

AMENDED THIS March 29/17 PURSUANT TO
MODIFIÉ CE A CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF _____
L'ORDONNANCE DU _____

DATED / FAIT LE _____

Maggie Sawka
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. : CV-16-11595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES
CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM
HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS
LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS
COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-
BOWLINE GROUP CORP.

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 31, 2016 Issued by "M. Godin"
Local Registrar

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Lawyers for the Defendant,
Mid-Bowline Group Corp.

CLAIM

1. The Plaintiff claims:

- (a) against the Defendants VimpelCom Ltd. ~~and~~ UBS Securities Canada Inc. and Globalive Capital Inc., on a joint and several basis, damages in the amount of ~~\$750,000,000~~ \$1,300,000,000 for breach of contract and breach of confidence;
- (b) against the Defendants Globalive Capital Inc., Tennenbaum Capital Partners LLC, 64NM Holdings GP LLC, 64 NM Holdings LP, LG Capital Investors LLC, Serruya Private Equity Inc., Novus Wireless Communications Inc., West Face Capital Inc., UBS Securities Canada Inc., and Mid-Bowline Group Corp., on a joint and several basis:
 - (i) damages in the amount of ~~\$750,000,000~~ \$1,300,000,000 for misuse of confidential information, conspiracy, and inducing breach of contract; and
 - (ii) Punitive damages in the amount of \$1,000,000;
- (c) against all of the Defendants on a joint and several basis:
 - (i) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (ii) The costs of this action, plus the applicable taxes; and
 - (iii) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. (“Catalyst”)

2. Catalyst is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.

The Defendants

3. VimpelCom Ltd. (“VimpelCom”) is a company subsisting under the laws of the Netherlands in the field of telecommunications services. Its headquarters is located in Amsterdam, Netherlands.

4. Globalive Capital Inc. (“Globalive”) is private equity corporation based in Toronto. Globalive was one of the founders of Wind Mobile Canada (“Wind”).

5. UBS Securities Canada Inc. (“UBS”) is an investment bank that provides advisory services to clients.

6. Tennenbaum Capital Partners LLC (“Tennenbaum”) is an alternative investment management firm headquartered in Los Angeles, California.

7. 64NM Holdings GP, LLC (“64NM GP”) is the general partner of 64NM Holdings, LP (“64NM LP”), a limited partnership organized under the laws of the State of Delaware in the United States of America. 64NM GP is headquartered in New York, New York. 64NM was formed by LG Capital Investors LLC (“LG”) for the purpose of participating in the acquisition of Wind.

8. Serruya Private Equity Inc. (“Serruya”) is a private equity investment fund headquartered in Markham, Ontario.
9. Novus Wireless Communications Inc. (“Novus”) is a telecommunications provider based in Vancouver, British Columbia.
10. West Face Capital Inc. (“West Face”) is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion.
11. Mid-Bowline Group Corp. (“Mid-Bowline”) is an entity incorporated by the members of the Consortium (defined below) for the purpose of purchasing VimpelCom’s interest in Wind.

Wind Mobile’s Inception

12. Wind was founded in 2008. It acquired Advanced Wireless Services spectrum licences during an auction open to small entrants in Canada’s telecommunications industry held by the Government of Canada.
13. Wind was initially jointly owned by Globalive and Orascom Telecom Holdings (“Orascom”) through a holding company called Globalive Investment Holdings Corp. (“GIHC”). Globalive indirectly held 67% of Wind’s voting shares and 34% of its total equity. Orascom indirectly held 100% of Wind’s non-voting shares, 32% of its voting shares and 65% of its total equity. The remaining 1% of Wind’s voting shares and total equity was held by a former Orascom employee.
14. In 2011, VimpelCom acquired the majority shareholder of Orascom, and, as a result, acquired Orascom’s interest in GIHC and Wind.

15. In June 2012, VimpelCom and Globalive entered into negotiations to determine whether one could buy the other's interest in Wind. As the negotiations progressed, VimpelCom became increasingly interested in acquiring Globalive's interest in Wind and the parties ultimately entered into a share purchase agreement whereby VimpelCom agreed to purchase Globalive's equity in Wind. Ultimately, VimpelCom could not secure the required regulatory approval from Industry Canada ("IC") to purchase Globalive's equity and the agreement was terminated.

VimpelCom Intends to Exit Wind

16. In early 2013, VimpelCom engaged UBS for the purpose of finding a purchaser for its debt and equity interests in Wind.

17. At all material times, UBS was VimpelCom's agent for the purpose of finding a purchaser for VimpelCom's debt and equity interests in Wind and completing the transaction.

18. ~~17.~~ By the fall of 2013, VimpelCom had financed Wind's capital purchases and operating expenses through shareholder loans that Wind could not repay. As a result of Wind's massive debts owed to VimpelCom, VimpelCom controlled the sale process for Wind despite only owning a minority voting interest in the company.

19. ~~18.~~ In the fall of 2013 and winter of 2014, several parties, including Catalyst, expressed an interest in purchasing VimpelCom's interest in Wind.

20. ~~19.~~ VimpelCom negotiated with numerous bidders in 2013, including Verizon Wireless, a U.S. wireless company, and Birch Hill, a private equity firm.

21. ~~20.~~ In December 2013, Catalyst negotiated in earnest potential terms for a deal with VimpelCom to acquire its interest in Wind. On January 2, 2014, Catalyst delivered a letter of

intent to VimpelCom whereby it offered to purchase Globalive Wireless Management Corp. for C\$550,000,000, all-cash on closing. VimpelCom did not accept Catalyst's offer.

Globalive Seeks a Financier

22. ~~21.~~ At the same time as VimpelCom was seeking to sell its interest in Wind, and entirely separate from that process, Globalive approached a number of parties, including Catalyst, in an attempt to find capital to purchase VimpelCom's shares in Wind. Globalive wanted to control the identity of the other shareholder of Wind.

23. ~~22.~~ Anthony Lacavera ("Lacavera") is the principal of Globalive. At all material times, Lacavera was the former chief executive officer of Wind. Lacavera directed Globalive to seek out funding to purchase VimpelCom's shares in Wind.

VimpelCom Writes Down its Investment in Wind

24. ~~23.~~ On March 6, 2014, VimpelCom announced that it had written off its investment in Wind as a result of challenges it was facing in the Canadian market. It was apparent to all bidders that VimpelCom was motivated to sell its share in Wind. It was also widely known to all bidders that if VimpelCom did not receive a suitable offer for its interest in Wind, it would likely push Wind into insolvency proceedings.

25. ~~24.~~ VimpelCom continued to aggressively pursue purchasers for its interest in Wind. Given the nature of the sale process and the fact that Wind was a privately held company, VimpelCom demanded that interested bidders execute a non-disclosure agreement.

Catalyst Executes Confidentiality Agreement and Continues Negotiations with VimpelCom

26. ~~25.~~ In March 2014, Catalyst re-engaged with VimpelCom through UBS.

27. ~~26.~~ On March 23, 2014, Catalyst executed a confidentiality agreement with VimpelCom and Global Telecom Holding S.A.E (the “Confidentiality Agreement”). The Confidentiality Agreement was intended in part, to protect the confidentiality of information exchanged during the diligence process. It also mandated complete confidentiality over the sale process:

Agreement and Related Negotiations. Each Party agrees that, unless required (pursuant to the advice of reputable outside legal advisors) by applicable law or by the rules of any national stock exchange on which such Party’s securities are listed or by any competent regulator authority (in any such case such Party will promptly advise and consult with the other Party and its legal advisers prior to such disclosure), without the prior written consent of the other Party, such Party will not, and will cause its Authorized Persons not to, disclose to any person other than the other Party and its Authorized Persons (a) the fact that discussions or negotiations are taking place with the other Party concerning the Project, (b) any of the terms, conditions or other facts related to the other Party's participation in the Project, including the status thereof, or (c) the existence of this Agreement, the terms hereof or that Confidential Information has been made available pursuant to this Agreement.

28. VimpelCom, Global Telecom Holding S.A.E and Catalyst are parties to the Confidentiality Agreement.

29. UBS was also bound by the terms of the Confidentiality Agreement:

“Authorized Person” shall mean, in relation to a Party, any Affiliate, agent, director, officer, employee, representative or professional advisor (including without limitation legal advisors, auditors and accountants) and potential financing sources and the professionals advisors of such Party, excluding in relation to the Company only, the Dave Entities.

30. Pursuant to the Confidentiality Agreement, UBS could not reveal, *inter alia*, that Catalyst and VimpelCom were in negotiations to anyone other than a Party or Authorized Person, as defined by the Confidentiality Agreement.

31. ~~27.~~ Between March and May of 2014, Catalyst and UBS negotiated terms upon which Catalyst would acquire VimpelCom's interest in Wind.

Wind Defaults on Vendor Debt and Catalyst Negotiations Continue

32. ~~28.~~ On May 1, 2014, Wind defaulted on \$150 million in vendor debt. It had until May 30, 2014 to cure the default.

33. ~~29.~~ On May 6, 2014, Catalyst and VimpelCom agreed to preliminary terms for an acquisition of Wind: Catalyst would purchase Wind based on an enterprise value of ~~\$300 million~~ \$1.3 billion, with a closing date of no later than May 30, 2014.

34. ~~30.~~ Catalyst's review of documents stored in VimpelCom's confidential "data room" commenced on May 9, 2014, after its meeting with Wind's management in Toronto.

35. ~~31.~~ Catalyst negotiated with VimpelCom and its advisors, UBS and Bennett Jones LLP, throughout May and June of 2014, but it could not finalize terms of a share purchase agreement during this period.

Other Suitors Pursue Transaction with VimpelCom

36. ~~32.~~ At the same time that Catalyst was negotiating with VimpelCom, VimpelCom was negotiating with other parties, including Tennenbaum and West Face.

37. ~~33.~~ In May 2012, Tennenbaum, together with an unknown partner, acquired certain vendor debt owed by Wind. During 2013 and 2014, Tennenbaum and its partner reached out to VimpelCom and Wind to offer to provide additional debt and equity capital to fund the business.

38. ~~34.~~ After Wind defaulted on its vendor debt on May 1, 2014, including the debt owed to Tennenbaum, VimpelCom informed Tennenbaum that it was selling its stake in Wind.

Tennenbaum met with Wind's management in early May 2014 and started negotiating a proposal to acquire Wind. Tennenbaum's negotiations continued through May and June 2014.

39. ~~35.~~ While Tennenbaum negotiated with VimpelCom, it also began building a consortium of equity partners, including Oak Hill, Blackstone and LG. This initial consortium was permitted to conduct diligence on Wind.

40. ~~36.~~ In May 2014, West Face separately conducted diligence and negotiated with VimpelCom regarding a potential purchase of VimpelCom's interest in Wind.

41. ~~37.~~ West Face was unable to pursue the transaction on its own. In June 2014, it reached out to a strategic partner and worked with that partner on a potential acquisition of Wind, but ultimately the strategic partner backed out.

Catalyst Enters Into Exclusivity With VimpelCom

42. ~~38.~~ In July 2014, Catalyst reached a critical point with VimpelCom such that a deal was imminent. In an effort to control the negotiations, Catalyst proposed that the parties enter into an exclusivity agreement which would allow Catalyst and VimpelCom to continue negotiating for a defined period without the possibility of a competing bid interfering with those negotiations.

43. ~~39.~~ On July 23, 2014, Catalyst and VimpelCom entered into an exclusivity agreement that provided for exclusive negotiations between the parties (the "Exclusivity Agreement"). The Exclusivity Agreement contained the following express and implied terms:

- (a) VimpelCom and Catalyst shall and shall cause their respective Affiliates to deal exclusively with each other in connection with the Transaction and VimpelCom shall use its reasonable efforts to ensure that GWMC and its subsidiaries deal exclusively with

Catalyst and its respective Affiliates in connection with the Transaction;

(b) VimpelCom shall not, shall ensure that its Affiliates will not, and shall use its reasonable efforts to ensure that GWMC and its subsidiaries do not, directly or indirectly, through any of its or their respective Representatives, solicit or encourage offers from, participate in any negotiations or discussions with, enter into any agreements with, or furnish any information to, any person regarding any alternative transaction to the Transaction (including but not limited to an acquisition, merger, arrangement, amalgamation, other business combination, joint venture or equity or other financing) involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets (an "Alternative Transaction");

(c) VimpelCom shall, shall cause its Affiliates and its and their respective Representatives to and shall use its reasonable efforts to ensure that GWMC and its subsidiaries, (A) discontinue or cause to be discontinued any existing activity of the nature described in Section 2(a), including but not limited to precluding access to any due diligence data room (except for access provided to Catalyst and its Representatives) and (B) enforce and not release any third party from, or otherwise waive, any standstill covenants or obligations owed by any such third party to VimpelCom and/or its Affiliates and/or GWMC or its subsidiaries under any confidentiality agreement entered into with respect to a potential Transaction involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets; and

(d) VimpelCom and Catalyst would undertake to negotiate with each other in good faith during the exclusivity period and would not take any steps to undermine the purpose and intent of the Exclusivity Agreement.

44. Pursuant to the Exclusivity Agreement, VimpelCom and its agents and advisors, including UBS, were not permitted to negotiate with any party other than Catalyst during the term of the Agreement.

45. ~~40.~~ The Exclusivity Agreement also required that the parties and their agents and advisors, including UBS, keep the existence and terms of the Exclusivity Agreement confidential.

46. ~~41.~~ The Exclusivity Agreement is governed by the laws of the Province of Ontario.

47. ~~42.~~ VimpelCom instructed Wind's management, including Lacavera, that all discussions with any other prospective purchaser of GWMC, its subsidiaries or any of their material assets must cease until the end of the exclusivity period. Although not a party to the Exclusivity Agreement, Lacavera was obligated not to take any steps that undermined its purpose and intent.

48. ~~43.~~ Catalyst's reasonable expectation was that during the exclusivity period, VimpelCom and Lacavera could not and would not negotiate with any party, including West Face or Tennenbaum, regarding an alternative transaction, and that VimpelCom would honour its obligation to negotiate with Catalyst in good faith.

49. ~~44.~~ Catalyst also understood that during the exclusivity period, Wind's management, including Lacavera, was instructed to and was obligated to assist in exclusively attempting to conclude a deal between Catalyst and VimpelCom.

50. VimpelCom, UBS and Lacavera had no intention of abiding by the terms of the Confidentiality or Exclusivity Agreements.

Other Bidders for ~~the Consortium~~ Wind

51. Prior to July 21, 2014, Tennenbaum, West Face, LG, Serruya, and Novus engaged in discussions regarding the formation of a consortium to pursue the purchase of VimpelCom's interest in Wind (the "Consortium").

52. On July 21, 2014, West Face sought VimpelCom's permission to join the Consortium. VimpelCom consented.

53. ~~45. By July 2014, Tennenbaum, West Face, LG, Serruya, and Novus had formed a consortium to pursue the purchase of VimpelCom's interest in Wind (the "Consortium").~~ The Consortium received Lacavera's and Globalive's support in the form of information provided to the Consortium by Lacavera and other senior managers of Globalive that was not provided to Catalyst.

54. At all material times, VimpelCom, UBS and Globalive knew of the existence of the Consortium and the Consortium's goal of concluding a transaction with VimpelCom for its debt and equity interests in Wind.

UBS and Globalive Inform Consortium of the Terms of the Exclusivity Agreement

55. While Catalyst and VimpelCom were negotiating the Exclusivity Agreement between July 21 to 23, 2014, Globalive and UBS revealed the state of these negotiations to Tennenbaum.

56. On July 23, 2014, UBS communicated to Oak Hill Capital ("Oak Hill"), a former member of the Consortium, Catalyst's confidential information, including the existence and terms of the Exclusivity Agreement. UBS told Oak Hill that VimpelCom had entered into exclusivity with Catalyst at the "reserve price" and would be in exclusivity for five to seven days.

57. Oak Hill transmitted the confidential information received from UBS to Tennenbaum, LG and West Face.

58. On July 29, 2014, UBS and Globalive communicated Catalyst's confidential information to Tennenbaum, the specified date on which the term of the Exclusivity Agreement expired. Tennenbaum communicated this confidential information to West Face.

59. At all times, Tennenbaum, West Face and LG knew that information about the Exclusivity Agreement, that were communicated by UBS and Globalive was Catalyst's confidential information.

Catalyst Extends the Exclusivity Agreement

60. ~~46.~~ By way of written extensions to the Exclusivity Agreement, Catalyst and VimpelCom agreed to extend the exclusivity period to August 18, 2014.

61. ~~47.~~ On or about August 3, 2014, VimpelCom and Catalyst reached an agreement in principle for the purchase of Wind by Catalyst.

62. ~~48.~~ In violation of the Confidentiality Agreement and the Exclusivity Agreement, VimpelCom, UBS, and Globalive informed the Consortium that an agreement had been reached with Catalyst in principle.

The Consortium Forms a Conspiracy

63. ~~49.~~ On or around July 23, 2014, UBS breached the Exclusivity Agreement and revealed to the Consortium that VimpelCom had entered into the Exclusivity Agreement.

64. ~~50.~~ Further, or in the alternative, VimpelCom breached the Exclusivity Agreement and revealed to the Consortium that it had entered into the Exclusivity Agreement.

65. ~~51.~~ Together with Lacavera and Globalive, the Consortium began discussing how they might cause VimpelCom to breach the Exclusivity Agreement so as to prevent Catalyst from successfully acquiring Wind.

66. ~~52.~~ The Consortium's and Globalive's joint intention was to induce VimpelCom to breach the Exclusivity Agreement knowing that, in so doing, they would cause damage to Catalyst.

67. ~~53. In or About~~ On August 1, 2014, the members of the Consortium, Globalive, and Lacavera and UBS (together, the Conspirators) entered into a conspiracy. ~~¶~~The predominant purpose of which was to induce VimpelCom to breach the Exclusivity Agreement, to cause VimpelCom to cease negotiating with Catalyst in good faith and to thereby cause harm to Catalyst (the "Conspiracy").

68. ~~54.~~ The following parties ~~met in in or about~~ attended a call on August ~~2016~~ 1, 2014 to discuss how to induce VimpelCom to breach the Exclusivity Agreement, as particularized below:

- (a) Michael Leitner ("Leitner"), as the principal of Tennenbaum;
- (b) Lawrence Guffy ("Guffy") and Hamish Burt, ("Burt") as principals of LG Capital Investors LLC ("LG") and the manager of the managing member of 64NM GP;
- (c) Greg Boland ("Boland"), Anthony Griffin ("Griffin"), Tom Dea ("Dea") and Peter Fraser ("Fraser"), as principals of West Face;
- (d) Michael Serruya ("M. Serruya"), Aaron Serruya ("A. Serruya"), and Simon Serruya ("S. Serruya"), as principals of Serruya;

- (e) Terence Hui (“Hui”), as principal of Novus; ~~and~~
- (f) Lacavera, as the principal of Globalive ~~(together, the “Conspirators”); and~~
- (g) Jonathan Herbst, on behalf of UBS (together, the “Conspirators”).

69. By August 1, 2014, Globalive and UBS had communicated the following confidential information to the Conspirators:

- (a) Catalyst and VimpelCom were negotiating a transaction to purchase VimpelCom’s equity and debt interests in Wind;
- (b) The structure of the deal that Catalyst proposed to VimpelCom;
- (c) The price that Catalyst was offering to VimpelCom to purchase Wind.
- (d) Catalyst and VimpelCom had entered into the Exclusivity Agreement; and
- (e) The term of the Exclusivity Agreement.

70. ~~55.~~ The Conspirators knew that VimpelCom and Catalyst were party to the Exclusivity Agreement and were aware that a term of the Exclusivity Agreement was that VimpelCom could not negotiate a potential sale of its interest in Wind with any other purchaser during ~~the term of the Agreement~~ its term.

71. Between August 1 and 10, 2014, Lacavera and UBS provided confidential information to the other Conspirators concerning the state of negotiations between VimpelCom and Catalyst. In particular, Lacavera and UBS informed the other Conspirators about the structure of the deal that

Catalyst believed it had with VimpelCom and the communication VimpelCom's Board of Directors were having about the negotiations with Catalyst.

72. On or about August 1, 2014, UBS and Globalive communicated the impending vote to Tennenbaum in contravention to the Confidentiality Agreement, the Exclusivity Agreement and their duty of confidence to Catalyst.

73. On August 1, 2014, Tennenbaum informed the Consortium that VimpelCom's Board of Directors intended to vote on the share purchase agreement proposed by Catalyst.

74. Tennenbaum and the other members of the Conspiracy knew that the information was confidential.

75. On August 4, 2014, the Consortium, including Lacavera, met to discuss the terms of their offer to VimpelCom to induce it to breach the Exclusivity Agreement.

76. ~~56.~~ Together, the Conspirators prepared terms of an offer to VimpelCom that were designed to induce VimpelCom to breach the Exclusivity Agreement and to cause VimpelCom to negotiate with Catalyst in bad faith during the terms of the Exclusivity Agreement. The Conspirators used their extensive knowledge of the Exclusivity Agreement to design their offer.

77. ~~57.~~ The Conspirators agreed that one of the terms they would offer to VimpelCom would be that the closing of their offer would not be conditional on any regulatory approval from IC. The Conspirators included this term in their offer with the knowledge that Catalyst had not offered this term and would not do so.

78. ~~58.~~ Lacavera knew that the proposed offer that all the conspirators crafted would have the effect of causing VimpelCom to breach the Exclusivity Agreement and cause damage to Catalyst.

79. ~~59.~~ Leitner agreed to be the individual who would submit the terms agreed to by the Conspirators to VimpelCom. In so doing, Leitner was acting on his own behalf and on behalf of his fellow co-Conspirators, who in turn were acting for the benefit of the investments funds with which they were associated.

80. ~~60.~~ Tennenbaum is vicariously liable for all conduct of Leitner pleaded herein.

81. ~~61.~~ Lacavera agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy. Additionally, Lacavera agreed that Globalive would join the Conspiracy.

82. ~~62.~~ Globalive is vicariously liable for all conduct of Lacavera pleaded herein.

83. ~~63.~~ At all material times, Guffy was acting as principal of LG, 64NM GP and 64NM LP and agreed that LG, 64NM GP and 64NM LP would participate in the Conspiracy. Guffy agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

84. ~~64.~~ LG, 64NM GP and 64NM LP are vicariously liable for all conduct of Guffy pleaded herein.

85. ~~65.~~ At all material times, Burt was acting as principal of LG, 64NM GP and 64NM LP and agreed that LG, 64NM GP and 64NM LP would participate in the Conspiracy. Burt agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

86. ~~66.~~ LG, 64NM GP and 64NM LP are vicariously liable for all conduct of Burt pleaded herein.

87. ~~67.~~ At all material times, Boland, Griffin, Dea and Fraser were acting as principals of West Face and agreed that West Face would participate in the Conspiracy. Boland, Griffin, Dea and Fraser agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

88. ~~68.~~ West Face is vicariously liable for all conduct of Boland, Griffin, Dea and Fraser pleaded herein.

89. ~~69.~~ At all material times, M. Serruya, A. Serruya, and S. Serruya were acting as principals of Serruya and agreed that Serruya would participate in the Conspiracy. M. Serruya, A. Serruya, and S. Serruya agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

90. ~~70.~~ Serruya is vicariously liable for all conduct of M. Serruya, A. Serruya, and S. Serruya pleaded herein.

91. ~~71.~~ At all material times, Hui was acting as a principal of Novus and agreed that Novus would participate in the Conspiracy. Hui ~~instructed~~ agreed that Letiner should send an offer to VimpelCom in furtherance of the Conspiracy.

92. ~~72.~~ Novus is vicariously liable for all conduct of Hui pleaded herein.

93. At all material times, Herbst was acting on behalf of UBS and agreed that it would participate in the Conspiracy.

94. UBS is vicariously liable for all conduct of Herbst pleaded herein.

Misuse of Catalyst's Lacavera Transmits Confidential Information by to the Consortium

95. ~~73.~~ While Tennenbaum and West Face were engaged in negotiations with VimpelCom beginning in May 2014, Lacavera was in constant communication with them in his capacity as Chief Executive Officer ("CEO") of Wind.

96. ~~74.~~ Lacavera had intimate knowledge of Catalyst's confidential negotiations with VimpelCom, which he received in his role as CEO of Wind, including Catalyst's regulatory strategy ~~and, its~~ negotiating positions with VimpelCom and the terms of the Exclusivity Agreement ("Catalyst's Confidential Information").

97. ~~75.~~ Lacavera knew that if Catalyst was the successful bidder, it intended to terminate his position as CEO of Wind and to eliminate his equity position in the company. In order to prevent this from occurring, and contrary to his contractual obligations to Catalyst under the Confidentiality Agreement, Lacavera shared Catalyst's Confidential Information with West Face and Tennenbaum, including the fact that Catalyst was negotiating with VimpelCom with regard to Wind.

98. ~~76.~~ Between April 2014 and August 18, 2014, Lacavera repeatedly communicated Catalyst's Confidential Information to the Consortium, either jointly or to individual members of the Consortium, to assist the Conspirators in their efforts to prevent Catalyst from successfully purchasing Wind.

~~77. The Confidential Information that Lacavera transmitted included critical information regarding Catalyst's confidential negotiation communications with VimpelCom.~~

99. After Lacavera and Globalive signed a support agreement whereby they agreed to support VimpelCom's negotiations, including the Exclusivity Agreement with Catalyst, Lacavera continued to communicate Catalyst's Confidential Information to the Consortium through Serruya.

100. ~~78.~~ Lacavera knew that ~~this~~ the information he was communicating was confidential and that information was shared with him on the condition that he not communicate this information to other parties bidding for Wind. In breach of this obligation, Lacavera shared this information with the other bidders, including West Face, to give those other bidders an unfair advantage in their pursuit of Wind.

101. ~~79.~~ The Consortium knowingly received and misused Catalyst's Confidential Information to create the Proposal and gain an unfair advantage over Catalyst in its negotiations with VimpelCom.

102. ~~80.~~ By wrongly transmitting Catalyst's Confidential Information to the Consortium, Lacavera, acting on behalf of Globalive, and, separate and apart from the interests of Wind and VimpelCom, knew that the transmission would (and did) cause damage to Catalyst.

UBS Transmits Confidential Information to the Consortium

103. UBS had intimate knowledge of Catalyst's Confidential Information, which it received in confidence by virtue of its relationship of confidence with Catalyst as VimpelCom's agent.

104. Between July 21 2014 and August 18, 2014, UBS repeatedly communicated Catalyst's Confidential Information to the Consortium, either jointly or to individual members of the

Consortium, for the purpose of assisting the Conspirators in their efforts to prevent Catalyst from successfully purchasing Wind.

105. The Confidential Information that UBS transmitted included Catalyst's negotiating positions with VimpelCom, the terms of the Exclusivity Agreement, and the status of the negotiations between Catalyst and VimpelCom.

106. UBS knew that this information was confidential and that information was shared with it on the condition that it not communicate this information to other parties bidding for Wind. UBS repeatedly breached Catalyst's confidence by transmitting this information to the Consortium, including Tennenbaum and West Face, to give those other bidders an unfair advantage in their pursuit of Wind.

107. The Consortium knowingly received and misused Catalyst's Confidential Information to create the Proposal (defined below) and to gain an unfair advantage over Catalyst in its negotiations with VimpelCom.

108. UBS knowingly and willingly participated in the conspiracy by transmitting Catalyst's Confidential Information to the other Conspirators in furtherance of the Conspiracy's predominant purpose which was to induce VimpelCom to breach the Exclusivity Agreement.

109. By wrongly transmitting Catalyst's Confidential Information to the Consortium, UBS knew that the transmission would (and did) cause damage to Catalyst.

The Consortium Induces VimpelCom to Breach the Exclusivity Agreement

110. ~~81.~~ On August 6, 2014, acting in furtherance of the Conspiracy, Leitner sent a proposal to VimpelCom and UBS entitled “Superior Proposal to purchase WIND Canada” (the “Proposal”).

The Proposal included the following terms:

- (a) Binding commitments to purchase VimpelCom’s equity and debt interests for a cash amount that approximates the net amounts distributed to VimpelCom based on the “reserve price”;
- (b) The proposal would not require regulatory approval and requires no engagement with regulatory authorities;
- (c) The proposal would close quickly; and
- (d) The Consortium would purchase Wind’s Vendor Loans at par and refinance them.

111. ~~82.~~ Leitner delivered the Proposal with authorization and instructions from Tennenbaum, 64NM GP, 64NM LP, LG, Serruya, Novus, West Face, Globalive, Guffy, Burt, M. Serruya, A. Serruya, and S. Serruya, Hui, Boland, Griffin, Dea, Fraser and Lacavera.

112. ~~83.~~ In furtherance of the Conspiracy, Leitner submitted the Proposal with the intent that VimpelCom would breach the terms of the Exclusivity Agreement and prevent Catalyst and VimpelCom from completing any deal, thereby causing damage to Catalyst.

113. On August 8, 2014, West Face, in furtherance of the Conspiracy, contacted Felix Saratovsky of VimpelCom to discuss the Proposal. West Face told Saratovsky that it was sending further details about the Proposal.

VimpelCom Uses Catalyst as a Stalking Horse Bid and Causes Catalyst Harm

114. ~~84.~~ The Conspiracy had the desired effect of causing VimpelCom to breach the Exclusivity Agreement. Between August 6 and August 18, VimpelCom and UBS engaged in discussions and negotiations with the Consortium, Globalive and Lacavera over the Proposal, in breach of the Exclusivity Agreement.

115. ~~85.~~ Following receipt of the Proposal, on August 7 and 8, 2014, VimpelCom ceased negotiating with Catalyst in good faith. Instead, it used its negotiations with Catalyst as a stalking horse to improve the terms of the Proposal.

116. On or about August 8, 2014, VimpelCom instructed UBS to inform the Consortium that VimpelCom was interested in concluding a transaction with the Consortium.

117. On or about August 10, 2014, Leitner engaged in negotiations with UBS and provided details of further equity commitments to bolster the Proposal. Leitner intended that UBS transmit this information to VimpelCom in furtherance of the Conspiracy.

118. ~~86.~~ On or about August 11, 2014, VimpelCom and Catalyst contacted IC to provide an update on the negotiations. During the conference call, Catalyst and VimpelCom told IC that the “deal was done”.

119. ~~87.~~ VimpelCom continually and repeatedly stalled its negotiations with Catalyst by, among other things, insisting on the need for approvals from its Board and its finance committee. The Board and the finance committee then insisted on additional, commercially unreasonable terms with the knowledge and intent that Catalyst could not agree to these new terms.

120. While VimpelCom stalled negotiations with Catalyst, UBS, on VimpelCom's instruction, continued to communicate with the Consortium in contravention of the Exclusivity Agreement. On August 12, 2014, UBS informed Leitner of the term of the Exclusivity Agreement, and the state of negotiations between Catalyst and VimpelCom.

121. ~~88.~~ Despite the representations to IC on August 11, 2014 that the deal was, in fact, done, on or about August 15, 2014, VimpelCom demanded that Catalyst agree to a \$5-20 million break-fee to be paid in the event that Catalyst's purchase of Wind did not receive regulatory approval. Prior to this date, VimpelCom had never requested a break fee from Catalyst.

122. ~~89.~~ VimpelCom's intention was to frustrate and defeat the purpose and intent of the Exclusivity Agreement so that its exclusivity period with Catalyst would expire without a signed agreement. While doing so, VimpelCom and the Conspirators continued to negotiate and discuss the terms of an agreement.

Exclusivity ~~W~~with Catalyst Ends

123. ~~90.~~ On August 19, 2014, the exclusivity between VimpelCom and Catalyst terminated without a signed agreement.

124. ~~91.~~ On September 15, 2014, the Consortium and VimpelCom announced an agreement by which the Consortium, through Mid-Bowline Group Corp., purchased VimpelCom's stake in Wind.

Harm to Catalyst

125. ~~92.~~ As a result of VimpelCom, UBS and Lacavera's breaches of the Confidentiality Agreement, the Exclusivity Agreement, and their duties of confidence, the Conspiracy was formed with the intent of harming Catalyst.

126. ~~93.~~ As a result of the misconduct of the Conspirators, VimpelCom and UBS breached the Exclusivity Agreement and breached ~~its~~ their duty of good faith during its negotiations with Catalyst. As a result, the Consortium was able to purchase Wind to Catalyst's detriment.

127. ~~94.~~ On or about January 2016, Shaw Communications ("Shaw") acquired Mid-Bowline, the corporation formed after the Consortium's acquisition of VimpelCom's interest in Wind, for \$1.6 billion. As a result, the Consortium received a profit of over ~~\$750,000,000~~ \$1,300,000,000, thereby crystallizing Catalyst's damages as a result of the Conspirators' and VimpelCom's wrongful conduct, as described above.

Catalyst Discovers the Conspiracy in January 2015

128. ~~95.~~ In December 2014, Mid-Bowline commenced an application to seek Court approval of a plan of arrangement pursuant to which Shaw intended to acquire all of the equity in Mid-Bowline. The application originally sought a release of an unrelated claim by Catalyst to a constructive trust over West Face's interest in Wind.

129. ~~96.~~ In January 2015, Catalyst brought a motion to oppose the plan of arrangement. In the course of those proceedings, Griffin filed an affidavit in support of the plan of arrangement. In it, Griffin described in detail the Consortium's efforts to purchase Wind.

130. ~~97.~~ Simon Lockie (Chief Legal Officer of Globalive) (“Lockie”), Leitner and Burt also filed detailed affidavits in support of the plan of arrangement. In each affidavit, the respective affiant described the Consortium’s efforts to purchase Wind and Globalive’s role in assisting the Consortium members.

131. ~~98.~~ Catalyst carefully reviewed the affidavits of Griffin, Lockie, Leitner and Burt after they were filed in the public record. This new evidence, when considered in the context of the timing of the Exclusivity Agreement and VimpelCom’s change in negotiation posture with Catalyst in August 2014, as detailed above, revealed the details of the Conspiracy, including the common intent of the Conspiracy, Consortium’s efforts to induce VimpelCom to breach the Exclusivity Agreement and the Consortium’s misuse of Confidential Information.

132. ~~99.~~ The affidavits revealed to Catalyst for the first time that VimpelCom did, in fact, breach the Exclusivity Agreement and had failed to negotiate with Catalyst in good faith throughout the exclusivity period.

Damage to Catalyst

133. ~~100.~~ As a result of the Consortium’s inducement of breach of contract and VimpelCom’s breach of the Exclusivity Agreement, Catalyst has suffered damages, which are crystallized in the form of the profits realized by the Conspirators from the sale of Wind to Shaw, which Catalyst estimates to ~~\$750,000,000~~ \$1,300,000,000.

Punitive Damages

134. ~~101.~~ Catalyst claims that the Defendants’ egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst’s rights and

interests so as to entitle Catalyst to a substantial award of punitive, aggravated and exemplary damages.

135. ~~402.~~ Accordingly, the Defendants are liable, on a joint and several basis, to Catalyst for \$1 million in punitive damages.

Service Ex Juris

136. ~~403.~~ The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario. The matters at issue in this proceeding concern contracts entered into and governed by the laws of Ontario.

137. ~~404.~~ Pursuant to the terms of the Exclusivity Agreement, VimpelCom attorned to the jurisdiction of the courts of the Province of Ontario.

138. ~~405.~~ Catalyst pleads reliance on Rule 17.02(f), (g) and (p) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

139. ~~406.~~ Catalyst proposes that this action be tried at Toronto.

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Court File No. CV-16-11595-00CL

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AMENDED AMENDED STATEMENT OF CLAIM

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