IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DOUGLAS M. HAYES, on behalf of himself and all others similarly situated and derivatively on behalf of Nominal Defendant ACTIVISION BLIZZARD, INC.,	:	
Plaintiff,	:	
v	:	Civil Action No. 8885-VCL
ACTIVISION BLIZZARD, INC., PHILIPPE G.H. CAPRON, JEAN-YVES CHARLIER, ROBERT J. CORTI, FREDERIC R. CREPIN, JEAN-FRANCOIS DUBOS, LUCIAN GRAINGE, BRIAN G. KELLY, ROBERT A. KOTICK, ROBERT J. MORGADO, RICHARD SARNOFF, REGIS TURRINI, VIVENDI, S.A., AMBER HOLDING SUBSIDIARY CO., ASAC II LP, ASAC II LLC, DAVIS SELECTED ADVISERS, L.P., and FIDELITY MANAGEMENT & RESEARCH CO.,	:	
Defendants.	:	

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Chancery Courtroom No. 12C
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Wednesday, September 18, 2013
10 a.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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RULINGS OF THE COURT FROM ORAL ARGUMENT ON PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

CHANCERY COURT REPORTERS
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THE COURT: Let me start by thanking everyone for the hard work that went into preparing for today. I know a lot of people lost their weekends and probably had to sacrifice personal things to help me get ready for this. I do appreciate that. And I want to particularly thank the associates, who I suspect lost more of their weekends and personal lives than some of the partners. And the papers that were submitted were extremely helpful. Your arguments this morning were extremely helpful.

So today's hearing is so that the Court can consider a motion for a temporary restraining order in Hayes versus Activision Blizzard, Inc., C.A. No. 8885. The plaintiff, Mr. Hayes, seeks to have the Court temporarily restrain the defendants from consummating transactions contemplated by a stock purchase agreement dated as of July 25, 2013. The grounds are that the parties are not seeking that the stockholder approval allegedly required by Section 9.1(b) of the company's amended and restated certificate of incorporation.

Now, there are other claims advanced in the complaint, including for breach of fiduciary

duty. The TRO application seeks relief only under the charter provision. The breach of fiduciary duty claims aren't at issue today.

The defendants expect to close tomorrow, September 19th, 2013. Because of the time that elapsed between the announcement of the transaction at the end of July and the filing of the lawsuit, I'm treating the application as one for a preliminary injunction rather than a TRO. I'm doing that for reasons that I'll explain at greater length later, but primarily it is a less plaintiff-friendly standard than the TRO standard.

To give you the bottom line up-front, nevertheless, applying the preliminary injunction standard, I believe the motion has to be granted. So the defendants are enjoined from proceeding with the transactions contemplated by the stock purchase agreement pending, one, trial on the merits; two, receipt of a favorable stockholder vote under Section 9.1(b); or, three, a modification of the injunction by this Court or, depending on how the parties wish to proceed, by the Delaware Supreme Court on appeal.

A little bit of factual background.

Activision Blizzard, Inc. is a Delaware corporation with its principal executive offices in California. As of July 25, 2013, Activision had approximately 1.21 billion shares of common stock outstanding. Vivendi is a corporation organized and existing under the laws of France. Its 61.5 percent ownership interest in Activision is treated as one of Vivendi's business segments. Amber Holding Subsidiary Co. is currently a wholly owned subsidiary of Vivendi. It is a Delaware corporation. ASAC II LP is a limited partnership established under the laws of the Cayman Islands. These are the key players in terms of understanding the transactions.

From an historical standpoint, we have to start with the 2008 business combination between Activision and Vivendi. On December 1, 2007, Activision and a wholly owned subsidiary entered into a business combination agreement with Vivendi and two of its indirect wholly owned subsidiaries. As a result of this transaction, Vivendi came to own a majority of Activision's outstanding common stock. Since then, it's controlled the board and the company through Vivendi-affiliated directors. In connection with the transaction, the charter of Activision was

amended to include Section 9.1(b), which is at issue in today's hearing.

By June 2012, for reasons that aren't entirely relevant, Vivendi decided to seek potential acquirers for all or part of its Vivendi's Activision business segment. I understand that Vivendi did not receive any offers, at least based on the materials that have been provided to me. Vivendi then turned to a deal with Activision.

On July 25, Activision, Vivendi, and ASAC announced the stock purchase agreement. Pursuant to the SPA, Activision will acquire Amber for 5.83 billion. Amber is defined in the SPA as "New VH." At the time of the purchase, Amber will own 428 million -- really, if I round up, 429 million -- shares of Activision common stock, plus 676 million in NOLs. The effective purchase price of the shares works out to $13.60 per share, representing a discount of approximately 10 percent from Activision's trading price on July 25, 2013.

Also as part of the SPA, ASAC will purchase nearly 172 million shares of Activision's common stock at the same $13.60 per-share price. Now, ASAC is going to be controlled by Activision's

two senior officers. The financing for the ASAC purchase is being provided by various large institutions who are also participating in the purchase. Given the numbers of the shares being sold by Vivendi, a little bit under 30 percent are going to ASAC.

The SPA has a termination date of October 15, 2013. After that point any party may elect to terminate it. Now, as a result of this transaction, Activision's stockholder profile will change materially. Before the transaction, Vivendi owns 61 percent, approximately, of the common stock and its rights are governed by an investor rights agreement, a stockholders' agreement, as well as the charter. After the transaction, approximately 47 percent of Activision stock will be owned by Vivendi, the top two officers through ASAC and their affiliates. That number, that 47 percent includes their affiliates. Without their affiliates, the figure drops to approximately 37 percent. There will be a revised investor rights agreement. There will be a revised stockholders' agreement.

Now, it does appear from -- particularly from the investor rights agreement, that

Vivendi plans to sell down its stake over time. It also appears from the stockholders' agreement that ASAC will have various rights to sell down or distribute to its own investors its stake over time. It does seem to be true therefore, to use Mr. Welch's analogy, that there is something of a separation in the offing; but it is a separation that will take place over time, subject to ongoing agreements by the parties, and it's a separation where the key step is essentially a reorganization in which Activision acquires Amber and the acquisition of Amber is an acquisition of a controlled subsidiary of Vivendi. And I'll get to the import of those concepts for Section 9.1 in a moment.

Litigation was filed challenging the transaction. On August 1, 2013, five business days after the announcement, a derivative lawsuit was filed in California alleging that the directors breached their fiduciary duties. About a week later, on August 9th, another Activision stockholder made a demand to inspect books and records, again for the same purpose, breach of fiduciary duties. It was on September 11th that the plaintiff Hayes commenced the litigation by filing this complaint and seeking relief

under Section 9.1(b). So by my count, 41 days elapsed between the announcement of the deal and the time of the filing of the Hayes complaint. At the time of filing, 34 days remained until the termination date. So in terms of determining how much time passed, certainly it's more than half the time had been expended.

Based on this series of events, the defendants have argued strenuously, both at the scheduling conference and also have reiterated this morning, that the entire application should be denied on grounds of laches. Laches requires a combination of two things: Unreasonable delay and prejudice. As a threshold matter, I reject the idea that the fast filing by the California plaintiff is evidence that Hayes should have filed earlier. The timing of the California complaint suggests an opportunistic filing triggered on the announcement rather than any type of diligent research into the potential claims that were available. I think it's rather ironic the defendants have argued to me that I should defer and that they actually endorse the California plaintiff's judgment on the failure to assert the charter claims, while at the same time they reject the California plaintiff's

judgment as to the explicit assertion of the corporate opportunity claims. This is not only inconsistent but clearly selective. The better inference is that in the short time between the announcement of the transaction and the initiation of litigation activity by the other plaintiffs, the charter claim simply wasn't diligenced.

Now, it's not surprising it wasn't diligenced, and it's far from clear that the amount of delay on these facts was unreasonable. There was no proxy statement describing the deal. The Form 8-K disclosure was minimalist and barebones. It runs about six pages and is essentially limited in its description. The Form 8-K doesn't attach or refer to the charter or bylaws or make any reference to a stockholder vote. It's not, on its face, a transaction that would require a stockholder vote. The terms of the SPA actually contain representations that no vote is required. So all of these things I think are sufficient to throw a stockholder plaintiff off the scent as to the existence of a charter-based voting right and to make it more reasonable that it took some time for a diligent stockholder to focus on the charter and realize that the charter vote was

potentially applicable.

I also don't think there's any prejudice to the defendants that would warrant a laches analysis. Given the top law firms involved, I'm certain that they analyzed the charter and bylaws. They had to think about this. It's somewhat surprising that, at least as Mr. Hanrahan reports, that there aren't any minutes or books and records that would relate to this subject; but regardless, this is something that I'm sure was discussed as part of the transaction. Also, the application is effectively being presented as a matter of law. It's not a situation where anybody would have to take discovery.

In terms of the alternative timeline, I don't share Mr. Savitt's confidence that this could have gotten to a vote with an earlier filing. I actually think it's most likely that had the plaintiff moved diligently, it would have not filed -- or more diligently -- I'm not saying they didn't move diligently. Had they moved more diligently, they wouldn't have filed seven days after the announcement like the California plaintiff. It probably would have taken two or three weeks. I don't think under that

circumstance you would have had a hearing in a week. I think you would have gotten a prompt hearing, but we ended up at this hearing because the defendants scheduled closing for tomorrow. I think you would have had a two- to three-week briefing schedule.

I mean, let's assume a two-week briefing schedule. And, as I say, I would, because of the significance of the issues here, I think a Court would prefer to give you something in writing rather than from the bench. What this all means is that we probably would have ended up with a decision or an outcome perhaps two weeks ago, and there would not have been time under those circumstances to get to a vote, and that's at an optimistic schedule for the litigation.

Nevertheless, I do take into account the plaintiff's delay. The plaintiffs have proceeded under the TRO standard, which is more favorable to plaintiff because it only requires a colorable claim, and it focuses primarily on the existence of irreparable harm. There's less stress on balancing. It's really supposed to be used for short, fast-moving emergencies. I share the defendants' concern that a plaintiff shouldn't be able to

contribute to the timing problem that generates the need for the TRO standard. So, therefore, I'm going to apply the preliminary injunction standard, which is more searching. Instead of a colorable claim, the plaintiff has to show a reasonable probability of success on the merits. There is heavier stress on the relative balancing of harms.

I'm now going to turn to the first element, which is reasonable probability of success on the merits. Section 9.1(b) of the charter states -- and I'm quoting -- "Unless Vivendi's Voting Interest (i) equals or exceeds 90% or (ii) is less than 35%, with respect to any merger, business combination or similar transaction involving the Corporation or any of its Subsidiaries, on the one hand, and Vivendi or any of its Controlled Affiliates, on the other hand" -- I'm going to elide some words and pick up with "the approval of such transaction shall require the affirmative vote of a majority in interest of the stockholders of the Corporation other than Vivendi and its Controlled Affiliates, that are present and entitled to vote at the meeting called for such purpose."

So the requirement of a disinterested

stockholder vote turns on whether the transaction in question is a "merger, business combination or similar transaction involving the Corporation or any of its Subsidiaries, on the one hand, and Vivendi or its Controlled Affiliates, on the other ...."

So the first key is "merger, business combination or similar transaction." It's not just a merger. It's not just a business combination. It's anything that is a similar transaction to a merger or a business combination.

The second key is it's not just between Activision and Vivendi. It includes between the corporation, Activision, or any of its subsidiaries, on the one hand, and Vivendi, or its controlled affiliates, on the other. So it includes a business combination between the corporation, Activision, and one of Vivendi's controlled affiliates, here Amber.

I'm going to focus on "business combination" because that it's a broader term than "merger." So if it falls within -- I mean, you could conceivably not fall within "merger" and still fall within "business combination." So I'm going to focus on "business combination."

In Martin Marietta, Chancellor Strine thoroughly reviewed the different meanings of "business combination" as used in different contexts. He ultimately found the term fundamentally ambiguous. He noted that some M&A authorities have suggested the origins of the term in the accounting literature. The accounting literature currently defines a business transaction as one with implications for control. Mr. Welch argued vigorously this is a transaction that actually does involve a change of control. As he sees it, it's a change from Vivendi to the public stockholders. So that's, arguably, implicated here; but the parties have said they're not accounting for the deal as a business combination. Nevertheless, as Chancellor Strine observed in Martin Marietta, the existence of this phrase in the accounting literature is consistent with its relatively expansive capacity.

The term also appears in the federal securities laws, such as SEC Rule 165, which defines it in terms of SEC Rule 145(a). There are various definitions and usages in treatises. The main Delaware usage is in Section 203. After considering all of these definitions, the Chancellor held -- and I'm quoting -- "A consideration of all these factors

leads me to conclude that one cannot confidently say that the term business combination transaction has a single, clear meaning. The usages in analogous contexts are too varied ...." That's at page 1113 of his decision.

He was, therefore, forced to resolve the case based on extrinsic evidence and reach a contextually specific understanding of what "business combination" meant in the context of the confidentiality agreement without a standstill that was at issue in that case.

In the course of his reasoning, Chancellor Strine recognized that the purchase of the stock of a wholly owned subsidiary could easily qualify as a business combination. That's found at page 1108 of his decision. He didn't hold as a matter of law that it meant that. He just recognized the term was sufficiently expansive to encompass that result.

That type of transaction is precisely what's happening here. Vivendi is selling Amber, a wholly owned subsidiary. Activision is acquiring it. This falls from the plain language of Section 9.1(b); in other words, a transaction involving the

corporation, Activision, on the one hand, and a controlled affiliate of Vivendi, on the other hand. We also know from the fact that Activision will be using the NOLs, that there will be some combining, perhaps not in the technical legal sense of a combination of the subsidiary with another subsidiary of Activision, but a combining of the assets. This all fits with the dictionary definitions that the defendants have cited.

Now moving to the specific context of this case, my job is to read the charter as a whole with the other documents at issue. I think it's important to remember that Section 9.1(b) was put in for the obvious purpose of limiting what a controlling stockholder could do, namely, Vivendi, without a stockholder vote. The purpose of the provision is, therefore, to limit the flexibility that a controlling stockholder otherwise would have with respect to the controlled company.

Given that context, the strongest analogy here is to limitations set forth in Section 203. I recognize the Delaware courts do not automatically import the definition of "business combination" in Section 203 into corporate documents.

My point, rather, is Section 203 is illustrative. It indicates the types of business combinations that someone setting up a provision designed to limit the flexibility that a controller has would want to contemplate. The purpose of the "business combination" definition of Section 203 is to limit follow-on transactions between an interested stockholder and a corporation. Likewise, the purpose of Section 9.1(b), here, is to give a stockholder vote for certain follow-on transactions between Vivendi, the controlling stockholder, and the corporation.

As the definitions in Section 203 recognize, the risk in these transactions is the controller will use its authority and influence to transfer value from the controlled company to the controller. You're not just worried about specific types of business transactions; you're worried about potentially value-transferring business transactions.

Now, if 203 would apply, this transaction would fall explicitly within Section 203 (3) -- let me slow down -- 203(c)(3)(ii). That provision defines a business combination to include "Any sale, lease, exchange, mortgage, pledge, transfer

or other disposition ... to or with the interested stockholder ... of assets of the corporation ... which assets have an aggregate market value of equal to 10% or more of the aggregate market value of all the assets of the corporation ... or the aggregate market value of all the outstanding stock ...."

Why are you worried about that? Because it's one thing to for the corporation to repurchase some shares or transfer some assets to its controller; but when you're doing a big, big reorg., value can move. Cash is an asset of the corporation. Here, the 5.83 billion that Activision will be paying to Vivendi is more than 10 percent of Activision's total assets of 13.411 million. It's obviously not a pro rata transaction. Only Vivendi is getting cash.

Now, again, I don't think that this is an effort by the drafters of the charter to explicitly incorporate this definition from Section 203. The question is what were they reasonably worried about at the time they drafted Section 9.1(b) and gave a stockholder vote on business combinations. What we know is they were giving that vote to limit and provide protection against actions of a controller. One of the things that could happen in just this type

of current reorg. is value could move. And what Section 9.1(b) says is that disinterested stockholders get to make the decision on whether value should move or shouldn't move.

For similar reasons, I think this transaction would fall within Section 203(c)(3)(v). I don't think Home Shopping Network changes the result. The Home Shopping Network Court, then-Vice Chancellor Chandler, noted specifically that the company was not a party to the tender offer or/transaction in that case. Here, Activision is a party to the transaction. Activision is paying the money to acquire the controlled subsidiary of Vivendi.

So as far as I'm concerned, I think the concept of business combination encompasses this deal. But this is not just a business combination -- I'm sorry -- that the provision just doesn't extend to business combinations; it extends to things similar to business combinations. It extends to things that resemble business combinations. I think, therefore, it has to mean something more than just business combinations. It has to be read as a protective provision designed to give stockholders, the disinterested stockholders, a vote on something like

this.

The defendants' briefs are extremely light on authority against this reading. Basically what I've gotten is the sound-bite argument that this is a divorce and not a combination. This is overly simplistic. It ignores Martin Marietta and Chancellor Strine's express recognition of the ambiguity of the term. It ignores Martin Marietta's explicit language on the type of transaction involving the acquisition of a subsidiary. It ignores the purpose of a provision like this in the charter which, as I say, is to give stockholders a vote on transactions with a controller that could have not just control implications but value-transfer implications. It ignores, frankly, the structural similarities between the transaction mechanics by which the business combination was accomplished in 2008 and the current transaction. Yeah, they have different titles to the agreements and yeah, the long-term purpose of the agreement in 2008 was combining, whereas now it's a overtime divesting. I agree with all that, but the actual transaction mechanics involving the purchase of a subsidiary are very similar.

This also, in my view, answers the

idea that common sense means these things are coming apart. Well, what I think I have to do is ask, as a common-sense matter, what is this charter provision designed to do? And as I've suggested, I think it's designed to give disinterested stockholders a vote on business combinations and things similar to business combinations involving the controller so that they can decide for themselves whether it's a good deal or not.

Given that fact, this type of major value-restructuring transaction, I think, is precisely the type of thing that common sense would dictate that disinterested stockholders would have expected to vote on and can expect to vote on because it could be a good deal, it could be a bad deal; they get to decide.

The defendants have stressed heavily the idea that this appears to be a good deal. It is true, a repurchase of equity could be good or bad for the issuer. It depends on the relative value of what's being bought. Here, there's certainly evidence that Activision is getting a good deal. There's the market reaction. But more importantly, from my perspective, the smart money is on the buy side. I always look to what the directors and officers are doing in a self-tender or other type of repurchase or

issuance transaction. Here, the smart money is buying at this price. That suggests to me that net-net, this is probably a good deal for Activision.

But the voting right here doesn't turn on whether a court thinks this is a good deal or not. The point is that it allocates that decision power to the disinterested stockholders. They get to decide whether actually this is a good deal or not. If you change the terms of the transaction just slightly, the pricing term just slightly, I think it makes it easier to see why this is a transaction you would expect the disinterested stockholders to have wanted a vote.

Assume that instead of being priced at a 10 percent discount to market, this deal was priced at a 30 percent premium to market. In addition to the plaintiffs then complaining about the pricing of the transaction, we would all look at this and say "Wow, this is a situation where value could move to the controller. This is precisely the type of situation where disinterested stockholders would have wanted to bargain for a vote on this type of interested-party transaction."

This is -- this is a tough case because, again, it looks like this is a good deal for

Activision; but in my view, the voting right analysis doesn't turn on whether I think it's a good deal or not. It doesn't turn on whether defendants think it's a good deal or not. This decision power is allocated to a majority-of-the-minority stockholders.

Against this reading of the charter, the defendants have pointed to the different language in Section 3.12 of the bylaws which contains a list of issues requiring independent director approval. Section 3.12(a)(iii) requires approval of a majority of independent directors for -- and I quote -- "any transaction or agreement between the Corporation or any of its Subsidiaries, on the one hand, and Vivendi or any of its Controlled Affiliates, on the other hand, including any with respect to any merger, business combination or similar transaction involving [the] parties."

This provision is both broader and narrower than Section 9.1. It's broader in that it refers to "any transaction or agreement." It's narrower in that it refers to "between" rather than "involving." It's different. This is a Section 144-style provision. "Transaction or agreement" would extend to lots of stuff, services

agreements, tax-sharing agreements, Activision renting Vivendi condos for their executives to use when they go to business meetings in Paris. All these types of things are interested related-party transactions, which, under this section, 3.12(a)(iii), would require independent director approval. The charter takes a subset of those transactions, "a merger, business combination or similar transaction," and says, "There we want a disinterested stockholder vote." It's dealing with the big stuff.

This is an $8 billion reorg. of Activision. Value is moving. Value is moving to the former controller. Value is moving to management. And a core part of the transaction is the corporation, Activision's, acquisition of a controlled subsidiary of Vivendi. This is the type of thing that I think falls squarely within Section 9.1.

As secondary indications -- and I don't rely on these heavily -- in reading the documents as a whole, I did note, as I mentioned to Mr. Welch this morning, that there are uses of "business combination" in related deal agreements that reinforce this understanding. Section 3.3 of the amended and restated investor rights agreement with

Vivendi has a standstill provision that bars Vivendi from entering into or agreeing -- it's phrased in terms of active verbs rather than is it gerunds? I don't know. Vivendi can't "... enter into or agree, offer, propose or seek to enter into, or otherwise be involved in or part of, any acquisition transaction, merger or other business combination or similar transaction relating to all or part of the Company or any of its subsidiaries ...."

"Other business combination" is defined or used here in an encompassing sense in the same transaction -- indeed, in an exhibit to the SPA -- to encompass an acquisition transaction involving a subsidiary. As I suggested, I think this suggests that if Vivendi proposed to buy back Amber -- in other words, the opposite of what is currently happening -- that would be a business combination that Section 3.3 would bar. This provision also treats an acquisition transaction as an example of a business combination, consistent with the Chancellor's analysis in Martin Marietta. The stockholders' agreement in Section 3.01 contains a parallel standstill for ASAC.

The defendants also have said Amber is not a business. For Delaware law purposes, it is. I

cited Seneca Investments, 970 A.2d 259, Court of Chancery from 2008. That decision collects cases, recognizing that acting as a holding company, which I assume is Amber's primary business at the moment -- actually, the documents indicate that it's its primary business at the moment -- is a valid business. And here it's not just shares; it's also the NOLs. It's got about $5 billion worth of assets. So in my view, Section 9.1(b) applies to the transaction currently under consideration.

I will now move to the next element, which is irreparable harm. It's established under our law that the deprivation of voting rights is irreparable harm. The plaintiffs cited a variety of cases. There's no response to that point by the defendants. It's settled law.

Part of the problem there is the idea that you can't remedy the voting right issue postclosing. You can try to give a damages proxy. For that reason, I asked the defendants to consider taking action that could help the Court construct a remedy postclosing. I have not received any help in that area.

As the plaintiffs point out, it will

likely be difficult to obtain money from any of the independent directors. Although the insiders at ASAC are likely quite wealthy and are providing a hundred million of the ASAC investment amount, it's not clear that they could support the type of judgment necessary to unwind the transaction. ASAC is a Cayman Islands entity. There is, indeed, a rep by ASAC regarding its investment intent. In terms of the defendants' response, I didn't get anything but a reiteration of that rep. They didn't take into account any flexibility that ASAC may have under the stockholders' agreement and the investor agreement to do other things with its shares. I have no assurance that the shares would be available or that they could be unwrapped.

I also might have benefited from some form of undertaking by Vivendi. What I was told was the transaction can't be unwound and that Vivendi is reserving its right to contest jurisdiction, notwithstanding its consent to this Court's jurisdiction in the underlying agreements. It may be that Vivendi wants to hedge its bets. Certainly that's its right to do so. It doesn't help me with addressing the harm.

What I have here is consequently not just interference with the voting right, I have a situation where assets may leave the jurisdiction to a Cayman Islands entity and a French entity, neither of which has agreed that I can potentially recover them or remedy the situation. So this is a situation where the Court might not be able to do anything later.

Lastly, I come to balancing of harms. The balancing of the harms depends primarily on the defendants' point, which resonates with me, that this is likely a good transaction for Activision. As I've already said, though, under 9.1(b), stockholders get to decide that, not me, not the courts, not the defendants.

In terms of the market reaction, a price is being set by the marginal buyer and seller. We don't know how people would vote. We don't know necessarily what the long-term holders think. In a proxy statement that describes the background of the transaction and the origins of the ASAC aspect of it, stockholders might reach a different view as to having management and favored investors taking, you know, just under 30 percent of the opportunity. Or they might like it. Some of the analyst reports that I've

been given suggest that this is a good thing because it shows the top two managers are re-upping and recommitting to the entity.

Under 9.1(b) the stockholders get to decide how they want to view that. What I am doing is not deciding whether this is a good deal or a bad deal. I'm enforcing the company's own corporate governance structure that it put in place in 2008.

To the extent this is a really good deal that the stockholders love and should get, this problem is of the defendants' own making. In their view of the world, this was an easy vote to get. They could have structured the deal to do so.

In terms of the downside risk, we don't know what's going to happen. I don't know what's going to happen. I am certainly fallible. No one can see the future. What I do know is that Vivendi appears not to have developed meaningful alternatives to a deal with Activision. I do know Vivendi is getting 8.2 billion in this transaction. The indications are it can't raise similar amounts through a dividend. The max seem to be 2 billion-ish. Yes, there's some risk of loss there. Yes, it could be a sizable risk. I am not discounting that. But

the people who get to decide that under the company's specific corporate governance structure are the stockholders.

To the extent there does need to be a vote, as Mr. Savitt pointed out, had people moved earlier and had I done this earlier, Vivendi still would have had to consent to a vote. Right now Vivendi will have to consent to an extension of the termination date. So in either situation, no matter when this went down, people needed Vivendi's consent. Here, the financing appears to be in place until December 18th. In contrast to the type of timing, it's actually a little bit more time between now and December 18th. It will still be tight. Maybe that financing can be put off as well. But if a vote has to happen, it's because of the charter and the provision that was put in in 2008.

In terms of a bond, the defendants have sought a billion-dollar bond. That size bond, I think, effectively would render a nullity this Court's ruling. I couldn't help but note that in the stock purchase agreement itself, the parties agreed that in the event equitable relief would issue, no bond would be necessary. That's Section 11.11. The same is true

in Section 8 of the investor rights agreement. In other words, when they were anticipating the possibility that there might be some equitable relief with respect to the deal, the parties didn't think a bond was required. I am happy and believe that it is equitable to go with that determination. This is also consistent with past precedent where we have not required a bond for stockholder plaintiffs that is material in the context of the transaction but, rather, only a bond that is relatively nominal, you know, not insignificant for many people, but really nominal.

What I'm going to do here, therefore, is to impose on the plaintiffs only a bond that I think will offset the rough costs of this litigation. I think that will help deter litigation dilatants, but it will not deter meaningful challenges, such as the one that was brought here. So I'm going to impose a bond of $150,000. As I say, I know that's a drop in the bucket for the numbers that are being talked about here; but if one goes back and looks at the type of amounts that have historically been imposed on stockholder plaintiffs, that's at the very high end.

First thing I'll ask for is questions.

Mr. Hanrahan?

MR. HANRAHAN: I have none, Your Honor.

THE COURT: Okay. Mr. Welch?

MR. WELCH: Your Honor, it occurs to me that we probably want to think about this; but it occurs to me one option which may be available to -- to us in the circumstance is to seek an interlocutory appeal. And with the time frames in mind, I would respectfully ask if Your Honor would be willing to certify such an interlocutory appeal under the -- under the Supreme Court's rules.

THE COURT: Yep. I mean, certainly you have the right to do that. I think you can sit down, Mr. Welch.

MR. WELCH: Thank you.

THE COURT: I'll tell you, I think my job in these situations is to call it as best as I can see it. I think the Supreme Court's job is to tell you whether I got it right or not and to fix it if they think I got it wrong. I think part of that system working is the Supreme Court having the opportunity to do that. I don't think that it is in any way my place to try to do things that would

interfere with the Supreme Court's ability to do that.

Now, I understand in this case they have the independent ability to take the interlocutory appeal regardless, but I will tell that you this is a situation that I think is perfectly appropriate for an interlocutory appeal. This is a big ruling that establishes the stockholders' legal right to vote on the transaction. It is a major transaction. It has significant consequences. If on appeal the Supreme Court said "No, Vice Chancellor Laster, you misunderstood everything. You got it wrong. The stockholders have no voting right," that would effectively be dispositive on this issue. My view is that under these types of circumstances, this is an appropriate case for the Supreme Court to take.

Now, I want to stress that I'm not trying to tell them to take it. My job under the rules, under Supreme Court Rule 42 is to make a recommendation. I'm simply saying I recommend that they take it. And in my view, this is an appropriate situation to take it. I hope they will agree with me; but from an institutional standpoint, they're the final word, not Laster.

MR. WELCH: Your Honor, thank you very

much. I deeply appreciate that. I wonder if it would be acceptable to Your Honor that we use this transcript essentially as your order and directive in connection with -- with -- with that certification.

THE COURT: What do you think, Mr. Hanrahan?

MR. HANRAHAN: Your Honor, I -- I think that I would question whether that -- we would have followed the procedural steps required by the Supreme Court's rule. I understand Your Honor's inclination, but it -- it may well be that we ought to look at the rule and make sure we follow those steps. It may even be helpful to Mr. Welch.

THE COURT: Well, here's what I'd suggest. And you gentlemen can sit down. I, unfortunately, have to get on a plane with Mr. DiCamillo because we're going out to Chicago to speak at a conference. So while I'm sure that we will -- I can assure you we will not talk about the case. I'm sure he won't hesitate to rabbit-punch me at least once during our journey.

I'm worried, therefore, that I may not be available to you as to the degree I would like to be for some of the time this afternoon and some of the

time tomorrow. I certainly can make myself available to you by phone. What I think would be helpful to me is if the parties could stipulate to a form of preliminary injunction order that would implement my rulings. That, then, I can review remotely. I can enter it. That will give you, then, an order from which to seek certification. If you-all at that point proceed how you wish and what you think is in compliance with the rules, you've heard my view that I think this is one where -- again, I don't want to try to tell the Supreme Court what to do, but I recommend that this is one that they should have the opportunity to review.

And if that means that the appropriate course to make sure that things are perfected under Rule 42 is for Mr. Welch to make a motion, I'm happy to take that up on an expedited basis. And, again, if necessary, I can do it by phone. I will be back on Friday. I know, however, that, you know, this is something that if the Supreme Court were to take it, I'm sure the defendants would like to have an answer before October 15th.

So it's something where we shouldn't dally.

THE COURT: Anything else from this side of the room?

Mr. Savitt.

MR. SAVITT: Yeah. Just one thing on this particular issue, which is a bit of wreck. We are just very concerned, Your Honor, about not having a circumstance where, in the procedural steps that have to follow, we are incapacitated from our opportunity to present the Rule 42 matters to the Supreme Court immediately. So just wanted to --

THE COURT: No, no. I understand.

MR. SAVITT: -- so -- and I know everyone is working in good faith.

THE COURT: No one is going to play four corners on you.

MR. SAVITT: We --

THE COURT: So -- so --

MR. SAVITT: -- just wanted to make sure everyone was pushing on.

THE COURT: Yeah. I mean, I don't think Mr. Hanrahan is going to play four corners on you. If he did, I'm sure the Supreme Court would be irritated with him.

I mean, Mr. Seitz can guide you

through this, but what I think -- was it your firm that did it or the other side that did it? Anyway, what people do not hesitate to do is to go ahead and perfect the appeal, file the notice of appeal, and then say "Dear Supreme Court, this is really moving fast. We're going to get you a copy of Vice Chancellor Laster's order and a copy of the transcript as soon as it comes in. We'll get you a copy of his actual recommendation on certification as soon as it comes in," et cetera. But I will leave you in the expert hands of Mr. Seitz, supported, as I'm sure he will be, by the expert insight of Mr. Scaggs, Welch, Micheletti, et cetera -- I don't want to leave anybody out -- Mr. DiCamillo, everybody, all -- all the associates in the room. You will not be left alone, Mr. Savitt, I can assure you.

MR. SAVITT: Thank you, Your Honor.

THE COURT: Anything else?

(No response)

THE COURT: All right. Again, thank you, everyone, for the helpful briefing and for the argument this morning. I do think that this was a very interesting case and it was not an easy injunction to grant for all the reasons that I

articulated, primarily based on the benefits of the transaction; but ultimately I think it has to be granted in light of the voting right.

We stand in recess.

(Court adjourned at 12:33 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 4 through 40 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except as revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 18th day of September 2013.

/s/ Neith D. Ecker

Chief Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public