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Report

By the members of the investigation

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On the investigation order by the Enterprise Chamber of the Amsterdam Court of Appeal  
on 21 December 2004 into Unilever N.V.

8 September 2006

Unofficial translation, not authorized by the Enterprise Chamber. In case of any  
discrepancies between the original and the translation, the Dutch original shall prevail.

## Chronology

1997

Unilever sold its chemical division and announced that it would pay out the revenue generated to its shareholders after two or three years unless that revenue would be reinvested before then

22 January 1999

Unilever asks for the willing ear of the Secretary of State for the preference share alternative, with put option devised by Unilever itself.

4 February 1999

Unilever's discussions with the Tax Authorities reach completion. The put option was rejected by the Tax Authorities. The Tax Authorities signed the ruling drawn up by Unilever itself in token of their agreement.

23 February 1999

The special dividend with the preference share alternative was announced by Unilever. Press Release. Presentations.

2 March 1999

The Secretary of State answers a question raised in the Lower House.

31 March 1999

Unilever publishes an Information Memorandum.

14 April 1999

The Secretary of State answers a question raised in the Lower House. Press Release issued by the Ministry of Finance.

4 May 1999

Annual Meeting of Unilever. Tabaksblat provided information about the preference share alternative and answered questions.

9 June 1999

The issue of the preference shares.

16 June 2000

Discussion between Van der Bijl and the Tax Authorities. Van der Bijl's e-mail to a few members of staff about that discussion.

November 2001

Memo from Haars, et al, in connection with and for Markham.

March 2003

ABN AMRO took the initiative to start discussions with Unilever about variations of dealing with the shares.

17 March 2004

The process of dealing with the preference shares was discussed at a Board Meeting.

24 March 2004

Unilever decided to deal with the shares by means of conversion.

12 May 2004

Annual Meeting of Unilever. Burgmans explained the conversion and answered questions.

9 June 2004

The waiting period, imposed by the Tax Authorities of 5 years, prior to the preference shares being settled, expires.

24 September 2004

Letter from the Tax Authorities; only conversion agrees with the arrangements made in 1999 with the Tax Authorities.

21 December 2004

The Enterprise Chamber ordered an investigation be made.

January 2005

The conversion took place.

9 March 2006

Letter from the Tax Authorities, a turn around in relation to the letter of 24 September 2004: Unilever ought to have also been able to choose for settling the preference shares using a buy-back, at the share price of the preference shares

In the frame of reference of their investigation, the investigators heard the people listed below once, or twice.

(former) Unilever

Bird	(Controller, member of the Jules Steering Committee)
Burgmans	(Chairman 2004)
Van der Bijl	(Joint Secretary, (1999), second man and (2004) head of Group Taxation)
Eggerstedt	(Finance Director 1999) and member of Jules Steering Committee)
Haars	(Group Treasurers 1999) and member of Jules Steering Committee)
Markham	(Finance Director 2004)
Tabaksblat	(Chairman 1999)
Vernooy	(Senior Member Controllers Department 1999)
Westerburgen	(Joint Company Secretary and head of Tax Department 1999)
Winter	(Legal Advisor and Jules Project Leader 1999)

(former) ABN AMRO

De Ruiter	(ABN AMRO Rothschild Managing Director Equity Capital Markets Netherlands 1999)
De Jong	(Vice President Corporate Finance 1999)
Van Nieuwkoop	(ABN AMRO Rothschild Senior Associate Equity Capital Markets 1999)

PriceWaterhouseCoopers

Van Manen

As well as the following analysts:

Kempen & Co.

Witteveen

Asser (Compliance Officer)

Amsterdams Effectenkantoor

Bicker Caarten

Stroeve

Van Oort

Van der Zande

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### The investigation ordered

In the judgment dated 21 December 2004, the Enterprise Chamber of the Amsterdam Court of Appeal ordered an inquiry into “the policy and conduct of affairs of Unilever N.V., established in Rotterdam, with regard to the preference shares, both around and following the issue on 9 June 1999 and around the decision-making process regarding the (intended) conversion announced on 24 March 2004”.

According to the judgment “the preference shares” are the cumulative preference shares issued by Unilever N.V. on 9 June 1999 as an alternative to the cash dividend that was made available on the same date to the shareholders of the Unilever Group.

In judgments dated 23 and 31 December 2004, the Enterprise Chamber ordered Prof. L. Traas, Mr. L.P. van den Blink and Mr. H.A.P.M. Pont, hereinafter jointly referred to as “the investigators”, who were appointed as investigators to conduct the inquiry.

### The course of the investigation

If the investigators had understood their task to also include the examination of all internal Unilever documentation possibly containing direct or indirect indications relevant to the investigation, this task would have become almost impossible to carry out. Moreover, even with such an interpretation of the task, the investigators would not have been sure that they had actually seen all documents that may be relevant. In view of the virtually unworkable scope of the material and their ignorance of the route to be found in this, the investigators initially based themselves on the selection which Unilever made for them from this material. The investigators asked for additional documents as their progressing investigation provided leads for this. Unilever always willingly complied with these requests. Moreover, Unilever also significantly facilitated the investigation, for example by making available a room in the Unilever building in Rotterdam as well as making other logistic provisions. However, this support does not alter the fact that the progress of the investigation was impeded from time to time because, in response to questions from the investigators or at Unilever’s initiative, documents surfaced that compelled the investigators to fully or partially revise preliminary opinions that had already been formed and to fully or partially rewrite parts of their report that had already been completed in draft form.

Thus, although the investigators are not certain that they examined all Unilever documentation containing indications that are relevant for the investigators, they firmly believe that at any rate they examined more than enough documents on which to base their report and furthermore, if and to the extent that there may still be relevant documents that they did not examine, the investigators do not expect that examination of those documents would change the content of the current report. The following comment should be made at this point: the investigators learned that Unilever obtained legal advice concerning its policy regarding the preference shares. Unilever refused to make these written opinions available to the investigators with a view to the “privileged” nature of these opinions. Unilever’s counsel, Mr. S.E. Eisma, argued that Unilever rightfully refused to make these opinions available to the investigators and submitted supporting literature and case law in this context. Mr. Eisma convinced the investigators. Thus, the investigators do not know the content of the opinions in question and do not know whether or not Unilever’s policy was in conformance with these opinions.

One factor that substantially delayed the progress of the investigation was the position taken by the Tax Authorities with regard to the co-operation requested by the investigators. The preference share-alternative was tax driven and, according to Unilever’s statements, its policy regarding the preference shares was largely determined by what Unilever refers to as its agreements made with the Tax Authorities and the impact of these agreements on the degree of openness with which Unilever was able to inform the market with regard to the preference shares. For this reason, the investigators wanted to hear the two inspectors of the Tax Authorities who were involved in these agreements, including the person who signed the Ruling discussed in this report. Initially, these inspectors declared that they were prepared to be interviewed subject to the conditions that they would receive the questions to be asked by the investigators beforehand and that these questions would be answered within the scope of a formal witness hearing before the Enterprise Chamber. After the Enterprise Chamber had ordered a witness hearing at the request of the investigators and after the investigators had sent the inspectors the questions to be asked, the inspectors informed the Enterprise Chamber that their right to refuse to give evidence would be invoked with regard to all of these questions. The Enterprise Chamber left it up to the investigators to decide whether or not to conduct the hearing despite this. Since Unilever felt that it was

very important to have its interpretation of the agreements made with the Tax Authorities confirmed, the investigators in turn left the decision up to Unilever. Unilever then contacted the Tax Authorities in an attempt to induce the Tax Authorities to co-operate in a hearing. This contact resulted in a lack of clarity among the investigators regarding whether or not the Tax Authorities were ultimately prepared to co-operate in any form and if so, in what form. Unilever told the investigators that it had urgently insisted that the Tax Authorities co-operate, going as high as the level of the Ministry of Finance. The investigators have no reason to doubt this. However, Unilever's insistence did not lead to any result that offered the investigators anything to rely on other than the fact that the investigators were able to examine the three letters (two letters from the Tax Authorities to Unilever and one letter from Unilever to the Tax Authorities) which are discussed later in this report. Copies of these letters have been attached as Annexes to this report. As their investigation progressed, the investigators believe that they obtained sufficient insight into the position taken by the Tax Authorities regarding the preference shares, also without any direct co-operation from the Tax Authorities. This means that this report was completed without any direct input from the Tax Authorities. Based on the insight obtained during the course of their investigation, the investigators believe that had this input been given, this input would not have resulted in any findings other than the findings included in this report.

#### The most important subjects covered by the investigation

The investigation conducted concerned, for the most part, three subjects of the policy pursued by Unilever N.V., referred to in the ruling handed down by the Enterprise Chamber, concerning the stock option dividend issued by Unilever N.V. in 1999 in the form of temporarily outstanding, stock exchange listed, preference shares.

Those three subjects are:

- the arrangements made by Unilever N.V. in the frame of reference of that issue with the Tax Authorities, including and in particular the influence exercised by those arrangements on the information required from Unilever N.V. to the market concerning that issue;
- the question as to whether the arrangements made with the Tax Authorities resulted in the value of the preference shares ultimately not being higher than

- either their conversion value (defined in this report) at the time of their conversion, or the listed share price at that time, and in that connection, also the question as to whether at the time, that listed share price deviated more than to a very minor extent from the conversion value;
- if, as stated in the report, the answer to the latter question is that the arrangements made with the Tax Authorities did result in a consequence for the settlement value of the shares, the question then arises as to whether Unilever was aware thereof when it provided information to the market, or could have been aware thereof and ought to have been aware thereof.

The total material review by the investigators is complex and for readers of this report who are not well acquainted with this material it will not be easy to keep the broader line in mind and avoid misunderstanding. The investigators therefore considered it would be helpful to focus attention at this early stage of the report on the three aforementioned subjects. These three subjects form the prime material of their investigation and the findings on these three subjects made an important contribution to the conclusion reached by the investigators. This does not however mean that the other subjects contained by this report should be seen in any way as unimportant.

The importance of the aforementioned three subjects does mean that whenever they are referred to in this report, the investigators have not sufficed with only a brief reference or indication, but often refer in so many words yet again to what the subject or subjects in question actually amount to. The advantage this provides is that the main subjects are clearly defined and the need to refer back to prior sections of the report is avoided. That the report hence has a rather repetitious nature goes without saying, as the investigators have preferred repetition to a lack of clarity.

#### The Unilever Group, Unilever N.V. and Unilever PLC

Unilever N.V. and Unilever PLC are the Dutch and English holding companies of the Unilever Group. It is assumed that readers of this report are familiar with the general outline of this group. The one-tier management of the group is conducted by the Executive Board (hereinafter and following Unilever terminology: the Board) of each of the two holding companies mentioned. These Boards consist of the same people, which does not have to mean that both Boards have the same Chairman. At the time the issue

of the preference shares referred to in the decision of the Enterprise Chamber was prepared and announced, M. Tabaksblat (hereinafter: Tabaksblat) was the Dutch chairman. At the time of the decision-making process in 2004 regarding the conversion, A. Burgmans was the Dutch chairman. The Board may consist of executive and non-executive members. The Board has an Executive Committee composed of Board members.

N.B. Where the term “Unilever” is used without any addition in this report, this refers exclusively to Unilever N.V.

#### The proceeds from the chemical division; Unilever’s over-capitalisation

In 1997, the Unilever Group sold its chemical division for around NLG 16 billion in cash, without having an immediate use for these funds. Keeping such a large amount of cash meant the group was faced with a substantial increase in the cost of capital. Should Unilever be unable to find one or more strategically appropriate acquisition candidates within a reasonably short period in which to invest these funds, it had to find a solution for this cost of capital problem. The solution that Unilever decided on was to dispose of the proceeds from the chemical division using a special dividend. In 1997 Unilever announced that unless the proceeds from the chemical division were spent on acquisitions within two to three years, these proceeds would go to the shareholders in the form of a special dividend. No candidates were found that qualified for acquisition within the term specified. At the end of the term, Unilever started preparations to distribute the special dividend. The minutes of an Executive Committee meeting held on 16 November 1999 state the following regarding the nature of the special dividend: “(...) because of our legal structure, what was essentially a capital repayment had to be presented as a special dividend”.

The maximum amount of free reserves that the group could distribute by way of dividend was GBP 5 billion, i.e. approximately the proceeds from the chemical division. GBP 5 billion was 10.6% of the group’s total market capitalisation. Thus, distributing such an amount was a huge operation. According to Tabaksblat in his statement to the investigators (Annex I), this might possibly be the largest distribution ever made in Europe. For the N.V. shareholders the special dividend amounted to NLG 14.50 (EUR 6.58) per ordinary share.

N.B. In the remainder of this report, all amounts in Dutch guilders have been converted to Euros, except to the extent that the amounts in Dutch guilders occur in quotes.

#### The special dividend and the private N.V. shareholders

Unilever's so-called untainted share premium reserve acknowledged by the Tax Authorities was completely insufficient to allow the special dividend to be charged against this reserve. The tax consequences this had for the Dutch private shareholders/depository receipt holders was that dividend tax would have to be deducted from by far the largest part of the special dividend and that income tax would be levied. This circumstance threatened to form an obstacle to the distribution of the special dividend that Unilever desired.

N.B. In the following, the term "shareholders" also includes depository receipt holders.

Dutch private Unilever N.V. shareholders jointly held around 10% of the Unilever N.V. shares (around 5% of the shares of the group). At the time, these shareholders would have had to pay progressive income tax of as high as 60% on their part of the dividend. Thus, these shareholders would only receive a comparatively small net compensation in return for losing more than 10% of the group's total market capitalisation. This compensation would contrast sharply with the compensation for the English PLC shareholders, who – apart from possible exceptions – would receive the special dividend, without deductions, or at least far less heavily taxed than the Dutch private shareholders. Thus, it was predictable that the Dutch private shareholders would forcefully oppose the special dividend, which would involve publicity that would be damaging for Unilever's reputation. (All this in addition to the fact that the size of the distribution could be expected to attract widespread attention even without this opposition – and not only in financial circles.)

Thus, from the point of view of responsibility towards the Dutch private shareholders alone, the Board could at least not see it as desirable to leave these shareholders to their own fiscal devices in distributing the special dividend.

A solution in the form of postponing the distribution pending of a change in the relevant fiscal regime was contemplated. Although such a change was not expected any time soon, at least according to a Memorandum to the Executive Board dated 2 February 1999: “there is little prospect of change in the Dutch fiscal regime in the short term”. In 1999, it was widely known – at least in fiscal circles – that a legislative change was imminent – and it was assumed that this change would be favourable for the special dividend structure – although it was not yet known precisely what this legislative change would entail. Tabaksblat told the investigators that the quote from the Memorandum referred to this uncertainty. (In fact, the new fiscal regime with the box system already took effect as of 1 January 2001, albeit that payment of a so-called super-dividend would have encountered tax objections until 2005) Finally, the Board decided not to wait for the legislative change. According to Tabaksblat, the fact that precisely what the legislative change would entail and how long it would take before the legislative change would take effect were both too uncertain were decisive factors in this. Meanwhile, the period of two to three years within which the proceeds of the sale of the chemical division would be distributed, as Unilever had announced in 1997, could have elapsed. Thus, the special dividend had to be distributed in 1999, provided that a solution to the fiscal problem could be found.

#### An optional dividend for the private NV shareholders

In looking for this solution, Unilever and the external advisers called in by Unilever, including ABN AMRO, finally decided on a choice dividend. This optional dividend gave the N.V. shareholders the option to receive the special dividend in cash, on which the private shareholders would have to pay tax, or in the form of a preference share stock dividend as a temporary instrument, which meant that the private shareholders could also receive the special dividend free of tax. The temporary nature of the structure was that a put option written by Unilever was attached to the preference shares, entitling the holder to sell the shares in due course back to Unilever at EUR 6.58 (being the amount of the cash dividend). In the meantime, the shares would be listed on the Amsterdam stock exchange as a separate class of preference Unilever shares. Thus, holders who did not want to wait until they could exercise their put option would be able to sell their shares on the stock exchange at any time. The put option guaranteed that the shares would have a value of EUR 6.58 after some time and this guarantee would ensure that

the price of the shares would not be much below EUR 6.58 in anticipation of the date on which the option could be exercised and despite the fact that these shares had a low coupon, adjusted to the nature of a temporary instrument.

Within Unilever, as part of the structure which Unilever had opted for to prepare for the decision-making, a Project Group had been set up (Jules was the code name for the special dividend), which wrote the following regarding the put construction to the Board's Executive Committee in a Memorandum dated 15 February 1999: "a put at the option of the shareholder at the end of five years at notional value [that is the calculation value which equals the amount in cash of the special dividend; investigators] to ensure higher trading value". This made the stock dividend an alternative that was an equivalent to the cash dividend.

Naturally, the Tax Authorities still had to agree to the tax-free distribution of such a temporary stock dividend.

#### Unilever's discussions with the Tax Authorities

To make the report easier to understand, the investigators will first explain the term "the conversion value" of the preference shares, which is frequently used in this report.

In addition to repurchase, the preference shares could be redeemed by converting them into ordinary shares in due course. Unilever wanted to leave this option open – this is discussed in more detail below – and included a conversion formula in its articles of association for this purpose. Pursuant to this formula, in case of conversion the share value of the ordinary shares to be issued to the holders of the preference shares to be converted is linked directly - that is 1:1 - to the share price of the ordinary share. Thus, the conversion value of the preference shares is determined by the share price of the ordinary shares.

A stock dividend to be issued tax-free under specific circumstance as an alternative to a cash dividend at the option of the shareholders was not without precedent in the Netherlands. However, what Unilever envisaged with its stock dividend alternative was in reality not a stock dividend but, as a result of the put option for the amount of the cash dividend, this was a cash dividend with deferred payment. Unilever, in the person of Mr.

J. van der Bijl (hereinafter: Van der Bijl, at the time the deputy, meanwhile) head of the group's tax affairs department, conducted discussions regarding this structure with the Tax Authorities. The investigators have heard Van der Bijl twice about those discussions. Annexes IIa, IIb and IIc are submitted with this report, being the draft report drawn up by the investigators of the first hearing, the version re-written of that report by Van der Bijl and, the version re-written by Van der Bijl of the second hearing. The discussions between Van der Bijl and the Tax Authorities were, on the part of Unilever, supported by a letter from the Company Secretary at that time, Westerburgen, to the Secretary of State at that time, Vermeend, dated 22 January 1999. In this letter, the Deputy's favourable attention was asked for Unilever's intention regarding the stock dividend alternative in the form of preference shares and the future redemption of these shares through repurchase by means of a put option for the amount of the cash dividend.

As said before, Unilever had set up the preference share alternative and presented this alternative to the Deputy with the put option for the amount of the cash dividend as the final element. Thus, the Tax Authorities knew that what Unilever wanted to achieve with this alternative – in anticipation of the expected legislative change – was a tax-free payment of the amount of the cash dividend – following and owing to a waiting period – to the holders of the preference shares in the form of a repurchase price. The put option served to guarantee the holders of the preference shares that this would actually take place after the end of the waiting period. However, it turned out that the put option and thus the guarantee envisaged by Unilever were unacceptable for the Tax Authorities.

The rejection of the put option by the Tax Authorities forced Unilever to consider a different method for redeeming the preference shares from the market in due course. These shares were not intended as a newly created class of permanent outstanding preference shares – alongside the classes that already existed – but as temporary securities destined to be redeemed from the market as soon as this was possible within the scope of the preference share alternative without frustrating the tax-free issue of these securities in the end. If this could not be achieved using a put option, other possibilities that were acceptable to the Tax Authorities had to be looked for.

After the put option was eliminated, Unilever was left with two options for redeeming the preference shares in due course, i.e. voluntary repurchase and so-called “reverse” conversion into ordinary shares (as used here, reverse means conversion at the initiative of the issuer).

N.B. Alongside voluntary buy-back and reverse conversion, there was also, at least in theory, a third possibility, namely doing neither and hence having the preference shares remain outstanding (for the time being) after five years. The roll over scenario is however very difficult, if not impossible, to reconcile with the information which Unilever provided upon the issue of the preference shares. If Unilever would want to roll over, that might be acceptable to the holders of the preference shares by, when rolling them over, providing those holders with a more attractive coupon than the one issued at the time of the issue of the securities. For reasons to be explained in this report – but in connection with the orderly sequence of the information contained in this report not explained at this present point – that coupon, made more attractive, may not provide for a higher value of the preference share than the conversion value. Rolling over with a more attractive coupon comes down to a form of reverse conversion into ordinary share but in securities with a coupon providing conversion value. Where, hereinafter, reference is made to the possibilities of and the choice between buy back and conversion, the addition shall always be made of there also being a roll over on option which amounts to conversion

Moreover, Unilever had to reserve the right to convert, even if Unilever would not redeem the preference shares from the market in due course through conversion but through repurchase. In that case, the conversion right would enable Unilever to redeem preference shares that had not been offered for repurchase from the market (mopping up these shares), so that Unilever would not be stuck with a small, but inconvenient, remnant of preference shares. In addition, the conversion right served as a last exit in the event that the shareholders’ meeting should block repurchase or if repurchase would not be a realistic option in 2004 because the tax regime would not have been changed such that tax free repurchase would be possible. Also, the conversion expectation to be expressed with the consent of the Tax Authorities served to reassure the holders of the preference shares that Unilever did not consider the preference shares to be a financing instrument and would not leave the holders with these shares, not even if conversion would prove disadvantageous to Unilever because at the time of the conversion the

share price of the ordinary shares would have reached such a level that the corresponding conversion price would be higher than the notional value of the preference shares. However, for the Tax Authorities to reserve of the conversion right as an alternative to repurchase had a different, essential function: i.e. to create a market risk like the one incurred by the recipients of a normal stock dividend. As said before, within this scope Unilever agreed with the Tax Authorities that the conversion formula to be included in Unilever's articles of association would directly link the conversion value - one to one - to the share price of the ordinary share.

For Unilever, directly linking the conversion value of the preference shares to the share price of the ordinary share involved the risk that if the share price of the ordinary share continued to increase – as Unilever expected at that time – the conversion value at the time of redemption would be a – possibly substantially – higher amount than the amount of the cash dividend (EUR 6.58). In that case, Unilever would have to pay (a lot) more than the original amount envisaged with the special dividend. To eliminate this risk, the conversion formula stipulated a maximum (“cap”) for the conversion value amounting to the cash dividend.

The Tax Authorities' rejection of the put option did not answer the question regarding whether the Tax Authorities would also object to a repurchase of the preference shares at the amount of the cash dividend, irrespective of the share price of the preference shares and their conversion value in the event that the holders of the preference shares would not have the guarantee that upon redemption in any case the amount of the cash dividend would be paid. If this question was answered affirmatively, this would give rise to the question that is fundamental to the assessment of Unilever's policy as referred to in the decision of the Enterprise Chamber of whether Unilever knew – or at least could have and should have known – that the Tax Authorities would consider such repurchase to be incompatible with the tax-free issue of the preference shares. Van der Bijl told the investigators the following in this respect (in his own words in a part of the report prepared by the investigators on the second of their interviews with him, which part Van der Bijl largely rewrote 6 December 2005, Annex IIc):

“In reply to your further question regarding whether the Tax Authorities had explained in the discussions with me prior to the announcement of the special

dividend that Unilever on no account would not be permitted to offer an amount of EUR 6.58 in 2004 in the event of a possible repurchase if the price of the ordinary share would be below EUR 73.18, I can confirm that the Tax Authorities did not explicitly raise this issue at the time; nor did I. Nor did Unilever take the position at that time that it would offer EUR 6.58 under all circumstances in case of a possible repurchase in 2004. On the contrary, the position was that any decision regarding what Unilever would do in 2004 had to be left up to the Board in 2004 in light of the circumstances prevailing at that time. This position was also communicated to the outside world. In reply to your question regarding whether I realised during the discussions with the Tax Authorities prior to the announcement of the special dividend that the Tax Authorities took the position that repurchase at EUR 6.58 in 2004 would only be possible if the share price of the ordinary shares at that time would have risen to a level where the conversion value would also be at EUR 6.58, I can state the following: in February 1999, I realised that the Tax Authorities could take this position, but I did not realise that they had already taken this position in February 1999. The fact that the text of the ruling did not mention this and that the Tax Authorities did not have any problems with the fact that this had not been included in the text of the ruling led me to believe that Unilever had some room to manoeuvre. In 1999 it was not in Unilever's interest to inquire with the Tax Authorities how much room Unilever had to manoeuvre. This does not alter the fact that I did know of course about the Tax Authorities' refusal to agree to a put option for the holders of the preference shares and about the fact that the Tax Authorities demanded a market risk. I also knew that the structure with preference shares could only qualify as a tax-free issue for the Tax Authorities if this was comparable to an ordinary stock dividend. Thus, at that time I did realise that our room to manoeuvre might be limited in 2004 but at that time I did not form any specific ideas regarding the extent of this limitation and the possible implications this would have. At that time, I did not delve into this any further because I had every confidence – and to my knowledge all people involved in Jules shared this confidence – that the price of the ordinary shares in 2004 would be at least EUR 73.18. Moreover, at that time we were working under considerable time pressure because the special dividend had to be announced on 23 February 1999 and it had only become clear to us in

early February that the Tax Authorities refused to co-operate in our plans drawn up for this purpose.”

#### The market risk demanded by the Tax Authorities

Several comments can be made regarding these words from Van der Bijl and the investigators shall do so. But they first wish to emphasize that in those words what, for the policy pursued by Unilever, primarily in connection with the point of the information provided about the preference shares, it is decisive, or ought to have been decisive that:

“But this does not detract from that fact that of course I was aware (...) of the circumstance that the Tax Authorities demanded market risk.”

and, in connection with the market risk, what also amounts to the same:

“I also knew that the construction with the preference shares could only apply for the Tax Authorities as a tax free payment if it was comparable with an ordinary stock dividend.”

The market risk of stock exchange listed securities is the risk of share price fluctuations. The market risk demanded by the Tax Authorities hence means that the amount that the preference shares when bought back by Unilever generates, has to equal their stock exchange quoted price. There is an alternative for a buy back, that is, conversion. Conversion, pursuant to the arrangements made with the Tax Authorities, requires the conversion value being determined by the share price of the ordinary shares of Unilever. The share price risk demanded by the Tax Authorities comes down to dealing with the preference shares in a manner in which the amount or the value received by their holders being determined by the share price. And in the case of a buy back, by the share price of the preference shares and in the case of conversion, the share price of the ordinary shares. The question as to which extent the arrangements made with the Tax Authorities allowed Unilever the liberty to choose in due course between two ways of dealing with the preference share and the question as to which extent that choice would have financial consequences for the holders of the preference share, will be covered later in this report by the investigators. At this time, the investigators solely submit that the market risk demanded by the Tax Authorities means that in connection with the

method to be used, and the amount or the value at which, the preference shares are to be dealt with, means that the freedom on the part of Unilever to choose a policy is very limited, namely limited to the choice between a buy back and conversion, in which in neither case, Unilever has anything to say about the revenue. That revenue is determined in both cases by the market, and not by Unilever. This finding will continue as a leit motif throughout this remainder of this report, particularly in connection with the information provided by Unilever to the market when offering the preference share alternative.

#### Some marginal notes on the statement made by Van der Bijl.

To return to the statement made by Van der Bijl. A number of marginal comments may be made about that statement. First of all, the comment that Van der Bijl only speaks about the situation in which the conversion value of the preference shares at the time the preference shares are redeemed would be lower than the amount of the cash dividend. In so doing, he ignores the situation in which at the time of redemption not only the conversion value, but the share price of the preference shares, as well, would be lower than the amount of the cash dividend. Following on from Van der Bijl, the investigators will do the same because – as will also be explained later in this report – under normal circumstances, in a market that has been accurately and fully informed by Unilever, the share price of the preference shares at the time of redemption will hardly differ from the conversion value. Where reference is made to Unilever's lack of ability to redeem at more than the conversion value as the result of its agreements with the Tax Authorities in the remainder of this report, unless otherwise stipulated, the words "more than the conversion value" must be read as "more than the conversion value or more than the share price of the preference shares at that time, although the latter has no practical relevance since this price will hardly differ from the conversion value".

The investigators presented Unilever with two propositions regarding the correlation between the share price of the preference shares and the conversion value and invited Unilever to comment on these propositions. Unilever did so in the form of a copy of a letter dated 18 April 2006 from Dr. M.L.J. Jonkhart to Unilever's counsel. This copy is attached as Annex III to this report. The conclusions made by Jonkhart on the last page of his letter correspond to the conclusions the investigators reached. With regard to the last sentence of the first full paragraph on that page, the investigators are only interested in the observation made, that the share price of the preference shares, in the period 9

June, discussed below, during which the preference shares, pursuant to the arrangements made by Unilever with the Tax Authorities, respectively the information given by Unilever to the market, could be bought back, that is, the period from 9 June to 1 December 2004 would be (virtually) equal to the conversion value. Whether on this basis the conversion value is considered to be the decisive factor for the share price of the preference shares, or whether the assessment of the volatility of the ordinary share and the limited remaining term of the preference shares – which collectively mean that the price of the preference shares will (hardly) rise above the conversion value – are considered to be the decisive factors does not change the accuracy of the observation. As appears from this report, the investigators fully agree with the conclusion in the penultimate paragraph on that page of Jonkhart's letter to the effect that the financial market will expect Unilever to act rationally and that for this reason alone – and apart from whether or not the agreements made with the Tax Authorities are communicated to the market – the share price of the preference shares will not (or will hardly) rise above the conversion value. Whether on those grounds the conversion value will be seen as the decisive factor for the share price of the preference shares, or the valuation of the volatility of the ordinary share and the limited remaining duration of the preference share – which together mean that the price of the preference shares will (barely) exceed the conversion value – is seen as the decisive factor, does not detract from the correctness of the finding. The same also holds true for the answer that Jonkhart gave to the question referred to in the first paragraph of his letter.

N.B. Moreover, Jonkhart's argument also shows that as the redemption date approaches, factors such as the volatility of the ordinary Unilever share, the relatively low return on the preference shares and the rate of interest will hardly have any influence.

The conclusion reached by Jonkhart on the last page of his letter appears, at first sight, to differ from that of the investigators (the views of the investigators are not supported by Jonkhart). Nevertheless, his findings are materially in agreement with the views held by the investigators. What this matter revolves around is whether, in 1999, the expectation was justified that the share price of the preference share in the period during which the buy back would be possible – the period 9 June 2004/1 December 2004 – in practice,

would not substantially differ from the conversion value. The view of the investigators is that in general no substantial difference could be expected.

Jonkhart makes it clear that the value of the preference share requires being composed of the sum of the value of the subordinated loan and the value of the put option. "The value of the option component is determined by the value of the underlying share at that moment, 'the volatility', the amount of the interest and the remaining duration until the redemption date." (Jonkhart, page 6 of his letter).

As the time to 1 December 2004 becomes shorter and as the volatility of the Unilever share is less, the significance of the option element for the real value of the preference shares will become less. In other words: if there is relatively less time to go to 1 December 2004, the share price of the preference share will reflect the fact that in the meantime not so much more can happen with the share price of the ordinary Unilever share and hence with the revenue generated by any conversion. The share value of the preference shares will get close to the conversion value. That fact is that (in retrospect) it may be stated that this actually took place. In the spring of 2004, Unilever announced that the preference shares would be converted. In the period 9 June 2004/1 December 2004, the share price of Unilever's ordinary shares stubbornly remained at a level of EUROS 46-49. Figures collated by Jonkhart show that for part of the period prior to 9 June 2003, there was no fixed relationship which appears to have existed between the conversion value and the actual share price of the preference share (Jonkhart, page 8). But after announcing the conversion, when investors knew exactly what they would receive in due course, it appears that the two did meet one another very closely. Jonkhart estimates the difference at about EUROS 0.10 per share in favour of the actual share price of the preference share. He added: "the cause of this is (...) the minor chance which investors seem to attribute to the possibility that the Unilever share in the short, remaining time period, will approach or even exceed EUROS 73.18".

Of course, in 1999, the factual development of the share price of the preference shares in relation to the conversion value in June/December 2004 was not known. But aside from this factual development, the investigators are of the opinion that from the foregoing the conclusion may be drawn that in 1999 there were already good grounds – particularly given the short duration of the period 9 June/1 December 2004 – to be able to

assume that the share price of the preference shares after 9 June 2004 would remain close to the conversion value and that as time progressed, would increasingly approach that conversion value.

For this conclusion, there is also another argument: “The market assumes rational behaviour. Rational behaviour on the part of Unilever means that (...) it would never, prior to terminating the preference shares pay (significantly) more than is strictly necessary.” (Jonkhart page 9.) “Financial markets assume such rationality and process this into the prices”(Jonkhart, page 9). Now, the conditions determined for the preference shares meant that Unilever did not need under any circumstances to buy back the shares at a price which (significantly) exceeded the conversion value.

If investors know those conditions, the assumption could be made that their value judgement would be based on this and – aside from all the other circumstances – no prices would come about in the market which (significantly) exceed the conversion value.

The final conclusion is therefore that in 1999 it could not be assumed that the share price of the preference share for the buy back period from 9 June 2004 to 1 December 2004 would stay the same as the conversion value but that this share price would remain close to it, so that even if Unilever were to decide to buy back the preference shares at the then applicable share price, the amount the holders of those share would receive, would be close to that conversion value. As submitted by Jonkhart, the difference in reality in the period 9 June 2004 to 1 December 2004, amounted to about EUROS 0.10. But even if the difference were to be larger, it may still be stated that the investors, in 1999, upon redemption of the preference shares in 2004, could have expected to receive an amount almost the same as the conversion value; irrespective of whether the purchase would be made at the share price quoted for the preference share or if conversion were to be applied. The investigators shall not repeat the addition of “almost equal to” (see page 11 of this report, with the addition of the words) but for the purpose of keeping this report easily readable, leave out that addition. However, this addition should be kept in mind when reading the conclusion.

For the sake of completeness, it should be noted that Jonkhart also investigated the share price development of the preference share after 1 July 1999 until the redemption

at the end of 2004. Jonkhart found that the actual share price development was substantially lower than the price of the bond component. “This points” – according to Jonkhart – to the fact that investor from the outset attributed a positive value to the option element in the security”. In other words, they did understand from the outset that there was a substantial chance that after 9 June 2004 they would not receive the full EUROS 6.58 and for this, attributed a discount on the bond component” (Jonkhart, page 5).

That this discount was included in the market price and that investors did not value the preference shares as a subordinated loan is not a surprising conclusion. It is a shame that Jonkhart did not investigate the other side of the coin and review to which extent the share price of the preference shares included the expectation that after 9 June 2004, more would be received than the conversion value. Ms. De Jong of the ABN AMRO Bank, and member of the team advising Unilever, stated to the investigators that the capital market moved between “hope” and “fear”. The “hope” that more would be generated than the conversion value and the “fear” that this would not be the case. That the “fear” was included in the share prices was found to be the case by Jonkhart but he did not review the “hope”. From the graph on page 8 of Jonkhart’s letter it is clear that in the period July 1999 – July 2004, there were periods in which the share price of the preference shares clearly exceeded the conversion value and that, when on 24 March 2004, the proposed decision of Unilever was made known that the preference shares would be redeemed at conversion value and hence it became clear that for investor there was nothing more to be expected than the conversion value, the share price of the preference shares collapsed by 20%. One might see an indication in this that in that period, a positive difference between the share price of the preference shares and their conversion value had been included by the market in the form of a premium in the share price, expressed as “hope”. Unilever did not appear to think it necessary to ask Jonkhart to investigate this as well.

After this explanation of the correlation between the share price of the preference share and their conversion value, made in connection with Van der Bijl not having mentioned that share price, we return to the statement made by Van der Bijl. After the foregoing marginal comment on the share price of the preference shares there is a second comment that the investigators make to Van der Bijl's statement, that in 1999, Unilever

originally most certainly intended “to offer EUR 6.58 in 2004 under all circumstances”. The structure with the put option presented to the Secretary of State and the Tax Authorities shows that this was most certainly Unilever’s point of departure and that the Tax Authorities were familiar with this point of departure. Therefore, it is all the more remarkable that, according to Van der Bijl’s statement, the Tax Authorities during the discussions with him did not raise the issue that repurchase at the amount of the cash dividend would be out of the question as long as this amount was greater than the conversion value. However, in view of the fact that the Tax Authorities required the preference share alternative to be similar to an ordinary stock dividend, otherwise than stated by Van der Bijl according to the foregoing quotation taken from his statement of 6 December 2005, it appears to the investigators – that Van der Bijl could not have had any doubts that the Tax Authorities would consider repurchase at the amount of the cash dividend, if this amount exceeded the conversion value – and thus eliminating the market risk feature that forms an integral part of a stock dividend – to be incompatible with the point that was the issue for the Tax Authorities. As Van der Bijl stated: “This does not alter the fact that I did know of course (...) that the Tax Authorities demanded a market risk. I also knew that the structure with preference shares could only qualify as a tax-free issue for the Tax Authorities if this was comparable to an ordinary stock dividend”. Also in view of this statement by Van der Bijl, it may be assumed that the reason the Tax Authorities felt that it was unnecessary to explicitly stipulate that the preference shares could not be redeemed at the amount of the cash dividend should this amount exceed the conversion value, lies in the fact that this was obvious in view of the nature of a stock dividend. Please refer, in this connection, to a further part of that submitted in this report under the heading “Van der Bijl’s e-mail of 16 June 2000.”

As quoted above, Van der Bijl told the investigators that during his discussions with the Tax Authorities, he realised that the Tax Authorities might take the position that repurchase at an amount exceeding the conversion value was not permitted, but that he was not aware whether the Tax Authorities did in fact take this position. Van der Bijl apparently accepted this uncertainty. According to the statement made by Van der Bijl, the investigators found that Van der Bijl was satisfied with not knowing any more than that the Tax Authorities could take that view and that he did not wonder if the circumstance of “the Tax Authorities demanding market risk” and that “the construction with preference shares could only be a tax free payment if comparable with ordinary

stock dividend” meant that the Tax Authorities de facto took that view. He did not ask the Tax Authorities for a definitive answer regarding whether or not the Tax Authorities approved of the fact that the preference shares would be repurchased in 2004 at the amount of the cash dividend, even if this amount was higher than the conversion value and, if the Tax Authorities did not approve, if Unilever at the least would still have some “room to manoeuvre” and if so, how much.

The statement made by Van der Bijl comes down to the fact that the only thing that he felt had not been established as a result of his discussions with the Tax Authorities (‘gave me the feeling that Unilever only had some room to manoeuvre’) was that the agreements made with the Tax Authorities implied that Unilever on no account would be permitted to repurchase at a repurchase price that exceeded the conversion value “the circumstance that the Tax Authorities demanded market risk “ and that he believed that this still left some “room to manoeuvre” so that Unilever would be able to pay a repurchase price that exceeded the conversion value, provided that the difference between the repurchase price and the conversion value was small – Van der Bijl mentioned 10% at most – in which case he believed that payment of the difference between the two values could be defended as a premium to encourage shareholders to offer the shares for repurchase. In this respect, he mainly had in mind the situation in which the share price increase would just fall short of the amount of the cash dividend. For this reason, in his discussions with the Tax Authorities, he preferred not to ask for a definitive answer in an attempt to leave open some room to manoeuvre in order to pay a small bridging premium to make up the difference between the share price increase and the amount of the cash dividend. In this context, there is still the question of whether a premium of 10% can still be considered to be small enough to reasonably be expected to be accepted by the Tax Authorities.

To the extent that following the discussions of Van der Bijl with the Tax Authorities Unilever still had some doubts regarding the question whether and if so, to what extent, the preference shares could be redeemed at an amount higher than their conversion value, these doubts were in any case removed by an answer given by the Secretary of State on 2 March 1999 to a question from the Dutch Lower House about the fiscal treatment of the preference share alternative. This answer was:

“(…) The conclusion is that the choice dividend as offered by Unilever is in conformance with the case law and the rules and legislation. Moreover, a choice dividend as presently offered by Unilever is not uncommon for listed companies” (Parliamentary documents Question & Answer Session Dutch Lower House, TK 52 page 52-3400).

In other words, a choice dividend in the form of a normal stock dividend as this may be distributed tax free in conformity with the rules and legislation and the case law and therefore not the postponed – and meanwhile disguised as stock dividend – payment of a cash dividend, as this payment was to be effectuated through repurchase of the preference shares at the amount of the cash dividend, independent of the share price of the Unilever shares. Should any doubts still be left after this answer from the Secretary of State, all possibility for doubt was eliminated by the perfectly clear answer given by the Secretary of State on 14 April 1999 to a question from the Dutch Lower House:

“No dividend that is declared now and which will only be made payable after five years is involved.” (Press report from the Ministry of Finance dated 14 April 1999), five years was the announced duration of the preference shares),

although Van der Bijl told the investigators (again as rewritten by him): “Also when the Secretary of State – after my consultations with the Tax Authorities had been completed – replied to a question from the Dutch Lower House that payment of EUR 6.58 postponed to 2004 could not be involved, I did not conclude that according to the Tax Authorities Unilever on no account could offer EUR 6.58 in 2004 in a possible repurchase if the conversion value should be below this amount”.

Based on Van der Bijl's statements regarding the Tax Authorities having demanded market risk, the investigators observe that, assuming that Van der Bijl did not realise that repurchase at a repurchase price exceeding the conversion value not only might be construed but also would actually be construed by the Tax Authorities to be in breach of the agreements made, Unilever in the person of Van der Bijl at least understood that, in the most favourable case, repurchase at a repurchase price exceeding the conversion value would only be acceptable to the Tax Authorities if this would involve no more than

a small premium on top of the conversion value. This observation should be continually kept in mind when reading the remainder of this report.

For the valuation of Unilever's policy in connection with the information it provided, dealt with below, to its shareholders and the financial market, the following question is of essential importance: did Unilever know at the time it gave that information, or could it have known at that time, that the market risk required by the Tax Authorities meant that when redeeming the preference share no higher value or amount could be paid by it than the (under the circumstances, increased perhaps by a small premium) conversion value or the share price of the preference share? In connection with the importance of this question, the investigators point out that to the extent necessary, yet again, that the Tax Authorities' demand, clearly made known to Unilever in the person of Van der Bijl, and according to his own statement) clearly made known, that the preference shares had to have a market risk attached to them, and that those shares were to have the character of an ordinary stock dividend, inevitably means that taking those shares out of the market could only be compensated by the conversion value or the market value – that for, for stock exchange listed shares, the share price. The payment of any higher amount, would eliminate the market risk and the character of an ordinary stock dividend no longer applies.

Unilever is, in any case in retrospect, of the opinion, as appears from that stated by the then Chairman of the Dutch Board, A. Burgmans (hereinafter: Burgmans) at Unilever's Annual Meeting, held in May 2004, as part of his information about Unilever's decision to repurchase the preference share at conversion value:

“We cannot remove the market risk of the preference share by just paying a higher price (than the conversion value: investigators) for the preference share. There is therefore a real chance that Unilever would receive a subsequent tax demand for the amount which in 1999 was not deducted as dividend tax on the preference shares. That would amount to hundreds of millions of Euros. That would have to be paid for by the holders of ordinary shares and a tax claim would frustrate the entire scheme of the preference shares”. (Minutes, page 21).

“..... if you are aware of the arrangements made with the Tax Authorities, if you read your information memo thoroughly, you can only come to one conclusion and that conclusion is that Unilever has to do this (conversion at the conversion value which has declined considerably since 1999; investigators), (Minutes, page 34.

A number of Unilever staff have stated to the investigators that Unilever, at the time at which it gave the information referred to in the quotation made above, concerning the only possible conclusion to be drawn, did not yet realise this. Mr. J. Winter, who at the time worked at Unilever and was head of the special group charged with preparing the special dividend, the Jules Project Group (Jules Project Leader, as Unilever introduced him to the investigators), with whom the investigators spoke twice (Annexes IVa and IVb), stated:

“not being aware that they (the Tax Authorities; investigators) already took the view (that the repurchase for an amount higher than the conversion value; investigators) was not permitted, in February 1999”

and Unilever’s then Company Secretary, Westerburgen (Annex V):

“We did not realise at that time – at least we did not pause and review – that if the Unilever share price in 2004 would be below 73 (which amounts to an amount close to the amount of the cash dividend, investigators), Unilever would not be able to pay a higher amount or value for the preference shares than the conversion value”;

and Winter once again:

“We did not face up to the fact that a lower share price of the ordinary share than Euros 73.18 would mean that only the conversion value could be paid”.

On the other hand, J. Haars, (Annex VI) at that time Group Treasurer and Member of the Steering Committee to which the Jules Project Group reported:

“For me personally, it was always clear that in 2004, even with the repurchase of the preference shares, shareholders would never receive more than the conversion value calculated on the basis of the formula included for this purpose in the Articles of Association of Unilever, with a maximum of Euros 6.58”.

Coming back to the statement of Van der Bijl quoted above: “(...) did cause me to believe that Unilever had some room to manoeuvre. In 1999 it was not in Unilever’s interest to inquire from the Tax Authorities how much room Unilever had to manoeuvre.”, the investigators point out that it is not clear what interest Van der Bijl felt he was serving by postponing obtaining an answer to the question regarding whether any room to manoeuvre was left open and if so, to what extent, until 2004. This answer at any rate had to be known before Unilever in 2004 would announce the value at which the preference shares would be redeemed from the market. Should Unilever still not know the answer by that time and should it distribute the amount of the cash dividend when the conversion value was below the amount of the cash dividend – but within the limits of what Unilever felt it could consider as room to manoeuvre – Unilever would run the risk that the Tax Authorities were shown to take the position that there was no or at least insufficient room to manoeuvre and that the repurchase for the amount of the cash dividend constitutes a violation of the agreements on which the tax-free issue of the preference shares in 1999 was based. In doing so, Unilever would run the risk of bringing down a tax catastrophe amounting to more than 450 million Euros in the form of subsequent tax demands for dividend tax, plus interest and a fine which might be as much as 100% and substantial damage to its reputation upon itself and possibly upon its shareholders, as well, to the extent that these shareholders opted for the preference shares in 1999. Thus, if the cash dividend were to be below the conversion value in 2004 – although within the limits of what Unilever felt it could consider as room to manoeuvre – first paying the amount of the cash dividend and then waiting to see how the Tax Authorities would respond to this would not be an option. This being the case, the investigators fail to see why Unilever evaded the answer to the question regarding its position on the point of the room to manoeuvre Unilever hoped for and thus making it impossible to take this answer into account in the information Unilever provided about the preference shares to the market.

This concludes the section of the report on Tax Authorities' rejection of the put option desired by Unilever and the consequences of this rejection for the details of the preference share alternative.

In connection with this rejection, the investigators do not give any attention to the question regarding whether Unilever's writing of the put option constitutes giving a share price guarantee, which is prohibited by law. The aforementioned Winter, told the investigators that Unilever did not really go into this question because the fact that the Tax Authorities would not accept the put option was taken into account from the start.

With regard to the temporary nature of the preference share alternative, which was the starting point for Unilever, the Tax Authorities stipulated that Unilever would not make any offer to repurchase the shares within a period after issue to be approved by the Tax Authorities. The Tax Authorities agreed to a period of five years.

The Tax Authorities co-signed a copy of a letter from Unilever to the Tax Authorities dated 4 February 1999 ("the Ruling") for approval and returned this copy to Unilever. The Ruling reads as follows:

"We confirm the agreement made with you regarding the stock dividend to be distributed by Unilever NV in the form of a preference share. The stock dividend will be offered to the Unilever NV shareholders as an alternative to a special cash dividend. We have agreed with you that the preference share will receive the same fiscal treatment as an "ordinary" stock dividend. The preference share has the following characteristics:

- the nominal value is NLG 0.10 and will be charged to the share premium reserve;
- the notional value equals the amount of the special cash dividend (this will amount to approximately NLG 14.50);
- the difference between the notional value and the nominal value is designated as "tainted share premium" for tax purposes;
- the dividend is calculated based on the notional value;

- the dividend is linked to the variable market interest rate, whereby a reduction of 25 to 50% compared to this interest rate will be applied;
- the dividend will be adjusted every six months;
- Unilever NV reserves the right to convert the preference shares into ordinary shares after five years after issue of the preference shares.

It is assumed that the preference share can be created in this way under civil law and corporate law and that the characteristics mentioned above will be recorded by means of an amendment to Unilever NV's articles of association to be approved by the General Meeting of Shareholders.

In the announcement of the special dividend, Unilever NV will state that it will not repurchase the preference shares within five years after issue.

In the announcement of the special dividend and if deemed advisable, Unilever may express the expectation that after five years, the shares will actually be converted.

Unilever NV promises that it will not make any attempt to stimulate institutional investors to withdraw the preference shares from the market and/or that Unilever has not made and will not make any agreements in this regard.

The preference shares will be listed on the Amsterdam stock exchange.

The distribution of the special dividend will be followed by a corresponding consolidation of the share capital.”

The result of the discussions with the Tax Authorities regarding the issue of the preference shares

Unilever had reason to be satisfied with the result of its consultations with the Tax Authorities. Its objective of not having the tax position of its Dutch private shareholders form an obstacle to declaring the special dividend had been achieved. The special dividend could proceed. A “Questions & Answers” annex to a Memorandum to the Executive Committee dated 2 February 1999 states the following in this respect:

“The occasion of Unilever’s special dividend is unique in that the choice of the preference share has been seen as necessary to unlock the feasibility of the whole scheme.”

Unilever’s Dutch private shareholders could be offered the special dividend in the form of preference shares which value, calculated based on the share price of the ordinary shares at the time of the issue, was not much below the amount of the cash dividend. The shareholder who opted for the preference shares could sell his preference shares at any time and receive the proceeds tax-free because the preference shares were listed on the stock exchange. Naturally, these proceeds would be lower than the amount of the cash dividend, but it was unrealistic to expect the price of the preference shares to be so low that the proceeds in case of a sale would be less than 40% net of the cash dividend. The expectation was rather that the share price would be at a level at which the proceeds in case of a sale would be significantly higher than the net amount left for the Dutch private shareholders if this dividend had been paid to them in cash. The holders of the preference shares could also opt to wait and see what their securities would deliver upon redemption after five years. It seemed to be a legitimate expectation that these proceeds would equal the amount of the cash dividend. There did not seem to be a reason to fear that the stable, positive price development of the ordinary Unilever share would not continue during the next five years and in combination with the conversion formula this meant that after five years the capped conversion value would have reached the amount of the cash dividend. In that case, which was deemed likely, the holders of the preference shares would still receive this amount upon redemption completely free of tax. In short, Unilever was entitled to believe that it was offering its Dutch private shareholders a highly acceptable alternative to the special cash dividend and that Unilever could thus consider itself free to make this dividend payable to these shareholders.

In response to this result, the Jules Project Group wrote the following in an annex to a Memorandum to the Executive Board dated 15 February 1999:

“The willingness [of the Tax Authorities; investigators] to accept the choice dividend is probably related to the fact that “Choice cash or ordinary scrip” is already established in the NL with the tax treatment we are seeking. Our

innovation is to make the choice a convertible preference share whilst preserving the advantageous tax treatment.”

In a written set of comments sent to the investigators, Unilever had pointed out to the investigators that the result of the discussions with the Tax Authorities a report was sent to the Executive Committee:

“The Executive Committee, in which most members of the Board have a seat, including the Chairman (Mr. Tabaksblat), and the Finance Director (Mr. Eggerstadt) prior to its meetings of 2 and 16 February 1999, was informed about the results of the discussions with the Tax Authorities by staff members, who submitted memoranda which also included detailed Q & As. The Executive Committee reviewed the text of the ruling of the Tax Authorities (in an English translation).”

The Finance Director, Eggerstadt, referred to in this quotation, was heard by the investigators (Annex VII).

#### The preference share alternative

In part following the ‘result of its discussions with the Tax Authorities, Unilever finally worked out the optional dividend in definitive form as follows:

- for each (depository receipt for an) ordinary share, one cumulative preference bearer share is issued;

N.B. Unilever N.V. has several preference share series outstanding. The term “preference shares” used in this report refers to the preference shares issued as a choice dividend, unless stipulated otherwise.

- the preference shares have a nominal value of EUR 0.05, but a notional value equal to the amount of the cash dividend, i.e. EUR 6.58. This notional value was not much above the conversion value at the time of the issue;

- on the preference shares, a cumulative preference dividend will be paid out equal to 65% of EURIBOR calculated on the notional value. (The investigators note that the then rate of company tax for paying out dividend would hence have been cash-flow neutral for Unilever.)

- listing on the Amsterdam stock exchange until 31 December 2004;

- at the time of issue, Unilever announces that it will not make any offer to repurchase the shares until five years after the date of their issue;
- upon the issue, Unilever announces that it reserves the right to convert the preference shares into ordinary shares after five years by applying the conversion formula included for this purpose in Article 50 of Unilever's articles of association and that Unilever expects to exercise this right to the extent that any preference shares are still outstanding after 1 December 2004.

Owing to the agreements made with the Tax Authorities, the stock dividend created in this way could also be received by the Dutch private shareholders without having to pay any income tax. It is pointed out that this did not mean that by virtue of the tax regime in effect in 1999, no dividend tax would have to be deducted and no income tax would have to be paid on the repurchase price to the extent that this price exceeded the nominal value of EUR 0.05 in case of a possible repurchase by Unilever.

#### The result of Unilever's discussions with the Tax Authorities with regard to redemption of the preference shares

Whether or not the price of the ordinary shares at the time of redemption of the preference shares in 2004 would be higher or lower than EUR 73.18 (at which rate, the conversion value would have reached the amount of the cash dividend), was something that was not known in 1999. If the price would be EUR 73.18 or more, the conversion value by virtue of the conversion formula equals the amount of the cash dividend, which in that case will be received by holders of preference shares upon redemption, either in cash through repurchase or through conversion into ordinary shares. In that case, this report would not have been written. The investigators will disregard this case – which was shown to be hypothetical in 2004 – and will only deal with the situation in which the share price of the ordinary shares in 2004 would be below EUR 73.18 – which was a possibility in 1999 and became reality in 2004.

In a previous chapter, the investigators devoted attention to the result of Unilever's discussions with the Tax Authorities regarding the issue of the preference shares. This chapter deals with the result of the discussions regarding redemption after five years. Once again the investigators quote a crucial part of the statement made by Van der Bijl:

“This does not alter the fact that I did know of course about (...) the fact that the Tax Authorities demanded a market risk. I also knew that the structure with preference shares could only qualify as a tax-free issue for the Tax Authorities if this was comparable to an ordinary stock dividend”.

In the redemption of the preference shares, as already stated, the market risk demanded by the Tax Authorities could be expressed in two ways. In the case of repurchase by means of a repurchase it could be expressed by means of a price equal to the current share price of the preference shares or a lower price (meaning repurchase at the share price with a discount), but never at a price higher than the share price. In the case of conversion, the market risk attached to the preference shares is expressed because, as stated before, the conversion value is determined by the share price of the ordinary Unilever shares.

The text of the Ruling does not infer that in the view of the Tax Authorities, of these two alternatives initially only conversion – and not repurchase at the share price of the preference shares – would satisfy the market risk requirement. As far as the investigators know, the Tax Authorities expressed an opinion regarding this point twice – both times after the event. In a letter dated 24 September 2004 (Annex VIII), written after a meeting following Unilever’s decision – which at that time had been known for some months, at least its proposed decision – to redeem the preference shares through conversion based on the conversion formula included in its articles of association, the Tax Authorities wrote Unilever the following, among other things:

“Strictly speaking it is true that repurchase of the prefs after five years is not ruled out by the agreement from 4 February 1999 [the Ruling; investigators]. However, if Unilever NV wants to withdraw the prefs from the market through repurchase, according to the conversion formula included in its articles of association Unilever NV will owe the pref holders not more than the conversion value. Having established this, it is not clear to me why in this scenario Unilever NV would still pay the pref holders more than the conversion value.

If Unilever NV pays more than the conversion value, I believe this is in breach of the agreement dated 4 February 1999, as in that case Unilever NV pays the pref holders more than agreed upon with the Tax Authorities in that agreement.”

However, a letter from the Tax Authorities to Unilever dated 9 March 2006 (Annex IXb), written in reply to a letter from Unilever of 26 January 2006 (Annex IXa), seems to infer that the Tax Authorities changed their mind. The letter includes the following two passages:

“If, at the time of repurchase, the share price of the ordinary Unilever share would be such that the preference shareholders would receive less than the calculated value of the preference shares, then Unilever NV would not be able to repurchase the preference shares – without taxation consequences – for a price equal to the notional value of the preference shares”.

and

“You write (...) that Unilever NV was permitted to repurchase the preference shares at a price equal to their share price. This choice of words might be taken to mean that the Tax Authorities permitted such a choice. As a result of the market risk mentioned before which formed the basis for the agreements made in 1999, it was up to Unilever NV to choose whether or not it would repurchase the preference shares (at the share price prevailing at that time) after the end of the five-year period following the issue.”

If this passage should indeed be taken to mean that the Ruling left room for redemption by means of repurchase at the then prevailing share price of the preference shares, even if that is higher than the conversion value, this is in direct breach of the reasoning in the letter dated 24 September 2004.

The Tax Authorities' point of view as demonstrated by this letter means that in making the agreements the Tax Authorities were entitled to rely on the fact that Unilever would act as a rational market party and therefore in redeeming the preference shares after five years would opt for the redemption method that would be most advantageous for Unilever, which means that in choosing between repurchase at the share price (exceeding the conversion value) and conversion, Unilever would opt for conversion and

by failing to do so Unilever acted in breach of the undisputable spirit of the agreements made.

For the investigators, the change of view which appears from the letter of 9 March 2006 is particularly surprising because the Tax Authorities – as one may well assume – realised that the share price of the preference shares had included had a premium included in it by the market due to the hope that some in the market believed that the preference shares would be redeemed by payment of Euro 6.58, even if that price were to be above the conversion value, while the Tax Authorities, in the first passage quoted from the letter of 24 September 2004, expressly stated that such a redemption, if not justified by the share price of the ordinary Unilever share, would not be acceptable. By allowing repurchase at market value, even if that share price includes the expectation that events shall take place which the Tax Authorities deem unacceptable, the Tax Authorities render themselves implausible and they open up – when this view is made known on the market – the possibility of speculation in the preference shares with share prices being driven up in the direction of EUR 6.58.

To clarify this train of thought, the following: The market risk demanded by the Tax Authorities became relevant for the redemption value of the preference shares on 9 June 2004, being the first date (five years after the issue date) on which Unilever was entitled to repurchase these shares. It should be borne in mind that – presupposing that the market also assumes that Unilever will act as a rational market party regarding redemption of the preference shares – the share price of the preference shares will not exceed or will hardly exceed the conversion value, at any rate as from 9 June 2004. Only if the market allows for the possibility that Unilever will not act as a rational market party, could the share price of the preference shares be higher than the conversion value, because only in that case is the downside risk (namely the risk that Unilever will not repurchase but instead will convert) attached to a share price above the conversion value offset by an upside (namely the chance that Unilever repurchases at a price higher than the share price, possibly even at EUR 6.58). This upside infers elimination of the market risk and is consequently excluded by the condition stipulated by the Tax Authorities and accepted by Unilever that the market risk intrinsic to a stock dividend is attached to the preference shares.

In conclusion: apart from factors such as volatility and interest rate, the share price of the preference shares can only become higher than the conversion value in one case. This is if Unilever did not inform the market or did not inform the market with sufficient clarity that the Tax Authorities stipulated that the market risk intrinsic to a stock dividend would be attached to the preference shares as a condition for the tax-free issue of these shares and Unilever did not (adequately) point out to the capital market that in accepting this condition, Unilever obligated itself to pay no more than the conversion value in case of repurchase. Only in the case of Unilever having made it insufficiently clear, can the share price of the preference shares rise above the conversion value. How much above the conversion value in that case depends on the market's estimate of the assumed upside. When it would be made known on the market that the Tax Authorities considered repurchase at market value acceptable, then – in any case in theory – in a thin market, speculation could drive up the price of the preference share to EUR 6.58, after which, by repurchasing at market value, the repurchase could be carried out at EUR 6.58, while the Tax Authorities had expressly stated that it considered this to be unacceptable. After all, the Tax Authorities has stated that if the repurchase value was not justified by the price of the ordinary share, repurchasing at that value is in terms of taxation, unacceptable (please refer yet again to the first of the passages quoted above).

From the foregoing, the choice to be made by Unilever in 2004 between conversion and repurchase amounts to the following: In the case where Unilever, in 1999, correctly, did not offer any hope of repurchase for the amount of the cash dividend, irrespective of the share price indicated by the information provided, at the time of the redemption, the share price of the preference shares would not have risen above or only be barely above the conversion value and Unilever's choice for the holders of the preference shares would hence not be interesting, or barely interesting. If Unilever, in 1999, gave incorrect information, making the share price of the preference shares separate from the value which the market attributes to a Unilever share, but is partly based on a promise made by Unilever, interpreted as such, that in any case redemption would take place for an amount of the cash dividend, the repurchase for that higher share price and hence the elimination of the market risk inherent to stock dividend, would be deemed to have been excluded, and this directly conflicts with the character imposed by the Tax Authorities of a stock dividend with the share price fluctuations inherent to it.

Unilever's decision-making process regarding the information to be provided to the market about redemption of the preference share alternative

Before discussing Unilever's policy regarding the information to be provided to the market about redemption of the preference share alternative, the investigators refer to an aspect of this redemption that is closely related to the aspect of rational action mentioned above. In 1999, Unilever reserved the right to convert any preference shares still outstanding after 1 December 2004 in conformity with the conversion formula included in the articles of association. In the information Unilever provided to the market, Unilever clearly and repeatedly mentioned this right. By exercising this right in 2004 and by issuing the equivalent in ordinary shares calculated according to the conversion formula to the holders of the preference shares, Unilever discharged its obligations towards the holders of the preference shares. Should Unilever give a higher equivalent – however achieved – this would be done voluntarily and would make redemption more expensive than necessary for Unilever. Consequently, Unilever would not be acting rationally towards the market. However, such failure to act rationally towards the market would, according to Unilever, also constitute an unacceptable act under corporate law towards its other shareholders (other than the holders of the preference shares). The unacceptability consists of giving a voluntary premium after the event to a limited group of shareholders in addition to a special dividend distributed in 1999 in the form of preference shares or otherwise. Thus, also completely aside from the agreements made with the Tax Authorities, it was already established in 1999 that in 2004 the preference shares could not be redeemed at more than the conversion value. The investigators will come back to this later in this report. The point is already mentioned here to prevent what follows below from creating the impression that Unilever's information provided to the market regarding redemption of the preference shares allegedly only involved tax aspects.

The investigators will disregard Unilever's preparation of the information it had to provide regarding redemption of the preference shares to the extent that this preparation took place prior to the Ruling completing Unilever's discussions with the Tax Authorities on 4 February 1999. The prohibition from the Tax Authorities to guarantee the holders of the preference shares that redemption would take place at the amount or the value of the

cash dividend, irrespective of the conversion value, meant that the preparations made up to that time had to be revised and adjusted to this prohibition.

Unilever's internal documents regarding the information to be provided to the market on redemption of the preference shares inspected by the investigators do not mention (at least not unambiguously) Van der Bijl's understanding mentioned before that – except for a possible small room to manoeuvre – the preference shares could not be redeemed at EUR 6.58 as long as the share price of the ordinary shares would be below EUR 73.18. Nevertheless, this understanding is a decisive factor for the information to be provided regarding the redemption value of the preference shares and means that the only accurate, clear and complete information was – in short – that the preference shares would be withdrawn from the market five years after their issue against compensation of the conversion value, either through repurchase or through conversion. The fact that Unilever was sufficiently aware of this, let alone whether Unilever ever considered providing such straightforward information, does not appear from these documents. These documents rather show that Unilever focused on the question of how to proceed in light of the prohibition from the Tax Authorities to guarantee the holders of the preference shares that after five years they would receive compensation for their shares equal to the cash dividend.

Appendix A to a Memorandum to the Executive Committee dated 15 February 1999 – and thus dating from after the completion of the discussions with the Tax Authorities – shows that Unilever at that time still started from the possibility of payment of the notional value or even slightly more in case of repurchase, regardless of the market value and ignoring the demand of market risk imposed by the Tax Authorities. The Memorandum says the following regarding the costs connected to the preference share alternative:

“There are some administrative costs and we may have to go through a process of retiring them, perhaps offering two or more percentage points above the notional value to clear them out of the market”

and

“In the current circumstances, it is envisaged that we would not set out to convert, but try to retire the vast majority of the shares via a cash offer at slightly above the notional value”.

It is possible that these statements regarding the size of the repurchase value were made on the assumption that the share price of the ordinary Unilever shares would be above EUR 73.18 (and thus a conversion value of EUR 6.58), but this at any rate does not apply to the next quote. The following is stated regarding an example in which the price of the ordinary shares decreased in the next five years to approximately 80% of the conversion value at the time of the issue:

“In such a case we could offer to buy back at 100 as an alternative to conversion”.

However, in turn this is incompatible with the statements in the Memorandum under the heading “What were the concerns of the Dutch Tax Authorities?”:

“They insisted that the scrip holder must carry risk to get capital treatment. In this case the holder is exposed to a fall in the NV ordinary share price over the 5 years”.

One day later, on 16 February 1999, Van der Bijl wrote the following in a Jules memorandum drawn up by him and titled “How to deal with the tax aspects in our external communication” following the rejection by the Tax Authorities of “any element that would fix the value of the preference shares at 100% of the cash dividend”:

“There clearly is a conflict with our desire to be able to claim that we give those who have elected for the preference shares a value which is close to 100%. However, in communicating our structure externally we must resist the temptation to add elements or interpretations that are beyond the terms of the agreement with the Dutch fisc”

and, under the heading “Buy-back”:

“The agreement [with the Tax Authorities; investigators] allows us to state that we will not buy back the prefs within five years from issue. This is actually the only statement we can make on a future buy back, if any. It does leave room for the markets to assume that we may well make an offer to the then shareholders to buy back the prefs after five years have lapsed. What should certainly not be done is adding to this a statement about our expectation – or, even worse, our intention – to buy back after five years”.

Yet another day later, on 17 February 1999, Van der Bijl wrote a Jules memorandum entitled “Key message to banks on how to communicate the tax aspects”. First of all, Van der Bijl paid attention to the “buy back” and next to the “conversion”. Among other things, he stated the following regarding the “Buy Back” [emphasis present in the original]:

“Any statement must be avoided that creates the impression that a buy back will or is likely to take place after five years and through this a value of 100% will or is likely to be returned to the holders of the preference shares. (...)”

Van der Bijl noted the following regarding the “Conversion”, among other things:

“The question of whether the conversion, if any, will deliver 100% in the hands of the holders of the preference shares depends on the movement of Unilever NV’s share price over the period concerned. If banks ventilate the view that this is likely to result in a 100% return if a conversion were to take place, this is entirely based on their own assessment of the development in Unilever’s share price and this should be clearly expressed”.

Thus, Van der Bijl’s “key message to banks” was that in interpreting the tax aspects, the banks must explain that in case of conversion the question regarding whether the amount of the cash dividend will be compensated depends on the development of the share price of the ordinary Unilever share. This dependency is not specified for repurchase. As said before and as will be discussed below, Unilever expressed the expectation that by far the majority of the preference shares would be repurchased and

that conversion would only be used to “mop up” the remainder. In the words of Van der Bijl (in the memorandum dated 16 February 1999 mentioned above):

“We have drafted the announcement in such a way that close readers will conclude that after five years most likely we will first make an offer to buy back and subsequently convert the remaining outstanding prefs”.

Finally, a summarising two-page Memorandum to the Board to which the memoranda mentioned before had been attached as Annexes, and also dated 17 February 1999, the possibility of redemption through repurchase was no longer mentioned separately:

“To realise their value efficiently, they [the holders of the preference shares; investors] can sell their preference shares in the market or hold until the Company converts the preference shares into ordinary shares after 5 years”,

but this appears to be a matter of concise formulation rather than the adoption of a principal position. Meanwhile, time was running out because on 23 February 1999 the special dividend had to be announced and ABN AMRO Rothschild – called in by Unilever – was to give a presentation on the special dividend and the preference share alternative to the financial market.

If - in preparing the information it had to provide to the market - Unilever did not realise the inevitable fact that in 2004 redemption would take place at the conversion value listed at that time, this is an omission, in view of both the fact that Unilever – as must be expected from a company like Unilever – was aware of the requirement of good corporate governance to provide accurate and especially clear information and the fact that the agreements made with the Tax Authorities alone and, in addition, the impossibility of giving a limited group of shareholders a voluntary premium on a dividend alone, were already factors in 1999 which constituted this inevitability and which could hardly be overlooked.

The demands of good corporate governance and the information provided by Unilever to the market regarding the redemption of the preference share alternative

The issue of the preference shares as a choice dividend did not require a formal prospectus.

The proposal concerning the special dividend linked to the preference share alternative was on the agenda for the annual meeting to be held on 4 May 1999. Consequently, prior to – and subsequently during – this meeting, the shareholders had to have been or had to be informed accurately, completely and clearly regarding this alternative, and especially regarding redemption of this alternative. This information comprised the following:

- on 23 February 1999, Unilever issued a press report with an appendix, which included the following passage:

“For a period of five years following the issue, Unilever N.V. will not present any proposal to repurchase the preference shares. Unilever reserves the right to convert all preference shares in to ordinary shares at any time after the period of five years mentioned. Unilever N.V. expects to exercise this right if any preference shares are still outstanding after 1 December 2004. The maximum value of the preference shares upon conversion will be limited to the notional value.”

Except for the announcement that upon conversion the maximum value of the preference shares would be limited to the notional value, the press report and the appendix do not contain any indication regarding the redemption value of the preference shares.

Repurchase as an alternative to conversion is not mentioned in the press report or the appendix – at least not explicitly.

Based on the announcement of the expectation – which was constantly repeated in later information – that if any preference shares would remain outstanding after 1 December

2004, Unilever would exercise its conversion right with regard to these shares, it may be concluded that Unilever wanted to commit itself to this conversion in order to reassure the future holders of the preference shares that they would not be left with their securities. Winter (referred to on a number of occasions before) told the investigators that Unilever had obtained legal advice – obtained internally or externally; Winter did not recall this – which he believed was correct, to the effect that if Unilever would not convert the preference shares still outstanding as of 1 December 2004, this failure would be actionable. In other words, the phrase “if any preference shares are still outstanding after 1 December 2004”, gives the definite suggestion that prior to 1 December 2004 something must have happened as a result of which – at any rate the majority of – the preference shares will no longer be outstanding. This can only have been a repurchase and in this way the understanding is made implicitly, but no less clearly, that repurchase will be the ultimate redemption method. See the quote above from one of Van der Bijl’s memoranda: “We have drafted the announcement in such a way that close readers will conclude that after five years most likely we will first make an offer to buy back and subsequently convert the remaining outstanding prefs”.

- shortly after the press report, Unilever distributed a brochure entitled: “F 16 billion Special Dividend with Preference Share Alternative & Consolidation of the Ordinary Share Capital – Answers to some questions for shareholders of Unilever N.V.” Under the heading “What will Unilever do with the preference shares?” this brochure states the following: “We announced that we will not repurchase the preference shares within five years after issue and that we expect to exercise the right to convert the preference shares into ordinary shares if any preference shares are still outstanding after 1 December 2004” and under the heading “What can I do with the preference shares?” the following alternative is mentioned in addition to sale on the stock exchange: “(...) or wait until the five-year period has expired and see what Unilever will do with the preference shares at that time”. The words “see what Unilever will do with the preference shares at that time” – are suitable to create the incorrect impression that what Unilever will do makes a difference in the value or the amount that the holders of the preference shares will receive for their shares. In fact and as already explained above, it had already been established that Unilever did not have to “see” anything in 2004, except for the choice of redemption between repurchase and conversion. This choice is irrelevant

to the holders of the preference shares who opted to “wait until the five-year period has expired and see what Unilever will do with the preference shares at that time”.

- Then, within the scope of the preparations for the annual meeting to be held on 4 May 1999, Unilever issued an extensive Information Memorandum, dated 31 March 1999, thus published after the answers from the Secretary of State to the Dutch Lower House. This Memorandum mentions repurchase as a possible redemption method: “Repurchase of Preference Shares – The Company has agreed with the Dutch Tax Authorities that it will not repurchase the Preference Shares within five years of their issue”. This is all that the Memorandum mentions regarding repurchase. It is left up to the shareholders hoping for repurchase at the amount of the cash dividend to have learned of the answers from the Secretary of State and to draw their own conclusions based on these answers regarding the redemption value of the preference shares. Not a word is mentioned about the redemption value of the preference shares, which is particularly relevant to the valuation – and thus the price development – of these shares. The demand of market risk is not mentioned. This improperly encourages speculation regarding the redemption value - and in particular a redemption value equal to the cash dividend.

In addition to this information provided to its shareholders that will be given the choice between the cash dividend and the preference share alternative, in February 1999 Unilever organised road shows for the financial market. During these road shows, Unilever used sheets, number 12 of which states:

“In creating the preference shares [dividend], Unilever continually had to consider the tax consequences” (the text placed between [ ] was apparently left out in printing the sheet).

Sheet 13 reads:

“\* To prevent the preference shares from being taxed by the Dutch Tax Authorities upon issue, Unilever has undertaken not to repurchase the preference shares within the first five years

- \* After five years, Unilever can convert the preference shares into ordinary shares
- \* Unilever announced that it will exercise this right if any preference shares are still outstanding after 1 December 2004, i.e. after 5½ years
- \* Unilever cannot make any further commitments at this point for tax reasons.”

In as far as shown by the sheets, Unilever did not say a word about the redemption value after five years, just as in the press report, the brochure and the Information Memorandum. This redemption value was the only important factor on which the capital market was left in the dark. By explicitly including the sentence “Unilever cannot make any further commitments at this point for tax reasons” in the information provided to shareholders, Unilever created the impression that there were “tax reasons” for not saying anything “at this point” regarding the redemption value. This information from Unilever is incorrect. There is no tax reason whatsoever why the Tax Authorities could object to providing the information that the preference shares will be settled at the conversion value after five years. This information would only emphasize the market risk stipulated by the Tax Authorities as intrinsic to an ordinary stock dividend. Moreover, the submission of alleged tax reasons still serves to promote the assumption that upon repurchase there is room for something in addition to the conversion value mentioned by Unilever, although Unilever cannot make any commitment regarding this something in addition for tax reasons, at least “at this point”. This improperly encourages speculations regarding the redemption value – and in particular a redemption value equal to the cash dividend – even stronger than such speculation is encouraged in the brochure and the Information Memorandum.

- In addition to Unilever itself, ABN AMRO Rothschild also provided information to the market regarding the preference share alternative at Unilever’s instructions. The investigators have spoken with the three ABN AMRO officers, who according to the bank were most intimately involved in providing this information, namely J.A. de Ruyter, at the time Managing Director Equity Markets Netherlands, the aforementioned, Ms. D. de Jong, at the time Vice President Corporate Finance and (meanwhile former ABN AMRO officer) R. van Nieuwkoop. Their statements, (Annexes XA, Xb, XIa, XIb, and XII) which are similar regarding this point, show that – either of its own accord or upon

request – Unilever did not inform the bank how Unilever intended to redeem the preference shares after five years and did not show the bank the Ruling. Based on their discussions with the Unilever officers from whom they received the information required for the information to be provided by the bank, at any rate De Ruiter and Van Nieuwkoop were convinced that Unilever intended to repurchase the preference shares after five years at the amount of the cash dividend but that no guarantees regarding this point could be given to the market. De Ruiter told the investigators the following on this point:

“On the other hand, no guarantee could be given for repurchase at a price equal to the cash dividend as such a guarantee would eliminate the share price risk. What had to be done in the presentation of the preference shares can be summarised as follows: Unilever’s intention to repurchase after five years at the amount of the cash dividend had to be communicated, but not guaranteed.”

Winter contradicted the latter in his statement to the investigators. Van Nieuwkoop told the investigators the following:

“I knew that the Tax Authorities did not permit a commitment to repurchase at NLG 14.50. Thus, the communication to the shareholders could only enable the logical conclusion that Unilever intended to repurchase after five years at NLG 14.50. But this could not be stated explicitly.”

and

“With regard to Unilever’s ultimate decision to convert at an effectively lower value than NLG 14.50, I can only say that this decision is fully containing to everything for which I was called in at the time.”

In its presentations – in February and in March 1999, i.e. both before and after the answers from the Secretary of State – ABN AMRO Rothschild used sheets bearing Unilever’s name and logo. In contrast to the sheets used for the Unilever presentation, the ABN AMRO Rothschild sheets extensively discuss the question regarding the

redemption value – and especially the question regarding whether Unilever will pay the amount of the cash dividend. The investigators were shown two sets of sheets from the presentation held on 23 February 1999, which differ substantially on a number of essential points: one set is in Dutch (this is the set submitted in the proceedings before the Enterprise Chamber) and one set consists of English sheets, which were not entered into the proceedings which are currently appended to this report as Annex XIII. Both sets are dated 23 February 1999. In the presentation given on that day, the Dutch sheets were used; the English sheets were not used. Unilever told the investigators that it was unable to find out who prepared these English sheets or why the sheets were prepared. After reading the sheets, the investigators believe that the Dutch version is a translation/adaptation of the English version because in the Dutch version certain elements of the information has not been included and because in the Dutch sheets the presentation has been made simpler and more straightforward.

One distinctive difference is that the Dutch sheets are far more outspoken regarding the settlement of the redemption value of the preference shares. The English sheets explicitly state:

“ \* Every outstanding preference share will convert into [x] ordinary shares (or such lower number of ordinary shares as have a market value equal to the special cash dividend per share).

\* The value of the preference share upon conversion, is therefore equal to the special dividend per share (NLG xxx) if the price of the ordinary shares upon conversion is at least equal to the current price per ordinary share.

\* Only if the price of the ordinary share upon conversion is lower than the current price per ordinary share, will the value of the preference share upon conversion be lower than NLG xxx.”

and

“\* assuming holders of the preference shares receive the notional amount by 31 December 2004, the preference shares can be valued as a subordinated fixed income instrument with a maturity of 5 years.

The Dutch version, which – as said before – appears to be a translation and – for a number of points - an adaptation of the English version,

- the first point mentioned above is left out;
- the second point no longer includes the reservation of the (future) share price that has to be higher than the current share price. The Dutch version (sheet 12) simply states “Based on the previous page it seems likely that Unilever will pay NLG 14.50 (the notional value of the preference shares) before 1 December 2004” (emphasis present in the original);
- however, the Dutch version also adds: “However, no guarantees are given in this respect”;
- the Dutch version includes an almost literal translation of the fourth point: “Assuming holders of the preference shares receive the notional value (five years after issue), the preference shares can be valued as a subordinated fixed income instrument with a maturity of 5 years”.

The substantiation of the underlined statement included above can be found in the two sheets preceding sheet 12, which sheets read as follows:

Sheet 10: “For the purpose of valuation, the preference share can be considered to consist of two separate instruments:

- Ordinary preference share
- Conversion option held by Unilever

Valuation of the conversion option based on the option theory assumes that Unilever will only convert if the conversion option is “in the money” (i.e. if the share price after five years is lower than a minimum amount to be announced) [this minimum is EUR 73.18; investigators].

“However, the preference share is intended as an alternative to the cash dividend and not as a financing instrument. Therefore, it does not seem obvious that the purpose of the conversion option is to be able to issue shares cheaply when the share price falls below the minimum mentioned above.”

Sheet 11: “Thus, interpretation of Unilever’s intention regarding the conversion option is crucial to the valuation:

- Unilever NV expects to exercise this right (...)
- if any preference shares are still outstanding [after 1 December 2004; added by the investigators]
- In the first five years following issue, Unilever will not repurchase the preference shares [emphasis present in the original text]”.

These sheets are followed by sheet 12 giving the conclusion mentioned above. Since this conclusion explicitly states that a likely distribution of EUR 6.58 is involved before 1 December 2004 [emphasis added by the investigators], this can be inferred to mean that the statement on sheet 12 means "Investors do not have to worry about the question regarding whether or not after 1 December 2004 the conversion option is “in the money”, because – for the greater part of the preference shares - Unilever will never be faced with conversion. It is Unilever’s intention to repurchase the majority of the preference shares before 1 December 2004 at EUR 6.58, although no guarantees can be given in this respect. (The investors were told that this guarantee could not be given in Unilever’s presentation, in which sheet 13 – after stating Unilever’s intention to convert any preference shares still outstanding after 1 December 2004 – stated: “Unilever cannot make any further commitments at this point for tax reasons”).

For the sake of completeness, it should be mentioned here that the information provided by the sheets, of March 1999, agrees with that set forth on the Dutch sheets of 23 February 1999. The sheets of March 1999 (on sheet 10) do state that if the share price is lower than EUR 73.20, the conversion value per preference share will amount to less than EUR 6.58. On sheet 12, this information is laid aside by the statement:

“\* such a conversion or repurchase that the holders receive less than NLG 14.50 (EUR 6.58) per preference share would conflict with the intention of Unilever to offer an equal alternative for cash dividend”

and on sheet 14:

“ \* Unilever can fulfill its intention to offer an equal alternative for cash dividend”

and on sheet 15:

“\* Do you believe that Unilever can deliver on its intention to offer an equal alternative for cash dividend?

- If so, then even with the lowest rate of Income Tax, the preference share is, tax wise, to be preferred above the cash dividend when the dividend exemption has already been used to the full.

and once again sheet 14:

“ \* Assuming that the holders of preference share will receive NLG 14,50 (five years after issue), the preference share may be valued as a subordinated loan with a tenor of five years

- In that case, the value of the preference share will be between NLG 13 and 14 (EUR 5.90 and 6.35), with an assumed “spread” of 0 to 1 percentage point:

Based on the above it can be concluded that the Dutch sheets, of 23 February 1999 – compared to the English sheets of the same date – provide additional support for the expectation that Unilever will pay EUR 6.58 under all circumstances.

There is another difference between the Dutch and English sheets, which supports this conclusion.

The English sheets state that the preference share alternative (“the stock dividend”) will not result in any dilution of the earnings per share for the holders of the ordinary shares who opted for the cash dividend.

The first part of sheet 6 of the English set reads:

“Criterion: stock dividend is non-dilutive for shareholders electing for the cash dividend

- Preference dividend equal to net return on retained excess cash (no dilution of EPS)".

This statement is presented in far greater detail on sheet 8 of the Dutch set:

"Stock dividend is non-dilutive for shareholders electing for the cash dividend

- The Company will put out any cash that is not distributed as a result of opting for the stock dividend on the money-market.
- The net return on this cash more or less equals the preference dividend (65% EURIBOR)
- Thus, the EPS on ordinary shares is not influenced by the extent to which shareholders opt for the stock dividend".

Both presentations show that no profit dilution will take place. The proceeds equal the costs so that on balance the influence is nil. The difference is that the English sheet does not specify the precise financing method. However, it seems justified to assume that this sheet infers that the "excess cash" will be included in Unilever's total financing, where on balance this will result in a reduction of the bank debt, in turn resulting in an interest saving after taxes of (some) 65% EURIBOR. The – very special – financing method is explicitly mentioned on the Dutch sheet, namely placing the total amount of undistributed cash on deposit. This financing method results in an increase in balance sheet total (of no less than EUR 1,400 million, as was shown subsequently). However, a financier acting rationally would never opt for such an increase in balance sheet total unless there would be a special reason to do so.

Therefore, some analysts read a special message from Unilever in the financing method announced on sheet 8. This message was that the undistributed cash was no longer considered to be Unilever's cash but the preference shareholders' cash, that this cash would be used to repurchase the preference shares in the second half of 2004 and that this repurchase would take place at EUR 6.58, as this was the amount determined in 1999 for which the preference shareholders, according to Tabaksblat (please refer to the quotation a few lines further) were entitled to.

That the cash which was not disbursed by Unilever could be deemed to be funds which no longer belonging to Unilever but rather to the preference shareholders, was expressly the subject of information given by Tabaksblat at the Meeting of Shareholders:

“The repayment as such will provide you, as a shareholder, holder of depositary receipts, with nothing extra to that which you do not yet have today. But due to that repayment, the balance sheet of Unilever will become a more efficient so that the shareholder value of Unilever will increase” (Minutes, page 53)

and

“What we are now doing is returning capital to the shareholder” (Minutes, page 56).

and

“What we are giving back is money which belongs to you and which we do not need”. (Minutes, page 56).

The fact that the message came across like this appears from the following press reports, among other things:

Beleggersbelangen (Investor Interests) 1 August 2003, page 26:

“The reasons for not expecting conversion can be summed up as follows:

- (...)
- The amount of EUR 1.4 billion was placed in a separate account four years ago and was not used for the company’s financing requirements.
- (...)

Haagse Effecten February 2004, page 2:

“The Haagse Effectenkantoor expects Unilever to repurchase the prefs at EUR 6.58 (...). Upon the introduction of the prefs, Unilever reserved the redemption amount of EUR 1.4 billion. It is true that this amount has been placed with a number of banks and in the past years, the 6-month EURIBOR received on this amount has been directly passed on to

the preference share holders after settlement of company tax. Another important argument is (...).”

Newsflash Amsterdams Effectenkantoor March 26, 2003, page 2:

“About one third of the NV shareholders opted for the CP shares leading to the issuance of 211.5 million 1999 CP shares. Unilever deposited the counter value of 211.5 million CP shares x EUR 6.53 = EUR 1,382 billion on a bank account against 6 month EURIBOR for the payment of the bi-annual preference dividend. This amount is reported under “cash and investments” in the balance sheet that stands at EUR 3.4 billion and the CP shares fall under the share capital that stands at EUR 5.87 billion in the preliminary 2002 results. So both lines in the balance sheet are inflated by about EUR 1.4 billion since 1999”.

Effect number 23, 9 November 2002:

“The amount of the notional value, 211.5 million x EUR 6.58, which Unilever implicitly owes to preference shareholders forms an implicit part of Unilever’s cash maintained with banks at 6-month EURIBOR. For this reason, the compensation on the prefs equals this interest rate minus 35% company tax that Unilever has to pay on the interest income involved”.

Unilever’s financial statements for the period 1999-2003 show that Unilever never placed EUR 1.4 billion on deposit to repurchase the preference shares in 2004. However, this does not alter the fact that the analysts quoted and possibly others as well were convinced of the fact that this had been done and from this in part derived an argument to conclude that repurchase would take place at EUR 6.58. Unilever was familiar with the sheets of ABN AMRO Rothschild. Winter had attended the presentation by ABN AMRO Rothschild on 23 February 1999. Unilever allowed the misunderstanding regarding the placement on deposit to continue. On this point too, the presentation on the sheets of March 1999 agrees with those on the Dutch sheets of 23 February 1999. Sheet 9 of the presentation from March 1999 again says: “The Company will invest any cash that is not distributed as a result of opting for the stock dividend on the money-market”. Later, when the comments from the analysts based on this announcement were published, Unilever still did not make any statement refuting this announcement by ABN AMRO Rothschild.

The following may be concluded based on the above:

- that the Dutch sheets provided additional support for the expectation that Unilever would pay EUR 6.58 under all circumstances;
- that the information material was prepared very carelessly, was handled carelessly and that the supervision by both Unilever and ABN AMRO was completely inadequate.

A sheet from the presentation given by ABN AMRO Rothschild in March reads:

- Unilever offers an alternative to the cash dividend, especially on account of the large group of Dutch private shareholders
- Key question: Do you believe that Unilever can and will ensure that this alternative is as equivalent as possible? [emphasis present in the original text]
- If so, the valuation is a simple present value calculation with an outcome of NLG 13 to NLG 14, depending on the interest rate and the perceived credit risk”

and on one of the next sheets:

- In its press report, Unilever makes the following announcements:
- “In the first five years following the issue, Unilever will not repurchase the preference shares”
- “Unilever N.V. expects to exercise this ... (conversion right, AAB)”
- “... if any preference shares are still outstanding ...”
- This can be inferred to mean that Unilever expects to repurchase the preference shares between 9 June 2004 and 1 December 2004 or to convert the preference shares as of 1 December 2004” [emphasis present in the original text]

and on the next sheet, under “Value realised upon exit”:

“General

- Conversion or repurchase such that the holders receive less than NLG 14.50 per preference share would be in breach of Unilever's intention to offer an equivalent alternative to the cash dividend.

#### Repurchase

- apart from the consideration above, there are no formal conditions for the size of an offer made by Unilever for the preference shares

#### Conversion

- to the extent that the holders do not wish to accept such an offer, the preference shares can be cancelled by Unilever through conversion into ordinary shares”

De Ruiter told the investigators the following regarding these sheets:

“The sheets that ABN AMRO Rothschild used in 1999 for its presentations were approved in advance by Unilever. Moreover, Unilever attended several of these presentations and never expressed any criticism. You tell me that these sheets create the impression that Unilever was exploring the limits of what the Tax Authorities would still accept without taking the position that the share price risk condition was breached. This impression is correct.”

In comments on the draft report on her hearing held on 6 October 2015, Ms. De Jong of the ABN AMRO informed the investigators in writing:

“Unilever is a professional organization which would certainly have informed us if, in our presentation of February 1999, had created incorrect expectations”.

Winter told the investigators the following:

“I did not see the sheets that ABN AMRO Rothschild used in 1999 for its presentations in advance; nor do I believe that other Unilever officers saw them. I attended the ABN AMRO Rothschild presentation on 23 February 1999. I gave a Unilever presentation on that day. I was not present at other presentations from

ABN AMRO Rothschild. The ABN AMRO Rothschild presentation on 23 February 1999 did not present any picture that differed fundamentally from what Unilever wanted to convey and therefore I did not criticise that presentation. At the time, based on the share price development of the ordinary Unilever shares for a series of years, we firmly believed that this price would be at least 73.18 in 2004 and thus that the conversion value would be NLG 14.50. It was in this light that I evaluated the presentation by ABN AMRO Rothschild.”

Winter’s last comment apparently refers to the fact mentioned before in this report that if the share price of the ordinary share would have risen to the cap after five years, the redemption value would be EUR 6.58, both for conversion and for repurchase. However, there is nothing in the sheets to indicate that the presentation must be considered to be based on the point of departure that at the time of redemption the share price of the ordinary share will have risen to at least EUR 73.18 – and the conversion value thus to EUR 6.58. On the contrary, the presentation evidently assumes that this will not be the case. If this would be the case, this would establish that the preference shares at any rate will realise the amount of the cash dividend and the “Key question: Do you believe that Unilever can and will ensure that this alternative is as equivalent as possible?” raised in the presentation will have lost all relevance.

- On 4 May 1999, Unilever’s annual meeting was held; thus on a date on which the Secretary of State had already given his answers to the Dutch Lower House and, as may be assumed, Unilever was aware of these answers. In this meeting, the settlement of the preference share alternative was discussed at length. Chairman Tabaksblat stated:

“The explanation mentions the possibility of exchange after five years. Naturally, at that time we will review what the best option is for all parties involved, but a conversion possibility does exist.”

and in reply to a question regarding whether after five years “to keep open the possibility to repurchase preference shares or exchanging these for shares?”, Tabaksblat stated: “Both, that is what it says. You have understood this correctly”. These statements by Tabaksblat can only be understood if it is assumed that at the time, Tabaksblat was

unfamiliar with the answer from the Secretary of State to the Dutch Lower House and did not realise that after five years there would be nothing to be reviewed on the point of the redemption value and the choice kept open between repurchase and conversion explicitly pointed out to the shareholders would be irrelevant to the holders of the preference shares, because in both cases they will be paid the conversion value.

In 1999 it was uncertain whether in 2004 Unilever could opt for repurchase as the redemption method. People were anticipating a legislative change of the tax regime that would enable a company to repurchase its own shares tax-free. In addition, the general meeting of shareholders had to authorise the Board to repurchase shares. Unilever believed that it was unlikely that this authorisation would be given for a repurchase above the conversion value ("It goes without saying how the general meeting of shareholders ultimately would have voted" [Defence, page 15]). In its information, Unilever did not pay any attention to the either of the aspects referred to in this paragraph.

Conclusion concerning the demands of good corporate governance and the information to be provided by Unilever regarding the redemption of the preference shares

The point of departure in this part of the report is the requirement of good corporate governance to the effect that an issuer that places securities on the market which will be traded and for which a price will be formed on the stock market, must provide the market with correct, complete and clear information regarding these securities.

In a case like the one at hand, which involves securities that will be withdrawn from the market by the issuer after some time, one of the important requirements involved is the redemption. This requirement does not have to be complied with only if and to the extent that serious interests of the issuer and/or of the parties investing in these securities oppose to providing correct, complete and clear information. In that case, the issuer must inform the market of these weighty reasons.

In connection with this requirement of good corporate governance, the investigators note that the Ruling does not say a word about the amount of the repurchase price. However, Van der Bijl's statement to the investigators – as quoted above – shows that, despite the

silence of the Ruling on this point, Unilever, in the person of Van der Bijl, realised that only if the conversion value would be equal to – or at least almost equal to – the amount of the cash dividend owing to a price increase of the ordinary share, would Unilever succeed in its goal of offering the holders of the preference shares a purchase price equal to – or at least not much lower than – the cash dividend after five years. The Tax Authorities' position in question was confirmed after the event in the Tax Authorities' letters to Unilever dated 24 September 2004 and 9 March 2006 mentioned above. The investigators refer to the passages quoted from these letters earlier in this report.

Thus, with regard to the agreements that Unilever made with the Tax Authorities regarding the maximum redemption value to be paid, there is hardly any difference between the interpretations that the Tax Authorities and Unilever, respectively, give to these agreements. According to the Tax Authorities, the maximum is the conversion value, at least the share price of the preference shares and according to Unilever, the maximum is the conversion value plus possibly a small premium. The share price of the preference shares at the time of redemption does not play any role, because – as said before and assuming that Unilever provided correct, complete and clear information to the market and the fact that Unilever is expected to act as a rational market party – from the time when repurchase is permitted after five years, this price will (virtually) be equal to the share price of the ordinary shares and thus to the conversion value. This position is also confirmed by the conclusion in a “Discussion Paper” dated 1 April 2004, prepared by Unilever's staff and intended to serve as the basis for the decision-making process of the Board:

“Buy-back does not seem to be a valid alternative if the price of the Prefs is above the Conversion Value (i.e. buy back for EUR 6.58 or at the current market price of the Prefs)”.

In an earlier part of this report, the investigators already observed that the valuation of the preference shares by the market can only be different and the share price of the preference shares can only exceed the conversion value based on the share price of the ordinary shares, if and to the extent that the market takes into account the possibility that Unilever will not act as a rational market party and therefore will not choose the redemption method that involves the least costs for Unilever.

Unilever had valid reasons to assume that the market – if not expecting, in any case – will allow for the possibility that Unilever will not opt for the redemption method involving the lowest costs for Unilever. In view of the purpose of the special dividend as expressed by Unilever, namely disposing of excess cash and in view of the fact that Unilever offered the preference shares as an alternative form of payment of the cash dividend, in due course to be redeemed, it is obvious that what the market has in mind is a possible redemption against payment of the amount of the cash dividend and that the price of the preference shares will be established based on the level of expectation that this may actually materialise.

If this possibility does not exist, Unilever had to ensure that – from the point of view of good corporate governance and to protect its shareholders – the information it would provide to the market regarding redemption of the preference shares did not leave any room for the incorrect assumption that this possibility would exist, which assumption would also affect the share price. In preparing the information to be provided to the market at the presentation of the preference share alternative, Unilever was thus faced with the crucial fact mentioned above affecting its information regarding redemption of the alternative of the unacceptability of a voluntary dividend premium to a limited group of shareholders and, in addition, by the question that was just as crucial to its information regarding whether the agreements Unilever made with the Tax Authorities permitted Unilever (if this option was chosen) to pay the amount of the cash dividend independent of the conversion value at that time, or any higher value or amount than the conversion value at all when redeeming the preference shares. Unilever could not ignore this question from the point of view of good corporate governance. Based on the answer to be given by Unilever, it then had to determine its policy regarding the question of its intentions regarding redemption of the preference shares, which was expected to come up in the market if there was any uncertainty about how Unilever was going to redeem the preference shares. As said before, Unilever could have known in 1999 and ought to have known that the agreements of themselves made with the Tax Authorities, and furthermore the bonus character, did not permit Unilever (if this option was chosen) to pay the amount of the cash dividend independent of the conversion value at that time or any higher value or amount than the conversion value at all, possibly plus a small premium, in redeeming the preference shares. The investigators point out at this stage

that A. Burgmans, (Annex XIV), Tabaksblat's successor as Unilever's CEO, explicitly confirmed this answer in the shareholders' meeting held on 12 May 2004, where he defended Unilever's decision to convert at a share price that had decreased substantially since 1999, which decision had meanwhile been announced:

"We cannot simply remove the market risk of the preference shares by in any case paying a higher price [than the conversion value; investigators] for the preference shares. In that case, there will be a real chance that Unilever receives an additional claim from the Tax Authorities for the amount that was not deducted for dividend tax in 1999 from the preference shares. This involves some hundreds of millions of Euros. These would also have to be paid by the ordinary shareholders and in case of a tax claim, the entire structure of the preference shares would be thwarted."

and

"However, now that the price of the ordinary share no longer permits this, conversion is the right decision".

[Minutes, page 21]

and

"... if you are familiar with the agreements with the Tax Authorities, if you carefully read the information memorandum, you can only arrive at one conclusion and this conclusion is that Unilever must do this [conversion; investigators]"

and

"but the issue is that (...) and the agreement we made with the Tax Authorities deprive us of the possibility to say at some point: we will make a gesture"

[minutes, page 34].

Although it is true that Burgmans stated the following regarding Unilever's decision to convert:

“In the end, we chose conversion. This was not an obligation, but a choice we made”

[Minutes, page 41],

but that only applies to the choice between the redemption technical aspects of conversion as opposed to repurchase, which, for the holders of preference shares was not an interesting choice, and which Burgmans does not appear to having been discussing.

The investigators wish to quote in this connection from the first statement made to them by Van der Bijl (as this was rewritten by him)

“In 1999, having conferred with the Tax Authorities, the question as to whether 6.58 could be paid when either the share price of preference shares or the conversion rate would be lower, was not explicitly covered. (...) In later discussions with the Tax Authorities, greater detail was given to the situation in which a lower amount than 6.58 would apply and the Tax Authorities clearly indicated that in such a case repurchase could only take place at that lower price. The reaction from the Tax Authorities was that purchase at a higher rate than the actual share price would constitute an infringement of the arrangements which had been made”.

In the proceedings before the Enterprise Chamber, Unilever presented the point of view expressed by Burgmans even more emphatically, if possible:

“Even if the chance of success with the Tax Authorities had been less than estimated, it would still have been irresponsible to take this risk [of an additional tax claim and a fine; investigators]”. [Defence, page 14]

In the proceedings before the Enterprise Chamber, Unilever gave the impression that repurchase at a higher price than the conversion value had not been an alternative to

conversion that had been ruled out from the start, but that conversion was the result of a consideration made for the first time in 2004 of the tax risk attached to repurchase at a price higher than the conversion value on the one hand, and the disappointment for the holders of the preference shares attached to conversion, on the other hand. In reality, any “risk” in the sense of uncertainty about the reaction of the Tax Authorities should Unilever offer a repurchase price for the preference shares that was higher than their conversion value, or at least higher than their share price, ignoring the nature of an ordinary stock dividend demanded by the Tax Authorities was never involved. Should Unilever fail to comply with the market risk condition and pay more than the conversion value or the share price of the preference shares in 2004, the Tax Authorities undoubtedly would consider the tax-free issue of the preference shares to be forfeited and would possibly levy a prohibitive additional income tax assessment, possibly increased by a fine as well, upon those who had been assured by Unilever in 1999 that they would receive the preference shares tax free. In this context, the investigators once more quote Van der Bijl:

“I also knew that the structure with preference shares could only qualify as a tax-free distribution for the Tax Authorities if this was comparable to an ordinary stock dividend”

and Burgmans:

“... if you are familiar with the agreements with the Tax Authorities, if you carefully read the information memorandum, you can only arrive at one conclusion and this conclusion is that Unilever must do this”.

The investigators have not learned of and have not been shown any facts or circumstances on the grounds of which it may be assumed, pursuant to which the tax risk deemed irresponsible by Unilever in 2004 was not yet known or respectively, acceptance of which could still be deemed responsible in 1999. Thus, with regard to the redemption value of the preference shares, the investigators conclude based on the agreements Unilever made with the Tax Authorities alone that it must already have been clear to Unilever in 1999 – and not as late as 2004 – that in the absence of alternatives in 2004 there would be nothing to consider and that the preference shares would be redeemed for the conversion value – and nothing more than the conversion value.

In the information Unilever provided to the market regarding redemption of the preference shares, from the point of view of corporate governance and to protect its shareholders, Unilever thus had to ensure that this information did not leave any room for – let alone promote the creation of – the illusion that if desired, Unilever could redeem at more than the conversion value.

The investigators now return to the unacceptability of a voluntary dividend premium to a limited group of shareholders. Apart from the question of whether the Tax Authorities permitted Unilever to offer the holders of the preference share an amount higher than the conversion value upon redemption, in preparing its information for the market Unilever was faced by the just as crucial a question from the point of view of good corporate governance and protection of its shareholders regarding whether this was also a possibility under corporate law. In 2004, Unilever answered this question in the negative pursuant to a line of reasoning to the effect that the preference share alternative was explicitly presented as an alternative to the cash dividend and not as an advance on the cash dividend in the sense that depending on Unilever's share price development, after five years an additional payment might follow on the preference shares. In 2004, Unilever also submitted that in view of the fact that Unilever would have discharged its obligations to the holders of the preference shares by means of conversion, any amount exceeding the conversion value that Unilever would pay upon repurchase would be a voluntary dividend premium to a limited group of shareholders and would therefore be out of the question under corporate law, even assuming that the meeting of shareholders would be prepared to give the authorisation required for this premium, which Unilever deemed highly unlikely in the proceedings before the Enterprise Chamber (already quoted in part):

“It goes without saying how the general meeting of shareholders ultimately would have voted” and a Board, acting responsibly, of a large, multi-national company would be wise not to make any proposals to the Meeting about which at heart it knows that the drawbacks and the risks are indefensible” [Defence, page 15]).

Thus, in 2004 there was nothing to consider between premium and conversion. Also according to Burgmans in the annual meeting on 12 May 2004:

“A higher bid [higher than the conversion value; investigators], for example at a higher share price of the preference shares or for EUR 6.58, the amount of the cash dividend in 1999, would mean that Unilever would make a completely voluntary payment to preference shareholders”

and

“In 1999, our ordinary shareholders included the conversion possibility in the articles of association. In so doing, they did not envisage providing for a voluntary dividend payment to preference shareholders upon repurchase at a price exceeding the conversion price” [Minutes, page 20]

and

“it is inappropriate to make a gift to one group of shareholders at the expense of another group of shareholders” [Minutes, page 33].

It is not the task of the investigators to express an opinion regarding whether or not this point of view adopted by Unilever in 2004 is tenable under corporate law. Thus, the investigators can only observe that Unilever adopted this point of view in 2004. The investigators have not learned of and have not been shown any facts or circumstances inferring that the situation in 2004 was changed compared to the situation in 1999 in the sense that in 1999 it could still be deemed acceptable that one group of shareholders received a gift by way of a voluntary, additional dividend at the expense of another group of shareholders or that it may be assumed that, when the ordinary shareholders included the conversion possibility in the articles of association, they intended to provide the voluntary dividend payment to the preference shareholders, which takes place in case of repurchase above the conversion price or that the result of the vote referred to in Unilever’s defence was less easy to predict in 1999 than this was in 2004. Thus, it was already established in 1999 that in 2004 there would be nothing to consider about premium or conversion and that conversion would be the only option. The investigators add to this that, even assuming that a realistic consideration between premium and conversion could be made in 2004, this consideration also could have – and therefore

should have – been made in 1999 in order to properly inform the shareholders faced by the preference share alternative in compliance with the requirements of good corporate governance.

Thus, with regard to the consequences of the conversion option for the redemption value of the preference shares, the investigators arrive at the same conclusion as regarding the consequences of the price risk demanded by the Tax Authorities, namely that it must have been clear to Unilever as early as in 1999 that the preference shares could not be redeemed for more than the conversion value.

Contrary to the investigators, Unilever takes the position that in 2004 there were clearly real considerations to be made regarding different redemption methods. The Member of the Unilever Board, R.H.P. Markham (Annex XV), explained this point of view in a letter to the investigators dated 28 April 2006. By enclosing this letter with their report as Annex XVI, the investigators let Unilever express itself on this point. Markham fails to acknowledge that, given the demand imposed of market risk, the then share prices of ordinary and preference shares, repurchase at EUR 6,58 was excluded. Moreover, it is also no acknowledged that unchanged rolling over, given the information expressly provided in 1999 that the preference shares were not intended as a financing instrument and that their listing as of 1 December 2004 would be terminated on the stock exchange, also excluded rolling over. Rolling over requires more advantageous conditions for holders (which amount to eliminating, in retrospect, the risk of share price fluctuations of the preference shares with the coupon determined upon issue upon their having been issued) has the same insuperable objections as applied to every other form of non-obligatory additional payment made to preference shareholders. There remains the process of weighing up repurchase as opposed to conversion. Given the circumstance that both options provide the holders with (almost) the same amount for their shares, that process cannot have included any consideration being given to the interests of the holders of the preference shares, but solely consideration being given to the technical aspects of redemption, which are considerations which do not affect shareholders. Those are not the interests which are referred to in the information given in 1999 with the aforementioned quotation: “see, or review” what Unilever will do after five years with the preference shares “which is the most interesting for everyone”. The letter written by Markham was therefore not able to change the opinions of the investigators. Based on

the consideration mentioned in this report, they maintain their conclusion that it was foreseeable that Unilever would not have to consider anything in 2004 regarding the redemption method for the preference shares.

Winter told the investigators that he inferred from the agreements made with the Tax Authorities that one of the conditions the Tax Authorities stipulated was that Unilever would only take a decision regarding redemption of the preference shares at the end of the five-year period. Winter, literally said the following:

“Even assuming that in 1999 Unilever – in breach of the prohibition by the Tax Authorities – had decided how the preference share alternative would be redeemed in 2004 (...)”

and

“The Tax Authorities only allowed Unilever to decide what to do with the prefs in 2004 and Unilever complied with this”.

Even apart from the fact that the alleged prohibition is unlikely – the Tax Authorities were not apparently concerned about taking a decision behind closed doors, but about the implementation of this decision to the extent that this implementation would eliminate the market risk stipulated by the Tax Authorities – the prohibition, if imposed, would lack significance. As a result of the condition that the preference shares – just like an ordinary stock dividend – had to be subject to a market risk, it was established that redemption could only take place against payment of the conversion value. Unilever no longer had to take any decision regarding choosing a specific redemption value, in either 1999 or 2004. The decision to redeem at the conversion value was already contained in the acceptance of the condition stipulated by the Tax Authorities that the preference shares had to be subject to a market risk.

The conclusion from the above is that good corporate governance in 1999 dictated to Unilever that no information could be provided that leaves any room for the impression – let alone that supports this impression – that redemption against a higher amount or value than the conversion value was a possibility. This principle becomes more

meaningful to the extent that Unilever had reasons to allow for the possibility that this impression would be gained in the market.

None of the internal Unilever documents inspected by the investigators have shown the investigators that the Unilever officers – except for J. Haars, at the time Group Treasurer and member of the Steering Committee to which the Jules Project Group reported – involved in the structuring and presentation of the preference share alternative realised that redemption could only take place against payment of the conversion value. Haars stated the following to the investigators, as already quoted:

“To me personally it has always been clear that in 2004, the preference shareholders would never receive more than the conversion value calculated on the basis of the formula included for this purpose in Unilever’s articles of association, with a maximum of EUR 6.58, also in case of repurchase”.

However, the question can be posed whether Haars’ point of view was not somewhat coloured by the developments in 2004. Until his departure from Unilever in 2002, as far as the investigators were able to verify, he did not explicitly express this point of view within Unilever or to the banks. A memorandum that he, Winter and Van der Bijl prepared for Markham in October 2001, states the following regarding a “second scenario in which the ordinary share price is lower than EUR 73.18 at the time” (the time of conversion):

“In the second scenario the market price should be lower than EUR 6.58 and the Dutch fisc will probably not allow us to buy back at a price higher than the market value or at maximum the value at conversion, if this would be higher”.

In light of a meeting discussed further down in this report, which Van der Bijl had in June of 2000 with the Tax Authorities and during which Van der Bijl was given to understand that the Tax Authorities did not permit Unilever “to buy back at a price higher than the market value or at maximum the value at conversion, if this would be higher”, this did not involve a probability but a certainty, as he reported in the e-mail that he sent to Winter and Haars regarding this meeting, the investigators fail to understand the qualification “probably” in the quote included above.

Conclusions regarding Unilever's information provided to the market regarding the preference share alternative and the requirements of good corporate governance

As follows from the consequences and the conditions of the Tax Authorities' position mentioned above that the preference shares had to have a market risk attached to them, and from the consequences of the conversion option, all that correct, complete and clear information to the market regarding redemption of the preference shares constitutes is the simple announcement that the preference shares will be redeemed from the market after five years against payment of the conversion value, either in cash or – at Unilever's option – in ordinary Unilever shares. The agreements made with the Tax Authorities do not prevent such an announcement; on the contrary, this announcement is the clearest possible description of the nature of an ordinary stock dividend together with the intrinsic market risk as demanded by the Tax Authorities in the clearest possible way. The interests of the shareholders faced by Unilever with the choice between the cash dividend and the stock dividend would have been very much served by this simple announcement, as in that case these shareholders – and the subsequent purchasers – would know where they stand with respect to the redemption of the preference shares. In the absence of any interest in not making this announcement, Unilever thus had to provide correct, complete and clear information to the market regarding redemption of the preference shares and therefore had to clearly communicate that redemption would take place at the conversion value. Without this information, it was impossible for the Unilever shareholders – and for the financial market in general – to form a well-founded opinion on the value of the securities that Unilever was placing in the market. What it comes down to is that by failing to communicate at the time of the issue that when the preference shares would be taken from the market after five years, this would be done against payment of the conversion value and by leaving the holders of the preference shares in the dark regarding the way the redemption value of their securities was established and by letting them wait for what Unilever would ultimately decide regarding establishing this value and by not informing them of the criteria based on which Unilever would take this decision – other than the criterion of what in due course, according to Unilever, “will be the best option for all parties involved”, which did not offer anything to go on – Unilever gave the preference shares the nature of a gamble with regard to their redemption value. The criteria based on which Unilever in due course would see fit to

redeem can be many, leading to any redemption value between EUR 6.58 and the, possibly (much) lower, conversion value. In as far as the investigators were able to verify, this character of the preference shares did not make Unilever wonder whether placing such securities under such conditions, on the market could be prejudicial to its reputation as a company that takes its shareholders seriously.

Not only was the statement that the preference shares will be redeemed at the conversion value not included in Unilever's information to the market, but the information provided explicitly but wrongfully suggested that Unilever's choice at the end of five years made based on the possibilities kept open until that time would make a difference for the holders of the preference shares. As said before, in the "Answers to some Questions" brochure mentioned above, the answer to the question "What can I do with the preference shares?" was "... or wait until the five-year period has expired and see what Unilever will do with the preference shares at that time". And Tabaksblat, as quoted before, said "review what the most interesting option is for all parties involved". By communicating this information, Unilever created the incorrect and predictable share price-deforming impression in the market that upon redemption Unilever would be free, if desired, to pay a higher value than the conversion value by offering an amount equal to the amount of the cash dividend upon repurchase, regardless of the conversion value. To avoid any misunderstanding among those who examined the documents in the proceedings before the Enterprise Chamber, the investigators refer to the distinction between their assumption meant here that Unilever, if desired, can opt for repurchase at an amount higher than the conversion value and the assumption at issue in the proceedings before the Enterprise Chamber. In those proceedings, the issue is the assumption that Unilever might possibly opt for repurchase at an amount higher than the conversion value. This report deals with the incorrect, preliminary assumption that Unilever, if desired, would be free to repurchase at an amount higher than the conversion value. The inaccuracy of the assumption that Unilever would repurchase at an amount higher than the conversion value – whatever may be said of this assumption – already results from the inaccuracy of this preliminary assumption.

By stating in its road shows that in structuring the preference share alternative Unilever continually had to take the tax aspects into account and by adding to a number of facts regarding the preference shares: "Unilever cannot make any further commitments at this

point for tax reasons”, Unilever gave the clear impression that as part of structuring the preference share alternative, regarding redemption it had to take the requirements from the Tax Authorities into account and furthermore that its silence on the point of the redemption value of the preference shares was done for tax reasons. It is true that in structuring the preference share alternative, Unilever had to take the requirements of the Tax Authorities into account, first of all the price risk requirement. But it is not true that for tax reasons Unilever was unable to commit to the conversion value as the only possible redemption value of the preference shares. As said before, by stating – and thus committing to the fact – that the redemption value would equal the conversion value, the price risk demanded by the Tax Authorities would be expressed in the clearest possible form.

Both in the proceedings before the Enterprise Chamber and in interviews conducted with Unilever officers by the investigators, Unilever pointed out the prudence it had to observe in providing information to the market in order to prevent the Tax Authorities from being able to reproach Unilever for the fact that this information in any respect was incompatible with the agreements made between Unilever and the Tax Authorities and would take the position that as a result, these agreements – and thus the favourable fiscal treatment of the preference shares – would no longer apply. This prudence required according to Unilever suggests that a conflict may be involved between, on the one hand, the requirement of good corporate governance to provide correct, clear and complete information and, on the other hand, the restrictions imposed by the Tax Authorities on the providing of this information. This suggestion is incorrect. In as far as the investigators were able to verify, the agreements made with the Tax Authorities do not contain anything that would qualify as being secret or at least more or less confidential between the Tax Authorities and Unilever. An internal Unilever briefing, “External Q & A for Jules”, dated 19 February 1999 and consisting of questions expected from the market and the answers to be given to these questions, includes the question: “Did you get a special ruling from the Dutch fisc?”, and the answer:

“No, we have not obtained any special ruling from the Dutch fisc. We did, however, pre-discuss our intended structure with them and they have confirmed that, in accordance with current Dutch tax law, the receipt of the preference

shares by individuals resident for tax purposes in the Netherlands will not be subject to personal income tax.”

Thus, the investigators fail to see that the agreements made with the Tax Authorities – as these were “in accordance with current Dutch tax law” – would prohibit Unilever from fully complying with the requirements of good corporate governance with regard to the information to be provided regarding the preference share alternative and, conversely, the requirements of good corporate governance did not prohibit Unilever from fully complying with the agreements made with the Tax Authorities on this point.

Unilever’s argument that the agreements made prevented Unilever from communicating that the amount of the cash dividend would be offered after five years, independent of the conversion value listed at that time, is correct in itself. But this inability was not the result of any restriction that the Tax Authorities imposed on Unilever regarding what Unilever was entitled to communicate with regard to the agreements it had made with the Tax Authorities, but was the result of the fact that good corporate governance prohibited Unilever from making a commitment that it possibly – i.e. depending on the share price of the ordinary share – could not live up to (i.e. in case the share price of the ordinary shares would be below EUR 73.18 at the time of redemption) on account of the agreements made with the Tax Authorities.

Thus, whatever can be said of Unilever’s reasons for not mentioning that the redemption value would equal the conversion value in the presentation of the preference share alternative, this cannot have involved tax reasons.

If Unilever had frankly stated in 1999 that the preference shares will yield their conversion value after five years or at least pointed out that the preference shares had the normal share price fluctuation attached to them inherent to stock dividend, and left it at that, then any lack of clarity in the market regarding redemption of the preference shares would have been ruled out without jeopardising the tax-free issue of the preference shares and these inquiry proceedings would not have been conducted. Winter told the investigators the following on this point:

“However, with the benefit of hindsight, in 1999 Unilever could have made by the simple announcement that the prefs would deliver the conversion value in 2004. All I can say about this is that with all internal and external expertise called in, Unilever came up with the information that we communicated in 1999.”

The reasons given by Unilever for not communicating to the market that the preference shares would be redeemed at the conversion value at the time of redemption

Burgmans told the investigators that Unilever believed it had three valid arguments for not simply including in its information regarding redemption of the preference shares that these shares would be redeemed at their conversion value at the time of redemption. The first of these three arguments means that no company – thus including Unilever – wants to commit in advance to something that will only become an issue in five years. Five years is a comparatively long period for a company and it is not inconceivable that after five years, a company will find itself in a position in which a decision to be made is viewed differently than it would have been if this decision had to be made 5 years ago. In itself it is completely understandable, of course, that in 1999, under the circumstances prevailing at that time, Unilever was hesitant when it came to committing itself to a policy that would have to be implemented in 2004, under the circumstances prevailing at that time. But this argument loses sight of the fact that both based on the acceptance of the requirement of a market risk stipulated by the Tax Authorities and based on the impossibility of giving a limited group of shareholders a premium on a dividend distribution, committing to redemption at the conversion value was the only safe redemption option, as was shown in 2004.

The second argument mentioned by Burgmans for why Unilever believed that it did not have to communicate in so many words that redemption would take place at the conversion value is that Unilever already expressed this sufficiently in its information, even without saying this in so many words. As appears from this report, the investigators believe that this argument is not convincing. If Unilever believed that it was preferable not to communicate in words which would exclude any misunderstanding, the real situation, namely redemption at the conversion value, Unilever should have remained silent about the redemption instead of providing information that left it unclear what the real situation was and offering non-existing tax reasons as the purpose for this.

The third argument results from the fact that the Tax Authorities had not objected to the conversion formula in the articles of association. Unilever was very satisfied with the fact that the Tax Authorities could agree to a conversion formula that started from a very small difference between the price of the ordinary share as listed at the time and EUR 73.18. If Unilever would now briefly and to the point communicate that after five years the redemption value would equal the conversion value determined by the conversion formula, Unilever feared that the importance of the conversion formula would be explicitly pointed out to the Tax Authorities, which might have the highly undesirable result for Unilever that the Tax Authorities would still come back to the point of the conversion formula and require a higher target price than EUR 73.18, as a result of which the preference shareholders would run a larger risk. In its discussions with the Tax Authorities, Unilever had obtained an excellent result and the less conspicuous Unilever would handle this result, the less reason Unilever would offer the Tax Authorities to reconsider this upon reflection.

The investigators believe that this risk mentioned by Unilever that the Tax Authorities would believe upon reflection that they had been too easy in stipulating their conditions and therefore would want to reconsider the agreements made is unlikely. In the Netherlands, in choosing between a cash dividend and a stock dividend, it is common practice – accepted by the Tax Authorities – that at the time of payment, the value of the stock dividend is (very) close to the value of the cash dividend. Seen in this light, Unilever's preference share alternative already had a comparatively fairly large difference between the two forms of dividend, on the one hand as a result of the low coupon of the preference shares and, on the other hand, as a result of a not insubstantial difference between the current share price of the ordinary Unilever share and EUR 73.18. In view of this fairly large difference in value compared to the current practice of stock dividends, the Tax Authorities had no reason to make this point the subject of further discussion in talks on the details of the conditions.

In a letter dated 21 April 2006 (Annex XII), Mr. Eisma – on behalf of Unilever – dismissed the investigators' argument described above. Mr. Eisma wrote:

“In the discussion with the Tax Authorities in February 1999, the issue was not the value of the dividend in shares compared to the cash dividend. It is correct that it was common practice in the Netherlands to fix the value of an optional dividend in shares as close to the amount of the cash dividend as possible, measured on the basis of the share price of the shares at a time around the declaration of the choice dividend. However, this was not a hard and fast rule and the investigators will undoubtedly recall times and examples where companies declared a choice dividend in which the value of the shares to be received was substantially lower than the amount of the cash dividend. All this was not or hardly relevant in fiscal terms. If the nominal amount of the shares to be issued can be charged against the fiscally acknowledged share premium reserve, the choice dividend in shares is free of income and dividend tax. If the fiscally acknowledged share premium reserve does not exist or is insufficient, the nominal amount of the shares to be issued is involved in the tax assessment. The latter was involved at Unilever and resulted in a small settlement with the Tax Authorities, which did not involve the (preference) shareholders. The (share) value of the shares to be issued and the value ratio between dividend in shares and dividend in cash is not or hardly relevant to the Tax Authorities in case of an “ordinary” choice dividend. However, in the discussion in the case of Unilever in February 1999, an entirely different issue was at stake. During the discussion with the Tax Authorities, Unilever gradually understood that the Tax Authorities did not want to co-operate in a structure that in the judgement of the Tax Authorities essentially involved a deferred payment of the cash dividend. In addition, it was clear that this was a very sensitive political issue. On the other hand, to the extent possible Unilever wanted to ensure that redemption of the shares issued by way of stock dividend could be realised in due course. You have seen that the structure with a put option for the holders of preference shares was unacceptable to the Tax Authorities. You have also seen that the Tax Authorities found it unacceptable to allow an entitlement to dividend on the preference shares to be changed after a certain period, so that their “market value” could be brought at or near the notional value. Within this scope, at least according to Unilever’s understanding, the willingness of the Tax Authorities to settle for a conversion structure and a conversion price with a relatively low trigger of EUR 73.18 could be called accommodating. Had Unilever insisted at

the time on further improvement of the conditions, which would have given the holders of preference shares more guarantees on balance, Unilever's estimate at that time was that it was not inconceivable that the Tax Authorities would either have demanded a higher trigger or would have insisted on a lower number of scrips (which would have come down to the same thing). In view of the interest of the case and the fact that Unilever in any case had to make a public announcement on 23 February 1999, it would have been unwise for Unilever to put the consent obtained from the Tax Authorities at risk by asking for new guarantees. At the least, this could have resulted in delays in a schedule that was already tight; moreover refusal by the Tax Authorities to co-operate in advance was not ruled out."

In the quoted passage, Unilever distinguishes between the value of the dividend in shares compared to the cash dividend upon the issue of the preference shares on the one hand and the value of the preference shares in relation to the cash dividend upon redemption of the preference shares on the other. (With regard to the latter, Unilever points out that the Tax Authorities did not want to co-operate in a structure that would essentially involve a deferred payment of the cash dividend.)

In Unilever's line of reasoning, the two relations mentioned are separate subjects. After discussing the relation between the value ratio of the dividend in shares and the cash dividend upon issue of the preference shares, Mr. Eisma wrote: "However, in the discussion in the case of Unilever in February 1999, an entirely different issue was at stake". He then discussed the redemption value (upon redemption of the preference shares) in relation to the cash dividend.

Mr. Eisma wrote: "Had Unilever insisted at the time on further improvement of the conditions, which would have given the holders of preference shares more guarantees on balance, (...) it was not inconceivable that the Tax Authorities (...) would have demanded a higher trigger" (higher than EUR 73.18 as earlier agreed upon).

This separation of the initial value and redemption value implicitly implemented by Unilever here is unacceptable. A discussion regarding the initial value in relation to the cash dividend is not "completely different from" a discussion on the redemption value in

relation to this dividend. In both cases, the contents of the conversion formula determine this relation and this formula is the same in both cases. The following is submitted to clarify this:

At the start of the term of the preference shares in June 1999, the interested investor could calculate that the conversion value of a preference share amounted to EUR 6.02 at the average share prices of the ordinary Unilever share of EUR 66.83 that prevailed in that month. This was a value that was substantially lower than the amount of the cash dividend (EUR 6.58). This lower value in combination with the low coupon that applied to the preference shares during the five years that would expire until the time of redemption signified a substantial gap between the value of the stock dividend calculated in this way and the cash dividend upon issue of the preference shares. Nobody, not even the Tax Authorities, would be able to conclude from this that the stock dividend – apart from the tax effect – was very attractive compared to the cash dividend. Thus, in light of the practice also acknowledged by Unilever that the value of the stock dividend and the cash dividend are usually close, there was no reason for the Tax Authorities to contemplate a different content for the conversion formula. Nor did this reason exist when subsequently looking at the redemption value at which the preference shares would be redeemed in 2004. If the price of the ordinary Unilever share would still – or again – be at EUR 66.83 at that time, the holders of the preference shares naturally would still be entitled to EUR 6.02. If the price would have risen to EUR 73.18 or higher, a value of EUR 6.58 would be received. That this allegedly might suggest that – upon repurchase – this “would involve a deferred payment of the cash dividend” is an incorrect conclusion. In the period June 1999 to December 2004, the preference shareholder would have run a price risk for more than five years with all sorts of possible developments in the price of the ordinary share and thus in the related conversion value during this period - developments that would clearly demonstrate that the link between the redemption value and the original cash dividend had been completely severed immediately upon issue. The Tax Authorities also understood this very well, as appears from the letter already quoted from sent to Unilever dated 9 March 2006. In that letter, the Tax Authorities wrote: “Precisely by introducing the preference shares (bonus shares) and the market risk attached to them, from 1999 there was however no connection any longer between any repurchase price for the preference share and the amount of the special dividend paid out in cash”.

Mr. Eisma, on behalf of Unilever, says that it feared the risk that the Tax Authorities would have demanded a higher trigger than EUR 73.18. A higher trigger than EUR 73.18 would have meant a different conversion formula that – at a specific share price level – would have resulted in a lower conversion value. As a result, upon issue of the preference shares an (even) bigger gap between the cash dividend and the dividend in shares would occur. By stating: “The (share) value of the shares to be issued and the value ratio between dividend in shares and dividend in cash is not or hardly relevant to the Tax Authorities in case of an “ordinary” optional dividend”, Unilever denies the existence of the risk that it mentioned earlier. If the ratio between the value of the shares to be issued and the cash dividend is hardly relevant to the Tax Authorities upon issue, why would the Tax Authorities make an issue of this in 2004 – after a price risk of five years, which shows that the link with the cash dividend was completely severed?

Moreover, Unilever gives the impression that it assumed that the Tax Authorities arrived at a decision in 1999 about the conversion formula without having given thorough consideration to the consequences which the conversion formula agreed would have for redeeming the preference shares, and thereafter, when Unilever asked for a further confirmation of the redemption method determined in that conversion formula, Unilever then came to the conclusion that the redemption method was too advantageous for Unilever and for that reason considered itself no longer bound by the arrangements made. The investigators do not share this assessment of the approach supposedly taken by the Tax Authorities, which in their eyes is naïve. The investigators on the contrary, assumed in their investigation that the Tax Authorities, certainly when it comes to such an important case as this one is, in which such very large sums are at stake and about which questions were even raised in the Lower House, would act carefully and thoroughly when reviewing the fiscal possibilities and finally in deciding on the choice of the conversion formula would have reached that decision after considering the matter and not only when asked for further confirmation, realize what is going on exactly, and then returns to previously made arrangements.

Therefore, the investigators believe that Unilever did not submit any valid arguments as the reason for not asking the Tax Authorities for a decision on the redemption value of

the preference shares, namely assuming apparently an unrealistic approach on the part of the Tax Authorities, now invoked a danger which does not exist.

Unilever's policy to only take a decision regarding the redemption at the end of the five-year period during which the preference shares would be outstanding

The decision that Unilever in fact took in February/May 1999 was to not yet take a decision regarding redemption of the preference shares in 2004, but to keep all options open regarding this redemption (see the statement that Tabaksblat made in the annual meeting of 1999 regarding reviewing the best option for all parties involved). However, this decision to decide nothing was a shot in the dark. As observed before in this report, there was nothing to decide regarding the redemption in 1999 for two reasons. (The arrangements made with the Tax Authorities and the bonus character.)

Except that the decision to take no decision was a shot in the dark, Unilever's policy of postponing the decision – which in fact had already been determined – regarding the redemption had harmful consequences for the information to be provided to the capital market. First of all, the postponement meant that at the staff level at which the decision-making process by the Board was prepared within Unilever there was no longer any need to arrive at unambiguous, final recommendations regarding how to ultimately structure the redemption of the preference shares. The line of reasoning in this respect was never fully worked out and was left undecided. The top management within Unilever did not feel the need to nevertheless arrive at a conclusion, if only a provisional one. This unfinished decision-making process regarding redemption meant that in its communication to the outside world, Unilever had to restrict itself to the texts that Unilever had used in its presentations in February and March of 1999. Those texts, which were expressed in that which was presented from March 2002 to March 2004 under the heading "EURO 0.05 cumulative preference shares Unilever N.V. (funds code 38870) on the website of Unilever:

"These preference shares are issued in the light of the special dividend paid on 9 June 1999 of EUR 6,58 (NLG 14,50) per ordinary share (or depositary receipt of each ordinary share) and are quoted on Euronext, Amsterdam. This quotation shall terminate on 31 December 2004.

Holders of ordinary shares or depository receipts for ordinary shares in the capital of Unilever could at that time opt for taxed payment in cash or untaxed payment in the form of cumulative preference shares.

The preference shares have a pre-determined calculated value of EUR 6.58 which equals the special per share dividend. The cumulative preference dividend is paid out every half year (9 June and 9 December) and amounts to 65% of EURIBOR on the notional value.

Unilever has agreed with the Dutch Tax Authorities that the preference shares shall not be repurchased within 5 years after issue (9 June 2004).

From 5 years after the issue of the preference share, hence from 9 June 2004, the Board of Unilever may decide to convert\* from EUR 6,53 of the notional value (EUR 6,58) the preference shares into new ordinary share. At the time of the issue of the preference shares, the Board of Unilever stated it expected to decide on conversion to the extent that after 1 December 2004, preference shares are still outstanding.

\* Conversion shall take place (... brief review of the conversion formula....)

After conversion, the preference share may be withdrawn under repayment of the then applicable notional value, which shall amount to no more than EUR 0.05. In brief, this means that with share price ("P") of EUR 73,18 or higher, on balance, a maximum value may be received of EUR 6,58 (EUR 6.53 + EUR 0.05, remaining calculated value). A lower share price ("P") shall, given the fact that maximum 10 scrips per preference share may be obtained, on balance mean receiving a lower value. For example, a share price of EUR 60, will, on balance, mean receiving a value of EUR 5.40".

and in the explanatory passage in Unilever's Annual Accounts for the years 1999 through 2003:

“After five years shall have expired after the issue of the Preference Shares, the Board may decide to convert, NLG 14.40 of the Notional Value of the Preference Shares into New Ordinary Shares. The Board expects to exercise this right to the extent there are still outstanding Preference Shares after 1 December 2004. The Notional Value shall, after conversion, be accordingly reduced. After conversion, in compliance with the stipulations of the law, the Preference Shares may be withdrawn under repayment of the Notional Value after conversion. The Company has agreed with the Tax Authorities that is shall not repurchase the Preference Shares within five years after issue.”

N.B. In this text the relevant differences are not referred to in the various Annual Accounts.

Unilever took the view that it had to stringently adhere to these texts. These texts were the only thing that had been recorded. Unilever consistently referred to these texts in the period 1999 to early 2004, without adding or detracting anything.

A second and even more important consequence of postponing a decision regarding redemption was that both Unilever’s staff officers involved in the preference share alternative and the individuals who took part in the project on the part of ABN AMRO Rothschild formed varying opinions regarding aspects of the ultimate redemption. These opinions had their effects on the specific recommendations made by ABN AMRO Rothschild, publicly or otherwise.

The fact that the opinions differed appears from the following:

- Van der Bijl was originally of the opinion that there was room to manoeuvre in fiscal terms for repurchasing above the conversion value, possibly up to a maximum of 10%.
- The Questions & Answers present an example where the following is submitted in case of a price decrease resulting in a conversion value that is 20% below the notional value of 100: “In such a case we could offer to buy back at 100 as an alternative to conversion”.
- The English sheets made for the presentation on 23 February 1999 do not leave any room to deviate from the conversion value should this value be lower than the notional

value. As said before, Haars told the investigators that he was of this opinion from the outset.

- The Dutch sheets for the presentation of 23 February 1999 no longer make any reservation regarding low share prices, but state that upon repurchase the notional value is likely to be paid, although no guarantees are given in this respect.
- The sheets used in the presentation of March 1999 state that if the holders of the preference shares receive less than the notional value upon repurchase or conversion, this would be in breach of Unilever's intention to offer an equivalent alternative to the cash dividend. Unilever can live up to this intention, but it is not certain if Unilever will do this.

Unilever was unable to integrate these different opinions because the discussion regarding redemption had been postponed until 2004. However, this was insufficient to satisfy the capital market as this market was left with a blind spot regarding the bandwidth between the notional value and the conversion value; the market was looking for indications as to which of these two opinions would be chosen.

Burgmans confirmed to the investigators that Unilever's information provided to the capital market was most certainly correct and that by far the majority of the investors and analysts knew exactly where they stood and what they were entitled to, namely to a stock dividend that went up and down with the share price of the ordinary Unilever shares and which would be lower than EUR 6.58 if the share price was below EUR 73.18. According to Burgmans, only a small minority felt that Unilever had created higher expectations by and thanks to the information provided by Unilever.

The investigators do not share Burgmans' opinion.

Van der Bijl concisely represented Unilever's approach adopted in providing information to the capital market in his memorandum quoted before dated 16 February 1999 titled "How to deal with the tax aspects in our external communication". In this memorandum he wrote, as quoted before:

“We have drafted the announcement in such a way that close readers will conclude that after five years most likely we will first make an offer to buy back and subsequently convert the remaining outstanding prefs”.

It is true that Unilever did make the announcement in this way, however leaving the question regarding the value that Unilever would offer in case of repurchase unanswered. This was not a question in case of conversion because it could be assumed that conversion would take place based on the conversion formula included in the articles of association. But, as said before, the question is left open for the case of repurchase and following the announcement “drafted in such a way that close readers will conclude that after five years most likely we will first make an offer to buy back and subsequently convert the remaining outstanding prefs” without mentioning the amount or value of the offer, the sheet ends with the statement “Unilever cannot make any further commitments at this point for tax reasons”.

Since the repurchase price was the only relevant factor left open in the announcement, it was obvious to conclude that the tax reasons that prevented Unilever at that time to commit itself involved the repurchase price. The same can be concluded from the warning given by Van der Bijl in his already referred to “Key message to banks on how to communicate the tax aspects” dated 17 February 1999. This warning implied that regarding repurchase the banks should avoid giving the impression that 100% of the cash dividend will be paid upon repurchase or even that this would be likely. But the fact that a 100% payment would be completely out of the question with a low share price of the ordinary shares was not mentioned. With regard to conversion, Van der Bijl did point out the fact that the redemption value was linked to the share price of the ordinary shares and stated that this redemption value might be lower than 100%:

“Any statement must be avoided that creates the impression that a buy-back will or is likely to take place after five years and through this a value of 100% will or is likely to be returned to the holders of the preference shares.”

But regarding the conversion:

“The question whether the conversion, if any, will deliver 100% in the hands of the holders of preference shares depends on the movement of Unilever NV's share price over the period concerned”.

Apparently there are no tax reasons for not committing to the redemption value of the preference shares in the case of conversion. The only conclusion that the capital market can make is that the tax reasons involved the repurchase price.

The presentations held by ABN AMRO Rothschild in February and March of 1999 complied with the directions given by Van der Bijl that no certainty could be given concerning the revenue to be generated by the redemption of the preference shares. The information provided in those presentations was aimed – without making this explicit – at making it clear to those listening that investors should keep in mind the possibility – but not the certainty – that Unilever would pay EU 6.58 even if the share price were to be below EUR 73,20. When giving this message, the statements on the sheets of ABN AMRO Rothschild remained within the instructions issued by Van der Bijl in his already referred to memo “Key message to banks on how to communicate tax aspects”, dated 17 February 1999. Both presentations of ABN AMRO Rothschild begin

With the statement that stock dividend in the form of preference shares will be offered to the shareholders as an alternative to the cash super dividend and that Unilever reserves the right to convert these preference shares into ordinary shares five years after the date of issue. ABN AMRO Rothschild could not suffice with this statement because Unilever (in its own presentation, on sheet 13) made additional statements, namely:

- that Unilever had bound itself in respect of the Tax Authorities not to repurchase the preference shares during the first five years after issue;
- that Unilever would make use of the conversion right if, after 1 December 2004, preference shares were still outstanding.

ABN AMRO Rothschild also had to include these two statements on its sheets.

As appears from the already quoted passage from the “Key message to banks” (“We have drafted the announcement in such a way that close readers will conclude (...)”), according to Van der Bijl, those statements were aimed at making it clear to the capital

markets that Unilever expected it would first make an offer to repurchase the preference shares and the remainder, still outstanding as of 1 December 2004, would then be converted. Unilever appears not to have wanted to make that explicit but people in the know on the capital market would be clear that was the intention. Thereafter, on sheet 13, Unilever made a further, additional statement. After the notice that the remainder would be converted reference is made to:

“ \* Unilever is unable to commit itself to any more at this time for tax reasons”.

Investors were confronted with the question due to this statement as to what a good reader would have to conclude from it. As Unilever had referred in previous notices to the “repurchase” of the preference shares, but had said nothing about the price at which that repurchase would be made and had also not referred to any events which would “bind” Unilever, it was not illogical that investors would read the latter statement to the effect that Unilever was unable at that time to commit itself to a repurchase price. The conversion formula, with the price risk it entailed, would therefore continue to apply. But when the final phase was reached, a deviation could be made from that formula. Unilever may then bind itself to pay another price, and, given the intentions of Unilever to pay a dividend of EUR 6.58, that other price would be EUR 6.58. Winter has stated to the investigators that the statement “bind itself” meant “could not say any more than was stated because of the Tax Authorities” and that the interpretation given by analysts that : “there was more, but that more could not be said” was incorrect. If this view taken by Winter is correct, that the use of language made by Unilever is at the very least unfortunate. If Unilever want to communicate that which Winter claims was the intention, then Unilever could have sufficed with the statement “This is all we have arranged with the Tax Authorities”. Unilever could of course have said nothing. But by stating: for taxation reasons, Unilever is unable to say anything more at present: Unilever indicated that there was something about which it could not clarify, at the time at which it made that statement but that it would be able to later on (if this latter was not the case, that statement ought to have been refrained from) and that the reasons for this were taxation related, that is: reasons in the fiscal aspects of the matter itself. That “for taxation reasons” a statement had to made that nothing more had been arranged with the Tax Authorities than stated – the interpretation given by Winter – seems implausible to the investigators. It is certainly implausible that a well informed person on the capital market

ought to have understood the statement in the manner in which Winter claims it was intended.

It has appeared to the investigators that Unilever, was cautious to the extent it gave information to the market, in that the text of the aforementioned press release and the Information Memorandum, was presented by it in advance to the Tax Authorities to make sure those texts contained nothing that the Tax Authorities could not reconcile with the arrangements made. The Tax Authorities had no objection to those texts. Unilever seem to have seen this fiat granted by the Tax Authorities as a part of the arrangements it made with the Tax Authorities and did so in the sense of that those arrangements not only concerned the tax treatment to be applied but also concerned the information to be provided by Unilever to the market and required Unilever to say nothing more than that which had been seen and agreed to by the Tax Authorities, at least Unilever thought it for the safety's sake desirable to apply that interpretation of the arrangements made. Their investigation did not provide the investigators with any connections for the correctness or even the probability of this interpretation. In particular, it may not be seen that the Tax Authorities would have an interest or would in some other manner wish that Unilever failed to disclose the market risk, demanded by the Tax Authorities, to the market. But even if that interpretation were to be plausible, this would not detract from the statement that "Unilever may not bind itself to any more at this moment for taxation reasons", certainly when that statement is made in the light of and as one of the closing comments to information provided about aspects of the tax treatment which is to apply to the preference shares, that statement does not lend itself to any other explanation than that, as already submitted, it concerns that taxation treatment itself.

The conclusion of the investigators is therefore that, if ABN AMRO Rothschild and other investment analysts derived the aforementioned consequence from the additional statements made by Unilever, which is not illogical, and if those consequences are incorrect, according to Unilever, Unilever only has itself to blame from those incorrect conclusions having been drawn. Unilever should have formulated its intentions more clearly. From the three statements referred to in the foregoing, indicated with a \*, the presentation made by ABN AMRO Rothschild of 23 February 1999 concludes that Unilever will not ever get round to conversion for the majority of the preference shares

because it will probably repurchase these shares before 1 December 2004 at the notional value of EUR 6.58. However, no guarantees are given in this respect. The ABN AMRO Rothschild presentation from March 1999 raises the key question regarding whether Unilever can and will offer an “equivalent” alternative to the cash dividend in the form of the preference share. A diagram is displayed showing that if the share price is less than EUR 73.20, the conversion value for each preference share is less than EUR 6.53. This is followed by the statement:

“conversion or repurchase such that the holders would receive less than EUR 6.58 for each preference share would be in breach of Unilever’s intention to offer an equivalent alternative to the cash dividend”.

Which in turn is followed by:

“Unilever can live up to its intention to offer an equivalent alternative to the cash dividend”

and

“Do you believe that Unilever will live up to its intention to offer an equivalent alternative to the cash dividend?”. “If so (...) the preference share (...) is preferable over the cash dividend”. (underlining in the original)

The passages quoted show that in its presentations, ABN AMRO Rothschild did not confine itself to the simple observation that this involved a stock dividend with a redemption value equal to the conversion value in conformance with the conversion formula. The reason that this was not sufficient is that Unilever made further announcements indicating that Unilever expected to repurchase the majority of the preference shares before 1 December 2004 at a price that Unilever could not commit to in 1999 for tax reasons, but the possibility that this might amount to EUR 6.58 was not ruled out. Since the further announcements by Unilever and especially the announcement that Unilever could make no further commitments at this point for tax reasons should be considered as unnecessary announcements if redemption of the preference shares would take place in conformity with the conversion formula, it was

obvious to construe these further announcements as an indication for the fact that EUR 6.58 might possibly be paid; although Unilever – in the person of Van der Bijl – had explicitly pointed out that no guarantees could be provided in this respect. The design of the preference shares was the cause of this, according to De Ruiter of ABN AMRO. He stated to the investigators that”:

“Also the fact that a “below market” dividend payment was to be paid by Unilever on the Prefs showed that Unilever only functioned as a temporary deposit holder for its retail investors who for taxation reasons did not wish to receive any special dividend. If Unilever would have communicated that it would redeem the shares at all time at conversion value, a “below market” dividend payment would not have been very obvious and communications could indeed have been considerably simpler”.

The investigators believe that it is understandable that ABN AMRO Rothschild interpreted the further announcements made by Unilever in this way and conformed its information to this interpretation. Also in part because the investment analyst Witteveen of stockbrokers Kempen, mentioned in the decision of the Enterprise Chamber, came to the same interpretation in August 1999, independent of ABN AMRO Rothschild. Witteveen told the investigators that in preparing his memorandum of August 1999 – intended as investment advice to institutional investors – referred to in the decision, he only used the Information Memorandum as the basis and that he had no knowledge of the sheets of ABN AMRO Rothschild of 23 February or March 1999. Witteveen also interpreted the further announcements by Unilever in the Information Memorandum in the way indicated and made the same conclusions from these statements as ABN AMRO Rothschild. (Before publishing his memorandum, Witteveen submitted the memorandum to Winter. This will be discussed below.)

Some investors and analysts will have followed the point of view of ABN AMRO Rothschild and Witteveen. Others will have doubted whether the Tax Authorities would have given Unilever the freedom to deviate from the stock dividend concept to such an extent that upon redemption Unilever would be allowed to pay more than the value of the stock. Others will possibly also have taken the same angle of approach as ABN AMRO Rothschild, but when ultimately weighing up the pros and cons, have doubted whether

Unilever would ultimately prove to be prepared to pay more for the repurchase of the preference shares than it had to pay pursuant to its Articles of Association. Of this latter category, some examples follow below, in which the preference of the analysts is always in favour of conversion.

Lehman Brothers (18 November 2003), “We believe that that Unilever should redeem the preference stock at the lowest possible price to the company; at present this means conversion into ordinary shares”.

F. van Lanschot (19 June 2003), “We consider a conversion to be more likely than a full cash payment.” But on 12 February 2004, Van Lanschot was of a different opinion: “Strong net debt reduction changes our view on cumpref. We believe the risk that Unilever decided not to pay the cumpref has become smaller. If Unilever decide to pay the cumpref in cash, which amounts to EUR 1.4 billion in total (at a price of EUR 6.58; investigators) the company’s net debt would reach 11 billion, within reach of the company’s target level. This finally strengthen our belief that Unilever will pay its cumpref in cash, which therefore may still be an attractive option for investors.”

Amsterdams Effectenkantoor (26 March 2003, “Although we tend to agree that the CP shareholder are entitled to the EUR 1.4 billion held in deposit (please refer to the announcement discussed previously in this report on placement on deposit, on the sheets of ABN AMRO Rothschild) and that it is the decent thing to do, there are several strong arguments for the Board of Directors of Unilever against the expected buy back” And even further, the conclusion that “there are some strong and defensible arguments for the Board to convert the CP shares and raise equity at minimum costs. However, for those that are convinced and are willing to speculate that the Board of Directors of Unilever will do the right thing, the possible total return of more than 27% by June 9, 2004 must look very tempting indeed”.

What is noticeable in the arguments used by these investment analysts is like ABN AMRO Rothschild and Witteveen they keep open the possibility of a buy back at EUR 6.58 even if the share price of the ordinary Unilever share is lower than EUR 73.18 and weigh up the chance that Unilever will repurchase at EUR 6.58 in cash, or convert. Only in their final weighing up are the arguments in favour of conversions given greater

weight. This indicates that these analysts also did not deduce the correct conclusions from the information provided by Unilever. They did not realize that repurchase at EUR 6.58 – given the taxation treatment of the preference shares as stock dividend – was not possible; despite the lists which according to Burgmans were shown with the information containing conversion values which would apply if the share price of the ordinary Unilever share were to be below EUR 73.18. Those analysts were also of the opinions that Unilever could repurchase, without any taxation problems, at EUR 6.58 but that it was more advantageous for Unilever and/or would lead to a better equity position, if conversions were to take place, as appears from the following quotations from their various reports:

Lehman Brothers: “(...) Unilever should redeem the preference stock at the lowest possible price to the company”.

Van Lanschot: “We consider a conversion to be more likely than a full cash pay (and when it appears that “the company’s net debt” remains within the “company’s target level”, Van Lanschot changed its opinion and expected repurchase for EUR 6.58 in cash).

Amsterdams Effectenkantoor: “Although we tend to agree that the CP shareholders are entitled to the EUR 1.4 billion held in deposit and that it is the decent thing to do, there are several strong arguments (...) against the expected buy back”.

Otherwise than stated by Burgmans, it was not the case that the market acted as a well informed party and knew exactly what was going on with the preference shares, namely, that if the share price of the ordinary shares remained below EUR 73.18, redemption would probably not take place at conversion value. The market did not understand this. Whether analysts, when weighing up the pros and cons would have ultimately reached the correct conclusion, would depend on the weight they would attribute to the additional arguments in that process of weighing up these pros and cons.

An illustration of the information provided by Unilever which the market perceived as lacking clarity may be seen in the complaint from an investment analyst in the magazine *Beleggers Belangen* from 1 August 2003. After pointing out the possibility of repurchase

at EUR 6.58 and the chance that on balance the preference share will still turn out to be a reverse convertible, he wrote:

“If you look at the price development of Unilever’s preference share it seems that the market does not know what to do with this, either.”

In the same spirit, Mrs. De Jong of ABN AMRO Rothschild mentioned above, characterised the market development of the preference share to the investigators as a development that “fluctuated between hope and fear”. The investigators do not share Burgmans’ opinion that this vagueness of the capital market was the result of a difference in quality between analysts – where on the one hand there are analysts that properly understood Unilever’s information and others who made incorrect conclusions based on this information. In view of the partially unclear further announcements by Unilever, the interpretations by ABN AMRO Rothschild, Witteveen and the other investment analysts quoted here, and presented above can be deemed plausible and these cannot be disposed of as a failing analysis of less qualified investment experts.

#### Optimism and the pressure of time

Winter told the investigators, as quoted above, that Unilever, with all internal and external expertise called in, did not realise that the consequence of the condition stipulated by the Tax Authorities that the preference shares had to be subject to a market risk was that only in the event that the share price of the ordinary share at the time of redemption would be sufficiently high could redemption take place at the amount of the cash dividend, or at least did not realize that good corporate governance required it to mention that consequence in the information it provided. If this statement by Winter is true, how can it be explained that Unilever was not or was at least only insufficiently aware of this consequence?

By way of assumption, the investigators can mention two causes that collectively provide the answer to this question, or at least which may have contributed to the fact that Unilever did not realise this and therefore did not limit or at least focus its information regarding redemption to the simple message that the preference shares would deliver the conversion value after five years.

First of all, the conviction Unilever had - based on the stable upward price movement in the years prior to 1999 - that the conversion value in 2004 would at a minimum have reached the cap and consequently that the redemption value would equal the amount of the cash dividend. Winter declared the following in this respect to the investigators:

“You point out that the firm expectation – close to certainty – that the share price of the ordinary share would have reached the cap in 2004 – in fact would have amply exceeded the cap – runs as a recurring theme through Unilever’s policy regarding the preference share alternative and that this expectation in combination with the consideration that if this would not be the case and conversion would take place at an amount lower than the cash dividend, Unilever in any case had ensured by means of the alternative that the holders of the prefs would receive more in net terms from the special dividend than if they had opted for the cash dividend in 1999. I believe that this remark is correct.”

Secondly, the time pressure emphasized by Van der Bijl in his statement.

Westerburgen’s letter mentioned before, dated 22 January 1999, to the Secretary of State already mentions the following in this respect “One problem is that as a result of these developments, we were working under severe time pressure”. The Executive Summary of a “Jules Project – Learning Review”, which was discussed on 16 November 1999 in a meeting of the Executive Committee, observed that Unilever’s decision-making process resulting in the payment of the special dividend as the way to dispose of excess cash was time consuming and concluded:

“As a result the final choice for the Special Dividend with Preference Share Alternative as a method to be applied was taken at a late stage, leaving little time to develop the scheme in full detail before the announcement deadline, or to prepare the proper execution of the scheme after the announcement. There was, perhaps, insufficient time to step back, to reconsider and to confirm that all relevant aspects were covered”.

These two causes served to strengthen one another. The belief that the share price at the time of redemption would have reached at least EUR 73.18, which would have stripped the prohibition by the Tax Authorities on paying the amount of the cash dividend

were the conversion rate not to provide that amount, of its meaning, meant that Unilever, amidst the many problems that had to be resolved in the complex preparations for the special dividend, was not inclined to devote much time and energy to an imaginary case, which Unilever was convinced would not occur. Already under time pressure, Unilever devoted its time to looking for a solution to the many, non-imaginary problems.

### Summary thus far

The Tax Authorities imposed as a condition on the tax free provision of the preference shares that a market risk had to be attached to them. That condition meant that when redeeming the preference shares, the holders would never be able to receive more than either the conversion value or the share price of preference shares.

Unilever could, partly thanks to the stock exchange listing of the preference shares, retain the feeling that it had made a highly acceptable alternative offer to its Dutch private shareholders for the special cash dividend.

Pursuant to the requirements of good corporate governance, in offering the preference share alternative, Unilever had to provide its shareholders – and the financial market in general – correct, complete and clear information regarding its envisaged redemption of this alternative after five years. If Unilever thought it had good reasons for not meeting this requirement to provide information, then Unilever ought to have made it clear in the information it did provide as to why it did not provide the information required about redemption. Consequently, Unilever had to check the possible redemption method(s) after five years and the redemption value the preference shares would have in the various redemption methods and subsequently – to be announced as part of this information – take a decision regarding the redemption method. According to Unilever, it failed to do this. Even assuming that – as Winter told the investigators – the agreements made by Unilever with the Tax Authorities prohibited Unilever from making such a decision before the actual time of redemption, these agreements in any case did not prohibit Unilever from establishing at what price the preference shares could and could not be redeemed. It has not become clear to the investigators to what extent Unilever sufficiently verified this. Had Unilever reviewed the possible redemption methods to be used after five years, it would have concluded that the market risk demanded by the Tax Authorities meant that redemption at the conversion value – either through repurchase

or through conversion – was the only possibility. According to Unilever, it only reached this conclusion four years later, within the scope of preparing the (information on) redemption. The investigators have not learned any fact or circumstance implying that the conclusion according to Unilever only reached after four years could not have been – and thus should not have been – reached as part of the preparations for the preference share alternative. If within the scope of these preparations (for providing information) Unilever failed to examine the way(s) in which the proposed redemption could take place after five years, Unilever would have made it impossible to provide the information regarding the redemption as required by good corporate governance. If, in preparing the preference share alternative, Unilever did arrive at the conclusion that redemption at the conversion value was the only option available for Unilever, good corporate governance required that Unilever had to announce this conclusion and thus prevent any speculation based on the incorrect assumption that Unilever, if desired, could redeem at a price higher than the conversion value. Unilever did not do this.

In the information provided about the redemption of the preference share, Unilever only referred to the possibility of repurchase, no sooner than after the expiry of a five year period. The reason it did not provide more information about this redemption, was not further specified by Unilever and was referred to as “for taxation reasons”. Those reasons are incorrect. It may not be seen that the Tax Authorities would have had any objection against stating that the preference shares had the market risk attached to them inherent to stock dividend. If Unilever had made such a statement, the market would not have formed the share price distorting illusion that Unilever was at liberty to choose when redeeming the preference shares to pay more than the conversion value or the share price of the preference shares.

Given the brief period during which repurchase could take place (9 June – 1 December 2004) and the absence of factors which make it probable that the share price of the ordinary Unilever shares during that brief period would demonstrate volatility of any significance, it was likely as early as 1999, if not predictable, that the share price of the preference shares, during the period 9 June – 1 December 2004, would barely rise above the conversion value, partly because the market would assume that Unilever as a financier, would act irrationally by redeeming the preference share at that higher share price. Unilever ought therefore to have made sure that the information it provided to the

market avoided creating the impression that the choice it faced in 2004 between conversion and repurchase was an interesting choice for the holders of preference shares. Unilever did not avoid creating this impression. “You may also retain your preference shares and sell them later on or wait until the period of five years has expired and see what Unilever will do at that time with the preference shares”(the brochure: “Some questions answered”) and “...no sooner than after five years. And at that time we will see of course what is the most interesting for everyone” (Tabaksblad, at the Meeting of Shareholders held in May 1999).

There was all the more reason to prevent any speculative price formation of the preference shares based on this incorrect assumption – as Unilever ought to have realised during the preparations for the preference share alternative – because the preference shares were presented as an alternative method for the shareholders to receive the revenue generated by the chemical division. It was to be expected that in the absence of any information on this point, the market would speculate at what value the preference shares would be redeemed after five years and in this respect would allow for – at least the possibility of – redemption at the amount of the cash dividend. The extent to which the market allowed for this was expressed in the share price of the preference shares. Unilever not only failed to prevent this speculation by the simple announcement that the preference shares would be redeemed at their conversion value, but Unilever furthered this speculation by stating in its information that upon redemption Unilever would be free to make a choice, choosing the best option for the holders of the preference shares, between repurchase and conversion, but that it could not anticipate this choice in its information for tax reasons. In fact, no tax reason whatsoever was involved for not disclosing that the preference shares would yield their conversion value after five years in the presentation of the preference share alternative. At Unilever’s instructions, ABN AMRO Rothschild also provided information to the market regarding the preference share alternative. Unilever did not inform ABN AMRO Rothschild fully regarding the agreements made with the Tax Authorities. As a result, ABN AMRO Rothschild forcefully encouraged the speculation mentioned above. Unilever did not interfere in this and did not subsequently correct the information provided by the bank on this point. The information provided by and on behalf of Unilever made part of the market erroneously assume that Unilever was free, if desired, to withdraw the preference shares from the market at a price exceeding the conversion value.

The summary and conclusion of Unilever's external communication regarding redemption of the preference share alternative therefore must be:

(1) that Unilever did not communicate that the preference shares would be redeemed after five years at their conversion value when it announced the preference share alternative and as a result made it impossible for the market to accurately assess the value of these securities;

(2) that by failing to communicate at the least that the Tax Authorities had made it impossible for Unilever to repurchase the preference shares at a price higher than their share price, Unilever made it impossible for the market to conclude, on this basis, in combination with the conversion right reserved by Unilever, that the preference shares could only be redeemed at their conversion value after five years;

(3) that ABN AMRO Rothschild, but also Unilever itself in the person of Tabaksblat with his announcement that in 2004 Unilever would review which redemption method for the preference shares would be the best option for all parties involved, provided information which Unilever must have realised, that at least could easily create the incorrect impression that Unilever had a choice with regard to the redemption value of the preference shares.

All this leads to the conclusion that Unilever's information provided to the market was absolutely incorrect with regard to an aspect that was essential to the preference share alternative.

It should be noted in this conclusion that the fact that Unilever led the market to erroneously believe that the redemption value of the preference shares could be higher than the conversion value at the end of their life was - in principle - favourable for Unilever's shareholders who preferred the preference share alternative and subsequently opted to sell the issued preference shares on the stock exchange. Without the incorrect assumption that, regardless of the price of the preference shares, Unilever could and possibly would repurchase these shares for the amount of the cash dividend, the price of the preference shares would initially have been lower than the price that actually developed, based in part on this incorrect assumption. On the other hand, of course, the disappointed purchasers of the preference shares who bought these shares

expecting or at least hoping that Unilever would repurchase at the amount of the cash dividend have their disappointment to blame on Unilever's incorrect information.

#### The issue of the preference shares

On 9 June 1999 (approximately) 211,500,000 preference shares were issued to the Unilever shareholders who had opted for this form of making the special dividend available. On that day, the first price appeared on the Amsterdam stock exchange, as well. The closing price was EUR 5.70.

#### Unilever's contact with Kempen & Co

Shortly after the issue, in August 1999, the contact discussed in the decision of the Enterprise Chamber took place between Unilever, in the person of Winter mentioned above, and Kempen & Co, in the person of the analyst J. Witteveen, Director Institutional Equity Sales (hereinafter: Witteveen) in response to a question from Witteveen to Unilever to give comments to a draft report regarding the preference shares prepared by Witteveen. Witteveen told the investigators that he had prepared his draft report in view of Dutch institutional investors. He was not familiar with the answers from the Secretary of State mentioned before or the Ruling. He was not familiar with the sheets for the presentations given in February and March of 1999 by ABN AMRO Rothschild. As appeared from his draft report, he believed he found indications in the Information Memorandum that Unilever would repurchase the preference shares in 2004 for EUR 6.58. He sent his draft to Winter, who proposed a number of amendments to the draft, including the sentence: "In view of Unilever's willingness to pay NLG 14.50 per share in dividend now, it is expected that Unilever", followed by Witteveen's text: "will use NLG 14.50 (EUR 6.58) as the repurchase price". Witteveen's draft also included the passage: "For tax reasons, Unilever does not make any firm commitments for these two elements [element 1 repurchase, element 2 conversion; investigators]. Naturally, point 1 is the most important because this nullifies point 2." Winter added the following closing sentence to this passage: "Unilever's good intentions can be inferred from its announcements". Winter told the investigators that he used the words "Unilever's good intentions" to indicate that Unilever would not roll over after five years and therefore that the preference shares would not remain outstanding as a cheap financing instrument. Before, Winter had declared the same in a written statement dated 9 August 2004, which was submitted to the courts as part of the proceedings before the Enterprise Chamber

(paragraph 9 of this statement). Witteveen responded to this statement with a statement dated 1 September 2004, also submitted into the proceedings: “I do not understand the point of the “perpetual nature” of the prefs referred to by Winter, as this was a not an issue in the subject mail”. The investigators also believe that Winter’s statement is not on this point. The part of Witteveen’s report in question exclusively regards repurchase or conversion and does not offer any lead for the assumption that the words “good intentions” may infer that Unilever will not leave the preference shareholders with their securities after five years. Winter’s amendments are conspicuous because these show that Winter started from (in any case the possibility of) repurchase at the amount of the cash dividend and evidently he – the Jules Project Leader of all people – was not familiar with the results of the meetings conducted by Van der Bijl with the Tax Authorities or with the previously mentioned answers given by the Secretary of State to questions from the Dutch Lower House. In this way, the amendments by Winter reinforce the conclusion the investigators reached before in connection with the presentations held by ABN AMRO Rothschild that in the preparations for the preference share alternative, Unilever proceeded carelessly and without adequate structure.

Van der Bijl’s e-mail dated 16 June 2000

On 1 November 2005, Unilever sent the investigators an internal Unilever e-mail dated 16 June 2000 from Van der Bijl to Westenburgen, Haars and Winter. That e-mail reads: “Dear Colleagues,

I had a meeting with the Tax Inspector this morning and he raised a point which I think you should be aware of.

He mentioned that there were “rumours” that Unilever had communicated to banks/investors that it would buy back the prefs in 2004 and 2005 at their notional value (NLG 14.50)”

“He stated that this would run against the agreement we had reached in two respects:

a) we had promised to refrain from any explicit statement about buying back the prefs until after the five year period had lapsed;

b) the buy-back of the prefs at their notional value would be against the grain of the agreement which implied that the prefs would be treated as a stock dividend and would as such be subject to the normal market fluctuations (that is why they had no problem with the conversion into ordinary shares based on nominal values). In their view this means that the prefs can only be bought in at their then market value which will be lower than NLG 14.50.

As far as a) is concerned, I think he is right. I have told him that I could not imagine that such statements have been made by Unilever representatives (which I hope is true). Please bear in mind that there is a real risk that the fisc will come back on its agreement if it has proof of Unilever making this sort of statements.

As regards b) I was a bit surprised by his position which had not been made explicit to us before, but which does not seem to be illogical in view of their overall approach to the prefs.

Please, let me know if you want to discuss further.

Kind regards,"

When asked about the meaning of this e-mail by the investigators in the second interview (Annex IIc), Van der Bijl emphasized that during his discussions with the Tax Authorities in 1999 he had understood that in 2004 the maximum repurchase price would be the share price of the preference shares listed at that time. Van der Bijl repeated that he relied on the fact that if this share price would be only just below the amount of the cash dividend he could argue that by bridging this small difference he could stimulate shareholders to offer their shares for repurchase and that the Tax Authorities would be prepared to overlook this small bridging. However, the discussion referred to in the e-mail had made him realise that even this small room was not available. Therefore he was "a bit surprised". According to Van der Bijl, these words should not be taken to be an understatement. He told the investigators that if he had understood from the Tax Authorities in 1999 that Unilever would be permitted in 2004 to pay the amount of the cash dividend as the repurchase price irrespective of the share

price, he would not have been “a bit surprised”, by the view taken by the Tax Authorities at the discussions held on 16 June 2000, but “flabbergasted”. However, what Winter, Van der Bijl and Haars wrote in the course of 2001 in their joint memorandum mentioned before, which they prepared at Markham’s request in 2001 and partially regarding the redemption of the preference shares, is incompatible with this interpretation. The investigators recall that this memorandum says (in which “the second scenario” refers to the case that the price of the ordinary shares in 2004 will not be EUR 73.18 and the conversion price therefore will not equal the cash dividend):

“In the second scenario the market price should be lower than EUR 6.58 and the Dutch fisc will probably not allow us to buy back at a price higher than the market value or at maximum the value at conversion, if this would be higher.”

The memorandum is undated but, as Markham told the investigators, was handed to him in November 2001, i.e. after Van der Bijl’s e-mail from June 2000. As said before, the word “probably” in the memorandum shows that at that time, Haars, Van der Bijl and Winter still did not know whether or not Unilever could repurchase the preference shares in 2004 at an amount higher than their share price. But this is incompatible with the statement from Haars quoted before that it “was always clear” to him (and not: “probable”) that “even in case of repurchase, the preference shareholders would never receive more than the conversion value...”.

In connection with the aforementioned statement made by Van der Bijl, that he was not flabbergasted by the view taken by the Tax Authorities at the discussions held in June 2000, the investigators note that during the first interview they had with Van der Bijl (on 4 February 2005, Annexes XXa and b), no mention was made by him of his discussions with the Tax Authorities on 16 June 2000. In connection with the redemption of the preference shares at EUR 6.58, he then stated (please refer to the draft report, Annex IIa)

“In 1999, the Tax Authorities had not expressly stated that in 2004 no 6.58 could be paid if the share price of the ordinary share would not justify it. In my discussions with the Tax Authorities in 2004, I mentioned the possibility of paying

out 6.58. The reaction from the Tax Authorities was that would be seen as a violation of the arrangements made”.

Van der Bijl redacted the draft report sent to him and partially rewrote it, as follows:

“In subsequent discussions with the Tax Authorities, greater detail was made of the situation which would arise if a lower share price than 6.58 were to apply, and the Tax Authorities made it clear that in such a situation repurchase could only be done at that lower price. The reaction from the Tax Authorities was that repurchase at a higher rate than the actual rate would be deemed to be a violation of the arrangements made. I thought that it was a shame that in the eyes of the Tax Authorities, this explicit view made it impossible to pay a premium, but on the other hand, it was clear to me that this was the result of the qualification used of stock dividend for the preference share”.

The draft report was sent by the investigators under cover of a letter of 4 July 2005 to the counsel representing Unilever. Unilever rewrote part of the draft and returned it on 1 November 2005, together with the e-mail, to the investigators. The Tax Authorities took a view in 1999, according to the original statement made by Van der Bijl, which they did not expressly make known to Van der Bijl, which amounted to no payment being possible in 2004 of EUR 6.58 if the share price of the ordinary share would not justify it. This, together with the remarkable silence of the Ruling on the point of the redemption price, would seem to indicate that the Tax Authorities left Unilever at liberty to determine the amount of the redemption price it would pay. The investigators provisionally assumed, until becoming acquainted with the e-mail sent by Van der Bijl and the rewritten version of their report on their interview with Van der Bijl, that the Tax Authorities had not imposed any limitations on Unilever concerning the amount of the redemption price. Which is why the investigators were not only surprised by the confrontation with a discussion, not mentioned by Van der Bijl in his interview with the investigators, which he had in June 2000 about the redemption of the preference share with the Tax Authorities, but were also amazed by Van der Bijl’s understanding which appears from the e-mail (“does not seem to be illogical in view of their overall approach to the prefs”) and his minimalising acceptance of that view that, at least as far as Van der Bijl was concerned, he did not feel the need apparently to have any further discussion about the matter

(“Please let me know if you want to discuss further”) nor did he think he needed to pass the matter on to Board level, instead of a shocked reaction in the direction of the Tax Authorities to the effect of “Why did you not make that explicit sooner?” From Van der Bijl’s reaction to the discussion held on 16 June 2000 it follows that Van der Bijl must have known in 1999 that the Tax Authorities would have problems with the redemption price of EUR 6.58 if that amount would not be justified by the share price of the ordinary Unilever shares. He left the investigators to assume until November 2005 that nothing had been discussed with the Tax Authorities about this point and that the Tax Authorities unexpectedly and outside the arrangements frame of reference and then only as late as in 2004, imposed a limitation on Unilever’s decision-making freedom.

#### Share price movements of the preference shares

The movements of the share price of the ordinary and preference Unilever shares during the period from June 1999 up to the time of conversion in January 2005 has been shown in the graph that is attached as Annex XVIII to this report. This graph was provided by Unilever to the investigators. The investigators are not aware of its maker. This graph also shows the theoretical value of the preference shares on the assumption of redemption through conversion (the “See Through Value” in the graph). This See Through Value or theoretical value is also included in the graph to be found on page 8 of the letter covered in the foregoing sent by Dr. Jonkhart. This theoretical value is calculated as follows:

(1) it is assumed that the price of the ordinary shares as of the observation date in the diagram also applies on the conversion date in December 2004;

(2) starting from this price of the ordinary shares, the conversion value at this price is then calculated (which the holder of a preference share will receive in December 2004);

(3) this conversion value – together with the dividends to be distributed on the preference shares – has then been discounted at the observation moment. This discounted value is the theoretical value.

The diagram shows that five periods can be distinguished with regard to the ratio between the share value of the preference shares and the theoretical value:

(1) a fairly brief period from early June 1999 to early November 1999, in which the share value was below the theoretical value;

(2) a fairly long period from early January 2001 to the end of November 2002, in which the share value fluctuated around the theoretical value;

(3) and (4) two longer periods from early November 1999 to the end of December 2000 and from the end of November 2002 until the announcement of the conversion on 24 March 2004 (with a brief interruption in April/May 2003), in which the share value was above the theoretical value;

(5) the period from the announcement of the conversion in March 2004 until the conversion, in which the share value of the preference shares almost equalled the theoretical value.

Had the market known that redemption could only take place at the conversion value, the share price (assuming a limited volatility of the ordinary Unilever shares) would invariably have been close to the theoretical value. However, if the market had started from redemption at (the amount of) the cash dividend, the share price would have invariably been close to the discounted value of the dividend to be distributed on the preference shares plus the discounted value of the cash dividend (the red line in the graph). In reality, the share price fluctuated roughly between these two extremes.

In connection with the uncertainty in the market referred to in the previous sentences and to avoid any misunderstanding, the investigators point out the following: in the proceedings before the Enterprise Chamber and to the investigators, Unilever argued that the uncertainty regarding the result of the preference share alternative demanded by the Tax Authorities placed limits on the degree of openness with which Unilever could provide information regarding this alternative to the market and that in this context Unilever was not permitted to say which amount or value it would pay upon redemption of the preference shares. The question regarding whether Unilever was allowed to say this is however irrelevant, because Unilever was unable to say this, as Unilever could not know what the share price of the ordinary share – and thus the conversion value – would be in five years' time. The uncertainty demanded by the Tax Authorities involved the proceeds from the preference shares upon redemption. This was also clearly understood by Unilever – at least in 2004 – as appears from the following passage from the Discussion Paper for the Executive Committee for the meeting of 17 March 2004:

“To qualify as exempt bonus shares, Unilever had to ensure that the investor ran normal shareholders risks. By applying a formula on conversion into ordinary shares, that introduced a down side risk and capped the up side to EUR 6.58, this condition was fulfilled”.

Thus, the uncertainty demanded by the Tax Authorities did not involve the answer to the question regarding what Unilever would do in 2004 (conversion or repurchase and, in case of repurchase, repurchase at the amount of the cash dividend or at another amount). This question was not raised because it had no practical relevance in view of the fact that as a result of the conditions stipulated by the Tax Authorities, it was inevitable that the redemption – either through conversion or through repurchase – would take place at the conversion value. The uncertainty demanded by the Tax Authorities involved this conversion value. But it was the uncertainty about the answer to the question not raised regarding what Unilever would do in 2004 that determined the price development of the preference shares and that Unilever could have prevented by accurately informing the market.

Unilever must have known that to the extent that the price of the preference share was more than a few percentage points above the “theoretical value” discussed above (without any abnormal volatility being involved), this price was based on the idea that Unilever could – and possibly would – redeem at the amount of the cash dividend, at least at more than the “theoretical value”. Unilever did not do anything to dispel this idea at any time, despite the fact that Unilever must have understood that this illusion could be traced back to the information it provided. Consultations on the question regarding whether or not a signal to the market would be in order were conducted at a high level within Unilever, in any event in October/November 2001. This appears from the memorandum mentioned before, prepared by Winter, Van der Bijl and Haars and handed to Markham in mid-November 2001:

“In the light of current press coverage and shareholder questions (saying we will buy back the prefs in 2004 for EUR 6.58) it is important to come to a view on our preferred options in 2004 and whether we should react to the coverage and questions”.

The memorandum ends with the following observation:

“In our meeting of October 15, 2001, we decided not to take public action to correct suggestions in the press and from banks that it is certain that Unilever will buy back the prefs in 2004 for EUR 6.58. Our statements and responses to questions have been consistent since 1999 and we are not responsible if others wish to read more into them. We agreed Jan Haars would approach ABN AMRO to ensure that ABN AMRO as our advisor to the transaction would not deviate from the statements made in 1999”.

Therefore, the question regarding whether it was Unilever’s responsibility to issue a correcting sign to the market became more relevant as the price development of the ordinary share conformed less to the firm expectation that Unilever had in 1999 that in 2004 the price would have gone up to at least EUR 73.18. That disappointing developments meant that the answers quoted above given by the Secretary of State in the Lower House accordingly gained practical significance. The passage “current press coverage and shareholders questions” referred to in the memorandum showed that the analysts and shareholders in question were not familiar with the answers from the Secretary of State. Unilever evidently believed that it was not part of its duty to exercise due care to point out this answer to the market and in this way to exclude any misunderstanding as to whether Unilever would repurchase at EUR 6.58 in 2004, even if the price of the ordinary share would not have risen to EUR 73.18 in 2004.

The meeting between Van der Bijl and the Tax Authorities on 16 June 2000 and the e-mail that Van der Bijl sent that day to a number of Unilever officers in which he said that he was “a bit surprised” about the Tax Authorities’ point of view that redemption at a price slightly higher than the conversion value could not be an issue have been mentioned before in this report. Thus, as from 16 June 2000 Unilever knew perfectly well that there was no “room to manoeuvre” whatsoever and that redemption in 2004 would have to take place at the conversion value and nothing more than the conversion value. Thus, Unilever ought to have realised that a share price of the preference share higher than (approximately) the conversion value could only be the result of the market’s ignorance of Unilever’s inability to redeem at a price higher than the conversion value. Nevertheless, as said before, Unilever did not see any reason to offer any signal to

dispel this ignorance. With regard to Unilever's policy not to dispel this ignorance in the market, it should be borne in mind that as a result of the information that Unilever had provided in 1999, Unilever had made it difficult for itself to give any informative signal, as the information from 1999 implied that Unilever would wait until 2004 to review what the best redemption option would be for all parties involved and would take a decision on the basis of this review at that time. By now giving the surprising signal that it was an established fact that redemption in 2004 would take place at the conversion value and thus – contrary to what Unilever suggested in 1999 – that there would be nothing to review on this point in 2004, Unilever would expose itself to fierce criticism and indignant questions regarding what it was Unilever claimed in 1999 it could not communicate for tax reasons. By communicating in 1999 that the redemption method would only be decided on in 2004, Unilever had eliminated any possibility of saying anything regarding redemption before 2004, or at least of saying anything that would not give rise to serious reproaches regarding its information policy in 1999. The only hope that Unilever could still entertain for escaping this difficult situation was that the share price of the ordinary share and thus the conversion value would rise to the level of the cash dividend, in which case there would be no reason to subsequently still have to devote attention to the quality of the information that Unilever provided to the market in 1999. Be this as it may, it was Unilever's policy to stringently adhere to the main point of its message in 1999 – among other things on its web site, in its annual reports and in its annual meetings – namely: we will only decide in 2004; up to that time we will keep all options open; the Tax Authorities do not allow us to make any further statements. The investigators once more point out that all three elements of this message were incorrect. How Unilever tried to account for this point in the annual meeting of 2004 in defending its decision to convert will be discussed in a next section of this report.

#### The consultations initiated in 2003 by ABN AMRO

In or shortly before March 2003 ABN AMRO offered to consult with Unilever regarding redemption of the preference shares in 2004. At that time, the bank held 89.5 million preference shares (42.4% of the total number outstanding) for its clients. The price of the ordinary Unilever share had fallen substantially since the preference shares were issued. Contrary to what was expected in 1999, a significant difference had arisen between the amount of the cash dividend and the much lower conversion value. If Unilever would opt for conversion, this would be disappointing to the bank's clients and the bank anticipated

that these clients would consider this not to be in line with the expectations raised at the time – including those raised by the bank. The offer from the bank to consult with Unilever regarding redemption must undoubtedly be seen in this light, as well.

Within the scope of the consultations between ABN AMRO and Unilever, ABN AMRO conducted a number of presentations for Unilever in March and April of 2003 (Annex XIX). Ultimately these consultations came to nothing. Afterwards, Unilever went its own way without adopting the proposals made by the bank or involving the bank in its decision-making process regarding redemption. Despite this, the investigators wish to devote attention to the presentations given by the bank, because the sheets used in these presentations provide an understanding of the view Unilever held regarding redemption at that time.

The sheets used by the bank in the presentations explain that Unilever did not inform ABN AMRO of the Tax Authorities' point of view – which had been known to Unilever in any case since June 2000 – to the effect that the Tax Authorities would consider redemption at a value higher than the conversion value to constitute a breach of the conditions on which the tax-free issue of the preference shares was based in 1999. Although it is true that the sheets disregard repurchase at a cash amount as an option that will not be considered, the reason for this has nothing to do with the Tax Authorities' point of view. According to an Executive Summary sheet of the presentation dated 14 March, the issue was that the redemption method

“should support Unilever in improving its financial ratios, which have remained out of line with the ‘A’ long-term credit rating category following the Best food acquisition”.

A sheet in the presentation held on 6 March raises the following question:

“Is the reduction in ‘Capital and Reserves’ upon redemption of the preference shares acceptable to Unilever, or should the preference shares be replaced with an instrument that qualifies as ‘Capital and Reserves’ and receives (at least) similar credits from rating agencies”,

in this context the following is observed:

“Unilever has a stated objective of debt reduction. Cash redemption of the preference shares is not in line with this objective”

and in the Executive Summary:

“Cash redemption and subsequent refinancing through debt will not support Unilever’s objective of reducing debt levels”.

Apparently, Unilever had answered the bank on 6 March in reply to the question quoted above that “reduction in Capital and Reserves” was not acceptable. The bank submits the following in this regard in one of the Executive Summary sheets in the presentations held on 14 March and 25 March:

“As we understand from our previous meeting, the goal for Unilever in this restructuring is to retain (cost effective) equity capital”.

The sheet “The goal & Unilever’s objectives” mentions:

“During our meeting of 6 March, Unilever expressed the intention to restructure the preference shares in a manner that: 1) retains Unilever’s capital and reserves”

followed by four other objectives: “is cost efficient”, “minimises taxation”, “is simple and flexible” and “is attractive to all stakeholders”. ABN AMRO’s view of “retain Unilever’s capital and reserves” as the first condition that the redemption had to satisfy appears from a sheet in the presentation held on 22 April:

“Assuming Unilever does not consider bidding the calculation value as a “moral” commitment, we have made a number of theoretical valuations (...)”

and from the “Restructuring considerations” sheet in the presentation held on 6 March:

“A bid below the calculation value is cheaper but could result in negative publicity and adverse market reactions, whereas a bid at the calculation value is more expensive, but consistent with the “spirit” of the special dividend”.

This is clear language. In assessing this language, the expected response from the holders of the 89.5 million preference shares mentioned above, managed by ABN AMRO, in case of a bid lower than the notional value should possibly be included. Be this as it may, the presentations show that Unilever did not inform ABN AMRO of the veto from the Tax Authorities expressed in 2000 and referred to in Van der Bijl’s e-mail from June 2000 (the presentation of 6 March 2003 even includes a “Factors supportive of a bid at the calculation value” sheet)

In as far as shown by the sheets, the presentations did not devote any attention to Unilever’s argument mentioned above that everything that the preference shareholders would receive upon redemption in excess of the conversion value would constitute an unacceptable premium.

Based on the above assumption that “Unilever does not consider offering the calculation value as a “moral” commitment” and the point of departure that conversion at the strongly decreased conversion value would result in adverse reactions from the market and damage to Unilever’s reputation, ABN AMRO proposed roll over scenarios to Unilever. The bank believed that a “do nothing” scenario in which the preference shares continue to be outstanding on the stock exchange for an indefinite period of time was not a realistic option in view of the information provided by Unilever in 1999 that the preference shares were not intended to be a cheap financing instrument. The scenarios proposed by the bank come down to rolling over with a higher coupon or replacement of the preference shares by other securities (in which “The bid value of this exchange offer should ideally be perceived equal to EUR 6.58”, presentation of 6 March 2003), or a combination of a cash component and any form of an adjusted roll-over to be offered to the holders of the preference shares. As said before, the discussions between the bank and Unilever were finally terminated without any clear result.

### The threat of an additional tax assessment

Since the meeting between Van der Bijl and the Tax Authorities in June 2000 mentioned above, Unilever knew that upon redemption of the preference shares under no circumstances would it be possible to offer more than the conversion value and that the Tax Authorities did not permit any “room to manoeuvre” whatsoever in the direction of a – even fractionally – higher value. At the end of the period during which the Tax Authorities could impose an additional tax assessment should Unilever fail to comply with the conditions stipulated by the Tax Authorities regarding the tax-free issue of the preference shares, the Tax Authorities informed Unilever that they considered imposing an additional tax assessment in the amount of EUR 720 million to safeguard their rights. After consultations with Unilever, the Tax Authorities decided not to impose this assessment, but not because the Tax Authorities no longer maintained their substantive interpretation of the agreements made, as Van der Bijl told the investigators. Thus, the investigators conclude that the reason for not imposing the assessment must have been that the Tax Authorities accepted Unilever’s promise not to pay any equivalent amount higher than the conversion value upon redemption of the preference shares.

### Settlement or roll-over

In view of the fact that upon redemption it was not possible to pay any value exceeding the conversion value, the choice between repurchase and conversion was limited to a mere technical choice in terms of redemption between paying the conversion value either in cash or in shares. This choice was hardly relevant to the holders of the preference shares.

One option that Unilever faced and which was relevant to the holders of the preference shares was the choice between redemption and the roll-over suggested by ABN AMRO. The conditions that the Tax Authorities had attached to the tax-free issue of the preference shares did not prevent a roll-over. However, in view of what Unilever had communicated to the market in 1999, it could not afford to resort to roll-over towards the holders of the preference shares. By communicating that the preference shares were not intended as a cheap financing instrument and furthermore that the listing would end as of 31 December 2004 and that Unilever expected to exercise its conversion right if and to the extent that any preference shares were still outstanding in the second half of 2004, Unilever had in fact promised the holders of the preference shares that Unilever

would not leave these holders with their securities. As said before, the legal advice was that a roll-over would be actionable. Thus, the fact that a roll-over was not an option applied to an unchanged roll-over. However, it was conceivable that a roll-over could be made acceptable to the holders of the preference shares through modification of the preference shares outweighing the postponement or cancellation of redemption, as suggested by ABN AMRO. A method of redemption would however still need to be chosen – possibly not (entirely) in cash – which, in order to continue to meet the terms of the arrangements made with the Tax Authorities and Unilever’s Articles of Association pertaining to the preference shares, which would result in a redemption value for the amended preference shares to be rolled over which equalled the conversion value. In fact, this amounts to converting at conversion value, albeit not converting into ordinary shares but into securities with a more attractive coupon for investors than the coupon issued with the preference shares.

#### The decision to convert

The minutes of the Executive Committee meetings mention the decision to be made regarding the redemption for the first time in July 2003. The following is recorded:

“A decision on the 10ct Preference Shares is required only in 2004. Unilever’s current position statement is that we will act strictly according to the published procedure and that we might consider converting the preference shares into ordinaries, but that we would not buy before mid-2004. Some market expectation is for a buy-in at the notional value of EUR 6.58 but the problem is that the Dutch fisc would not allow this without jeopardising the whole scheme. This also would be an inequitable treatment of PLC as well as NV ordinary shareholders”.

The minutes of a Board meeting held on 17 March 2004 read:

“Mr. FitzGerald reminded the meeting that the issue related to the Company’s EUR 0.05 Preference Shares had been discussed at length on a provisional basis at the meeting of the Executive Board on 17 March and that this Board meeting had been convened to have the issue discussed by the full Board. This had allowed all directors to have the opportunity to reconsider all aspects of the EURO 0.05 Preference Shares, including taking account of information brought

to their attention by the various Corporate Centre Departments. The Chairman then invited further comments and observations on the papers that had been provided as the basis for that discussion and also for this meeting”.

None of the minutes of the Board meetings or the Executive Committee meetings says anything substantive regarding the discussions conducted. The majority of the “papers that had been provided” involve legal opinions rendered by law firms – which are the most interesting to the investigators. As explained at the start of this report, the investigators are not informed of the contents of these legal opinions.

The quote included above from the minutes of an Executive Committee meeting: “Some market expectation is for a buy-in at the notional value of EUR 6.58 but the problem is that the Dutch fisc would not allow this without jeopardising the whole scheme” appears to leave room for including the possibility in the decision-making process to pay more than the conversion value (although less than EUR 6.58) as the equivalent and “the opportunity to reconsider all aspects of the EUR 0.05 Preference Shares, including taking account of information brought to their attention by the various Corporate Centre Departments” referred to in the minutes of the Board Meeting dated 17 March 2004 gives the impression that the decision involves all sorts of aspects to be carefully studied. However, as set out above, the need to redeem at the conversion value had been established since 1999 by acceptance of the condition stipulated by the Tax Authorities that the price risk intrinsic to a stock dividend had to be attached to the preference share alternative and, apart from this, by the fact that it was not possible to pay a voluntary dividend premium. The choice of the form in which the conversion value would be paid – cash or shares – was not a policy issue that required a decision-making process, but a technical redemption issue that could be left to experts. Any unmodified roll-over was ruled out as an option as a result of the information provided in 1999. Rolling over with modification or replacement of the outstanding preference shares, for example by securities with a more attractive coupon might be considered in which connection – as explained above – eagle eyes would need to ensure that the redemption value of securities to be rolled over would equal the conversion value of the preference shares. Because the minutes of the Board meetings and the Executive Committee meetings do not say anything substantive regarding the discussions on the redemption, the investigators were unable to discover whether a modified roll-over was seriously

considered. In as far as can be inferred from the written documents, Unilever did not devote any attention to the possibility of a modified roll-over in the proceedings conducted before the Enterprise Chamber.

Redemption instead of (amended) rolling over meant that Unilever had to spend cash, either by repurchasing the preference share or purchasing its own ordinary shares into which the preference shares were to be converted.

The cash required for that purchase was spent by Unilever and to this extent Unilever's goal of debt reduction, as referred to in the aforementioned discussions with ABN AMRO, was frustrated.

#### The meeting of shareholders held on 12 March 2004

In March 2004 Unilever announced that the preference shares would be converted and that the conversion would take place in early 2005. The announcement had been timed so that the subject could be discussed in the annual meeting to be held in May. In this meeting, Burgmans explained the reasons for the decision to convert was based according to Unilever and he answered some questions (Annex XX). He first of all submitted: "Before we announced our intended decision in March of this year, there was no decision and consequently there was nothing to announce (...)". He then mentioned the three choices the Board faced. This was first of all a roll-over. Burgmans observed that as a result of a roll-over, the holders of the preference shares would suffer a loss and "This meant that this option was not acceptable as far as we were concerned" (Minutes, page 19). Burgmans was evidently referring to an unmodified roll-over. The second option was repurchase. The possibility of repurchase above the conversion value was deemed not to qualify on account of the premium aspect ("would exceed the boundaries of good governance", page 20) and also on account of the agreements with the Tax Authorities ("We cannot simply eliminate the market risk of the preference shares by paying a higher price for the preference shares anyhow", page 21). The third option was conversion, which Unilever had decided on in the interim ("However, since the price of the ordinary share no longer permits this [repurchase at EUR 6.58; the investigators], conversion is the right decision", page 22). Burgmans did not mention a modified roll-over as a possible better decision.

With regard to Burgmans' announcement that no redemption decision had been taken prior to March 2004, the investigators refer to their earlier observation that the decision to redeem at the conversion value was an established fact from the start as a result of acceptance of the condition stipulated by the Tax Authorities that the price risk intrinsic to a stock dividend had to be attached to the preference shares. Burgmans completely ignored this consequence. The investigators quote (Minutes, page 24):

“We have always kept all possibilities open. That is really the only thing that we have always said. At that time, we did not have to add anything to the discussion. By pointing out the different possibilities existing, we thus pointed out the risk.”

By not disclosing that for Unilever it must have been clear from the start that the preference shares would yield the conversion value upon redemption – possibly with a small premium – and by not trying to explain to the audience Unilever's policy of not communicating this in 1999, Burgmans presented the shareholders with a distorted picture of Unilever's policy, as “leaving open all options” and the existence of “different possibilities” were not involved. The only possibility was redemption at the conversion value, or, amended rolling over with such amendments which would result in a value equal to the conversion value. In this context, the investigators refer to the rhetorical question that Burgmans asked and answered:

“Did we already know in 1999 that we would convert the preference shares? The answer is: no, we did not”, Minutes, page 22.

Literally this answer is correct, as there is nothing to show that Unilever had already made its choice between repurchase and conversion prior to March 2004. However, both the question and the answer are misplaced. The issue was not whether Unilever had already made a decision in 1999 between repurchase and conversion as the redemption method, but whether Unilever ought to have known in 1999 that redemption would take place at the conversion value, both in case of repurchase and in case of conversion. The answer to this question is: yes, possibly with a small premium. Going back to the penultimate quote: the “risk” allegedly pointed out by Unilever in 1999 was not involved. The fact that Unilever would redeem at the conversion value, even if this value was lower than the amount of the cash dividend, was not a risk ran by the

preference shareholders, but a guarantee. Finally, it is incorrect that – as Burgmans suggested – the reason Unilever was unable to communicate in 1999 that it guaranteed redemption at EUR 6.58 was that Unilever would have violated an agreement with the Tax Authorities if it had communicated this. The reason Unilever did not communicate that it guaranteed redemption at EUR 6.58 in 1999 was – according to Unilever – that in 1999 Unilever had not yet taken any decision regarding redemption (as Tabaksblat stated, quoted above, in the annual meeting of 1999: “(...) the possibility of exchange after five years. Naturally, at that time, we will review what the best option is for all parties involved” and to the investigators:

“You ask me if a plan that Unilever had in 1999 regarding the future of the preference shares is involved. My answer is: no, there was no plan for this, except for the intention to only decide at the end of the five-year period following issue what Unilever would do with the preference shares”

and Winter to the investigators:

“In 1999 no decision whatsoever was taken”.

With regard to not communicating in 1999 that the preference shares in 2004 would yield no more than the conversion value, Burgmans invoked the agreements made with the Tax Authorities:

“With regard to (...) the point that you believe that we did not communicate clearly: we have always clearly communicated the possibilities. What we could not do was say, five years in advance, what we would do today. This was impossible on account of the agreement that we had with the Tax Authorities alone”.

The reference to agreements with the Tax Authorities in order to defend Unilever’s policy of not communicating in 1999 that the preference shares in 2004 would yield no more than the conversion value, is not a convincing argument. As indicated above, the Tax Authorities could not have objected to the fact that Unilever would explain that what the holders of the preference shares would receive upon redemption depended on the share

price of the ordinary share at that time, consequently that they would receive the conversion value. The Director of the Netherlands Association of Shareholders, Mr. De Vries, asked about this in so many words and in so doing touched upon the essence of the case:

“(…) within the scope of the agreements with the tax authorities, were you permitted to say that you would convert if the price was below EUR 73”

(in other words, if the price resulted in a conversion value below the amount of the cash dividend). Burgmans tried to give an evasive answer:

“What I am trying to explain is that the tax authorities demanded uncertainty from us. Uncertainty that is normal in investments. This means that we could not make any specific announcements regarding what we would do in this or that case”,

and when De Vries persisted:

“We were unable to say what we would do if the price would be above EUR 73.18, at EUR 73.18 or below EUR 73.18 because this would provide a guarantee. And this is exactly what the tax authorities did not want. The tax authorities said: if you want to have this cash flow pass untaxed, you will have to attach uncertainty to this instrument, uncertainty that we linked to the Unilever share, as stated, the normal uncertainty that is known to every investor”.

This answer given by Burgmans is incorrect. What the situation was in connection with the demand imposed by the Tax Authorities of uncertainty, appears from the following passage, partly quoted above, from page 1 of the Discussion Paper given to the Executive Committee for its meeting held on 17 March 2004:

“It was agreed with the Dutch tax authorities that the receipt of the Prefs would not be taxable subject to certain conditions. Subsequent sale of the Prefs in the market was tax free for shareholders. To qualify as exempt bonus shares, Unilever had to ensure that the investor ran a normal shareholders risk. By applying a formula on conversion into ordinary shares that introduced a down-

side risk and capped the up-side to EURO 6.58, this condition was fulfilled (emphasis added by the investigators)”.

The shareholders had to run a normal shareholders risk and that risk was given content by coupling the value of the preference shares by means of a conversion formula to the share price of the ordinary share. The preference share hence ran the share price risk of the ordinary share. This had to remain intact, that was all that was needed, tax-wise.

It is lamentable that Burgmans in his reply made to De Vries, did not simply quote the aforementioned passage from the Discussion Paper for the Executive Committee. The Tax Authorities would not have been able to have any objection to this and the lack of all clarity would have been removed.

In connection with the room to manoeuvre on the part of Unilever providing information to the outside world, it can firstly be determined in the Ruling it is expressly stated that:

“Unilever NV can, if it so desire, when announcing the special dividend, express the expectation that after five years conversion will actually take place”.

The answer to the question posed by De Vries: “ought you to have said you would convert if the share price was below 73.18? Could you have said this, from the Tax Authorities?” might have been “Yes”, without any reservation. That the Tax Authorities would not have had any objection against such a statement is obvious as the normal shareholders risk that the holders of the preference shares had to run, remained completely intact with such a reply in the affirmative. The reply given by Burgmans to the second question posed by De Vries was also incorrect:

“We could not say what we would do if the share price was above EUR 73.18, at EUR 73.18 or below EUR 73.18 as that would have provided certainty”. Burgmans could, without jeopardizing the arrangements made with the Tax Authorities, and referring to the conversion formula, have stated that with a share price above or at EUR 73.18, the cap would be effected and EUR 6.58 would be paid and that, if the share price were to be less than EUR 73.18, the list of payment conditions would apply which followed on from the conversion formula and that had been show, among other things, on the sheets

as early as in 1999, of ABN AMRO Rothschild. By stating that Unilever could not give an answer in 1999 to the question posed by De Vries, Burgmans gave the wrong impression of the nature of the uncertainty demanded by the Tax Authorities. The Tax Authorities only wanted the conversion formula to apply in full.

The Tax Authorities wanted to have this guarantee and, as repeatedly said before, there was no reason whatsoever why the Tax Authorities would prohibit Unilever from communicating this guarantee to the market.

De Vries responded with:

“So your answer to this second question is: no, you were not permitted to say that you would convert?”

Burgmans again gave an evasive answer:

“No, my answer is the answer that I gave”

But De Vries kept persisting:

“My question is: were you permitted to say that you would convert if the share price would be below EUR 73.18? Did the tax authorities permit you to say this?”

Burgmans continued to refuse to answer this question with yes or no:

“I gave you a specific answer and I will not go into hypothetical questions” and “I maintain the answer that I gave”.

As Burgmans reported to the meeting, it had been brought to Unilever’s attention that shareholders were preparing legal proceedings against Unilever following the conversion decision. Thus, it is understandable that Burgmans wanted to adopt a reticent stance in the meeting regarding points on which Unilever was vulnerable, especially the point raised by De Vries. But on this point Burgmans did not give a reticent answer but a specific, incorrect answer by adding: “This was impossible on account of the agreement

that we had with the Tax Authorities alone” to his words “What we could not do was say, five years in advance, what we would do today”.

As said before, the questions posed touched upon the core of the issue: assuming that it is correct, as argued by Burgmans, among other things by invoking the agreements made with the Tax Authorities, that conversion was the only possible redemption method if the price of the ordinary share was lower than EUR 73.18, why did Unilever not announce this simple fact when it offered the preference share alternative? Burgmans preferred not to answer the question regarding whether the agreements made with the Tax Authorities implied that Unilever had to keep the market in the dark on this point. As appears from this report, the answer should have been: There is no reason whatsoever why the Tax Authorities could object to the announcement of this simple fact – as being the consequence of the price risk demanded by the Tax Authorities. Nevertheless, Unilever did not announce this simple fact, according to Unilever for fear that announcement could make the Tax Authorities go back on the agreements made. In an earlier part of this report the investigators already stated why this alleged fear is not plausible and in any case is invalid.

#### Conversion advantage for Unilever and Dilution of the earnings per share

The investigators refer to the two Annexes included at the end of this report for both these subjects raised in the proceedings before the Enterprise Chamber.

#### Summary

First of all, the investigators refer to the “Summary to this point” included earlier in this report and to that which partially overlaps with this in the following.

The special dividend distributed in 1999 was a vehicle designed to improve the capital structure of Unilever. It was difficult to use without the preference share alternative.

Pursuant to the agreement that Unilever made with the Tax Authorities, the preference shares in question had to remain outstanding for at least five years after the date of issue. As a result of the information that Unilever provided to the market in 1999, it deprived itself of the option to roll over the preference shares after the end of this five-year period, or at least to roll over the preference shares without changing their terms.

In 1999, there were already precedents for the tax-free issue of stock dividends. Unilever followed those precedents. The Tax Authorities agreed to a tax-free issue of a stock dividend in the form of the preference shares. The answers given by the Secretary of State in the Dutch Lower House clearly showed – in as far as still necessary – that this did not involve the deferred payment of the cash dividend, temporarily given the form of preference shares. The price risk, which is the determining factor for a stock dividend, was a *condition sine qua non* for the Tax Authorities. The price risk was created by means of the right Unilever reserved, and which it made known to the market, to convert the preference shares in due course into ordinary shares based on a conversion formula stipulated in Unilever's articles of association. This formula linked the value of the preference shares to the share price of the ordinary shares.

Rational market behaviour meant that the share price of the preference shares at the time their settlement became an issue would not or would hardly be above the conversion value. Thus, the price risk required by the Tax Authorities for the preference shares was the price risk of the ordinary shares and the settlement value of the preference shares was thus their conversion value as dictated by the share price of the ordinary shares at time of the settlement. Unilever understood this, although the company initially hoped that if the conversion value at the time of the settlement would only be slightly lower than the amount of the cash dividend, the Tax Authorities would overlook a small bridging premium on top of the conversion value. Unilever did not want to ask the Tax Authorities for a definitive answer regarding this point. In 2000, Unilever received this definitive answer from the Tax Authorities without asking for it: no such premium could be involved.

The fact that the conversion value of the preference shares would also be the settlement value is a consequence of Unilever's acceptance of the condition stipulated by the Tax Authorities that it had to be possible to consider the preference shares to be a stock dividend and that the preference shares therefore had to be subject to the price risk that is intrinsic to a stock dividend. This acceptance meant that no decision regarding the settlement value had to be made when settling the preference shares. Thus, the information provided by Unilever in 1999 that Unilever would keep all options regarding

this settlement open and that in due course Unilever would review the most interesting option for all parties involved was incorrect information.

Unilever's point of view, only announced in 2004, that everything the preference shareholders would receive upon settlement over and above the conversion value would constitute a voluntary, unacceptable bonus after the event on top of the special dividend and thus that this would be out of the question in itself shows that the information that Unilever gave in 1999 to the effect that Unilever would keep open all options regarding this settlement and that, in due course, Unilever would review the most interesting option for all parties involved was incorrect information.

With the preference shares, Unilever put securities on the market. Good corporate governance demands the provision of clarity regarding the redemption value of these securities (unless there are valid reasons for uncertainty about which the market is to be informed). However, Unilever, in its information, opted to leave the redemption value open. The information Unilever provided to the market created an opportunity for a view to be taken that there was a valid reason for this uncertainty, i.e. that settlement against the amount of the cash dividend would be fiscally possible, even if the conversion value would be lower, provided that uncertainty would continue to exist in this regard in the market. This view was interpreted in this way by ABN AMRO and other investment analysts as the core of the preference share alternative presented to the capital market. This reaction was predictable and not illogical. However, there were also analysts that came to a different conclusion based on answers given by the Secretary of State to questions from the Dutch Lower House and Unilever's expected rational behaviour, as a financier, (no voluntary bonus on top of the special dividend) who were of the opinion that ultimately a value could be expected equal to the conversion value. That latter reaction was not illogical either.

Leaving the redemption value open should also be viewed from a different angle: If the available alternatives regarding the settlement value do not show any substantially relevant differences – as applies to the preference shares under discussion - it is a breach of good corporate governance to leave the settlement value open when providing information regarding the securities in question. Thus, in 1999 Unilever was obliged to verify whether the available alternatives showed such differences. If this was not the

case, the market could be and thus should have been provided clarity regarding the settlement value to be expected, and especially regarding the basis for this value.

Unilever waited until 2003/2004 before it conducted this analysis.

With its message that all options would be kept open and that exactly what the most interesting option for all parties involved would be, would only be reviewed in 2004, Unilever suggested that the options might (possibly) have different outcomes. However, the conclusion that all options would lead to the conversion value could already have been reached by Unilever in 1999. This message should have been communicated to the market.

In providing information regarding the future settlement of the preference shares, Unilever and ABN AMRO – which was called in by Unilever but which was not fully informed regarding the price risk demanded by the Tax Authorities and was evidently unfamiliar with the scope of the answers given by the Secretary of State in the Dutch Lower House – did not inform the market. The reasons Unilever offered for its silence regarding this essential point are defective and wrongfully suggest that a special tax arrangement was involved, designed for Unilever and particularly favourable to Unilever, and that the Tax Authorities would not permit the disclosure of this arrangement. Instead of communicating that settlement would take place at the conversion value, Unilever to a large extent concealed this message while providing information to the market (to say the least). In so doing, Unilever created the impression - at least in part of the market - that Unilever could and would settle against payment of the amount of the cash dividend, irrespective of the share price of the ordinary share. In particular Unilever's repeated incorrect statement that it could not tell any more regarding the settlement of the preference shares than it did for tax reasons was sufficient to create high expectations and to be construed to mean that the Tax Authorities did not permit Unilever to disclose anything. This impression was reflected in the share price of the preference shares during important periods and especially during the last eighteen months prior to the settlement. Unilever decided not to provide any information to the market that might have led to a correction of the share price of the preference shares.

Unilever's argument that the uncertainty demanded by the Tax Authorities was the reason for not providing the information that the preference shares would be settled at

the conversion value, cannot be accepted. The uncertainty demanded by the Tax Authorities solely involved the proceeds from the preference shares upon settlement, *i.e.* the share price development of the ordinary share and not the answer to the question regarding whether upon settlement the proceeds would equal the conversion value or, depending on a choice to be made by Unilever, a higher value. In the view taken by the Tax Authorities, there was precisely certainty that a market value, to be determined by Unilever's own insights, uncoupled, redemption value was excluded.

In preparing and issuing the information regarding the preference share alternative, Unilever started from or at least was influenced by its assumption that the share price of the ordinary share at the time of the settlement of the preference shares would have increased to at least the level on which the preference shares would have a conversion value equal to the cash dividend. In the information it provided to the market, Unilever failed to mention that this information was based in part on this assumption.

Contrary to what Unilever presented in the annual meeting of 2004, what Unilever in fact did in March 2004 was not to make a decision regarding the redemption of the preference shares, that is decide on the redemption value to be paid, but state two consequences. These were the consequence which had been determined since 1999 that the arrangements made with the Tax Authorities and alongside this, the similar consequence known from the outset of the circumstance that redemption at more than conversion value would constitute an admissible additional bonus to a limited group of shareholders. Those consequences were that redemption could solely take place at conversion value.

The conversion decision referred to by Burgmans in the Annual Meeting of 2004, was not based on any consideration of the pros and cons of the options: repurchase at a price higher than the conversion value, conversion and roll-over, or in any event was not based on any consideration in the sense that this could lead to a result other than the result determined in advance, that the preference shares would fetch their conversion value.

With his statements to the effect that prior to March 2004, no settlement decision whatsoever had been taken and that in March 2004 all sorts of careful considerations

were made, based on which considerations Unilever finally decided to convert the preference shares, Burgmans' report to the annual meeting in May 2004 conflicted with the facts, though it may have literally been the truth (in case formal considerations have been made, unnecessary considerations, whose outcome, however, was fixed in advance) but it did not agree with the spirit.

### Conclusion

The investigators arrive at the following twofold conclusion:

First: it already followed from the conditions stipulated by the Tax Authorities and accepted by Unilever in 1999 – and moreover from the nature of a voluntary dividend bonus for a limited group of shareholders, which would result in case of settlement at a value greater than the conversion value – that in 2004 Unilever did not have any discretion, from the outset, regarding the settlement value of the preference shares. Repurchase at share price value would, in the absence of incorrect information have been an option – uninteresting for the shareholders, but supposedly excluded by the Tax Authorities due to the incorrect information in the direction of the cash dividend - high share price, only conversion was left over. The information provided by Unilever in 1999 did not leave Unilever any room to avoid this consequence by deciding not to settle, whether or not for the time being. Aside from irrational market behaviour, in 2004, Unilever had no choice but to settle at the conversion value. To this extent Unilever cannot be reproached for the settlement at conversion value.

Secondly: while providing information to the market in 1999, Unilever did not state that the settlement of the preference shares would take place at stock exchange value or conversion value, in which, normally speaking, the assumption may be made that during the redemption period of 9 June – 1 December 2004, the stock exchange value would remain close to the conversion value. Unilever opted to leave open what the settlement value would be in case the share price of the ordinary shares would be below EUR 73.18 at the time of the settlement. In this crucial respect, Unilever's information to the market was defective and in breach of good corporate governance. Unilever's information that for tax reasons it could not reveal more than it did was incorrect. In addition, the information contained a lack of clarity that led ABN AMRO and a number of investment analysts to believe that settlement would be made at EUR 6.58,

irrespective of the conversion value, although no certainty could be given to the market regarding this point. In view of this lack of clarity, this opinion was predictable and not illogical. Unilever felt that it was not under an obligation to correct this opinion, not even when this incorrect opinion was reflected in the share price development of the preference shares. This is also a breach of good corporate governance.

When Unilever was confronted by questions from disappointed shareholders in the annual meeting of 2004, in an attempt to defend the decision to convert the preference shares without eliciting the reproach Unilever had seriously failed in its provision of information in 1999, Burgmans wrongfully discoursed that the decision to convert was the result of considerations, which could not have been made as early as 1999 within the scope of the preparation of the information regarding the preference share alternative.

## ANNEX I

### Conversion advantageous to Unilever

In this annex the investigators will devote attention to the question regarding whether the conversion decided upon by Unilever in March 2004 resulted in any gain for Unilever compared to repurchase of the preference shares at EUR 6.58 as expected by part of the preference shareholders and if so, what the nature of this gain is. Dilution of the earnings per share will be discussed as the second issue.

The issue in the question regarding whether the conversion resulted in any gain for Unilever is the difference between the conversion value and EUR 6.58.

In case of repurchase at the amount of the notional value of EUR 6.58, Unilever would have to pay a total of EUR 1,382 million. In case of repurchase of the Unilever shares required for conversion, Unilever would have to pay EUR 932 million at the (assumed) price of these shares of EUR 49.33 at the time of conversion. Thus, a difference of EUR 450 million (the amount of EUR 49.33 as the share price will be discussed below). In the annual meeting of May 2004, one shareholder submitted that this amount of EUR 450 million was a profit for Unilever; a profit at the expense of the holders of the preference shares (in fact the Annual Meeting referred to a lower amount because the calculation made assume a higher share price of the ordinary Unilever shares than the amount referred to here of EUR 49.33). Burgmans said that no profit to be accounted for in the profit and loss account was involved, but a shift on the balance sheet "Because this is booked differently, of course".

The investigators tried to determine the correct handling of the difference of EUR 450 million according to the guidelines for annual accounting and reporting. As of 1 January 2005, Unilever reports in conformance with IFRS. This means that the guidelines set forth in IAS 32 are the decisive factor.

IAS 32 requires that as of 1 January 2005 Unilever must include the preference shares of the preference share alternative on the balance sheet as liabilities and no longer as equity capital. This gives rise to the question regarding how redemption must take place for a convertible that has been included as a liability. IAS 32 distinguishes two possibilities for redeeming a convertible instrument, namely:

- a. The conversion of the convertible instrument takes place at maturity;

b. The cancellation takes place before maturity through early redemption or repurchase in which the original conversion rights do not change.

with regard to a. In the case mentioned under (a), AG 32 of IAS 32 stipulates that to the extent that the convertible instrument is booked as a liability, this must be converted to equity capital and that no profit or loss occurs in this conversion.

with regard to b. In situation (b) AG 33 of IAS 32 applies. In that case, no conversion takes place from “liabilities” to “equity capital”, but the convertible instrument is maintained as a “liability” and the profit or loss incurred when the liability is redeemed is included as profit or loss on the profit and loss account.

Thus, the decisive factor for the accounting treatment of the amount of EUR 450 million – used by way of example in the above – is whether or not redemption on the maturity date is involved in the subject case of the preference shares.

The preference shares do not have any real maturity date. In principle, their term is unlimited. The press report issued by Unilever – and approved by the Tax Authorities – regarding the offer of the preference share alternative explicitly says: “The preference shares will have no redemption date”. Unilever also continually mentioned a roll-over as one of the alternatives allegedly available in 2004 according to Unilever. An argument for the opinion that no redemption on the “maturity date” as referred to in IAS 32 can be derived from this. Unilever and Unilever’s accountants, PriceWaterhouseCoopers, arrive at conflicting opinions. Unilever’s Chief Accountant, G. Pickethly, wrote the investigators: “Since the preference shares did not have a defined maturity date the event of conversion is by default the maturity date and paragraph AG 32 of IAS 32 applies.” The point of view of PriceWaterhouseCoopers comes down to the same. They wrote the following to the investigators: “In the conditions to the preference shares as set forth in the information memorandum dated 31 March 1999 no maturity date has been included other than that Unilever is entitled to convert the preference share at any time after 1 June 2004. Thus, effectively it is up to Unilever to determine the maturity date, since conversion automatically means that the financial instrument involved has matured. On this basis we believe that our reference to IAS 32 (AG 32) is correct”.

The investigators believe that although strictly speaking this case involves preference shares without any formal maturity date, at the time the preference shares were issued it

was however immediately announced that Unilever expected to convert the (remaining) preference shares as of 31 December 2004. Since the envisaged conversion actually took place around this date, the investigators believe that no “early redemption or repurchase” is involved as stipulated as a requirement in paragraphs b and with regard to b above so that the positive difference can be booked in the profit and loss account. Thus, the investigators’ conclusion is the same as the conclusion of Unilever and PriceWaterhouseCoopers, namely that there are sufficient grounds for not including the difference between the notional value and the conversion value as of the conversion date as profit in Unilever’s profit and loss account.

In a letter dated 29 March 2006, PriceWaterhouseCoopers informed the investigators that progressive insights – in part based on experience with another financial instruments to which similar principles apply – resulted in a slightly different settlement being followed than follows from their point of view presented above. As of 1 January 2005, in conformance with the obligation mentioned above, the proceeds from the preference shares (EUR 1,382 million) were classified as a debt. However, at the same time, an additional entry was made. This entry entered the conversion right (as a derivative) on the balance sheet for EUR 450 million with a counter entry of an equal increase in equity capital. This EUR 450 million is the value of the conversion right based on the price of the ordinary Unilever share of EUR 49.33 that applied as of 31 December 2004. Changes in the value of the conversion right carried as an asset are incorporated in the profit and loss account. At the time of conversion, changes only take place in the balance sheet. In that case, the value of the debt is offset by the value of the conversion right plus the value of the repurchased Unilever shares required for the conversion. This financial treatment does not result in any profit or loss in the profit and loss account. Thus, the accounting treatment differs slightly from the one discussed before, but the outcome is the same.

However, the fact that the accounting treatment does not result in any profit or loss in the profit and loss account does not change the fact that Unilever most certainly did realise a gain on a cash basis and that the equity capital increased. Had Unilever repurchased the preference shares at the notional value of EUR 6.58 at which the documents had been issued in 1999 – instead of converting the securities into ordinary shares repurchased at a price of EUR 49.33 – Unilever would have had to pay an additional EUR 450 million.

This “gain” for Unilever is a result of the price development of the ordinary Unilever shares and results from the price risk attached to the preference shares.

In June 1999 – as an alternative to the special cash dividend of EUR 6.58 – Unilever had offered Dutch shareholders the possibility to opt for a stock dividend in the form of convertible preference shares. These preference shares had a notional value of EUR 6.58 and – starting from the average price of the ordinary shares in June 1999 (the first month in which the preference shares were outstanding) of EUR 66.83 – a conversion value of EUR 6.02. Thus, in the initial phase this conversion value approximated the notional value or – in other words – approximated the amount of the cash dividend. Contrary to the expectations of many parties, at the announced conversion time on 31 December 2004, the price of the ordinary shares at EUR 49.33 was not higher than but lower than the starting price of EUR 66.83. As a result, the conversion value of the preference shares did not rise to EUR 6.58, but fell to EUR 4.45. This decrease implied a “capital loss” to the holders of the preference shares and a “capital gain” to Unilever of a total of EUR 450 million.

This “loss” and this “gain” directly result from the price risk demanded by the Tax Authorities, which had to be attached to the preference shares. Whether or not Unilever communicated the existence of this risk to its shareholders and the capital market in a manner that complies with the requirements of good corporate governance is the key question in the investigators’ report.

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## ANNEX II

### Dilution of the earnings per share

Pursuant to the regulations in force in England and the USA (FRS 14 and FAS 128, respectively), Unilever is required to include in its annual report not only the net earnings per ordinary share calculated based on the number of outstanding shares, but also the net earnings on a diluted basis, i.e. based on the number of shares that would be outstanding if all conversion rights and options to the issue of new shares granted for the future by Unilever were to be exercised. A separate inclusion of the diluted earnings per share is only required if these earnings are lower than the undiluted earnings.

Each year, Unilever published the earnings per share on a diluted basis prior to the issue of the preference shares, since in addition to options Unilever also has other outstanding convertible preference shares. The other preference shares can be converted in 2038.

The fact that in the period 2000-2003 Unilever did not take into account the effects of the preference shares issued within the scope of the preference share alternative in the calculation of the earnings on a diluted basis – but only did this for 2004 after it had announced the envisaged conversion in 2005 of these preference shares – was regarded by some investors as a possible indication that in the period 2000-2003, Unilever intended not to convert the preference shares but to repurchase these shares (at the price of EUR 6.58).

The investigators established the following regarding this:

a. Not including these effects was correct in the years 2000-2002 because an assumed conversion in those years did not result in lower net earnings on a diluted basis. Thus, at that time there was no dilution.

b. As a result of the decrease in the interest rate in 2003 (the dividend on the preference shares was linked to this interest rate), in 2003 the preference shares did have a dilutive effect on the earnings per share. This dilutive effect amounted to EUR 0.03 (the earnings per share decreased from EUR 2.74 to EUR 2.71). Unilever did not mention this effect in the 2003 annual report. In 2004 Unilever did report the dilution, which amounted to EUR 0.01 at that time.

Unilever's Chief Accountant mentioned before, G. Pickethly, gave the investigators the following written explanation for not including the effects of the preference shares in 2003:

“Having checked that the effect of the preference shares was anti-dilutive in 2000, 2001 and 2002 we omitted to undertake this detailed calculation in 2003. We relied instead on the fact that calculations in respect of 2000, 2001 and 2002 had shown that the preference shares were not dilutive because they would result in a fixed number of shares being issued in return for consideration of a

higher amount. Omitting the detailed calculation in 2003 was an oversight and we undertook the calculation in 2004 we established that movements in interest rates meant that the preference shares had switched to become very slightly dilutive. We therefore presented them as such in the 2004 accounts. Since the effect of this on 2003 was immaterial we did not restate the 2003 calculation.”

The Chief Accountant further explicitly submits:

“The fact that we did not incorporate the effect of the preference shares into the diluted EPS calculations in 2003 was wholly unconnected to any plan to convert, redeem or continue holding the shares”.

Thus, Unilever appears to have been surprised afterwards by the effect of the interest rate decrease and initially missed the consequences this had for the diluted earnings per share. The investigators deem this explanation plausible. Therefore, they agree with the conclusion that omitting the dilutive effect in 2004 was completely unconnected to any specific planned method for redeeming the preference shares in 2004.

During an interview with the investigators, Unilever’s accountant, PriceWaterhouseCoopers in the person of Prof. J.A. van Manen, declared that he had always paid attention to the dilution issue in the audit and that it was determined that the dilution was not “material”.

For the record, the investigators point out that in correspondence with an investment consultant and in the annual meeting of 12 May 2004, Unilever gave a completely different explanation for not including the effects of the preference shares on the diluted earnings per share. On 29 July 2002, an employee of KPMG/Meijburg asked Van der Bijl by e-mail why the preference shares of the preference share alternative were not included in the calculation of the diluted earnings per share, while the preference shares that would not be convertible until 2038 had been included. On Unilever’s behalf, Vernooy initially replied to this e-mail; then Winter also replied. Both answers submit that the difference between the two classes of preference shares is that the holders of the prefs convertible in 2038 have an unconditional right to conversion, while the decision regarding whether or not to convert for the preference shares involved in the preference

share alternative is the exclusive domain of the Unilever Board. According to both Vernooy and Winter, this later situation was the decisive factor for not including the preference shares of the preference share alternative. During the annual meeting in 2004, Van der Bijl gave the same answer in reply to a question to this effect. In the (international) guidelines for annual accounting and reporting, the investigators did not find any stipulation that supports this point of view presented by Unilever. Nor is such a stipulation obvious. Based on the report given by Unilever's Chief Accountant to the investigators as mentioned above it must be concluded that Unilever has meanwhile realised that this explanation was based on a non-existing guideline it thought up itself.

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Amsterdam, the Netherlands

8 September 2006

Signed

L.P. van den Blink

H.A.P.M. Pont

L. Traas