SVEA HOVRÄTT
Avdelning 02
Rotel 020103

DOM
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Stockholm

Mål nr
T 7449-10

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SAKEN
Klander av skiljedom

KLANDRAT AVGÖRANDE
Skiljedom meddelad i Stockholm den 27 juli 2010 i Stockholms Handelskammares Skiljedomsinstituts mål V 83/2008 och V 113/2008, se bilaga A

HOVRÄTTENS DOMSLUT

1. Hovrätten avslår käromålet.

Postadress	Besöksadress	Telefon	Telefax	Expeditionstid
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2. ETF III K/S ska ersätta Midroc New Technology AB dess rättegångskostnader i hovrätten med 535 000 kr, varav 500 000 kr avser ombudsarvode, jämte ränta enligt 6 § räntelagen från dagen för hovrättens dom till dess betalning sker.

BAKGRUND

ETF III K/S (ETF) är en dansk investeringsfond och Midroc New Technology AB (Midroc) är ett svenskt riskkapitalbolag. Midroc ägde tillsammans med ett antal aktieägare (minoritetsägarna) aktier i det amerikanska utvecklingsbolaget Avisere Inc. År 2007 erbjöd Midroc ETF och SAAB att investera i Avisere Incs verksamhet. Syftet var att rekapitalisera bolaget. ETF och SAAB ville dock inte investera direkt i ett amerikanskt bolag utan krävde att investeringen i stället skulle ske via ett svenskt bolag.

Midroc, ETF och SAAB kom därför överens om att ett nytt bolag, Avisere Holding, skulle bildas och att investeringen – i form av en riktad nyemission mot erhållande av preferensaktier med särskilda rättigheter – skulle ske i detta bolag som i sin tur skulle äga samtliga aktier i Avisere Inc. Minoritetsägarna i Avisere Inc skulle samtidigt samla sitt ägande i ett annat nybildat bolag, MinCo AB, som i sin tur skulle äga aktier i Avisere Holding. Ian Wachtmeister var genom eget bolag en av minoritetsägarna och hade åtagit sig att vara samordnare för minoritetsägarna.

Midroc, ETF och SAAB undertecknade den 21 december 2007 ett avtal om omstrukturering och rekapitalisering jämte ett antal underliggande avtal (avtalen). Ian Wachtmeister undertecknade avtalen för minoritetsägarnas räkning.

Emissionslikviden skulle betalas den 23 januari 2008 och ETF skulle tillträda de nyemitterade aktierna samma dag. ETF hävde emellertid avtalen innan emissionslikviden skulle betalas och Midroc ansåg att hävningen var obefogad.

Den 2 juli 2008 påkallade Midroc ett skiljeförfarande vid Stockholms Handelskammares Skiljedomsinstitut mot ETF med yrkande om att ETF skulle utge ett skadestånd på 37 614 532 kr samt 180 000 USD jämte ränta och kostnader. I samband med sitt svar på påkallelseskriften framställde ETF ett eget yrkande om skadestånd mot Midroc.

Stockholms Handelskammares Skiljedomsinstitut beslutade att till skiljenämnd utse advokaten Mats Bendrik (ordförande), hovrättsrådet jur.dr. Patrik Schöldström och advokaten Björn Tude.

En fråga i skiljetvisten var om avtalen ingåtts med bindande verkan för samtliga avtalsparter i och med undertecknandena den 21 december 2007. En annan fråga var vilken betydelse det hade för ett eventuellt skadestånd att ETF och SAAB skulle få preferensaktier i Avisere Holding.

I skiljedomen som meddelades den 27 juli 2010 fann skiljenämnden bl.a. att avtalen ingåtts med bindande verkan och att Ian Wachtmeister således var behörig att företräda minoritetsägarna vid undertecknandet av avtalen, att hävningen varit obefogad och att Midroc på grund av hävningen var berättigat till skadestånd med 37 614 532 kr jämte ränta och kostnader. Skiljenämnden fann vidare att vid den av skiljenämnden valda metoden för skadeberäkning var frågan om preferensaktierna utan betydelse.

YRKANDEN I HOVRÄTTEN

ETF har yrkat att hovrätten upphäver skiljedomen i dess helhet.

Midroc har bestritt käromålet.

Parterna har yrkat ersättning för sina rättegångskostnader i hovrätten.

GRUNDER FÖR TALAN

ETF

Skiljenämnden har överskridit sitt uppdrag i två hänseenden alternativt begått två handläggningsfel. Felen är var för sig av sådan beskaffenhet att skiljedomen helt ska upphävas.

Behörighetsfrågan

Skiljenämnden har överskridit sitt uppdrag genom att till grund för sitt avgörande lägga en omständighet som inte åberopats av part (34 § första stycket 2 lagen om (1999:116) om skiljeförfarande [LSF]). Felet har sannolikt, eller kan i vart fall inte uteslutas, ha inverkat på utgången i målet.

Alternativt har skiljenämnden genom att inte klargöra vilka omständigheter som åberopats begått ett handläggningsfel som sannolikt har inverkat på utgången i målet (34 § första stycket 6 LSF).

Frågan om preferensaktierna

Skiljenämnden har överskridit sitt uppdrag genom att inte beakta en invändning som gjorts av ETF (34 § första stycket 2 LSF). Felet har sannolikt, eller kan i vart fall inte uteslutas, ha inverkat på utgången i målet.

Alternativt har skiljenämnden genom att helt avstå från att avge domskäl avseende den åberopade omständigheten begått ett grovt handläggningsfel som sannolikt har inverkat på utgången i målet (34 § första stycket 6 LSF).

Midroc

Skiljedomen ska inte upphävas enligt de grunder som åberopats av ETF. Inga överskridanden av uppdraget eller handläggningsfel har förekommit under skiljeförfarandet. I vart fall har det inte förekommit något fel som inverkat på utgången i målet.

PARTERNAS UTVECKLING AV TALAN

Parterna har till utveckling av sin respektive talan anfört i huvudsak följande.

ETF

Behörighetsfrågan

ETF gjorde i skiljeförfarandet gällande att något bindande avtal inte förelåg då Ian Wachtmeister inte haft fullmakt att företräda samtliga minoritetsägare. Midroc vitsordade att Ian Wachtmeister saknade fullmakt från fyra av minoritetsägarna.

Midroc bestred trots det att Ian Wachtmeister skulle ha saknat behörighet att företräda minoritetsägarna vid undertecknandet den 21 december 2007. Midroc angav emellertid inte någon omständighet till stöd för Ian Wachtmeisters behörighet såvitt avsåg de fyra minoritetsägarna. Midroc gjorde i stället gällande att detta i vart fall saknade betydelse.

Skiljenämnden fann att Ian Wachtmeister vid undertecknandet den 21 december 2007 var behörig att företräda samtliga minoritetsägare, trots att det var ostridigt att han saknade fullmakt för fyra av dem. Skiljenämnden har följaktligen grundat sin uppfattning om Ian Wachtmeisters behörighet på någon annan omständighet än att Ian Wachtmeister skulle ha haft fullmakt från de fyra minoritetsägarna.

Skiljenämnden har lagt till grund för sitt avgörande att det är osannolikt att Ian Wachtmeister skulle ha skrivit på avtalen utan att vara behörig att företräda alla minoritetsägare samt att de minoritetsägare som inte ställt ut fullmakt bundits genom passivitet (avsnitt 11.23 och 11.24). Skiljenämnden kan svårligen ha menat att den som skriver på ett avtal för annan är behörig just därför att han skriver på. Skiljenämnden måste därför ha grundat sin slutsats om behörighet för de fyra som inte ställt ut fullmakt på någon annan konkret omständighet. Vidare åberopade Midroc aldrig passivitet från dem som inte ställt ut fullmakt. Skiljenämnden har alltså grundat sitt avgörande på rättsfakta som inte åberopats. Skiljenämnden har därigenom överskridit sitt uppdrag. Uppdragsöverskridandet har inverkat på utgången.

Om skiljenämnden ansåg att Midroc till stöd för Ian Wachtmeisters behörighet hade åberopat någon ytterligare omständighet som skiljenämnden hade att döma över, kunde skiljenämnden inte ta för givet att ETF uppfattat detta. Skiljenämnden måste under

sådana förhållanden ha insett att ETF inte förstått varpå behörigheten skulle grundas utan fullmakter. Det har i sådant fall ålegat skiljenämnden att klargöra för ETF hur skiljenämnden uppfattat Midrocs talan. Genom att inte utreda vilka omständigheter som Midroc åberopade till stöd för Ian Wachtmeisters behörighet har skiljenämnden begått ett handläggningsfel. Handläggningsfelet har inverkat på utgången i målet.

Frågan om preferensaktierna

Enligt vad parterna överenskommit skulle Avisere Holdings värde före de avtalade kapitaltillskotten anses uppgå till 40 500 000 kronor, det s.k. pre money-värdet.

Midroc anförde i skiljeförfarandet att skadeståndet i huvudsak skulle beräknas med utgångspunkt i det värde som parterna i avtalen hade kommit överens om samt den andel av samtliga aktier i Avisere Holding som Midroc och MinCo AB skulle innehaft om avtalen hade fullföljts.

ETF gjorde i fråga om preferensaktiernas betydelse vid beräkningen av skadeståndets storlek gällande följande. Samtliga aktier som ETF och SAAB skulle erhålla var preferensaktier som medförde en företrädesrätt vid alla former av realisation av Avisere Holdings värde. ETF och SAAB hade dessutom rätt att under vissa förhållanden erhålla ytterligare preferensaktier utan ytterligare kapitaltillskott, vilket innebar att de skulle kunna få en större andel av bolagets samtliga aktier. Midrocs och MinCo AB:s aktieinnehav skulle däremot endast till en viss mindre del bestå av preferensaktier. Preferensaktierna skulle ha ett högre värde än övriga aktier. Midrocs och MinCo AB:s andel av Avisere Holdings värde skulle därför vara mindre än deras andel av aktieinnehavet. ETF:s och SAAB:s rätt till ytterligare preferensaktier måste därför beaktas vid beräkning av Avisere Holdings värde. Och under alla förhållanden måste de ursprungliga preferensaktiernas värde i förhållande till övriga aktier beaktas vid beräkning av Midrocs andel av Avisere Holdings värde.

Skiljenämnden behandlade möjligheten till ytterligare preferensaktier vid sin beräkning av Avisere Holdings värde men den underlät att pröva ETF:s invändning om de ursprungliga preferensaktiernas betydelse vid beräkning av Midrocs och MinCo

AB:s andel av Avisere Holdings värde. Skiljenämnden har därigenom överskridit sitt uppdrag. Skiljenämnden har i vart fall begått ett grovt handläggningsfel genom att inte i sina domskäl ange ETF:s invändning om de ursprungliga preferensaktiernas betydelse vid beräkningen av skadeståndets storlek. Såväl uppdragsöverskridandet som handläggningsfelet har inverkat på utgången i målet.

Midroc

Behörighetsfrågan

Midroc gjorde i skiljetvisten gällande att ett bindande avtal förelåg.

ETF bestred Midrocs påstående samt anförde att fullmakter från fyra av minoritetsägarna saknades vid undertecknandet den 21 december 2007 och att ett bindande avtal därför inte hade kommit till stånd. Vidare anförde ETF att det är en grundläggande rättsprincip vid avtal mellan flera parter, att om avtalet inte undertecknas av samtliga parter så har inget bindande avtal kommit till stånd.

Midroc gjorde bl.a. gällande att frånvaron av fyra fullmakter saknade betydelse för ETF:s, Midrocs och MinCo AB:s bundenhet vid avtalen och bestred förekomsten av den rättsprincip som ETF gjorde gällande. Midroc anförde även att Ian Wachtmeister genom ett beslut vid en extra bolagsstämma den 13 december 2007 getts behörighet att företräda samtliga minoritetsägare.

Skiljenämnden fann att det inte krävdes fullmakt från samtliga minoritetsägare för att ETF skulle vara bundet av avtalen genom sitt undertecknande och förklarade att det inte finns en rättsprincip av den innebörd som ETF gjort gällande. Skiljenämnden konstaterade även att Ian Wachtmeister kunde ingå bindande avtal för minoritetsägarna vid undertecknandet den 21 december 2007 trots att fullmakter saknades. Skiljenämnden har därigenom underkänt ETF:s invändningar i denna del. Skiljenämnden har således inte lagt någon inte åberopad omständighet till grund för sitt avgörande, utan gjort en materiell och rättslig prövning av ETF:s invändningar.

Frågan om preferensaktierna

ETF gjorde i skiljetvisten gällande att förekomsten av preferensaktier skulle påverka beräkningen av skadans storlek, utan att göra någon distinktion mellan de olika preferensaktierna.

Skiljenämnden lämnade en utförlig och korrekt redovisning av ETF:s inställning beträffande preferensaktierna samt fann att frågan om preferensaktier vid den av skiljenämnden valda metoden för beräkningen av skadeståndets storlek saknade betydelse. Skiljenämnden fann vidare att Midroc hade åberopat och i tillräcklig utsträckning styrkt förekomsten av sådana omständigheter som medförde att Midroc hade rätt till skadestånd med yrkat belopp. Skiljenämnden har således inte överskridit sitt uppdrag genom att inte beakta av ETF gjorda invändningar.

HOVRÄTTENS DOMSKÄL

Utredningen

Hovrätten har avgjort målet efter huvudförhandling. Midroc har åberopat skriftlig bevisning. Midroc har även åberopat ett rättsutlåtande av professorn Lars Heuman. ETF har åberopat rättsutlåtanden av professorn Bengt Lindell.

Hovrättens bedömning

Hovrätten konstaterar inledningsvis att svensk rätt är tillämplig.

Hovrätten behandlar först klandergrunden avseende behörighetsfrågan.

ETF invände i skiljeförfarandet att Ian Wachtmeister inte var behörig att den 21 december 2007 träffa bindande avtal eftersom han då saknade fyra fullmakter från minoritetsägarna. Midroc bestred att Ian Wachtmeister inte skulle vara behörig och att avtalen inte var bindande. Midroc gjorde gällande att även om Ian Wachtmeister inte

"formally represent one or few of the minority shareholders when executing the Agreement Package, it is of no relevance. The Agreement Package is valid and binding regardless". (Avsnitt 7.114–7.115.)

Skiljenämnden prövade först frågan om det som ETF påstod finns en rättsregel som innebär att det för bindande avtal krävs fullmakter från samtliga minoritetsägare. Nämnden fann att så inte var fallet (se avsnitt 11.15).

Skiljenämnden fann sedan, efter att ha bedömt ett antal bevis- och tolkningsfrågor, att Ian Wachtmeister var behörig att företräda minoritetsägarna vid undertecknandet av avtalen den 21 december 2007 och att avtalen därför var bindande (se avsnitt 11.16–11.27, särskilt avsnitt 11.25 och 11.27).

ETF har i klanderprocessen gjort gällande att skiljenämnden lagt någon annan omständighet till grund för sin bedömning av behörighetsfrågan än att Ian Wachtmeisters behörighet grundat sig på fullmakter från minoritetsägarna eller möjligen beslut på den extra bolagsstämma som hölls den 13 december 2007. ETF har särskilt pekat på avsnitt 11.22 och 11.24 och gjort gällande att skiljenämnden lagt aktieägarnas passivitet, dvs. en sådan omständighet – ett sådant rättsfaktum – som inte åberopats i skiljeförfarandet, till grund för sitt avgörande. ETF har vidare pekat på avsnitt 11.23 och gjort gällande att eftersom skiljenämnden till grund för sitt avgörande som ett rättsfaktum knappast kan ha lagt att det måste anses osannolikt att Ian Wachtmeiser skulle ha undertecknat avtalen utan bemyndigande av alla minoritetsägarna, så måste skiljenämnden ha lagt någon annan inte åberopad konkret omständighet till grund för sin slutsats om dennes behörighet.

Hovrätten konstaterar att Midroc i skiljeförfarandet anfört mer än en grund till stöd för sin ståndpunkt att Ian Wachtmeisters var behörig att företräda samtliga minoritetsägare.

Hovrätten konstaterar vidare att avsnitt 11.24 pekar tillbaka på avsnitt 11.22 och vittnesmålet med uppgiften att fullmakter för 97,91 % av aktierna (se avsnitt 11.18) fanns redan vid den extra bolagsstämman. I avsnitt 11.23 bedömer skiljenämnden

endast sannolikheten för att Ian Wachtmeister skulle ha agerat utan behörighet. Skiljenämnden uttalar sedan i avsnitt 11.25 och 11.27 att det mot bakgrund av "(t)his circumstance in combination with Otto's testimony" finns skäl att anse att Ian Wachtmeisters var behörig att företräda minoritetsägarna vid undertecknande av avtalen och att dessa därför är bindande.

Skiljenämnden har i nu redovisade delar bedömt ett antal bevis-, tolknings- och rättsfrågor. Enligt hovrättens mening är det inte i alla delar tydligt hur behörighetsfrågan bedömts i rättsligt hänseende. Domskälens utformning ger dock inte stöd för någon slutsats av innebörd att skiljenämnden fört in och därmed grundat sitt avgörande på ett rättsfaktum som inte åberopats, såsom minoritetsägarnas passivitet. Det bör också framhållas att det förhållandet att en skiljenämnd kan ha gjort en bedömning av bevisning och rättsläge som inte är helt klar, eller som kan sättas i fråga, inte innebär ett uppdragsöverskridande.

Skiljenämnden har således inte överskridit sitt uppdrag i nu aktuellt hänseende. Den har inte heller underlåtit att klargöra vilka omständigheter som åberopats.

Hovrätten övergår härefter till att pröva klandergrunden rörande frågan om preferensaktierna.

Av reciten framgår att parterna hade olika uppfattning om preferensaktiernas betydelse vid skadeberäkningen. Midroc gjorde gällande att preferensaktierna över huvud taget inte hade någon betydelse för beräkningen av den skada som Midroc lidit (se avsnitt 7.21-25), medan ETF gjorde gällande att preferensaktierna hade betydelse för dels beräkningen av Avisere Holdings värde, dels fördelningen av Avisere Holdings värde (se avsnitt 9.181-182).

Skiljenämnden har gjort bedömningen att den delar Midrocs uppfattning att frågan om preferensaktierna är irrelevant (se 11.93-94). Skiljenämnden slår sedan fast i avsnitt 11.99 att Midroc "for the reasons stated above" är berättigat till 65,94 procent av värdet på Avisere Holding och i avsnitt 11.108 att Midroc visat "the existence of such

facts" som ger bolaget rätt till skadestånd i den storleksordning som Midrocs beräkningsmetod ger vid handen.

Som det måste uppfattas har skiljenämnden härmed helt gått på Midrocs linje att existensen av preferensaktier inte har någon betydelse vid beräkningen av den skada som Midroc lidit, dvs. preferensaktierna hade varken betydelse vid beräkningen av Avisere Holdings värde eller fördelningen av Avisere Holdings värde. Skiljenämnden har således saknat anledning att vid den valda beräkningsmetoden närmare redogöra för sin bedömning av ETF:s invändningar om preferensaktiernas betydelse. Skiljenämnden har således inte överskridit sitt uppdrag i nu aktuellt hänseende.

Skiljenämnden kan mot denna bakgrund inte heller anses ha avstått från att helt avge domskäl avseende ETF:s invändning avseende betydelsen av de ursprungliga preferensaktierna. Något handläggningsfel har därmed inte begåtts.

Sammanfattningsvis finner hovrätten att inga överskridanden av uppdraget eller handläggningsfel har förekommit under skiljeförfarandet. ETF:s käromål ska därför avslås.

Rättegångskostnader

Vid denna utgång ska ETF ersätta Midroc för dess rättegångskostnader i hovrätten. Om beloppen råder inte tvist.

Hovrättens dom får enligt 43 § andra stycket LSF inte överklagas.

I avgörandet har deltagit hovrättslagmannen Cecilia Renfors, hovrättsrådet Anna-Karin Winroth, referent, och tf. hovrättsassessorn Mattias Pleiner. Enhälligt.

BILAGA 1

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FINAL AWARD

Made on 27 July 2010

Seat of arbitration: Stockholm

Arbitration No.: V (083/2008) and V (113/2008)

Claimant: Midroc New Technology AB, reg.nr. 556019-7443, Box 2053, 174 02 Sundbyberg

Claimant's counsel:

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2. Advokat Jonas Benedictsson, Baker & McKenzie Advokatbyrå, Box 5719, 114 87 Stockholm

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Respondent's counsel:	1. Advokat Harry Bergman, Wistrand Advokatbyrå, Box 7543,103 93 Stockholm, Sweden 2. Advokat Johan Molin, samma adress
Arbitral Tribunal:	Advokat Mats Bendrik, chairman, Nordenson Advokatbyrå AB, Grev Turegatan 13 A 114 46 Stockholm, Sweden Hovrättsrådet, jur.dr Patrik Schöldström Österängsvägen 36 A, 182 46 Enebyberg Advokat Björn Tude Gernandt & Danielsson Advokatbyrå KB, Box 5747, 114 87 Stockholm

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1. GENERAL BACKGROUND

Midroc New Technology AB's business

1.1 Venture capital investments in non-listed entities are normally referred to as private equity.

1.2 Midroc New Technology AB ("Midroc") is a Swedish Venture Capital Company focusing on private equity investments in new, potentially ground-breaking, technologies and business concepts with an "emerged window of opportunity". This means that commercial viability has been determined. Midroc's investments are signified by an active but time-limited ownership.

1.3 The most common reason for an entity to request support by means of private equity is to enable commercial utilization of its technology and sales development. Midroc invests at an early stage in concepts with demonstrated prerequisites for a substantial, rapid and international break-through, primarily but not exclusively in the segments of security and surveillance, energy efficiency, environmental care and health promotion.

1.4 Midroc is part of the Midroc group of companies, owned by the Saudi individual Mohammed Al-Amoudi and the Swedish Wikström family.

The Avisere Group's business

1.5 The Avisere Group was active in the segment of security and surveillance. The Avisere Group was focusing on developing new embedded intelligence in surveillance cameras, video servers and other technology devices under a business concept called Real-Time Actionable Intelligence, comprised of Motion Detection, Human Detection & Counting, Zone Filtering, Automatic Snapshots Distribution, Gesture Recognition and Tracking.

1.6 The Avisere Group offered video analytic software and it worked on all platforms (e.g. Windows/Linux/ MAC OS X and embedded in DSPs). OEM customers integrated Avisere's software modules in video servers, video recorders and/or cameras. In short, the Avisere Group and its software for Real-Time Actionable Intelligence offered the end-users effective tools for sophisticated surveillance.

1.7 Specifically the Avisere Group supplied software and algorithms for a product called True Human Detection. These algorithms were specially designed to enable

separating human beings from other objects and counting identified human beings within a specific area or entering a specific area.

1.8 The products thus developed by the Avisere Group attracted substantial interest in the market for security and surveillance, particularly after the events of 9/11, when new and more effective means for detection, identification and tracking were sought and in constant demand.

1.9 In December 2007 the development of the Avisere Group's products had progressed to a stage where products could be sold to customers, even if adjustments to the current costumer's products would be needed. The challenge for the Avisere Group was to aggressively and rapidly establish a market for the products.

1.10 The Avisere Group's business started as a Swedish company, Avisere Europa AB. The business was based on an Indian innovation of software that analyses and processes the images from surveillance cameras and servers. The development of this software was carried out by the Indian company Avisere Technology (Pvt) Ltd. In the end of 2005 Avisere Europa AB's sales and marketing business was moved to the US to be carried out by Avisere Inc., a US company set up in Tuscon, Arizona. Avisere Inc. became the parent company of the Avisere Group with Avisere Europa AB and Avisere Technology (Pvt) Ltd. as subsidiaries. The development of the software business continued in Avisere Technology (Pvt) Ltd. After the move to the US Avisere Europa AB no longer had a business and became, in practice, a dormant company.

ETF III K/S's business

1.11 ETF III K/S ("ETF") is a Danish limited partnership. ETF is represented through its General Partner ETF III GP ApS. Eqvitec Partners Oy and its fully owned subsidiary Eqvitec Partners AB are the investment advisors of ETF. One of their main tasks as advisors is to evaluate and propose investment opportunities for ETF. Eqvitec Partners Oy is one of the Nordic´s leading private equity firms active in venture capital transactions.

The intended investment

1.12 In 2007, Midroc invited ETF to invest funds in the Avisere Group. In order to induce ETF to invest funds in the Avisere Group, Midroc agreed to form a Swedish holding company, Avisere Holding AB ("Avisere Holding"), primarily for holding the shares in Avisere Inc. Midroc and ETF agreed that ETF´s investment should be made in Avisere Holding.

1.13 On 21 December 2007, Midroc and ETF entered into a Restructuring and Recapitalization Agreement ("the RRA"), which was the main agreement with

several integrated underlying agreements as appendices. All agreements are collectively referred to as "the Agreement Package", including among other things a Share Subscription Agreement ("the SSA"). Under the SSA additional shares in Avisere Holding should be issued to ETF, on the condition that ETF paid the agreed subscription price. Midroc and SAAB AB ("SAAB") should also invest in Avisere Holding under the SSA and additional shares should hence be issued to Midroc, ETF and SAAB.

1.14 In the SSA Section 4.2, it is stated that ETF, SAAB and Midroc should pay the subscription price no later than 24 January 2008.

1.15 On 22 January 2008, ETF cancelled the agreements entered into between ETF and Midroc. Midroc´s position is that ETF had no valid reason for its cancellations.

1.16 ETF´s cancellation of the agreements has, according to Midroc, caused Midroc and MinCo AB ("MinCo") damage.

1.17 Midroc alleges that it has acquired MinCo and MinCo´s claim for damages from ETF.

1.18 ETF´s position is firstly that there were no binding agreements concluded and secondly if the Arbitral Tribunal concludes that there were binding agreements ETF in any case had a right to cancel them.

2. ARBITRATION AGREEMENT

2.1 Section 11 of the SSA has the heading "Dispute Resolution" and reads:

> *"11.1*
> *Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall first be referred to Mediation in accordance with the Rules of the Mediation Institute of the Stockholm Chamber of Commerce, unless one of the parties objects. If any of the parties objects to Mediation or if the Mediation is terminated, the dispute shall be finally resolved by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.*
>
> *11.2*
> *The arbitral tribunal shall be composed of three arbitrators all appointed by the Arbitration Institute of the Stockholm Chamber of Commerce.*

The seat of arbitration shall be Stockholm, Sweden.

The language to be used in the arbitral proceedings shall be English.

11.3
The parties agree not to disclose any confidential information obtained in connection with the arbitration proceedings to any third parties unless all parties to this Agreement have given their consent to disclose such Confidential Information or if required to do so by law, other regulations or necessary in order to enforce a party's right under an arbitral award.

11.4
A party commencing arbitration proceedings shall without delay inform all other parties in writing hereof, including parties not involved in the arbitration."

The parties have jointly declared that they are in agreement that the issues to be tried in this arbitration are based on the Agreement Package with the exception of the Share Purchase Agreement and the Option Agreement and that the Arbitral Tribunal thus has the competence to try issues under all the agreements with the said exceptions.

3. THE PROCEEDINGS

3.1 Midroc objects to mediation.

3.2 In a Request for Arbitration submitted to the Arbitration Institute of the Stockholm Chamber of Commerce dated 2 July 2008 Midroc initiated arbitration against ETF.

3.3 The Arbitration Institute registered the Request for Arbitration under Case no. V (083/2008).

3.4 On 22 July 2008 ETF submitted to the Arbitration Institute an Answer to the Request for Arbitration including also a Counterclaim.

3.5 On 11 August 2008 Midroc submitted to the Arbitration Institute its comments on among other things the Counterclaim.

3.6 On 22 September 2008 ETF submitted to the Arbitration Institute a Supplementary Answer to the Request for Arbitration. In the Supplementary Answer ETF requested that Midroc's Request for Arbitration was dismissed.

3.7 On 12 September 2008 the Arbitration Institute informed the parties that it had decided to appoint advokat Mats Bendrik as chairman, and hovrättsrådet jur.dr Patrik Schöldström and advokat Björn Tude as co-arbitrators.

3.8 On 30 September 2008 the case V (083/2008) was referred to the Arbitral Tribunal.

3.9 On 17 October 2008 the Arbitral Tribunal held a telephone conference with the parties.

3.10 In the conference the parties informed that there were at the moment three arbitration cases pending at the Arbitration Institute related to each other between the same parties, one of which was case V (113/2008). It was noted that a question was raised to consolidate the case V (083/2008) and the case V (113/2008).

3.11 The members of the Tribunal declared themselves willing to serve as arbitrators in case V (113/2008) would a consolidation be decided.

3.12 On 20 October 2008 the Arbitral Tribunal issued a time-table for the proceedings based on the discussion during the telephone conference.

3.13 By a letter dated 7 November 2008 the parties and the Arbitral Tribunal were informed by the Arbitration Institute that the arbitration V (113/2008) was consolidated with arbitration V (83/2008).

3.14 On 6 November 2008 Midroc submitted its Statement of Claim.

3.15 On 19 December 2008 ETF submitted its Statement of Defence and Counterclaim.

3.16 On 3 February 2009 the Arbitral Tribunal issued a revised time-table for the proceedings.

3.17 On 12 February 2009 Midroc submitted its Reply and Statement of Evidence.

3.18 On 27 March 2009 ETF submitted its Rebuttal including Statement of Evidence.

3.19 On 2 April 2009 a telephone meeting between the Arbitral Tribunal and the counsel of both parties was held.

3.20 On 11 May 2009 the Arbitral Tribunal issued another revised time-table.

3.21 On 25 May 2009 Midroc submitted a submission and additional Statement of Evidence.

3.22 On 10 June 2009 ETF submitted a submission and additional Statement of Evidence.

3.23 On 16 June 2009 another telephone meeting between the Arbitral Tribunal and the counsel of both parties was held.

3.24 On 25 June 2009 Midroc submitted a submission and additional Statement of Evidence.

3.25 On 3 July 2009 ETF submitted a submission.

3.26 On 31 August 2009 Midroc submitted a submission including among other things additional Statement of Evidence.

3.27 On 6 October 2009 ETF submitted a submission including among other things additional Statement of Evidence.

3.28 On 16 October 2009 Midroc submitted a submission including among other things additional Statement of Evidence.

3.29 On 4 November 2009 ETF submitted a request for permission to make an application to the District Court for the witness David Otto to testify under oath in the District Court.

3.30 After some correspondence in that matter between the parties the Arbitral Tribynal rendered such a permission on 23 November 2009.

3.31 On 27 November 2009 ETF submitted a submission including among other things additional Statement of Evidence.

3.32 On 27 January 2010 Midroc submitted a submission including among other things additional Statement of Evidence.

3.33 On 3 March 2010 ETF submitted a submission including among other things additional Statement of Evidence.

3.34 On 25 March 2010 Midroc submitted a submission including among other things additional Statement of Evidence

3.35 On 12 April 2010 ETF submitted a submission including among other things additional Statement of Evidence.

3.36 On 15 April 2010 Midroc submitted a submission including among other things additional Statement of Evidence.

3.37 During the Main Hearing each Party submitted one additonal submission and some written evidence.

3.38 The Main Hearing took place on 19, 21, 22, 26, 27 April, 4 and 6 May 2010.

3.39 At the Main Hearing witness examinations were held with the following persons: Göran Linder, Dan M Öwerström, Tinku Acharya, Rohan Shah, David Otto, Andreas Gunnarsson, Krister Mossberg, Björn Gauffin, Andrew Bor, Ivar Stömberg, Jan Grapatin, Kimmo Jyllilä, Jukka Mäkinen, Mikael Tarnawski-Berlin, Johan Winnerblad, Håkan Rosén, Peter Lundblad, Gösta Johannesson, Niklas Larsson, Magnus Forssman, Jack Austern, Bertil Nordin.

4. REQUEST FOR RELIEF

Midroc´s request for relief

4.1 1. Midroc requests an order for ETF III K/S ("ETF") to pay damages to Midroc in the amount SEK 37,614,532 and USD 180,000.

2. Midroc requests an order for ETF to pay interest on arrears on the SEK amount of damages to Midroc, in accordance with Section 4, paragraph 1, and Section 6 of the Swedish Interest Act, from the day following thirty days after ETF`s receipt of Midroc´s Request for Arbitration and on the USD amount, in accordance with Section 4, paragraph 4, and Section 6 of the Swedish Interest Act, from the date of receipt of the Statement of Claim, until full payment is made.

3. Midroc claims compensation for costs including legal fees and interest and an order for ETF, as between the parties, to be held solely liable for the costs of the arbitration including the fees to the arbitrators.

ETF's position

4.2 ETF denies the reliefs sought by Midroc in its entirety.

4.3 ETF does not testify to any principal amount claimed by Midroc.

4.4 ETF testifies that interest can be calculated on the SEK amount as from 7 August 2008 and on the USD amount as claimed by Midroc in its Statement of Claim.

ETF's request for relief

4.5 ETF requests an order for Midroc to pay damages to ETF in the amount of SEK 325 000 with interest, in accordance with Section 6 of the Swedish Interest Act,

from the day following thirty days after Midroc received ETF´s anwer to Midroc´s Request for Arbitration dated 22 July 2008.

4.6 ETF requests an:

a) *order* for Midroc to compensate ETF for its costs for the arbitration plus interest in accordance with Section 6 of the Swedish Interest Act as of the date of the award until payment is made, and

b) *a declaration* that as between the parties, Midroc shall bear the fees and expenses for the Arbitral Tribunal and the fees and expenses of the SCC Institute.

Midroc's position as to ETF's counterclaim

4.7 Midroc disputes all ETF's claims and no amount is admitted as such. Midroc admits to ETF's claim for interest as such.

4.8 It is Midrocs's position that ETF is in breach of contract and that ETF has caused Midroc damage, not the other way around. Midroc disputes having breached the Subscription Agreement or any other agreement. Midroc disputes liability for damage caused to ETF.

4.9 Even if Midroc would be in breach of contract, Midroc disputes that ETF is entitled to damages from Midroc for the claimed damage.

5. LEGAL GROUNDS FOR MIDROC'S CLAIM

5.1 As legal grounds for its claim Midroc invokes that ETF has cancelled the Agreement Package without cause. This is a breach of contract and Midroc is entitled to damages from ETF.

6. GENERAL COMMENT AS TO THE PARTIES´ CONTENTIONS

6.1 The parties have submitted a large number of submissions some of them rather comprehensive and not only stating the respective party´s position and assertions on various issues but also a lot of quotations from written evidence in support thereof.

6.2 The Arbitral Tribunal chooses to describe the respective Party's case rather briefly and only to a limited extent include quotations from written evidence.

6.3 The fact that the recitals are brief compared with the parties' submissions do not mean that the Arbitral Tribunal has omitted to carefully consider all the submissions.

7. MIDROC'S CONTENTIONS

7.1 Midroc has mainly contended as follows.

Midroc's investment in the Avisere Group and the need for additional investors

7.2 In July 2005 and during 2006 and 2007, Midroc invested totally approximately SEK 28,000,000 in the Avisere Group, at that time owned by Midroc and a fairly large number of individual investors. Under internal regulations, Midroc was not allowed to own more than forty-nine per cent of Avisere Inc. going forward. The individual investors lacked the financially resources needed. To enable a global commercialization of the company's technology, the Avisere Group needed more investors.

7.3 According to a proposed business plan by Avisere Inc., new capital was needed for the following reasons:

"For the purpose of shifting from development mode to marketing mode the company's activities and organization need to be expanded and strengthened accordingly. Avisere and its major owners therefore intend to raise adequate financial means in order to allow full exploitation of the commercial potential of this ground-breaking technology."

7.4 It was hence anticipated that Avisere Inc., in order to reach full potential, needed additional funding to strengthen its management and add competence. Moving the Avisere Group's executive board to Sweden, and closer to the then current and proposed new owners, was also discussed.

Midroc's, SAAB's and ETF's entering into the agreements

7.5 From January 2007 Midroc had initial contacts and discussions with several European companies, among them SAAB AB ("SAAB") and ETF. Contacts were initiated through a commercial broker retained by Midroc. In March 2007 SAAB informed Midroc that it is willing to invest in the Avisere Group. Thereafter ETF also informed Midroc that it was willing to invest in the Avisere Group. ETF and SAAB were both to invest funds in cash and SAAB

would also supply industrial knowledge and be a potential future customer of the Avisere Group. As a consequence, Midroc later in March 2007 terminated all contacts with other potential investors.

7.6 SAAB and ETF started their due diligence of the Avisere Group, estimated to take about 2-4 weeks, in April 2007. However, the due diligence was extended. In April 2007 Midroc, ETF and SAAB signed a Term Sheet. In June 2007 SAAB notified Midroc that it was no longer interested. ETF on the other hand remained interested on the condition that another co-investor was found. In October 2007 SAAB decided to reengage in the negotiations with Midroc and ETF. The parties agreed to re-implement the Term Sheet signed in April 2007. The ensuing negotiations were finalized in December 2007 and the Agreement Package was signed.

7.7 In the Term Sheet it was stated that the proceeds from the contemplated restructuring would be used *"To develop the Avisere Group's business consisting of the development and provision a software product to manufacturers of digital cameras and system suppliers of security"*.

7.8 It was decided to set up a new company, Avisere Holding AB ("Avisere Holding"), for the investments. Prior to the agreed investments, it was agreed that ETF would purchase shares in Avisere Holding from Midroc under a Share Purchase Agreement.

7.9 It was also decided that all current shareholders in Avisere Inc. would transfer its ownership to Avisere Holding, the envisaged end result being that Avisere Inc. was a wholly owned subsidiary of Avisere Holding. It was further decided that the minority share holders in Avisere Holding would transfer their shares to a new Swedish limited liability company, named MinCo AB ("MinCo"), to have the minority represented by a single entity.

7.10 In the Shareholders Agreement for Avisere Holding, annexed to the RRA, it was agreed that *"The Parties will use commercially reasonable effort to achieve an ... IPO or a sale of all or substantially all securities or assets... within four years from the date of this Agreement"*.

The economy of the Avisere Group

7.11 Midroc had for quite some time supplied the Avisere Group with funds to keep it up and running. Until May 2007 Midroc's financing was made in consideration for new issued shares and from May 2007 until November 2007 through convertible loans which were converted to shares on 6 December 2007.

The conversion of the convertible loans to shares was made at the request by ETF and SAAB both wanting a leaner balance sheet.

7.12 Hence, when the parties finally entered in to the Agreement Package on 21 December 2007, the Avisere Group was in urgent need of a cash infusion, a fact well known to all parties. The burn rate for the Avisere Group was approx USD 80 000 per month, mainly for staff. In December 2007 and January 2008 Midroc supplied the Avisere Group short term loans so as to avoid insolvency (18 December 2007, USD 80,000 and 15 January USD 100,000). ETF was well aware of this. Midroc's short term loans in December 2007 and January 2008 are also evident from the Indemnity (Skadelöshetsförbindelse och Säljoption), section 2.7c and d, signed by Midroc on 21 December 2007. The reason why the Avisere Group in December 2007 and January 2008 needed slightly more than USD 80,000 per month was due to accrued transaction costs.

7.13 SAAB and ETF agreed that Midroc would be compensated for its financing of the Avisere Group when the subscription price had been paid by SAAB and ETF.

7.14 To summarize, in early 2007, the Avisere Group was an "early-stage company" in need of additional funding. It lacked a source of revenue on its own and needed constant and re-occurring infusions of cash by its owner, Midroc, to survive day to day. ETF and SAAB spent the better part of a full year carefully reviewing the commercial potential of the Avisere Group and ultimately decided to make a significant investment towards the prospects of a successful trade sale or IPO. It was recognized by all parties that, due to the time spent in deliberations and negotiations, the Avisere Group could not survive absent immediate funding. By their decision to invest and the signing of all relevant agreements, ETF and SAAB induced Midroc to undertake temporary bridge-financing by investing even more funds into the Avisere Group (18 December 2007, USD 80,000 and 15 January USD 100,000).

Subsequent Events

7.15 In January 2008 and without any real notice or warning, ETF cancelled all agreements in the Agreement Package. As a consequence of ETF's cancellation, SAAB also cancelled all agreements.

7.16 ETF's cancellation and its subsequent non-performance had devastating consequences for the Avisere Group. The cancellation had an immediate negative internal effect on the Avisere Group. Key employees, fully aware of the severe financial situation, knew that the Avisere Group very soon would not be able to pay even their wages, immediately began seeking other options and the day to day operations abruptly came to an end. There was no alternative

plan or preparedness for the sudden impact of ETF's cancellation and no time for remedial action by Midroc. The cancellation caused a general hesitance in the market about the Avisere Group and its commercial viability. Due to the shortage of time, this hesitance in practice made any effort for alternative financing impossible. ETF and SAAB had needed close to a year to agree the terms for their investment. Any potential alternative investor was likely to need on or about the same time to evaluate the Avisere Group. Time, however, had run out.

7.17 By the cancellation, the Avisere Group had received a "kiss of death". In an almost desperate effort to salvage the situation, Midroc attempted to revisit contacts with some of the companies that had previously shown interest. However, it was more or less immediately concluded that the general hesitance referred to above ran too deep, that time had run out and that the Avisere Group therefore was beyond rescue. The Avisere Group soon collapsed. All employees had to leave the company looking for other opportunities and potential customers suspended or deferred any purchases of products.

Midroc's damage

7.18 ETF's cancellation of the RRA and the other agreements is a breach of contract and Midroc is entitled to damages from ETF. ETF's cancellation is also a breach of contract vis-à-vis MinCo. Midroc has acquired MinCo and MinCo's claim for damages from ETF.

7.19 In Midroc's opinion, the value of Avisere Holding that the parties agreed in the RRA is the best estimation of the company's value. Midroc is entitled to recover its share of this value, corresponding to the number of shares in Avisere Holding owned by it as further described below.

7.20 According to the RRA, Section 2.1, the value of Avisere Holding was estimated at SEK 40,500,000 prior to the subscription of additional shares under the SSA. The agreed total subscription price under the SSA for the first step amounted to SEK 17,224,945.69. The loss of value in Avisere Holding, caused by ETF's cancellation of the agreements, thus amounts to (40,500,000 + 17,224,945.69) = SEK 57,724,945.69.

7.21 In the RRA, Section 4.1, it is stated that after the first subscription of shares in accordance with the SSA, Midroc would have owned 35.84 per cent and MinCo 30.10 per cent of the shares in Avisere Holding. Midroc and MinCo would hence after the first subscription of shares have jointly owned 65.94 per cent of the shares in Avisere Holding.

7.22 After the first subscription of shares Avisere Holding would have been worth SEK 57,724,945.69, as calculated above, and Midroc and MinCo would at that time have owned 65.94 per cent of the shares as set out above at an estimated value of (57,724,945.69 x 0.6594)=SEK 38,063,829. From this amount, SEK 449,297,177 is deducted representing the subscription price never paid by Midroc. The remaining amount (38,063,829-449,297,177)= SEK 37,614,532 represents Midroc's and MinCo's damage.

7.23 The size of Midroc's and MinCo's damage has to be calculated based on the value of Avisere Holding. The value of a development company is generally difficult to estimate. Furthermore, the Avisere Group was in urgent need of a cash infusion and without a cash infusion it would collapse and be worth nothing (which also happened). The value of Avisere Holding today, had the agreements been performed can not be established. Hence, the damage that Midroc and MinCo has suffered can not be established but has to be estimated.

7.24 The parties agreed in the RRA, section 2.1, that the value of Avisere Holding was SEK 40,500,000 prior to the subscription of additional shares under the SSA. The parties' estimation of the value was made based on the cash infusion envisioned by the agreements. Midroc has estimated its damage based on the assumption of the agreed value of the company and that the agreements were performed.

7.25 The way Midroc has calculated its damage, the matter of preferential shares is irrelevant. The calculation is not a valuation of earnings. The fact that preferential shares had a certain preferential right to dividends is thus irrelevant. ETF's objection to Midroc's estimation of its damage is based on a speculation.

7.26 In addition, Midroc has suffered damage by the bridge-financing on 18 December 2007 and 15 January 2008, mentioned above, in the amount of USD 180,000. The bridge-financing was procured by Midroc on the agreed condition that the entire amount would be repaid as soon as the subscription price had been paid. By its cancellation, ETF effectively caused that repayment from the Avisere Group could not be sought.

7.27 Midroc disputes the view expressed by ETF that the intended investment was a lost cause from the outset and that the Avisere Group would have had no value even with a cash infusion as agreed.

7.28 Midroc disputes all the remaining ideas and propositions by ETF in this regard. For instance, the calculations proposed by ETF are obviously not the calculations on which the investment was based, since the calculations *inter alia* presuppose a negative return of investment. In this situation neither Midroc nor ETF would have decided to invest. Assuming at the same time a negative

return of investment, a participation in Tranche 2 and an exercise of warrants defies logic. What ETF has offered in this regard is just calculations with little, if any, basis in reality.

7.29 If using a reasonable annual value growth of fifty per cent, Midroc's share in the Avisere Group would after five years have been in excess of SEK 300 million with or without the exercise of warrants and with or without the participation in Tranche 2 (Section 5 and 8 in the SSA). Reducing the annual value growth to 11.3 per cent – way below the level that would justify an investment like the current for any sensible venture capitalist – Midroc's share in the Avisere Group would after five years have been in par with its current damages claim.

7.30 MinCo was a creation for the agreements entered between Midroc and ETF/SAAB. MinCo was formed to expediently represent the minority shareholders in the new vehicle, Avisere Holding.

ETF's cancellation of the agreements and the alleged reasons for its cancellation

7.31 The parties had agreed that the First Closing should take place on 23 January 2008 at 10:00 a.m. On 21 January 2008 Midroc's Managing Director Göran Linder received a phone call from ETF's Ivar Strömberg, during which Midroc was informed that ETF would not fulfill its obligations under the agreements. Göran Linder disputed ETF's right to withdraw from the agreements and replied that he would discuss the matter with Midroc's board of directors and revert.

7.32 The following day, 22 January 2008, Midroc received a letter from ETF in which ETF formally cancelled the Agreement Package. In consequence, ETF did not perform under any of the agreements. Midroc replied in a letter on 29 January 2008 and disputed ETF's right to withdraw from the agreements.

7.33 ETF has in the arbitration referred to the four grounds for cancellation set out below. They are all disputed by Midroc.

Section 3.2 in the RRA

7.34 In its cancellation of 22 January 2008, ETF has claimed that the condition precedent in section 3.2 of the RRA had not and would not be fulfilled at First Closing and that this was not due to circumstances on ETF's side. This allegation is disputed by Midroc.

7.35 Section 3.2 in the RRA stipulates:

"First Closing (Tranche 1)
(a) The First Closing will take place on January 23, 2008 at 10:00 a.m. at the offices of MAQS's LAW FIRM Norrmalmstorg 1, Stockholm, Sweden or such other date and place specified by agreement of the Investors, provided however that the following condition has been met on or before the First Closing.

(i) Holding shall own with full title all the issued and outstanding shares in Avisere Inc., which will be evidenced by Avisere Inc.'s legal counsel, extract from Transfer on Line and minutes from the extra ordinary shareholder's meeting in Avisere Inc. of December 13, 2007, documents to be approved by ETF and SAAB.

(ii) All schedules referred to in this Agreement and any subschedules shall be provided to and approved by ETF and SAAB.

(b) On First Closing the events described in the Subscription Agreement shall occur."

7.36 Further, ETF has stated that *"In spite of promises made by Dan M. Öwerström, Midroc had not in the evening of 22 January 2008 provided any drafts for the documents or contacted ETF regarding the reasons for the delay."*

7.37 These allegations are disputed by Midroc. In particular, any allegation of a delay is disputed. Midroc was not obliged to procure or produce the remaining documents before First Closing and certainly not in the evening of 22 January 2008, subsequent to having received ETF's (i) oral message on 21 January 2008 that ETF would not finalize the deal and (ii) the cancellation letter received on 22 January 2008. Any delay from 21 January 2008 has been caused by ETF.

7.38 All the schedules to the RRA and all the subschedules were produced by Midroc and would have been presented at the First Closing had ETF not cancelled the agreements. Hence, Midroc would have timely performed its obligations in this respect had ETF not cancelled the agreements.Two of the documents, schedule 5.2 to the SSA (schedule 3.1 (i)) and a list of addresses (schedule 7.6.1 to the RRA and schedule 21.5.2 to the Shareholders Agreement Avisere Holding (schedule 3.1 (ii)) were in progress and would have been timely supplied had ETF not cancelled the agreements.

7.39 Without any evidence and without even asking Midroc, ETF has anticipated that Midroc would be unable to procure the documents referred to in section 3.2 of the RRA by First Closing. At the relevant time the parties had frequent if not daily contact.

7.40 There was no indication from, much less a notice by, Midroc that it was unable to perform any of its obligations and no extension was requested. ETF's

anticipation of Midroc's breach of contract is a construction and lacks foundation.

7.41 ETF alleges that some of the schedules/subschedules that Midroc was obliged to draft and provide to ETF and SAAB were *"naturally subject to negotiations, approval or rejection"* and *"need to be scrutinized in detail"*.

7.42 According to the RRA Midroc was to present the schedules and subschedules at First Closing and Midroc was not obliged to provide the schedules and subschedules before that day. The schedules and the subschedules were not subject to negotiations. Their main content, mainly standard language, was decided by the various agreements, not the other way around. ETF was obliged to accept the documents at First Closing provided that they were reasonably drafted and complied with the various agreements. As at signing, at First Closing Midroc would not have prevented ETF from scrutinizing in detail any and all of the schedules and/or subschedules if ETF so desired. If any document on scrutiny was found to be incorrect, such document would have been corrected.

7.43 It is Midroc's position that even if the conditions in the RRA Section 3.2, were not met at the planned day for First Closing, on 23 January 2008, it would still not have entitled ETF to cancel the agreements. Any such shortcoming by Midroc of a purely technical nature, such as now discussed, would not amount to a fundamental breach of contract. ETF's sole remedy would instead have been to withhold its own obligations, such as payment of the subscription price under the SSA, since the Closing of Tranche 1 under the SSA was subject to the provisions under the RRA (the SSA, Section 3.2).

The transfer of the shares in Avisere Inc. to Avisere Holding

7.44 Midroc has finally stated its position on this issue as follows.

1. Midroc disputes that the RRA stipulates that the closing documents would have to be approved by 10 am on 23 January 2008. Closing documents were to be presented no later than at that time ("...to be approved..."), RRA 3.2 (a) (i).

2. The letter from Otto Law Group of 18 January 2008 is not the evidence from Avisere's legal counsel referred to in the RRA 3.2 (a) (i). Such evidence would have been presented at Closing.

3. The technique for Avisere Holding becoming the sole shareholder in Avisere Inc., at the time of ETF's termination was either:

- a share transfer from each minority shareholder to Minco and from Minco to Avisere Holding and from Midroc to Avisere Holding, or

- a share exchange agreement, binding for all shareholders by a majority vote, between Avisere Inc. and Avisere Holding for all shares.

Either technique would have accomplished the end goal of Avisere Holding becoming the sole shareholder in Avisere Inc. Depending on the circumstances, the one or the other would have been executed no later than on Closing. A share exchange agreement, as the case may be, would have been subsequently filed with the Arizona Authorities.

4. In the event of a procedural defect or other defect pertaining to the share exchange, such defects were capable of being cured within a reasoanble period of time. During a reasonable cure period, ETF was not entitled to terminate the agreements.

5. Powers of attorney for four minority shareholders were still sought at the time of ETF's termination and the result thereof was pending. At Closing either powers of attorney would have existed for all minority shareholders, or would not have been needed due corporate action binding all shareholders to the transaction in question.

Avisere Technology (Pvt) Ltd.

7.45 In its cancellation of 22 January 2008, ETF has claimed that Avisere Holding is not, as guaranteed by Midroc, the owner of all the issued and outstanding shares in Avisere Technology (Pvt) Ltd. and has alleged that this is important since Avisere Technology (Pvt) Ltd. is the holder of the intellectual property rights necessary for the business of the Avisere Group. The relevance and accuracy of these allegations are disputed by Midroc.

7.46 Section 2.2.2 in the RRA stipulates:

"Holding will own 100 per cent of all shares and other securities in Avisere Inc., which in its turn will own 100 per cent of all shares and other securities in Avisere Technology (Pvt) Ltd and Avisere Europa AB."

7.47 Avisere Technology (Pvt) Ltd. was not the subsidiary of Avisere Holding and no representation or warranty to that effect was made by Midroc. Avisere Technology (Pvt) Ltd. was the subsidiary of Avisere Inc., which was a wholly owned subsidiary of Avisere Holding.

7.48 Midroc understands ETF's allegation be that Avisere Inc. did not at the time of ETF's cancellation own all of the shares in Avisere Technology (Pvt) Ltd., and that this was a ground for cancellation. Midroc disputes that this is the case.

7.49 It is correct that Avisere Inc. on 21 January 2008 was not yet the owner of all shares in Avisere Technology (Pvt) Ltd. ETF's counsel had however made a due diligence of the Avisere Group and knew that Avisere Inc. owned only ninety per cent of all the issued and outstanding shares in Avisere Technology (Pvt) Ltd. Avisere Inc. owned only ninety per cent of Avisere Technology (Pvt) Ltd.

7.50 The remaining ten per cent of the shares in Avisere Technology (Pvt) Ltd. was scheduled for transfer to Avisere Inc. to meet the agreed terms of the RRA. Efforts to conclude the transfer were deferred only due to ETF's cancellation of the agreements. Tinku Acharya, the Chief Science Officer of the Avisere Group, and Vijay Sreenivas Bobba, who owned nine and one per cent respectively of the remaining ten per cent of the shares had agreed to transfer their shares to Avisere Inc. in January 2008. Midroc was confident that these agreements would be timely honoured.

7.51 As to the allegation by ETF in its cancellation of 22 January 2008 that the ownership of Avisere Technology (Pvt) Ltd. was important since Avisere Technology (Pvt) Ltd. was the holder of the intellectual property rights necessary for the business of the Avisere Group, this is disputed by Midroc as incorrect and irrelevant. Avisere Inc.'s right of use of any relevant intellectual property and Avisere Holding's control over Avisere Inc. was not less by Avisere Inc owning ninety instead of one hundred per cent of Avisere Technology (Pvt) Ltd.

7.52 A few days before the cancellation of the agreements, Midroc and ETF had agreed that ETF would arrange for the transfer of the remaining ten per cent. No deadline for the transfer was set or even discussed. Midroc was of the understanding that this was not a big issue and that Midroc could proceed to handle the matter in a practical way and was not under any notice of default or breach of contract.

7.53 However, unbeknownst to both Midroc and ETF, under Indian law it was not possible for Avisere Inc. to own one hundred per cent of the shares in Avisere Technology (Pvt) Ltd since there has to be at least two shareholders. In that situation, according to the RRA, section 7.8, the parties were obliged to find an alternative solution. Since the Indian law requirement was met if one single share was owned by a second shareholder, and since this second shareholder could have been anyone of the parties or any affiliate of Avisere Holding or Avisere Inc. or either of them, this was not a real issue.

7.54 It is also Midroc's position that it would have been possible to transfer all of the shares before First Closing on 23 January 2008, at least by way of executed share transfer agreements. If ETF would have required that the transfer of shares including formal technicalities, if any, was fully performed before First Closing and for that reason wanted to postpone First Closing until such time, Midroc would have agreed to do so.

7.55 ETF was not entitled to withdraw from its investment in the Avisere Group or to cancel all agreements on account of the outstanding issue of the ten per cent of the shares in Avisere Technology (Pvt) Ltd, or on account of the fact that one single share would have to be owned by a second shareholder. A shortcoming by Midroc in this regard, if any shortcoming is at hand, does not amount to an essential breach of contract.

7.56 Under the Sales of Goods Act, such defect/defects or delay would have entitled ETF to certain remedies on the condition that ETF would have put Midroc on notice of the defect within a reasonable time after ETF detected or should have detected the defect or delay (the Sales of Goods Act, *inter alia* Sections 32 and 23).

7.57 First of all, ETF would have been entitled to demand that Midroc rectified the defect (the Sales of Goods Act, Section 34). This would however not have been possible as regards the one single share that could not be owned by Avisere Inc. but it would have been a suitable remedy as regards the formal technicalities for the rest of the ten per cent of the shares. Midroc would also have been entitled to rectify the defect on its own initiative (the Sales of Goods Act, Section 36).

7.58 Further, ETF would have been entitled to withhold the payment until the defect was rectified (the Sales of Goods Act, Section 42). As regards the one single share that could not be owned by Avisere Inc., ETF might have been entitled to demand a reduction in the price. In that case the reduction should have been calculated in such a manner that the proportional relationship between the price as reduced and the price agreed upon in the contract corresponds to the proportional relationship at the time of the delivery, between the value of the goods in their defective state and the goods in the condition agreed in the contract (the Sales of Goods Act, Section 37 and 38). ETF would only have been entitled to terminate the agreements on the basis of a defect if the breach of contract was of material importance to ETF and

Midroc realised or should have realised this (the Sales of Goods Act, Section 39).

7.59 Midroc disputes that the defect as regards the ownership of one single share in Avisere Technology (Pvt) Ltd. was of such importance to ETF that it entitled ETF to cancel the agreements. At least Midroc did not and should not have realised this.

7.60 Moreover, ETF did not cancel the agreements because of existing defects at First Closing but because of anticipatory breach. ETF did not even know about the shareholding in Avisere Technology (Pvt) Ltd. (aside of what it had learned through the due diligence) or the contents of Indian law when ETF terminated the agreements. If it is clear that a breach of contract will occur which would entitle one of the parties to terminate the contract that party may terminate prior to the time for performance (the Sales of Goods Act, Section 62). However, when ETF cancelled the agreements it was not clear that a defect regarding the ownership of Avisere Technology (Pvt) Ltd. would at all occur at First Closing.

7.61 In summary, ETF was not entitled to cancel the agreements because of anticipatory breach. If ETF had not cancelled the agreements before First Closing and a defect as regards the ownership of one single share in Avisere Technology (Pvt) Ltd. as above existed at First Closing, this would also not have entitled ETF to cancel the agreements but merely to withhold the payment, demand Midroc to rectify the defect and perhaps to demand a reduction in the price.

7.62 The consummation of the transfer, through which the buyer would enjoy title to the shares (Sw. sakrättsligt skydd) would have taken longer but could have been completed within a few days thereafter, i.e. possibly at the end of the same week.

The Avisere Group's contractual relationships with third parties

7.63 During 2007, Midroc diligently informed ETF about the Avisere Group's contractual relationships and potential contractual relationships with third parties. According to ETF, *"Midroc had informed about two contractual relationships that were especially important"*. According to ETF, these two contractual relationships were an agreement between Avisere Inc. and ipConfigure/AT & T/Accenture and an agreement between Avisere Inc. and Smartvue/Securitas U.S. The statement by ETF is not true, for various reasons.

7.64 First, Midroc has not informed about only two contractual relationships and it has definitely not denominated any relationship as "especially important" or, for that matter, more "important" than any other.

7.65 ipConfigure had entered into an agreement with Accenture under which Accenture acted as a project manager. According to information that Midroc received, Accenture had entered into an agreement with AT & T. Midroc asked ipConfigure to see the agreement between AT & T and Accenture but was told that AT & T will never disclose their contract, terms, conditions etc as it relates to prime contractor Accenture: it's a confidential deal between the parties and currently a business secret.

7.66 Midroc informed ETF of this in a report of 9 October 2007 (called "Highlights 9 Sep 2007") which Midroc attached to an e-mail to *inter alia* ETF 10 October 2007. From the report it also emerges that ipConfigure had other potential contractual partners, such as British Telecom.

7.67 Further, on 7 September 2007 ipConfigure had written a Letter of Intent, in which it identified Avisere as its

> *"Go-To-Market partner for Video Analytics"*. In the Letter of Intent it was also *inter alia* stated that *"In addition to the AT & T project ipConfigure is actively pursuing opportunities with other global telecommunications companies interested in offering similar solutions"*.

7.68 Avisere Inc. and Smartvue had entered into a Channel Partner Agreement on 5 May 2005, under which Avisere Inc. had made some deliveries of products. Smartvue produced cameras/servers in which the Avisere Group's software was used. Smartvue in its turn had entered into an agreement with Securitas U.S. Smartvue made its own estimation on how much products it would purchase from Avisere Inc. to fulfil its agreement with Securities U.S. This estimation was accounted for by Göran Linder in the report of 9 October 2007. Hence, those numbers are not made up by Göran Linder but simply reflect Smartvue's own prognosis. The prognosis did not mean or imply that Smartvue had made a commitment to purchase similar numbers or a certain amount worth's of products from Avisere Inc.

7.69 Midroc simply described to ETF the different business possibilities that the Avisere Group had. Midroc did not grade the above mentioned contractual relationships as more important than any other agreement/potential agreement that Avisere Inc. had or hoped to enter into.

7.70 This appears *inter alia* from an e-mail that Göran Linder sent to Creandum 29 June 2007 with a copy to Ivar Strömberg. In this e-mail Cisco and Optelecom were mentioned before ipConfigure and Smartvue, which implies that Göran Linder did not grade Cisco and Optelecom as less important than the other opportunities. It also emerges from the report of 9 October 2007 that Avisere Inc. had several other potential contractual relationships than ipConfigure/AT & T/Accenture and Smartvue/Securitas U.S.

7.71 At ETF's request Göran Linder sent an approximation to *inter alia* ETF on 15 October 2007 in which he had experimented with different scenarios called Offensive Scenario, Balanced Scenario and Defensive Scenario. The size of purchases that were approximated was based on information from the different companies, which is stated in a footnote.

7.72 At Ivar Strömberg's request Göran Linder also sent him the approximation in a format in which Ivar Strömberg could estimate the possible revenues himself.

7.73 As a basis for the approximation, at ETF's request, Göran Linder used ipConfigure/AT & T/Accenture and Smartvue/Securitas U.S. among Avisere Inc.'s agreements/potential agreements to show the effect revenues of a certain size would have for the Avisere Group. The fact that ipConfigure/AT & T/Accenture and Smartvue/Securitas U.S were used to illustrate the approximation does not imply that these opportunities necessarily were any greater or more important for the Avisere Group than any other opportunity or that they were more likely to yield revenues.

7.74 The information Midroc has provided regarding potential revenues from Avisere Inc.'s agreements with Smartvue and ipConfigure has hence been based on information Midroc in its turn had received. Midroc has neither provided ETF any incorrect information about the Avisere Group's contractual relationships, nor made any guarantees or promises about revenues. Further, it should be stressed that the Avisere Group had other potential contractual partners, such as Cisco. Avisere received a certificate for Cisco on 14 December 2007, of which Ivar Strömberg was informed.

7.75 In its cancellation of 22 January 2008 ETF has claimed that information about the Avisere Group's on-going co-operation with third parties that would bring considerable income to the Avisere Group the following years had been provided and that this information was incorrect. ETF has stated that the information was incorrect since there was no co-operation at all with AT & T and since the revenue from Smartvue/Securitas US would be considerably delayed.

7.76 ETF has also stated that

"It had also become evident that the information Midroc had provided to ETF before signing the Agreement Package regarding certain contractual relationships between the Avisere Group and third parties were incorrect. At a meeting with representatives of Midroc and the Avisere Group on 17 January 2008, it had, inter alia, been revealed that the Avisere Group's most vital contractual relationship had been terminated well before the signing of the Agreement package. This, inter alia, meant that the major source of income to the Avisere Group, which had been the keystone for the parties' investment evaluation of the Avisere Group, was non-existing."

7.77 Midroc disputes that these allegations, even if true which is contested by Midroc, constitutes a breach of contract by Midroc, entitling ETF to cancel the agreements.

7.78 On 17 and 18 January 2008 representatives from Midroc, ETF, SAAB and Avisere Inc. participated in a "work shop" at which Avisere Inc.'s Managing Director Roger Undhagen informed the other participants about Avisere Inc.'s development. Roger Undhagen mentioned *inter alia* that it was uncertain whether one of the potential customers, AT & T, with whom Avisere Inc. had negotiated, would commit to purchasing the company's software and the incomes from another customer, Smartvue, would accrue as expected or be delayed. None of the participants at this meeting reacted explicitly on this information.

7.79 The Teaming agreement with ipConfigure was still in force at the time of the "work shop" on 17 and 18 January 2008. AT & T was thus mentioned as a potential customer only. Midroc has not, in any of the agreements, represented a contractual relationship between Avisere Inc. and AT & T.

7.80 The agreement with Smartvue was still in force at the time of the "work shop" on 17 and 18 January 2008. However, Smartvue's sales of its own products, using Avisere's products as a feature, developed slower than expected and Smartvue's estimates of purchases of Avisere's products were affected accordingly. Midroc has, however, in any of the agreements represented neither a contractual relationship between Avisere Inc. and Smartvue nor any particular revenue from any such agreement.

7.81 In addition, ETF had already reviewed both agreements and been in direct contact with both Smartvue and IP Configure, and was hence

well apprised of the situation in relation to both.
It should also be noted that section 7.10.1 in the RRA stipulates:

> *"This Agreement (including any schedules and exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly cancelled."*

7.82 ETF has stated that "the value of the Avisere Companies was based on the expected revenues from the ipConfigure/AT & T/Accenture and Smartvue/Securitas agreements" This is incorrect. The value of the Avisere Group was based on all of its different business possibilities. The Avisere Group's business possibilities were accounted for in the report of 9 October 2007 and the *"market up date"* of 17 October 2007. As is evident from the report of 9 October 2007, the Avisere Group had *inter alia* entered into an agreement - a Channel Partner Agreement dated 17 March 2006 - with Videoprotein Inc.

7.83 Further, Midroc's opinion was that the certification by Cisco was equivalent to a deal with ipConfigure/AT & T/Accenture. This opinion was shared by ETF as is evident from a telephone conference between Göran Linder and Ivar Strömberg on 26 June 2007.

ETF's allegations do not constitute an essential breach

7.84 None of ETF's alleged breaches of contract are essential, not even combined in the unlikely event that it is established that all allegations are true, which is disputed by Midroc.

7.85 Further, all ETF's allegations are based on the anticipated breach of contract by Midroc. In case ETF's anticipation of Midroc's non-performance with regard to the first two allegations, late delivery of certain exhibits and late transfer of the minority shares, had been well founded – despite ETF's messages on 21 and 22 January 2008 to Midroc that it would and did cancel all agreements – it would still only be a matter of a slight delay. In a deal of this magnitude having been on the table and negotiated for close to a year, a slight delay can not entitle ETF to cancellation, especially not without prior notice or circumstances indicating that time was of essence.

7.86 As to the anticipated "shortfall in revenue" from AT & T and Smartvue, this also cannot be an essential breach of contract. There was no warranty or representation by Midroc in the RRA or any other agreement as to the earnings, current or future, of Avisere Holding or the Avisere Group. In a ven-cap deal

involving a start-up company, this would also not be expected or even feasible. Instead, the SSA as expected had provisions dealing with the consequences of a future shortfall in revenues, *inter alia* by the conditional undertaking to "Closing of Tranche 2" described in section 8 of the SSA.

7.87 At First Closing the status of Avisere Inc.'s contractual relationships/business opportunities would not have been a defect in the "goods", Avisere Holding AB, regardless of any sideletter and/or oral information from Midroc and ETF was not entitled to cancel even if it had amounted to a defect.

7.88 However, if a defect in this respect had existed at First Closing, ETF would again have been entitled to certain remedies on the condition that ETF had put Midroc on notice of the defect within a reasonable time after ETF detected or should have detected the defect (the Sales of Goods Act, Section 32).

7.89 ETF would then have been entitled to demand that Midroc rectified the defect (the Sales of Goods Act, Section 34), e.g., by adding replacement prospects to the list of prospects. Midroc would also have been entitled to rectify the defect on its own initiative (the Sales of Goods Act, Section 36). ETF would also have been entitled to withhold the payment until the defect was rectified (the Sales of Goods Act, Section 42).

7.90 The remedy that in Midroc's opinion would have been suitable for a defect as now discussed is a reduction in the price. In that case the reduction should have been calculated in such a manner that the proportional relationship between the price as reduced and the price agreed upon in the contract corresponds to the proportional relationship at the time of the delivery, between the value of the goods in their defective state and the goods in the condition agreed upon in the contract (the Sales of Goods Act, Section 37 and 38). ETF would only have been entitled to terminate the agreements on the basis of a defect if the breach of contract was of material importance to ETF and Midroc realised or should have realised this (the Sales of Goods Act, Section 39).

7.91 Midroc disputes that a defect regarding the ipConfigure/AT&T/Accenture and Smartvue/Securitas agreements – if it had existed at First Closing – was of such importance to ETF that it would have entitled ETF to cancel the agreements. In any case Midroc did not and should not have realised this.

7.92 ETF claims that ETF was entitled to terminate the Agreement Package since Midroc was in no position to fulfil its contract obligation to – at the time of First Closing - provide ETF with a set of conditions precedent documentation which ETF was obliged to approve.

7.93 If Midroc had not provided ETF with the schedules and subschedules to the RRA at First Closing, as agreed in the RRA, Section 3.2 (a) (ii), this would have constituted a delay in delivery of the goods. In that case, ETF would have been entitled to enforce the contract and demand performance (the Sales of Goods Act, Section 23), i.e. demand that Midroc provide ETF with the documents. ETF would also have been entitled to withhold the payment (the Sales of Goods Act, Section 42). ETF could also have prescribed to Midroc a specified extension of time for delivery of "the goods" (the documents) and, provided such time was not unreasonably short, ETF would have been entitled to terminate the agreements if the documents were not delivered within that extended time (the Sales of Goods Act, Section 25, second paragraph).

7.94 Otherwise, ETF would only have been entitled to terminate the agreements on the grounds of delay by Midroc if the breach of contract was of material importance to ETF and Midroc realised or should have realised this (the Sales of Goods Act, Section 25, first paragraph).

7.95 Moreover, if one or a few documents would not have been provided to ETF on time at First Closing, it would only have implied that a part of the delivery was delayed.

7.96 In that case, ETF would only have been entitled to terminate the agreements in its entirety if the breach of contract was of material importance to ETF with regard to the entire contract and Midroc realised or should have realised this (the Sales of Goods Act, Section 43).

7.97 Midroc disputes that a delay with providing ETF with the remaining schedules and subschedules to the RRA - even at First Closing - would have entitled ETF to terminate the agreements.

7.98 However, ETF did not terminate the agreements because of delay with providing the documents at First Closing, but because of anticipatory breach. If it is clear that a breach of contract will occur which would entitle one of the parties to terminate the contract, that party may terminate prior to the time for performance (the Sales of Goods Act, Section 62). Midroc disputes that ETF was entitled to cancel the agreements because of anticipatory breach. When ETF cancelled the agreements it was not clear that a delay with providing the documents would occur at First Closing.

7.99 In summary, ETF was not entitled to cancel the agreements because of anticipatory breach. If ETF had not cancelled the agreements and a delay with providing the schedules and subschedules to the RRA had occurred at First Closing, this would still not have entitled ETF to cancel the agreements but merely to enforce the contract and demand performance and withhold the

payment. ETF could also have prescribed to Midroc a specified extension of time for delivery of the documents and, provided such time was not unreasonably short, ETF would have been entitled to terminate the agreements if the documents were not delivered within that extended time.

ETF's counterclaim (or consolidated claim)

7.100 ETF has requested an order for Midroc to pay damages to ETF in the amount of SEK 325,000, for its legal fees. Midroc disputes ETF's claims and no amount is admitted as such.

7.101 It is Midrocs's position that ETF is in breach of contract and that ETF has caused Midroc damage, not the other way around. Midroc disputes having breached the RRA or any other agreement. Midroc disputes liability for damage caused to ETF.

The Indemnity

7.102 On 21 December 2007, Midroc also signed the Indemnity under which SAAB and/or ETF became entitled to compensation from Midroc under certain conditions. The conditions were *inter alia* that SAAB and/or ETF established that Avisere Holding and/or any of its subsidiaries have suffered a damage, that the kind of damage is covered by the Indemnity and that the damage is caused in a certain way, for example by Midroc supplying wrongful information. Further, the Indemnity requires that SAAB/ETF is a shareholder in Avisere Holding when requesting compensation under the Indemnity.

7.103 Midroc disputes that ETF is entitled to demand any performance under the Indemnity since ETF has cancelled it.

7.104 Midroc also disputes that ETF would have been entitled to any compensation from Midroc under the Indemnity even if ETF had fulfilled its investment in the Avisere Group and had not cancelled the Indemnity. Midroc has not misrepresented anything and has not withheld any relevant information. Hence, Midroc is not in breach of contract. Even if Midroc would have withheld information from ETF and would be in breach of contract, Midroc disputes that it would have caused Avisere Holding a damage covered by the Indemnity, since it does not meet the definition of damage under the Indemnity in Section 2.1.

7.105 The Indemnity covers damage caused to Avisere Holding and not damage caused to ETF.

7.106 In addition, any protection for ETF under the Indemnity requires (i) the consummation of the investment and (ii) that ETF "*still is*" a shareholder in Avisere Holding at the time when a claim is made (Section 2.5). ETF does not assert that this is the case.

7.107 Midroc disputes that ETF is entitled to set off any amount under the Indemnity. The proposition that ETF would have had any claim available for set off is pure speculation.

Additional circumstances

Due Diligence

7.108 The parties agreed in the Term Sheet that ETF and SAAB were to perform a due diligence of the Avisere Group, which should be completed on or before 15 May 2007. ETF and SAAB had divided the performance of the due diligence tasks between them. SAAB was responsible for the technical and patent parts and ETF was responsible for the legal and market parts. SAAB and ETF were to jointly perform the due diligence regarding the management and financial parts.

7.109 Midroc did not commit itself to perform any seller's due diligence and did not perform any such due diligence. The due diligence was to be performed by SAAB and ETF and SAAB performed its part. SAAB met Indian employees and development staff to evaluate the Avisere Group's product. SAAB also performed its own tests of the products.

7.110 It should be noted that the data room at MAQS Law Firm contained documents showing that Avisere Inc. owned ninety, and not one hundred, per cent of the shares in Avisere Technology (Pvt) Ltd.

7.111 ETF had free access to Avisere Inc.'s contractual partners and potential contractual partners and were also in contact with some of them both by telephone and in person. Midroc, via Roger Undhagen, Managing Director of Avisere Inc., introduced ETF (Ivar Strömberg) to Christopher Uiterwyk of ipConfigure in an e-mail on 6 November 2007 to enable ETF to liaise directly with ipConfigure. Roger Undhagen also introduced ETF to several of Avisere Inc.'s other contractual partners and potential contractual partners. Midroc also granted ETF some time to liaise with Avisere Inc.'s contractual partners and potential contractual partners before Midroc required ETF's final decision on whether it would make an investment in the Avisere Group.

7.112 Ivar Strömberg also met Roger Undhagen.

7.113 Midroc's position is that ETF and SAAB could obtain all the information they wanted and needed. Both ETF and SAAB have been granted the possibility to fully investigate the Avisere Group and Midroc has also encouraged them to investigate fully. Midroc's impression and understanding is that investigations, satisfactory to SAAB and ETF, were performed by them. Midroc has received no notice or communication to the contrary.

ETF's legal grounds for the defence are disputed

Binding Agreement

7.114 Midroc disputes that no binding agreements have been realized. It was not possible for ETF to refuse performance under the RRA by not accepting the relevant schedules and subschedules to the RRA provided by Midroc at First Closing.

7.115 Midroc disputes the allegation that Ian Wachtmeister was not duly authorized to represent the Minority shareholders at the Signing. If he for one reason or another failed to formally represent one or few of the minority shareholders when executing the Agreement Package, it is of no relevance. The Agreement Package is valid and binding regardless.

Contractual Fraud

7.116 Midroc disputes that the Agreement Package is invalid due to contractual fraud.

7.117 Midroc has not induced ETF to enter into the agreements by fraudulent deception. Midroc has not known or should have known that ETF was induced to enter into the agreements by fraudulent deception on the part of a third party. Further, Midroc has not withheld any facts regarding *"the agreement with ipConfigure/AT & T/Accenture"*. Midroc has received the information at the same time as ETF on 17 and 18 January 2008 that it was unlikely that AT & T, with whom ipConfigure had negotiated, would commit to purchasing the Avisere Group's software.

7.118 No further comments seem needed. ETF's allegation of contractual fraud is made in bad faith and based on an expedient and wilful disregard of certain central facts and circumstances.

7.119 Midroc has not provided ETF with incorrect information.

7.120 Midroc has not had any intent to mislead ETF.

7.121 Midroc disputes that acts or omissions by Roger Undhagen could constitute contractual fraud for Midroc or on its behalf. Midroc also

disputes that Undhagen has provided ETF with incorrect information or has had any such intent. Undhagen's voluntary disclosure of the information at the "work shop" signifies this lack of intent.

Non-performance by SAAB

7.122 Midroc does not share ETF's view that ETF is not responsible for SAAB's non-performance. ETF's cancellation of the agreements was made in relation to and executed against SAAB as much as it was made in relation to Midroc. SAAB received the same oral information about ETF's withdrawal as Midroc on 21 January 2008, constituting ETF's cancellation of the agreements. If ETF had fulfilled its investment, SAAB would have done the same. SAAB's non-performance was directly caused by ETF's cancellation of the agreements, which is evident from a letter from SAAB to Midroc on 25 January 2008.

Mitigation of losses

7.123 Midroc, ETF and SAAB, had agreed how the survival and development of the Avisere Group should be financed. When ETF cancelled the agreements, Midroc was not obliged to supply the Avisere Group with more of its own funds to mitigate its losses. Midroc was also not obliged to perform ETF's and SAAB's obligations under the agreements to limit its damage. Under internal regulations, Midroc has not been entitled to make Avisere Holding a subsidiary of Midroc and ETF has been aware of this.

7.124 After and as a consequence of ETF's cancellation, it was not possible for Midroc to find any other investors. Midroc tried, but to no avail. The market was clearly hesitant when well-renowned companies like ETF and SAAB had withdrawn from their investment. By the cancellation, the Avisere Group had received a "kiss of death" as time had clearly run out. In an almost desperate effort to salvage the situation, Midroc attempted to revisit contacts with some of the companies that had previously shown interest but no one was interested.

7.125 The time spent by professional investors like ETF and SAAB, close to a year from initial contact and exchange until signing, is illustrative of the impossible situation for Midroc caused by ETF's cancellation. Even assuming that some other investor would have shown interest, and assuming – for no good reason - that their decision would be made in half the time needed by ETF and SAAB, Midroc would still have had to chance another close to US 500,000 (six times US 80,000) just to keep the Avisere Group from collapsing. Midroc was not obliged to assume such a risk.

7.126 But this is hypothetical. There were no investors at hand and Midroc was out of options. The damage was done

Legal aspects

Applicable law

7.127 The parties have agreed that Swedish law is applicable on the agreements (the RRA, Section 7.3.1 and the SSA, Section 10.1.).

7.128 Since both Midroc and ETF have their places of business in the Nordic countries, the Swedish Sales of Goods Act (1990:931) is applicable and not the International Sales of Goods Act (1987:822) (the Sales of Goods Act, Section 5 and the International Sales of Goods Act, Section 2).

8. LEGAL GROUNDS FOR ETF'S DEFENCE

No binding agreements have been realized

8.1 The agreements in the Agreement Package (except the SPA and the Option Agreement) were made conditional upon certain specified events. This means that these agreements in the Agreement Package were not binding between the parties until the occurance of the events set out in Section 3.2 of the RRA.

8.2 Section 3.2 in the RRA set out that ETF is at liberty to approve or reject the conditions precedent documentation that should have been presented by Midroc. The conditions precedent documentation was supposed to be an integrated part of the Agreement Package and certain parts were by their very nature open for negotiation which can lead to approval or rejection. ETF has not approved the conditions precedent documentation and was not under any obligation to do so.

8.3 Since no binding agreements were ever realized ETF can not be liable for any breach of such non binding contracts.

8.4 Midroc's claims are, however, based on the notion that binding agreements have been realized and Midroc is claiming for the reliance interest (*Swe: positiva kontraktsintresset)* due to an alleged breach of contract by ETF. In a situation with no binding agreements a party is not entitled to damages for the reliance interest but at the most for quasi-delictal damages (*Swe: negativa kontraksintresset)* if the party can prove that the counterparty has acted negligently *(culpa in contrahendo).*

The legal relevance of the powers of attorney to Ian Wachtmeister

8.5 ETF denies that any member of the Minority other than Sarah Austern has issued a power of attorney of any kind to Ian Wachtmeister. ETF also denies that a power of attorney with a content as the one Sarah Austern gave Ian Wachtmeister the right to sign the RRA and the MinCo shareholders agreement on a Minority shareholder's behalf.

8.6 It was an indispensable prerequisite for the validity of the Agreement Package that all of the original minority shareholders in Avisere Inc.entered into the RRA and MinCo shareholders agreement. This was a fundamental condition that all parties were in agreement on.

8.7 Apart from that, it is a fundamental legal principle that if all parties intended in a multi-party agreement do not enter into the agreement there is no agreement at all.

8.8 This means that if Midroc can not produce authentic copies of powers of attorney from each and every Minority shareholder giving Ian Wachtmeister the power to sign the RRA and the MinCo shareholders agreement on their behalf, then the Agreement Package is not valid and entails no contractual responsibility for any party and hence there is no ground for contractual damages.

8.9 From the legal opinion of David Otto it is obvious that Avisere Inc. had obtained Powers of attorney from 71 of 75 of the Minority shareholders of Avisere Inc.

ETF has not acted negligently

8.10 ETF has been at the liberty to approve or reject the conditions precedent documentation presented by Midroc i.e. to choose to realize the Agreement Package or to renounce from doing so.

8.11 ETF has acted loyally towards Midroc. Midroc did not present the drafts for agreement documentation timely before the signing on 21 December 2007. After the signing ETF, in January 2008, repeatedly asked for the drafts for the agreement documentation (now being the conditions precedent documentation) so that ETF would have time to scrutinize, if necessary negotiate, and approve or reject. In the evening of 22 January 2008, when ETF formalized its withdrawal by the termination letter, Midroc had not even submitted first drafts for the

conditions precedent documentation. ETF disputes that Midroc at the time of First Closing at 10.00 of 23 January could have provided ETF with a set of conditions precedent documentation which ETF would have approved.

8.12 It was at that time also clarified that Midroc would not be able to fulfill the warranty regarding the shareholding in the Avisere Group.

8.13 Also, which was of utmost importance for ETF, Midroc had at that time finally revealed that the ipConfigure/AT&T/Accenture agreement did no longer exist and that the Smartvue/Securitas agreement was significantly postponed, i.e. that there would be no revenue streams to the Avisere Group for a foreseeable future. It was obvious that ETF was asked to invest in a company that would go bust when the invested money dried up (the burn rate was at least USD 180 000 per month). The Avisere Group was obviously insolvent on 23 January 2008.

8.14 ETF's decision to withdraw from the investment under these circumstances was not negligent.

The Agreement Package is invalid due to contractual fraud *(Swe: svek)*

8.15 Midroc and senior officers in the Avisere Group induced ETF to enter into the Agreement Package by submitting extensive and specific information regarding *inter alia* the agreement with ipConfigure/AT&T/Accenture. This contractual relationship ceased to exist in November 2007 when AT&T withdraw from the co-operation, i.e. well before 21 December 2007.

8.16 Despite Midroc's knowledge that the agreement was an important factor for ETF's decision to make the investment and enter into the Agreement Package and despite the warranty regarding correct and complete information in the Indemnity, this information was withheld from ETF and was revealed first on 18 January i.e. just a few days before First Closing on 23 January 2008.

8.17 ETF was induced to enter into the Agreement Package by a fraudulent deception by Midroc, committed by persons submitting and then withholding information regarding the ipConfigure/AT&T/Accenture agreement on behalf of Midroc. This means that the Agreement Package shall not be binding on ETF (cf. Section 30 in the Swedish Contracts Act).

8.18 Midroc's allegation that acts or omissions by Roger Undhagen are not attributable to Midroc (or perhaps also not to the Minority/MinCo or himself as a member of the Minority) is irrelevant and incorrect. Midroc has in these

arbitral proceedings the full contractual responsibility for information submitted or omitted by, *inter alia*, Roger Undhagen.

8.19 The fact that Roger Undhagen disclosed that the basic elements of Avisere Inc.'s business had failed (no revenues) first *after the signing* of the Agreement Package (to which Roger Undhagen should have taken part as a member of the Minority), contradicts Midroc's assertion that Roger Undhagen lacked intent.

8.20 Roger Undhagen was actually the CEO of Avisere Inc. and the ultimate leader of the business operations. He was invited to give an account of Avisere Inc.'s business at the "work shop" and could of course under these circumstances not continue to conceal the fundamental fact that Avisere Inc. in reality did not have any business at all.

8.21 The circumstances that have been revealed in the investigation and what follows from the legal opinion by SNF regarding the non-transfer of shares in Avisere Inc. to Avisere Holding also constitutes a contractual fraud.

Actions committed contrary to good faith

8.22 Midroc's (including Roger Undhagen) actions are also committed contrary to good faith (*Swe: tro och heder)* in the sense expressed in Section 33 of the Swedish Contract Act.

8.23 It is evident that if Midroc would have had the knowledge that the ipConfigure/AT&t/Accenture agreement had been terminated in mid November 2007 and that the Smartvue/Securitas agreement had been substantially delayed, it would have been inequitable to enforce the Agreement Package and demand ETF to make the investment. Under the circumstances presented in the case Midroc must be presumed to have had such knowledge.

8.24 Under all circumstances the non-performance of the transfer of shares is such a circumstance that it according to Section 33 of the Swedish Contract Act would have been inequitable to enforce the Agreement Package and demand ETF to make the investment. An enforcement would have meant that ETF should have invested SEK 9 286 41 8 in consideration for shares issued in an empty SEK 100 000 off the shelf company and in addition to that should have bought existing common shares from Midroc for SEK 2 399 999 in that company, i.e. be forced to pay SEK 11 686 417 for 21.07

percent of an empty SEK 100 000 off the shelf company (which would constitute a maximum equity after the investment of SEK 21 070).

8.25 It should be pointed out that this applies regardless of Midroc's and the Minority's/MinCo's actual knowledge of these circumstances. In any case Midroc and the Minority/MinCo must be presumed to have knowledge of the circumstances regarding the non-transfer of their own shares in Avisere Inc.

8.26 This means that the Agreement Package shall not be binding on ETF.

If the Agreement Package was binding ETF was entitled to terminate all agreements in the Agreement Package

8.27 If the Agreement Package was binding there were such fundamental defects in the Avisere Group that entitled ETF to terminate all the agreements.

8.28 The defects are:

a) Midroc and the minority/MinCo did not transfer all shares in Avisere Inc to Avisere Holding.

b) Midroc could not have provided ETF with a set of condtion precedent documentation on the time of First Closing at 10:00 of 23 January, which documents ETF would have been obliged to approve. Further Midroc has committed a breach of contract by not submitting the conditions precedent documentation on such time so that ETF would be able to scrutinize (and if necessary negotiate) and approve the agreement documentation.

c) The absence of the ipConfigure/AT&T/Accenture and Smartvue/Securitas agreements meaning that the Avisere Group had no revenues and would have no revenues for any foreseeable future. This was a defect in the Avisere Group (cf. Section 17 and 18 of the Swedish Sales of Goods Act). Midroc knew that this was of material importance to ETF. ETF was therefore entitled to terminate the Agreement Package (cf. Section 39 of the Swedish Sales of Goods Act).

d) The circumstance that Avisere Technology (Pvt) Ltd was not wholly owned by the Avisere Group. In Section 2.2.2 in the RRA, Midroc warrants that the companies in the Avisere Group were wholly-owned by Avisere Holding at the time the First Closing on 23 January 2008. The warranty also covers the ownership of Avisere Technology (Pvt) Ltd. Avisere Holding is only indirectly the owner of 90 per cent of the shares

in Avisere Technology (Pvt) Ltd. This is a defect and also a breach of a specific warranty. Midroc was not in a position to fulfill the warranty at the time of the First Closing on 23 January 2008 or thereafter. Midroc knew that the full ownership of the companies in the Avisere Group was of material importance to ETF (a warranty was issued by Midroc for these circumstances). ETF was therefore entitled to terminate the Agreement Package (cf. Section 39 of the Swedish Sales of Goods Act).

8.29 The breaches of contract that ETF invokes constitute grounds for termination of the Agreement Package, separately or together, and entitled ETF to terminate the Agreement Package.

8.30 The parties were in agreement that ETF had not performed any due diligence investigation and that ETF were under no obligation to investigate the Avisere Group.

Midroc has not suffered any damages

8.31 First it shall be established that Midroc can only have lost the *real value* of it's (and MinCo's) ownership in the Avisere Group (i.e *real money),* which is independent of any "agreement of value" between the parties. It shall also be established that Midroc has the burden to prove its losses and has to show its actual losses.

8.32 ETF testifies to Midroc's assertion that the Avisere Companies were on the verge of bankruptcy and in urgent need of a cash infusion and that it without a cash infusion would collapse immediately and be worth nothing (which also seems to have happened). This means that the *real value* of Midroc's (and MinCo's) ownership in the Avisere Group before the investment and without a cash infusion under all circumstances was zero (0).

8.33 In order to receive any damages Midroc must first of all show that the Avisere Group actually would have survived if the cash infusion by ETF had been executed and show which *real! value* the Avisere Group would have had in such case.

8.34 In this respect it should be pointed out that the revenues in the Avisere Companies had been limited (approximately USD 100 000 a year). At the same time, the "burn rate" of the Avisere Companies was at least USD 80 000 a month. Midroc had from July 2006 to December 2007 invested totally approximately SEK 28 000 000 in the Avisere Companies. It is not known to ETF how much the other shareholders in the Avisere Companies (the MinCo owners) had invested, but it is most likely a considerable amount. These

historical investments had not created any value at all, since there were no revenues or (as it was revealed in January 2008) no foreseeable revenues to the Avisere Group.

8.35 It shall also be pointed out that Midroc has to show that the Avisere Group would have been successful and, hence, created a value for Midroc (and MinCo) taken into account a number of conditions, such as:

a) the statistical success/failure rate of similar companies funded by private equity; and

b) the business conditions and development (such as market growth) of the specific market (Video Content Analysis - VCA); and

c) the conditions of competition on the specific market (VCA); and

d) the general business conditions with a world recession that hit all markets in the autumn of 2008.

9. ETF'S CONTENTIONS

9.1 ETF has mainly contended as follows.

The background

The first contacts (early spring 2007)

9.2 During early spring of year 2007 Eqvitec Partners gained contact with Göran Linder of Midroc, through Christer Mossberg of the consulting firm KRMO, which was acting as a financial advisor to Midroc. Eqvitec Partners was informed that SAAB AB (publ.) was interested in the Avisere Companies' technology and contemplating in an investment in the Avisere Companies. Eqvitec Partners was also informed that SAAB had started a review regarding the companies business and especially regarding the technology. Eqvitec Partners informed ETF of the above.

9.3 Midroc invited ETF and SAAB to invest funds in a group of companies named "Avisere", consisting of Avisere Inc (a U.S. corporation), Avisere Europa AB (a Swedish limited liability company), and Avisere Technology (Pvt) Ltd (an Indian limited liability company).

9.4 Midroc was the owner of approximately 40 per cent of the shares in the Avisere Companies and a group of founders and earlier investors of approximately 60 per cent of the shares. After Midroc's conversion of a convertible loan in early December 2007, Midroc's ownership increased to exceed 50 per cent.

9.5 In late March 2007 the parties started to negotiate a Term Sheet governing the fundamental components of a possible investment. A final version of the Term Sheet was signed on 26 April 2007.

ETF's assessments of the Avisere Companies and the decision not to proceed with an investment and the subsequent events (spring - autumn 2007)

9.6 Both ETF and SAAB made during the spring and early summer in 2007 their respective assessments of the status of the Avisere Companies. However, both parties decided in the early summer of 2007 not to proceed with an investment. On the part of ETF, the reason for this was that the Avisere Companies lacked "commercial proof "and, hence, any significant revenues from its business. Ivar Strömberg (CEO of Eqvitec Partners AB) explained this to Göran Linder of Midroc.

9.7 It should be noted that the Avisere Companies technology and business proposal is built on software that is normally "embedded" in hardware products such as cameras that is manufactured and marketed by third parties. This means that the software products normally can not be sold as "stand-alone" products but as "embedded" products. In order to conclude agreements with such third parties the Avisere Companies had to convince the third parties that the product held such technological and commercial standards so that they would "embed" the Avisere Companies' technology in a product concept. In the spring of 2007 the Avisere Companies had only achieved a few co-operation agreements of less commercial significance. There was, hence, no "proof of technology concept" and no "commercial proof of the Avisere Companies' products".

9.8 The decision from ETF was followed by Göran Linder's persistent and unsolicited contacts with Ivar Strömberg during the summer and autumn of 2007 in order to show that the Avisere Companies had taken steps in order to mend the lack of commercial proof.

9.9 In November 2007 ETF had received information about several important new business leads and also about binding contracts that had been concluded between the Avisere Companies and third parties that should generate steady revenues.

ETF's decision to proceed with the investment process and the revived negotiations (November - December 2007)

9.10 In late November 2007 ETF decided to proceed with a possible investment in the Avisere Companies. SAAB had, a while earlier, also decided to proceed with the investment process.

9.11 In order to bring in an investment, Midroc and the minority shareholders of the Avisere Companies provided for a Swedish off the shelf limited liability company to be the Swedish holding corporation, the company to be named "Avisere Holding AB", which directly and indirectly should be the holder of all the shares in Avisere Inc., Avisere Europa AB and Avisere Technology (Pvt) Ltd (this constellation of companies are hereinafter collectively referred to as the "Avisere Group". For this purpose the minority shareholders also bought a Swedish off the shelf limited liability company to be the holding company for the minority shareholders to which the shares in Avisere Inc. should be transferred.

9.12 On 21 December 2007 the parties, together with SAAB and MinCo signed the Agreement Package.

9.13 *Inter alia* due to Midroc's inability to present a number of drafts for crucial agreement documents in the Agreement Package (several schedules and sub-schedules), all of the agreements except for two agreements in the Agreement Package were made conditional, i.e. that no binding agreements were finalized. Midroc was to provide drafts for these agreement documents to ETF and SAAB in order for them to scrutinize (and if necessary), negotiate and possibly approve, on or before the first closing on 23 January 2008.

9.14 The two agreements in the Agreement Package which were made binding was the Share Purchase Agreement between Midroc and ETF (schedule 1.3 to the RRA) regarding ETF's acquisition of 7 075 ordinary shares in Avisere Holding (the "SPA") and the reciprocal option agreement between the same parties regarding the repurchase of the same shares (the "Option Agreement").

The subsequent events of signing (January 2008)

9.15 In the beginning of 2008 ETF and SAAB asked Midroc's attorney Advokat Dan M. Öwerström of MAQS Law Firm Advokatbyrå ("MAQS") several times to submit the draft agreement documents that Midroc should provide. In spite of promises made by Dan M. Öwerström, Midroc had not even in the evening of 22 January 2008 provided any drafts for the documents or contacted ETF regarding

the reasons for the delay.

9.16 At this time it had also become evident that Midroc could not comply with a warranty regarding Avisere Holding's full ownership of the shares of the companies in the Avisere Group, since Avisere Inc. was not the owner of all shares in Avisere Technology (Pvt) Ltd (cf. Section 2.2.2 in the RRA).

9.17 It had also become evident that the information Midroc had provided to ETF before the signing of the Agreement Package regarding certain contractual relationships between the Avisere Companies and third parties were incorrect.

9.18 On Thursday and Friday 17 and 18 January, 2008 the parties to the Agreement Package met as scheduled at ETF's premises in World Trade Center in Stockholm for a two day "work shop" and "kick-off. At the "work shop" Midroc and key personnel from the Avisere Group were to inform about the business of the Avisere Group. The participants were Göran Linder, Roger Undhagen, Tinku Acharya (of Avisere Inc.), Håkan Rosen, Ivar Strömberg, Michael Tarnawski-Berlin (of Eqvitec Partners), two persons representing MinCo AB (Ian Wachtmeister and another person), Steve Lewis, Karin Bjurel (of Avisere Group), Lars Lundeborg (candidate to the position as CEO/CFO of Avisere Group).

9.19 Late on 18 January 2008 Roger Undhagen perfectly out of the blue revealed that the ipConfigure/AT&T/Accenture-agreement had been terminated in mid November and that the cooperation with Smartvue/Securitas had been postponed at least 9-12 months due to technical problems with Smartvues camera equipment.

9.20 Ivar Strömberg was also informed that Avisere Inc. did not own 100 per cent of the shares in Avisere Technology (Pvt) Ltd but only 90 per cent. Ivar Strömberg was informed that 9 per cent of the company was owned by Tinku Acharya and 1 per cent by Vijay Sreenivas Bobba, a former Indian board member of the company.

9.21 Ivar Strömberg found this information regarding the absence of the two principal agreements for the business and the ownership of shares astonishing and totally unacceptable. The information was in direct contradiction with the information that Midroc had repeatedly submitted before signing on 21 December 2007 and meant that all information that Midroc had submitted about commercial relationships and expected revenues from these contracts in order to induce ETF to make the investment were incorrect. Midroc had known since June 2007 that

commercial relationships and revenues were of fundamental importance for ETF to invest. ETF was now informed that the business in the Avisere Group in reality was a castle built in the air.

9.22 Ivar Strömberg and Håkan Rosen took Göran Linder to the side to discuss the situation. Göran Linder had no answers at all.

9.23 Midroc did not submit any further information regarding the break-down of the commercial relationships with ipConfigure/AT&T/Accenture and Smartvue/Securitas. Midroc did not submit any of the conditions precedent documents.

9.24 Based on these circumstances ETF decided not to execute the RRA and the relevant underlying agreements in the Agreement Package. Midroc was formally notified of this by a termination letter dated 22 January 2008 which was sent to Midroc and the other parties to the Agreement Package in the evening of the same day. In the same letter ETF called for the option under the Option Agreement by way of reserve *(Swe: reservationsvis),*

9.25 ETF has not been obliged to execute the RRA and the relevant underlying agreements in the Agreement Package and has, under all circumstances, been entitled to terminate the RRA and the underlying agreements including the binding SPA and Option Agreement.

Midroc's assertion as to the relevance of a due diligence investigation

9.26 Midroc has on various occasions made the assertion that ETF has performed a thorough due diligence investigation of the Avisere Group and that this would imply that ETF should not be entitled to invoke deficiencies in Avisere Group. This assertion is incorrect.

Was there a due diligence performed by ETF and what legal significance could be assigned to a due diligence investigation?

9.27 According to the Term Sheet agreed between Midroc, SAAB and ETF on 26 April 2007 it was decided that a due diligence of the Avisere Companies was to be executed.

9.28 The legal due diligence was scheduled to start in early May 2007 and end on 15 May. However, the final "Index - Due Diligence Request List" was delivered by Sophia Horn af Rantzien in late May 2007. The scope of the documentation was

a bit more comprehensive than expected for a start-up company and it now included a list of 65 pages but no key findings or summing-up of the material, which had been promised.

9.29 Taken into account the relatively small size of the contemplated investment by ETF (a total of SEK 9 300 000 + SEK 9 300 000 according to the Term Sheet). it would have taken disproportionately much time and costs to carry out a due diligence without any closer cues and instructions from Midroc, who had performed a three week tour of the Avisere Companies and a seller's due diligence. For this reason Ivar Strömberg suggested that MAQS should put together the most vital and important information received in its seller's due diligence in a memorandum in order for ETF to be able to focus on such information in the execution of a due diligence investigation.

9.30 Göran Linder agreed to Ivar Strömberg's suggestion and instructed MAQS to execute a memorandum. A short memorandum by MAQS was executed on 5 June 2007. The substantive matter of the memorandum more or less consisted of a summary of the earlier provided "Index - Due Diligence Request List".

9.31 A few handwritten questions were delivered by Niklas Larsson, Jakob Bernander and Ivar Strömberg in the data room on 8 June 2007. These questions were followed by a few questions sent by e-mail from Jakob Bernander to Sophia Horn af Rantzien on 12 June 2008.

9.32 Ivar Strömberg received a short answer by e-mail on his questions from Göran Linder on 20 June 2008.

9.33 After this Eqvitec Partners informed Göran Linder that ETF would not go forward with the investment process and the reasons for this decision. At this time SAAB had also decided to abort the investment process.

9.34 At the time when ETF aborted the investment process the Avisere Group had not entered into any essential commercial relationships that generated revenues and this was also the main reason for ETF's decision not to proceed.

9.35 ETF did not commence with any due diligence investigation of Avisere Group after this point of time.

9.36 Despite ETF's decision to abort, on 6 July 2007 Sophia Horn af Rantzien, without being asked, sent an e-mail with appendices with answers to the questions which were left to answer.

9.37 From this point of time Göran Linder also started to submit information in consecutive order to Ivar Strömberg regarding all kinds of business leads, commercial relationships and potential and concluded contracts involving the Avisere Companies.

9.38 On 21 October 2007 Håkan Rosen sent an e-mail with the information that SAAB had changed its plans and decided to go ahead with the investment process.

9.39 This decision had been preceded by new information from Göran Linder regarding *inter alia* new commercial contracts which the Avisere Companies had entered into.

9.40 ETF did not perform a due diligence investigation in the spring and early summer of 2007. Moreover, MAQS did not provide either Midroc or ETF with a seller's due diligence.

9.41 ETF had explained to Midroc that ETF would rely on Midroc's seller's due diligence and Midroc's cues and instructions as to the documentation.

9.42 On 12 November 2007 Midroc, SAAB and ETF decided that Midroc's legal counsel Dan M. Öwerström should arrange for a schedule for the documentation procedure. At this time it was still not finally decided if ETF would proceed with the investment. Signing was scheduled to take place on 14 December 2007. All parties understood that this was a very tight schedule.

9.43 The reason for the tight schedule was according to what Midroc alleged at this time, that Midroc wished to divest its holding in the Avisere Companies below 50 percent before the year end so that Midroc would not be required to consolidate the balance sheet and profit and loss account of Avisere Inc. into the end-of-year accounts of 2007. It was of no particular interest to ETF to sign the agreements before the year end.

9.44 On 26 November 2007, the board of Eqvitec Partners had decided to propose to ETF to proceed with the investment process and Göran Linder was informed of this the same day.

9.45 In spite of the tight time schedule, no draft agreements had been delivered on Thursday, 6 December 2007 and ETF and SAAB had concerns if it would be possible to sign any agreements before the end of 2007. It was obvious that there were very little time left for any further investigation of the Avisere Companies before signing. SAAB and ETF and their respective counsels met in order to

decide how to proceed. They decided to ask for more information from Midroc regarding the Avisere Companies in order to be able to do further legal investigation.

9.46 An incomplete first draft agreement package was sent to ETF and SAAB from Dan M. Öwerström on 12 December 2007. This delivery did not include any drafts of the schedules to the agreements. The package included a draft indemnity as set out on page 3 in the Term Sheet.

9.47 Furthermore. the draft SSA contained a Section 7 "Disclaimer of further representations and warranties".

> "7.1 Except as expressly made herein, the Founders have not made any representation or warranty to Subscribers concerning any matter, including without limitation, the business prospects of Holding or its subsidiaries, and *the Subscribers acknowledges and warrants that entering into this Share Subscription Agreement, they have made full investigation of the business and business prospects of Holding and its subsidiaries and relying on independent investigations.*" [ETF's emphasis]

9.48 This was not a correct description of facts. *"The Subscribers"* (i.e ETF and SAAB) had not made a *"full investigation"* (i.e. a due diligence investigation).

9.49 ETF and SAAB did not accept to perform any due diligence investigation at this stage or assume any duty to investigate the Avisere Group. Also there was no time to perform a due diligence investigation (it was two days before the scheduled closing) which certainly would have postponed a closing of a deal well into 2008. Midroc neither demanded that ETF and SAAB should perform a due diligence investigation. Instead it was later decided that the text regarding *"full investigation of the business and business prospects of Holding and its subsidiaries and relying on independent investigations""* etc. was struck out of the SSA and to the contrary agreed that Midroc should take full and unconditional responsibility for all the information regarding the Avisere Group that had been submitted by Midroc or by the the companies in the Avisere Group

9.50 This was formalized in the revised indemnity that Midroc eventually issued for the benefit of ETF and SAAB, where it is stated that Midroc is responsible for the accuracy of all information submitted and that no

relevant information had been withheld by Midroc or by any company in the Avisere Group.

9.51 Apart from this ETF and SAAB considered, on very good grounds, that the submitted draft agreement package was very poorly drafted. For example; the draft agreements lacked many of the fundamental components which had been negotiated between the parties and important components in the Term Sheet previously concluded between the parties; the draft agreements were also inferior from a legal technical point of view and were inconsistent and incoherent. The agreement documents did simply not meet the standard you would expect for a venture capital transaction.

9.52 It was in this situation not even meaningful for ETF and SAAB to, as common, do markups on the draft agreement package. ETF and SAAB therefore required the draft agreement package to be redrafted by Midroc.

9.53 Due to the late delivery and the redrafting, the parties had to reschedule the signing. Midroc was very eager to sign an agreement regarding the transaction before Christmas and it was decided that signing should take place on Thursday, 20 December 2007.

9.54 In order to be able to finalize the agreements it was agreed that Midroc should send the redrafted agreement package in the evening on Monday, 17 December 2007, at the latest.

9.55 The parties were now even more aware that this was a very tight time schedule and that everything needed to work out expedient, especially on the part of Midroc who was responsible for drafting the documents.

9.56 Dan M. Öwerström sent the new draft of the SSA at 19.36 on 17 December 2007 which contained a new Section 8 (former Section 7), which reads:

> *"7.1 Except as expressly made herein, the Founders have not made any representation or warranty to the Investors ~~Subscribers~~ concerning any matter, including without limitation, the business prospects of Holding or its subsidiaries, and the Investors ~~Subscribers~~ acknowledges and warrants that entering into (his ~~Share Subscription~~ Agreement, they have made full investigation of the business and business prospects of Holding and its subsidiaries and relying on independent investigations."*

9.57 This was of course again not a correct description. *"[T]he Investors"* (i.e ETF and SAAB) had not made a *"full investigation"* (i.e. a due diligence investigation).

9.58 First at 22.29 on 17 December 2007 Dan M. Öwerström had submitted all the new drafts of the agreement package. It should be pointed out that Midroc at this time had not yet drafted and delivered any of the schedules to the Agreement Package, which should constitute an integrated part of the agreement.

9.59 ETF and SAAB had serious concerns about the wording in Section 8 (former Section 7) in the new draft of the SSA since it simply was not true that the parties had made a *'full investigation"* of the Avisere Group and since ETF and SAAB were not willing to take any responsibility for an investigation of the Avisere Group.

9.60 The parties met for negotiations on Tuesday 18 December, 2007. Among other things they discussed the wording in Section 8. Dan M. Öwerström and Midroc agreed with SAAB and ETF that a due diligence had never been executed and should not be executed (there was at this stage simply no time for this) and that the language in Section 8 should be deleted. Instead it was agreed that Midroc should assume the full and unconditional responsibility for the correctness and completeness of the information submitted regarding the Avisere Group and that Midroc should indemnify SAAB and ETF for any deficiencies in the Avisere Group, i.e. a warranty for the correctness and completeness of the information.

9.61 A new draft of the indemnity (in English) was suggested in accordance with the agreement between the parties at the meeting the day before.

9.62 The new draft of Section 8 in the SSA reads as follows:

"~~Biselaimer of further representations and warranties~~Tranche 2

~~Except as expressly made herein, the Founders have not made any representation or warranty to Subscribers concerning any mattery including without limitation, the business prospects of Holding or its subsidiaries, and the Subscribers acknowledges and warrants that entering into this Share Subscription Agreement, they have made full investigation of the business and business prospects of Holding and its subsidiaries and relying on independent investigations.~~ The Founders and the Investors shall on Closing of Tranche 2 (to occur on the date that follows from the Restructuring and Recapitalisation Agreement) cause an extra shareholders meeting in Holding whereby the Founders and the

Investors shall decide to offer 42.593 PI shares for subscription to the Investors and Midroc at the subscription price contemplated below and on the terms set out in the draft resolutions attached hereto as Schedule 8.1."

9.63 Later, on 20 December 2007, the parties negotiated the new draft of the Indemnity.

9.64 *To summarize'*, the parties agreed that ETF and SAAB should not be obliged to perform a due diligence and investigate the Avisere Group and that Midroc assumed full responsibility for the correctness and completeness of all relevant information that was submitted regarding the Avisere Group; Midroc also assumed responsibility for the correctness of the information submitted by the companies in the Avisere Group and that these companies had not withheld any relevant information.

The documentation pertaining to the conditions precedence clause (Section 3.2 in the RRA)

9.65 The Agreement Package (except the SPA and the Option Agreement) was made conditional (Section 3.2 of the RRA) due to the fact Midroc had not been able to present the relevant agreement documentation.

9.66 The absent documentation which was to be delivered and approved by ETF is set out in the "List of Schedules". The schedules which were of particular importance for ETF to scrutinize, (and if necessary) negotiate and approve were the following:

a) Schedule 1.1 to the SSA "Recalculation conditions in event of new share issues etc"; this is a document which contains the terms and conditions under which the warrants in Avisere Holding are to be executed. These terms and conditions *inter alia* deals with the adjustment of the exercise price in cases of a bonus issue of shares (*Swe: fondemission),* new issue (*Swe: nyemission),* reduction of share capital (*Swe: minskning av aktiekapital),* liquidation (*Swe: likvidation),* merger (*Swe: fusion),* compulsory redemption (*Swe: tvångsinlösen),* division (*Swe: Delning),* reentry of subscription right (*Swe: återinträde av teckningsrätt),* insolvent liquidation (*Swe: konkurs),* Such terms and conditions are naturally subject to negotiations, approval or rejection.

b) Schedule 3.3 b to the SSA "Documentation on the issues of new shares and warrants (board minutes, minutes from general meeting, terms for

issue of shares, terms for issue of warrants, subscription lists)"; These documents need to be scrutinized in detail in order to asses if they correspond to the agreed deal structure and if they sufficiently safeguards ETF's interests.

c) Schedule 8.1 to the SSA "Draft resolutions for issue of Tranch 2 shares"

9.67 Notwithstanding the above, ETF disputes Midroc's assertion that all the schedules to the RRA and all the sub-schedules were already produced by Midroc and would have been presented in a timely manner or that Midroc could have produced the documentation in such timely manner, if ETF had not terminated the Agreement Package on 22 January 2008.

Midroc and the minority/Minco did not fulfill the condition precendent to transfer shares in Avisere Inc.to Avisere Holding before first closing 23 January 2008

9.68 ETF and SAAB were not willing to invest directly into a U.S. corporation but demanded that the Avisere Inc. shares (with its holdings in the Indian and Swedish subsidiaries) should be transferred to a Swedish holding company (Avisere Holding).

9.69 The minority shares in Avisere Inc. were spread between 75 individuals and corporations in Sweden, U.S.A., India and other countries ETF and SAAB were not willing to invest in a company with a large number of minority shareholders but demanded that the Minority should transfer their shares in Avisere Inc. to a Swedish holding company (MinCo) so that the Minority would act jointly.

9.70 Based on this, Midroc and the Minority agreed to transfer their shares to Avisere Holding before the capital injections by ETF and SAAB under Tranche 1. Otherwise ETF and SAAB would have invested the money into an empty SEK 100 000 off the shelf company.

9.71 At the time of the scheduled signing (21 December, 2007) neither Midroc nor the Minority/MinCo had transferred the shares in Avisere Inc. to Avisere Holding or submitted any documentation that the shares had been transferred in accordance with U.S. law. This was one of the reasons why the Agreement Package was made conditional.

9.72 Therefore the Agreement Package included the following condition precedent provision (Section 3.2 (i) in the RRA):

"The First Closing will take place on January 23, 2008 [...] provided however that the following condition has been met on or before the First Closing

(i) Holding shall own with full title all the issued and outstanding shares in Avisere Inc, which will be evidenced by Avisere Inc's legal counsel, extract from Transfer on Line and minutes from the extra ordinary shareholders' meeting in Avisere Inc of December 13, 2007, documents to be approved by ETF and SAAB.

(ii) [...]

9.73 The content of the text regarding "evidence" for a transfer were submitted by Midroc and the Minority/MinCo and was, as far as ETF assumed, based on their contacts with Avisere Inc.'s legal counsel and company secretary. ETF had no reason to distrust that this was the proper way to substantiate a share transfer under U.S. law.

9.74 The meaning of the condition precedent provision is crystal clear: Midroc and the Minority/MinCo were obligated to formally and irrevocably transfer their shares to Avisere Holding before First Closing 23 January, 2008, otherwise ETF and SAAB had no obligation to proceed with the investment (i.e. that the condition were not present). It shall be pointed out that Midroc's and the Minority's MinCo's *main obligation* in the transaction was to transfer their shares in Avisere Inc. to Avisere Holding and then issue new preferential shares in Avisere Holding to ETF and SAAB in consideration for the moneys to be invested in Tranche 1.

The course of events between signing and First Closing (23 January, 2008)

9.75 In January 2008 ETF and SAAB asked for confirmation and supporting documentation that substantiated that the transfer of Avisere Inc. shares to Avisere Holding had been accomplished. This led to some correspondence between the parties.

9.76 Among other things the following documentation was attached to the correspondence:

- a Shareholders'List from Transfer OnLine;

- a document dated 10 January, 2008 headlined "AVISERE, INC. UNANIMOUS WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF THE BOARD

OF DIRECTORS" with the agreement package as exhibit A, the "MINUTES OF THE SPECIAL SHAREHOLDERS' MEETING OF AVISERE, INC". dated 13 December, 2007 as exhibit B (the document which was supposed to be schedule 1.1 c to the Agreement Package).

9.77 In an e-mail dated 16 January, 2008 SAAB's Andreas Gunnarsson asked for a certificate showing that it according to U.S. law was clarified that the Minority could be "forced" to join MinCo. Göran Linder replied the next day and attached thereto a document headlined *"Re: Minority Shareholders' Share Certificates In Connection with the Restructuring and Recapitalization of Avisere Inc."* dated 16 January, 2008. The document *inter alia* contains the following paragraph:

> *"The Board of Directors will, prior to closing on January 23, 2008, instruct the Avisere's transfer agent to transfer the minority shares to MinCo, who will then sell each of the minority's individual Shares to Avisere Holding AB, after which one certificate shall be issued to Avisere Holding AB for a total of 15, 332, 371 shares of common stock."*

9.78 It should be pointed out that David Otto of the Otto Law Group was retained as legal counsel of Avisere Inc. and that he also acted as a director and as company secretary of Avisere Inc.

9.79 ETF has asked the U.S. law firm Sabharwaf, Nordin and Finkel ("SNF") to further investigate these allegations by Midroc.

9.80 The conclusions in the supplementary legal opinion together with the previous legal opinions are:

a) That there has not been passed a valid decision by the shareholders in Avisere Inc. to *transfer* any shares in Avisere Inc to anyone. The transfer of shares in an Arizona corporation is not an action that can legally be taken solely by a vote of the shareholders of the corporation but would always require a proper and due transfer by each and every shareholder (cf. (d) below).That in any case, the resolution passed at the shareholders meeting on 13 December, 2007 did not by itself effect a transfer of Avisere Inc. shares and makes no mention whatsoever of any cancellation of Avisere Inc. shares.

b) That there has not been passed a valid decision by the board of Avisere Inc. to cancel any share certificates in Avisere Inc. since no such mandate was given by the shareholders at the 13 December, 2007

meeting and that the board decision of 10 January, 2008 and the resulting letter from the Otto Law Group dated January 14 2008 to Transfer Online asking that the Avisere Inc. shares be cancelled, were clearly *ultra vires* and had no legal effect.

c) That a *transfer* of shares in an Arizona corporation in order to be valid must be accomplished in accordance with Arizona and federal U.S. law (as described in detail in the legal opinions and that a cancellation of shares in such a company under all circumstances requires that the shares in the company are *transferred back to the corporation* (in this case to Avisere Inc.) in accordance with said Arizona and federal U.S. law *before* they can be cancelled.

d) That the Minority Shareholders never irrevocably transferred any shares in Avisere Inc. to MinCo and that Midroc and MinCo never irrevocably transferred any shares in Avisere Inc. to Avisere Holding, which was unequivocally required by the RRA as a pre-condition.

e) That the documentation submitted by Midroc prior to First Closing and/or in the Arbitration proceedings does not substantiate that a transfer of shares in Avisere Inc. took place or could have been accomplished by the measures invoked by Midroc.

9.81 *To summarize:* This means that no transfer of ownership *(Sw: äganderättsövergdng)* of shares in Avisere Inc. to Avisere Holding has ever occurred or could have occurred due to the measures invoked by Midroc.

Conclusions from the investigation and the legal opinion regarding the non-transfer of shares

9.82 Midroc and the Minority/MinCo did not fulfill the conditions precedent provision in Section 3.2. (i) RRA and that the RRA under no circumstance has become binding towards ETF and that Midroc and the Minority/MinCo can not be entitled to any damages due to ETF's non-fulfillment of the Agreement Package.

9.83 The non-fulfillment of the condition precedent in Section 3.2 (i) does not *in first hand* constitute a defect *(Swe: fel)* or delay *(Swe: dröjsmål)* but the non-fulfillment of a condition, which means that ETF never became obliged to make the investment under the Agreement Package. This applies regardless of the reasons behind the non-fulfillment of the condition precedent and regardless of Midroc's and the Minority's/MinCo's knowledge of the non-fulfillment. The condition precedent was simply not met.

9.84 Moreover, *in second hand,* the 100 per cent ownership of the Avisere Inc. was warranted by Midroc and the Minority/MinCo at the time prior to First Closing. It can be concluded that this warranty was breached since Avisere Holding did not own a single share in Avisere Inc (and hence not in the subsidiaries).

9.85 Any allegations by Midroc that these requirements would have been met on time at First Closing shall under all circumstances be set aside unless such an allegation is substantiated by 77 (Midroc plus the Minority plus MinCo) duly executed indorsements regarding all existing shares in Avisere Inc. that actually existed before First Closing.

Further conclusions regarding Midroc's claims attributable to the Minority/MinCo

9.86 ETF disputes that the Minority (i.e. any member of the Minority) ever has owned any shares in MinCo. It appears from the documentation submitted by Midroc that MinCo was an empty SEK 100 000 off the shelf company purchased by MAQS Advokatbyrå (who obviously never was a party to any of the agreements) and that the shares remained in the ownership of MAQS Advokatbyrå until the shares were transferred to Midroc on 26 June, 2008.

9.87 The claim put forward by Midroc is based on an alleged decrease in value of the ownership of shares in Avisere Holding/Avisere Inc. MinCo has never owned any shares in Avisere Holding or in Avisere Inc. and can therefore not have sustained any such losses. This means that the deed of assignment invoked by Midroc constitutes an assignment of a non-existing claim for damages, since a claim must be based on the fact that MinCo owns or at some time has owned shares in Avisere Holding/Avisere Inc. that could have decreased in value.

9.88 This means that Midroc's claims attributable to MinCo's alleged losses, already on these grounds, shall be dismissed *(Swe: ogillas).*

The commercial relationships and revenues to the Avisere Group

9.89 In the autumn of 2007 Ivar Strömberg and ETF assessed that they had received information regarding commercial relationships and contracts that the Avisere Companies had reached, which again made an investment interesting to explore. Also SAAB was again interested to invest. Midroc had informed about two contractual relationships that were especially important:

a) It had been stated that the Avisere Companies had reached a binding contract with the U.S. company ipConfigure (which is one of the worlds leading manufacturer of IP based enterprise video surveillance software)

which in turn had a binding contract with AT&T (which is one of the largest telecommunication companies in the U.S. and in the world) and Accenture (which is a global management consulting, technology services and outsourcing company). According to the information submitted by Midroc, the Avisere Companies' technology should be "embedded" in video surveillance equipment that should be marketed world wide by AT & T.

b) It had also been stated that the Avisere Companies had a binding contract with the U.S. company Smartvue (which is a manufacturer of IP based enterprise video surveillance software) which in turn had a binding contract with Securitas U.S. branch (the global security company). According to the information submitted by Midroc, the Avisere Companies' technology should be "embedded" in video surveillance equipment that should be marketed by Securitas in the U.S.

9.90 These contract relationships were according to Midroc the major commercial breakthrough for the Avisere Companies and the contracts should bring in steady revenues as from 2008 when the business ventures should be launched.

9.91 It was under these fundamental presumptions that ETF would invest in the Avisere Group.

9.92 When it was revealed on 18 January 2008 that the contract with ipConfigure/AT&T/Accenture did not exist and that the contract with Smartvue/Securitas had been postponed so that any sales of "embedded" Avisere products could not be commenced until 9-12 months after what had been stated previously, Eqvitec Partners saw no reason for ETF to finalize the deal and decided to propose to ETF not to execute the Agreement Package. Ivar Strömberg informed Midroc of this in the evening of 21 January 2008 and ETF sent the termination letter to this effect in late evening on 22 January 2008.

The course of events regarding the commercial relationships and revenues to the Avisere Companies which led to ETF's decision to withdraw from the investment process in June 2007 but resume the process in the autumn of 2007

9.93 Already in the initial negotiations regarding the Term Sheet the importance of the Avisere Companies' revenues had been discussed. In the Term Sheet (page 4) the performance-linked milestone was related to the targets which *inter alia* states:

"- the Company's accumulated revenues in 2007 and 2008 shall at least be SEK 34.000.000."

9.94 In the Term Sheet (page 3) it was furthermore agreed that the conditions for closing of Tranche 2, which in the spring of 2007 was planned to take place in February 2008, was *inter alia* as follows:

> *"a) the Company's revenues for the calendar year 2007 shall exceed SEK 3,500,000..."*

9.95 The revenues for the accounting year 2006 had slightly exceeded USD 100 000.

9.96 This meant that in order for ETF and SAAB to proceed and make the investment it was necessary for the Avisere Companies to show that there were sufficient commercial relationships in order to be able to raise the revenues for the accounting year 2007 and for the subsequent years.

9.97 Even if there was some interesting information in May 2007 concerning possible future revenues there were still no commercial contracts that would generate revenues. In June 2007 SAAB decided not to proceed with the investment. ETF followed SAAB's decision. ETF's reason for this was the lack of commercial contracts and revenues. Ivar Strömberg explained to Göran Linder that ETF was not willing to proceed with the investment without any commercial contracts that would generate substantial revenues on the level with the amounts set out in the Term Sheet.

9.98 After ETF's decision, Ivar Strömberg during the summer and autumn of 2007 regularly received commercial information from Göran Linder.

9.99 Ivar Strömberg was in July 2007 informed by Göran Linder about *"den affär som håller på att "closas" mellan AT&T och ipConfigure"* and the "Letter Agreement" which was signed between Christopher Uiterwyk of ipConfigure and Roger Undhagen of Avisere Inc. on 7 July 2007. The Letter Agreement *inter alia* states the following:

> *"This Letter Agreement (the "Agreement"), dated July 9, 2007, contains the terms of an agreement between Avisere Inc. ("Avisere") and ipConfigure ("ipConfigure") concerning the licensing of Avisere's Intelligent Video Analytics software. Avisere and ipConfigure intend that the terms set forth herein will also be incorporated into an additional set of Schedules to the attached Channel Partner Agreement, to be signed upon ipConfigure's signed contract with AT&T.*

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, intending to be legally bound hereby the parties to this Agreement agree as follows:

Term. ipConfigure and Avisere will jointly define the specifications for the Avisere Intelligent Video Analytics software product no later than August 15, 2007. This will include functional and technical specifications, and product packaging specifications. The Avisere Intelligent Video Analytics software product will be delivered to all AT&T subscription customers for a free 30 day trial, where after the customer will be able to choose which business application(s) they would like to subscribe to.

Fee. ipConfigure will pay Avisere (i) alicense royalty of $1.00 per business logic application per month for each camera and /or video channel containing and/or using the Avisere Intelligent Video Analytics software product feature set delivered to AT&T.

forecast. AT&T's roll-out plan includes 1,000,000 cameras deployed within 24 months, estimated to begin 60 days after signed contract with ipConfigure."

9.100 On 13 August 2007 Göran Linder sent an e-mail to the CEO of Avisere Inc. Roger Undhagen. Ivar Strömberg was copied of the e-mail. In the e-mail Göran Linder asked for written confirmation about the commercial conditions of the new partners of the Avisere Companies.

9.101 On 15 August 2007 Roger Undhagen sent an answer to Göran Linder.

9.102 Ivar Strömberg was copied of the e-mail. In his answer Roger Undhagen referred to the break-through position which the Avisere Companies was in.

9.103 In an e-mail on 16 August 2007 to *inter alia* Göran Linder and Ivar Strömberg, Roger Undhagen reported from an event at Sun Microsystem the day before where he had met with Christopher Uiterwyk (of ipConfigure) and Steve Lewis (of Axis).

9.104 On 20 August 2007 Ivar Strömberg was informed by Göran Linder about the latest progress with regard to Cisco, Optelecom and AT&T.

9.105 On 10 September 2007 Göran Linder sent an e-mail with appendices with the heading "Teaming Agreement between ipConfigure and Avisere for a Client Opportunity at AT&T and a Letter of Intent to Ivar Strömberg with the heading

"Goda nyheter avs Avisere". Among other things a copy of a signed agreement between Avisere Inc.and ipConfigure concerning AT&T via Accenture was attached.

9.106 On 13 September 2007 Göran Linder sent an e-mail to Ivar Strömberg with an updated forecast regarding license revenues from Smartvue forwarded from Martin Renkis (of Smartvue) and Roger Undhagen.

9.107 The new information Ivar Strömberg had received was now concretized in a way which made ETF again interested in a possible investment in the Avisere Companies. However, in order for ETF to make an investment it was necessary for Midroc and the Avisere Companies to prove that the said business relations were binding. Ivar Strömberg explained this for Göran Linder. For this reason Göran Linder sent an e-mail to Roger Undhagen, Tinku Acharya and Krister Mossberg (of KRMO) on 28 September 2007 with the heading "Avisere: Need-to-have for capitalization...". In the email Göran Linder listed some "NEED TO HAVE" requirements which *inter alia* concerned the business relationship with AT&T and some "NICE TO HAVE" requirements which *inter alia* concerned the involvement of Axis and Smartvue.

9.108 On 10 October 2007 Göran Linder sent an e-mail with an appendix "Highlights 9 Sep 2007" to Ivar Strömberg and Håkan Rosen (of SAAB). Göran Linder asked if it was not so that SAAB and ETF after all was interested to make an investment in the Avisere Companies taken into account the great commercial progress during the summer and autumn 2007. In the appendix Göran Linder accounted for several commercial relationships which the Avisere Companies had or was about to enter into. Also ipConfigure (AT&T) and Smartvue (Securitas) were accounted for.

9.109 Göran Linder stated among other things the following:

"VD:n på ipConfigure, Christopher Uiterwyk, är beredd att skriftligen bedyra att kedjan är säkrad och intakt. Däremot *utesluter* han möjligheten att Avisere/MNT får se kopior på alla i sammanhanget relevanta avtal, eftersom "AT&T will never disclose their contract, terms, conditions etc as it relates to prime contractor Accenture; it's a confidential deal between the parties and currently a business secret och han är själv under ett non-disclosure agreement.

Growth projections are expected to reach 50,000 cameras in year one, 250,000 cameras in year two, and 1 Million cameras by year three.

For Avisere's del innebär inte desto mindre de *ingångna avtalen* att man får licensavgifter motsvarande 1 USD per kamera, funktion och månad. Med fem

definierade funktioner i den mjukvara Avisere levererar innebar detta alltså en teoretisk licensintakt på 5 USD per kamera och månad.

ipConfigure

Avisere och ipConfigure *har alltså ingått ett s.k. "Teaming Agreement[1]"* vad gäller projektet med AT&T och Accenture. Därutöver finns *ett LOI* från ipConfigure som beskriver affärsmöjligheten utöver AT&T (liknande projekt med exv British Telecom, som Accenture också vill driva), samt direktförsäljningen av ipConfigure's Enterprise version.

VD Christopher Uiterwyk säger "it's great pleasure to identify Avisere as our Go-To-Market partner for Video Analytics and we look forward to a long and prosperous relationship".

9.110 On 15 October 2007 Göran Linder sent an e-mail with appendices to Ivar Strömberg and Håkan Rosen. In the e-mail Göran Linder made an account of the Avisere Companies' forecasted sales and cash flow until year 2010. He elaborated with three scenarios; "OFFENSIVE SCENARIO", "BALANCED SCENARIO" AND DEFENSIVE SCENARIO". All scenarios, also the defensive one, have the presumptions that the ipConfigure/AT&T/Accenture agreement and Smartvue/Securitas agreement would generate substantial revenues and being the bulk of the revenue. There is no scenario indicating that these agreements would not generate any revenues.

9.111 In a break down for the balanced and defensive scenarios, the figures for each revenue source are shown. The figures for the ipConfigure/AT&T/Accenture and Smartvue/Securitas agreements are fixed in both scenarios. The figure for the other sources of revenues (Optelecom-NKF, Cisco and others) varies in the two scenarios.

9.112 The figures used in the scenarios show that the revenues from the ipConfigure/AT&T/Accenture and Smartvue/Securitas agreements were assured in comparison with the other sources of revenues (Optelecom-NKF, Cisco and others), for which there yet were no binding contracts but only prospects.

9.113 From the figures can also be concluded how big the share of each revenue source is in relation to the total forecasted revenues.

9.114 From the figures it follows that the existence of the ipConfigure/AT&T/Accenture and Smartvue/Securitas agreements were of fundamental importance for the Avisere Companies.

9.115 On 18 October 2007 Göran Linder sent an e-mail with the heading "Avisere: Market update per 17 okt 07" with an appendix with the heading "Avisere Inc – "senaste nytt" to Ivar Strömberg and Håkan Rosen. In the e-mail Göran Linder explained that he had "*rykande färsk" info*" regarding new market progress the latest week. The appendix accounted for new deals. As for the ipConfigure/AT&T/Accenture-deal and Smartvue/Securitas-deal which are described in the appendix "Highlights 9 Sep 2007" there were no divergences indicated from the earlier accounts.

9.116 On 18 October 2007 Göran Linder sent an e-mail with an appendix to Ivar Strömberg in which he accounts for increased reliability in the revenue scenarios.

9.117 By the e-mail Göran Linder and Midroc further substantiated the revenue figures accounted for in the previous forecasts. No reservations were made.

9.118 It was not possible for ETF to get access to the actual contracts between ipConfigure and AT&T/Accenture (which were concluded between third parties and reportedly covered by non-disclosure undertakings). Ivar Strömberg therefore requested a direct dialogue with Christopher Uiterwyk (of ipConfigure). For this reason Roger Undhagen sent an e-mail with the Letter of Intent to Ivar Strömberg on 6 November 2007. Christopher Uiterwyk and Göran Linder were copied of the e-mail.

9.119 After this Ivar Strömberg had a telephone conversation with Christopher Uiterwyk (of ipConfigure) who explained that it was correct that ipConfigure had a binding contract with AT&T and Accenture of the nature described by Göran Linder.

9.120 Based on the information received about the Avisere Companies' contractual relationships and expected revenues, the board of Eqvitec Partners decided to propose to ETF to proceed with the investment process. Göran Linder was informed about this in an e-mail from Ivar Strömberg dated 26 November, 2008.

9.121 The pre- money valuation and the share subscription and purchase price of shares in the Avisere Group in the Agreement Package was based on the forecasted revenues stated by Midroc during the fall of 2007, which in all scenarios ("offensive", "balanced" and "defensive") included substantial revenues from the agreements with ipConfigure/AT&T/Accenture and Smartvue/Securitas.

9.122 The pre-money valuation and the share subscription and purchase price of shares in the Avisere Group in the Agreement Package and ETF's investment, was by no

means based on an assumption where the Avisere Group had an annual turnover of USD 50 000-100 000 USD as indicated by Midroc for the accounting year 2007 or no revenues at all.

9.123 With that level of revenues or no revenues at all the Avisere Group would have had no value whatsoever. Also, under such circumstances, a Tranche 1 investment by ETF of SEK 9 286 418 in accordance with Section 3.3 of the SSA would have made no or negligible difference as to the value of the Avisere Group.

9.124 The cancellation of the iPConfigure/Accenture/AT&T agreement and the postponement of the Smartvue/Securitas agreement occurred *after* the time period when Ivar Strömberg had his contacts with Avisere Inc.'s first hand contractual partners (ipConfigure and Smartvue). During these contacts none of the ipConfigure and Smartvue representatives said anything about a possible cancellation or postponement of the agreements. Ivar Strömberg had of course no reason to distrust the information submitted by Midroc and Avisere Inc.'s executive personnel or the information submitted by executive personnel of ipConfigure and Smartvue and no means to investigate if it was incorrect, exaggerated or unreliable.

9.125 What Midroc really suggests is that Midroc and the Minority/MinCo shall have no responsibility for any misrepresentation since there could have been a theoretical possibility to call the bluff. This is an incorrect and unreasonable starting point for the legal assessment.

Avisere Inc.'s ownership in Avisere Technology (Pvt) Ltd (Section 2.2.2 in the RRA)

9.126 According to information submitted by Midroc before the signing on 21 December 2007, all the developments work in Avisere Group was performed by personnel in Avisere Technology (Pvt) Ltd. The intangible assets were hence created in and initially owned by Avisere Technology (Pvt) Ltd. *Inter alia* for this reason it was of outmost importance for ETF that Avisere Inc. fully owned Avisere Technology (Pvt) Ltd.

9.127 The 100 per cent ownership was a fact that was expressly guaranteed in RRA Section 2 "Ownership structure of Holding prior to first subscription of shares":

> *"2.2.2 Holding will own 100 per cent of all shares and other securities in Avisere Inc, which in its turn will own 100 per cent of all shares and other securities in Avisere Technology (Pvt) Ltd [...]"*

9.128 At the "work shop" meeting on 18 January 2008 it was revealed that Avisere Inc. did not own 100 per cent of the shares in Avisere Technology (Pvt) Ltd but only 90 per cent. It was stated that 9 per cent of the shares were owned by Tinku Acharya and 1 per cent were owned by Vijay Sreenivas Bobba, a former Indian board member of Avisere Technology Pvt Ltd.

9.129 On 19 January 2008 Göran Linder sent an e-mail to Andreas Gunnarsson and Ivar Strömberg with a copy to Dan M. Öwerström in which he confirmed Tinky Acharya's undertaking to transfer his shares and to find out the best way to do so within the frame of the Indian legislation.

9.130 ETF disputes that the parties had agreed as suggested by Göran Linder in the e-mail.

9.131 ETF also disputes the content of Tinku Acharaya's and Vijay Sreenivas Bobba's witness statements purporting that they were willing to assign all their shares in Avisere Technology (Pvt) Ltd to Avisere Inc. and that this could have been affected prior to First Closing on 23 January 2008, at the latest

9.132 Notwithstanding the fact that they would have been willing to assign all their shares or not, ETF disputes that it would have been legally possible to do this under Indian law and if this would have been possible, that this could have been executed prior to First Closing on 23 January 2008. Hence, the witness statements lack any value as evidence irrespective of the alleged intent of the issuers.

9.133 According to Indian law, a private company incorporated in India must have a minimum of two shareholders. It was therefore not possible to transfer all the shares to Avisere Inc. Midroc could therefore not fulfill its warranty obligation under Section 2.2.2 at the time of First Closing or even later.

9.134 Moreover, according to procedural issues of Indian law, the transfer of shares in a private limited company from an Indian resident to a foreign company could not have been executed within the period of time; 19 January (Saturday) - 23 January (Wednesday). The time for fulfilling these formalities would have exceeded the few days left before First Closing.

9.135 Moreover, according to Indian law an Indian citizen residing outside India can only transfer his shares in a private company incorporated in India to another Indian citizen residing inside or outside India and thus not to a foreign company, such as Avisere Inc, without approval of the Reserve Bank of India. This means that Tinku Acharya, who reportedly resided in the U.S., could not transfer his shares to Avisere Inc. within a pertinent period of time.

9.136 It follows that Midroc did not and could not execute the warranty of the owner structure in the Avisere Group in Section 2.2.2 of the RRA.

The Signing of the Agreement package on 21 December 2007

9.137 The signing was initially scheduled to take place on 14 December 2007 but was first rescheduled to 20 December 2007.

9.138 However, it soon became evident for all parties that a signing could not even take place on 20 December, 2007. This was due to (i) the fact that Midroc was not able to examine all the marked-up agreements from ETF and SAAB and make the necessary redrafts of the other agreements, (ii) that further negotiations regarding outstanding issues had to be dealt with and (iii) that Midroc had not yet presented any drafts for the schedules to the Agreement Package (which were an integrated part of the agreement). Therefore the parties again agreed to reschedule the signing, now till Friday, 21 December 2007 at 10.00. With Christmas comming up, this was in practice simply the last day before the end of the year 2007 when it was possible to sign the Agreement Package.

9.139 New drafts of the agreements still under negotiation were delivered at 01.42 on Friday, 21 December 2007.

9.140 However, no draft schedules or other redrafted agreements were delivered from Dan M. Öwerström or Anders Björnsson. ETF could not understand why this had not been done.

9.141 Despite all the outstanding issues which had to be dealt with, the parties had telephone contacts and also met on 21 December 2007, in order to continue the negotiations regarding the outstanding issues and see how far that would reach.

9.142 It was already perfectly clear for all parties involved that there would be no possibility to conclude a binding deal as scheduled since there were several outstanding issues regarding the RRA and other agreements in the Agreement Package, where Midroc tried to reopen late stage negotiation.

9.143 For obvious reasons ETF could not conclude a final deal without having the possibility to scrutinize (and if necessary) negotiate and approve such documentation which would constitute an integrated part of the Agreement Package.

9.144 This last issue was a deciding reason why a deal could not be finalized on 21 December 2007. ETF's point of view was that the signing of the Agreement package should be postponed until Midroc in an orderly manner had delivered drafts of the schedules that ETF and SAAB would have had the opportunity to scrutinize, (and if necessary) negotiate and approve.

9.145 Midroc, however, expressed a strong desire to sign an agreement on 21 December 2007 so that Midroc could avoid consolidating the Avisere Group by the end of 2007. ETF and SAAB accepted this and the RRA (the main agreement) was redrafted with conditions precedents, i.e. that the Agreement Package should not be binding until certain specified events had occurred, *inter alia,* that the schedules were delivered and also approved by ETF and SAAB.

9.146 On the day of signing on the 21 December 2007, conditions were added in order to make the RRA conditional and Section 3.2 was redrafted as follows:

"First Closing (Tranche I)

(a) The First Closing will take place on [January 14, 2008] at 10:00 a.m. at the offices of MAQS's LAW FIRM Norrmalmstorg 1, Stockholm, Sweden or such other date and place specified by agreement of the Investors. On First Closing the events described in the Subscription Agreement shall occur.

(i) Holding shall own with full title the issued and outstanding shares in Avisere Inc, which will be evidenced by Avisere Inc's legal counsel, extract from Transfer on Line and minutes from the extra ordinary shareholders' meeting in Avisere Inc of December 13, 2007.

(ii) All schedules referred to in this Agreement and any subschedules shall be provided to and approved by ETF and SAAB."

9.147 Hence, the Agreement Package was made conditional on certain future events and the signing did not mean that ETF entered into any binding contracts.

9.148 However, for the said consolidation reasons Midroc needed a binding contract regarding the transfer of shares in Avisere Holding (which should be the owner of the Avisere Group). For this reason Midroc insisted on a binding agreement regarding the sale of 7 075 ordinary shares in Avisere Holding.

9.149 ETF accepted this, but requested in return the reciprocal Option Agreement so that ETF would be able to resell the shares according to the SPA to Midroc if no other binding agreements would be realized. ETF had no interest whatsoever to buy and be stuck with just a small block of ordinary shares in Avisere Holding. This was of course obvious for Midroc.

The parties' correspondence and negotiations subsequent to ETF´s decision not to proceed with the investment

9.150 Subsequent to ETF's indication that ETF would not proceed with the investment and the formal termination letter of 22 January 2008, Midroc's counsel Dan M. Öwerström sent a letter to ETF dated 29 January 2008.

9.151 It is apparent from the letter that Midroc's standpoint was that Midroc considered that ETF did not have any legal foundation for not proceeding with the investment and to terminate the agreements in the Agreement Package. However, since Midroc was not requesting fulfillment of ETF's obligations under the Agreement Package but only claiming for damages, it is evident that Midroc accepted the termination as such but not that it was legally founded.

9.152 ETF answered the letter on 4 February 2008 and requested that Midroc should submit certain documentation that would verify that the statements made in the letter of 29 January 2008 were correct. The reason for the request was to make it possible for ETF to revalue the situation and see if there could be any grounds for a discussion regarding a possible investment on modified terms.

9.153 In a telephone call with Niklas Larsson on 6 February 2008, Dan M. Öwerström explained that Midroc was not willing to submit any documents or say anything about the requests for documents, since Midroc only saw this as a "fishing expedition" in a subsequent legal dispute. Dan M. Öwerström said that Midroc, however, was interested in a discussion regarding an accomplishment of a transaction.

9.154 It was decided that representatives of the parties should meet for discussions without their respective legal counsel. A meeting was scheduled to 8 February, 2008

9.155 Ivar Strömberg and Jukka Mäkinen (CEO of Eqvitec Partners) went to the meeting to meet with Göran Linder and Christer Wikström on the Midroc side. To their surprise Dan M. Öwerström appeared at the meeting which did not include any constructive elements but mostly a "legal lecture" and various

threats from Dan M. Öwerström.

9.156 On 9 February 2008 Dan M. Öwerström sent an e-mail to Ivar Strömberg (with a copy to Niklas Larsson) and made with reference to the meeting a proposal for fulfillment of the transaction on new terms, substantially less favorable for ETF.

9.157 On 11 February 2008 ETF made a reasonable counterproposal by an e-mail of Niklas Larsson. In the letter it was pointed out that Midroc was under an obligation to mitigate its losses due to the alleged breach of contract by ETF.

9.158 On 13 February 2008 Midroc answered by a letter of Dan M. Öwerström.

9.159 It was stated that ETF had not met Midroc's imperative demands, that the correspondence was over and that Midroc would file a request for arbitration during the subsequent week. Dan M. Öwerström was never heard from again.

The relationship with SAAB

9.160 In Section 4.1 of the SSA it is clearly stated that the obligation to subscribe for the Tranche 1 shares is a several and not a joint obligation by ETF and SAAB ("severally not jointly"). ETF's and SAAB's participation in the transaction is according to the wording in the Agreement Package not conditional upon the other party's participation.

9.161 This means that Midroc in principle had an independent claim towards SAAB that SAAB invested in the company in accordance with the Agreement Package.

9.162 Midroc has not requested that SAAB should proceed with the investment but has instead released SAAB from all obligations under a contractual relationship that Midroc alleges, in any event, was binding for ETF. This is evident from the content of Dan M. Öwerström's letter of 29 January 2008.

Midroc's inconsistency in its basis for argumentation

9.163 Midroc has the burden to prove the economical losses suffered due to the alleged breach of contract.

9.164 Midroc argues on the one hand that the Avisere Group was on the verge of bankruptcy at the time of First Closing on 23 January 2008 (i.e. that it in practice was worthless) and at the same time that Avisere Holding had a pre money value of SEK 40 500 000. ETF's opinion is that the Avisere Group was insolvent and had no value at all on 23 January 2008.

9.165 Midroc has as a starting point chosen to allege that the Avisere Holding had a real pre money value of SEK 40 500 000 and that the First Tranche investment by ETF and SAAB would have raised that value of the company with SEK 17 224 945,69 to SEK 57 724 945,69.

9.166 Midroc's calculation of its alleged losses is divorced from reality and the argumentation is for many reasons incorrect. This is explained in the following.

Avisere Holding had no value at all at the time of the First Closing on 23 January 2008

9.167 A party who claims compensation for damages can only be awarded compensation for real losses that the party can substantiate. An "agreement" of a value is of no relevance when calculating a loss if it is not real. Despite this, ETF would like to add a few comments regarding the "agreed" pre money value.

9.168 In Section 2.1 of the RRA, which Midroc refers to, it is stated that the parties agree that Avisere Holding after the acquisition of the shares in Avisere Inc. will have a value of SEK 40 500 000. This pre money valuation was based on the revenue streams to the Avisere Group which were presented by Midroc before signing and the assumption that the investment would take place. A pre money valuation does not say anything about the real value of a company before an investment but is a mathematical exercise in order to decide the distribution of shares after an investment (i.e. which fractional share of the company the investor will receive for the invested money), which is always an issue for negotiation. It should also be noted that the mathematical pre money valuation in the SSA were made subject to the factual revenue streams to the Avisere Group, which is explained in the following.

9.169 As a part of the Agreement Package warrants were issued to ETF and SAAB entitling these companies to subscribe for preferential shares (PI shares) at basically no cost (subscription price at quota value) if the revenues during the period 1 January 2008 - 30 June 2009 (eighteen months) would fall short of SEK 34 000 000. If the revenues would fall short of SEK 25 000 000, ETF and SAAB were entitled to exercise all warrants which would mean that ETF and SAAB (assuming that Tranche 2 would have been injected) would have increased its ownership in Avisere Holding from 28,62 per cent to 34,01 (ETF) and 20,00 per cent to 25,00 per cent (SAAB)) (cf. Sections 3 and 5 in the SSA). This means that the parties were in agreement that the pre money valuation of the Avisere Group was approximately SEK 25 500 000 if the revenues for the eighteen months period fell short of SEK 25 000 000. It should also be pointed out that the warrants entitled to subscription for preferential shares.

9.170 This clearly contradicts Midroc's allegation that the parties were in agreement that the real value of the Avisere Group was SEK 40 500 000 and that this *"is the best estimation of the company's value."* This is however of no importance since Midroc can only have lost its real value of the holding in Avisere Holding.

9.171 Midroc describes the economical situation in the Avisere Group and that the companies were insolvent which would mean that Midroc's own investment was a "sunk cost" (the shares were in practice worthless).

9.172 Midroc can in principle only be entitled to damages if Midroc can substantiate that the investment of ETF would have raised the value of Midroc's holdings in Avisere Holding and that Midroc could have realized this value.

9.173 The proposed annual value growth of 50 per cent or more can be compared with such an Internal Rate of Return ("IRR") *(Swe: internränta)*, that is applied as a measurement for return on investment in venture capital investments. What Midroc really says is that the investment in the Avisere Group would have had an IRR of 50 per cent.

9.174 According to Thomson Reuter Private Equity Benchmark statistics regarding venture capital returns (IRR) in Europe, the average return for investment in early stage companies such as Avisere Group are in average minus 3.7 per cent and 1.90 per cent in the upper quartile!

9.175 ETF's opinion is that the Avisere Group had no stand-alone-value at all (SEK zero) before the contemplated cash injection.

9.176 In reality Midroc and the Minority/MinCo did not lose anything that was not already lost (sunk costs). As a fact Midroc *saved money* by not injecting their portion of Tranche 1.

The significance of the different classes of shares in Avisere Holding

9.177 Midroc's assertion that a cash injection could have increased the value of the Avisere Group is incorrect.

9.178 ETF wish to point out that Midroc's argumentation is based on the assumption that the value before the contemplated cash injection was zero and that it remained zero since no cash injection was made. Under the presumption that Peter Lundblad's opinion that a cash injection does not affect the stand-alone-value is correct, this means that the parties for the rest are in agreement that the stand-alone-value of the Avisere Group was zero.

9.179 A calculation of damages shall have the starting-point as if the contract had been fulfilled.

If the Tranche 1 investment would have been executed MinCo, Midroc, ETF and SAAB would have been holder of shares as follows:

	PI shares Shares	Ordinary shares	Per cent of PI
MinCo	0	42 926	0
Midroc	1111	49 999	2,61
ETF	22 963	7 075	53,91
SAAB	18 519	0	43,48

If the Tranche 2 investment would have been executed MinCo, Midroc, ETF and SAAB would have been holder of shares as follows:

	PI shares	Ordinary shares	Per cent of PI Shares
MinCo	0	42 926	0
Midroc	2 222	49 999	2,61
ETF	45 926	7 075	53,91
SAAB	37 038	0	43,48

A full exercise of the warrants would have redistributed the holding as follows:

	PI shares	Ordinary shares	Per cent of PI Shares
MinCo	0	42 926	0
Midroc	3 529	49 999	2,61
ETF	72 941	7 075	53,91
SAAB	58 825	0	43,48

9.180 It follows from the tables above that notwithstanding the injection of Tranche 2 and/or a full exercise of the warrants or not, Midroc would have owned only 2,61 per cent of the PI shares in Avisere Holding.

9.181 In the Agreement Package (the SHA) there are regulations stating that the holders

of PI shares has priority before holders of ordinary shares to proceeds from liquidation, dissolution or winding up of Avisere Holding and to proceeds from all types of transfers of the shares and of the assets of Avisere Holding (so called exits) (cf. Section 16 of the SHA). The holders of PI shares also have preference to dividends (cf. Section 14 in the SHA).

9.182 This means that Midroc would not be able to realize any substantial value from Avisere Holding unless the exit value was extremely high so that there were enough proceeds to distribute to the holders of ordinary shares. As shown above, Midroc's holding of shares after injection of Tranche 2 and full exercise of the warrants constitutes only 2,61 per cent of the PI shares and 22,75 per cent of all shares and 40,99 per cent of all shares (also including MinCo's shares).This can be exemplified: In order for Midroc (including Minco's shares) to receive an amount equivalent to the SEK claim of 37 614 532 the total distributed exit value would need to amount to approximately SEK 139 000 000, assuming a five year period from the investment to the exit. For sake of clarity. It should be pointed out that MinCo is only holder of ordinary shares.

Midroc's claim of USD 180 000

9.183 Midroc has as a starting point chosen to allege that the Avisere Holding had a pre money value of SEK 40 500 000 and that the First Tranche investment by ETF and SAAB would raise that value of the company with SEK17 224 945,69 to SEK 57 724 945,69. Midroc alleges that since Midroc and MinCo would have owned 65,94 per cent the damage would be SEK 37 614 532. Deduction is made with an amount equal to Midroc's subscription price which was never paid by Midroc.

9.184 On top of this Midroc claim compensation with USD 180 000 which amount corresponds to the short term loans which Midroc allegedly supplied the Avisere Group with in December 2007 and January 2008.

9.185 ETF does not testify that the Avisere Group has received the said short term loans or, if so, that the Avisere Group's debt to Midroc for the said short term loans is still outstanding.

9.186 Notwithstanding this, there was no undertaking made by ETF to compensate Midroc for its short term loans to the Avisere Group in December 2007 and January 2008. What was agreed is that Midroc would have been compensated for its financing if there would have been a binding agreement for ETF to make the investment in the Avisere Group. This is evident from Section 2.7 c) and d) in the Indemnity which suggests that Midroc is not obliged to compensate ETF for any amount pertaining to the said short term loans.

9.187 In practice this means that Midroc was entitled to recover the Avisere Group's debt to Midroc from the subscription money in case ETF would have been obliged to make the investment in the Avisere Group.

9.188 Given Midroc's model for calculating its claim, this means that Midroc either has to deduct an amount of USD 180 000 from its SEK amount claim of 37 614 532 or withdraw its USD claim; otherwise Midroc asks to be compensated twice for the alleged short term loans.

The significance of Midroc's obligations under the Indemnity

9.189 ETF does not invoke a *direct application* of the Indemnity. Midroc's claimed damages are computed according to the expectation interest in that Midroc (together with the Minority/MinCo) wish to be put in the same situation as if the Agreement Package (which actually includes the Indemnity) was executed.

9.190 The Indemnity includes two provisions for indemnification:

a) The indemnity in Section 2.1 covers losses of *Avisere Holding* and its subsidiaries;

b) The Indemnity in Section 2.4 covers losses of *ETF and SAAB* due to misrepresentations etc.

9.191 It follows from the wording of the Indemnity that the "cap" in Section 2.6 is only attributable to Section 2.1 (Avisere Holdings' and its subsidiaries' losses) which semantically means that losses under Section 2.4 is unlimited and not "caped" at all. Otherwise the indemnity in Section 2.4 would not be sanctioned at all, which of course is out of the question. ETF is in spite of the wording, however, honest and willing to give Midroc the benefit of the doubt since the clear intention of the parties was that the total indemnification should be limited to MSEK 19.2.

9.192 The situations with cancellation and postponement of agreements are by the way covered *both* by Section 2.4 and Section 2.6.

9.193 If the investment would have been executed, ETF would have been entitled to claim Midroc for compensation under the Indemnity with an amount of SEK 19 200 000 for the decrease in value of the Avisere Group due to the misrepresentation and withholding of relevant information which has been described in detail above.

9.194 In the case Midroc manages to prove that it has suffered losses due to the alleged breach of contract, ETF is entitled to set off as a maximum an amount of SEK 19 200 000 under the Indemnity.

ETF has no responsibility for SAAB's non-performance

9.195 As a factor in the calculation of losses Midroc invokes SAAB's Tranche 1 investment of SEK 7 489 229,90.

9.196 ETF is not responsible for SAAB's non-performance of its possible obligations under the Agreement Package and to subscribe and pay for shares in accordance with Section 3.3 in the SSA this is a contractual relationship between Midroc and SAAB which does not involve ETF.

9.197 Midroc can not hold ETF responsible for SAAB's possible breach of contract towards Midroc or for the losses Midroc may have suffered due to this.

ETF disputes that Midroc has acquired the shares in MinCo or any claim for damages from MinCo

9.198 ETF disputes that Midroc has acquired the shares in MinCo or any claim for damages from MinCo. Midroc has not provided any evidence to substantiate this allegation.

9.199 It should be pointed out that around 45 percent of the claim put forward by Midroc is pertaining to MinCo's alleged losses.

Midroc is under obligation to mitigate its losses

9.200 A contractual party is under an obligation to mitigate its losses suffered due to a breach of contract by the other party.

9.201 Based on the circumstances invoked by Midroc as grounds for its claim for damages, ETF has the following comments on the issue regarding mitigation of losses.

9.202 If the Avisere Group would have had the pre money value that Midroc alleges Midroc could have mitigated its losses by subscribing for the shares instead of ETF. Midroc had the financial means to make the investment. In such case Midroc would not have suffered any losses but would have assimilated the alleged value of the Avisere Group.

9.203 Midroc could also have mitigated its losses by requesting that SAAB made the investment in accordance with its undertakings in the Agreement Package. As far as ETF knows SAAB has (contrary to ETF) not invoked that Midroc has committed a breach of contract which would entitle SAAB to withdraw.

9.204 ETF offered a reasonable solution with an investment in the Avisere Group on reasonably revised terms, given the circumstances. Midroc did not consider the proposal in a reasonable way but did instead try to improve the agreement conditions for Midroc and also acted insolently. ETF has good reasons to believe that Midroc had no interest in saving the Avisere Group since Midroc at this stage knew that the Avisere Group was beyond any salvage and had no value to Midroc with or without the investments from ETF and SAAB.

Midroc's claim for interest

9.205 ETF disputes that interest can be calculated from 28 February 2008 on any amount pertaining to the SEK amount claimed by Midroc. The first time Midroc's alleged damage was presented with reasonable basis for calculation was when ETF received the Request for Arbitration on 8 July 2008 (Dan M. Öwerström's letter of 29 January does not meet the standards set out in Section 4 of the Swedish Interest Act). ETF testifies that interest can be calculated as from 7 August 2008 on any amount pertaining to the SEK amount.

9.206 ETF testifies that interest can be calculated from the date of receipt of Midroc's Statement of Claim on any amount pertaining to the USD amount.

10. ETF'S COUNTERCLAIM

Midroc has acted negligently

10.1 ETF has been under no obligation to approve the conditions precedent documentation that should have been presented by Midroc. ETF has acted loyally towards Midroc but Midroc has acted disloyally towards ETF.

10.2 Midroc's disloyal actions have been negligent *(culpa in contrahendo)*. ETF is entitled to damages for its useless legal fees amounting to SEK 325 000

Midroc represents the Minority and MinCo in the arbitration

10.3 Another important factor that Midroc tends to forget is that 45.65 per cent of the claims for damages that Midroc put forward in the arbitration (not counting the

USD amount) are damages that *the Minority/MinCo* allegedly has sustained and that Midroc allegedly has acquired from MinCo and which Midroc now wishes the Arbitral Tribunal to award. What Midroc alleges to have acquired is in fact an alleged ordinary claim [Sw: *enkel fordran]* which Midroc now tries to recover.

10.4 Midroc does in various aspects argue that Midroc did not know about certain facts and should have no responsibility for incorrect or omitted information that emanates from members of the Minority or MinCo (for instance Roger Undhagen). This is a misleading argumentation.

10.5 Midroc has *in first hand* assumed full contractual responsibility for any incorrect or omitted information from any member of the Minority or from MinCo or from executive personnel in the companies in the Avisere Group. This is evident from a number of circumstances:

10.6 Midroc was "leading" the transaction from the original owner's side and Midroc negotiated the transaction both on behalf of Midroc and on behalf of the Minority/MinCo.

10.7 Midroc did explicitly ask (or in fact ordered) Roger Undhagen to submit information to ETF regarding the operations of the companies in the Avisere Group with the obvious reason to induce ETF to invest and can not afterwards say that Midroc has no responsibility for the correctness, reliability and completeness of that information (compare the situation where a company would claim that the company itself has no responsibility for information submitted by the company officers since they are not the legal person).

10.8 Midroc has expressly in the Indemnity assumed full contractual responsibility towards ETF for any information or omission of information submitted by the companies in the Avisere Group, such as the information submitted and omitted by Roger Undhagen.

10.9 Midroc has in *second hand* assumed such full contractual responsibility by acquiring the Minority's/MinCo's alleged claims for damages. A claim for damages is an ordinary claim and is not subject to protection of good faith. ETF is entitled to invoke any objection against Midroc that can be raised against the Minority/MinCo.

Ivar Strömberg's role

10.10 Midroc does constantly in its submission describe Ivar Strömberg as *"ETF .s counsel and representative"* etc. As explained before and as Midroc very well knew during the negotiations, Ivar Strömberg did not act as a representative

of ETF but on behalf of Eqvitec in its role as *advisor* to the investment fund ETF.

11. REASONS

11.1 In summary ETF's position is that the Agreement Package is not binding for several reasons and that if it is binding ETF has had reason to rescind it, and further that Midroc at any rate has not suffered any damage or at least not proven any damage.

Is the Agreement Package binding between the parties?

Does Section 3.2 a) in the RRA contain a condition precedent (*Sw.suspensivt villkor*)?

11.2 ETF's position is that the Agreement Package is not binding on the parties unless and until ETF approves the documentation as set out in Section 3.2 a), that ETF has not given such approval and that therefore the Agreement Package has not become binding; ETF cannot be liable for contractual damages under a non-binding contract.

11.3 ETF further maintains that ETF had full discretion not to give such approval even if the documentation was wholly acceptable to ETF. ETF says that such approval thus is a condition precedent for the Agreement Package to become binding.

11.4 Midroc's position is that the Section is not to be construed in that way. Midroc asserts that it was not the intention of the parties to create a condition precedent. Midroc argues that the intention simply was that Midroc would, if so required, adjust any items in the documention to the satisfaction of ETF.

11.5 The Arbitral Tribunal starts by observing that parties to a contract may well intend that the consequences of such non-approval be exactly those that ETF claim. Very clear evidence would however be needed to establish such an intention if not expressly stated.

11.6 In this case the consequences of a non-approval by ETF are not expressly stated. There is some support in the oral evidence before the Arbitral Tribunal that the legal advisors of ETF involved in the drafting of the Section entertained the idea that the effect of the Section would be along the lines now argued by ETF.

11.7 The evidence on the whole, however, does not support ETF's position. The evidence rather suggests that little thought was given to the possibility that ETF would not eventually approve the documentation, perhaps after adjustment, and no thought at all to the precise consequences of non-approval.

11.8 A clear sign that the parties' intention was not what ETF now claims is that ETF expressly rescinded the Agreement Package in its letter of 22 January 2010. If ETF regarded the Agreement Package as non-binding, then ETF would not have rescinded it.

11.9 For these reasons the Arbitral Tribunal concludes, expressed in positive terms, that the Agreement Package was intended to be and was binding on the parties.

Was Ian Wachtmeister authorized to represent the Minority shareholders at Signing?

11.10 ETF´s position is that Midroc has not proved Ian Wachtmeister´s authorization to represent all the Minority shareholders at the Signing.

11.11 As such an authorization is denied by ETF, Midroc must according to ETF present the written powers of attorney from all the Minority shareholders. Otherwise the Agreement Package can not be considered binding on the parties.

11.12 ETF has denied that any other shareholder than Sarah Austern has issued a power of attorney of any kind to Ian Wachtmeister. Further ETF has denied that the power of attorney which is submitted in this arbitration, gave Ian Wachtmeister the authority to sign the Agreement Package on behalf of her. Hence, to the extent that the written powers of attorney even from the other shareholders had the same contents they should not be considered binding.

11.13 For this reason there is in the view of ETF no binding agreement between the parties.

11.14 Further it is according to ETF a fundamental legal principle that if not all parties to an intended multiparty agreement have entered into the agreement there is no valid agreement at all.

11.15 First in the opinion of the Arbitral Tribunal there is no such fundamental general principle. Decisive are instead the circumstances surrounding the signing in the particular case and how the agreement is phrased.

11.16 In the opinion of the Arbitral Tribunal neither the wording of the RRA nor the circumstances surrounding the signing indicate that it was the intention of the parties that the Agreement Package should not be binding on any of the parties due to any missing powers of attorney. The RRA rather indicates that

Midroc/the Minority had the time until the First Closing to remedy such deficiency.

11.17 As to ETF´s allegation that no other power of attorney than that of Sarah Austern has been issued and as long as Midroc does not present all the power letters of attorney Ian Wachtmeister´s authority to sign for the Minority is not proved, the Arbitral Tribunal takes the following view.

11.18 David Otto testified that the powers of attorney were checked at the shareholder´s meeting on 13 December 2007 and that the shareholders were represented in the way stated in the minutes from the meeting, i.e. 97,91% of the total amount of shares. This meant that powers of attorney from four shareholders were missing.

11.19 A direct share transfer would undoubtedly in the end require the participation of every shareholder, if the obligation in the RRA should be met.

11.20 David Otto testified that according to the information he received from Undhagen the latter was however confident that the missing powers of attorney would be collected in the end.

11.21 According to David Otto the missing powers of attorney would however not have been an obstacle if the method of a share exchange was to be chosen, a method which also was available in order to achieve the goal in the RRA, i.e. that all the shares in Avisere Inc. were to be transfered to Avisere Holding.

11.22 David Otto´s testimony that the powers of attorney were counted and checked at the shareholder´s meeting on 13 December 2007 was made under oath and must therefore be considered trustworthy.

11.23 It must in the view of the Arbitral Tribunal be considered unlikely that Wachmeister would have signed the agreements without having the authorization to represent those shareholders he has signed for as listed in Schedule 1 to the RRA.

11.24 No indication has been presented that any shareholder has objected to the actions of Ian Wachtmeister on his/her behalf, which is an observation that of course supports the conclusion under 11.22.

11.25 This circumstance in combination with Otto's testimony gives the Arbitral Tribunal reason to conclude that Ian Wachtmeister was authorized to represent the shareholders listed in Schedule 1 to the RRA at Signing.

11.26 Further in the view of the Arbitral Tribunal the power of attorney issued by Sarah Austern was broad enough to entitle Ian Wachtmeister to sign the Agreement Package on her behalf.

11.27 The conclusion is thus that Ian Wachtmeister was authorized to conclude a binding Agreement Package on behalf of those listed in Schedule 1 to the RRA.

Contractual fraud

ipConfigure/AT&T/Accenture and Smartvue

11.28 ETF´s allegation is that ETF was induced to enter into the Agreement Package by a fraudulent deception by Midroc, committed by persons submitting and then withholding information regarding the ipConfigure/AT&T/Accenture agreement and the Smartvue/Securitas agreement on behalf of Midroc.

11.29 According to ETF the first mentioned agreement ceased to exist in November 2007, i.e. well before the date of signing on 21 December 2007. During the same period of time the revenues expected from the agreement with Smartvue/Securitas became delayed.

11.30 ETF states that despite Midroc´s knowledge that these agreements were important factors for ETF´s decision to make the investment this information was revealed the first time on 18 January 2008, i.e just a few days before First Closing on 23 January 2008.

11.31 These circumstances mean according to ETF that the Agreement Package shall not be binding on ETF (cf. Section 30 in the Swedish Contracts Act).

11.32 The first question the Arbitral Tribunal has to consider under this issue is whether the relevant circumstances include a fraudulent deception.

11.33 It was Roger Undhagen, CEO of Avisere Inc., who revealed the information in question at the workshop on 18 January 2008 with representatives from among others ETF, SAAB and Midroc. Nothing in the evidence indicates that anyone else within the organisations of Midroc and ETF had this information before this occasion.

11.34 The invoked e-mail correspondence between Göran Linder, Ivar Strömberg, Håkan Rosén, Roger Undhagen and others during the autumn 2007 show that Göran Linder and Midroc had no more information with regard to the relations with ipConfigure/AT&T/Accenture and Smartvue than Ivar Strömberg and ETF had until 18 January 2008.

11.35 It is noted that Ivar Strömberg had been introduced by Undhagen on 6 November 2007 to have direct contact with Christopher Uiterwyk of

ipConfigure in order to have direct information on relevant questions from him.

11.36 All the testimonies with regard to the circumstances at the work shop meeting on 18 January show clearly the participants' dissatisfaction at the fact that Undhagen had not revealed the information concerning the agreement with ipConfigure/AT&T/Accenture earlier.

11.37 The delay with regard to revenues from Smartvue/Securitas was however known to Midroc ETF and SAAB since October 2007 according to what Håkan Rosén informed in his testimony.

11.38 He testified that he and Ivar Strömberg had at least one telephone meeting with Mr. Renkis of Smartvue in October 2007. They were then informed about the fact that the revenues were to be delayed and that Mr. Renkis concluded that he had been a bit too optimistic.

11.39 The fact that the information about the delayed revenues for Smartvue was not supplied earlier can therefore in the view of the Arbitral Tribunal not constitute a deception.

11.40 With regard to ipConfigure/AT&T/Accenture the Arbitral Tribunal finds it strange that Undhagen did not inform in due time before the Signing about the change in Avisere Group´s contractual relationships with these companies. It must have been clear to Undhagen that this information was of considerable interest for the parties involved in the transaction.

11.41 The question is however if ETF had taken the decision not to enter into the agreement package had the information been given before Signing.

11.42 The Arbitral Tribunal makes on this issue the following judgement.

11.43 SAAB's representives in the negotiations Andreas Gunnarsson and Håkan Rosén have both testified about the dissatisfaction at the fact that the information concerning ipConfigure/AT&T/Accenture was given in such a late stage. Their opinion was however that this demonstrated a management problem rather than anything else. It was not a reason to withdraw from the investment.

11.44 Decisive are the circumstances during the negotiations rather than those subsequent to the Signing.

11.45 The evidence presented on this issue does not demonstrate that ETF´s interest as to Avisere Inc.´s agreement with ipConfigure/AT&T/Accenture and the revenues in relation thereto deviated substantially during the negotiations from the interest in revenues in general and the general potential of the technology. If that had been the case it can anyway not have been clear to Midroc.

11.46 The conclusion is therefore that the information about the Avisere Group's contractual relationship with ipConfigure/AT&T/Accenture that was not supplied did not have any decisive impact on ETF's decision to enter into the Agreement Package. It is anyway not proved that ETF was induced to enter into the Agreement Package by a fraudulent deception by Midroc.

Non-transfer of shares in Avisere Inc. to Avisere Holding

11.47 ETF asserts with reference to the legal opinions of Sabharwal, Nordin & Finkel that the non-transfer of shares in Avisere Inc. to Avisere Holding constitutes a contractual fraud.

11.48 ETF is referring to the conclusion in the legal opinion that "neither the purported transfer of the Minority Shares nor the transfer of the Midroc Shares constituted valid, effective and irrevocable transfers and assignments of such Shares to Avisere Holding under the provisions of Article 8 of the UCC."

11.49 As can be concluded by the legal opinions and testimonies of Bertil Nordin and David Otto those two have different opinions on the issue how the transfer could be completed.

11.50 The Arbitral Tribunal concludes that the circumstances do not constitute a fraudulent deception by Midroc.

Application of section 33 of the Swedish Contract Act

11.51 As ground for its allegation that it would be inequitable and contrary to good faith in the sense expressed in section 33 of the Swedish Contract Act to enforce the Agreement Package, ETF invokes the same circumstances as invoked under the heading "Contractual fraud".

11.52 In the view of the Arbitral Tribunal and in line with the reasoning under the heading "Contractual fraud" the presented circumstances are not of the kind to consider the Agreement Package invalid under section 33 of the Swedish Contract Act.

Conclusion as to the question if the agreements were binding

11.53 The Agreement Package was binding between the parties.

Rescission based on anticipated breach of contract

Some general remarks

11.54 Having concluded that the Agreement Package is binding on the parties the Arbitral Tribunal would first like to make the following general remarks as to the question of anticipated breach of contract.

11.55 ETF invokes in the arbitration that ETF was entitled to rescind the Agreement Package on four grounds:

a) Midroc and the minority/MinCo did not transfer all shares in Avisere Inc. to Avisere Holding.

b) Midroc did not submit the condition precedent documentation at such time that ETF would be able to scrutinize and approve the agreement documentation; Midroc could not have provided the condition precedent documentation on the time of First Closing at 10:00 of 23 January, which documents ETF would have been obliged to approve.

c) The absence of revenues from ipConfigure/AT&T/Accenture and Smartvue/Securitas for any foreseeable future.

d) Avisere Technology (Pvt) Ltd was not wholly owned by the Avisere Group.

11.56 ETF´s position is that these alleged breaches constitute grounds for cancellation seperately or together. Further ETF is of the opinion that to the extent the deficiencies under a),b) and d) were not remedied at 10:00 on 23 January 2008 this constitute a breach of contract that entitled ETF to cancel the agreements. It is in the view of ETF obvious that Midroc would not have been able to fulfill its obligations at this point of time. In addition ETF asserts that it had the liberty to approve or disapprove what ETF calls the conditions precedent documentation.

11.57 Midroc´s position is that there was no obligation to provide the documentation before 10:00 on 23 January 2008. Further Midroc asserts with regard to the documentation that there would not have been any deficiencies at 10:00 on 23 January 2008 and if that would have been the case Midroc according to the Swedish Sales of Goods Act would have been entitled to remedy the deficiencies within a reasonable period of time. The same applies also in the event that the transfers of shares in Avisere Inc. and Avisere Technology (Pvt) Ltd would be late. According to Midroc it is anyway obvious that ETF at the time of the anticipatory recission had no information that justified such an action.

11.58 Prior to the judgement of the particular issues under a)-d), the Arbitral Tribunal gives its general view on the prerequisites for an anticipatory recission.

11.59 Swedish law is applicable to the contractual relationship between the parties according to their agreement.

11.60 It is noted that the Agreement Package does not contain any provision regarding a right to rescind the agreements. The Arbitral Tribunal must therefore judge what Swedish law says on this issue.

11.61 Section 62 of the Swedish Sale of Goods Act, which applies to this issue, contains rules regarding anticipated breach of contract. Under this provision a party is entitled to rescind a contract prior to performance if it is evident that a breach of contract will occur. This means that the general requirement of materiality must be fulfilled, as well as the fact that the breaching party must have or should have understood the significance of the breach of contract to the other party.

11.62 As to ETF's assertion that it had the liberty to approve or disapprove the conditions precedent documentation no matter whether it corresponded to reasonable expectations, the Arbitral Tribunal disagrees with such a view. A refusal to approve "condition precedent documentation" that was reasonable would have been contrary to the general principle on loyalty in contractual relationships.

Midroc and the minority/MinCo did not transfer all shares in Avisere Inc to Avisere Holding

11.63 It is a fact that Avisere Holding was not the owner of all the shares in Avisere Inc.at the time for ETF´s rescission of the Agreement Package on 22 January 2008. ETF´s assertion is that this precondition would not and could not have been fulfilled at First Closing at 10:00 on 23 January 2008.

11.64 This alleged circumstance justifies according to ETF the anticipatory rescission.

11.65 According to the testimony of David Otto and Göran Linder efforts were made all the time until 22 January 2008 to find and convince the small number of remaining shareholders who had not yet accepted to transfer their shares to MinCo to do so.

11.66 David Otto and Göran Linder testified that there were good reasons to believe that direct transfers of all the shares could have been executed on 23 January 2008.

11.67 The Arbitral Tribunal does not find that it on 22 January 2008 was clear that Avisere Holding would not be the owner of all the shares in Avisere Inc. on 23 January 2008. This circumstance is in itself sufficient reason to consider the anticipatory rescission on this ground unjustified.

11.68 In addition the alternative means to achieve the goal to transfer the shares in Avisere Inc. to Avisere Holding through a share exchange in the event that a direct share transfer would have failed, would according to Otto still have been possible to execute, albeit with some days delay.

11.69 As there is no indication shown that time was of essence for ETF in this respect, such a delay would not in the view of the Arbitral Tribunal have justified a rescission of the Agreement Package. In any event, there is no evidence that Midroc realised, or should have realised, that such a breach of contract would be of material significance to ETF.

Midroc did not submit the "conditions precedent documentation" at such time that ETF would be able to scrutinize and approve the agreement documentation; Midroc could not have provided the "conditions precedent documentation" on the time of First Closing at 10:00 of 23 January, which documents ETF would have been obliged to approve.

11.70 The fact that the documentation was not submitted before 23 January 2008 can not in the view of The Arbitral Tribunal constitute a breach of contract as such an obligation is not stated in the RRA.

11.71 There is no evidence presented supporting the allegation that Midroc could not have provided the documentation on 23 January 2008. Hence this alleged circumstance can not at all constitute a breach of contract.

The absence of revenues from ipConfigure/AT&T/accenture and Smartvue/ Securitas for any foreseeable future.

11.72 Decisive for the judgement of this issue is whether there is an undertaking in any manner with regard to valid agreements between the Avisere Group and ipConfigure/AT&T/Accenture and Smartvue/Securitas.

11.73 Midroc disputes that the Agreement Package can be considered to include such an undertaking. Midroc invokes in this respect Section 7.10.1 in the RRA, which among other things stipulates that it constitutes the full and entire understanding and that any other written or oral agreement relating to the subject matter between the parties is expressly cancelled.

11.74 Based on this observation the Arbitral Tribunal finds this ground for ETF's cancellation of the Agreement Package unjustified

Avisere Technology (Pvt) Ltd was not wholly owned by Avisere Inc.

11.75 It is common ground that Avisere did not own 100% of the shares in the Indian subsidiary at the time of the cancellation. ETF has claimed that it was material to ETF that Avisere owned 100% of the shares of the Indian subsidiary since it was

the holder of the intellectual property rights which formed the basis for the Avisere group's business.

11.76 It was revealed at the workshop on 18 January 2008 that Avisere did not own 100% of the shares in the Indian subsidiary. Göran Linder testified that he at the meeting informed Ivar Strömberg that the holders of ten percent of the shares, Acharya and Bobba, had declared that they were willing to transfer their shares immediately to the Avisere Group. Acharya, who was present at the meeting on 18 January and holder of nine percent of the shares, had undertaken to find out as soon as he was back in India how such a transfer should be done in order to meet the legal prerequisites in India.The amount of time this would take was estimated not to be long.

11.77 Göran Linder undertook at the meeting to ensure that the Avisere Group would become owner of 100% of the shares in the Indian subsidiary as soon as practicably possible. As a consequence, at the time of rescission, it could not have been evident that this would not be the case on 23 January 2008.

11.78 Avisere Inc. was however not entitled to own hundred percent of the shares as Indian Law stipulates that there must be at least two shareholders one of which however could be another company within the Avisere Group.

11.79 The circumstance that one share had to be owned by another company within the Avisere Group than Avisere Inc. is in the opinion of the Arbitral Tribunal not to be seen as a material breach of the RRA, since the Avisere Group would control Avisere Technology (Pvt) Ltd.

Summary

11.80 To summarize it is the conclusion of the Arbitral Tribunal that the rescission of the Agreement Package was not justified. Midroc is therefore entitled to be compensated for its damage related to the rescission.

Damages

11.81 Since ETF disputes that ETF has caused damage to Midroc in any amount, it falls on Midroc to prove (*"styrka"*) such damage to the alleged extent. More precisely it falls on Midroc to assert and substantiate such facts that in law constitute damage as claimed.

11.82 Midroc's basic argument on this issue is straightforward. Midroc says that the parties have agreed on the value of Avisere Holding and that ETF's breach of contract caused Midroc and MinCo to lose their share of that value; it is a total loss since Avisere Holding became worthless. Midroc also says that Midroc has

acquired not only MinCo, but also MinCo's claim on ETF for damages for that breach.

11.83 The Arbitral Tribunal first deals with Midroc's damage claim in general and ETF's general objections. Then the Arbitral Tribunal deals with the claim in figures and the corresponding objections.

11.84 A first general objection of ETF is that Midroc has not acquired MinCo's alleged claim on ETF for damages. The Arbitral Tribunal however finds, on the strength of the evidence invoked by Midroc, notably a document dated 2 July 2008 expressly stating that MinCo assigns that claim to Midroc, that Midroc has acquired that claim. – In what follows the Arbitral Tribunal does not necessarily distinguish Midroc's "own" claim from the one acquired from MinCo.

11.85 A second general objection of ETF is that Midroc and MinCo cannot have suffered such loss for what can be termed "ownership reasons". ETF argues that Midroc and MinCo can have suffered loss of value on shares in Avisere Holding only if both of them own or have owned shares in Avisere Holding, if Avisere Holding owns or has owned shares in Avisere Inc. and if those shares have decreased in value. ETF argues that neither Midroc nor MinCo have owned shares in Avisere Holding and furthermore that Avisere Holding has not owned shares in Avisere Inc. To support its argument ETF has submitted annual reports of Midroc, MinCo and Avisere Holding listing ownership of shares of those companies at different times, and therefore also reflecting non-ownership of such shares.

11.86 In the Arbitral Tribunal's opinion ETF's objection misses the mark for the following reason. Midroc's claim for damages is based on the assumption that the parties' agreement was performed at closing on 23 January 2008; this is the hypothetical situation that Midroc invokes in comparison with the actual situation. In the hypothetical situation Midroc and MinCo would have owned the relevant shares in Avisere Holding and Avisere Holding the relevant shares in Avisere Inc. Therefore it is of little importance whether such ownership actually existed when ETF cancelled the agreement. In the Arbitral Tribunal's opinion there is not sufficient support in the evidence before it that such ownership would not have existed at closing on 23 January 2008.

11.87 The Arbitral Tribunal moves on to ETF's second general objection.

11.88 As noted above Midroc asserts that the parties have agreed on the value of Avisere Holding. In support of the assertion Midroc invokes section 2.1 of the RRA, where it is stated: "The parties agree that Avisere Holding after the acquisition of shares in Avisere Inc [...] will have a value of SEK 40,500,000 [...]." ETF of course admits that the RRA so states, but objects that those words

do not refer to any "real" or "market value" of Avisere Holding. According to ETF, the valuation in section 2.1 of the RRA is only a mathematical exercise for deciding the distribution of shares after the investment.

11.89 In the Arbitral Tribunal's opinion, the clear and express wording of a clause such as the present one, negotiated at arm's length by the parties, must be sufficient proof of the value of an object that the parties own or have intended to own jointly, unless the party alleging a meaning differing from the wording submits evidence that clearly supports its allegation.

11.90 To this end ETF has invoked expert opinions, written and oral, by Peter Lundblad and Gösta Johannesson on the valuation of businesses in general and in particular of early-stage development companies, such as Avisere Holding. Their opinions also cover the present "pre-money valuation", as they call it, of Avisere Holding in section 2.1 of the RRA. The Arbitral Tribunal finds their opinions to be of limited relevance because they focus on "pre-money valuation" in general and not specifically whether the present valuation in section 2.1 of the RRA does or does not accord with such generalities. In other words, their opinions do not shed light on the specific history of that clause. Their opinions do not lend much support to ETF's allegation that the present valuation is only a mathematical exercise for deciding the distribution of shares after the investment.

11.91 The testimony of Håkan Rosén does shed light on the specific clause in section 2.1 of the RRA. The essence of his testimony on this issue was as follows. The parties arrived at the figure SEK 40,500,000 through negotiations. The figure was intended by them to be as accurate a "real" value as possible. In the end the valuation was a "gut feeling", but that feeling was indeed preceded and produced by a number of calculations and comparisons as well as other input. The Arbitral Tribunal notes that the latter is quite in line with the words of Peter Lundblad in his legal opinion that "any value calculation will rely on a high level of subjective judgment." Similarly, Gösta Johannesson states in his opinion that investors "apply a multitude of criteria to value companies which may differ significantly from one to another." The written and oral opinion by Björn Gauffin, invoked by Midroc, is in the same vein. In sum, Håkan Rosén's testimony runs counter to ETF's allegation that the present valuation is only a mathematical exercise for deciding the distribution of shares after the investment.

11.92 The Arbitral Tribunal therefore finds that thus far the evidence invoked by ETF does not support its allegation.

11.93 ETF has invoked a further general objection against the figure SEK 40,500,000 as a proper valuation. The objection has to do with preferential shares in Avisere

Holding that ETF (and SAAB) were entitled to claim on certain conditions, namely the occurrence of specified future events, under warrants in the parties' agreement. ETF argues that the consequence is that the parties' agreement is to the effect that the pre-money value of Avisere Holding was substantially lower (approximately SEK 25 500 000 lower) on those conditions. Midroc's has countered that the matter of preferential shares is irrelevant because Midroc's calculation is not based on those conditions.

11.94 The Arbitral Tribunal agrees with Midroc that the matter of preferential shares is irrelevant for the reason given by Midroc; Midroc asserts a value of Holding at a time, i.e. just before the agreed closing, that is well before the time of the potential occurrence of the specified future events that would have triggered ETF's right to preferential shares under the warrants.

11.95 Another general objection raised by ETF is that ETF is entitled under the indemnity to set off SEK 19,200,000 against the damage claimed by Midroc. ETF argues that it is so entitled due to misrepresentation and withholding of information by Midroc. The Arbitral Tribunal agrees with ETF that ETF would be entitled to such a set-off since Midroc is claiming damage for expectation interest, provided that Midroc has misrepresented and withheld information as alleged by ETF. On the latter issue the Arbitral Tribunal however has found above that ETF has not established such action and omission by Midroc. Consequently the Arbitral Tribunal finds that ETF is not entitled to such a set-off.

11.96 As a partial conclusion the Arbitral Tribunal thus finds that Midroc is entitled to damage in some amount. The Arbitral Tribunal goes on to deal with Midroc's claim in figures and ETF's corresponding objections.

11.97 First the Arbitral Tribunal addresses the issue of the value of Avisere Holding today and the cause of that value. Midroc alleges that the value is zero, "adequately" caused by ETF's breach of contract. ETF does not expressly admit the allegation. On this issue, the Arbitral Tribunal finds, notably on the strength of the opinion and testimony of David Otto and the testimony of Göran Linder, that Midroc has proven its allegation.

11.98 Midroc calculates its claim for SEK 37,614,532 as follows. That figure equals 65,94 percent of the sum of the agreed value SEK 40,500,00 and of the first subscription prices to be paid by ETF and SAAB (the "injection"), namely SEK 17,224,945, minus the subscription price SEK 449,297 that Midroc did not pay.

11.99 For the reasons stated above Midroc is entitled to 65,94 percent of SEK 40,500,00.

11.100 As for Midroc's entitlement to the same percentage of SEK 17,224,945 minus SEK 449,297 the Arbitral Tribunal finds as follows. The Arbitral Tribunal observes that Midroc has not gone into detail on this item of its damage claim, nor ETF raised any precise objections against it. The Arbitral Tribunal's task is therefore basically limited to determine whether the factual circumstances invoked by Midroc to support this item of the claim, in addition to the ones invoked to support also the previous item, warrant the conclusion that Midroc has suffered damage as claimed. In effect Midroc only invokes one additional circumstance, namely the subscription prices agreed for ETF and SAAB, which prices ETF does not as such dispute. So the question for the Arbitral Tribunal is if the price payment would have raised the value of Avisere Holding to the sum of the agreed value and the prices.

11.101 The Arbitral Tribunal finds that the question is to be answered in the affirmative for the following reasons. The parties agreed that Avisere Holding had a certain value before the subscription prices were to be paid, but the agreed value was not based on the size of the subscription prices as such. It was of course based on the assumption that Holding developed its business and had the means to do so, but the size of subscription prices did not as such directly influence the agreed value. Therefore it is the Arbitral Tribunal's opinion that the subscription prices would have added to the agreed value of Avisere Holding.

11.102 ETF has also objected that Midroc has failed to mitigate its loss in three ways. It is convenient to deal with the first two objections together. First, ETF says that Midroc itself could and should have subscribed the shares in Avisere Holding intended for ETF. Secondly, ETF says that Midroc could and should have asked SAAB to make its own investment in spite of ETF's refusal. Here the Arbitral Tribunal puts decisive weight on the testimony of notably Göran Linder, which essentially was to the following effect. The potential of the investment was largely due to the combination of the three investors Midroc, ETF and SAAB, in particular to their respective capabilities and capacities as regards, among other things, technology, marketing, financing and industrial experience. It would have been hopeless to find another financial investor to replace ETF when ETF had refused at such a late stage. Some such initial efforts were made, but to no avail. The mere fact of ETF's late refusal was a clear sign to other financial investors and others that it was not a good investment; the word gets around. On the strength of this evidence the Arbitral Tribunal finds that Midroc had no duty to mitigate its loss by making the investment either on its own or together with SAAB. The Arbitral Tribunal thus does not accept the two objections.

11.103 ETF's third objection is that Midroc has failed to mitigate its damage by denying ETF's proposal for a reasonable solution. The Arbitral Tribunal finds that

ETF's counterclaim

11.109 In consequence with the reasons stated above, ETF´s counterclaim shall be rejected.

Interest

11.110 Midroc is entitled to interest on SEK 37,614,532 from 7 August 2008 until payment as testified by ETF.

Costs

11.111 Midroc has mainly been the successful party in the arbitration. ETF shall therefore compensate Midroc for its legal costs in the claimed amount, which the Arbitral Tribunal deems reasonable.

11.112 For the same reason ETF shall, as between the parties, be solely liable for the costs of the Arbitration in accordance with Section 43(5) of the SCC Rules.

11.113 The costs of the arbitration have been determined by the Arbitration Institute of the Stockholm Chamber of Commerce as follows:

Mats Bendrik:

Fee EUR 85 640 and VAT EUR 17 128

Björn Tude:

Fee EUR 51 384 and VAT EUR 10 277

Patrik Schöldström:

Fee EUR 51 384

Arbitration Institute of the Stockholm Chamber of Commerce

Administrative fee EUR 21 105 and VAT EUR 4 221

Expenses EUR 12 705 and VAT EUR 2 541

12. AWARD

12.1 ETF III K/S is ordered to pay to Midroc New Technology AB SEK 37 614 532 and interest thereon from 7 August 2008 until payment is made in accordance with Section 4, paragraph 1 and Section 6 of the Swedish Interest Act.

12.2 Midroc New Technology AB's claim for damages in the amount of USD 180 000 is rejected

12.3 ETF III K/S'claim for damages in the amount of SEK 325 000 is rejected

12.4 ETF III K/S is ordered to pay to Midroc New Technology AB as compensation for legal costs SEK 5 754 237 and interest thereon from the date of this award until payment is made in accordance with Section 6 of the Swedish Interest Act.

12.5 The parties are jointly and severally liable to pay the arbitration costs as follows.

Mats Bendrik: Fee EUR 107 050 of which EUR 21 410 is VAT.

Björn Tude: Fee EUR 64 230 of which EUR 12 846 is VAT.

Patrik Schöldström: Fee EUR 51 384.

The Arbitral Tribunal reminds of the obligation to pay "sociala avgifter" regarding the fee of Patrik Schöldström.

The Arbitration Institute of the Stockholm Chamber of Commerce:

Administrative fee EUR 26 381 of which EUR 5 276 is VAT.

Expenses EUR 15 881 of which EUR 3 176 is VAT.

12.6 As between the parties the arbitration costs shall be borne by ETF III K/S.

12.7 Pursuant to Section 41 of the Arbitration Act, an action may be brought "against the award regarding the payment of compensation to the arbitrators". Pursuant to the same Section of the Arbitration Act, such an action shall be brought "within three months from the date upon which the party [initiating the action] received the award"; and, pursuant to Section 43 of the Arbitration Act, it must be brought before the Stockholm District Court (Stockholms tingsrätt).

Björn Tude | Mats Bendrik | Patrik Schöldström