&T is particularly low and the price of Cheil
3 is particularly high.

4 Now, it is true that prices are unpredictable,
5 but they are unpredictable to investors in the market.
6 There is a lot of information, there is a lot of
7 lit--there is big literature in finance showing that
8 insiders, corporate insider, are actually able to time the
9 market, for example, when they repurchase Shares. So, the
10 fact that the [REDACTED] Family is more knowledgeable about the
11 path of prices than the market, I don't think is a
12 stretch.

13 All right. So, this takes me to my second
14 point, which is the Sum Of The Parts. Let me just tell
15 you that everybody here agrees that this is a standard
16 method of valuation. It consists of three pieces. You
17 value the parts in the conglomerate, is the core and the
18 subsidiaries. You add these parts together, and then you
19 subtract debt. There is, of course, the issue of whether
20 you apply the discount or not, and this is where I'm going
21 to go now, so I will explain in my third part--this is my
22 second part, only I'm going to explain in my third part
23 why I believe the discount is not necessary.

24 All right.

25 So, there has been many arguments, I kind of

1 started today talking about them. The Korea discount
2 affects value of firms in Korea and the conglomerate,
3 there are governance problems at the holding company level
4 perhaps. There could be a realized capital gains, there
5 might be illiquidity of some of the holdings. I will talk
6 about these issues in a second. So, we all, I
7 think--well, I don't agree with all of them, I'll tell you
8 which ones I agree but at least the Korea discount that
9 the governance problems are aspects that I truly believe
10 affect Korean conglomerates.

11 As I was telling you before, while I will agree
12 that some, again but not all of these affect--impact the
13 value of the holding company, the best way to include
14 these effects is in the valuation of each of the
15 individual parts. And again, not as a subjective and
16 imprecise discount to SOTP. So, we should do our best to
17 value the parts correctly in order to avoid trying to use
18 an SOTP discount at the end.

19 Now, how do we avoid using a discount and try to
20 precisely incorporate these effects? Well, we try to use
21 Market Values. We use comparable, and we select the
22 comparables in a way that addresses these valuation
23 issues.

24 So, this is a table, and I'm going to spend some
25 time here. So this is a table and I hope most of the

1 reasons that might affect the value of the holding
2 company, I have a column saying whether it's applicable to
3 SC&T or no, and then finally how--if it's applicable, how
4 it is included in the final valuation of
5 Professor--Dr. Duarte-Silva.

6 So, let's start with the Korean discount. You
7 know, I think that we all agree that this is already
8 embedded in the valuation, so I guess there is no
9 discussion here but just as an illustration. How do
10 we--how do we include the Korean discount when we value
11 the parts? We do two things: One, we use Market Values
12 which are already depressed by the Korean discount.
13 Market Values are already depressed. And second, we use,
14 to value the core, we use multiples of firms that are in
15 Korea, so they already embed these Korean discount, so
16 there is no need again to apply another discount.

17 Now, a similar explanation hold for the next
18 factor, severe governance problems at the holding company
19 level. Now, the idea here is that there might be
20 governance problems at the holding company level. I have
21 here "unclear" because the academic literature on this
22 point is not definitive. And let me tell you why. The
23 evidence is mixed. On the one hand there is a large
24 literature showing that firms that are at the top of the
25 group, likely the holding companies, have higher

1 multiples. That is, they value more. At the same time,
2 there are other studies that claim the opposite, that the
3 holding companies actually have, for whatever reason, more
4 severe agency costs.

5 The point here is, no matter whether we believe
6 that there is a benefit or a cost--sorry, or whether there
7 are severe holding agency problems at the holding company
8 or not, what Dr. Duarte-Silva does is he uses as
9 comparables firms that are themselves holding companies.
10 Again, so no need really to decide on the direction of
11 this factor.

12 I will talk about unrealized capital gains and
13 the Illiquidity Discount on traded holdings. I think, for
14 example, that unrealized capital gains would generate a
15 discount. This is, I agree that it might not be--this
16 might not be--it might not be in the Market Price, but it
17 might trigger a tax liability. However, I don't think
18 that this is applicable to SC&T. I have a slide for that.

19 There is another theory that is in the Report
20 that, having been presented here later, Professor Bae
21 might talk about it, which is about the liquidity discount
22 of the traded holdings. I don't think this is a valid
23 theory. I will explain why.

24 There are two more here. In the interest of
25 time I will just talk about the last one, you know,

1 Professor Bae in his Report also mentions that there is a
2 low profitability of SC&T Core. Again, I'm not sure about
3 that. However, I have to say that the multiples used to
4 value the core are Enterprise Value over EBITDA multiples,
5 so using profits or earnings, if you want, in the
6 denominator helps mitigate that potential problem.

7 All right. So, I agree with Professor Dow that,
8 you know, if one were to sell stock--the stock that SC&T
9 holds in other firms, that will trigger a capital gains
10 tax. The question is how likely this is. And I don't
11 think that it's likely. The reason why these--why SC&T
12 holds Shares in SEC and SDS is precisely because it wants
13 to keep control of these firms, and Professor Bae, in his
14 Report makes the same point, so I think that we are in
15 agreement on this.

16 But there is a more important point here, or
17 perhaps equally important, which is even in the unlikely
18 event of liquidation, the price at which these Shares are
19 going to sell is not going to be the Market Price but
20 rather higher. They're going to be--there is something
21 that is called the Control Premium, which means that when
22 blocks of Shares are sold in the market, the price per
23 share is higher than the Market Price applied for Shares
24 that are not sold in block, and the reason why--the reason
25 for this increased value is because the Market Value

1 control, buying 20 percent, for example, 10 percent, of a
2 firm conferred some amount of control which is valued in
3 the market. I cite in my Second Report one academic study
4 that Reports an average block premium in Korea of at least
5 16 percent.

6 All right. I'm sorry you haven't heard this
7 one, although it's in the Report, the next comment that I
8 want to make is about, you know, this idea that there
9 should be an illiquidity discount applied to the holdings
10 because the SC&T is not planning to sell these Shares. I
11 have to say that, first, even though they're not planning
12 to sell their Shares, they could. I mean, this is not the
13 situation we typically think when we are dealing with
14 illiquid assets. An illiquid asset is an asset that is
15 difficult to sell, not that the owner of the asset is
16 unwilling to sell.

17 But even then, investors in the holding company,
18 SC&T, can actually effectively sell Shares in the
19 subsidiaries by simply selling the Shares of the holding
20 company. There is no need for the holding company to sell
21 the Share. And actually, this view is supported by
22 finance professionals who actually do not apply a discount
23 even to illiquid holdings owned by firms that trade in
24 liquid markets. I have a quote here from Professor
25 Damodaran. So, even if you believe that these holdings

1 are illiquid, there are reasons to believe that a
2 Illiquidity Discount doesn't apply.

3 All right. In the last part of today, I want to
4 talk a little bit about what the academic literature says
5 about the holding-company discount. So, as I told you
6 when I was introducing myself, I have been working on
7 business groups since my graduate degree, that's
8 20-something years ago. And in early 2000s, there was a
9 lot of interest in the study of business groups, and
10 Professor Bae published a paper in 2002, which is very
11 well cited. And I have been going to conference and, you
12 know, been engaged with this topic. The reality is that I
13 have not heard about a holding-company discount--let me
14 rephrase that. I've heard about the holding-company
15 discount anecdotally, but I have never seen a systematic
16 academic study that documents this fact.

17 When I read the reports, you know, I went back
18 to the journals to find evidence for this, so what I did
19 is a search on the top three finance journals for the last
20 20 years, for all papers that mentioned the word "business
21 groups" and other related terms. I came up with 51
22 papers, and no paper actually talked about the
23 holding-company discount. The papers do talk about
24 valuation of business groups. They talk about whether the
25 market:book ratio is high or low, depending on the

1 situation in the group but that is very different from
2 saying that they are worth less than the Sum Of The Parts.
3 It's just very valuable, not very valuable. It doesn't
4 mean that the parts are not adding to the total.
5 Actually, no paper goes far to make that claim.

6 All right. Actually, Professor Bae in his
7 Report, admits that there is no academic literature on
8 this topic. Just to, you know, provide context that, you
9 know, I'm not the only one claiming this. His view is
10 that holding companies--this holding-company discount
11 applies only in Korea, and for that reason is not of the
12 interest of the major finance journal, and I think that--I
13 think this is incorrect. Business groups are prevalent in
14 many countries. Professor Bae, himself, explains that
15 business groups are prevalent not just in Korea, but in
16 Brazil, Chile, China, India, Indonesia and so forth, and
17 even in developed countries such like Italy and Sweden,
18 and this is a short list, I would say.

19 So I would not see why business groups that are
20 kind of quite similar would not have also a
21 holding-company discount. I have to say that there is a
22 lot of interest also in the academic literature about
23 Korea. Korea is an interesting country to study Corporate
24 Finance.

25 Actually, out of the 51 papers on business

1 groups on all the world, 12 of them, 20 percent of them
2 are about Korea, so there is an interest in research in
3 this area.

4 I went to a leading textbook, one that I use in
5 my class, and this textbook in the chapter of the Sum Of
6 The Parts actually does not recommend either the
7 application of the discount. They simply say just add the
8 value of the core assets, the subsidiaries, the cash, and
9 subtract debt, and also the recommendation of this book in
10 terms of what to do with the value of the subsidiaries is
11 just to add--just to use the Market Price.

12 I wanted to see at least how a leading
13 researcher in conglomerates and family firms teaches this
14 topic in her class, so Professor Villalonga is a
15 well-known researcher in these topics, and she wrote a
16 note on Sum Of The Parts that she used to teach--well,
17 used to because she moved from Harvard, but she used to
18 teach this at Harvard Business School, in a class on
19 family firms there, and she concludes there in one of the
20 paragraph with this sentence: "The research findings
21 imply that the practice of applying a discount to SOTP
22 values is not only arbitrary but, in fact, wrong."

23 And then Professor Bae also makes a comment that
24 this Professor Villalonga was referring only to the U.S.,
25 but reading the note I don't think this is the case, and I

1 have many quotes here that provide background.

2 All right. Another very straightforward reason
3 why this is not--and Professor Dow mentioned this
4 yesterday--another reason why this cannot be a generalized
5 fact is because there are some, even in Korea, some
6 conglomerates or some holding companies that trade at a
7 premium. Cheil trades at a premium. Traded at a premium
8 before the Merger. SC&T even in some periods have traded
9 at a discount.

10 All right. In the last minute, I want to--I'm
11 going to very briefly--I already mentioned this before
12 when I was telling you that the literature, the academic
13 literature has looked at Tobin's Q, which is essentially a
14 market:book ratio to understand the valuations of holding
15 companies and not at the holding-company discount, and the
16 interpretation that a low Tobin's Q is equivalent to a
17 holding-company discount, I think, is wrong. And this is
18 kind of present in many of the comments and the analyses
19 of Professor Bae, but I don't have time to go there.

20 Let me end with my conclusion in the last 30
21 seconds that I have.

22 So, a discount to SOTP prior to the Merger is
23 due to the expected value transfer. I mean, it would be a
24 coincidence that the premium and the discount are almost
25 exactly the same magnitude. Since the market was

1 embedding this expected value transfer into the Stock
2 Price, the Stock Price is not an accurate measure of
3 Intrinsic Value, so the best alternative is the SOTP
4 method.

5 And finally, as I explained to you, I believe
6 that Dr. Duarte-Silva's methodology to compute the SOTP
7 adjusts for factors that affect the value of SC&T,
8 obviating the need to apply a second discount. There is
9 no evidence that the holding-company discount in the
10 academic literature, textbooks--perhaps in the academic
11 literature that I reviewed in the textbooks that I show
12 you, or taught by at least myself and one other finance
13 professor, and I don't think that I have seen, like,
14 convincing evidence at least as a general point that the
15 holding-company discount exists.

16 And that is the end of my presentation.

17 Sorry, I forgot to mention I included an errata
18 here. I made a mistake in one of my Reports. My Second
19 Report. Where I claimed that one firm was trading at a
20 premium to SOTP when in reality it was trading at a
21 discount. I have to say that I don't think that affects
22 my conclusion because I was trying to illustrate that some
23 firms trade at a premium and others at a discount.

24 PRESIDENT SACHS: Thank you very much.

25 We still have time before the coffee break to

1 start cross-examination. Mr. Gopalan?

2 MR. GOPALAN: Thanks, Mr. President.

3 CROSS-EXAMINATION

4 BY MR. GOPALAN:

5 Q. Good morning, Professor Wolfenzon.

6 A. Good morning.

7 Q. You used the term "Fair Market Value" at several
8 points in both of your Reports; correct?

9 A. Yes.

10 Q. You don't define that term in either report?

11 A. I do not.

12 Q. Could we go to CRA-177, please.

13 A. Am I supposed to be--sorry. No? Okay.

14 Q. That's a cue to FTI to bring up the document.

15 A. Yes, I know that. It's just not in my screen.

16 Sorry, this is the first time I'm doing this so.

17 Q. No worries at all.

18 So, this is a frequently cited World Bank
19 document called the "Legal Framework for the Treatment of
20 Foreign Investment." If we could go to Page 26, please.

21 And in that first paragraph, it provides a
22 definition of "Fair Market Value," which I will read for
23 the record. It says: "The price that a willing buyer
24 would normally pay to a willing seller of the investment
25 after taking into account all relevant circumstances such

1 as the nature and duration of the investments.
2 Throughout, reasonable criteria would be applied with a
3 view to ascertaining the market value of that investment."

4 Do you see that?

5 A. Can you highlight it for me, please?

6 Yes, I see that.

7 Q. Do you agree with that definition?

8 A. Actually, I believe that this is--I don't have a
9 view on this definition. This is--you know, I'm finance
10 professor. I'm not familiar with legal definitions.

11 Q. So, when you used this term "Fair Market Value"
12 in your Report, what do you mean?

13 A. I'm referring to an Intrinsic Value.

14 Q. So, to you, Intrinsic Value and Fair Market
15 Value are equivalent?

16 A. They're not.

17 I understand that, according to this definition,
18 for example, the Investors would be buying and selling
19 Shares of SC&T at the price that includes the value
20 transfer; right? However, I would not consider that the
21 Intrinsic Value or, if you want, a stand-alone value,
22 absent the threat of the Merger.

23 Q. The question is: "Fair Market Value" and
24 "Intrinsic Value," are they the same thing to you?

25 A. I'm not familiar with this definition. I am--in

1 my explanation that I just gave you, they are not,
2 so--but... Yeah.

3 Q. In your Report, you used them for the same
4 purpose, they're equivalent terms in your Report?

5 A. I might not have--I might have been not very
6 careful with that definition, yes.

7 Q. But, in truth, they're different things?

8 A. Okay, so let me--so, I think what I would say is
9 that, in my Report, I have been thinking about--

10 PRESIDENT SACHS: Could I ask you to speak up a
11 little.

12 THE WITNESS: Sure, sure.

13 In my Report, I was referring to Intrinsic Value
14 as the value of SC&T specifically without--in the but-for
15 world without the expected value transfer. That's the way
16 I was thinking about it in my Report. I'm sorry that
17 these legal definitions escape me a bit.

18 BY MR. GOPALAN:

19 Q. That's totally understandable, but just to be
20 very clear, Fair Market Value is the price, and for you
21 that's something different to Intrinsic Value?

22 A. Yes, yes.

23 Q. And the Fair Market Value of an asset changes
24 over time; right?

25 A. Absolutely.

1 Q. And that's the same for any asset? It could be
2 a house, it could be a share in a public company?

3 A. Yes.

4 Q. So, a buyer today may pay something else for the
5 same asset tomorrow?

6 A. Yes.

7 Q. And that's for any number of reasons?

8 A. Absolutely.

9 VOICE: Sorry, Witness, keep your voice up.

10 THE WITNESS: I'm sorry, yes, yes.

11 BY MR. GOPALAN:

12 Q. I have the same issue, actually.

13 So, when one offers an opinion on the Fair
14 Market Value of an asset, you're offering that at a very
15 specific moment in time?

16 A. Yes.

17 Q. The Valuation Date matters?

18 A. The Valuation Date matters, yes.

19 Q. You addressed Sum Of The Parts in your Reports
20 in your presentation this morning.

21 A. Um-hmm.

22 Q. That's a standard widely used valuation
23 technique?

24 A. Yes.

25 Q. It's used frequently by many stock analysts?

1 A. Yes.

2 Q. And different analysts reach different Sum Of
3 The Parts conclusions?

4 A. Yes.

5 Q. And they could reach different conclusions or
6 different valuations, despite doing the analysis on the
7 same day?

8 A. Yes.

9 Q. And that difference could be attributable to
10 various factors?

11 A. Yes.

12 Q. It could be the companies they chose to-- the
13 comparables they chose to value the Company's core
14 business?

15 A. Um-hmm.

16 PRESIDENT SACHS: Mr. Wolfenzon, once again,
17 otherwise it's very difficult for David our court reporter
18 to follow you.

19 THE WITNESS: Yes.

20 BY MR. GOPALAN:

21 Q. It could also be due to the method that they
22 adopted to value unlisted holdings?

23 A. Yes.

24 So, let me elaborate on this a bit.

25 So, having said that, no analyst, two people

1 doing the same valuation of a company can reach different
2 conclusions. There are valid and invalid reasons to
3 arrive to that two different conclusions, so we can
4 disagree about the growth of the Company but there are
5 standard methods in finance that are--I mean, robust of
6 course, they rely on assumptions, but, you know, I cannot,
7 for example, apply a discount when it's not warranted.

8 Q. You wouldn't apply a discount if it's not
9 warranted. You wouldn't apply a discount to a Sum Of The
10 Parts valuation?

11 A. If it's not warranted.

12 Q. Others might disagree?

13 A. People can be wrong, if you're asking that
14 question, yes.

15 Q. Let's turn to--

16 A. The truth, in my opinion, there is, you know,
17 there are situations where no discount is warranted. I
18 understand that other people might believe it is. My
19 interpretation of the academic literature and applicable
20 evidence is that, you know, we should not. I think I'm
21 here to express that opinion.

22 Q. That's your good-faith academic opinion?

23 A. Yes.

24 Q. Let's go to one Analyst's Report on SC&T. If we
25 could pull up CRA-70, please.

1 This is a Deutsche Bank Analyst Report from
2 23 April 2015.

3 Do you see that? It's in the top right-hand
4 corner.

5 A. Yes.

6 Q. And the Merger at issue in this case was
7 announced on the 26th of May 2015, so this was published
8 before that?

9 A. Um-hmm, yes.

10 Q. We look at the data in the top right-hand
11 corner, we see that SC&T's Share Price on this day is KRW
12 61,400.

13 Do you see that?

14 A. Yes.

15 Q. And the price target is KRW 78,400.

16 A. Yes. I see that.

17 Q. So, the price target is where the analyst
18 expects the price will go; correct?

19 A. Agree.

20 Q. It's speculative?

21 A. Well, it's his view.

22 Q. It's subjective?

23 A. It's his best effort to come up with a price, a
24 future price.

25 Q. It could be wrong?

1 A. This analyst could be wrong.

2 Q. Let's go, please, to Page 5. Figure 12, if we
3 could zoom in on that, please.

4 This is a Sum Of The Parts analysis, isn't it?

5 A. Um-hmm.

6 REALTIME STENOGRAPHER: Can the Witness say
7 "yes" instead of "um-hmm"?

8 THE WITNESS: Yes. Absolutely.

9 My apologies.

10 BY MR. GOPALAN:

11 Q. So, this analyst uses a Sum Of The Parts
12 analysis to derive the target price.

13 Do you see that?

14 A. Yes.

15 Q. And if we look at the line "all listed
16 equity"--and if we could highlight that the full way
17 along--we will see that this analyst applies a 30 percent
18 discount to SC&T's listed holdings.

19 Do you see that?

20 A. Yes.

21 Q. And he uses that to derive his target price?

22 A. Yes.

23 Q. Now, if I wanted to buy a share of SC&T on the
24 date of this Report, 23rd of April 2015, I would pay the
25 Market Price, wouldn't I?

1 A. You would.

2 Q. And nobody would pay this target price of KRW
3 78,400?

4 A. If you buy the share--I don't understand the
5 question. If you buy the share in the market, you pay the
6 price.

7 Q. Is that the Market Value?

8 A. That is a current value, yes, um-hmm.

9 Q. Okay. You reviewed Dr. Duarte-Silva's Sum Of
10 The Parts valuation carefully in the process of preparing
11 both of your Reports?

12 A. Yes.

13 Q. And is your opinion that no discount should be
14 applied to that valuation?

15 A. Yes.

16 Q. Did you validate the rest of Dr. Duarte-Silva's
17 Sum Of The Parts analysis?

18 A. Which parts?

19 Q. Did you agree with his estimation of SC&T's core
20 business?

21 A. What I review of Dr. Duarte-Silva's valuation is
22 the methodology that he followed. You're asking me if I
23 look at every single detail of the analysis. I did not.

24 Q. So, did you, for example, review his methodology
25 for valuing Samsung Biologics?

1 A. I have--I remember what he did, yes.

2 Q. And you agree with that?

3 A. Yes.

4 Q. Now, Dr. Duarte-Silva's Valuation Date was the
5 17th of July 2015; correct?

6 A. Yes.

7 Q. Sorry, just into the microphone.

8 A. Yes.

9 Q. So, that's the date of the Merger Vote?

10 A. Yes.

11 Q. If we have time, if we could go to RDE-12,
12 please. If you could bring that up. Thank you.

13 Dr. Duarte-Silva's Sum Of The Parts produces a
14 per-share price estimate of SC&T that's just under KRW
15 120,000 on the date of the Merger.

16 Do you see that?

17 A. Yes.

18 Q. For a share of SC&T actually traded at just over
19 KRW 60,000 at the same time?

20 A. Um-hmm, yes.

21 Q. So, the Market Price is about half of what the
22 per-share price implied by Dr. Duarte-Silva's valuation;
23 right?

24 A. Yes.

25 Q. And if I wanted to buy a share in SC&T on the

1 17th of July, I would pay the Market Price?

2 A. You would pay the Market Price.

3 Q. And it's the same if I wanted to buy a share in
4 February 2015, for example? I would pay the Market Price?

5 A. You would pay the Market Price.

6 Q. It wouldn't matter to me what Dr. Duarte-Silva's
7 valuation is, his Intrinsic Value--

8 (Overlapping speakers.)

9 A. Well, I believe--and the reason what
10 Dr. Duarte-Silva is doing this valuation is not to
11 estimate the price in the actual world but to estimate the
12 price in the but-for world, yes.

13 So, what I would say is that, in the but-for
14 world, you will have not seen these prices going forward.
15 You would have seen something different--sorry, you would
16 have seen his but-for value.

17 Again, I admit that, you know, it would be, you
18 know, too presumptuous of me to say that this would be
19 exactly the price, but I would say that this is
20 the--given, you know, my knowledge of, you know, a solid
21 methodology.

22 Q. Understood.

23 So, in February 2015, months before the Merger
24 Vote, if I wanted to buy--

25 A. Sorry?

1 Q. This is marked on the graph. On the top panel
2 just next to December 14, you can see February 15 at the
3 bottom on the horizontal axis.

4 A. February 15, yes, sorry, yes, you mean 2015.

5 Q. Yes.

6 A. Perfect, yes.

7 Q. That's a few months in advance of the Merger
8 Vote?

9 A. Yes.

10 Q. If I wanted to buy a share of SC&T in that
11 month, I would pay the Market Price?

12 A. I mean, yes.

13 I have to say--yes.

14 Q. I'm about to move on to a whole new different
15 module, Mr. President, so it might be a good time to take
16 the break.

17 PRESIDENT SACHS: We will resume at 10:15,
18 David.

19 (Brief recess.)

20 PRESIDENT SACHS: Mr. Gopalan, may we ask you to
21 proceed.

22 MR. GOPALAN: Thanks, Mr. President.

23 BY MR. GOPALAN:

24 Q. Professor Wolfenzon, for a large highly traded
25 public company, the presumption is that the Stock Price

1 tells us the Fair Market Value; right?

2 A. For a large traded public company, you can buy
3 and sell Shares at the current Market Price.

4 Q. And having regard to what we've looked at
5 before, the definition of "Fair Market Value"--

6 A. Um-hmm.

7 Q. --the Market Price for a share in such a public
8 large company would be the Fair Market Value; correct?

9 A. Again, I prefer not to use the term because I'm
10 not familiar with the nuances of the definition, but I can
11 definitely tell you that you can buy and sell Shares at
12 the current Market Price.

13 Q. My difficulty with that, Professor Wolfenzon, is
14 that you used the term "Fair Market Value" at several
15 points in your Report.

16 A. Yes. I've realized that you have very specific
17 meaning to that. I can clarify what I meant if you show
18 me the Report.

19 Q. Okay. Let me ask you. When you reviewed Dr.
20 Duarte-Silva's Sum Of The Parts analysis, you saw that he
21 valued SC&T's holdings in many other Samsung Group
22 companies.

23 A. Yes.

24 Q. And he did so at their Market Prices.

25 A. Yes.

1 Q. And you were okay with that? You thought that
2 was a reflection of Fair Market Value.

3 A. Yes.

4 Q. But, for you, SC&T--the Share Price of SC&T did
5 not reflect the Fair Market Value.

6 A. Yes.

7 Q. And you offer reasons in your Reports why the
8 Stock Market price of SC&T did not capture the Fair Market
9 Value of Shares in SC&T on the date of--

10 (Overlapping speakers.)

11 A. Sorry, let me--I explain why the current Market
12 Price of SC&T does not reflect the value at which this
13 firm would trade in the but-for world.

14 Q. You explain why SC&T's Market Price does not
15 reflect an estimate of the Intrinsic Value of SC&T;
16 correct?

17 A. Today? Yeah, in their--are you asking me or you
18 are asserting that?

19 Q. It's a bit of both, actually.

20 A. Okay. So--

21 Q. I'm asking you: Is it your opinion that SC&T's
22 Share Price on the 17th of July 2015, the date of the
23 Merger Vote--

24 A. Um-hmm.

25 Q. --didn't reflect its Intrinsic Value?

1 A. So, what I can tell you, what I have under--what
2 I've been thinking about in my Report is that the price of
3 SC&T reflected the value of its components but at the same
4 time reflected value transfer to Cheil. So the price
5 embedded a transfer to Cheil.

6 So, I can give you an example, if you want me to
7 clarify.

8 Q. Not just yet, if that's okay.

9 In Dr. Duarte-Silva's Sum Of The Parts, the
10 listed holdings included several other Samsung Group
11 companies; correct?

12 A. Yes.

13 Q. It included Samsung Electronics, Samsung SDS--

14 A. Um-hmm.

15 Q. --Samsung Engineering. You had no issue with
16 those components being valued at their Market Prices?

17 A. No.

18 Q. So, for you the only issue was SC&T.

19 A. Yes.

20 Q. Is it fair to say that the presumption is that
21 we can trust the Market Price?

22 (Voice sounding.)

23 Q. I'll repeat the question.

24 Is it fair to say that the presumption is that
25 we can trust the Market Price unless there's reason to

1 doubt it?

2 A. Unless there is reason--I think that you don't
3 need me for that question. That's almost a tautology.

4 Yes, it--

5 (Overlapping speakers.)

6 Q. That's a "yes"?

7 A. Yes.

8 Q. Okay. Let's go to your Second Report, to
9 Paragraph 57, please.

10 We'll go to the last sentence of Paragraph 57,
11 and I'll read it for the record: "For the reasons set out
12 in this report, Prof. Dow has not presented convincing
13 evidence that these reasons did not each play a role in
14 the determination of the exchange ratio and, taken
15 together, caused SC&T's shares to trade at the discounted
16 fair market value shown through Dr. Duarte-Silva's SOTP
17 valuation of SC&T's shares."

18 Did I read that correctly?

19 A. Yes.

20 Q. But the Share Price of a big company like SC&T
21 is presumptively its value; correct?

22 A. I think that we are--if you allow me to explain
23 again, I think we are mixing terms. So, clearly--and I'm
24 not going to dispute this--leading up to the Merger
25 Announcement, the Merger Vote, the--you could buy and sell

1 Shares at what is the Market Price. What I'm saying is
2 that the Market Price, this Market Price that you are
3 paying, reflects many things. It has--parts of it are the
4 components of the holdings. At the same time, it reflects
5 value transfer. Now, I don't know how -- My view is that
6 the value transfer disappears in the event of a failed
7 merger.

8 So, we--the problem--I think that the reason why
9 we are going around and around this question is because we
10 have two scenarios in mind. So, there is the scenario
11 which I believe that you are calling "the real world/what
12 actually happened," and the scenario of what could have
13 happened. And so, I am telling you that, of course, in
14 the real world, we are exchanging the Shares at the price,
15 at the Market Price. What I'm telling you is the best
16 estimate of the Market Price in the but-for world would
17 have been a different price.

18 Q. Okay. You said that a reason--and you said it
19 this morning and you said it again in your testimony--

20 A. Um-hmm.

21 Q. --the reason SC&T's Share Price was undervalued
22 compared to its intrinsic value--

23 A. Um-hmm.

24 Q. --was the threat of value extraction--

25 A. Um-hmm.

1 Q. --and that's.

2 A. Yes.

3 Q. And you say that a reason that that--that there
4 is a threat to value extraction is the risk of a
5 transaction that favors the █████ Family at the expense of
6 SC&T's Shareholders.

7 A. Yes.

8 Q. Right?

9 So you said, I think just a minute ago, you
10 don't know--pull up the quote so I'm not misquoting you.
11 I will quote you: "I don't know how my view is that the
12 value transfer disappears in the event of a failed
13 merger." Right?

14 A. Can I see that? Is it possible for me to see my
15 own--or that is not possible? No?

16 PRESIDENT SACHS: It was in the Transcript. You
17 just said this.

18 Could you--oh, I'm sorry, I realize you don't
19 see the Transcript, so but please quote it again.

20 MR. GOPALAN: Sure. Maybe FTI could pull that
21 up, if it's possible, but if not, I can just read it out
22 again.

23 FTI TECHNICIAN: What was the time stamp?

24 MR. GOPALAN: 10:24:47.

25 THE WITNESS: Thank you.

1 BY MR. GOPALAN:

2 Q. So, my question to you, Professor Wolfenzon, is:
3 In the event of a failed merger, the succession issue is
4 unresolved, isn't it?

5 A. Yes.

6 Q. The [REDACTED] Family still has control of the Samsung
7 Group; correct?

8 A. Yes.

9 Q. So, SC&T's Shares would probably still be
10 trading at an undervalue; right?

11 A. It depends on what you think about what will
12 happen. Yeah, my understanding is that there were other
13 avenues to a--to effect the transfer, and the--should the
14 Shareholders vote no for one transaction, I don't see why
15 they would vote Yes for another, seeing that perception.

16 Q. That's not an opinion you express in any of your
17 Reports.

18 A. No. No, no, because I was not confronted with
19 this question.

20 Q. But this morning in your presentation, you said
21 succession has been a long-standing issue that's weighing
22 on SC&T's Share Price.

23 A. Yes. Yes, exactly, yeah. The acquisition--so
24 the acquisition of--and by the way, you are asking me
25 questions that I understand that I have not expressed an

1 opinion in my Reports.

2 But I--there were, as I understand it--and I
3 cannot remember now--other potential avenues for transfer
4 that might not have been involved SC&T, but again this is
5 a speculation.

6 Q. It's speculation.

7 And so, at the same time, undervalue in SC&T's
8 Share Price could have been unrelated to the Merger
9 specifically; right?

10 A. I don't think so.

11 Q. Well, you said that there were other
12 transactions possible to the Samsung Group to consolidate
13 succession; right?

14 A. Yes, but I haven't studied them, so I don't know
15 whether they were undervalued, overvalued; I have no idea
16 about that.

17 Q. It's also fair, then, to say, that your
18 conclusion that SC&T's undervalue is due entirely to the
19 Merger is also speculative.

20 A. My conclusion? Can you repeat the question?

21 Q. Sure. SC&T, the reason it was trading at an
22 undervalue historically is due to a threat of a merger or
23 a threat of succession problems.

24 A. A threat of a--yes, a threat of a merger.

25 Q. That's speculative, isn't it?

1 A. You know, there is evidence on that; right? So,
2 I mean, this is not purely speculative. If you look at
3 the premium on Cheil and a discount on SC&T, they are very
4 similar.

5 Q. Okay. We're going to come to that evidence
6 shortly.

7 A. Um-hmm, um-hmm.

8 Q. In your First Report, you analyzed SC&T's Share
9 Price between the Merger Announcement and the Merger Vote.

10 A. Yes.

11 Q. Right? So, that's between 26 May 2015 and
12 17 July 2015.

13 A. Yes.

14 Q. And you concluded that SC&T's Share Price was
15 affected by the terms of the Merger Announcement.

16 A. Yes.

17 Q. It was affected by the Merger Ratio,
18 specifically.

19 A. Yes.

20 Q. Let's go to your First Report's Paragraph 48.
21 Let me read this for you: "As I explained in this
22 section, the Korean system for the determination of merger
23 ratios is open to exploitation and, in the case of
24 SC&T-Cheil, an unfavorable exchange ratio for SC&T's
25 shareholders was achieved through two particular

1 mechanisms: selection of the timing of the merger by the
2 boards of SC&T and Cheil, and the potential manipulation
3 of the stock price of SC&T."

4 A. Yes.

5 Q. I read that correctly?

6 A. Yes.

7 Q. Now let's look at your Second Report.

8 A. Yes.

9 Q. We'll go to Paragraph 50. Again, I'd like to
10 read this for the record: "In our First Reports, Dr.
11 Duarte-Silva and I explained that there are three
12 principal reasons why the stock market prices of SC&T did
13 not capture the intrinsic or Fair Market Value of SC&T and
14 Cheil on the date of the merger vote. We noted that, most
15 importantly, on the day of the vote, the stock market
16 prices already incorporated the threatened value transfer
17 from SC&T to Cheil."

18 I read that correctly?

19 A. Yes.

20 Q. Threatened value transfer was not one of the two
21 reasons you set out in your First Report.

22 A. No.

23 Q. The words "value transfer" don't actually appear
24 anywhere in your First Reports.

25 A. No.

1 Q. But you say now that it's the most important
2 reason why SC&T was not priced fairly as of 17 July 2015.

3 A. Yes.

4 Q. It didn't just become the most important reason
5 between your First Report and your Second Report?

6 A. I've been--you know, I've been reading them and
7 studying them and analyzing this case, yes.

8 Q. You just overlooked it in the First Report.

9 A. That's a very strong word. I think that I--you
10 know, I might have thought about it, but I didn't include
11 it, yes, but that's it.

12 Q. But it's the most important reason. You just
13 missed it.

14 A. If you ask me today, I think so.

15 Q. Let's take a look--

16 A. You asked me--sorry, let me just--

17 Q. Sorry.

18 A. --say it correctly, yes.

19 Q. Let's take a look at what you say about that
20 reason in your Second Report. It's Paragraph 52 of your
21 Second Report.

22 Now let me read this again: "In his Second
23 Report, Dr. Duarte-Silva addresses Professor Dow's
24 disagreement with the proposition that the stock market
25 prices already incorporated the threatened value transfer

1 from SC&T to Cheil prior to the merger vote, and concludes
2 they are without merit. In my view, the fact that the
3 market prices already incorporated the threatened value
4 transfer from SC&T to Cheil is not surprising."

5 And then you list a series of subparagraphs.

6 A. Yes.

7 Q. So you're summarizing here what Dr.
8 Duarte-Silva's--Yes.

9 Q. --opinion is?

10 A. Yeah.

11 Q. And his opinion was that SC&T's Share Price
12 incorporated threatened value transfer.

13 A. Yes. It was a very--yes, I thought the evidence
14 was convincing.

15 Q. You say you're not surprised by his conclusion;
16 right?

17 A. Yes.

18 Q. Are you actually offering your independent
19 opinion that SC&T's Share Price was
20 incorporated--incorporated threatened value transfer--

21 A. I haven't done, so if you are--
22 (Overlapping speakers.)

23 Q. Let me repeat that question.

24 Are you actually offering your independent
25 opinion that SC&T's Share Price incorporated threatened

1 value transfer on the Merger Vote Date?

2 A. So, I--the analysis is not mine. I haven't run
3 the numbers. I've seen the analysis, and I've read it,
4 and I found it convincing.

5 Q. Have you reviewed all the evidence that Dr.
6 Duarte-Silva looked at?

7 A. Absolutely all the evidence?

8 Q. Yes.

9 A. No.

10 Q. So, you're just endorsing Dr. Duarte-Silva's
11 analysis; right?

12 A. I'm not sure what you mean by "endorsing." My
13 apologies for not--I just don't want to make a statement
14 that is--when I don't understand exactly the nuances of
15 the word.

16 I read the analysis--sorry, I read the analysis.
17 I look at the graphs, and I--you know, and that convinced
18 me the same way that when I form an opinion about an
19 academic decision and I read a paper, I do not
20 necessarily-- run the analysis myself. I read the report,
21 I read the paper, I read the analysis, and I trust, you
22 know, the result.

23 Q. That was enough for you, Dr. Duarte-Silva's
24 analysis, to reach the conclusion?

25 A. Yes.

1 Q. There are many reasons why a stock might trade
2 at an undervalue to its intrinsic value at a given point
3 in time; right?

4 A. Yes.

5 Q. And you didn't perform any event study before
6 the Merger Announcement linking news of the SC&T-Cheil
7 merger to decline in the SC&T Share Price.

8 A. I didn't.

9 Q. And neither did Dr. Duarte-Silva.

10 A. No.

11 Q. You didn't consider, in fact, any other
12 potential impacts on SC&T's Share Price in the lead-up to
13 the Merger Announcement; right?

14 A. What do you mean "consider"? In what report?

15 Q. In either report. We--you just testified that
16 there are many reasons why--

17 A. Yes.

18 Q. --a Share Price might have been undervalued?

19 A. Yes.

20 Q. --and you didn't consider anything other than
21 the potential merger.

22 A. Well, the evidence on the value transfer is very
23 convincing.

24 Q. You didn't consider any developments, for
25 example, in the Korean Stock Market more generally in that

1 period.

2 A. No.

3 Q. You didn't consider how SC&T's peers in the
4 construction industry were doing at the time either, did
5 you?

6 A. Yeah. I read reports of the--you know, that the
7 construction industry was not doing well.

8 Q. Okay. I suggest to you that it's very
9 unreasonable to narrowly identify one reason for a stock
10 price's undervalue over a period of several months.
11 What's your response to that?

12 A. You think that--so you are telling me that the
13 evidence that I presented is--or that Dr. Duarte-Silva
14 presented is not convincing? Is that the question?

15 Q. Not quite. We'll come to that evidence in
16 a--shortly. My point is that you've accepted that there
17 are various reasons why a stock might trade at an
18 undervalue.

19 A. Yes.

20 Q. And my suggestion to you is that, with that
21 understanding, it's unreasonable not to look at any other
22 factors as explaining why a Stock Price might be down;
23 right?

24 A. You know, one should look at so--I don't know
25 what the standards are here, so let me tell you what we do

1 in academic research. We do not consider all
2 possible--you know--try to consider possible theories that
3 explain the same aim--and then we provide also evidence in
4 favor of the, you know, theory we are trying to prove.

5 Q. Okay. Let's look at some of that evidence.

6 In your Report, you described the evidence that
7 Dr. Duarte-Silva relies on as strong. Sound right?

8 A. Yes.

9 Q. Okay. Let's look at CRA-48, please.

10 And before we get into the text of the document,
11 let me ask you: You also say that market commentary from
12 the time supports the theory of value extraction that Dr.
13 Duarte-Silva has articulated.

14 A. Yes.

15 Q. And so, when you--sorry, go ahead.

16 A. Yes. So--and I'm sure that you are going to
17 show me evidence that, you know, not everybody was
18 thinking the same way, yes. But, you know, the, you know,
19 several reports that I read indicated that, yes.

20 Q. So, you reviewed several reports on this issue;
21 right?

22 A. Um-hmm.

23 Q. And some of them said that--some of them didn't
24 mention value extraction at all; correct?

25 A. That is true.

1 Q. Now, this is one that Dr. Duarte-Silva relied
2 on, presumably you also reviewed; is that right?

3 A. I don't remember.

4 Q. So, Dr. Duarte-Silva cited three reports. He
5 relied on three reports for this--for his idea that SC&T's
6 Share Price traded at undervalue due to value extraction.

7 Do you un--

8 A. So--

9 Q. I'll just finish that question.

10 So, is that consistent with your understanding?

11 A. So, I don't remember how many. I just want to
12 say that the argument does not rely solely on this report;
13 right? So there is this evidence of the value transfer,
14 as well.

15 Q. Right. But Dr. Duarte-Silva relies on three
16 reports.

17 A. Um-hmm.

18 Q. And you described his evidence as strong, didn't
19 you?

20 A. Yes.

21 Q. Okay. So, let's look at one of those reports
22 now.

23 A. I have to say that, you know, there is--there
24 are different pieces of evidence; right? There is the
25 evidence on the value transfer, and then there is the

1 evidence on the, you know, market commentary. The fact
2 that one piece of evidence is not as strong, as I'm sure
3 you're going to show me now, doesn't necessarily mean that
4 the entire--taken together, the entire evidence is weak,
5 but I'll stop there and wait for your question.

6 Q. When you write a paper in your field, you cite
7 to evidence to support the assertions you make; correct?

8 A. Yes.

9 Q. So, it's a reasonable assumption that the
10 evidence that Dr. Duarte-Silva relies on and which you
11 validate should substantiate what he's saying; correct?

12 A. It should. You know, I don't like--you know, in
13 my--in my field of study, we don't--you know, we try to
14 review all the evidence for and against, yes.

15 Q. Okay. So, let's go to the first paragraph, the
16 third sentence, please, and if we could highlight that.
17 It starts with "we attribute the recent pullback."

18 So--sorry, just for context, this is a--an
19 Analyst Report by Samsung Securities from January 2015.

20 A. Yes.

21 Q. And as I mentioned, it's one of the Reports that
22 Dr. Duar--one of the three Reports Dr. Duarte-Silva relies
23 on in his First Report as evidence about SC&T's Share
24 Price reflecting the possibility of value extraction?

25 A. Yes.

1 Q. Now, this Report says: "We attribute the recent
2 pullback in the price to fresh concerns about--over the
3 Roy Hill Project, the possibility of provisioning for the
4 Saudi Qurayyah IPP Project, and third, rumors of a Merger
5 with Cheil Industries, which listed on December 18, 2014."

6 The fact is this one and two here have nothing
7 to do with the Merger; right?

8 A. Yes. But--yes, this is talking about the
9 decline in price.

10 Q. Yes.

11 A. Yes. So, this analyst, I do not think is--and
12 maybe we can go to the evidence, but I don't think this
13 analyst is saying that the decline in the--in the
14 deviation from SOTP but...

15 I mean--go ahead.

16 Q. My point is just that these--these two factors
17 may have led to a decline in SC&T's Share Price in advance
18 of the Merger; right?

19 A. From--I don't know from when to when.

20 Q. Well, the Report was published in January 2015;
21 right?

22 A. Okay. They could have--yes, they could have led
23 to a decline.

24 Q. And neither you nor Dr. Duarte-Silva bothered to
25 try to investigate the price impact of these factors?

1 A. No.

2 I mean, people--you know--you know, analysts
3 will come up with a million reasons why prices can go up
4 and down. The--as I--as I--as I keep saying, there is
5 very striking evidence of a value transfer by computing
6 the--I mean, I apologize for repeating this again, but if
7 you ask me: Yes, I did not consider the other two for a
8 decline in price. I did find, however, very strong
9 evidence for a value transfer, and I think it's
10 unreasonable to collect all possible speculations and
11 analyze them all. I think that we've analyzed or I've
12 analyzed--reviewed evidence of a value transfer in--that
13 was presented by Dr. Duarte-Silva.

14 Q. Dr. Duarte-Silva explained that the entire--the
15 single reason SC&T traded at an undervalue before the
16 Merger Vote was fear of the Merger.

17 A. Um-hmm.

18 Q. You can't agree with that, can you?

19 A. The entire reason?

20 Q. Correct.

21 A. You could have--I mean, I propose other
22 rationales, right, in my Report.

23 Q. What you don't propose is other--other impacts
24 on the Share Price that could have driven it down
25 unconnected to the Merger; right?

1 A. No, the reason why I don't--the reason why I'm
2 not finding this conversation that illuminating on the
3 "value transfer" theory is that it's one-sided; right?
4 So, what is very striking about the data, again, is that
5 whenever the discount increases, there is a commensurate
6 increase in the premium, which I don't think theory one or
7 two witnesses heavily explain.

8 But again, I haven't--you know, you put me on
9 the spot with this, and that would be--that would be my
10 reaction to this evidence.

11 Q. Let's--let's look at some of the evidence that
12 you--I think you've been alluding to now. In Paragraph 53
13 of your Second Report, you say: "First, the Sum Of The
14 Parts of SC&T is well below its Market Value of Equity
15 leading up to the vote. Second, and conversely, the Stock
16 Market Value of Equity of Cheil was above its Sum Of The
17 Parts."

18 A. Um-hmm.

19 Q. Right? This the evidence you were talking about
20 is strong?

21 A. Yes.

22 Q. And if you look to what you cite to in
23 Paragraphs--well, in Footnotes 52 and 53, you direct us to
24 see Dr. Duarte-Silva's Report.

25 A. Um-hmm.

1 Q. Right?

2 A. Yes.

3 Q. So, why don't--why don't we do that. We'll go
4 to Figure--Dr. Duarte-Silva's Second Report, Paragraphs 68
5 and 69.

6 And actually, I think we can just go to
7 Figure 4, which is beneath that.

8 So, the green part of this table is supposed to
9 illustrate the discount for SC&T to the sum of its parts;
10 is that right?

11 A. Yes.

12 Q. And the blue part is supposed to show the
13 premium for Cheil to the sum of its parts?

14 A. Yes.

15 Q. But the Sum Of The Parts analysis that forms the
16 basis for this graph, that's Dr. Duarte-Silva's own
17 analysis; right?

18 A. That is true.

19 Q. He doesn't cite any third-party Analyst Reports
20 to substantiate the data on the table?

21 A. So, the way the--this--well, of course he's--I
22 mean, he's not taking this analysis from somebody else.
23 He's doing this analysis himself and I--he, you know, he
24 collects--you know, that he collects data from Analyst
25 Reports to determine what are the right comparables, he

1 uses Market Prices. So, he, you know, he clearly explains
2 all the sources of information, so I don't understand what
3 do you mean when he doesn't cite sources.

4 I mean, he is citing his--and the reason why he
5 doesn't cite sources is because he cites where he gets the
6 data from what the Reports he uses to find the
7 comparables, but, of course, this is his own analysis.

8 Q. You're aware that methodology underlying this
9 analysis is disputed in this Arbitration?

10 A. The--

11 Q. The methodology that he adopted to come up with
12 these figures is disputed.

13 A. Some of it--I believe that, you know, people
14 have different opinions about--about the methodology, but
15 if you tell me exactly what is the--in dispute, I can--but
16 I--yes, I know.

17 Q. Okay. In light of the fact that it is
18 disputed--

19 A. Um-hmm.

20 Q. --you didn't think it was necessary to test or
21 compare any part of Dr. Duarte-Silva's analysis against
22 third-party analysts, your own research, anything else?

23 A. I didn't--I didn't do it, no.

24 Q. As an independent expert, you were happy just
25 accepting what Dr. Duarte-Silva did?

1 A. I mean, "accepting" is--is a loaded word. What
2 I did is I reviewed the methodology, as I explained, which
3 is consistent with my view of how the SOTP should be
4 computed. I thought that, really, this was a very careful
5 methodology. I--I--I reviewed the sources of the data--I
6 mean, everything seemed to be done properly.

7 I don't think that--so, I didn't think that it
8 needed, kind of, my independent analysis. I--again,
9 this--I take this evidence as valued because I think that
10 it's been done correctly. The same way that I read the
11 academic paper and not always go and replicate the study
12 to believe its conclusions.

13 Q. Okay. Just staying on Figure 4 for a second, do
14 you see that between April and May 2015, Figure 4 shows
15 that Cheil was trading at a premium?

16 A. Between May and--

17 Q. Between April and May 2015.

18 A. Yes.

19 Q. So, you can see that by the blue--

20 A. Um-hmm.

21 Q. The blue being above the line, really.

22 A. Yes, I can see it.

23 Q. We could pull up CRA-104, please.

24 This was an exhibit to Dr. Duarte-Silva's
25 Report, and it's an Analyst Report prepared by Macquarie

1 Research, an Australian bank. If you see the date, it's
2 at the bottom, it's--of the Page--29th of April 2015.

3 A. Um-hmm.

4 Q. And if we go back to the top of the document on
5 the left, we see that the Share Price for Cheil is
6 KRW 166,500. And the Sum Of The Parts analysis, which is
7 just beneath that, the 12-month target, is KRW 190,000.

8 Do you see that?

9 A. Yes.

10 Q. So, at least some analysts in this same period
11 didn't think Cheil was trading at a premium?

12 A. I--can you--can we go and look at the analysis
13 that this analyst is doing? I mean, I--I mean, if the
14 question is: Is there a person who did not agree or did
15 not come up with the same number as Dr. Duarte-Silva?
16 Yes. But I haven't reviewed the methodology of this
17 specific analyst.

18 Q. The point really is just that others disagreed
19 to the point where they saw that Cheil was also trading at
20 a discount.

21 A. Dr. Duarte-Silva has computed the--you know, you
22 are showing me one--you are showing me one Analyst Report.
23 My reading of the evidence--not the evidence. My reading
24 of the Analyst Reports around this period was that Cheil
25 was trading at a premium. If you selective--if you select

1 one out of many--and I don't have the data with me showing
2 a discount--I have nothing to say. I have to agree that
3 this is a discount. Although, again, I have to say that I
4 have--this is the opinion of an analyst. I haven't
5 reviewed the methodology of this analyst. I don't know
6 what comparables this analyst is using. I don't know
7 whether this analyst is correcting the way that
8 Dr. Duarte-Silva corrected his Sum Of The--these
9 multiples.

10 So--yes. If you--if you give me a number, and
11 you want me to compare this number with 166 versus--what
12 is the comparison here?

13 Q. 190,000.

14 A. Yes.

15 So, the other thing that I would have--that I
16 have to say about Analyst Reports is that this is a price
17 target; right? So, this is an expectation of what the
18 price would be in 12 months; right? So, if I show you--I
19 mean, having said what I said. So, if I show you, for
20 example, that--that, you know, the price target for
21 Wal-Mart, right, is above its Market Price, you would not
22 conclude that there is a holding-company discount; right?
23 So, I mean, this is an aspirational price, but--and again,
24 I haven't reviewed the methodology here.

25 Q. Right. And they use the Sum Of The Parts

1 analysis to derive that aspirational price; right?

2 A. They--they are try--by aspirational, and let me
3 be clear here, I mean the--what the price as the name
4 suggests should be in 12 months from now.

5 Q. Professor Wolfenzon, there is a very fundamental
6 interdependence between your evidence and
7 Dr. Duarte-Silva's, isn't there?

8 A. Interdependence. So, I--you know, if you're
9 asking me whether I read his Report, yes.

10 Q. I mean, you relied heavily on his evidence
11 regarding so-called "threatened value transfer" as a means
12 to disregard SC&T's Share Price and validate the use of
13 the Sum Of The Parts analysis; right?

14 A. I use a lot of his--I use his evidence, yes.

15 Q. And then he relies on your evidence to not apply
16 a holding-company discount to the Sum Of The Parts
17 analysis that he does; right?

18 A. I think he does rely on my evidence for the
19 absence of a holding-company discount. My evidence--I
20 wouldn't say that I have evidence--well, I have some
21 evidence plus some theoretical--well, what I would call
22 theoretical results.

23 Q. Your good-faith academic opinion about the
24 holding-company discount?

25 A. Exactly.

1 Q. Right. And the end result of this
2 interdependence is--

3 A. So, again, I'm not--I'm not sure what--what--you
4 know, the loaded word here "interdependence." I--I wrote
5 an analysis saying that there is a holding company--that
6 there's no holding-company discount, and Dr. Duarte-Silva
7 seems to agree with that. He presented some evidence that
8 I find persuasive, if that's what you're asking--you know,
9 that's in the Reports, yes.

10 Q. Well, the end result of this interdependence is
11 that you--Dr. Duarte-Silva estimates a Share Price of
12 SC&T, it's double the Market Price on the same day; right?

13 A. Again, you keep insisting on that. These
14 are--you're comparing apples and oranges.

15 Q. It's a value that's so much higher than SC&T's
16 Share Price has ever been in its history; do you agree
17 with that?

18 A. It is--well, I have to review the--the--I have
19 to review the evidence, but saying that--you know, saying
20 that a stock is valued above its historical value doesn't,
21 you know--doesn't tell me anything. It is a value that is
22 above the current Market Price because it is a value that
23 is computed under different assumptions.

24 Q. It's an estimate of Intrinsic Value that's
25 100 percent higher than the Market Price on the same day;

1 correct?

2 A. It is--it is--and I won't dispute that is
3 100 percent higher than--than the current market. I--I
4 would say that is these are apples and oranges because the
5 evidence suggests that the current price is affected by
6 this value transfer, and that is not reflected in the
7 but-for world.

8 So, I mean--if you--I mean, want me to
9 accept--I--I can--happy to accept facts, is the--if the
10 number that he gets two times the current Market Price,
11 yes, but again, my explanation for that is that these are
12 apples and oranges.

13 Q. You've also testified today that you're unsure
14 whether succession issues would weigh on SC&T's Share
15 Price in the but-for world; right?

16 A. Did I?

17 Q. This is the same testimony that we highlighted
18 on the screen earlier.

19 A. Well, if--yes, okay.

20 Q. You don't think it's unreasonable--you don't
21 think it's unreasonable to assume that the Intrinsic Value
22 would be realized in a Share Price in that event?

23 A. Can you--can you explain what event you have in
24 mind?

25 Q. The event being that, upon a rejected merger,

1 there would still be succession issues that the [REDACTED] Family
2 would need to resolve and that SC&T's price would,
3 therefore, still be depressed.

4 A. I find it very--I don't find it very convincing
5 that after the rejection of a Merger the family would come
6 and try again. As I--as I told you, there is evidence
7 that they mentioned that they were not going to try again,
8 and there were alternative plans for the group
9 restructuring.

10 Q. So, your evidence depends on the factual
11 assumption that the [REDACTED] Family wouldn't reattempt this
12 Merger?

13 A. The--the--yes.

14 Q. Okay. Let's move on to a different topic. One
15 of the two reasons, that you identified in your First
16 Report, was the timing of the Merger.

17 A. Yes.

18 Q. Under Korean Law, the Exchange Ratio for Mergers
19 involving affiliates of the same chaebol is a function of
20 Market Prices of the target and acquiring company over the
21 preceding months; right?

22 A. Um-hmm.

23 Q. And the objective behind that rule is to protect
24 Minority Shareholders from unfair Merger Ratios that may
25 not be negotiated at arm's length between the Boards of

1 two companies?

2 A. Yes, um-hmm.

3 Q. And that rule differs to the rule applicable in
4 some countries, like the U.S. where the Exchange Ratio in
5 stock-to-stock Mergers is determined through negotiations
6 between the merging companies?

7 A. Yes.

8 Q. Your evidence is that (drop in audio)--your
9 evidence is that the timing of the Merger Announcements is
10 one way to manipulate the Merger Ratio?

11 A. Yes.

12 Q. And your suggestion is that the [REDACTED] Family
13 announced the Merger at the time when the SC&T's Share
14 Price was particularly low relative to Cheil's?

15 A. The Exchange Ratio, yes.

16 Q. The Share Price was particularly low, and that
17 led to the Exchange Ratio being--

18 A. Yes.

19 So what you want--you know, what--as you
20 correctly explained, the Exchange Ratio is, you know, a
21 tautology. It's the division of one price over the other.
22 And so, in this time, in theory, means that what you want
23 is this ratio to be as low as possible to--to--for the [REDACTED]
24 Family to transfer the maximum possible and--and keep as
25 large stake in the resulting NPV.

1 Q. The timing of the Merger Announcement was
2 controlled by the [REDACTED] Family; right?

3 A. I believe so.

4 Q. Nothing to do with Korea? Nothing to do with
5 the Government of Korea?

6 A. No--I mean, that was my understanding.

7 Q. Let's go to your First Report, Paragraph 52, and
8 Figure 4, if we could zoom in on that, please.

9 So here, you graphed hypothetical Merger Ratios
10 in the weeks preceding the Merger Announcement; right?

11 A. Yes.

12 Q. And the graph shows what the Merger Ratio would
13 have been had the [REDACTED] Family announced the Merger earlier?

14 A. Yes.

15 Q. The movement in the graph reflects movements in
16 SC&T's Share Price relative to Cheil's?

17 A. It's the--reflects movements in the--yes, in
18 the--it's the average of the prices over the one month,
19 one week, and one day.

20 Q. Right.

21 And you say, in the second sentence at
22 Paragraph 52: "Consistent with this analysis, the
23 mandated Exchange Ratio was particularly low on May 26,
24 2015 as compared with the ratio that would have applied on
25 earlier dates."

1 A. Yes.

2 Q. So, the lowest point on this figure is 0.35?

3 A. I think, yes. It's the--yes, that's the actual
4 Merger Ratio, yes.

5 Q. And that's about three SC&T Shares to one Cheil
6 share?

7 A. Yes.

8 Q. And the highest point on this graph is a ratio
9 of 0.42?

10 A. Yes.

11 Q. So, 0.35 is particularly low compared to the
12 other Merger Ratios set out here?

13 A. In this graph.

14 Q. 0.42 is not particularly low, to use your words?

15 A. 0.4--I mean, again, you are picking words--you
16 know, I have to be careful with my language. What I'm
17 saying, simply, is that 0.35 is lower than 0.42.

18 Q. Okay. And Professor Dow did a similar analysis
19 with the Merger Ratio, at different hypothetical
20 announcement dates, didn't he?

21 A. Um-hmm.

22 Q. And he used a longer time horizon?

23 A. Um-hmm.

24 Q. You discussed the results in your Report?

25 A. Yes.

1 Q. And you said the results are similar to yours?

2 A. Yes.

3 Q. Let's go to Page 90 of the First Dow Report, and
4 if we could bring up on the screen, please, Figure 21,
5 which is below Paragraph 218.

6 So, what this figure shows you is that the
7 hypothetical Merger Ratio would never have been higher
8 than 0.42 or thereabouts, had the Merger been announced at
9 any other point in 2015 before May 26. You don't disagree
10 with that?

11 A. It never would have been...

12 Q. It never would have been higher than 0.42, which
13 was the peak of your analysis.

14 A. I'm not sure what you are asking. So, are
15 you--can you ask--so, is the question--can you repeat the
16 question?

17 Q. Sure. And let me elaborate so it's clearer.

18 A. Yes.

19 Q. In your analysis, you covered two months, April
20 and May 2015.

21 A. Yes.

22 Q. Professor Dow's analysis goes back through to
23 January 20, 2015.

24 A. Yes.

25 Q. The peak of your figure showed a Merger Ratio of

1 0.42.

2 A. Yes.

3 Q. Professor Dow goes further back in time and
4 shows that, even if you go back to January, it would never
5 have gone past that.

6 (overlapping speakers.)

7 A. Yes, yes.

8 Q. Right. And you see the line, the dotted line in
9 orange at the top which is--

10 A. 0.35, yes.

11 Q. 1.35, and that's the Merger Ratio implied by
12 Dr. Duarte-Silva's Intrinsic Value analysis?

13 A. Yes.

14 Q. Right.

15 So, instead of 2.5 or three SC&T Shares to one
16 Cheil share, Dr. Duarte-Silva's analysis implies the
17 Merger Ratio should have actually been 1.35 Cheil Shares
18 to one SC&T Share. You agree with that?

19 A. Yes.

20 Q. So, the timing of the Merger, in the context of
21 the difference of opinion about Fair Market Value is
22 hardly a material reason, is it?

23 A. It is--well, it depends on what do you mean by
24 "immaterial." It is not--it is not the rationale that
25 would have taken you all the way to 1.35. I think we can

1 agree to that.

2 Q. In fact, it would have taken you a very small
3 way--

4 A. It would have taken you to, you know--you know,
5 if you pick a random number, it would be something very
6 likely higher than 0.35.

7 So, whether it's immaterial or not, it's a
8 little bit subjective, you know, going from 0.35 to 0.42
9 is 0.7, that's a 20 percent increase, which is not
10 insignificant.

11 Q. The numbers are what they are. 0.35 to 0.42
12 against 1.35, and I agree, material is a judgment call.

13 A. Yes.

14 Q. But it's a very small numerical difference;
15 agree? You agree with that?

16 A. Small--again, it is a difference that might be
17 significant for investors, but will not take you all the
18 way to 1.35.

19 Q. Okay.

20 A. Whether it's small--I mean, 20 percent, it's
21 20 percent. I don't know what you mean by a small, what
22 is a threshold for something being as small.

23 Q. Let's move on to the second of your two reasons
24 in your First Report for a low Merger Ratio, and that was
25 potential manipulation of the Stock Price. If we go to

1 Paragraph 53 of your First Report.

2 Now, in this paragraph, you say the potential
3 manipulation is a reason why we can't look to SC&T's Share
4 Price as a measure of Fair Market Value.

5 A. It's one of the reasons.

6 Q. That's one of the issues.

7 And you cite two Korean court decisions in
8 Footnote 22 for that?

9 A. Yes.

10 Q. So, one of those decisions, as you can see from
11 your footnote, is dated May 30, 2017.

12 (Witness bumps microphone.)

13 A. Apologies.

14 Q. I was just talking about the dates in your--

15 A. Yes, yes.

16 Q. May 30, 2016, is the date of one of those
17 decisions, and the other is June 8, 2017.

18 A. Yes.

19 Q. You reviewed both of those decisions?

20 A. I believe I remember looking at them, yes.

21 Q. And you call out two specific instances of
22 potential price manipulation in Europe?

23 A. Yes.

24 Q. That first is the nondisclosure of a major
25 contracts?

1 A. Yes.

2 Q. It's the contract relating to the construction
3 of a power plant in Qatar?

4 A. Yes.

5 Q. And the second is the reallocation of projects
6 from SC&T to another Samsung Group company?

7 A. Yes.

8 Q. Right. You didn't provide any analysis of the
9 impact of either event on SC&T's Share Price?

10 A. I didn't.

11 Q. You're aware that Professor Dow actually did
12 that analysis?

13 A. Yes.

14 Q. And he did that in his First Report?

15 A. Yes.

16 Q. And he found that the disclosure of the items
17 that you referred to, would have had at most a negligible
18 impact in SC&T's Share Price? You saw that?

19 A. Again, yes. I saw his comments, yes.

20 Q. And you didn't engage with any of that analysis
21 in your Second Report, did you?

22 A. It was--I comment on it. What I said in my
23 Second Report is that--the fact that one reason does not
24 explain the full magnitude of the value transfer doesn't
25 necessarily mean that it's not an important reason, and is

1 not a reason that is valid to consider.

2 Q. Let's see what you said in Paragraph 56 of your
3 Second Report.

4 So, you described Professor Dow's argument as
5 "misplaced," and you said: "I did not state and do not
6 consider that market manipulation alone was responsible
7 for the substantial undervaluation of SC&T's Shares by the
8 Stock Market in the run up to the Merger Vote."

9 That's right?

10 A. Yes.

11 Q. So, your response to the charge that you didn't
12 quantify any aspect--any impact of price manipulation--

13 A. Yes, I remember correctly that one of them--

14 Q. I'm sorry, let me finish the question.

15 A. I apologize.

16 Q. No problem at all.

17 Your response to the charge that you didn't
18 quantify any impact of price manipulation is that it
19 wasn't the only reason for SC&T's undervaluation?

20 A. Yes.

21 Q. That's your response?

22 A. (Witness reading) Let me read this.

23 Q. Yes.

24 A. I clearly state here that I do not consider
25 market manipulation alone was responsible for the

1 substantial undervaluation. Yes.

2 Q. He said that you didn't try to engage with his
3 analysis quantifying the impact on SC&T's Share Price?

4 A. I didn't--I agree with his analysis on the Qatar
5 project, and the other--there was the other event was not
6 a--was impossible to quantify.

7 Q. Okay. So, you agree they had no meaningful
8 impact on SC&T's Share Price?

9 A. I think it was a 2 percent impact.

10 Q. A negligible impact?

11 A. 2 percent.

12 Q. Okay. But you wouldn't know, yourself, because
13 you didn't quantify it?

14 A. I--at the time of writing this Report, I had not
15 quantified it.

16 Q. Okay. Now, based on the mechanisms we just
17 discussed--

18 A. Yes.

19 Q. --timing of potential price manipulation, you
20 describe in your Reports that the Merger Ratio was unfair.

21 A. Yes.

22 Q. Right? That's the word you use, "unfair."

23 A. Um-hmm.

24 Q. Is that an economic conclusion?

25 A. Well, by--I have to say that, you know, as I

1 described clearly in this Report, I--you know, before
2 preparing this Report, as you know, I had read Professor
3 Tiago--Professor Duarte-Silva's Report as well, so I was
4 aware of the fear of the merger theory.

5 Q. You didn't mention that in your First Report?

6 A. I didn't mention that in my First Report.

7 Q. The most important reason that you say--the
8 so-called most important reason you didn't mention it in
9 your First Report?

10 A. Yes.

11 Q. Did you know that certain SC&T Shareholders
12 sought to have the Merger annulled in Korea's courts on
13 the basis that the Merger Ratio did not reflect SC&T's Net
14 Asset Value?

15 A. Can you repeat the question?

16 Q. Sure.

17 Certain of SC&T's Shareholders applied to have
18 the Merger annulled in Korea's courts.

19 A. Um-hmm.

20 Q. On the basis that the Merger Ratio did not
21 reflect SC&T's Net Asset Value?

22 A. I think that that's the case that I cite here,
23 but I'm not sure. Yes. I mean, I was aware that there
24 were court cases against SC&T, yes.

25 Q. So, it's not either of the two cases that you

1 cite in your Report?

2 A. No.

3 Q. So, I take it you didn't review that decision?

4 A. No.

5 Q. Did you know that it existed?

6 A. If you will describe it to me, I would be able
7 to answer.

8 Q. So, it was a court case brought by SC&T's
9 Shareholders after the Merger, a few years after the
10 Merger-- well, it might have been just after the Merger
11 and decided a few years later, where they sought to annul
12 it on the basis that the Merger Ratio was unfair--

13 A. Then I was not aware of that Report--of that
14 Report.

15 Q. Okay. So, you cited two Korean Decisions to
16 support your opinion about price manipulation, but you
17 didn't look at every Korean Decision?

18 A. I didn't look at every Korean--yes, I didn't
19 look at every possible--every Korean Decision.

20 Q. And that's understandable because you're not a
21 lawyer, nor are you a Korean lawyer, to review all the
22 Korean court decisions and then know what's out there;
23 right?

24 A. I think it's evident, yes, I'm not a lawyer.

25 Q. I would like to take you to one of those

1 Decisions that is out there. R-242, please.

2 Now, on Page 2 of this--this is the judgment I
3 was referring to.

4 A. Um-hmm.

5 Q. On Page 2 of this, you see it's dated 19th of
6 December--19th of October 2017?

7 A. Yes.

8 Q. This Decision was issued after the two court
9 decisions that you rely on in your Report?

10 A. Yes.

11 Q. If we could go to Page 18, please. And zoom in
12 on the second large paragraph, and we can start--that's
13 right.

14 Now, the Court here is addressing the
15 plaintiff's allegations that the Merger Ratio was unfair
16 because Share Prices did not reflect objective value.

17 A. Um-hmm.

18 Q. And the Court says, and I will read the relevant
19 passage: "However, the Share Market Price of stock-listed
20 companies is set by many investors involved in the
21 securities market after examinations of the assets by
22 financials, earning power and future business prospect
23 publicly disclosed in accordance with the relevant laws,
24 which means that the Share Market Price of a corporation
25 reflects the objective value of the pertinent

1 corporations. Therefore, differences with the price
2 calculated by asset value or profit value cannot lead to
3 the conclusion that the above Share Market Price does not
4 accurately reflect the objective value of the stock-listed
5 companies."

6 A. Can you highlight it for me, please.

7 Q. Yeah.

8 Do you see that? Have I read it correctly?

9 A. I'm a bit slow. Apologies.

10 (Witness reviews document.)

11 A. Yes, I'm reading it. If you can ask me the
12 question, I am--I have to say--

13 Q. I haven't asked you a question yet.

14 A. Yes, okay. Go ahead.

15 I don't fully understand, in all honesty,
16 this--what they mean with "asset value" or "profit value."
17 These are not terms that I use in my professional life.

18 Q. Okay. Well, why don't we move to a lower part
19 of the paragraph, starting with the word "moreover." Let
20 me read that out.

21 "Moreover, even if the Share Market Price of
22 Samsung C&T's objective financial state including sales
23 and operating income exceeded that of Cheil, such
24 circumstances are insufficient to acknowledge the
25 appropriate Market Value is not reflected since it was not

1 influenced by improper methods that interrupt the
2 functioning of the market such as the Share Market Prices
3 of Samsung C&T and Cheil being intentionally manipulated
4 by the majority Shareholders."

5 Do you see that?

6 A. Yes, I can read that, yes.

7 Q. So, this Korean court found that there was in
8 fact no price manipulation; right?

9 A. Yes.

10 Q. And this Court reached that finding after the
11 two courts that you cite to?

12 A. I'm following you.

13 Q. And there is no attempt by you to reconcile the
14 difference between what this says and the decisions that
15 you cite to?

16 A. Well, this is the first time that I'm confronted
17 with this Article so--you know, I wouldn't have been able
18 to comment on it because I didn't review it.

19 Q. Okay.

20 A. Yes.

21 The same way--this is, by the way, similar to
22 the fact that, you know, there has been other court
23 decisions that I was not aware of that, you know, again
24 documenting other, you know--I would say who relies in
25 these firms, and I didn't--but I did include it in my

1 Reports, I don't know even know if it's on the record.

2 Q. But it was enough for you to consider the
3 allegations and to consider what was in those two
4 decisions that you cite, not analyze any price impact, and
5 accept that that's the reason why we could ignore SC&T's
6 Share Price; right?

7 A. As I'd said, here I looked--I was aware of these
8 two evidence of price manipulation. I agree with you that
9 I was--you know, I didn't quantify them. I reviewed the
10 evidence on timing, and I had read, although I see that
11 it's not in my Report, the "value transfer" theory. I was
12 not aware of this evidence at the time, you know, and I'm
13 not familiar with Korean courts and whether or not this is
14 the last word or not on these issues.

15 I read two court documents suggesting or
16 indicating that there had been price manipulation.

17 Q. You read two court documents, and that was
18 enough? You didn't feel the need to go any further than
19 that?

20 A. I didn't go any further than that, yes.

21 Q. Okay.

22 A. I thought that this was established by the
23 Courts, and that's what I say in my Report.

24 Q. I want to take you to one more passage in this
25 Judgment, you'll find it on the screen.

1 Right. Towards the--seven lines up from the
2 bottom, and I will read from it. It says: "There is no
3 evidence to acknowledge this," and it's continuing from
4 where I was quoting before, "there is no evidence to
5 acknowledge this in light of the following facts. The
6 stock trend for major construction companies that were in
7 competition with Samsung C&T is similar to that of Samsung
8 C&T, the Share Market Price fluctuates according to the
9 subjective judgments and the psychological factors of the
10 Investors before the merger is actualized and since the
11 share market reflects the predictions and outlook on the
12 corporate governance and the consequent expectation of the
13 market participants, is due to the nature of the share
14 market."

15 It might be over the page that last part of the
16 sentence.

17 So, the same Court considered the evidence and
18 found that there were reasons SC&T's Share Price
19 fluctuated having nothing to do with threatened value
20 transfer; right?

21 A. That's the opinion of the Court.

22 Q. "That's the opinion of the Court." Okay.

23 A. Yes.

24 Q. Let's go back to the holding-company discount.

25 So, it's your good-faith academic opinion that

1 we just don't apply a holding-company discount to a Sum Of
2 The Parts analysis?

3 A. Yes.

4 Q. It's always wrong to do so?

5 A. No. It's not always wrong to do so. In my
6 presentation today, I gave you cases where it is valid to
7 apply a holding-company discount; for example, if you
8 think that you are going to liquidate assets or Shares and
9 pay a capital gains tax.

10 Q. Now, there is a tension in what you said this
11 morning about illiquidity and capital gains tax, isn't
12 there? And I will elaborate because that's not clear.

13 You said that there's no discount that needs to
14 be applied due to potential capital gains tax because
15 there is no realistic chance of Samsung C&T cashing in on
16 its listed assets in the Samsung Group; right?

17 A. Yes, um-hmm.

18 Q. But then for illiquidity, you said that there is
19 at least some chance that the Company might sell and,
20 therefore, we shouldn't apply a discount due to
21 illiquidity.

22 A. No.

23 Q. That's not what you said?

24 A. No, no.

25 Q. Could you elaborate on that?

1 A. Huh?

2 Q. That was my understanding of what you said this
3 morning, sir.

4 A. No. No, no.

5 My point about that topic is that--when we think
6 about illiquidity with the idea of--the idea of an
7 illiquid asset and the reason why it's discounted is
8 because, just to put it in simple terms, is because it is
9 difficult to sell. And let me give you an example.

10 If I own shares of a private firm that doesn't
11 trade in the market, it's complicated for me to sell that
12 share. Why? I cannot call a broker and sell it
13 immediately. I will need to spend time and resources
14 finding a buyer. And there are other reasons. It might
15 be that, for whatever reason I want to sell my share,
16 because I need the money at a particular point in time, I
17 won't be able to, so that's what I think about my
18 definition of what an Illiquidity Discount is,
19 what--illiquidity of a liquid stock is.

20 Now, what I said about the holdings of SC&T is
21 that they could sell if they wanted to. They choose not
22 to sell, which is very different than saying it is
23 difficult or costly to sell, so that's why I don't see the
24 contradiction that you're referring to.

25 Q. Okay. And I think we will hear from Professor

1 Bae on that shortly.

2 I want to take you to one more Analyst Report,
3 if we could go to CRA-49.

4 So, you're familiar with this Analyst Report?
5 You cited it again this morning.

6 A. Yes, Nomura.

7 Q. Okay. Nomura Samsung C&T Report dated 23rd of
8 April 2015. You see the price of SC&T at the time is
9 61,400?

10 A. This is SC&T?

11 Q. Yes.

12 A. Yes.

13 Q. And the target price is 84,000?

14 A. Again, this is a target price, yes.

15 Q. Okay, if we scroll down the page under the
16 heading "Reiterate buy," it says--and it will be no
17 surprise to you this is one of the three Reports that
18 Dr. Duarte-Silva relies on: "We believe the stock
19 currently trades at a steep discount due to the merger
20 because of the market's concerns about SC&T's potential
21 merger with Cheil Industries. However, we continue to
22 believe that the merger will not take place."

23 So, this analyst didn't think the Merger would
24 occur; right? That's what it says.

25 A. Apparently.

1 Q. Now, let's go to Page 2 of the Report.
2 Figure 3.

3 Now, I think I saw this in your presentation
4 this morning.

5 A. Yes.

6 Q. Okay. So, this shows that SC&T's discount has
7 fluctuated over the years; right?

8 A. Yes, yes, um-hmm.

9 Q. In this analysts' view, SC&T traded at a steep
10 discount to Net Asset Value for years before the Merger,
11 say for that period in 2011-2012.

12 A. Yes. In some periods, yes.

13 Q. Okay. Now, a discount that's so long entrenched
14 and historical can't have related to a very specific
15 merger that's announced only in 2015, can it?

16 A. Several points. Again, I don't know how is this
17 computed. And I guess that the discount in 2009 cannot be
18 related--I mean, to a specific merger, could be--I mean,
19 it could be that there was expectations.

20 I am--I'm speculating. I have to be completely
21 honest, I just--the case takes place around 2015, and I
22 provided my opinion about what was causing the discount
23 then. I do not know what was causing the discount in
24 2008-2009. I haven't studied that period.

25 Q. Okay. Let's go to Page 3, please, at the bottom

1 of the page, just where it says "Valuation Methodology."

2 Now, it says: "We used the Sum Of The Parts
3 valuation to derive our target price."

4 A. Um-hmm.

5 Q. "We valued SSCT in two parts: The value of
6 stakes and affiliates at a 30 percent holding-company
7 discount."

8 A. Yes.

9 Q. "And (2) value of corporation."

10 So again, we see that the Sum Of The Parts
11 analysis is the same as the target price. That's how they
12 derived the target price?

13 A. Yes.

14 Q. And they apply a 30 percent discount to the
15 value of SC&T's holdings and listed affiliates?

16 A. Yes, they apply a 30 percent discount, but I
17 just--I want to make a point that I don't know if the
18 intention here is--if the intention here is to show that
19 analysts--some analysts apply a discount. They do. It's
20 not--it's not entirely clear to me why they do it. In
21 terms of what I think is a more reliable source, I will go
22 to the academic studies that I cited.

23 I don't know whether--I'm not sure where you're
24 going with this question, but I just wanted to make sure
25 that that's on the record.

1 Q. Yeah.

2 A. So, this is SOTP methodology that would again,
3 as I mentioned before, I'm not sure what--I mean, I
4 don't--I don't even think this is relevant, but again,
5 not--it doesn't give clear indication as to how it's
6 performed, but I don't--I don't deny the fact that
7 analysts come up with a, you know, discounts and premiums
8 and, you know, yes, and that is--that is why two things.
9 I believe first that one needs to understand what is going
10 on at a particular moment in time, to the best of our
11 ability, and; second that, you know, these wild variations
12 in the discount suggests that, you know, either there is
13 some reason for the discount that is time bearing, right?
14 For example, an illiquidity discount will be something a
15 little bit more permanent, and would not be--the liquidity
16 discount that Professor Bae will discuss, for example,
17 will be something a little bit more permanent, and would
18 not explain the time series that we see.

19 Or it is possible that there are different
20 reasons why the discount is applied or arises.

21 But again, I'm not sure if I'm answering the
22 question. Perhaps you could ask me a question.

23 Q. That's okay. It's really just to say to you,
24 it's your good-faith academic opinion we don't apply a
25 holding-company discount in SC&T's case; correct? "Yes"

1 or "no" answer.

2 A. I cannot answer "yes" or "no."

3 Q. Okay. Then please.

4 A. Because a discount is not a blind application of
5 a number. As I was explaining today in the morning, for
6 example, if you use multiples that you derive from
7 companies that are outside of Korea, you will be--you will
8 be overvaluing the holding company, and then, of course, a
9 multiple will vary. So, whenever you ask me should you
10 apply a multiple, I would say I need to see what is the
11 process of valuing the parts. And if I am satisfied with
12 the way that the parts are valued, that they are using a
13 holding company and so forth, perhaps even that there is
14 not an imminent sale of a stake, then I would--I would be
15 able to comment on that.

16 And what I was telling you or what I presented
17 in the morning is that, after having seen Dr.
18 Duarte-Silva's methodology, I believe that that
19 methodology incorporates the relevant reasons why a
20 discount could be there, and for that reason, I opine that
21 there was no need for a holding-company discount.

22 Q. Right.

23 And analysts who were looking at SC&T's price
24 evidently thought that-- they disagreed with your academic
25 opinion; right?

1 A. They disagree with that opinion.

2 Q. And they applied a 30 percent holding-company
3 discount to the value of stakes and affiliates of SC&T.
4 That's what this says; right?

5 A. This particular analyst, yes. I mean, I have to
6 say--an analyst, you know--I have to say that, after
7 reading many reports, it's very inconsistent the way in
8 which they apply a discount. Sometimes it's lower,
9 sometimes it's higher, sometimes they provide the reasons,
10 sometimes the reasons are not consistent. Sometimes they
11 don't apply a discount at all.

12 It is possible that what they're trying to do is
13 they are trying to kind of match the price to some extent
14 and just apply a discount where the valuation is off.

15 Q. But that's speculative because you don't know
16 that?

17 A. That's speculative.

18 Q. Okay. And it wouldn't surprise you to know then
19 that this analyst is not alone in applying a 30 percent
20 discount or a significant discount to SC&T's stakes--

21 A. It's possible they're not doing all of the
22 adjustments that I described in my presentation earlier on
23 today.

24 Q. Okay. I have one last set of questions, and it
25 won't take long.

1 A. I'm happy--well, not happy, but I will answer
2 that.

3 Q. You weren't instructed to opine on the
4 likelihood that the Merger would be approved; right?

5 A. I was not.

6 Q. You were not.

7 But you conducted some analysis anyway of the
8 Share Prices of SC&T and Cheil in the lead up to the
9 Merger Vote?

10 A. Some analysis, yes.

11 Q. Right, you did. Let's take a look at that
12 analysis. It's in your First Report, Figure 2, which is
13 below Paragraph 42.

14 Okay. You plot in Figure 2 a graph showing the
15 daily market capitalization of SC&T as a share of the sum
16 of the total Market Capitalization of SC&T and the Market
17 Capitalization of Cheil; that's right?

18 A. Yes.

19 Q. And we're talking about Market Capitalization
20 here, so you used SC&T's and Cheil's Market Prices as
21 inputs?

22 A. Yes.

23 Q. This graph has nothing to do with Sum Of The
24 Parts estimates?

25 A. No.

1 Q. And the red line is fixed. That's a ratio of
2 the number of Shares pre-merger SC&T Shareholders would
3 have in the combined entity.

4 A. Yes.

5 Q. Relative to the number of Shares pre-merger
6 Cheil Shareholders would have; that's right?

7 A. Yes.

8 Q. The blue line is dynamic, and that represents
9 the relative movements in SC&T and Cheil's Share Prices in
10 the lead-up to the Merger Vote; correct?

11 A. Correct.

12 Q. So, Paragraph 42, the last couple of sentences.
13 You say: "If before the Merger Vote, values reflected the
14 post-merger split of value described in Paragraph 40, the
15 ratio plotted should be 28.8 percent."

16 Now, 28.8 percent is the red line.

17 A. Yes.

18 Q. "This is reflected in my findings. As the
19 Merger Vote approached, this ratio moves closer to
20 28.8 percent."

21 A. Yes.

22 Q. Now, in Footnote 12 of this paragraph, you say:
23 "In the last month of trading leading to the Merger Vote,
24 the ratio is not exactly 28.8 percent, reflecting an
25 expectation that approval of the Merger was possible, but

1 not certain."

2 A. Yes.

3 Q. Is that right?

4 But SC&T and Cheil's Share Prices approached
5 28.8 percent in a relative sense; right?

6 A. Yes.

7 You can see that, at the very--of course at
8 the--if you want to--if you look at the very last day, it
9 goes up, it goes down. It's a line that is closed, yes.

10 Q. And it gets closer and closer as we approach the
11 Merger Vote? That's what you say?

12 A. It depends--yes, yes. Okay.

13 (Overlapping speakers.)

14 A. My apologies.

15 Q. Sorry about that.

16 You say, as the Merger Vote approached, this
17 ratio moves closer to 28.8 percent?

18 A. Yes. Now that--if you--if you look closely,
19 that's a statement of the general trend. But if you look
20 closely, there are ups and downs. I'm just--okay.

21 Q. The trend reflects the market's expectation the
22 Merger is likely to be approved; doesn't it?

23 A. Likely, yes.

24 Q. More likely than not to be approved?

25 A. Yes.

1 Q. Okay. I don't have any more questions.

2 PRESIDENT SACHS: Thank you very much.

3 We go to redirect.

4 MS. VAZOVA: We have no redirect.

5 PRESIDENT SACHS: You have no redirect.

6 I turn to my co-Arbitrators. Do you have
7 questions to Professor Wolfenzon?

8 ARBITRATOR GLOSTER: I don't have any, thank
9 you, Chair.

10 PRESIDENT SACHS: That is not the case, I see
11 Professor Mayer has no questions either. I have no
12 questions, either.

13 We thank you for your presentation, and you are
14 now released as a witness, and we will have our lunch
15 break, resuming at 12:30.

16 MS. VAZOVA: Mr. Chairman, before we break, can
17 I address a very brief housekeeping issue? I think we can
18 let Professor Wolfenzon go.

19 PRESIDENT SACHS: Yes, Professor Wolfenzon, we
20 do not need you any more.

21 THE WITNESS: Shall I leave?

22 PRESIDENT SACHS: Yes, please.

23 (Witness steps down.)

24 MS. VAZOVA: So, very quickly, we just wanted to
25 revert to the Tribunal on the question of Post-Hearing

1 Submissions, the Parties have discussed, and we've worked
2 cooperatively, and we have a proposal for the Tribunal we
3 thought it may be useful to share now, to the extent the
4 Tribunal finds it useful to reflect upon that.

5 PRESIDENT SACHS: Okay.

6 MS. VAZOVA: So, as to Post-Hearing Briefs, the
7 Parties are in agreement and propose that we do one round
8 of Post-Hearing Submissions limited to 50 pages, submitted
9 simultaneously on April 29, so about 30 days and change
10 after the conclusion of the Hearing.

11 PRESIDENT SACHS: Yes?

12 MS. VAZOVA: And then, to the extent the
13 Tribunal finds it helpful, to have further oral closings,
14 we would request that those be held during the week of
15 May 9 or May 16. I should be up front, the proposal comes
16 from our end of the table, due to the circumstances that
17 Ms. Lamb alluded to, Korea has very graciously agreed to
18 that request. During that two-week time period, we can do
19 every day except for May 10th, so obviously all this is
20 subject to the Tribunal's preference and availability, but
21 this is the proposal that the Parties wanted to put
22 forward.

23 PRESIDENT SACHS: Very good. Thank you. We
24 will discuss this during lunch.

25 (Whereupon, at 11:45 p.m. (EDT), the Hearing was

1 adjourned until 12:30 p.m. (EDT) the same day.)

2

3

AFTERNOON SESSION

4

PRESIDENT SACHS: We can resume.

5

Very briefly, as far as your joint proposal is

6

concerned, we are happy with one round of Post-Hearing

7

Briefs, 50 pages. We would assume this is without

8

quotations because otherwise it would be a little bit on

9

the short side given the various issues you may have to

10

deal with. Our tendency would have been to provide for 75

11

pages rather than 50, but since you agreed on 50, that's

12

your agreement. But we think that we had, I mean, quite

13

important Witness Statements here of this week and also

14

Expert Opinions, and considering also the size of the case

15

and the complexity of certain issues, 75 pages would

16

probably be justified.

17

Simultaneous, yes. April 29, I think, was the

18

deadline that you said. We would propose May 11 in the

19

week of May 9 that would be suitable for the Members of

20

the Panel. We would propose 3:00 p.m. CET. That would be

21

9:00 New York time, but if you prefer to have it at 9:30

22

or 10:00, let us know.

23

And also, we arbitrators have agreed to meet

24

relatively shortly thereafter on 24th of May to continue

25

deliberating on the case.

1 So, that's for the further proceedings. Is
2 there anything you would like to add?

3 MR. NYER: I think on the page counts, we're in
4 your hands, if you think 75 pages is justified, then we
5 are happy to go with this. And communicating by eye
6 contact with my colleague, I think we have an agreement
7 across the table.

8 MS. VAZOVA: We are in agreement, yes.

9 MR. NYER: One question is whether the Tribunal
10 would propose to submit questions on topics that you would
11 be especially interested in seeing covered.

12 PRESIDENT SACHS: Yes. We will do that probably
13 in the course of next week. I mean, already the three
14 questions that Professor Mayer put to you obviously are
15 relevant questions, and we already had your first input on
16 that, but there may be two or three other questions that
17 we will put to you.

18 MR. NYER: Thank you.

19 PRESIDENT SACHS: But the idea is please answer
20 them, you're not limited, of course, to answering them.
21 You can, in essence, in particular tell us what you think
22 the results of the evidentiary hearing has brought towards
23 your respective positions.

24 All right. Then we will now hear Professor Bae.

25 PROFESSOR KEE-HONG BAE, RESPONDENT'S WITNESS, CALLED

1 PRESIDENT SACHS: So, good afternoon, Professor
2 Bae.

3 THE WITNESS: Good afternoon.

4 PRESIDENT SACHS: You teach and live in Toronto,
5 so you will testify in English.

6 THE WITNESS: Yes.

7 PRESIDENT SACHS: And the topic of your expert
8 testimony is the application of a holding-company discount
9 to SC&T.

10 In front of you should be a declaration that we
11 would like you to read to the record.

12 THE WITNESS: Okay. I solemnly declare upon my
13 honor and conscience that my statement will be in
14 accordance with my sincere belief.

15 PRESIDENT SACHS: Thank you very much.

16 You will now be given the floor for your
17 presentation.

18 THE WITNESS: Thank you.

19 PRESIDENT SACHS: Did we receive a handout?
20 Okay.

21 THE WITNESS: Can I start?

22 PRESIDENT SACHS: The floor is yours.

23 DIRECT PRESENTATION

24 THE WITNESS: Good afternoon. My name is
25 Kee-Hong Bae. I'm a Professor of Finance at Schulich

1 School of Business at York University.

2 Speaking on myself, I was born and raised in
3 Korea, got most of my education there. After I got my
4 Master's degree from Korea University, I worked for local
5 investment banking firm for several years, and after that
6 I went to U.S. and got my Ph.D. in finance from the Ohio
7 State University. And after that, I have taught at
8 various universities in Asia and Canada, and right now I'm
9 teaching at York University.

10 My main research areas is in corporate
11 governance and international public finance, and I
12 published numerous articles in top finance, accounting and
13 economics journals, and I received several research awards
14 for my research.

15 Recently, I got the Eminent Scholar Award from
16 the Korea-America Finance Association for my contribution
17 to the Association to the Korea finance community.

18 Now, I have a few qualifications to be an expert
19 in the Korean capital market. Perhaps the most relevant
20 one is the tunneling paper that I published in top finance
21 journal as to the mergers by Korean business groups, which
22 I think is closely related to current arbitration. And I
23 have few other qualifications as shown in this slide.

24 Now, I was instructed to provide my expert
25 opinion on three issues. The first issue is whether

1 holding company account--holding-company discount-should
2 be applied to the SOTP value. And the second issue is
3 whether the only reason for SC&T's discount to the Net
4 Asset Value is so-called the "threatened value transfer,"
5 so that if the Merger had been rejected, SC&T would have
6 traded at the Net Asset Value or SOTP Value. And the last
7 issue is whether the holding-company discount should be
8 applied to a legal holding company only but not to de
9 facto holding company such as SC&T.

10 Now, let me start with the first issue, which is
11 about holding-company discount.

12 Now, holding-company discount refers to the
13 difference between a holding company's SOTP value, or net
14 asset value, and the market price of that company.

15 Now, Dr. Duarte-Silva's and Professor
16 Wolfenzon's opinion is that SC&T's fair market value in
17 the counterfactual scenario should be represented by the
18 SOTP value as computed by Dr. Duarte-Silva, and no
19 holding-company discount should be applied to that SOTP
20 value. Doing so would be double-counting because Dr.
21 Duarte-Silva uses comparable conglomerates in valuing
22 SC&T.

23 Now, my opinion is that Dr. Duarte-Silva's SOTP
24 value does not correctly measure SC&T's but-for fair
25 market value. Why is that? The reason is that his

1 valuation approach fails to consider SC&T's two important
2 governance problems with affect the fair market value.

3 Now, the first governance problem has to do with
4 the ownership structure of the Samsung business group, and
5 this is a generic governance problem that is present in
6 all chaebol-related companies.

7 The second governance problem is more specific
8 to SC&T, and it has to do with the affiliated holdings in
9 publicly traded companies which I call "listed holdings."

10 Now, let me explain in detail why this
11 governance problem can cause a so-called "holding-company
12 discount."

13 Now, this figure has an ownership structure of
14 Samsung business group as of 2015. This figure was
15 constructed by Korean Fair Trade Commission. This is
16 complex, as can you see it. It's like a subway map in New
17 York. Now in most companies, one unit of share only
18 carries only one vote. Now, the problem with this complex
19 ownership structure is that you can get around the
20 one-share-one-vote rule so you can exercise more voting
21 power than the actual share ownership that you own.

22 So, this ownership structure of Samsung business
23 group or a business group that has similar ownership
24 structure, it creates a gap between cash flow rights or
25 what we call "actual share ownership" and voting rights.

1 In the context of the Samsung C&T, I explained the details
2 in my Report. In the context of the Samsung C&T, the
3 cash-flow rights of the controlling █████ Family is only
4 1.4 percent whereas the voting right that can be exercised
5 through affiliated companies is 13.6 percent. So, the
6 ratio of voting rights to cash-flow rights is almost 10
7 times. What this means is that you can exercise as many
8 10 times voting power as one unit of share that you
9 actually own.

10 So, that gap is called the "wedge." Why is that
11 a problem? Because the large wedge creates an incentive
12 for the controlling family to engage in self-interested
13 transaction, which is often called "tunneling
14 transaction," at the expense of minority investors.

15 Now, "tunneling" refers to an activity or
16 transaction through which a controlling family can benefit
17 themselves at the expense of other shareholders in the
18 company. So the larger the wedge, the lower the firm
19 valuation. This is well-documented in finance literature.
20 Why? The larger the wedge the market perceives high
21 tunneling risk, so that they demand higher risk premium,
22 apply a higher discount rate to the other cash flow that
23 can be generated by the company, so the firm valuation
24 becomes lower.

25 Now, the second problem is more specific to the

1 SC&T. Now, SC&T has large amount of listed holdings, and
2 those holdings are not for sale, and it sacrificed
3 shareholder value. Now, why is that? The next graph
4 shows the SC&T's assets and income by asset type. Now, I
5 constructed this figure from Dr. Duarte-Silva's SOTP
6 valuation, so I didn't create any number here. I'm just
7 taking his numbers in this graph.

8 Now, the left-hand side is the amount of assets,
9 and the right-hand side is the amount of income generated
10 from the asset. Notice that the blue color is the amount
11 of asset from core business--it's hard to make use
12 (referring to clicker)--okay. So, the blue color shows
13 the amount of core asset, and notice that the amount of
14 asset is \$6.2 billion, whereas the amount of asset from
15 affiliated holdings is \$12.3 billion, and most of it is
16 listed holdings; in other words, affiliated holdings in
17 public companies, so that's about \$11 billion.

18 Now, notice that SC&T, the main business is
19 construction, and yet two third of the asset is in the
20 form of affiliated holdings or unlisted holdings, which
21 has nothing to do with the main business of Samsung C&T.

22 And notice also that the income generated from
23 core business is \$613 million, so return on assets from
24 core business is almost 10 percent.

25 On the other hand, the income generated from

1 affiliated holdings, which is essentially dividend income,
2 which tends to be quite low in Korea, is only
3 \$193 million, so the return on asset from affiliated
4 holdings is only 1.57 percent, so you can see that the
5 presence of large amount of listed holdings depresses the
6 profitability of Samsung C&T.

7 More importantly, this kind of asset composition
8 sacrifices shareholder value. Why? Because a large
9 amount of capital, you know, \$11 billion, are tied up in
10 the form of listed holdings, which is essentially a
11 non-income-generating asset, and which has nothing to do
12 with the main business.

13 So, this asset competition sacrifices the
14 opportunity to generate higher return to shareholders.

15 So, the question is: Why is it that SC&T's
16 management invests such large amount of assets in
17 affiliated holdings that create little value to
18 shareholders? If the SC&T's management acts in the best
19 interests of shareholder, they have no reason to invest
20 such a large amount in the affiliated holdings.

21 So, why do they do that? Because the listed
22 holdings are not to generate profit but to provide control
23 power for the controlling █████ Family. In other words,
24 Samsung C&T's management makes an extremely inefficient
25 investment decision to benefit the controlling family;

1 and, by doing so, they hurt the minority shareholder
2 value. Now, that is tunneling. It is a corporate
3 decision that benefits controlling family at the expense
4 of the other shareholders in the company.

5 So, knowing this governance problem, the market
6 values the listed holdings significantly lower than their
7 market prices. Now, this is the key governance problem
8 causing a huge discount by the market on SC&T.

9 And notice also that this governance problem has
10 existed for a long time, long before the proposed Merger.
11 That is why you see a huge discount long before the
12 Merger.

13 Now, Dr. Duarte-Silva talks about the
14 double-counting problem. His argument is that his
15 valuation approach already considers the governance
16 problem because he used similar chaebol companies as peer
17 companies so that applying a holding-company discount is
18 double-counting.

19 Now, remember that his valuation approach valued
20 the core business and listed holdings separately, okay?
21 So, even if he's right, his argument applies to the
22 valuation of core business only, not to the valuation of
23 the listed holdings.

24 Now, he values listed holdings at the market
25 prices, and I argued that approach is wrong because it

1 doesn't consider governance problem associated with the
2 huge amount of listed holdings, so discounting listed
3 holdings has nothing to do with double-counting.

4 And notice that the proportion of listed holding
5 of Samsung C&T is much higher than the peer companies as
6 shown in the next slide.

7 As you can see, the proportion of listed
8 holdings to total asset for SC&T is as much as 60 percent,
9 whereas the other companies, the peer companies, at best
10 is only 5.2 percent. So, SC&T is, in fact, de facto
11 holding company; the other companies are not. So,
12 holding-company discounts should be significantly higher
13 than SC&T than for the other peer companies.

14 So, in sum, Dr. Duarte-Silva's SOTP value does
15 not correctly measure SC&T's fair market value in the
16 counterfactual scenario because his valuation, even though
17 the governance problems which I just discussed, which
18 caused a large discount. In fact, by ignoring this
19 governance problem, he overstates the but-for fair market
20 value significantly on the Merger voting date.

21 Now, let me turn to the second issue which is
22 about the threatened value transfer.

23 Now, Dr. Duarte-Silva's opinion is that the only
24 reason for SC&T's discount is due to so-called "threatened
25 value forever" from SC&T to Cheil due to Merger, so that

1 if the Merger had been rejected, SC&T would have traded at
2 the net asset value.

3 Now, if his theory is right, okay? If
4 threatened value transfer is the only reason for the
5 discount, then one should see neither discount nor premium
6 for the New SC&T. Why is that? Because the Old SC&T's
7 discount and Cheil's premium should cancel out each other
8 in the New SC&T. In New SC&T there is no value transfer,
9 so you should not see any discount.

10 So, I look at the analyst reports to see whether
11 there is no discount for the New SC&T because, according
12 to Dr. Duarte-Silva, there is no value transfer for New
13 SC&T, so I examined the analyst reports for three months
14 right after the Merger, from October to December of 2015.
15 So, what's the evidence? The evidence shows that there is
16 a significant discount in all analyst reports.

17 Now, according to Dr. Duarte-Silva, the market
18 expected the Merger starting from the IPO of Cheil
19 company, which took place in December 2014. So, if there
20 is no expectation of the Merger, then there is no value
21 transfer, so you should not see a discount.

22 So, I examined the analyst reports during the
23 time period in which the market would not have expected
24 the Merger. Particularly, I examined the first quarter of
25 2014, time period which the market was not likely to have

1 expected the Merger.

2 So, what's the evidence from the analyst
3 reports? Again, you can see that a significant discount
4 from all analyst reports. So, the evidence from the
5 analyst report suggests that the "threatened value
6 transfer" story or theory is not consistent with the
7 evidence. You see significant discount long before the
8 Merger and after the Merger.

9 Now, let me talk to the other question of
10 whether SC&T would have traded at the SOTP value if the
11 Merger had been rejected. Now, I argue that it is highly
12 unlikely. Why? Because the reasons to discount SC&T's
13 Net Asset Value, which is two governance problems that I
14 discussed earlier, would have persisted, even if the
15 Merger had been rejected.

16 The first problem of tunneling risk would have
17 continued to exist. Let me explain why that could be the
18 case.

19 In the next slide--in the next slide, I
20 calculated the wedge ratio, which I discussed earlier,
21 which measures the tunneling risk in SC&T from 2010 to
22 2020. So, as you can see, from 2010 to 2015, the
23 magnitude of the wedge ratio is around 10 times. Now,
24 after the merger, the wedge ratio dropped to 1.2 times.
25 In other words, the interests of controlling family is

1 more aligned with the minority shareholders.

2 Now, the important question is: If the Merger
3 had been rejected, what would happen--what would have
4 happened to this wedge ratio? Okay. That's the
5 counterfactual scenario. What would have happened? Now,
6 given the history of the wedge ratio and given that the
7 █████ Family had strong incentives to keep affiliated
8 holdings for control purposes, the reasonable assumption
9 is that it would have stayed the same. The ratio would
10 have remained the same at the magnitude of around 10
11 times. In other words, tunneling risk would not have
12 changed if the Merger had been rejected.

13 Now, what about the second governance problem
14 associated with the listed holdings? Again, this problem
15 would have continued. Now, notice that, as long as SC&T
16 keeps the listed holdings as their assets, then the
17 governance problems associated with the listed holdings
18 would continue, and controlling █████ Family had very strong
19 incentives to keep listed holdings regardless of the
20 Merger outcome. To maintain control power, the █████ Family
21 is going to keep the listed holdings, particularly those
22 in Samsung Electronics. Now, this is the point that Dr.
23 Duarte-Silva pointed out yesterday with which I completely
24 agree.

25 Now, another important reason why I think SC&T

1 share value is not going to be net asset value in the case
2 of Merger rejection is because of the canceled Hyundai
3 Merger in 2018.

4 Now, Hyundai proposed a merger between Hyundai
5 Glovis and Hyundai Mobis in 2018. Now, this proposed
6 merger from Hyundai business group is quite similar to
7 Samsung Merger in many respects.

8 Now, first, Hyundai Group is the second largest
9 business group in Korea. The Samsung Group is the largest
10 business group, and Hyundai Glovis is to Hyundai Mobis as
11 Cheil is to SC&T.

12 Now, the mergers were for purpose of family
13 succession from father to son, and both mergers were
14 opposed by Elliott. The difference is that Hyundai Merger
15 was canceled due to a petition by Elliott and other
16 investors, and Samsung Merger was completed. So, by
17 looking at what happened to the Hyundai Mobis stock price
18 when the Merger was canceled, we can make an informed
19 inference as to what would happen to Samsung C&T share
20 price in the case of Merger rejection.

21 So, what happened? When the Merger was
22 canceled, the left-hand side shows the magnitude of stock
23 price changing. The horizontal axis shows the trading day
24 relative to the event day, event day zero, event date of
25 the Merger cancellation announcement.

1 Now, you can see that right after the
2 cancellation announcement, the price of Hyundai Mobis,
3 which is like Samsung C&T, dropped by as much as
4 13 percent by 20 trading days after the announcement.

5 So, this evidence suggests that if Merger had
6 been rejected, if the Merger between Samsung C&T and Cheil
7 had been rejected, the market reaction would have been
8 negative, so the SC&T share price would have dropped. So,
9 if anything, the discount would have become even wider.

10 Now, let me turn to the last issue that
11 holding-company discount should be applied to legal
12 holding company only but not to a de facto holding company
13 like Samsung C&T. That's Professor Wolfenzon's opinion,
14 and that claim is based on two studies on Korean
15 companies. One study is by Professors Park, Suh & Kang,
16 which I call "PSK Study," and this study shows that legal
17 holding companies undervalued relative to other companies
18 but not to de facto holding company. The other paper is
19 by Professors Almeida, Park, Subrahmanyam, and Professor
20 Wolfenzon, which I call APSW Study, they show that some
21 chaebol companies, which they call "central firms," are
22 undervalued.

23 Now, Professor Wolfenzon claims that this
24 finding that some companies are undervalued is mostly
25 driven by legal holding companies only, not de facto

1 holding companies.

2 Now, I list three reasons to disagree.

3 First of all, de facto holding companies
4 selected in the PSK Study are very different from SC&T.
5 Furthermore, the PSK Study did not include SC&T in their
6 study. It's not in the 18 de facto holding companies
7 sample. So, one cannot generalize the study's findings to
8 the context of SC&T because it's not in the sample.

9 The second reason which I think is more
10 important is that the PSK Study is subject to what we
11 financial economists call "endogeneity bias." Now, in
12 layman's terms, what it means is that you compare oranges
13 and apples, which are not comparable. And by doing so,
14 you make a wrong conclusion such as the one that only
15 legal holding companies are at discount.

16 Now, to see how the endogeneity bias played the
17 role in the PSK Study, I got the exactly same data from
18 them, and I replicated their study, and I confirmed their
19 findings, and then I used a sample which is subject to
20 less endogeneity bias, and I ended up with a very
21 different conclusion.

22 So, my new finding is that, as common sense will
23 suggest, the legal status has nothing to do with
24 undervaluation. It is equity stake in other companies; in
25 other words, affiliated holdings or listed holdings are

1 related to the undervaluation. And that evidence makes
2 more intuitive sense because equity stakes in other
3 companies are related to the chaebol governance problem as
4 I discussed earlier, whereas their legal status says
5 nothing about the governance problem.

6 The legal holding companies are undervalued
7 because they hold a large amount of the affiliated
8 holdings, and that's why they are at discount, not because
9 of their legal status.

10 Now, the last reason is that Professor Wolfenzon
11 argues that their findings are largely driven by the legal
12 holding companies. Now, this study by Professor Wolfenzon
13 is actually a very good study. I have a high respect for
14 this study, but his claim I have to disagree because his
15 claim is not correct. The sample in the APSW Study
16 includes a total of 47 chaebols and more than 1,000
17 companies during the time period of 1998 and 2004.

18 Now, by 2004, which is the last year of the
19 sample period, there are only 20 holding companies in
20 Korea, and only one chaebol adopted the holding company
21 structure, legal holding company structure, according to
22 Korea Fair Trade Commission. So, it has to be the case
23 that the discount is likely to be driven by de facto
24 holding companies like Samsung C&T because there were not
25 many legal holding companies in this sample period.

1 So, to conclude, SC&T's share price is at
2 discount because of the governance problems, and the
3 apparent discount has nothing to do with the legal status
4 but has more to do with the listed holdings. And the
5 prevalence of listed holdings is the result of the
6 governance problem, which is that SC&T's management and
7 controlling shareholders prefer to hold large stake in
8 affiliated companies for control purpose, not for
9 maximizing shareholder returns. And these governance
10 problems would have persisted even if the Merger had been
11 rejected because controlling family has no incentive to
12 liquidate them.

13 So, the SC&T's Fair Market Value would have been
14 significantly lower than the SOTP Value as computed by Dr.
15 Duarte-Silva in the counterfactual case of the Merger
16 rejection.

17 Thank you very much for your attention.

18 PRESIDENT SACHS: Thank you very much, Professor
19 Bae, and we will now go to cross-examination.

20 Ms. Burack?

21 MS. BURACK: Yes. Thank you, Mr. Chairman.

22 CROSS-EXAMINATION

23 BY MS. BURACK:

24 Q. Good afternoon, Professor Bae. Thank you for
25 being here.

1 Do you have a copy of your report with you? If
2 not, we can give you one.

3 A. I have.

4 Q. Okay, excellent.

5 Let's start with just a few questions on your
6 background.

7 A. Um-hmm.

8 Q. You currently sit on the Corporate Governance
9 Research Committee for the Korea Corporate Governance
10 Service; is that right?

11 A. Yes.

12 Q. And the Korea Corporate Governance Service, or
13 "KCGS," that's a non-profit group that provides corporate
14 governance and proxy research services in Korea?

15 A. I believe so. It is a sister organization of
16 the Korean Stock Exchange.

17 Q. And you consider that to be a reputable
18 organization?

19 A. I believe so.

20 Q. And it's knowledgeable about the research and
21 the topics which it works in?

22 A. You mean the staff members there or who are
23 knowledgeable?

24 Q. You would consider reports issued by the KCGS to
25 be credible and knowledgeable?

1 A. Well, I mean, generally credible, but that
2 doesn't mean what they are saying is always correct.

3 Q. Let's talk about some of the materials you rely
4 on in your Report.

5 So, in your Report, you criticize
6 Dr. Duarte-Silva's use of the Sum Of The Parts valuation
7 on the basis that that valuation can be influenced by a
8 valuator's interests or it might be affected by biased
9 estimates; is that right?

10 A. Yes. And that is the opinion of the
11 Professor--the NYU Professor of Finance who is well-known
12 for his valuation.

13 Q. Yes. I believe you cite actually in your Report
14 an article by Professor Damodaran?

15 A. Yeah. And I agree with him.

16 Q. And Professor Damodaran is a recognized expert
17 on valuation topics?

18 A. Yes.

19 Q. He's the world's leading authority on the
20 subject, would you say?

21 A. I would--I would think so, yeah.

22 Q. Sometimes called the "Dean of Valuation"?

23 A. Okay, yeah. But when it comes to the valuation
24 of Korean companies, I don't think he is as well-informed
25 as I am.

1 Q. Understood.

2 And we can actually just look--I want to orient
3 you. You cite to Professor Damodaran's Article in
4 Paragraph 67 of your Expert Report.

5 A. 67, yes.

6 Q. 67.

7 And that is on Page 28.

8 A. Yes.

9 Q. And the Article you cite, it's in Footnote 56,
10 Aswath Damodaran, "What is valuation?" And it's cited
11 here as Exhibit KHB-25. I believe that might be a
12 typographical error. I would like to pull up KHB-24 and
13 just confirm that's the Article that you're referring to.

14 And is this, in fact, Professor Damodaran's
15 Article that you were citing to in your Report?

16 A. Can you increase the font?

17 Q. Sure.

18 A. So, I cannot find this sentence, that we almost
19 never stock value in company. Where is it? I don't see
20 that--

21 Q. I believe it's on Page 2 of this document. It's
22 right under that second heading "Value First, Valuation to
23 Follow."

24 A. Yeah.

25 Q. So--

1 A. That's the statement,-- I cite it. My apology,
2 sorry.

3 Q. And in this Article, Professor Damodaran is
4 discussing potential sources of bias in valuations and how
5 to mitigate them; correct?

6 A. Yes.

7 Q. And if we go to Page 4, the paragraph at the
8 bottom of that page, one source of bias that Professor
9 Damodaran identifies is attributed to institutional
10 factors. He writes: "A significant portion of bias can
11 be attributed to institutional factors."

12 Do you see that?

13 A. Yes.

14 Q. Okay. And he then goes on in that same
15 paragraph to discuss an example where equity research
16 analysts have to grapple with demand from their employers
17 that they bring in investment banking business; is that
18 right?

19 A. Yes.

20 Q. And in other words, Professor Damodaran is
21 arguing that companies subject to these equity analyst
22 valuations, they may be actual or potential investment
23 banking clients of the analysts' own employer; correct?

24 A. Yes. This is a well-known problem.

25 Q. And as you say, it's a well-known problem, and

1 so what the Professor is saying here is that, when looking
2 at sell side firm analyst reports, we need to be cautious
3 and attuned to potential bias in those reports; correct?

4 A. Yes.

5 Q. And so, for example, when looking at a sell side
6 analyst report, we might be hesitant to fully embrace the
7 conclusions of that report if it was coming from the
8 trading house of the very same company that stood to
9 benefit from the proposed transaction; right?

10 A. Yes.

11 Q. Because that would, in fact, be a classic
12 example of institutional bias affecting valuation within
13 Professor Damodaran's cautionary framework?

14 A. Can you repeat the last comment?

15 Q. Sure.

16 A. I got lost.

17 Q. Apologies.

18 Because, in fact, that situation where a sell
19 side analyst from a trading house affiliated with the same
20 company that's involved in the transaction--

21 A. Yeah, so that's why they create Chinese wall
22 between Research Department and the Sales Department.

23 Q. Sticking on this page, if we could go back up
24 now, I want to turn to the second full paragraph in this
25 report.

1 And in this paragraph, Professor Damodaran is
2 considering how use of discounts can infect a valuation
3 with bias; correct?

4 A. Where is it? The use of the--

5 Q. Yes. He writes: "The use of discount,
6 illiquidity and minority discounts, for instance, are more
7 typical in private company valuations for tax and divorce
8 court, where the objective is often to report as low a
9 value as possible for a company."

10 Do you see that?

11 A. Okay, yes.

12 Q. Okay. Do you agree with Professor Damodaran's
13 statement?

14 A. Well, again, it depends on the bias. You may
15 have an incentive to inflate the valuation of private
16 company, so it's all about the incentive.

17 Q. Correct. And in fairness, the preceding
18 sentence talks about the use of premiums, control and
19 synergy are good examples being used in acquisition
20 valuations where the bias might be to purchase--

21 (Overlapping speakers.)

22 A. Exactly. So, because of this biases from the
23 valuator, the most reliable of the valuation is the
24 market price, as Professor Dow claims, which I agree.

25 Q. Okay. We will get to Market Price, don't worry,

1 but I would like to just stick with this language from
2 Professor Damodaran for a few more moments.

3 A. Um-hmm.

4 Q. So, he states that illiquidity discounts are
5 more typical--more typical in private company valuations;
6 correct?

7 A. Um-hmm.

8 Q. And neither SC&T nor SEC are private companies;
9 right?

10 A. They are public companies.

11 Q. And he goes on to say that these illiquidity
12 discounts are typically used where the objective is to
13 report as low a value as possible; right?

14 A. Yes.

15 Q. And he gives a particular example of tax and
16 divorce court proceedings.

17 Do you see that?

18 A. Yes.

19 Q. So--sorry, I didn't mean to cut you off.

20 So, what he's saying here is that the reason why
21 he identifies bias in those particular contexts, tax and
22 divorce court proceedings, is because the very purpose of
23 using the discount is to reduce the liability in, for
24 example, a litigation context; right?

25 A. Yeah, in this context.

1 Q. Okay. And now, in your Report, you opine that a
2 liquidity discount or an illiquidity discount, perhaps,
3 should be applied to Dr. Duarte-Silva's Sum Of The Parts
4 analysis; right?

5 A. Can you point me to that paragraph?

6 Q. Sure.

7 Why don't we go to Paragraph 76 of your Expert
8 Report.

9 A. Yes.

10 Q. And you're discussing the discount throughout
11 this section, and you're welcome to look at it.

12 I want to direct your attention to, in
13 Paragraph 76, excuse me, you write that "discounts for
14 illiquidity can be as large as 30 to 50 percent."

15 Do you see that?

16 A. Yes.

17 Q. And to support that statement in Footnote 64,
18 you cite to an article on valuing thinly traded assets;
19 right?

20 A. Um-hmm.

21 Q. And that is cited as KHB-17.

22 A. Yes.

23 Q. Can we pull up that Article, please.

24 This is just the cover page, if we go to the
25 second page of the Article. The first line of the

1 introduction defines thinly traded assets as investments
2 for which there is no liquid market available; right?

3 A. Yes.

4 Q. And we can agree--right?--that SEC is the
5 largest company on the Korean Stock Exchange?

6 A. Um-hmm. Yes.

7 Q. And you will agree with me that there is a
8 difference between not wanting to sell shares and not
9 being able to; correct?

10 A. Yes.

11 Q. Okay. And would you also agree with me that if
12 I own shares in a holding company that itself may have
13 illiquid assets, I can still sell shares in the holding
14 company; right?

15 A. Yeah, but the holding company is at discount.
16 You're not going to get the full value of the Intrinsic
17 Value. You're going to have to trade at the, you know,
18 price which is much lower than the SOTP value or net asset
19 value.

20 So, I don't see the point of this line of
21 question or what is the question?

22 Q. The question was just simply I can buy or sell
23 my shares in a holding company; right?

24 A. Yes, any time. It's a public company.

25 Q. Elsewhere in your Report and in your

1 presentation this afternoon, you describe the phenomenon
2 called "tunneling"; right?

3 A. Can I elaborate on this illiquidity issue here?

4 Q. I think if your counsel would like to ask
5 further questions on it, they may return.

6 PRESIDENT SACHS: You will be given the
7 opportunity later in redirect.

8 BY MS. BURACK:

9 Q. Returning to my questions, you earlier in your
10 presentation and in your Report, you were describing a
11 phenomenon called "tunneling"; right?

12 A. Yes.

13 Q. And, broadly speaking, that refers to the
14 extraction of value by controlling shareholders from
15 minority shareholders; right?

16 A. Extraction is a pretty strong word. I'm saying
17 is that, it is an activity that benefit controlling
18 shareholder and by doing so, it can damage the shareholder
19 value of other minority shareholders.

20 Q. Okay. Let's go to Paragraph 54 of your Expert
21 Report, which is on Page 24.

22 A. Yes. Yes.

23 Q. And you see that you--you're describing a study
24 that you co-authored some time ago, and you mentioned
25 that, "in that study we examined two competing views about

1 business groups in emerging markets, the value-added view
2 and the tunneling view. The term "tunneling" was
3 originally coined to characterize the extraction of value
4 from Minority Shareholders in the Czech Republic."

5 A. Yes.

6 Q. So, extraction was your word in your Report?

7 A. No, it's not my word. It's the other word given
8 by the Professors who wrote the paper called "tunneling,"
9 Simon Johnson, Andre Schlipol, and I forgot the other
10 author's name. That is not my expression. It is the
11 expression I took from their study.

12 Q. Okay. You don't caveat it or qualify it in this
13 paragraph of your Report, do you?

14 A. Pardon me?

15 Q. You don't caveat it or qualify it or say this
16 isn't, sort of, the right way to think about it in this
17 paragraph of your Report, do you?

18 A. No. Why should I?

19 Q. In Footnote 39 in the same paragraph, you go on
20 to elaborate a bit on the tunneling view, and in the last
21 full sentence of that footnote, you write: "The tunneling
22 view of business groups is that the structure of business
23 groups can create conflicts of interest between
24 controlling families of business groups and minority
25 investors and controlling families have incentive to

1 siphon (tunnel) the firm's assets out of the firm to
2 increase their wealth at the expense of minority
3 investors."

4 A. Yes.

5 Q. And do you agree with that characterization of
6 "tunneling"?

7 A. Yes.

8 Q. And if we could just go to Paragraph 88 in your
9 Report, briefly. That's on Page 37.

10 A. Yes.

11 Q. And here, you're referring to an earlier section
12 in the Report as discussed in Section 3(c) and you write:
13 "The larger the wedge is the more investors perceive there
14 to be a tunneling (value extraction risk)."

15 Right?

16 A. Yes.

17 Q. And once again, value extraction in this
18 sentence there is no citation, so can I take that to be
19 your words?

20 A. This is the standard terminology we use in the
21 finance literature, so I have no reason to deviate from
22 that practice.

23 Q. Okay. Understood.

24 And in your Report, you described two event
25 studies of stock market reactions to Merger Announcements

1 of Korean companies; correct?

2 A. Um-hmm, yes.

3 Q. And the first of those--sorry.

4 A. Sorry.

5 Q. And the first of those studies looked at
6 reactions to Korean merger announcements between 1981 and
7 1987; right?

8 A. Yes.

9 Q. And then the second one looked at stock market
10 reactions to Merger Announcements more recently from 2000
11 to 2019; correct?

12 A. Yes.

13 Q. Okay. And in both cases you looked at the
14 reaction of stock prices after Merger Announcements in
15 order to determine whether they were consistent with this
16 tunneling thesis. That is, you looked at them to
17 determine whether the Merger was being perceived as
18 extracting value from minority shareholders?

19 A. In my first paper, in the paper that I published
20 in 2002.

21 Q. Okay. And it was your thesis in that paper that
22 falling stock prices indicated the market perceived a risk
23 of value extraction from minority shareholders; correct?

24 A. Not--not for all mergers. The mergers by the
25 largest chaebol companies.

1 Q. So, in those cases, in mergers between large
2 chaebol companies, falling stock prices in the wake of a
3 Merger Announcement reflected the market's perceived risk
4 that value would be extracted from Minority Shareholders?

5 A. Yes.

6 Q. Is that right? Okay.

7 And that first study, that was a very highly
8 regarded study; correct?

9 A. Yeah. It's well cited and then recognized by
10 finance scholars.

11 Q. And it was published in the Korean Journal of
12 Finance?

13 A. No. It's published in Journal of Finance which
14 we argue is top finance journal.

15 Q. My apologies. I stand very much corrected.

16 That's a peer-reviewed journal?

17 A. Yes, absolutely.

18 Q. And the study, just so we're clear, concluded
19 that price movements following Merger Announcements
20 between these chaebol companies we have been discussing
21 indicated that the market perceived mergers within those
22 chaebols as value destructive; right?

23 A. Yes, that was our interpretation.

24 Q. Okay. And then the second event study, the one
25 that covered the more recent period from--sorry, the

1 second study that you conducted in the more recent period
2 from 2000 to 2019, that's something that you conducted for
3 purposes of this Arbitration; correct?

4 A. Yes.

5 Q. It hasn't been published anywhere yet?

6 A. No.

7 Q. Has it been peer-reviewed?

8 A. Which one are you talking about?

9 Q. I'm talking about the study that you conducted
10 for purposes of this Report.

11 A. I only look at the announcement returns, which
12 is in Appendix Figure 5.

13 Q. And that work that you did reflected in Appendix
14 Figure 5, that's not published work; correct?

15 A. This figure--yeah. At that time I didn't write
16 the paper.

17 Q. Okay. And if you didn't write a paper, I
18 presume it hasn't been peer-reviewed?

19 A. I mean, I don't have a paper, so...

20 Q. Understood.

21 And according to this second study that you
22 conducted, you concluded that the market no longer
23 perceived mergers to be value-destructive, at least not on
24 average; right?

25 A. Which paragraph are you referring to?

1 Q. Sure.

2 I believe Paragraph--it would be 56 of your
3 Report, which is on Page 24 and 25 of the Report.

4 A. 56, yes.

5 Q. And specifically, I'm looking at--well, on
6 Page 25, but still that same paragraph, 56, you write:
7 "From 2000 to 2019, the market generally held the same
8 positive perception of mergers of companies in the top 30
9 largest chaebols and smaller non-chaebol companies and no
10 longer generally perceived chaebol mergers to be
11 value-destroying at least on average."

12 Correct?

13 A. Yes.

14 Q. I had a few questions about what you mean
15 because you have a few caveats, they're no longer
16 "generally perceived" and "at least on average." And my
17 question is what did you mean by those caveats?

18 A. If you look at the figure, which I think was
19 Appendix Figure 5 on Page 86. The figure above is copied
20 from my Journal of Finance paper which I published a long
21 time ago.

22 PRESIDENT SACHS: I'm sorry, Operator, can we
23 put there figure on the screen?

24 BY MS. BURACK:

25 Q. It's on Page 86, sir.

1 A. As you can see, the red line, red dotted line,
2 shows the price reaction of top chaebol-acquiring
3 companies. And right after the Merger Announcement, stock
4 price started going down. So, the market perceived that
5 news as bad news.

6 Now, if you look at the figure below, I did
7 exactly the same thing, simply using more recent time
8 period. The red dotted line, the pattern is quite
9 different. The stock price started moving up well before
10 the Merger Announcement; and then, after the Merger
11 Announcement, it kind of stabilized. It doesn't move.

12 So, if the market learned of the news of the
13 Merger Announcement, then they reacted positively. They
14 thought it's goods news, so it's quite different from
15 the--my earlier, you know, evidence. That's what I mean.

16 Q. Thank you, Professor Bae.

17 I want to go back now to Paragraph 57 B, unless
18 the Tribunal cares to look at these charts any longer, I'm
19 gong to move on back to the language of the Report.

20 PRESIDENT SACHS: No, no, we can move on.

21 BY MS. BURACK:

22 Q. So, in Paragraph 57 B where you're discussing
23 this study, again you wrote: "And no longer generally
24 perceived chaebol mergers to be value-destroying, at least
25 on average."

1 So, does that mean that in some cases that you
2 looked at in this more recent period from 2000 to 2019,
3 the stock price fell after the Merger Announcement and in
4 some cases it rose?

5 A. Yeah, probably that's the case, but on average,
6 it went up.

7 Q. Okay, understood.

8 Did you look into whether there was any rhyme or
9 reason to why the price might fall sometimes and rise
10 others?

11 A. No, at that time I didn't do any analysis.

12 Q. And did you consider the individual
13 characteristics of any of the mergers included in that
14 study--

15 (Overlapping speakers.)

16 A. No. I said all I have done is just to look at
17 the market reaction. That's all.

18 Q. Okay. And then you just averaged it out?

19 A. Yeah.

20 And that evidence is not really relevant to my
21 Expert Report because my Expert Report is about the
22 holding-company discount, so.

23 Q. With respect, sir, you included it in your
24 Report--

25 (Overlapping speakers.)

1 A. --which in retrospect I don't know why I did
2 that.

3 Q. And I believe you say in your Report that you
4 have not done any additional research to determine why the
5 results from your earlier study are different from the
6 results of this more recent study; right?

7 A. Yes. At the time of the writing.

8 Q. And just so I'm clear, neither of these two
9 studies that I have been talking about looked at reactions
10 in market price after the Mergers at issue were actually
11 approved or rejected; right?

12 A. I'm sorry, I didn't catch your question.

13 Q. So, neither study that we've been talking about,
14 the earlier one or this more recent one, neither one
15 looked at what was happening to the Merger Price after the
16 Merger at issue was actually approved or rejected?

17 A. No, we didn't look at the stock price pattern at
18 the Merger Voting date.

19 Q. Right.

20 A. Because the event study--in particular whatever
21 information is available--I mean, revealed to the market,
22 it is revealed at the time of announcement.

23 Q. And so, you focused just on the Stock Price--

24 A. That's a standard practice in our profession.

25 Q. So, would the market price after a Merger either

1 passes or fails be a relevant datapoint for your analysis?

2 A. No, not really.

3 Q. Okay. Earlier this afternoon, you discussed a
4 merger involving Hyundai.

5 A. Yes.

6 Q. Two companies of the Hyundai Group?

7 A. Yes.

8 Q. And you also discuss this in your Report, and in
9 your Report you talk about various ways in which the
10 Hyundai Merger was comparable to the Merger at issue in
11 this case; right?

12 A. Yes.

13 Q. And you note that the difference between the two
14 Mergers is that the Hyundai Merger was canceled whereas
15 the Samsung Merger went ahead and was approved; right?

16 A. Yes.

17 Q. And then--and I believe--I don't know if you can
18 pull this up. It was Slide 26 of Professor Bae's
19 presentation.

20 And you noted that the stock price of the
21 Hyundai company dropped sharply after the announcement
22 that the Merger in that case was canceled; right?

23 A. Yes.

24 Q. And I believe in your Report, when discussing
25 the same Stock Price, you said that was evidence that the

1 market devalued Hyundai's stock after the Merger was
2 called off; right?

3 A. Yes. That's why price dropped.

4 Q. Okay. Did you look at what happened to SC&T's
5 Stock Price after the Merger was approved on July 17,
6 2015?

7 A. I believe it dropped.

8 Q. And doesn't that then tell us, to use your
9 words, sir, that the market devalued SC&T's stock upon
10 news of the Merger's approval?

11 A. Yes.

12 Q. And then, wouldn't that evidence be consistent
13 with tunneling or the potential for majority shareholders
14 to extract value from the minorities?

15 A. You have to understand that the stock price is
16 determined by millions of different factors. That's why
17 we don't really make money in the stock market. It's very
18 difficult to predict.

19 Now, in my view, the reason why you see a big
20 drop in stock prices of Samsung C&T on Merger Voting Date,
21 is because the proxy war was over. So, there is no, you
22 know, room for further price appreciation. And then,
23 those who have participated in the proxy war, they p--you
24 know, they liquidated their--their investment to take
25 profit or for those who lose money, they cut their loss.

1 So, the game is over, so you get out of the market.

2 So, in my view, it is the liquidated trading,
3 which pressured down the other stock prices.

4 Now, proxy war is a--is essentially good for
5 shareholders because price tends to go up. But if the war
6 is over, then you're going to have to get out the market.
7 So, price dropped. Just supply and demand.

8 Q. Do you conduct any analysis of the affect of a
9 proxy--

10 A. No. I don't--I don't have to. I mean--

11 (Overlapping speakers.)

12 PRESIDENT SACHS: Let counsel first finish.

13 THE WITNESS: I apologize.

14 (overlapping speakers.)

15 THE WITNESS: I'm not used to this.

16 BY MS. BURACK

17 Q. It's very easy to feel like it's a conversation.

18 A. Yes. Sorry.

19 Q. No problem. Did you conduct any analysis on
20 these proxy effects in the case of the drop in SC&T share
21 price after the Merger was approved?

22 A. No, I did not.

23 Q. Okay. And did you conduct any analysis of
24 possible proxy effects in the case of the Hyundai Merger?

25 A. No, I did not.

1 Q. But, in the case of the Hyundai Merger, you felt
2 confident in concluding that that Merger, or the
3 cancellation of that Merger, the drop in stock price
4 reflected the market devaluing Hyundai's stock; right?

5 A. Yes.

6 So, my interpretation is that the market
7 devalued Hyundai Mobis stock because if the Merger is
8 rejected, then the tunneling risk is brought back to the
9 table again.

10 Now, if you look at my presentation slide as to
11 a wedge ratio--can we see the wedge ratio.

12 Q. Respectfully, Professor Bae, if it's responding
13 to my question, because if not--we will get to the wedge
14 ratio, I promise.

15 A. I'm answering your question.

16 Q. Okay.

17 A. I'm explaining why price dropped on the Merger
18 cancellation date in the Hyundai case.

19 Q. Okay, understood.

20 MR. NYER: Can we show the slide on the other
21 screen? It's, I believe, Slide 23 of Professor Bae's
22 slides. Is that--

23 THE WITNESS: Now, in many ways, as I said, the
24 Hyundai Merger is very similar to Samsung Merger, so the
25 wedge ratio of the Hyundai Mobis was quite high just like

1 the Samsung case.

2 So, if the Merger went through, the wedge ratio
3 would have dropped just like the Samsung case, but then if
4 the Merger is canceled, then it's going to be the status
5 quo, the tunneling risk would have remained the same. So,
6 that's bad news for Mobis Shareholders, so they devalued
7 Shares of Hyundai Mobis, so price dropped.

8 So, that's why I believe if the Merger had been
9 rejected in the Samsung case, a similar thing would have
10 happened. Price is likely to have dropped because the
11 risk of tunneling would have remained the same.

12 BY MS. BURACK:

13 Q. Well, since you want to talk about the wedge
14 ratio, I suppose we can go there.

15 So, in your Report, one of the things you opine
16 on is that SC&T is subject to a high governance risk due
17 to the large wedge between cash-flow rights and control
18 rights; correct?

19 A. Yes.

20 Q. Okay. And just to recap, the wedge you've been
21 describing this afternoon, that's the difference between
22 the █████ Family's cash-flow rights and its control rights;
23 correct?

24 A. Yes.

25 Q. And the existence of that wedge leads to--leads

1 to the market discount on a company like SC&T?

2 A. Because of that, the wedge. Because wedge--it
3 creates the, you know, conflict of interest between
4 controlling shareholder and minority shareholder. The
5 market perceive high risk and discount. That's why you
6 see undervaluation.

7 Q. Okay. And you have a figure in your Report that
8 illustrates this, but we can also use the figure--the
9 chart that you used in your presentations. That is
10 Slide 23 of the presentation you gave this afternoon.

11 And I believe what you're saying, Professor Bae,
12 is that this chart shows that the wedge ratio for Samsung
13 C&T decreased after the Merger occurred in 2015; right?

14 A. Yes.

15 Q. And you conclude from the decrease in that ratio
16 that, therefore, the threat of value extraction is
17 lessened from 2016 onward; correct?

18 A. I don't think I said that.

19 Q. Well, you would agree--right?--that
20 the--the--the lower wedge ratio after 2016 and onward,
21 reflects less tunneling risk because investors will
22 perceive there to be less of a risk of the value
23 extraction?

24 A. Yes. Yes.

25 Q. All right. And that's because the interests now

1 will be controlling shareholders, they have control and
2 cash-flow rights more aligned?

3 A. More aligned, yes.

4 Q. So, looking at this chart, is it possible that
5 the wedge ratio decreased in the case of Samsung C&T, the
6 wedge ratio decreased after the Merger because the
7 threatened value extraction, in fact, already happened?

8 A. That's a very interesting interpretation,
9 but--so, the wedge ratio decrease because there is no
10 value transfer?

11 Q. Well, if, in fact, the [REDACTED] Family had already
12 stolen the value from SC&T's minority shareholders, then
13 there wouldn't be as much of a forward-looking risk that
14 that would continue to happen because the value had, in
15 fact, already been taken.

16 A. No. I think I'm going to have to disagree with
17 that interpretation. No.

18 PRESIDENT SACHS: Sorry. And why would you
19 disagree?

20 THE WITNESS: Well, this--the wedge ratio change
21 is a result of the restructuring combining two companies
22 into one, where the [REDACTED] or the [REDACTED] Family has higher
23 ownership in Cheil, whereas the Samsung C&T, as I said
24 before, the [REDACTED] Family had only 1.4 percent of ownership,
25 so you combine them into one company, then there is, you

1 know, the--

2 PRESIDENT SACHS: I understand counsel saying
3 the damage has been done, so--

4 THE WITNESS: The damage has been done.

5 PRESIDENT SACHS: That was the question.

6 THE WITNESS: Yeah. Damage has been done.

7 So, it's not--okay. So, the reduced wedge ratio
8 is not because of the damage--it is because of the
9 restructuring.

10 MR. NYER: I don't know if there is a typo in
11 the Transcript, but I heard you say that the damage hasn't
12 been done, and I see the Transcript shows that the damage
13 has been done.

14 MS. BURACK: I believe he did say that the
15 damage has been done.

16 THE WITNESS: Yeah.

17 So, if there--I mean, speaking--I think I'm
18 going to have to stop there. Go ahead.

19 BY MS. BURACK:

20 Q. Professor Bae, did you consider any other
21 developments that occurred in Korea post-2015 that might
22 have impacted an investor's perceived risk of value
23 extraction from SC&T?

24 A. After 2015?

25 Q. Correct.

1 A. You mean, New SC&T?

2 Q. Yes.

3 A. Was there any value extraction?

4 Q. Just did you consider any developments in Korea
5 from 2015 onward after the Merger?

6 A. No, not that I'm aware of.

7 Q. So, you didn't consider the fact that, for
8 example, Samsung was first publicly investigated in
9 connection with the corruption scandal underlying this
10 case in late 2016?

11 A. Well, I saw the news once in a while, but I
12 don't really closely follow that.

13 Q. And didn't factor into your opinions at all.

14 A. No.

15 Q. And likewise, did you consider the fact that
16 President ██████ was impeached and then later tried and
17 convicted for her role in the Samsung scheme in
18 considering--when considering events that might impact
19 investors' perceived risk of value extraction from SC&T?

20 A. I think that's not relevant because the news was
21 revealed to investors after, long after this event, so
22 that is not relevant.

23 Q. And did you consider the fact that ██████ was
24 convicted and imprisoned for bribery in 2017 when
25 evaluating whether investors would have an increased or

1 decreased risk--perceive an increase or decreased risk
2 value extraction in the New SC&T post-2015?

3 A. Again, I think the--it's a legal issue. It's
4 after the Merger.

5 Q. Okay.

6 A. So, it cannot possibly affect the market's
7 perception.

8 Q. Well, just to be clear, Professor Bae, I'm not
9 so much talking about the market's perception at the time
10 of the Merger. I'm asking, you know, following the Merger
11 there's this decreased wedge ratio that you pointed out.
12 You said this led to a decreased perceived risk of value
13 extraction, and I'm simply asking if you considered other
14 events in Korea that might also have contributed to a
15 perceived decrease in the risk of value extraction.

16 A. I don't know.

17 Q. Going back to your critique of Dr.
18 Duarte-Silva's Sum Of The Parts analysis, one thing you
19 think he did inappropriately was value SC&T's listed
20 holdings at their market price; right?

21 A. No, I don't think that that is right.

22 Q. Look at Paragraph 63 of your Report.

23 A. Are you saying that they are valuing listed
24 holdings at Market Prices is right?

25 Q. Well I--

1 A. Did I say that is right?

2 Q. I'm simple pointing you to Paragraph 63 of your
3 Report. It's on Page 27, and you write--you're critiquing
4 Dr. Duarte-Silva's valuation. You note that he valued
5 SC&T's listed holdings at their market prices, and you
6 say: "This assumption is flawed and generates an
7 overestimated SOTP values because SC&T's listed holdings
8 are non-tradable stocks and do not generate any benefits
9 to SC&T's shareholders other than to the controlling [REDACTED]
10 Family." Is that right?

11 A. Yes, I said that.

12 Q. So, we've been talking about market prices quite
13 a bit over the course of this arbitration, and with
14 Professor Dow yesterday, and so I just want to make sure I
15 understand. You do not think that SC&T's listed holdings
16 should be valued at their Market Price; right?

17 A. No. It's not matter of should or should not.
18 The market doesn't value listed holdings at the market
19 prices because the market doesn't see any benefit of
20 listed holdings.

21 So, it's not about whether I believe it should
22 be valued or it shouldn't be valued. It's just that the
23 market does not value listed holdings at their market
24 prices. That's my point, because of the governance
25 problem associated with the presence of huge amount of

1 listed holdings.

2 Q. And the reason you believe the market does not
3 value listed holdings at their market price is because, in
4 the case of SC&T, the [REDACTED] Family held those holdings for
5 purposes of control and, therefore, never would have sold
6 them; is that right?

7 A. Yes.

8 Q. Okay. And you go on, you characterize the
9 listed holdings as non-tradable assets; correct?

10 A. Yes.

11 Q. And because they're not tradable, I believe you
12 say they--

13 (Overlapping speakers.)

14 A. No, it's not--it's not--okay. Maybe
15 non-tradable could be a mis-expression. The [REDACTED] Family
16 has no incentive to sell listed holdings, and with that
17 Dr. Duarte-Silva agrees.

18 Q. Let's go to 75 of your Report. That's on Page
19 31. And you refer in that paragraph to the affiliated
20 holdings as non-tradable assets; right?

21 A. Affiliated holdings that are held for control
22 purpose are non-tradable assets.

23 Q. Okay.

24 And because they are not tradable, you go on to
25 say they cannot generate profits; correct?

1 A. Where did I say that?

2 Q. Well, perhaps I'm not following correctly.
3 Let's make sure I understand.

4 You say if the listed holdings or portfolio
5 holdings held by an investment company that actively
6 trades them for profit, Dr. Duarte-Silva is right.

7 A. Yes. It should be valued at market prices.

8 Q. Okay. But here they can't be traded for profit,
9 so they shouldn't be valued at market price. Is that what
10 you're saying?

11 A. Yeah, because the listed holdings by Samsung C&T
12 is for the purpose of controlling by [REDACTED] Family.

13 Q. Understood.

14 I just want to understand what kind of profits
15 specifically we're talking about. The listed holdings or
16 the affiliated holdings or the non-tradable holdings,
17 whatever we want to call them, they can still issue
18 dividends; right?

19 A. Yeah. Dividend income is pretty low in Korea.

20 Q. Okay.

21 A. So that's not going to be many benefits.

22 Q. And so, in fact, I take it from the rest of this
23 paragraph that you're actually not talking about dividend
24 income because you go on to talk about profit in the event
25 of liquidation. So, am I right that you're really

1 referring more to profits in the sense of capital gains?

2 A. Um-hmm.

3 Q. And under your theory--

4 REALTIME STENOGRAPHER: I need a verbal answer.

5 THE WITNESS: I'm sorry. Yeah. Yes.

6 BY MS. BURACK:

7 Q. And so, if non-tradable assets can't generate
8 capital gains, they're also not going to be the subject of
9 any corporate tax on those capital gains; right?

10 A. I think it--it can still--I mean, I guess you're
11 talking about here the contingent tax liability that
12 Professor Dow discussed yesterday.

13 Q. I'm just simply asking more as a general matter.
14 If an asset is, as you say, not tradable or not going to
15 be sold because it's being held for control purposes, then
16 it seems to me that it can't generate capital gains or
17 taxes on those capital gains because the whole point is
18 that that asset would not be liquidated.

19 A. If there is hundred percent certainty that this
20 will never be liquidated, then yes, but, you know,
21 although I used the term "non-tradable asset," I mean,
22 there is--in the case of the company going liq--bankrupt,
23 this asset should be liquidated, so there is, however
24 small that is, there is a chance that they can be
25 liquidated.

1 If the Company goes bankrupt, all assets will be
2 liquidated.

3 Q. In the ordinary course, however, is it your view
4 that these non-tradable assets will not generate any
5 capital gains and, therefore no taxes on those capital
6 gains?

7 A. Yes.

8 Q. So I believe you've said a couple of times this
9 afternoon that you agree that the purpose of SC&T's
10 holdings in SEC was to benefit the █████ Family; right?

11 A. Yes.

12 Q. Okay. And would you agree that the Merger was a
13 mechanism for the █████ Family to solidify its control over
14 SEC?

15 A. Yes.

16 Q. But you think that the █████ Family's motivation
17 to obtain control would have persisted even if the Merger
18 had been voted down; right?

19 A. Yes.

20 Q. But what if, Professor Bae, the NPS had voted
21 down the Merger? Wouldn't that have sent a very strong
22 signal that the Korean Government was not willing to
23 tolerate value extraction to the detriment of other
24 Shareholders?

25 A. Yeah, it could have sent such a signal.

1 Q. Okay. And, in that scenario, with the strong
2 signal from the NPS, isn't that another way that the risk
3 of this continued governance deficit could be removed?

4 A. No. I disagree with that.

5 As I have shown, the wedge ratio would have
6 remained the same. In other words, the [REDACTED]'s incentive
7 and the minority shareholders' incentive are not aligned.
8 So, why would the market believe that the [REDACTED] Family will
9 be a good citizen? No.

10 Q. You're aware that NPS was a significant
11 shareholder in SC&T; correct?

12 A. Yes.

13 Q. It had over an 11 percent stake, I believe?

14 A. Yes.

15 Q. Okay. And in this case it was the swing vote on
16 the Merger; right?

17 A. That I don't--I cannot make any comment because
18 I haven't really analyzed the NPS decision, and that isn't
19 scope of my Expert Report.

20 Q. Okay.

21 A. So I cannot make any informed comment on that
22 issue.

23 Q. Fair enough. But it was certainly--it had a
24 large shareholding at over 11 percent.

25 A. Yeah, I agree.

1 Q. Okay. And NPS is a public institution in Korea
2 that manages the pension contributions of Korean citizens;
3 correct?

4 A. Yes.

5 Q. Okay. And if the NPS's vote was decisive--

6 A. If?

7 Q. If. I'm just asking you to go with this
8 assumption. If it was, in fact, the case that the NPS's
9 vote was decisive, then whatever motivation or incentive
10 [REDACTED] might have to obtain control, that might persist
11 if the Merger was voted down, but he wouldn't have the
12 means to execute on it; right?

13 A. Can you be more specific?

14 Q. Sure.

15 A. He doesn't have any means to execute what?

16 Q. Well, so, I understand you to be saying that if
17 the Merger had been voted down, that this problem created
18 by the wedge ratio would have persisted because the [REDACTED]
19 Family would still be looking for a way to solidify its
20 control--

21 A. Yeah.

22 Q. --over Samsung.

23 A. Yes.

24 Q. So, what I'm asking is, if the NPS had the swing
25 vote in that scenario and the NPS said no, then the fact

1 that the [REDACTED] Family wants control doesn't mean they can
2 get it; right?

3 A. Yeah, but that doesn't mean that they're going
4 to give up their intention to solidify their control
5 power.

6 MS. BURACK: I have no further questions. Thank
7 you. That was it.

8 PRESIDENT SACHS: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. NYER:

11 Q. Just one question to give Professor Bae a chance
12 to elaborate on the points that you wanted to elaborate
13 on, on the illiquidity issue, if you have any additional
14 comments that you want to offer.

15 A. Yeah, the illiquidity issue is one
16 interpretation of the governance problem. The holding
17 company discount of Samsung C&T is essentially governance
18 discount.

19 Now, I discussed the illiquidity issue because
20 that's one interpretation of the discount, but that's not
21 the main problem. The main problem is: it is a governance
22 problem. That's why you see a huge holding-company
23 discount in terms of Samsung C&T, which has serious
24 governance issues as I explained in my presentation. So,
25 I'm just simply saying that the Illiquidity Discount could

1 be just another interpretation, and then I think I wrote
2 down just one paragraph on that. So, that's not the main
3 focus of the discount. The main focus of the
4 holding-company discount should be the governance issue.

5 Q. Thank you, Professor Bae. Nothing more.

6 PRESIDENT SACHS: Okay. That's clear. Your
7 position is clear on that point.

8 I turn to my two co-Arbitrators. Do you have
9 questions to Professor Bae?

10 ARBITRATOR MAYER: I don't. Thank you.

11 ARBITRATOR GLOSTER: I don't. Thank you very
12 much.

13 PRESIDENT SACHS: Neither have I, so we thank
14 you, Professor Bae, for your expert testimony. You are
15 now released as an expert--

16 THE WITNESS: Thank you very much.

17 PRESIDENT SACHS: --and may leave the room.

18 (Witness steps down.)

19 PRESIDENT SACHS: I think we could dispense of
20 the coffee break and just wrap up and see where we stand.

21 So, we've dealt with the Post-Hearing Briefs.

22 An item I should still mention is the
23 Transcript. You've seen the high quality of the
24 Transcript as usual, provided by David, so we would invite
25 you to contact each other with respect to the issuance of

1 a final Transcript and get back to us earlier if there is
2 a serious problem; and we would not expect this, but if
3 there is, we will, of course, assist.

4 So, from our perspective, this is it. So, we
5 will close the Hearing unless you have further
6 observations before I thank all the participants. But
7 housekeeping matters or observations on the further
8 proceedings?

9 MS. VAZOVA: Nothing from Claimant,
10 Mr. Chairman.

11 PRESIDENT SACHS: Okay. Thank you.
12 And Respondent?

13 MR. NYER: Nothing from the Respondent, other
14 than thanking you, Members of the Tribunal, PCA, and
15 counsel for Claimants.

16 PRESIDENT SACHS: Yes.

17 And it's reciprocal. We want to thank counsel
18 for very professional conduct of these proceedings in a
19 civilized manner, which is not always the case, so thank
20 you very much. That makes the task easier for the
21 Tribunal.

22 We thank David, of course. We thank FTI and
23 Scott. They did a great job, I think. We thank the
24 Centre here, PCA in person of Levent, and so we're looking
25 forward to hearing from you, and possibly having the May

1 oral argument, but remotely we would propose, so that we
2 can control the costs of the proceedings.

3 So, thank you very much. Have a safe journey
4 back for those who have to travel and, so, goodbye.

5 (Whereupon, at 1:57 p.m. (EDT), the Hearing was
6 concluded.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.



DAVID A. KASDAN