

**IN THE MATTER OF AN ARBITRATION UNDER THE
ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW AND THE FREE TRADE
AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA**

BETWEEN

ELLIOTT ASSOCIATES, L.P.

Claimant

AND

REPUBLIC OF KOREA

Respondent

**CLAIMANT'S SUBMISSION
ON REMITTED ISSUE
27 April 2026**

THREE CROWNS

KOBRE & KIM

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I. INTRODUCTION

1. These proceedings have been recommenced almost eight years after they started,¹ and the Tribunal reconstituted nearly three years after issuing its Award,² following the ROK's largely unsuccessful attempt to set aside the Award in the English courts.
2. The Tribunal is now asked to determine a single, narrow issue of causation: whether the breaches of the Treaty by the Blue House and the Ministry of Health and Welfare (the *MHW*) caused EALP's loss.³ This issue was the subject of extensive argument and evidence in the underlying arbitration, and so the Tribunal's task is straightforward. The Tribunal needs only to consider and clarify what it has already determined in its Award.
3. As the Tribunal will recall, it has *already* found that:
 - a. The ROK, "through the MHW, intervened in the NPS's vote on the Merger and instructed the NPS *to ensure that the vote would be in favor of the Merger*";⁴
 - b. "The NPS, *under the direction and instructions of the MHW*, took steps to *ensure that the vote would be conducted by the Investment Committee rather than the Experts Voting Committee*";⁵
 - c. "[W]hen voting on the Merger, the NPS did not act independently and for commercial purposes . . . but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy";⁶

¹ See Notice of Intent, 13 April 2018.

² See *Elliott Associates, L.P. (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-51, Award, 20 June 2023 (the *Award*).

³ Defined terms, unless otherwise specified, have the same meaning as in the Claimant's Amended Statement of Claim, Statement of Reply and Defense to Preliminary Objections and Rejoinder on Preliminary Objections.

⁴ Award, ¶ 602(a) (emphasis added).

⁵ Award, ¶ 602(b) (emphasis added).

⁶ Award, ¶ 623 (emphasis added).

- d. “[T]he NPS had a *de facto* casting vote as the largest shareholder of SC&T” such that it was the NPS’s vote that caused the Merger to proceed;⁷ and
- e. “*Not only was the effect of the Respondent’s intervention in the NPS’s vote on the Claimant’s investment reasonably foreseeable at the time the intervention occurred; as a matter of fact, the Respondent foresaw at the time that the Claimant’s investment would be adversely affected by the intervention.*”⁸
4. These and other findings in the Award have *not* been set aside by the English courts. As a matter of English law, they are therefore *binding* on the ROK and not open to relitigation. Indeed, the High Court emphasized that remittal “*will not affect or allow Korea to revisit findings which have not been set aside.*”⁹
5. In light of the Tribunal’s findings that have not been set aside, there can be no dispute that the ROK’s breaches in fact caused EALP’s loss. Indeed, when the High Court decided to remit this single issue back to the Tribunal, it did so “*with reluctance*”, because of its appreciation of the likelihood that the Tribunal will ultimately find EALP entitled to precisely the same damages that it requested in the underlying arbitration.¹⁰
6. The ROK’s unsuccessful attempts to set aside the entirety of the Tribunal’s Award commenced on 17 July 2023, when the ROK began set aside proceedings on the grounds that the Tribunal lacked jurisdiction to decide EALP’s claim within the

⁷ Award, ¶ 817 (emphasis added).

⁸ Award, ¶ 360 (emphasis added).

⁹ See *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Ruling on Consequential Issues, 18 March 2026 (the **Ruling**), Exh CLA-227, ¶ 7.

¹⁰ See *Republic of Korea v. Elliott Associates, L.P.* [2026] EWHC 368 (Comm) (the **Judgment**), Exh CLA-222, ¶ 268 (“I have reached this conclusion with reluctance, not least because EALP advanced its case by reference to Article 11.1(3) of the Treaty in the arbitration on a basis which did not depend on the acts of the NPS themselves constituting measures adopted or maintained by a Party, and it may well be entitled to the same relief on the basis of its case concerning the Blue House Measures (over which I have found the Tribunal did have jurisdiction), just as the *Mason* claimants were”). As set out below at ¶ 82.b, EALP requests that the interest awarded on its damages take into account the gradual deduction of EALP’s recovery from the disposal of SC&T shares over time, for the reasons set out in EALP’s Request for Correction of the Award, 20 July 2023, ¶¶ 19–20.

meaning of section 67 of the English Arbitration Act. The High Court initially viewed the ROK’s grounds for set aside as falling outside the scope of the English Arbitration Act.¹¹ The Court of Appeal disagreed and remitted the case back to the High Court for determination.¹²

7. The High Court heard arguments from the ROK that EALP’s claim failed on all three jurisdictional requirements in Article 11.1(1) of the Treaty: namely, (i) there was no relevant “measure”; (ii) there was no measure “adopted or maintained” by the ROK; and (iii) the measure(s) did not “relate to” Elliott or its investment. The High Court hearing on these issues involved detailed submissions on the extensive factual record underlying EALP’s claim, which it considered *de novo*.
8. Drawing on this wealth of evidence, the High Court largely rejected the ROK’s attempt to set aside the Award, finding instead that there *were* measures adopted or maintained by the ROK and relating to EALP’s investment, and that while the conduct of the Blue House and MHW was undoubtedly attributable to the ROK, the NPS’s conduct was not.¹³ As a result, the High Court concluded that the Tribunal *did* have jurisdiction to find that the conduct of the Blue House and MHW breached the Treaty.¹⁴ However, the High Court set aside those select parts of the Award that found, or were inextricably linked to the finding, that the NPS was a *de facto* State organ.¹⁵
9. This gave rise to the question of whether the findings in the Award were sufficiently clear that breaches by the Blue House and the MHW had caused the NPS to vote in favor of the Merger, thereby causing EALP’s loss.¹⁶ The ROK argued (and the High Court appeared to accept) that it had to be “*completely clear*” in the Award that this is what the Tribunal had found, both as a matter of factual

¹¹ See *Republic of Korea v. Elliott Associates, L.P.* [2024] EWHC 2037 (Comm), **Exh CLA-220**, ¶ 69.

¹² See *Republic of Korea v. Elliott Associates, L.P.* [2025] EWCA Civ 905, **Exh CLA-221**, ¶ 65.

¹³ See Judgment, **Exh CLA-222**, ¶ 211.

¹⁴ See Judgment, **Exh CLA-222**, ¶¶ 243–244

¹⁵ See Judgment, **Exh CLA-222**, ¶¶ 247, 266(i).

¹⁶ See Judgment, **Exh CLA-222**, ¶¶ 264–265.

and legal causation.¹⁷ The High Court decided that, although the Tribunal made numerous relevant findings, as summarized at paragraph 3 above and explained in further detail in paragraphs 20 to 39 below, it was not open to the High Court to infer from what remained in the Award that the Tribunal had in fact concluded that the breaches of the Blue House and MHW caused EALP's loss because the Tribunal had stated explicitly, at paragraph 814 of the Award,¹⁸ that it did not need to determine that question in the light of its finding that the NPS was a *de facto* State organ.¹⁹

10. The Tribunal had determined that both factual and legal causation between the ROK's breaches and EALP's loss had been established in a scenario in which the NPS was a state organ.²⁰ The High Court thus remitted a single question back to the Tribunal, namely "the issue of causation of the breaches of the Treaty found to have been constituted by the [Blue House, the MHW and the Minister] and the relief award."²¹ The remitted issue, in particular, raises the following narrow question: *Does the determination by the Court that the NPS may not be regarded as a State organ alter the Tribunal's finding that the legal requirement of causation, i.e., foreseeability/proximity, is met?"*
11. The remitted issue arises from the High Court taking a different approach to attribution of the NPS than was taken by the Tribunal. For the reasons explained in this submission, this single issue is limited to a narrow question of *legal causation* only. That is because the Tribunal has *already* made numerous findings relevant to factual and legal causation almost all of which have survived set aside and remain binding. Of particular importance is the Tribunal's conclusion that a relationship of sufficient proximity exists between the Blue House and the Ministry's conduct and the NPS's vote in favor of the merger and EALP's loss.

¹⁷ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, High Court Hearing Transcript, Day 3 (4 December 2025), **Exh CLA-224**, 164:16–21.

¹⁸ See Award, ¶ 814.

¹⁹ See Judgment, **Exh CLA-222**, ¶ 265.

²⁰ See Award, ¶¶ 813-823.

²¹ See Judgment, **Exh CLA-222**, ¶ 266.

12. Against this backdrop of the undisturbed arbitral record, the Tribunal must now decide whether the legal requirement of causation is still met in circumstances where the NPS may not be regarded as a State organ. That test is whether it was reasonably foreseeable that the breaches would cause EALP loss. For the reasons set out in this submission, manifestly, the legal status of the NPS as being other than a State organ does not alter the Tribunal's prior conclusion that a relationship of sufficient proximity exists between the Blue House and the MHW's conduct and the NPS's vote in favor of the merger and EALP's loss.²²
13. Thus, there is very little left to clarify in the Tribunal's additional Award in these remittal proceedings. And what little is left to clarify must be done against the backdrop of the Parties' submissions and evidence already forming the arbitral record. As the Tribunal has already ordered, unless exceptional circumstances justify it, new evidence cannot be admitted,²³ and it is not open to the Parties to raise new arguments on the remitted issue.
14. The Tribunal's prior findings, as well as the submissions and evidence on the record clearly establish that the ROK's breaches caused EALP's loss. With that straightforward clarification by the Tribunal, these near decade-long proceedings can end and EALP can finally receive the relief to which it has been long entitled.

*

15. The remainder of this submission is structured as follows:
 - a. **Section II** sets out the issue to be determined by the Tribunal, by reference to the order of Lord Justice Foxton dated 18 March 2026 (the **Order**) (**II.A**) and the background to the Order (**II.B**);
 - b. **Section III** sets out EALP's submissions on the remitted issue, explaining that the Tribunal's existing findings on the remitted issue are not affected

²² See below ¶¶ 67–78.

²³ See Letter from the Tribunal to the Parties, 11 April 2026, pp. 3-4.

by either the status of the NPS under international law (*III.A*) or the two additional judgments of the Korean courts (*III.B*); and

c. *Section IV* sets forth EALP's requests for relief.

16. EALP's submission is accompanied by legal authorities **CLA-214** to **CLA-230**.

II. THE COURT'S ORDER AND ITS CONTEXT DEFINE THE NARROW ISSUE TO BE DETERMINED BY THE TRIBUNAL

A. THE COURT'S ORDER

17. Under the law of the seat, the extent of the remission "has to be interpreted by reference to the [court's] order in the light of the background to that order".²⁴

18. Here, the Order remitted a single issue to the Tribunal:

Did the breaches of the Treaty found to have been constituted by the measures of the Blue House, the Minister of Health and Welfare, and the Ministry of Health and Welfare cause loss or damage to the Claimant, and the relief to be awarded for such loss or damage?²⁵

B. THE RELEVANT BACKGROUND TO THE COURT'S ORDER

19. The relevant background to the Order, described in the sub-sections that follow, includes:

a. *Sub-section 1*: the salient findings in the Award;

b. *Sub-section 2*: the ROK's failed attempt to set aside these findings;

c. *Sub-section 3*: the High Court's ruling that the Tribunal made *numerous* relevant findings on causation that are unaffected by set-aside; and

²⁴ *Glencore International AG v. Beogradska Plovidba (The "Avala")* [1996] 2 Lloyd's Rep 311, **Exh CLA-217**, p. 316. *See also Sans Souci Ltd v. VRL Services Ltd* [2012] UKPC 6, **Exh CLA-229**, ¶¶ 12, 13, 15.

²⁵ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, Order of Foxton LJ, 18 March 2026 (the *Order*), **Exh CLA-226**, ¶ 3.

- d. **Sub-section 4:** the ROK’s failed attempt to broaden the causation issues to be remitted in these proceedings.
- e. **Sub-section 5** then concludes that, on the basis of the relevant background to the Order, the single remitted issue is properly understood as *a narrow question of law* following from the High Court’s finding that the NPS is not a *de facto* organ of the ROK.

1. Salient findings in the Tribunal’s Award

20. The starting point for understanding the background to the Order is the Tribunal’s Award and, in particular, the salient findings on causation that have not been set aside.

(i) The Tribunal confirmed the applicable tests for factual and legal causation

21. The Tribunal has already confirmed the relevant tests for establishing causation:
- a. Factual causation “involves the determination of whether the claimant would have suffered the claimed loss or damages in the absence of the alleged breach”, i.e., whether ‘but-for’ the ROK’s breaches, EALP would have suffered loss and damage.²⁶
 - b. Legal causation concerns “whether the claimed loss or damage is sufficiently closely linked to the alleged breach”, which “may be determined in terms of whether the claimed loss or damage is a ‘direct’ result of the alleged breach, or whether it is ‘proximately’ caused by the alleged breach”²⁷ (these two formulations being “technically distinguishable but in substance equivalent ways of stating the applicable test”²⁸). Legal causation will not be established where there is “an

²⁶ Award, ¶ 815.

²⁷ Award, ¶ 815.

²⁸ Award, ¶ 815.

intervening cause that breaks the chain of causation, rendering the alleged loss or damage ‘indirect’ or too ‘remote’ to be compensated.”²⁹

(ii) *The Tribunal has already found that the ROK’s breaches caused the NPS to vote in favor of the Merger*

22. The first findings of note are the Tribunal’s conclusions on whether the ROK’s breaches caused the NPS to vote in favor of the Merger.

23. The Tribunal has already made numerous factual findings that the ROK *did* cause the NPS to vote in favor of the Merger.

24. On the questions of whether, but-for the instruction to bypass the independent Experts Voting Committee (*EVC*), the decision on how to vote on the Merger would have been referred to the EVC, and whether the EVC would have voted against the Merger,³⁰ the Tribunal has already found that:

a. “According to the policies set by the NPS for the Merger, the voting rights were to be exercised by the Experts Voting Committee”.³¹ In other words, the vote decision *would* ordinarily have been referred to the EVC.

b. “As it became evident that a referral of the matter to the Experts Voting Committee . . . would not ‘guarantee’ the approval of the Merger”,³² “[t]he Respondent, through the MHW, intervened in the NPS’s vote on the Merger and instructed the NPS *to ensure that the vote would be in favor of the Merger*”,³³ and accordingly “[t]he NPS, under the direction and instructions of the MHW, took steps *to ensure that the vote would be conducted by the Investment Committee* rather than the Experts Voting Committee”.³⁴ In other words, the Tribunal found that, due to the instructions to bypass the EVC, the vote was handled by the Investment

²⁹ Award, ¶ 815.

³⁰ See EALP’s Post Hearing Brief, ¶ 161(a).

³¹ Award, ¶ 598.

³² Award, ¶ 587.

³³ Award, ¶ 602(a) (emphasis added).

³⁴ Award, ¶ 602(b) (emphasis added).

Committee and, moreover, that *the reason for this instruction was the likelihood that the EVC would have voted against the Merger.*

- c. The Tribunal also found that the ROK offered no evidence to contradict this finding. In particular, the Respondent’s witness Mr. Young-gil Cho, a member of the EVC, said nothing about whether he would have voted in favor of the Merger (or indeed against it, as he was undecided), had the matter been referred to the EVC. The Tribunal therefore determined that his evidence was “inconclusive”.³⁵
25. On the questions of whether the MHW ordered the NPS’s leadership to take steps to procure that the Investment Committee vote in favor of the Merger, and whether the NPS’s leadership complied with that order,³⁶ the Tribunal has already found as follows:
- a. “On June 30, 2015, [MHW officials] . . . instructed [Chief Investment Officer (*CIO*) Hong] of [the] NPS and other Investment Management employees to ‘have the Investment Committee decide on the SC&T / Cheil merger,’ *with the underlying directive to have the Investment Committee vote in favor of the Merger.*”³⁷ The Tribunal also found that “[w]hen CIO Hong asked whether they could say that this [i.e., the referral to the Investment Committee] was done ‘under pressure’ of [sic] the MHW, [an MHW official] replied that ‘even a little child knows that, but you may not state that the [MHW] is involved in this.’”³⁸
 - b. These Ministerial instructions were reiterated on multiple occasions, including in the face of protest from NPS employees that the decision should be sent to the EVC.³⁹ For example, the Tribunal found that, on 8 July 2015, a MHW official “reiterated the instruction at a subsequent

³⁵ Award, ¶ 820.

³⁶ See EALP’s Post Hearing Brief, ¶ 161(b).

³⁷ Award, ¶ 586 (emphasis added).

³⁸ Award, ¶ 598.

³⁹ Award, ¶ 587.

meeting with CIO Hong . . . stressing that ‘the voting right *must be exercised in favor of the Merger. This is what [Minister Moon] wants*’.”⁴⁰

- c. The Tribunal has also already found that, given these orders from the MHW, “[CIO Hong], *had no choice* but to choose to vote in favor of the Merger at the Investment Committee”.⁴¹ And the Tribunal found that Minister Moon “put pressure on the members of the Investment Committee [i.e., CIO Hong] *so that they decide in favor of the Merger*”.⁴²
- d. The Tribunal also found that “CIO Hong ‘convened and *convinced the Investment Committee to vote in favor of the Merger* motion based on the fabricated figures” set out in the so-called Merger ‘synergy effect’, which was presented to the Investment Committee.⁴³ The Tribunal concluded that CIO Hong, “through [REDACTED] actions, manipulated the synergy effect and explained the same at the Investment Committee of the Investment Management, and encouraged certain members to approve the Merger before and during the meeting, thereby *ultimately causing the Committee to decide in favor of the Merger*.”⁴⁴
- e. Thus, the Tribunal has already concluded, in terms that could not be clearer, that “[t]he NPS, *under the direction and instructions of the MHW . . . influenced the vote conducted by the Investment Committee, including by fabricating a synergy effect of the Merger that had no basis in fact and meeting with members of the Investment Committee, to the effect that the Investment Committee voted in favor of the Merger*.”⁴⁵
- f. Similarly, the Tribunal found that “*when voting on the Merger, the NPS did not act independently and for commercial purposes*; as the Korean courts have determined, the NPS did not take its decision independently,

⁴⁰ Award, ¶ 588 (emphasis added).

⁴¹ Award, ¶ 592 (emphasis added).

⁴² Award, ¶ 594 (emphasis added).

⁴³ Award, ¶ 587 (emphasis added).

⁴⁴ Award, ¶ 596 (emphasis added).

⁴⁵ Award, ¶ 602(b) (emphasis added).

based on the commercial merits of the Merger, *but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy.*”⁴⁶

g. The Tribunal also found that “throughout the process [i.e., the Investment Committee vote on the Merger], CIO Hong, who chaired the Investment Committee, ‘*actively induced the members of the Investment Committee to vote in favor of the Merger*’” and “CIO Hong ‘violated his occupational duty by *causing a loss of unknown value to the NPS.*’”⁴⁷

h. Finally, the Tribunal observed that “a number of the Investment Committee members testified that they would likely have voted against the Merger had they known that the synergy effect was fabricated”.⁴⁸

26. Taken together these existing findings, which have not been set aside by the High Court and therefore remain binding, already confirm that the MHW ordered CIO Hong to take measures to ensure that the Investment Committee voted in favor of the Merger, and that CIO Hong achieved this by directing that a synergy effect be fabricated to deceive the Investment Committee members who would not otherwise have supported the Merger. Moreover, these findings establish that the Investment Committee members did *not* vote in favor of the Merger for independent, commercial reasons, but instead acted under the deception and influence of the MHW, as implemented by CIO Hong.

(iii) The Tribunal’s findings that the NPS caused the Merger to be approved

27. The second set of findings of note are the Tribunal’s conclusions that the NPS caused the Merger to be approved. On this, the Tribunal found that the NPS held the *casting vote* and so the exercise of that vote on the MHW’s orders caused the Merger to be approved.⁴⁹ In particular, the Tribunal concluded that:

⁴⁶ Award, ¶ 623 (emphasis added).

⁴⁷ Award, ¶ 591 (emphasis added).

⁴⁸ Award, ¶ 598.

⁴⁹ See Award, ¶¶ 819–820.

- a. “[T]he NPS had a *de facto* casting vote as the largest shareholder of SC&T”;⁵⁰ and
 - b. “[C]onsidering the ownership of SC&T’s shares and the interests of several SC&T shareholders, [the NPS’s] vote in favor of the Merger, which held 11.21% of shares in SC&T, was *absolutely necessary* to secure more than two-thirds of the participating votes required to approve the Merger. Accordingly, *the [NPS] came to have the de facto casting vote that would determine whether the Merger would proceed.*”⁵¹
28. These findings already establish that but-for the NPS’s vote in favor of the Merger, the Merger would not have been approved.
29. EALP notes for completeness that, as the Tribunal acknowledged in its Award, EALP explained that the existence of multiple causes does not exonerate or attenuate liability as a matter of international law. Thus, the voting patterns of other shareholders are irrelevant in circumstances where it is an arithmetical fact that the Merger would not have been approved but-for the NPS’s vote in favor of the Merger.⁵²
- (iv) The Tribunal’s findings that the Merger caused EALP’s loss**
30. The third set of findings of note are the Tribunal’s conclusions that the Merger caused EALP’s loss.⁵³ In particular, the Tribunal has already found that:
- a. “The merger ratio was such that major shareholders of the Samsung Group such as [JY Lee] would be at a gain, and SC&T shareholders would be at a loss” and “*the approval of the Merger had a direct effect of profiting the major shareholders of the Samsung group such as [JY Lee]*”;⁵⁴ and
 - b. “The Korean Courts have thus found that . . . *there was therefore a direct causal link between the NPS’s vote on the Merger and the loss suffered by*

⁵⁰ Award, ¶ 817 (emphasis added).

⁵¹ Award, ¶ 818 (emphasis added).

⁵² Award, ¶¶ 791-797.

⁵³ See Award, ¶ 948.

⁵⁴ Award, ¶ 817 (emphasis added).

*the NPS and other SC&T shareholders, including the Claimant. . . . There is no evidence before the Tribunal in the present proceedings that would cause the Tribunal to second-guess the findings of the Korean courts.”*⁵⁵

31. On the quantum of EALP’s loss, the Tribunal found that:
- a. “[T]he Claimant’s loss . . . [is] the difference between SC&T’s share price on the valuation date, 16 July 2015, and the price at which the Claimant subsequently disposed of its shareholding”,⁵⁶ as “[t]his is a loss that the Claimant would have suffered as a result of the Respondent’s breach, as it would indeed have ‘locked in,’ or realized, the reduction in value of the Claimant’s investment in SC&T as a result of approval of the Merger”;⁵⁷ and
 - b. “The Claimant’s total loss on its entire stock of 11,125,927 shares it held on the valuation date of 16 July 2015 . . . amounts to KRW 68,744,114,123, or approximately KRW 68.7 billion (KRW 13,358,357,723 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares). . . . [T]his is therefore the amount to which the Claimant is, in principle, entitled under the Treaty in compensation of the loss of value of its investment as a result of the Respondent’s breaches of the Treaty.”⁵⁸
32. Again, these existing findings confirm that the loss suffered by EALP was caused by the ROK’s breaches of the Treaty.

⁵⁵ Award, ¶¶ 819–820 (emphasis added).

⁵⁶ Award, ¶ 932.

⁵⁷ Award, ¶ 933.

⁵⁸ Award, ¶ 938. This amount was later reduced to KRW 62,206,067,478, or approximately KRW 62.2 billion (KRW 6,820,311,078 for the Putback Shares + KRW 55,385,756,400 for the non-putback shares). *See* Decision on Requests for Correction and Interpretation of the Award, 1 September 2023, ¶ 65(a)(10).

(v) *The Tribunal's findings that there is no evidence of any intervening break in the chain of causation*

33. On the question of any intervening act that could break the chain of causation, the Tribunal has already made the following, relevant findings.
34. *First*, the Tribunal rejected the ROK's claim that the Investment Committee acted independently when voting in favor of the Merger.⁵⁹ To the contrary, and as already noted above, the Tribunal found that:

[W]hen voting on the Merger, the NPS *did not act independently and for commercial purposes*; as the Korean courts have determined, *the NPS did not take its decision independently, based on the commercial merits of the Merger*, but acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW in the implementation of a governmental policy.⁶⁰

35. *Second*, the Tribunal rejected the ROK's argument that the EVC *could have* voted in favor of the Merger had the vote been referred to it, this hypothetical exercise of independent judgment thus breaking the chain of causation. Similarly, the Tribunal also rejected the ROK's argument that the approval of the Merger lay in the hands of other SC&T investors who *could have* voted (but in fact did not vote) against the Merger, again, thus hypothetically breaking the chain of causation. The Tribunal ruled that:

A chain of causation is not interrupted by a potential event; it can only be interrupted by an event that has actually taken place. Neither of the potential events relied upon by the Respondent has in fact taken place, and accordingly they could not have broken the chain of causation.⁶¹

⁵⁹ See Award, ¶¶ 609, 621.

⁶⁰ Award, ¶ 623 (emphasis added).

⁶¹ Award, ¶ 822. This paragraph was set aside by the High Court. However, as noted at the Case Management Conference (CMC), the Court set aside this paragraph of the Award, because it found that it could be somehow interrelated with the Tribunal's finding that the NPS was a *de facto* State organ. The High Court invited the Tribunal to revisit this issue and thus it is entirely open to the Tribunal to confirm in its additional Award that the language on causation in paragraph 822 was not dependent on its finding regarding the legal status of the NPS. See CMC Transcript, 16:7–18.

36. *Third*, the Tribunal found that there was no evidence of an intervening act that would have broken the chain of causation between the NPS's vote and the claimed loss and damage.⁶²
37. *Fourth*, the Tribunal found that the ROK, from the Presidential level on down, *foresaw* the harm its conduct would cause to EALP. Thus, Mr. Thomas observed in his Separate Opinion that:

The weight of the evidence shows that *had it not been for the unexpected emergence of the Claimant's highly publicized proxy campaign, the measures relating to the voting of the NPF's shares would likely not have been adopted or maintained in the first place.* The measures, intended by the President to assist the succession plan by means of a vote in favor of the Merger, *necessarily were intended to defeat the Claimant's proxy battle*, in respect of which it had acquired its 7.12% shareholding in SC&T. Whether the President intended to harm the Claimant's covered investment is not clear. But what is clear is that upon the giving of her directive, unbeknownst to the Claimant, it was engaging in a waste of time and money in launching a proxy battle *that was destined to fail*, and at least to that extent it was harmed.⁶³

38. Accordingly, the Tribunal already held at paragraph 360 of its Award that EALP's harm was *both foreseeable and foreseen* by the ROK:

Not only was the effect of the Respondent's intervention in the NPS's vote on the Claimant's investment reasonably foreseeable at the time the intervention occurred; as a matter of fact, the Respondent foresaw at the time that the Claimant's investment would be adversely affected by the intervention, as it was very much a matter in the public domain, and well known to the Blue House, the MHW, and the NPS, that the Claimant opposed the Merger. Moreover, the evidence shows that Minister Moon and CIO Hong in particular invoked the Claimant's opposition to the Merger as an argument to persuade other officials of the MHW and the NPS,

⁶² See Award, ¶ 821.

⁶³ Separate Opinion of J. Christopher Thomas, 20 June 2023, ¶ 71 (emphasis added).

and the members of the NPS's Investment Committee, to support the Merger.⁶⁴

39. These findings conclusively establish both factual and legal causation at all three levels of the causal chain.

(vi) The Tribunal's findings on causation are underscored by the independent findings of the Mason tribunal and English High Court

40. The Tribunal's findings are consistent with the independent findings of (i) the *Mason* tribunal in its final award rendered in 2024⁶⁵ (which was subsequently upheld by the Singapore International Commercial Court⁶⁶) and (ii) the English High Court.

41. Notwithstanding its finding that the NPS's conduct was not attributable to the ROK, the *Mason* tribunal had no difficulty finding that the ROK's breaches still caused the claimants' losses.⁶⁷ In particular, the *Mason* tribunal made three specific findings of note.

42. *First*, the *Mason* tribunal held that the ROK caused the NPS to vote in favor of the Merger:

The first question that arises in this context is which committee would have decided on the Merger if the Blue House and the MHW had not pressured the NPS to let the Investment Committee decide on the Merger. . . .

[T]he Tribunal considers it irrelevant whether it would have been within the Investment Committee's discretion under the NPS Voting Guidelines to refrain from a referral to the Experts Voting Committee and to take the decision on the Merger itself. As the record shows, the NPSIM initially considered the Merger vote to be a difficult matter which was to be decided

⁶⁴ Award, ¶ 360 (emphasis added).

⁶⁵ *See Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**.

⁶⁶ *See Republic of Korea v. Mason Capital and another* [2025] SGHC(I) 9, **Exh CLA-228**.

⁶⁷ *See Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, Sections VII.B and C.

by the Experts Voting Committee and expressed its concerns to the MHW.

Based on these circumstances, the Tribunal considers that Claimants have shown with a sufficient degree of certainty that without Respondent's interference in the NPS' internal decision-making process, the Merger vote would have been referred to the Experts Voting Committee.

The second question is how the Experts Voting Committee would have decided on the Merger if it had been seized of the matter.

In this regard, the Seoul District Court reached the conclusion that “if [the Investment Committee] referred the Merger to the Experts Voting Committee for review and resolution, it was highly likely that the Experts Voting Committee would oppose the Merger, as it did in the SK Merger”. *The Tribunal agrees that it was highly likely that the Experts Voting Committee would have decided either to abstain or to vote against the Merger*

Third, the Tribunal is not convinced that there were sound economic reasons, supported by reliable data, for the NPS to vote in favor of the Merger. . . .

*In conclusion, the Tribunal is satisfied that Claimants have shown with a sufficient degree of factual certainty that Respondent's breach caused the NPS to vote in favor of the Merger.*⁶⁸

43. *Second*, the *Mason* tribunal held that the NPS vote caused the Merger to be approved, ruling:

The Tribunal is not convinced that there [are] any reliable indications that if the NPS had voted against the Merger or abstained, other shareholders who actually abstained or voted against the Merger would have changed their votes and voted in favor of the Merger instead. In the Tribunal's view, there is no evidence to support Respondent's argument that the

⁶⁸ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 861–881 (emphasis added) (internal citations omitted).

Lee Family would have used other (legal) means to influence the votes of institutional investors.

*The Tribunal therefore concludes that, had the NPS voted against the Merger or abstained, the Merger would have most likely been rejected by SC&T's shareholders. The NPS' vote in favor of the Merger thus caused the Merger to be approved. . . .*⁶⁹

44. *Third*, the Mason tribunal held that the ROK's interference in the NPS's vote caused Mason's loss (which is materially the same nature of loss claimed by EALP in this arbitration):

. . . The Tribunal will deal with the question of whether the alleged losses were caused by Respondent's breach of the Treaty and whether they are properly quantified in the context of quantum. At this stage, it suffices to state that the Tribunal is satisfied that Claimants would not have sold their SC&T and SEC shares shortly after the Merger but for Respondent's breach.

*In conclusion, and without prejudice to its determination on the proper quantification of the losses, the Tribunal decides that Respondent's interference with the NPS' exercise of its voting rights in the Merger caused Claimants' losses.*⁷⁰

45. The High Court, upon a *de novo* review of the evidence before it, reached a similar conclusion:

I am satisfied on the balance of probabilities that organs of the Korean State, in the form of the President, the Blue House, the Minister and the MHW caused instructions or directions to be given to NPS personnel to vote in favour of the Merger, *the effect of those instructions being that the NPS Investment Committee should not reach an independent decision*

⁶⁹ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 886–887 (emphasis added).

⁷⁰ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 888–889 (emphasis added).

*on this issue, but should vote in accordance with the instructions and directions given.*⁷¹

46. The High Court noted that its own conclusions, which were based on the evidence before it, are “consistent with . . . the findings made in the *Mason* Award, as summarised at [738], *with which I am in complete agreement.*”⁷²
47. On the issue of legal causation, the *Mason* tribunal recalled that “in order to prove legal causation, [c]laimants must establish that the claimed loss is not too remote from the treaty violation, the relevant factors being *inter alia* directness, foreseeability, or proximity.”⁷³ Applying this legal test, the *Mason* tribunal made two specific findings.
- a. *First*, there was proximity between the ROK’s breaches (which were exclusively focused on the actions of the Blue House and the MHW) and the claimants’ loss with respect to their SC&T shares, and this loss was foreseeable:

The Tribunal notes that several reports criticizing the fairness of the Merger ratio had been issued before 8 July 2015, including the ISS and KCGS reports. The NPSIM Research Team’s first report, stating that an appropriate merger ratio would be between 0.46 and 0.89, was issued on 30 June 2015. Minister Moon was aware of these reports, as held by the Seoul High Court[.] . . .

*As a result, the Tribunal is satisfied that the loss in the value of Claimants’ SC&T shares was foreseeable for Respondent at the time of the breach.*⁷⁴

- b. *Second*, this proximate causal chain *was not severed by the conduct of the NPS* or any other actors:

⁷¹ Judgment, **Exh CLA-222**, ¶ 208 (emphasis added).

⁷² Judgment, **Exh CLA-222**, ¶ 209.

⁷³ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 909.

⁷⁴ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 912–913 (emphasis added) (internal citations omitted).

The Tribunal is not convinced that the fact that the Merger and the Merger Ratio were suggested by the management boards of SC&T and Cheil severed the chain of causation. While this may be considered a concurrent cause, it has certainly not become the superseding cause of harm. As a matter of fact, Respondent's breach is a more recent and direct cause. *Had the Korean government refrained from giving any instructions to the NPS in relation to the Merger, the Merger would in all probability have been rejected, and the harmful consequences of the determination of an unfair ratio would therefore have been avoided.*

Neither is the Tribunal convinced by Respondent's argument that Claimants' losses are too remote from Respondent's breach because the NPS did not owe a duty of care to the other shareholders. . . .

Finally, the Tribunal's finding that the NPS' conduct is not attributable to Respondent does not mean that the NPS' conduct has become a superseding cause breaking the chain of cause. The undue interference of the Korean government was directed at influencing the NPS' vote. Under these circumstances, the NPS' conduct cannot be severed in causal terms from the conduct attributed to Respondent.

Consequently, the Tribunal finds that Respondent's breach legally caused Claimants' loss in respect of their SC&T shares.⁷⁵

48. Therefore, on the basis of materially the same evidence before this Tribunal, the *Mason* tribunal held that the causal chain between the ROK's breaches, exclusively at the Blue House and Ministerial level, and the losses suffered by protected investors in SC&T was unbroken, and that causality existed despite its holding that the NPS's conduct was not attributable to the ROK. The factual and legal causal chain is equally unbroken between the ROK's breaches and EALP's losses.

⁷⁵ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 914–917 (emphasis added).

2. The ROK's attempts to set aside the entire Award were rejected

49. The ROK sought to set aside the *entire* Award on the grounds that the Tribunal did not have jurisdiction.⁷⁶ That was rejected by the High Court based on a *de novo* review of the factual record that focused on underlying primary evidence rather than the prior decisions of the Korean courts.⁷⁷ The sole jurisdictional issue that the High Court decided differently from the Tribunal was that of attribution: on a *de novo* re-hearing, the High Court held that the NPS is not a *de facto* organ.⁷⁸
50. Additionally, the ROK had argued that the High Court's different finding on attribution was inextricably interwoven with other aspects of the Award (e.g., that the finding of breach against the ROK was dependent on the NPS's conduct being attributed to the ROK), such that (again) the Award should be set aside *in its entirety*.⁷⁹ The High Court again rejected that argument. Instead, it held that its finding on attribution did not disturb the Tribunal's findings as to:
- a. The breaches of the Treaty by the Blue House/MHW: the High Court noted that the key finding of breach was at paragraph 603 of the Award, which the High Court did *not* set aside.⁸⁰

The issue which arises is how far [the finding of breach at paragraph 603 of the Award] is dependent upon the NPS being a State organ, such that a direction from the Minister/MHW to CIO Hong to procure that the NPS voted in favour of the Merger might not have led to the conclusion that there was a breach of Article 11.5 of the Treaty but for that erroneous attribution.

⁷⁶ See Judgment, **Exh CLA-222**, ¶ 1; Ruling, **Exh CLA-227**, ¶ 9.

⁷⁷ See Judgment, **Exh CLA-222**, ¶¶ 26–82.

⁷⁸ Although the High Court noted that four of the six arbitrators who had considered the issue had concluded the opposite. See Judgment, **Exh CLA-222**, ¶ 152 (“I am not surprised to see that the six arbitrators who considered the issue in this case and *Mason* split (4:2 in favour of *de facto* designation). Had the question before me been whether the conclusion of the Tribunal was one reasonably open to them on the evidence of Korean law before them, the answer would have been ‘yes’.”).

⁷⁹ See Judgment, **Exh CLA-222**, ¶ 256.

⁸⁰ Save for the particular phrase regarding the NPS and CIO Hong, thus conspicuously rejecting the ROK's argument that the findings of breach in relation to the MHW/the Minister cannot stand “if CIO Hong is taken out of the picture”. See Judgment, **Exh CLA-222**, ¶ 257.

Reading the Award as a whole, *I have concluded that the finding is not so dependent. . . . It is not a realistic reading of the Award to conclude that the Article 11.5 breach depended on whether or not that instrument of an unchallenged State organ was itself a state organ.*⁸¹

- b. The degree of control and coercion exercised by the MHW on the NPS:
see, for example, paragraph 260 of the Judgment, noting that-

The Tribunal made a number of findings to the effect that CIO Hong/the NPS were acting under the direction and control of the Minister/MHW rather than making their own decision: see [602(b)] and [623]. *Indeed the latter paragraph is of particular importance because the Tribunal found that the NPS was acting 'effectively as an instrument of the MHW in the implementation of a governmental policy.'*⁸²

51. After having failed to set aside the Award in its entirety, the ROK asserted that, in the event of a remittal, the *entire* causation section of the Award should be set aside.⁸³ Again, that was rejected.
52. The High Court set aside only the specific and narrow parts of the causation section of the Award that referred to the Tribunal's attribution finding.⁸⁴ Importantly, the High Court did *not* disturb the Tribunal's findings on the applicable legal tests for causation in fact and in law, or the Tribunal's factual findings on the chain of causation from the conduct of the Blue House and the MHW to the NPS. Thus, despite the ROK's submissions to the contrary, the High Court declined to set aside paragraphs 816 to 821 of the Award on the basis that these paragraphs-

[A]re relevant arguments on a potential causal pathway leading from the breaches found to be constituted by the conduct of the Blue House, MHW and the Minister, and are therefore within the jurisdiction of the Tribunal. *They are not inextricably bound up with the finding that the conduct of NPS*

⁸¹ Judgment, **Exh CLA-222**, ¶ 260 (emphasis added).

⁸² Judgment, **Exh CLA-222**, ¶ 260 (emphasis added).

⁸³ See Judgment, **Exh CLA-222**, ¶ 256; Ruling, **Exh CLA-227**, ¶ 5(l).

⁸⁴ See Ruling, **Exh CLA-227**, ¶ 5(h)-(l).

*itself constituted a measure adopted or maintained by Korea. . . .*⁸⁵

3. The ROK’s claim that the Tribunal made *no* findings on the remitted issue was rejected

53. In determining whether any issue should be remitted to the Tribunal, the High Court noted that it had the power to “decline to grant relief when satisfied that the excess of jurisdiction has had no effect on the relief granted”.⁸⁶

54. On this question, the ROK submitted that the Tribunal simply had not decided the question of causation independent of its finding on attribution of the NPS’s conduct to the ROK;⁸⁷ in contrast, EALP contended that the Award contained findings on causation that were independent of its attribution finding, such that the attribution of the NPS’s conduct made no difference to the relief granted in the Award.⁸⁸

55. The High Court closely considered the passages to which EALP referred as containing such independent findings on causation. While the High Court ultimately concluded that the issue had to be remitted to the Tribunal,⁸⁹ it importantly did *not* rule that the Tribunal had failed to make *any* finding on the remitted issue; instead, the High Court found that the Tribunal needed to *clarify* its finding on the remitted issue.

56. In particular, the High Court was sympathetic to EALP’s argument and found that “*there are passages in the Award which provide support for EALP’s characterisation of the Tribunal’s assessment*”⁹⁰ —i.e., that the breaches constituted by the measures of the Blue House and the MHW *did* cause EALP’s loss.

⁸⁵ Ruling, **Exh CLA-227**, ¶ 5(l)(ii) (emphasis added).

⁸⁶ Judgment, **Exh CLA-222**, ¶ 255.

⁸⁷ See *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, High Court Hearing Transcript, Day 2 (3 December 2025), **Exh CLA-223**, 12:16–34:17.

⁸⁸ See Judgment, **Exh CLA-222**, ¶ 264.

⁸⁹ See Judgment, **Exh CLA-222**, ¶¶ 264–267.

⁹⁰ Judgment, **Exh CLA-222**, ¶ 265 (emphasis added).

57. However, the High Court concluded that English law required that the Tribunal’s findings be made with the requisite degree of clarity.⁹¹ As to that requisite degree of clarity, the ROK submitted—and the High Court appears to have accepted—that “it would need to be *completely clear*”⁹² that the Tribunal had already decided the issue that would otherwise be remitted. Applying this very high standard, and specifically in the light of paragraph 814 of the Award in which the Tribunal stated that it did not need to determine causation on the basis that the NPS was not a state organ, the High Court concluded that it could not find that the Tribunal had in fact decided this issue irrespective of the status of the NPS under international law.⁹³

58. The High Court reached this conclusion “with reluctance” because “EALP advanced its case by reference to Article 11.1(3) of the Treaty in the arbitration on a basis which did not depend on the acts of the NPS themselves constituting measures adopted or maintained by a Party, and it may well be entitled to the same relief on the basis of its case concerning the Blue House Measures (over which I have found the Tribunal did have jurisdiction), just as the *Mason* claimants were.”⁹⁴

4. The ROK’s attempt to maximize its ability to relitigate the Parties’ dispute on remittal was rejected

59. In the context of the Court deciding the scope of set aside, the ROK argued against including in the Order a list of specific paragraphs that were to be set aside, contending instead that a broad declaration as to the scope of remission would be sufficient. EALP objected on the grounds that the ROK’s approach would-

[C]reate[] obvious ambiguity or uncertainty as to the exact scope of set-aside and, in particular, what facts and issues are to be considered afresh by the Tribunal and what should be preserved upon remission. So as to avoid future disputes before the Tribunal as to what the Court intended, EALP favours precision and

⁹¹ See Judgment, **Exh CLA-222**, ¶ 264.

⁹² *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, High Court Hearing Transcript, Day 3 (4 December 2025), **Exh CLA-224**, 164:16–21 (emphasis added).

⁹³ See Judgment, **Exh CLA-222**, ¶ 265.

⁹⁴ Judgment, **Exh CLA-222**, ¶ 268.

clarity, with the specific parts of the Award that are to be set aside identified in the order.⁹⁵

60. The High Court agreed with EALP, deciding that it “should specifically identify the paragraphs affected rather than include a more general formulation which may lead to disputes in the future as to the scope of its application.”⁹⁶ These paragraphs are very limited and have virtually no impact on the Tribunal’s determinations relevant to causation.
61. As a result, the Tribunal can be certain as to which paragraphs in the Award have been set aside and which have not. Those parts of the Award which have not been set aside remain binding: indeed, the Tribunal is *functus officio* in respect of those matters and they cannot be reopened as a matter of law.⁹⁷ This was emphasized by the High Court in its Ruling as to the scope of the remission, which reiterated that “[t]he scope of the remission *will not affect or allow Korea to revisit findings which have not been set aside.*”⁹⁸

5. The Court’s Order and its relevant background confirm that the remitted issue is a narrow question of law

62. In sum, (i) only specifically identified paragraphs and sentences of the Award have been set aside; (ii) key findings of fact, viz. that the ROK *did* cause the NPS to vote in the way that it did, that the NPS’s vote caused the Merger to be approved, and that the Merger caused loss to EALP, have *already* been determined by the Tribunal in the parts of the Award that were *not* dependent on the attribution finding, that were *not* set aside, and that *are binding*; and (iii) the findings on causation that were set aside are limited to issues of legal causation that fall now to be clarified by the Tribunal.

⁹⁵ *Republic of Korea v. Elliott Associates, L.P.*, CL-2023-000395, EALP’s Brief Submissions on Consequentials, 25 February 2026, **Exh CLA-225**, ¶ 9.

⁹⁶ Ruling, **Exh CLA-227**, ¶ 4.

⁹⁷ *See Carter (trading as Michael Carter Partnership) v. Harold Simpson Associates (Architects) Ltd* [2004] UKPC 29; [2005] 1 WLR 919, **Exh CLA-216**, ¶ 23 (“[T]he remittal of the award does not deprive it of legal effect. It continues to operate so as to make the arbitrator *functus officio*, unable to alter his award, on those matters which were not remitted.”).

⁹⁸ Ruling, **Exh CLA-227**, ¶ 7 (emphasis added).

63. Specifically, the single remitted issue is properly understood as a question of law, and a very narrow one, following from the High Court’s different attribution finding, namely: *Does the determination by the High Court that the NPS may not be regarded as a State organ alter the Tribunal’s finding that the legal requirement of causation, i.e., foreseeability/proximity, is met?*

III. THE TRIBUNAL SHOULD CLARIFY IN ITS ADDITIONAL AWARD THAT THE ROK CAUSED EALP’S LOSS

64. In setting out its submissions on the remitted issue, EALP recalls that a decision on the remitted issue does not entail a *de novo* review. To the contrary, as a matter of the law of the seat in this arbitration, when deciding this question, “the arbitration reverts to the position it was in before the arbitrator published his award”⁹⁹ and the remitted issue is thus “to be determined in the light of the evidence before the arbitrators” in the original proceedings.¹⁰⁰ In this way, remittal takes place “against the background of an arbitration which has *already* been defined by pleadings and argument before an arbitrator”.¹⁰¹

65. As noted above, the Tribunal has already heard significant evidence and argument on causation: both on factual causation and on legal causation. These submissions were presented by both sides to this arbitration without knowing the outcome of the Tribunal’s determination on the question of attribution, and are thus unaffected by the partial set aside of the Award. These prior submissions therefore circumscribe the permitted scope of the Parties’ submissions in these remittal proceedings, as well as the Tribunal’s additional Award. Per the High Court: “[t]he effect of remission of an award following appeal is to allow the tribunal to

⁹⁹ *Husmann (Europe) Limited v. Ahmed Pharaon* [2003] 1 All ER (Comm) 879, **Exh CLA-218**, ¶¶ 79–83.

¹⁰⁰ See *Van Der Giessen-De-Noord Shipbuilding Division B.V. v. Imtech Marine & Offshore B.V.* [2008] EWHC 2904 (Comm), **Exh CLA-230**, ¶ 113; *Glencore International AG v. Beogradska Plovidba (The “Avala”)* [1996] 2 Lloyd’s Rep 311, **Exh CLA-217**, p. 316; *Alegrow S.A. v. Yayla Agro Gida San Ve Nak A.S.* [2020] EWHC 1845 (Comm), **Exh CLA-214**, ¶ 76.

¹⁰¹ *Glencore International AG v. Beogradska Plovidba (The “Avala”)* [1996] 2 Lloyd’s Rep 311, **Exh CLA-217**, p. 316 (emphasis added).

re-determine the cases that were advanced before it, rather than to present a new case that may have emerged during the appellate process.”¹⁰²

66. EALP’s submissions on the remitted issue therefore reflect the submissions that it made on this same issue during the arbitration, and are set out in detail, below.

A. THE TRIBUNAL’S FINDINGS ON THE REMITTED ISSUE ARE NOT AFFECTED BY THE STATUS OF THE NPS UNDER INTERNATIONAL LAW

67. The Tribunal has confirmed that the applicable test for legal causation is that of *directness* or *proximity*.¹⁰³ EALP recalls in this regard its submissions in the arbitration that legal causation is “inextricably tied to the question of the foreseeability of the harm in question,” which in turn can be established by “the mere fact that the respondent state ‘deliberately caused the harm in question.’”¹⁰⁴

68. EALP has already established with reference to the salient findings in the Award, that a sufficient causal link exists between the ROK’s breaches and EALP’s loss—that is, proximate causation—by virtue of: (i) the direct and uninterrupted causal chain;¹⁰⁵ and (ii) the fact that, “[n]ot only was the effect of the Respondent’s intervention in the NPS’s vote on the Claimant’s investment reasonably foreseeable at the time the intervention occurred; as a matter of fact, the

¹⁰² *Alegrow S.A. v. Yayla Agro Gida San Ve Nak A.S.* [2020] EWHC 1845 (Comm), **Exh CLA-214**, ¶ 76. *See also Van Der Giessen-De-Noord Shipbuilding Division B.V. v. Imtech Marine & Offshore B.V.* [2008] EWHC 2904 (Comm), **Exh CLA-230**, ¶ 113 (“*It seems to me most undesirable that the appellants should be able to open up the entire subject matter of those parts, and to run, for instance, points that they have never taken before*”). (emphasis added).

¹⁰³ Award, ¶ 815.

¹⁰⁴ Award, ¶ 751. *See also* Commentary to the ILC Articles, **Exh CLA-38**, Article 31, comment 10 (“The allocation of injury or loss to a wrongful act is, in principle, a legal and not only a historical or causal process. Various terms are used to describe the link which must exist between the wrongful act and the injury in order for the obligation of reparation to arise. For example, reference may be made to losses ‘attributable to [the wrongful] act as a proximate cause’, or to damage which is ‘too indirect, remote, and uncertain to be appraised’, or to ‘any direct loss, damage including environmental damage and the depletion of natural resources or injury to foreign Governments, nationals and corporations as a result of’ the wrongful act. Thus, causality in fact is a necessary, but not a sufficient condition for reparation. There is a further element, associated with the exclusion of injury that is too ‘remote’ or ‘consequential’ to be the subject of reparation. In some cases, the criterion of ‘directness’ may be used, in others ‘foreseeability’ or ‘proximity’. But other factors may also be relevant: for example, whether State organs deliberately caused the harm in question, or whether the harm caused was within the ambit of the rule which was breached, having regard to the purpose of that rule. In other words, the requirement of a causal link is not necessarily the same in relation to every breach of an international obligation.”) (Internal citations omitted.)

¹⁰⁵ *See* Award, ¶¶ 623, 821. *See also* ¶¶ 33 to 39 above.

Respondent foresaw at the time that the Claimant’s investment would be adversely affected by the intervention”¹⁰⁶—indeed the ROK *specifically foresaw* this “ISD claim”¹⁰⁷ and nevertheless proceeded deliberately to inflict harm on EALP.

69. These findings are in no way impacted by the High Court’s conclusion on the legal status of the NPS (as not a *de facto* State organ under international law), which is irrelevant to the question of whether the Blue House and MHW’s breaches had a sufficiently foreseeable impact in causing EALP’s loss.¹⁰⁸ Put simply, the NPS’s legal status as a *de facto* State organ, or not, has no import on whether the Blue House and MHW’s conduct had a foreseeable damaging consequence on EALP.
70. *First*, there is a direct and uninterrupted chain of causality in the present case. To summarize again, President Park’s improper order that the Merger must be approved, Minister Moon’s identical instruction, and the subsequent illegal actions and omissions of the ROK’s officials to ensure that this outcome was achieved, caused the NPS to vote in favor of the Merger.¹⁰⁹ As the direct causal consequence of the NPS’s vote in favor, the Merger was approved.¹¹⁰ And as a direct consequence of the Merger, EALP was permanently deprived of both a material increment of the value of its investment in SC&T (when this was transferred to the Lee family and other Cheil shareholders) and of the ability to realize that value, which foreseeably would have been released by a “skyrocketing” share price if the Merger had been defeated.¹¹¹

¹⁰⁶ See Award, ¶ 360.

¹⁰⁷ See, e.g., Transcript of Court Testimony of Jong-beom An (Moon/Hong Seoul High Court), 26 September 2017, **Exh C-525**, p. 12 (noting that MHW Officials Tae-han Lee was concerned about “ISD issues”); Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, p. 24 (recording Blue House official Jong-beom An’s concern about “a potential ISD claim”); Transcript of Court Testimony of Ki-nam Kim (JY Lee Seoul Central District Court), 14 June 2017, **Exh C-514**, p. 19 (recording Blue House official Ki-nam Kim’s concern regarding a potential ISD claim being filed against the ROK).

¹⁰⁸ See below ¶ 76.

¹⁰⁹ See Award, ¶¶ 586–598, 602, 623, 624, 814. See also EALP’s Reply Post-Hearing Brief, ¶¶ 43–49; EALP’s Post-Hearing Brief, ¶ 182.

¹¹⁰ See Award, ¶¶ 817–820, 948. See also EALP’s Reply Post-Hearing Brief, ¶¶ 50–51; EALP’s Post-Hearing Brief, ¶ 182.

¹¹¹ See Award, ¶¶ 817–820, 948; EALP’s Post-Hearing Brief, ¶ 182. See also EALP’s Reply Post-Hearing Brief, ¶¶ 52–54; Transcript of Court Testimony of ██████████ (Moon/Hong Seoul Central District Court), 8 May 2017, **Exh C-510**, p. 15.

71. As noted above, this chain of causation has already been recognized by the Tribunal in passages of the Award that have *not* been set aside and are thus *not* open to relitigation.¹¹²
72. *Second*, the sufficiency of the causal chain in this case is further confirmed by the foreseeability of EALP’s loss. This is the rare case where there is overwhelming evidence that the State actually foresaw the harm its conduct would cause to this particular claimant. Indeed, ROK officials expected this Treaty claim precisely because its conduct specifically targeted EALP. To recall:
- a. A Blue House memorandum considering the advantages and disadvantages of the Blue House “interven[ing] in the NPS’s exercise of voting rights,” specifically noted “Elliott[’s]” opposition to the merger and observes that “[o]ppos[ing] the merger” would be perceived as tantamount to “help[ing] a foreign hedge fund.”¹¹³
 - b. Soon thereafter, in late June 2015, President Park decided to “actively intervene[.]” in the NPS’s vote on the Merger.¹¹⁴ Again, following this decision, President Park specifically identified “Elliott” as a key obstacle in the ROK’s efforts to “ensure that the merger was accomplished.”¹¹⁵
 - c. In light of the specific targeting of EALP, Blue House officials specifically noted that implementing President Park’s order risked a ISD claim from EALP.¹¹⁶

¹¹² See above ¶¶ 22–39. See also above ¶ 61.

¹¹³ [Blue House], “Direction of the National Pension Service’s Exercise of Voting Rights regarding the Samsung COT Merger”, undated, **Exh C-588**, p. 41.

¹¹⁴ Seoul High Court, Park, **Exh C-286**, p. 90.

¹¹⁵ Second Suspect Examination Report of Jin-su Kim to the Special Prosecutor, 9 January 2017, **Exh C-488**, p. 6. See also Work diary of [Won-yeong Choe], entry dated [25 June 2015], **Exh C-367**, p. 4; [Blue House], “Review of Domestic Companies’ Measures to Defend Management Rights Against Foreign Hedge Funds”, undated, **Exh C-587**. See also Seoul High Court, Park, **Exh C-286**, p. 87 (recounting President Park’s testimony that “[a]t the time of the Merger, I found it regrettable and worrisome that [Samsung], a leading corporation in Korea, was being attacked by [Elliott], a foreign hedge fund.”).

¹¹⁶ Transcript of Court Testimony of Jong-beom An (JY Lee Seoul Central District Court), 4 July 2017, **Exh C-520**, pp. 28, 30–33. See also Transcript of Court Testimony of Wan-seon Hong (Moon/Hong Seoul Central District Court), 17 May 2017, **Exh C-511**, p. 55.

73. Moreover, as noted earlier, the Tribunal has already found that “[n]ot only was the effect of the Respondent’s intervention in the NPS’s vote on the Claimant’s investment reasonably foreseeable at the time the intervention occurred; as a matter of fact, the Respondent foresaw at the time that the Claimant’s investment would be adversely affected by the intervention.”¹¹⁷
74. None of these findings was dependent on the legal status of the NPS. And, in light of these findings in the Award, none of which has been set aside, it is simply not open to the ROK to relitigate in these proceedings whether the causal chain was sufficiently proximate. The Tribunal has already conclusively held that it was.¹¹⁸
75. *Third*, and relatedly, the ROK in fact breached its Treaty obligations intentionally in order to ensure that the NPS voted in favor of the Merger.¹¹⁹ Given the NPS’s casting vote, the ROK’s conduct ensured that the Merger would be approved. Indeed, it was because the ROK was aware that the NPS held the casting vote that it was targeted by the Blue House and the MHW.¹²⁰ Accordingly, as a result of this deliberate conduct, the ROK ensured that the Lee family’s succession plans would be achieved to the detriment of SC&T shareholders.¹²¹ The extraordinary factual record in this case, which results from the conscientiousness of Korea’s own Special Prosecutor in successfully prosecuting senior Government officials, confirms that President Park, Minister Moon, CIO Hong, and multiple subordinates were well aware of this aim, and that the ROK’s conduct to achieve it was designed specifically with EALP in mind.¹²² In such circumstances, there

¹¹⁷ Award, ¶ 360 (emphasis added).

¹¹⁸ See also *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶ 913 (“[T]he Tribunal is satisfied that the loss in the value of Claimants’ SC&T shares was foreseeable for Respondent at the time of the breach.”).

¹¹⁹ See EALP’s Post-Hearing Brief, ¶ 186.

¹²⁰ See Reply, ¶¶ 89–91, 513. See also [Yeong-sang Lee’s] Handwritten Memo, undated, **Exh C-585** (noting that President Park and her Blue House staff specifically identified “[s]hares held by [the] NPS” as a means by which to “help” the Lee Family and “pursue a win-win strategy” to ensure that “*the crown prince [JY Lee]. . . securely inherit[s] the throne*” of the Samsung empire.”) (emphasis added).

¹²¹ See Reply, ¶¶ 505–544. See also Seoul High Court Case No. 2019No1962 (remanded proceeding), 10 July 2020, **Exh R-314**, pp. 44–45.

¹²² See EALP’s Post-Hearing Brief, ¶ 185; Reply, ¶¶ 88–107, 532. See also Separate Opinion of J. Christopher Thomas, 20 June 2023, ¶¶ 71–73.

can be no doubt that there is a sufficient causal link between the ROK's Treaty breaches and the loss suffered by EALP.

76. *Finally*, the High Court's conclusion that the NPS is not a *de facto* State organ in no way affects this uninterrupted chain of causation, nor the foreseeability of the consequences of the ROK's breach. As noted above, the Tribunal has already held, as a matter of fact, that the Blue House and MHW caused the NPS to vote in the way that it did.¹²³ The Tribunal has also already held, as a matter of law, that the consequences of the Blue House and MHW's actions were foreseeable. And the Tribunal has also already rejected the existence of an intervening act that could break the chain of causation.¹²⁴ These factual and legal holdings are in no way impacted by the *legal* status of the NPS vis-à-vis the Korean State.
77. International law is clear that a State's international responsibility for its delicts is not reduced or attenuated by the presence of concurrent causes, whether they be third persons or natural events.¹²⁵ In the same way, international law does not allow for a State to escape international responsibility simply because the final step in the causal chain involved acts by a third-party that it specifically directed and controlled so as to carry out its delicts.¹²⁶ This is entirely consistent with the Tribunal's still binding conclusion that-

¹²³ See above ¶¶ 22–26.

¹²⁴ See above ¶¶ 33–39.

¹²⁵ See above ¶ 29. See also Commentary to the ILC Articles, **Exh CLA-38**, Article 31, comment 12 (“[I]nternational practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault. . . . Such a result should follow *a fortiori* in cases where the concurrent cause is not the act of another State (which might be held separately responsible) but of private individuals, or some natural event such as a flood. In the *United States Diplomatic and Consular Staff in Tehran case*, the Islamic Republic of Iran was *held to be fully responsible* for the detention of the hostages *from the moment of its failure to protect them.*”) (emphasis added) (internal citations omitted) and comment 13 (“It is true that cases can occur where an identifiable element of injury can properly be allocated to one of several concurrently operating causes alone. But unless some part of the injury can be shown to be severable in causal terms from that attributed to the responsible State, the latter is held responsible for all the consequences, not being too remote, of its wrongful conduct”). See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment (Reparations), ICJ Rep 2022, p. 13, **Exh CLA-215**, ¶ 97 (“fact that the damage was the result of concurrent causes is not sufficient to exempt the Respondent from any obligation to make reparation”).

¹²⁶ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Rep 2007, p. 43, **CLA-24**,

[W]hen voting on the Merger, the NPS did not act independently and for commercial purposes; as the Korean courts have determined, the NPS did not take its decision independently, based on the commercial merits of the Merger, but *acted under the direction and instructions of the MHW and thus effectively as an instrument of the MHW* in the implementation of a governmental policy.¹²⁷

78. As detailed above, on the basis of materially the same evidence before this Tribunal, the *Mason* tribunal had no difficulty finding that the ROK's breaches caused the claimants' losses, notwithstanding its finding that the NPS's conduct was not attributable to the ROK.¹²⁸

¶¶ 396–397 (“[T]he Court must now determine whether the massacres at Srebrenica were committed by persons who, though not having the status of organs of the Respondent, nevertheless acted on its instructions or under its direction or control. . . . [This question] is different from the question whether the persons who committed the acts of genocide had the status of organs of the Respondent under its internal law; nor . . . is it the same as the question whether those persons should be equated with State organs *de facto*, even though not enjoying that status under internal law. The answer to the latter question depends, as previously explained, on whether those persons were in a relationship of such complete dependence on the State that they cannot be considered otherwise than as organs of the State, so that all their actions performed in such capacity would be attributable to the State for purposes of international responsibility. Having answered that question in the negative, the Court now addresses a completely separate issue: whether, in the specific circumstances surrounding the events at Srebrenica the perpetrators of genocide were acting on the Respondent’s instructions, or under its direction or control. An affirmative answer to this question would in no way imply that the perpetrators should be characterized as organs of the FRY, or equated with such organs. It would merely mean that the FRY’s international responsibility would be incurred owing to the conduct of those of its own organs which gave the instructions or exercised the control resulting in the commission of acts in breach of its international obligations. In other words, it is no longer a question of ascertaining whether the persons who directly committed the genocide were acting as organs of the FRY, or could be equated with those organs—this question having already been answered in the negative. *What must be determined is whether FRY organs—incontestably having that status under the FRY’s internal law—originated the genocide by issuing instructions to the perpetrators or exercising direction or control, and whether, as a result, the conduct of organs of the Respondent, having been the cause of the commission of acts in breach of its international obligations, constituted a violation of those obligations.*”) (emphasis added).

¹²⁷ Award, ¶ 623 (emphasis added).

¹²⁸ See above ¶¶ 42–44 (referring to *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, Sections VII.B and C).

B. TWO ADDITIONAL JUDGMENTS OF THE KOREAN COURTS DO NOT CHANGE THE TRIBUNAL’S FINDINGS

79. The ROK has repeatedly indicated that it intends to seek the Tribunal’s leave to introduce additional judgments of the Korean courts into the arbitration record,¹²⁹ most likely (i) a judgment of the Seoul Central District Court in November 2022 dismissing a claim for damages filed by certain former SC&T shareholders; and (ii) the first instance and appeal judgments in the JY Lee market manipulation proceedings in 2024 and 2025, acquitting JY Lee of charges of market manipulation.
80. EALP notes that the ROK has not made any application to date and has left for itself room to apply for permission to adduce other unidentified evidence, yet does not propose to do so until after EALP files this present submission. EALP will respond to any application for leave to adduce new evidence if and when it is made.
81. For now, EALP notes that the two additional judgments change nothing, including the Tribunal’s findings on factual causation. In particular:
- a. The ROK had also applied to introduce these two additional judgments into the record of the *Mason* arbitration. Neither judgment was admitted into evidence by the *Mason* tribunal, on the basis that the ROK had failed to establish “exceptional circumstances” which could justify the late admission of these documents.¹³⁰ In refusing to admit these two judgments into evidence, the *Mason* tribunal held that “the mere fact that a judgment was rendered after the final submissions in [the] arbitration” does not constitute “exceptional circumstances”.¹³¹ The same finding should apply here: the November 2022 judgment of the Seoul Central District Court was rendered before the closure of the arbitration proceedings on 13 March

¹²⁹ Letter from the ROK to the Tribunal, 26 March 2026, ¶ 27; CMC Transcript, 53:25–54:24.

¹³⁰ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶¶ 102, 103, 108, 109.

¹³¹ *Mason Capital L.P. (U.S.A.) and Mason Management LLC (U.S.A.) v. Republic of Korea*, PCA Case No. 2018-55, Final Award, 11 April 2024, **Exh CLA-219**, ¶ 109.

2023, which means the ROK had ample opportunity to raise it during the arbitration. It did not do so.

- b. As noted, the ROK challenged these decisions by the *Mason* tribunal before the Singapore International Commercial Court. The ROK’s challenge failed. The Singapore Court, having viewed the judgments, held that “it is unlikely either judgment would have materially affected the outcome of the Arbitration.”¹³²
- c. The English High Court was also presented with these judgments in the ROK’s application to set aside the Award and heard submissions on them. The High Court’s Judgment makes little material reference to the additional judgments of the Korean courts, going so far as to describe the Seoul High Court judgment in the JY Lee market manipulation proceedings as being of “limited assistance”.¹³³
- d. Finally, as recorded in the Award, the ROK stipulated repeatedly in the arbitration that it did not take issue with the findings of fact set out in the judgments that currently form part of the arbitral record.¹³⁴ It should not now be allowed to contradict its own repeated stipulation, particularly where the Tribunal had before it not only the serial criminal conviction decisions themselves, but also the extensive underlying primary evidence presented in those prosecutions.¹³⁵

¹³² *Republic of Korea v. Mason Capital and another* [2025] SGHC(I) 9, **Exh CLA-228**, ¶ 146. *See also id.*, ¶¶ 131, 143.

¹³³ Judgment, **Exh CLA-222**, ¶ 32.

¹³⁴ *See Award*, ¶ 581 (“The essential facts underlying these decisions [of the Korean Courts] *are not in dispute between the Parties*”, referring to Arbitration Transcript, Day 2, 16:17–19 (Counsel for the ROK) (“We do not deny the facts as they are presented to you in relation to the convictions that have been pronounced by the courts.”). *See also* Arbitration Transcript, Day 2, 17:9–12 (Counsel for the ROK); Arbitration Transcript, Day 9, 87:10–12 (Counsel for the ROK).

¹³⁵ CMC Transcript, 49:15–50:2.

IV. REQUEST FOR RELIEF

82. For the foregoing reasons, EALP hereby requests that the Tribunal determine as follows:

- a. The ROK is ordered to pay EALP compensation for the losses caused to EALP by the ROK's breaches in the amount of USD 48,490,438.00;
- b. The ROK is ordered to pay EALP pre-award interest at a rate of 5 percent on the sum in sub-paragraph (a) above, compounded yearly from 16 July 2015 until the date of this additional Award, taking into consideration the sums recovered by EALP between 17 and 25 September 2015, on 18 March 2016 and on 12 May 2022;¹³⁶
- c. The ROK is ordered to pay EALP post-award interest at a rate of 5 percent, compounded yearly, from the date of this Award until payment of the sum in sub-paragraph (a) above in full;
- d. The ROK is ordered to pay EALP the legal costs incurred by EALP in relation to the original arbitration proceedings, in the amount of no less than USD 28,903,188.90, with interest at the rate of 5 percent, compounded yearly;
- e. The ROK is ordered to pay EALP the legal costs incurred by EALP in relation to these remitted proceedings, in an amount to be quantified, with interest at the rate of 5 percent, compounded yearly;
- f. The ROK is ordered to pay EALP its costs of the set-aside proceedings before the English courts;
- g. The Parties are to bear their own costs of the original arbitration proceedings; and
- h. The ROK is ordered to pay the costs of these remitted proceedings.

All other claims and requests for relief are dismissed.

¹³⁶ See EALP's Application for Correction of the Award, 20 July 2023, ¶¶ 19–20; Award, ¶ 961.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Constantine Partasides', written in a cursive style.

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27 April 2026