

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 2
June 07, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 2/Volume 2 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 7th day
of June, 2016, commencing at 9:30 a.m.

B E F O R E: The Honourable Justice F. Newbould

1 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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3
4 A P P E A R A N C E S:

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9
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11 & Kris Borg-Olivier, Esq., Brandon Moyse.
12 & Denise Cooney, Esq.

13
14 Kent Thomson, Esq.,
15 & Matthew Milne-Smith, Esq.,
16 & Andrew Carlson, Esq., for the Defendant,
17 West Face Capital Inc.

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I N D E X

WITNESS

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1 -- Upon commencing at 9:30 a.m.

2

3 MR. MILNE-SMITH: Good morning. So,
4 Your Honour, just to make sure we are all on the
5 same page, do you want to go into the de Alba
6 cross-examination folder on your iPad, just so we
7 are in the right place to start.

8 There's several different layers you
9 have to get through, I know.

10 THE REGISTRAR: Good morning, Mr. de
11 Alba. Just a reminder that you are still under
12 oath.

13 THE WITNESS: Yes, good morning.

14 CROSS-EXAMINATION BY MR. MILNE-SMITH
15 (CONT'D):

16 Q. Good morning, Mr. de Alba.

17 A. Good morning.

18 Q. Am I correct that Catalyst
19 approached government representatives on numerous
20 occasions between March and August of 2014 seeking
21 various regulatory concessions?

22 A. Correct.

23 Q. And those were the concessions
24 that we looked at yesterday in the March 27th
25 PowerPoint?

1 A. There could have been other
2 concessions, but those concessions were the main
3 concessions.

4 Q. And just so we have got a bit of a
5 laundry list, those occasions included the March
6 27th presentation to Industry Canada?

7 A. Correct.

8 Q. The May 12th presentation to
9 Industry Canada?

10 A. Yes.

11 Q. And then I understand there were
12 also a couple of conversations that Bruce Drysdale
13 reported to you on; do you recall those as well?

14 A. Yes.

15 Q. He sent an email -- and why don't
16 we bring it up just so it is in the record -- at
17 tab 34 of our cross-examination binder. So this is
18 CCG0025815.

19 So do you recall receiving this email?

20 A. Do you mind if I read it?

21 Q. Sure.

22 A. (Witness reviews document.)

23 Yes, I do recall.

24 Q. And then tab 42 is an August 3rd
25 email from Mr. Drysdale?

1 THE COURT: Just a second. This tab,
2 the one we just looked at, is an email from Mr. de
3 Alba.

4 MR. MILNE-SMITH: Yes, and further down
5 it includes the report of Mr. Drysdale. I'm sorry,
6 Your Honour. Mr. Thomson is going to go through
7 this in some more detail with Mr. Riley, so I don't
8 think --

9 THE COURT: Oh, I see, it is the second
10 page.

11 MR. MILNE-SMITH: Yes, I am just doing
12 this sort of in fairness to the witness for the
13 dates.

14 THE COURT: That's fine.

15 BY MR. MILNE-SMITH:

16 Q. So then tab 42. This is
17 CCG0025843. And if you could just scroll down so
18 we can see the whole email, this is another report
19 from Mr. Drysdale on August 3rd. Do you recall
20 receiving this email, Mr. de Alba?

21 A. Yes.

22 Q. Okay, and am I correct --

23 THE COURT: Just a second. Which
24 number was that, I'm sorry?

25 MR. MILNE-SMITH: Sorry, this is tab

1 42.

2 THE COURT: 42, thank you.

3 BY MR. MILNE-SMITH:

4 Q. And I promise you, Your Honour,
5 you are going to hear more about these emails.

6 And am I correct, Mr. de Alba, that you
7 didn't attend the March 27th or the May 12th
8 presentation?

9 A. That's correct.

10 Q. And you didn't participate in the
11 conversations that Mr. Drysdale is reporting on in
12 these two emails?

13 A. No.

14 Q. But you understood that on each of
15 those four occasions we have just run through the
16 government refused to give any assurance that
17 Catalyst would in fact receive the regulatory
18 concessions it was seeking?

19 A. I cannot say in all four of them,
20 as I did not attend.

21 Q. So you can't add anything more to
22 what Mr. Drysdale has reported, for example, then?

23 A. Not since I wasn't there, but I
24 know other participants could add something
25 different.

1 Q. Okay. And do I have it correct
2 that Catalyst's plan was to sign the share purchase
3 agreement with VimpelCom, and even though the
4 government said they wouldn't give you concessions,
5 you were going to try and get the concessions
6 before the deal closed?

7 A. There was an ongoing dialogue with
8 the government, with various arms of the
9 government, with various branches or arms of the
10 government, and that dialogue was ongoing.

11 Q. Okay, but that doesn't quite
12 answer my question, sir. Your plan was to sign the
13 SPA, and even though the government said they
14 wouldn't give you concessions, you were going to
15 try and get concessions before the deal closed;
16 correct?

17 A. The SPA allowed us to have a
18 discussion in relationship to concessions.

19 Q. Well, again, that doesn't answer
20 my question. Mr. de Alba, again, you recall giving
21 examination for discovery evidence on May 11th,
22 2016?

23 A. Yes.

24 Q. And you gave that evidence under
25 oath and it was truthful?

1 A. Correct.

2 Q. And let me just read to you from
3 the transcript.

4 THE COURT: Just wait a second.

5 MR. MILNE-SMITH: It is tab 2, page
6 177.

7 THE COURT: Go ahead. Which question?

8 MR. MILNE-SMITH: Question 654. Do you
9 have that, Your Honour?

10 THE COURT: Yes.

11 BY MR. MILNE-SMITH:

12 Q. Okay.

13 "Question: Meaning your plan
14 was to sign the SPA and even though
15 the government said they wouldn't
16 give you concessions, you were going
17 to try and get concessions before
18 the deal closed?

19 Answer: We were going to try."

20 Did I ask you that question and did you
21 give that answer?

22 A. That's correct.

23 Q. And you did so truthfully;
24 correct?

25 A. Yes.

1 Q. And if Catalyst had not obtained
2 any of the concessions in the March 12 [sic] and
3 May 12 presentations to Industry Canada, Catalyst
4 would not have proceeded to close its deal to
5 acquire Wind?

6 A. It is tough to say for me.

7 Q. Okay, let me try it one more time.
8 If Catalyst had not obtained any of the concessions
9 in the March 27th and May 12th presentations to
10 Industry Canada, Catalyst would not have proceeded
11 to close a deal to acquire Wind; correct?

12 A. When you say the word "any", we
13 would have not, if you use the word "any."

14 Q. Right, if you had not obtained any
15 of the concessions in those presentations, you
16 would not have proceeded to close a deal to acquire
17 Wind?

18 A. Correct. There were some
19 concessions that were obtained throughout.

20 Q. And you never obtained the
21 concession regarding the sale of spectrum to an
22 incumbent; correct?

23 A. That's correct.

24 Q. And that was the most vital
25 concession?

1 A. Correct.

2 Q. Mr. de Alba, you were
3 Catalyst's --

4 THE COURT: Sorry, he never obtained a
5 concession regarding what?

6 MR. MILNE-SMITH: Sale of spectrum to
7 an incumbent. Sorry, Your Honour.

8 THE COURT: I'm just looking at the
9 transcript, and you were speaking so quickly
10 that --

11 BY MR. MILNE-SMITH:

12 Q. My apologies.

13 Mr. de Alba, you were Catalyst's lead
14 negotiator with VimpelCom; correct?

15 A. Correct.

16 Q. And just a point of terminology so
17 I make sure that we are on the same page, when I
18 refer to the "interim period", you understand that
19 is a defined term from the share purchase agreement
20 that means the period between signing the agreement
21 and closing the agreement?

22 A. Correct.

23 Q. And am I correct that Catalyst's
24 ability to pursue regulatory concessions in the
25 interim period was a point of extensive negotiation

1 between Catalyst and VimpelCom?

2 A. Correct.

3 Q. And it is fair to say that
4 VimpelCom repeatedly and consistently tried to
5 restrict or limit Catalyst's ability to seek
6 regulatory concessions in the interim period?

7 A. Correct.

8 Q. And Catalyst repeatedly tried to
9 ease those restrictions?

10 A. Yes.

11 Q. And as it turned out, VimpelCom --

12 THE COURT: Just a minute.

13 Go ahead.

14 BY MR. MILNE-SMITH:

15 Q. As it turned out, VimpelCom did
16 not agree to allow Catalyst during the interim
17 period to pursue regulatory concessions that would
18 permit sale of Wind spectrum to an incumbent;
19 correct?

20 A. I think that was a contentious
21 point. I don't believe it was clearly stated in
22 the documents, correct.

23 Q. So you agree with the proposition
24 I put to you?

25 A. Yes.

1 Q. Now, we already looked yesterday
2 at the first two drafts or two of the early drafts
3 from May 12th and May 23; do you recall that?

4 A. Yes, I do.

5 Q. So I don't plan to go through that
6 again. Now, I have at least eight drafts that go
7 back and forth between Catalyst and VimpelCom on
8 the subject, and I am of course happy to take you
9 through each one, but as a preliminary matter, is
10 it fair to say as Catalyst's lead negotiator you
11 went back and forth on clause 6.3(d) repeatedly?
12 Do you recall that?

13 A. I do recall going back and forth
14 on that section.

15 Q. Okay, and just for the Court's
16 benefit, again, 6.3(d) was that clause we looked at
17 yesterday that dealt with this issue of the ability
18 to seek regulatory concessions during the interim
19 period; correct?

20 A. I think there were other sections
21 or sub-clauses on that section that also allow for
22 that.

23 Q. Okay, well, why don't we make sure
24 we are on common ground here. Let's pull up tab
25 28, since that is the last version we looked at

1 yesterday. And for the record, this is CCG --

2 THE COURT: Just wait a second.

3 MR. MILNE-SMITH: Don't worry, I wasn't
4 going to ask a question, Your Honour. I was just
5 stating the doc ID.

6 MS. BARBIERO: Tab 28.2.

7 THE COURT: Which document?

8 BY MR. MILNE-SMITH:

9 Q. So it is tab 28.2, CCG0011364, and
10 this is the May 23rd draft of the share purchase
11 agreement reflecting you can see on the front page
12 "FMD comments", and that is Fasken Martineau
13 Dumoulin, your law firm; correct, sir?

14 A. Correct.

15 Q. And then if we go to page 37 --

16 THE COURT: The page number at the top?

17 BY MR. MILNE-SMITH:

18 Q. Page number at the top, yes.

19 We have section 6.3 and, Mr. de Alba,
20 you see this is the regulatory third party
21 notification and approvals section?

22 A. Correct, correct.

23 Q. And then if we flip over to page
24 38, there is clause (d) that I referred you to?

25 A. Yes.

1 Q. And so again, this was the clause
2 that dealt with the issue of seeking regulatory
3 concessions during the interim period; correct?

4 A. I think this is one of the
5 clauses. In addition, VimpelCom/Wind were also
6 seeking concessions themselves and we were allowed
7 to continue to pursue those concessions.

8 Q. Okay.

9 A. So I think there are other parts
10 of the document that deal with that as well.

11 Q. We are going to come to that, so I
12 know exactly what you are talking about. That
13 comes in a later draft I think you'll recall?

14 A. Yes.

15 Q. Yes, and we are going to get to
16 that, I promise you. But at least in this draft,
17 6.3(d) is the clause that deals with the issue we
18 are discussing?

19 A. It does. I'm not sure it is in
20 other parts of the document, but it clearly does
21 here.

22 Q. You can't point to another part of
23 this document here --

24 A. Not from my memory.

25 Q. Now, what I am going to do, Mr. de

1 Alba, is the only document I want to take you
2 through in detail now is the end point, but I think
3 as part of the record I just want to introduce,
4 Your Honour, the various drafts that went back and
5 forth so they form part of the record and Your
6 Honour can look at them in the course of your
7 deliberations.

8 So what I propose to do is go through
9 and identify --

10 THE COURT: If you are doing it for
11 identification, would you do that right now? Won't
12 this be part of your argument?

13 MR. MILNE-SMITH: The discussion we
14 have had among counsel is that unless it is
15 referred to in the course of the examination, we
16 can't rely on it in closing. So I'm happy to just
17 read through a list of them, and if we are agreed
18 with counsel, then I leave it to Your Honour
19 that --

20 MR. DiPUCCHIO: We are fine with that,
21 Your Honour. He doesn't have to run through them.

22 THE COURT: Why don't you do that.

23 MR. MILNE-SMITH: Okay. So the various
24 iterations of the share purchase agreement are as
25 follows, and I'll give the tab number and the doc

1 ID number:

2 So there is tab 29, CCG0009636. It is
3 a May 31 draft reflecting Catalyst's comments.

4 There is tab 30, which is CCG0009738,
5 that is 30.2, so 9738 reflecting VimpelCom comments
6 of June 17.

7 There is tab 31.2, CCG0024199, a July
8 13 VimpelCom draft.

9 There is tab 33.2, CCG0009833, a July
10 24th Catalyst draft.

11 Tab 35, CCG0009859, that is tab 35.2.
12 That is a July 7 VimpelCom draft.

13 Tab 36.2, CCG0012087, a July 28th
14 Catalyst draft.

15 Tab 39.2, CCG0026606, a July 30
16 VimpelCom draft.

17 Tab 40.2, CCG0026610, a July 31
18 Catalyst draft.

19 And I would propose also that the
20 covering emails where I have been referring to tab
21 40.2, 39.2 and so forth, the covering emails are
22 the ".1", so I propose they also form part of the
23 record. Is that fine, Counsel?

24 MR. DiPUCCHIO: That is fine.

25 BY MR. MILNE-SMITH:

1 Q. Thank you. So let's fast-forward
2 then, Mr. de Alba, to the end of the story, as I
3 understand it at least, and you can confirm for me.

4 Tab 41, we'll start with tab 41.1.
5 This is an August the 1st email, and I just want to
6 look at the second email on that page from
7 Mr. Saratovsky and it is sent to you and then
8 copied to various other individuals; do you see
9 that, sir?

10 A. Yes, I do.

11 Q. So Mr. Saratovsky writes and says:

12 "As discussed, attached are
13 drafts of the Share Purchase
14 Agreement and Trademark Licence
15 Agreement (with blacklines against
16 the last versions provided by your
17 counsel) that we consider
18 substantially completed, subject
19 only to settling some of the details
20 in the schedules [...]"

21 And I take it you agreed with them at
22 this time that this draft was considered
23 substantially completed?

24 A. Yes.

25 Q. And then in the next paragraph he

1 says that they need to finalize the support
2 agreement with AAL, with Tony Lacavera, so you
3 understand they were in negotiations for a support
4 agreement at that time?

5 A. I think it was brought up. I
6 don't recall the extent of my understanding of
7 that, as all of the sale and purchase agreements
8 talk about selling a hundred percent of the shares.

9 Q. Okay.

10 A. So the understanding was that they
11 were selling a hundred percent of the shares.

12 Q. So the support agreement wasn't
13 your concern?

14 A. Correct.

15 Q. And then in the third paragraph it
16 states that under the exclusivity agreement dated
17 July 23rd, 2014, as amended on July 30, 2014:

18 "[...] this constitutes written
19 confirmation by VimpelCom that the
20 attached Share Purchase Agreement
21 and Trademark Licence Agreement are
22 substantially settled. Under the
23 exclusivity agreement, once you
24 confirm the same by reply email, the
25 exclusivity period will be extended

1 automatically by 5 Toronto business
2 days."

3 Is that correct?

4 A. Correct.

5 Q. And just so we have it in the
6 record, tab 43, if we could skip there quickly, so
7 this is CCG002442. Do you have tab 43, Your
8 Honour?

9 THE COURT: Go ahead.

10 BY MR. MILNE-SMITH:

11 Q. Your Honour, I'm told I misread
12 the doc ID. CCG0024442. So you'll see in the
13 middle of the page there is an email from you, Mr.
14 de Alba, responding to the one we just looked at,
15 and you write:

16 "Hi, Felix, we are okay with
17 these agreements subject to a typo
18 on the trademark licence agreement."

19 And then skipping past the
20 parenthetical:

21 "Therefore, we also consider
22 the agreement substantially
23 settled."

24 So you gave the confirmation he asked
25 for; correct?

1 A. Correct.

2 Q. And, Mr. de Alba, the core deal
3 team for Catalyst at this time would have included
4 Zach Michaud and Lorne Creighton; correct?

5 A. I believe so.

6 Q. But you didn't copy them on these
7 emails; correct?

8 A. It doesn't seem, no.

9 Q. If we could then just go back to
10 tab 41.2 and look at the actual formal share
11 purchase agreement at that time. This is
12 CCG0026625.

13 A. Yes.

14 Q. So if we then go to page 41, we
15 will find 6.3(d). And, sir, you would agree with
16 me that without the consent of VimpelCom, which is
17 not to be unreasonably withheld --

18 THE COURT: Sorry, where are you
19 looking at?

20 BY MR. MILNE-SMITH:

21 Q. I'm going to ask the witness to
22 summarize the contents of this very long paragraph.

23 So take a moment to read it, Mr. de
24 Alba.

25 A. Okay, thank you.

1 (Witness reviews document.)

2 I have read it.

3 Q. Okay. So the point of this clause
4 is that once you signed this, without the consent
5 of VimpelCom, not to be unreasonably withheld, it
6 limits your ability to seek the approval of any
7 other transaction?

8 A. That is not correct.

9 Q. Okay, could we go back to tab 2,
10 the transcript again, and I am on page 169. In
11 fact, maybe just to make sure for the record that
12 we are looking at the same document, please go to
13 page 162 of the transcript and you will see at
14 question 598 it refers to document 26625. That is
15 the same draft that we have up on the page.

16 If we could then go forward to page
17 169, so this is question 626 and the first part is
18 responding to something else Mr. de Alba said, but
19 you will see near the top of page 169 it says:

20 "Question: The point is that
21 once you signed this, without the
22 consent of VimpelCom not to be
23 unreasonably withheld, it limits
24 your ability to seek the approval of
25 any other transaction?

1 Answer: Not to be unreasonably
2 withheld."

3 Now, did I ask you that question and
4 did you give that answer?

5 A. Yes.

6 Q. And you gave that answer
7 truthfully?

8 A. Yes, but I think I missed one
9 component, which is the other document that you
10 pulled talks about sale to an incumbent, not any
11 other transaction.

12 Q. Okay, so you agree that it limits
13 your ability to sell spectrum to an incumbent?

14 A. Correct.

15 Q. And that, of course, was the core
16 of Catalyst's plan?

17 A. It was not -- no, it was not the
18 core of the plan. It was --

19 Q. A vital part of Catalyst's exit
20 strategy was the ability to sell to an incumbent?

21 A. The option to sell to an incumbent
22 was one, yeah.

23 Q. Yes, and this clause limits your
24 ability to do that?

25 A. On that option, yes.

1 Q. Yes. Thank you, Mr. de Alba.

2 THE COURT: As I read the clause,
3 Mr. Milne-Smith, it doesn't permit -- during the
4 interim period, the purchaser shall not discuss
5 with any governmental authority the sale or
6 transfer of the business or its assets to an
7 incumbent.

8 MR. MILNE-SMITH: Yes.

9 THE COURT: It doesn't say unless with
10 the consent of VimpelCom. It just simply limits
11 it, period, in the middle of the paragraph.

12 MR. MILNE-SMITH: That's right. I was
13 limited in my impeachment by what I said in the
14 transcript before. I mean, the document speaks for
15 itself and I don't plan to argue with the witness
16 about what the document means.

17 BY MR. MILNE-SMITH:

18 Q. Now, Mr. de Alba, in fairness to
19 you, earlier in this cross-examination you referred
20 to another clause that talked about existing
21 regulatory concessions that Wind was already
22 pursuing?

23 A. Correct.

24 Q. Do you recall that? And that is
25 clause 6.3(e) that we see here on page 41 of

1 CCG0026625; correct?

2 A. That's correct.

3 Q. Okay. And just for His Honour,
4 let me just read to you a passage here. About
5 halfway down the paragraph of 6.3(e) it says:

6 "For greater certainty, the
7 Purchaser may, with the prior
8 written consent of GTH [...]"
9 And GTH here was the seller; correct?

10 A. Yes.

11 Q. So:

12 "[...] with the prior written
13 consent of GTH, not to be
14 unreasonably withheld, take any
15 action with respect to seeking or
16 pursuing concessions from any
17 governmental authority so long as
18 such action would not be expected to
19 prevent or delay the obtaining of
20 any consent or approval required
21 hereunder."

22 Do you see that?

23 A. Correct.

24 Q. And the regulatory concessions
25 that you were allowed to pursue pursuant to 6.3(e),

1 if you just look up a little bit, were regulatory
2 concessions from Industry Canada that GWMC is
3 presently seeking on the date hereof; correct?

4 A. Correct.

5 Q. And again, GWMC, just to recollect
6 something we looked at yesterday, that is
7 effectively Wind Mobile?

8 A. I believe that is correct.

9 Q. So what this says is that you can
10 continue to pursue what GWMC was already pursuing
11 so long as it wouldn't be expected to prevent or
12 delay the obtaining of any consent; correct?

13 A. Correct.

14 Q. And GWMC was not at this time
15 pursuing the ability to sell spectrum to an
16 incumbent?

17 A. I don't think so.

18 Q. And just by way of refresher, am I
19 correct, Mr. de Alba, that in the last draft we
20 looked at yesterday that was sent on May 24th, the
21 last draft that was sent to Brandon Moyse, do you
22 recall that, on May 24th?

23 A. Yes.

24 Q. Catalyst had taken out anything
25 resembling this current 6.3(d); correct?

1 A. I believe that is correct.

2 Q. So that was the last he saw of it?

3 A. Yes, I think so. Well, as far as
4 I know.

5 Q. And he would have no way of
6 knowing that this 6.3(d) wound up in the agreement?

7 THE COURT: (d) or (e)?

8 BY MR. MILNE-SMITH:

9 Q. (d).

10 A. I mean, not that I am aware of.

11 THE COURT: I am completely confused.
12 You started off by asking about 6.3(e).

13 MR. MILNE-SMITH: Yes.

14 THE COURT: And then you say so that is
15 the last he saw of it. Who is "he"?

16 BY MR. MILNE-SMITH:

17 Q. I apologize, let me be more clear,
18 Your Honour. I looked at 6.3(e) just in fairness
19 to Mr. de Alba because he had referred to it
20 earlier.

21 Now, let me take you back in time to
22 March 24th and the draft we looked at yesterday --
23 sorry, May 24th, not March. May 24th. Do you
24 recall that, Mr. de Alba?

25 A. Yes.

1 Q. And that draft didn't contain
2 6.3(e) as we just looked at here?

3 A. If you say so. I don't know.

4 Q. Okay, but we did look at it, and
5 you recall there was no 6.3(e); correct?

6 A. I believe so.

7 Q. And 6.3(d) had been deleted and
8 replaced with a clause about protecting Catalyst's
9 confidential information; do you recall that?

10 A. I think that is correct.

11 Q. So the last version of the share
12 purchase agreement that was sent to Brandon Moyse,
13 whether or not he ever looked at it, didn't contain
14 anything resembling 6.3(d) and (e) in this
15 agreement as of August the 1st?

16 A. As to the language, probably not,
17 but as to the essence, the points remained.

18 Q. Those points, as you just referred
19 to, the points that are captured in 6.3(d) and (e)
20 did not appear anywhere in the May 24th draft, did
21 they?

22 A. The reason why I'm pausing is that
23 the pursuit of some of the concessions that Wind
24 was pursuing were also consistent with the main
25 concessions that we were going to pursue.

1 Q. Sorry, Mr. de Alba, I think you
2 have it backwards. In the draft on May 24th you
3 had taken out any restriction on your ability to
4 pursue concessions; do you recall that?

5 A. I think that is correct.

6 Q. So my point is on August the 1st
7 you agreed to restrictions on your ability to
8 pursue concessions; correct?

9 A. To some concessions, but not all,
10 because there are some that are consistent by both
11 parties, meaning Catalyst and Wind.

12 Q. I understand, you are allowed to
13 pursue the concessions that Wind is already
14 pursuing?

15 A. Correct.

16 Q. But you aren't allowed to pursue
17 the really important concessions, such as the right
18 to pursue the right to sell to an incumbent, sell
19 spectrum to an incumbent?

20 A. That one not, but the second-most
21 important one, which is the wholesaler, we can
22 still pursue.

23 Q. Mr. de Alba, my simple point is
24 that on May 24th, the last draft that Brandon Moyse
25 was sent, it didn't contain any of these

1 restrictions on ability to pursue concessions?

2 A. I believe so.

3 Q. And had Catalyst signed this SPA,
4 it would not have been allowed to go and seek
5 concessions from the government until after closing
6 about the ability to sell spectrum to an incumbent?

7 A. Correct.

8 Q. And you said the confidential
9 regulatory strategy to which Mr. Moyse was privy
10 concerned the regulatory concessions Catalyst was
11 seeking as set out in a March 27 presentation?

12 A. Correct.

13 Q. But Catalyst had just accepted a
14 clause that prohibited you from seeking the right
15 to sell spectrum to an incumbent as set out in the
16 March 27 presentation?

17 A. That is only one of the options.
18 The other two options is still alive and can be
19 pursued.

20 Q. Mr. de Alba, the government had
21 given you no indication that they were willing to
22 let you wholesale spectrum to an incumbent, had
23 they?

24 A. That is not correct.

25 Q. Okay. On the March 27th

1 presentation, you were told that you couldn't
2 pursue the wholesale option; they weren't going to
3 give you the right?

4 A. That is not correct.

5 Q. Mr. de Alba, am I correct that the
6 wholesale option you are referring to was option 2
7 in your March 27th presentation, right?

8 A. Correct.

9 Q. And do you recall that that
10 required ability to sell spectrum to an incumbent
11 after five years?

12 A. After five years, but you could
13 still operate the business as a wholesaler before.

14 Q. Okay, let's pull up that document.
15 The March 27 presentation is tab 20, tab 20.2.

16 Sorry, this is the wrong tab. It's tab
17 20.2. Somehow -- I apologize, Your Honour, the
18 document I'm looking for is CCG0011565. Oh, I have
19 the wrong page, I apologize.

20 Page 8, please. This is the option 2
21 that you were discussing, the wholesale option?

22 A. Correct.

23 Q. And if you look under the heading
24 of "Requires"; do you see that?

25 A. Yes.

1 Q. In the second point:

2 "Ability to exit the investment
3 with no restrictions in 5 years."

4 Do you see that?

5 A. Correct.

6 Q. So your option 2 required the
7 ability to exit the investment with no restrictions
8 in five years?

9 A. That is what the presentation
10 says, but we could have operated the business for
11 five years as a wholesaler and still run a
12 profitable business.

13 Q. Mr. de Alba, that is not what you
14 told the Government of Canada, is it?

15 A. That is as it relates to the exit
16 strategy, but we still could have -- your question
17 was related to the agreement. We could have signed
18 the SPA and still we would be able to pursue --

19 THE COURT: No, Mr. de Alba, you are
20 not listening to the question. You are not here to
21 argue the case. The question was whether you told
22 that to the Government of Canada. The question
23 was, that is not what you told the Government of
24 Canada, is it? So he is asking about what you told
25 the Government of Canada. That was the question.

1 So why don't you repeat it again,
2 Mr. Milne-Smith.

3 BY MR. MILNE-SMITH:

4 Q. You told the Government of Canada
5 that Catalyst requires the ability to exit the
6 investment with no restriction in five years;
7 correct?

8 A. As part of the negotiation.

9 Q. And, Mr. de Alba, it was in fact a
10 key part of your exit strategy for this investment
11 that you have the ability to depart the investment
12 by selling spectrum to an incumbent after five
13 years without restrictions; correct?

14 A. It was one of the key strategies,
15 that's right.

16 Q. And it was Mr. Glassman rather
17 than you that had primary responsibility for
18 dealing with this sort of regulatory issue;
19 correct?

20 A. That's correct.

21 Q. And so coming back again to where
22 we were, Mr. de Alba, you have already conceded
23 that the restrictions in the August 1 draft
24 prevented you from seeking the right to sell
25 spectrum to an incumbent after five years; you were

1 not allowed to seek that concession?

2 A. Catalyst could not unilaterally
3 seek it. We could seek it with permission or if
4 requested by the government.

5 Q. And you had no reason to think
6 that VimpelCom would give you that permission?

7 A. It depends what options they had.

8 Q. You had no reason to think they
9 would give you that concession?

10 A. If they had no other options, they
11 would be, you know --

12 Q. Okay.

13 A. -- they could give it.

14 Q. Right. But they had fought you
15 tooth and nail. We went through the eight drafts
16 where you went back and forth on this, and they
17 were very concerned with ensuring that they limited
18 your right to pursue regulatory concessions without
19 their consent; correct?

20 A. And we had done the same. We had
21 keep on fighting the point back.

22 Q. Yes, and we saw where it ended up.

23 Mr. de Alba, exclusivity was initially
24 entered into on July 23rd; correct?

25 A. I believe that's correct.

1 Q. And we saw already that it was
2 extended by virtue of the agreement on the
3 substantially complete form of share purchase
4 agreement; is that right?

5 A. Correct.

6 Q. And so that extended it, as I
7 understand, if you counted five business days, it
8 extended it to August the 11th; do you recall that?

9 A. I think that is correct.

10 Q. And you recall that on August the
11 7th, or at least you are aware now that on August
12 the 7th is when the offer by Michael Leitner was
13 sent to Mr. Saratovsky?

14 A. I think I'm aware of that now,
15 yes.

16 Q. And am I also correct then that
17 the next day, on August the 8th, VimpelCom agreed
18 to extend your exclusivity?

19 A. I believe so.

20 Q. So just for the record, if we turn
21 up tab 44, please, this is CCG0027224, so this is
22 Mr. Saratovsky on August the 8th agreeing to extend
23 exclusivity to the 18th?

24 A. Correct.

25 Q. And, Mr. de Alba, you have no

1 direct knowledge of any communications by VimpelCom
2 to West Face or any member of its consortium during
3 the exclusivity period; correct?

4 MR. DiPUCCHIO: Your Honour, I'm just
5 wondering what that is relevant to.

6 THE COURT: Sorry?

7 MR. DiPUCCHIO: I'm wondering what that
8 is relevant to, Your Honour, in this case.

9 MR. MILNE-SMITH: It is relevant to why
10 the deal failed, why Catalyst was unable to --

11 THE COURT: Go ahead, Mr. Milne-Smith.
12 I don't want the two of you debating.

13 BY MR. MILNE-SMITH:

14 Q. Let me just read the question to
15 you again, Mr. de Alba.

16 You have no direct knowledge of any
17 communications by VimpelCom to West Face or any
18 member of its consortium during the exclusivity
19 period?

20 A. Other than having learned that
21 they floated this proposal on August the 7th.

22 Q. Sorry, that is a communication by
23 West Face to VimpelCom --

24 A. I'm sorry.

25 Q. -- or by Michael Leitner. Let me

1 just read my question again to you.

2 You have no direct knowledge of any
3 communication by VimpelCom to West Face or any
4 member of its consortium during the exclusivity
5 period?

6 A. I am not aware of it.

7 Q. And, in fact, you can't point to a
8 document that reflects that Mr. Leitner's offer of
9 August the 7th was provided to the VimpelCom board
10 or finance committee?

11 A. Not from the record.

12 Q. And, Mr. de Alba, do you recall
13 that your counsel refused to answer any questions
14 or produce any documents about communications after
15 August 18th relating to Catalyst's efforts to
16 acquire Wind?

17 A. I believe that is correct.

18 Q. But the fact of the matter, Mr. de
19 Alba, is that Catalyst simply was not willing to
20 match the deal that VimpelCom ultimately chose to
21 pursue; correct?

22 A. That is speculation. The deal was
23 not -- did not evolve and was not presented to us
24 like that. As you said, we were -- we had
25 substantially settled the documents and we were

1 thinking that we were getting ready to sign the
2 SPA.

3 Q. Yes, but after August 18th, you
4 couldn't match the offer that the West Face
5 consortium made?

6 A. How could I know what their offer
7 was?

8 Q. You could have asked VimpelCom.

9 A. Wouldn't that be a breach?

10 Q. I'm just asking you if you went to
11 VimpelCom and tried to negotiate further in order
12 to match the other terms that were being offered.
13 Did you do that?

14 A. I think we reached out again.

15 Q. Pardon me?

16 A. We did reach out again.

17 Q. Right, and you chose not to make a
18 better offer?

19 A. I don't recall what happened. I
20 need to check.

21 Q. Because Catalyst didn't believe --
22 the fact of the matter is Catalyst didn't believe
23 the business could be profitable without obtaining
24 the regulatory concessions set out in your March
25 27th presentation; correct?

1 A. That is not accurate.

2 Q. You didn't want to partner with
3 Globalive; correct?

4 A. We thought we had an agreement
5 with AAL, as you say here. Now the support
6 agreement with AAL is in place.

7 Q. The support agreement wasn't with
8 you. It was with VimpelCom; correct? You just
9 told me that earlier?

10 A. Correct.

11 Q. You didn't want to do a deal that
12 involved Globalive as a key equity participant?

13 A. They were selling a hundred
14 percent to us, or the group was selling a hundred
15 percent to us as per the documents.

16 Q. I'm asking you about a different
17 deal, Mr. de Alba. You didn't want to do a
18 different deal that gave Globalive a significant
19 equity participation?

20 A. It is very difficult to speculate
21 on the context of a different deal when you have
22 spent months negotiating in one direction.

23 Q. Right, and you didn't want to go
24 in a different direction?

25 A. We didn't know why we had to go in

1 a different direction.

2 Q. And that is why you couldn't reach
3 a deal; correct?

4 A. We couldn't reach a deal because
5 VimpelCom has -- was now pursuing a different
6 direction.

7 MR. MILNE-SMITH: Thank you, Mr. de
8 Alba. Those are my questions.

9 THE WITNESS: Thank you.

10 THE COURT: Any re-examination?

11 MR. DiPUCCHIO: Your Honour, could we
12 have a couple of minutes just to get organized in
13 the event that we need some documents here?

14 THE COURT: Sure. How much time do you
15 need? Five minutes?

16 MR. DiPUCCHIO: Yes, five minutes would
17 be good.

18 -- RECESSED AT 10:23 A.M.

19 -- RESUMED AT 10:31 A.M.

20 MR. DiPUCCHIO: Your Honour, I really
21 just have one set of questions for Mr. de Alba on
22 re-examination, and I wonder if Your Honour has on
23 your iPad the folder "Catalyst re-examination of de
24 Alba"?

25 THE COURT: Well, we are going to find

1 out.

2 MR. DiPUCCHIO: It should have
3 magically appeared there.

4 THE COURT: Yes.

5 RE-EXAMINATION BY MR. DiPUCCHIO:

6 Q. Okay, good. So the document I
7 want to refer the witness to is initially
8 CCG0011506, which is number 3.

9 And the question I have for you, Mr. de
10 Alba, do you recall Mr. Centa briefly going through
11 a series of correspondence involving Mr. Moyse in
12 the February and March timeframe; do you remember
13 that?

14 A. Yes, I do.

15 Q. And he took you very briefly to
16 this cover email and then he never took you to the
17 attachment, so I want to take the Court to the
18 attachment and you to the attachment, which is the
19 next document, CCG00011507.

20 And this was the attachment to that
21 email that Mr. Michaud sent to Mr. Moyse in
22 February of 2014, and it is a slide presentation
23 entitled "Wind Operational Review"; do you
24 recognize this document?

25 A. Yes, I do, dated November 2012.

1 Q. And what is that document?

2 A. The -- as it says, Wind's
3 operational strategy and business plan.

4 Q. And where did you get that from?

5 A. Probably from the company.

6 Q. And do you know why Mr. Michaud
7 was giving that document to Mr. Moyse in February
8 of 2014?

9 A. I believe to familiarize Mr. Moyse
10 about the business plan that the company had
11 established as early as 2012.

12 Q. And which company was that?

13 A. Wind.

14 MR. DiPUCCHIO: Thank you. Those are
15 my questions, Your Honour.

16 THE COURT: "The business plan that the
17 company", and the company you are talking about
18 would be Wind?

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 Thank you, Mr. de Alba.

22 THE WITNESS: Thank you, Your Honour.

23 -- WITNESS EXCUSED --

24 MR. DiPUCCHIO: Your Honour, our next
25 witness is Newton Glassman. Has Your Honour read

1 his affidavit?

2 THE COURT: Yes.

3 MR. DiPUCCHIO: He should be out in the
4 hallway.

5 NEWTON GERSHON ZEB GLASSMAN: AFFIRMED.

6 EXAMINATION IN-CHIEF BY MR. DiPUCCHIO:

7 Q. Good morning, Mr. Glassman. Mr.
8 Glassman, do you recall swearing an affidavit for
9 the purposes of this proceeding on May 27th, 2016?

10 A. I do.

11 Q. And you have reviewed that
12 affidavit?

13 A. I do.

14 Q. And do you adopt that affidavit
15 for the purposes of your evidence in-chief today?

16 A. I do, except for the typos.

17 Q. Mr. Glassman, I'm going to take
18 you very, very quickly, high level, through some of
19 the highlights of your affidavit and then you'll be
20 cross-examined by my friends. But can you describe
21 for the Court your position with Catalyst Capital?

22 A. My title is that I'm the Managing
23 Partner, and I am the founder of the firm.

24 Q. When did you found the firm?

25 A. Technically the firm's first

1 closing of a first fund was on September 30th,
2 2002. The firm was founded in February or March of
3 2002.

4 Q. And your affidavit and Mr. de
5 Alba's affidavit, which I take it you reviewed
6 prior to swearing your own affidavit?

7 A. I did.

8 Q. Describes, generally speaking, the
9 work culture at Catalyst. Can you tell us about
10 that culture?

11 A. Sure. I had been formerly a
12 Managing Director or arguably a partner at
13 Cerberus, and in 2001 or before, I became somewhat
14 cynical of the structure used generally in private
15 equity and in active distressed private equity
16 specifically. The game had become one of
17 aggregation of capital. I wanted to build a model
18 that was fundamentally different, which is
19 essentially of manufacturing returns.

20 The result of that is that a typical
21 firm is highly hierarchical and pyramidical. Our
22 firm is very, very flat, since we are not focussed
23 on managing money. We are focussed on returns.

24 Q. And how many professionals do you
25 have working at Catalyst, say now?

1 A. I think there are eight investment
2 professionals, but we also have finance
3 professionals and others in the firm.

4 Q. And typically, how many people
5 would staff, for example, an investment
6 opportunity?

7 A. A minimum of three and sometimes
8 four. It would be one person from each level, so
9 at least a partner, a vice president, sometimes an
10 associate and at least an analyst.

11 Q. And we know that Mr. Moyse at the
12 time he was employed at Catalyst was described as
13 an analyst. What's an analyst's role on a deal
14 team?

15 A. Well, first of all, an analyst at
16 our firm is different than at most investment
17 banking or money management firms. We typically
18 hire people that have experience. A typical
19 analyst at an investment bank or an investment firm
20 is straight out of college. Like Mr. Moyse, all of
21 our analysts have prior experience, typically at
22 minimum in a two-year program at a prior firm,
23 sometimes multiple two-year programs.

24 An analyst at our firm would be more
25 akin to an associate or even a director at other

1 firms. They are responsible for not only
2 aggregating data and putting it together, but
3 assimilating and in some cases leading the
4 discussion on behalf of the team, and the reason
5 for that is that it is our view that is the best
6 way of learning a deal.

7 One of the lessons I learned when I was
8 in New York was that just processing material
9 doesn't teach a junior anything, and if we are
10 going to have a flat structure, the junior people
11 have to actually be involved in dealing with and
12 struggling with the investment decisions and issues
13 facing an investment.

14 Q. And there is reference made in
15 your affidavit and in some of the other evidence we
16 have heard in Court already about Monday morning
17 meetings at Catalyst, which I understand are not
18 actually morning meetings all the time, but can you
19 tell us a little bit about what the Monday morning
20 meetings are and what is discussed in the Monday
21 morning meetings?

22 A. The Monday meetings are almost
23 invariably over lunch. They can last up to two and
24 a half hours. There is a schedule of what is to be
25 discussed. Our proprietary software, which we have

1 spent 14 million dollars building, generates a
2 package. That package is put on the table for
3 everybody to take one copy of that at the beginning
4 of the meeting. The front page is a summary. The
5 very top of it shows everything that is in the deal
6 pipe and everything that we are considering and
7 looking at.

8 The next section shows every live deal
9 that we are in the process of, and the next section
10 shows everything in the portfolio. And in every
11 meeting we intentionally go through all three
12 sections.

13 The next page shows the allocation of
14 staffing by person. Since we have such a flat
15 organization, everybody has to know what everybody
16 else is doing. But more importantly, unlike any
17 other firm I know, even analysts and associates are
18 required to be investors in each fund, which means
19 that they have dollars in every single deal, not
20 just their own deal, but deals that are being led
21 by others and that they are not on that deal team.

22 The result of that is that we believe
23 that ethically, if you have money in a deal, you
24 are entitled to know what is going on in that deal,
25 and frankly, if you have ideas, you should make

1 them known and you have a vested interest, an
2 alignment of interest in making those ideas known.

3 Q. And did Monday morning meetings
4 occur in 2014?

5 A. Virtually every week.

6 Q. All right.

7 A. Along with Thursday meetings which
8 were less formal and had to do with the execution
9 of the deal itself or deals themselves, so we would
10 only really deal with sections two and mostly three
11 of the first page that I just described.

12 Q. Were these meetings on Monday
13 optional meetings for the investment professionals?

14 A. No, they are mandatory, and in
15 fact, not showing up required an explanation of
16 either a health reason or a specific excusion [sic]
17 by one of the partners, and it would be raised and
18 discussed if somebody wasn't there.

19 Q. You describe in your affidavit and
20 we have heard evidence as well at this trial about
21 the importance of confidentiality in the work that
22 you do at Catalyst. Can you tell us why
23 confidentiality plays such an important role?

24 A. Sure. There is a bunch of
25 reasons. Catalyst's guiding principles include,

1 aside from the general overriding theme of
2 excellence, superior analytics and attention to
3 detail.

4 One of the reasons we believe the firm
5 is ranked as one of the best in the world at what
6 it does is because of those two issues, and we
7 spend an inordinate and exorbitant amount of time
8 internally focussing on very specific details and
9 getting the details right in the analysis of a
10 transaction and in the execution of any strategy
11 that we want to go forward with.

12 We think that the disclosure of certain
13 details, and it could be as -- and this has
14 actually happened in deciding cases, the difference
15 between a comma and a period in a paragraph and how
16 that should be read is critically important, for
17 example, in an indenture, is critically important.
18 And we believe that one of the duties we have is to
19 educate and teach the junior guys that the
20 attention to detail, which is why it is in our
21 guiding principles, is so critically important to
22 ultimately manufacturing returns on behalf of our
23 investors. And the disclosure of any of that would
24 give somebody else a competitive advantage.

25 Q. Now, I want to turn your attention

1 to really the meat of your trial evidence, which is
2 your involvement and Catalyst's involvement in the
3 Wind transaction. And first of all, let's talk
4 about the deal team for Wind at Catalyst. Who was
5 that?

6 A. The deal team, not just on Wind
7 but on telecom generally, was unusual in the sense
8 that it had active and disproportionate involvement
9 of all the partners, so myself, Mr. de Alba and Mr.
10 Riley, at least one VP, which could have changed
11 over time but was mostly Zach Michaud, and at least
12 one and often two analysts, so at times it would be
13 Andrew Yeh or Andrew and Brandon Moyse, but
14 inevitably included effectively everybody in the
15 firm, for a bunch of reasons, not the least of
16 which was that Mobilicity itself was a very, very
17 specifically important transaction to the firm from
18 a franchise perspective, but also because of
19 Gabriel's historical background in telecom, which
20 included leading the restructuring of AT&T Latin
21 America, which was eventually sold to Carlos Slim
22 for I think 14 billion dollars and my co-leading
23 the telecom group at Cerberus for years.

24 Q. So I'm going to show you one of
25 the documents that is appended as an exhibit to

1 your affidavit, it is attached as Exhibit 1, and
2 the document is CCG0011564.

3 And we have there an email,
4 Mr. Glassman, on the screen, but if you actually
5 flip through just very briefly the various pages,
6 you will see what I am showing you is a
7 presentation.

8 A. I only have an electronic copy, so
9 I can't flip through.

10 Q. Yes, I know, but they are flipping
11 through for you.

12 A. Oh, I see. Yes.

13 Q. Just to refresh your memory as to
14 what we are looking at.

15 Now, before we actually talk about the
16 content of the presentation, I want to ask you in
17 the email we see Brandon Moyse forwarding this
18 document to you and to Mr. de Alba and Mr. Riley.
19 Tell us what the lead-up was to this document. How
20 did it come to be that Mr. Moyse was sending you a
21 copy of this presentation?

22 A. Well, the lead-up to it would be
23 months of ongoing discussion internally. We had
24 owned Mobilicity at that point I believe for maybe
25 two years, but certainly over a year, and probably

1 it was two years.

2 Constant discussion inside the firm
3 about the telecom environment, the regulatory
4 environment, the competitive landscape, the actions
5 of the incumbents, what actions the incumbents were
6 taking, including using blocker and discount brands
7 like Fido, constant discussion about how that
8 changed and changes in that area would affect the
9 value of our collateral and other people's
10 collateral.

11 There would have been a discussion
12 about what strategies we would take under different
13 scenarios. All those scenarios would have been
14 discussed with the whole team, including Mr. Moyse.
15 The pros and cons would have been discussed. Input
16 from the junior people, including Brandon, would
17 have been sought and incorporated in the decision.

18 All of that over time would have been
19 accumulated and a decision made as to how we were
20 going to present different key issues to the
21 government. We were in -- and Mr. Moyse and the
22 rest of the team, and in fact the whole firm,
23 professionals in the firm, would know that we were
24 in informal discussions with different regulatory
25 bodies and personnel as well as political personnel

1 in the government. We had had multiple phone calls
2 leading up that led to a particular meeting, which
3 was to be in March of 2014. That would require a
4 presentation in order to have some structure around
5 the conversation and to actually make the points
6 that we wanted to make.

7 Brandon, as the most junior person on
8 the team, would have been given the task of
9 accumulating the information, putting it in a form.
10 He would have done multiple drafts. Those drafts,
11 not all of them reviewed by me. I probably
12 reviewed the first and last, but the VP would have
13 done every version. The VP would have been given
14 instructions from me and Gabriel and possibly Jim
15 on some of the legal issues about what to fix, what
16 not to fix. Brandon would have been involved in
17 discussions as to why decisions were being made to
18 insert some things and remove others.

19 And the process would culminate, after
20 many versions, in a final presentation which we
21 took with us to Ottawa.

22 Q. What is your recollection as to
23 the length of time it took to do the lead-up work
24 that you have just described?

25 A. Well, that is a difficult

1 question. All of the lead-up work would have been
2 months, if not years, in the making. The lead-up
3 work, once we knew there was going to be a meeting
4 but probably didn't know the date, probably would
5 have required weeks of work, and then there would
6 have been a push at the very end to get the final
7 version once we knew the date and the time and
8 hopefully the attendees. And I don't remember if
9 we knew all the attendees ahead of time.

10 Q. And do you recall yourself
11 personally participating in meetings with Mr. Moyse
12 prior to March 26th of 2014 to discuss some of the
13 issues you have just mentioned in your testimony?

14 A. Not only did I attend those
15 meetings, I remember specifically personally
16 raising some of the more tricky issues at multiple
17 Monday meetings prior to that, so that everybody
18 would be discussing it and considering it without a
19 gun to their head in terms of time, because I knew
20 it was coming.

21 Q. All right, and you have mentioned
22 various --

23 A. I hoped it was coming.

24 Q. And you have mentioned various
25 drafts of this agreement. Obviously those drafts

1 don't exist. Why is it that we don't see the
2 drafts of the agreement?

3 A. It is not an agreement. It is a
4 presentation.

5 Q. Sorry, the presentation.

6 A. Sorry.

7 Q. I apologize.

8 A. We were asked by Industry Canada
9 to not keep any work product of anything that they
10 thought might be politically sensitive, and as part
11 of the conditions of going to these kinds of
12 meetings, it is my experience this happens often
13 and frequently, especially if the meetings are on
14 sensitive issues to the government. And in this
15 case, there were both political considerations and,
16 frankly, regulatory considerations for them, and we
17 honoured them. We gave our word, so we honoured
18 it.

19 Q. And tell us very generally why
20 these meetings with the government officials were
21 very important --

22 THE COURT: Can I just ask a question,
23 Mr. DiPucchio.

24 I don't quite understand your answer,
25 sir. You were asked why there weren't copies

1 around. You said you were asked by Industry Canada
2 not to keep any work product, so you kept your
3 word. What does that mean? You threw out -- the
4 drafts were thrown out?

5 THE WITNESS: Yeah.

6 THE COURT: But this one was kept?

7 THE WITNESS: No, no, the final product
8 they had no problem with our keeping. They were
9 worried that -- my sense of it, sir, was that they
10 were worried. And my history and my experience
11 both in Canada and the U.S., and I have some
12 experience in the U.S. as well on a telecom file
13 called NextWave, which I hope will come up, was
14 that if the work product had issues and stuff that
15 wasn't eventually discussed with the government,
16 the government didn't want it actually coming back
17 to potentially cause problems for them in the
18 future. They would stand by what was actually
19 brought to them, not by the stuff that was evolving
20 over time that they may not have known about. And
21 that was one of their ground rules.

22 THE COURT: Thank you.

23 BY MR. DiPUCCHIO:

24 Q. And I was just asking you, Mr.
25 Glassman, to describe very, very generally for us

1 why the meetings or this particular meeting with
2 the government officials was of importance in the
3 Wind/Mobilicity context?

4 A. That requires some background.

5 So the background is as follows. In
6 2008 the government had conducted an auction for
7 what is known as AWS spectrum. The conditions
8 around that spectrum auction allowed for the sale
9 of that or the resale of that spectrum after five
10 years. The theory behind that five-year window was
11 that at least that the non-incumbents, the new
12 entrants, would have to try for five years to build
13 networks and to build a business. But if after
14 five years they couldn't have built it, the
15 original theory was then you could actually sell
16 the spectrum.

17 The reason that original premise was
18 significant was because no one would be able to
19 finance the immense cost of building a national
20 network or even a regional network without being
21 able to provide collateral. No bank is going to
22 lend you against something that you can't sell,
23 because that means the collateral value is zero.

24 So the original theory was you may not
25 be able to sell it for five years, but anybody that

1 lends or finances against the value of the spectrum
2 and/or the network would be able to monetize that
3 at some point in the future.

4 The government, as a result of what
5 they perceived to be a lacklustre success or no
6 success at all at building a fourth network,
7 because at that time Mobilicity was in bankruptcy,
8 public was either in bankruptcy or was on the verge
9 of insolvency, and Wind was losing hundreds of
10 millions of dollars, faced this dilemma where
11 nobody would be able to actually build out the
12 network if they sold all the spectrum to the
13 incumbents.

14 It was well known in the industry at
15 the time also that the then Prime Minister had
16 personal carriage of the file and had a personal
17 issue with the behaviour of one or more of the
18 three incumbent CEOs, which became known in the
19 papers after this, but not at that time, I don't
20 think. So the government unilaterally and
21 retroactively amended the 2008 AWS licences to say
22 that said licences are not transferable for an
23 indefinite period.

24 The market's reaction to that was
25 immediate. The debt of any of the publicly or

1 quasi publicly traded debt of any of the
2 non-incumbents immediately dropped. Analysts in
3 the telecom sector immediately were in an uproar.
4 People rightly perceived it to be as a very
5 dangerous and risky approach, and quite, quote,
6 "unlike a conservative government", close quote, to
7 interfere with it.

8 And our concern, since we were already
9 a stakeholder in Mobilicity, was that it would
10 interfere with our collateral value. And it is
11 very, very important to understand why this was a
12 focus for Catalyst.

13 Catalyst was an investor in the
14 operating company of Mobilicity, not the holding
15 company. The operating company was the only entity
16 that had any collateral or any say in the
17 collateral or any stake in the collateral. The
18 holding company had no financial interest, both by
19 law and both by structure.

20 So the result was that Catalyst was an
21 investor in Mobilicity. It had bought the debt, as
22 had the rest of the market, on the basis of having
23 some collateral value, which the collateral value
24 was either severely infringed or eradicated as a
25 result of this action by the government which in

1 turn would make it impossible to build a fourth
2 carrier because you would never be able to get
3 outside arm's length money to help you build it.

4 The reason that all became important
5 was because there was a very important case in the
6 U.S. called NextWave, it went to the Supreme Court,
7 the U.S. Supreme Court, where the FCC tried to
8 expropriate the property of NextWave as a result of
9 NextWave going into bankruptcy.

10 I happen to have been involved in the
11 case while I was at Cerberus. It lasted years. We
12 had unique and particular insight and experience at
13 our firm in dealing with this kind of regulatory
14 action. And they ultimately failed. The FCC
15 failed in the U.S. and we were successful at
16 NextWave. And this was a very, very similar action
17 and very similar issue.

18 The problem for Catalyst in this
19 scenario was that we couldn't directly and it was
20 known within our firm that we could not directly
21 lead that litigation for other reasons, just
22 pragmatic reasons that relate to our regulatory
23 involvement in other businesses and the nature of
24 our firm and our need for government support and,
25 frankly, our promise to the government as to what

1 kind of nature of firm we would be in the future in
2 previous meetings, not just on a telecom file. And
3 we had friends in the PMO and the PCO, but
4 primarily the PMO, for years, including a former
5 classmate of mine from law school.

6 So we were not in a position to break
7 our word, nor were we going to. But it became very
8 important that we explain to the government why
9 this was such a dangerous path for them and that we
10 believed that when the right party brought the
11 action, they would lose and it would be
12 embarrassing and they wouldn't end up with their
13 fourth carrier. And we were trying to help them
14 understand the impact of it.

15 And again, I say we were in a
16 particularly unique position to understand it, not
17 because we read a case that was the ground-breaking
18 case in the U.S., but because we were involved in
19 it and because Gabriel had involvement in telecom.
20 And to the point where on Monday morning meetings
21 we not only discussed NextWave ad nauseam with the
22 associates and the rest of the deal team, we
23 discussed what it did to Cerberus and to the other
24 holders of NextWave and what they had to do in the
25 interim in order to make sure that the case stayed

1 alive, that the FCC lost, what strategies we were
2 taking, what tactics we took behind the scenes in
3 that litigation.

4 Q. All right, let me stop you there.
5 So who attended the meeting ultimately
6 in Ottawa?

7 A. On behalf of Catalyst, myself and
8 Jim Riley along with our government relations
9 consultant. We met in between the meetings --
10 well, it is really we had two government relations
11 consultants, and one was Bruce Drysdale. I believe
12 Bruce attended almost all, if not all, of the
13 meetings in person.

14 Our separate consultancy, which I think
15 is called Summit, didn't attend the meetings but
16 briefed us beforehand for weeks, briefed us that
17 morning on our journey to Ottawa, briefed us at
18 lunchtime and briefed us afterwards.

19 Q. All right. And tell us ultimately
20 about your discussions with the government. Who
21 did you meet with on the government side?

22 A. Generally there were three or four
23 meetings with separate groups. The first group --
24 and I don't remember which order -- but the groups
25 generally were Industry Canada; the Chief of Staff

1 for the Minister of Industry separately from the
2 bureaucrats that run Industry Canada, so that is
3 two meetings; representatives of the PMO, the Prime
4 Minister's Office; and then separately
5 representatives of the PCO, Privy Council, which is
6 essentially the chief bureaucrat of the country.

7 Q. And these were all meetings that
8 occurred on --

9 A. Yeah, we didn't technically meet
10 with the PCO himself; his Chief of Staff we met
11 with.

12 Q. And those meetings all occurred on
13 the 27th of March?

14 A. Yeah, aside from conversations
15 leading up to those meetings, which we also had.

16 Q. Okay. And how did you use the
17 presentation that we see on the screen for the
18 purposes of those meetings?

19 A. The presentation was intended to
20 provide a framework for a discussion. The
21 presentation itself wasn't the discussion. It was
22 the framework for a discussion. And the purpose
23 was to provide the government with forewarning in
24 our opinion of what would happen under different
25 scenarios; especially if Catalyst was successful in

1 merging Wind and Mobilicity, we did not want to be
2 seen as surprising the government.

3 The strategy, which was known to the
4 entire professional -- all the professionals in the
5 firm, was to continuously keep the government
6 informed of the approach and the status of the
7 transaction.

8 We never expected the government to
9 actually make any concessions until an announced
10 deal, because that is a stupid thing for the
11 government to do. But what we wanted to do is to
12 make sure that the government was fully informed so
13 that when we delivered a signed deal, they would
14 know exactly what our demands and expectations were
15 or they would suffer the publicity of having had a
16 deal delivered and not getting approved, very
17 similar to what eventually happened to the
18 government when they declined a deal from Manitoba
19 Tel by one of the former founders of Orascom and
20 the owner of Wind, Naguib, and I forget Naguib's
21 last name.

22 Q. All right. So tell us about the
23 actual discussion with the representatives of
24 Industry Canada?

25 A. I think four people showed up to

1 the Industry Canada meeting. I know that Ian
2 Stewart showed up, the then Head of Regulatory
3 Affairs Kelly showed up, and I forget Kelly's last
4 name, I think it is "Mac" something, and two other
5 representatives.

6 The discussion started with the
7 government being very defensive about the current
8 need or environment for a fourth carrier and the
9 government's policy around it.

10 By the end of the meeting, we had Ian
11 Stewart, who was the most senior person, actually
12 agreeing with us. Kelly, who was responsible for
13 forming the regulation, repeatedly telling us that
14 she may not be able to change and may not want to
15 change the regulations, but she understands the
16 analysis completely and agrees with it.

17 Q. And what analysis was that?

18 A. That there was no way to actually
19 have a financially viable fourth network in Canada
20 without some regulatory change, or they would be
21 facing some litigation risk.

22 Q. All right. Did you --

23 A. And they were actually aware of
24 the NextWave case at that time.

25 Q. Okay. Did you discuss the

1 possibility of litigation with the government
2 officials?

3 A. We absolutely did. We made it
4 clear that Catalyst, and this was a tactical risk
5 known to us at the time, we made it clear to the
6 government that Catalyst could never lead that
7 litigation, for a host of reasons. The reason we
8 disclosed that even though it would hurt our
9 negotiating position was because they would know
10 it. They knew that we were in other regulated
11 businesses, and to actually allege that we would
12 lead it would wreak of being disingenuous. So it
13 had the advantage of being honest and forthright in
14 telling them we wouldn't lead it, but we would have
15 a problem if somebody else in the right party led
16 it.

17 And that legal analysis ended up
18 becoming very critically important to the overall
19 situation, because anyone that evaluated the value
20 of the spectrum would have to come to the view that
21 in order to get value out of the spectrum, the
22 rules and the way the government had been treating
23 the AWS 2008 licences would have to be changed
24 either voluntarily or involuntarily. Otherwise,
25 you couldn't put any value on the spectrum.

1 Q. And did you actually discuss with
2 the government officials the concessions that --

3 A. We did. We gave them two sets.
4 One set is what we call option 1, which is a pure
5 retail carrier; option 2 is a wholesale carrier.
6 If you look at the two options carefully, you will
7 see that there is a difference of two regulatory
8 requirements.

9 One was the ability to operate using
10 incumbent's networks in what is known as
11 out-of-area situations; in other words, they would
12 be allowed and the incumbents would have to force
13 allowing non-incumbents to use some of their
14 spectrum so that you wouldn't get, quote, "dropped
15 calls", closed quote, the minute you walked out of
16 Wind or Mobilicity or the merged entities' network.

17 And the other was -- if you go back a
18 page, please, I think it was on the tower -- yeah,
19 it was towers, tower-sharing, so that we were
20 basically showing the government if you want a
21 retail carrier, it is going to require more
22 concessions than if you want a wholesale carrier,
23 and if you don't want to give any concessions, you
24 are forcing people into ultimate litigation and
25 sooner or later we think you'll lose it.

1 Q. Okay. And did you get any
2 reaction from the government officials to what you
3 were saying?

4 A. Well, we got two kinds of
5 reactions. We got an explicit and implicit
6 reaction.

7 The explicit stated official reaction
8 was we want a fourth carrier, we want a fourth
9 retail carrier, that is all we care about, and we
10 are not going to give you or anybody else any
11 regulatory relief.

12 That makes sense. There is no reason
13 for the government to officially say they would do
14 anything else until they have an official deal in
15 front of them. Otherwise, they will be seen as
16 favouring one bidder in a process over another. So
17 of course the government is going to say that.

18 The second less formal and unofficial
19 reaction was yes, we know we have a very, very big
20 problem; we are very frustrated with the Prime
21 Minister; we are having a lot of difficulty
22 figuring out how to thread this needle; we
23 appreciate your input, and we are particularly
24 interested in understanding the litigation and your
25 personal experience, Mr. Glassman, in NextWave and

1 why you think this is as bad, if not worse, than
2 NextWave.

3 Q. How long did those meetings last,
4 Mr. Glassman, in Ottawa, on the 27th?

5 A. Pretty much all day.

6 Q. All right, and --

7 THE COURT: Just a second.

8 THE WITNESS: I think the only time we
9 didn't meet was over lunch. I think we had our own
10 lunch with Summit in order to debrief and get
11 feedback.

12 THE COURT: We'll take the morning
13 break for 20 minutes.

14 -- RECESSED AT 11:06 A.M.

15 -- RESUMED AT 11:30 A.M.

16 BY MR. DiPUCCHIO:

17 Q. Mr. Glassman, in the interests of
18 time here, I want to just try to scroll forward a
19 little more quickly than we have been. And you
20 talked about the meetings with the government
21 officials on March 27th. Did you report the
22 outcome of those meetings to anybody else at
23 Catalyst?

24 A. I reported the entire outcome,
25 both the official response as well as the

1 unofficial responses, to the entire team and they
2 were discussed from March onward numerous times.

3 Q. Did that include Mr. Moyse?

4 A. Absolutely.

5 Q. And what exactly did you discuss
6 with him or what did you update him on?

7 A. We saw it as a learning experience
8 and a possibility of teaching for the more junior
9 people. We discussed the official response and the
10 official position that the government would not be
11 providing any regulatory relief, and we discussed
12 why that had to be the official position by the
13 government, since the government would not and
14 could not be seen as providing regulatory relief to
15 one bidder over another bidder or different
16 concessions until they had an actual bid and a deal
17 in front of them.

18 And then we discussed at length the
19 unofficial response and the body language, which
20 was that the government pretty much acknowledged
21 that they had in all three -- all four meetings at
22 different levels admitted that they had a very
23 serious problem and they would not be able to
24 simultaneously satisfy a fourth carrier and stay
25 true to their regulatory commitment.

1 Q. Okay. Did you discuss with your
2 team the importance of regulatory approval for the
3 deal from Catalyst's perspective?

4 A. Yeah, it was uniquely important to
5 Catalyst because it was well-known that we could
6 not initiate or lead the litigation, although we
7 had the best information and the best experience in
8 understanding the potential forthcoming litigation.

9 Q. And why would that be important
10 with respect to the need for regulatory approval
11 then?

12 A. Because it fit and it helped
13 understand and explain why Catalyst could not ever
14 wave the regulatory approval issue. There were two
15 reasons why we could never waive it.

16 The first was that as a matter of
17 strategy and tactics, our view was that the
18 government would be politically in a position where
19 they had no choice. If a public deal combining
20 Wind and Mobilicity which they had been publicly
21 touting as a fourth carrier was delivered to them
22 but had conditions of some form of regulatory
23 relief, it was our view that they would have no
24 choice but to provide the regulatory relief or, in
25 the alternative, suffer two things. One is the

1 political public embarrassment with an upcoming
2 election of having not been able to fulfil a fourth
3 carrier when it was solely within their mandate and
4 within their control, and number two, increasing
5 not only the probability of the litigation but the
6 ultimate outcome and the award of damages would be
7 significantly higher, in our opinion.

8 And that was discussed ad nauseam with
9 the team.

10 Q. Let's fast-forward then. A lot of
11 this is in your affidavit and so I'll leave it, but
12 let's fast-forward to the presentation that was
13 made to the government in May, as I understand from
14 your affidavit that you had further meetings with
15 government officials in May?

16 A. We did. We had conversations
17 between March and May, and we had a meeting I
18 believe on May the 12th or 11th.

19 Q. And the actual presentation that
20 was made to the government officials is Exhibit 3
21 to your affidavit, and again, Mr. Glassman, why was
22 Brandon Moyse preparing this particular
23 presentation?

24 A. There were a number of reasons.
25 The first and foremost was because, as a member of

1 the team, he had had not only the history leading
2 up to the March 27th presentation, he had also
3 prepared the March 27th presentation. He had been
4 involved in all the subsequent internal discussions
5 which included some of our consultants and outside
6 parties. He had been included in every Monday
7 meeting where I believe it was almost always
8 discussed, either Mobilicity or Wind or both, and
9 he had the most knowledge of the file.

10 Q. So tell me about the May meetings
11 with the government officials. Were they in terms
12 of content any different than the meetings you had
13 had in March?

14 A. The content was fairly similar.
15 The response and the attendees was different, and
16 that telegraphed an enormous amount to me.

17 Q. Okay, tell us about that.

18 A. So for example, the former Head of
19 Regulatory Affairs, Kelly, had been moved out of
20 her position and replaced with a much more
21 experienced individual. When she entered the room,
22 everybody was quite fearful of her. Her name I
23 think was Colleen, and I forget her last name.
24 Their chief counsel, Industry Canada's chief
25 counsel attended the meeting.

1 The nature of the dialogue was much
2 more forthcoming from the government, that although
3 their official position was no different, chief
4 counsel, I believe he was chief counsel,
5 point-blank admitted to me that he knew that they
6 were going to lose the litigation if it was brought
7 by the right person. And they understood -- which
8 told me that they had done an enormous amount of
9 analysis as to who would actually have standing and
10 who had a viable complaint and who didn't.

11 It also told me that they understood
12 that Catalyst did have proper -- without him saying
13 it, by him having shown me that they had done the
14 analysis, I concluded, correctly I believe, that
15 they knew that Catalyst did have good standing and
16 that by our saying that we wouldn't be the one to
17 initiate it, we wouldn't be the one that brought
18 it, which actually helped them, but also the fact
19 that we would have no choice but to support it once
20 it was brought because of our own fiduciary duties
21 to our investors was very troubling to them.

22 And their view -- and he point-blank
23 asked me questions about NextWave, the history of
24 NextWave in the U.S., what happened in the Supreme
25 Court, how the FCC had its strategy and devised its

1 strategy.

2 Q. And that's covered off in your
3 affidavit, so I won't ask you to repeat it. Did
4 you report the outcome of those meetings to the
5 deal team at Catalyst?

6 A. In great detail, intentionally
7 with as much detail as humanly possible. I had
8 read the meeting that we should move forward with
9 the acquisition or the attempted acquisition of
10 Wind and that we would inevitably get what we
11 wanted, and I actually think I wrote that in an
12 email.

13 Q. I want to fast-forward all the way
14 now to the end of the piece to when you first
15 became aware of the fact that the consortium that
16 West Face was a part of had succeeded in acquiring
17 Wind. Do you remember when you first became aware
18 of that?

19 A. I don't remember the exact date.

20 Q. Okay. Do you remember when you
21 first became aware of the actual terms on which the
22 consortium was prepared to do a deal with Wind?

23 A. I do. I remember it becoming
24 public knowledge. I remember reviewing the terms
25 internally and being shocked and dismayed. It was

1 the first time in my history, in 26 years of a
2 fairly successful career, ever seeing a competing
3 bid not increase, in a competitive auction process,
4 not increase the actual price and rely solely on
5 issues unrelated to economics. I had never seen
6 that before.

7 And I had never seen a money manager
8 waive one of the biggest risks in a deal, in this
9 case was regulatory concessions, obviously, or
10 approval. It was particularly troubling to me
11 because the regulatory environment had gotten
12 worse, not better, since the situation had started
13 for Wind, for a whole bunch of reasons, including
14 VimpelCom's own experience and Manitoba Tel's
15 situation and some other things. And the only
16 conclusion I could draw was that something fishy
17 had happened.

18 MR. DiPUCCHIO: All right, those are my
19 questions. Thank you.

20 THE COURT: Go ahead, Mr. Thomson.

21 MR. THOMSON: Thank you, Your Honour.

22 Your Honour, do you have my
23 cross-examination binder, electronic binder on your
24 iPad?

25 THE COURT: Just a second.

1 Yes, I do.

2 CROSS-EXAMINATION BY MR. THOMSON:

3 Q. Thank you. I'm just trying to
4 turn the screen on.

5 Mr. Glassman, am I correct that you
6 have a law degree from the University of Toronto?

7 A. I do.

8 Q. You also have an MBA from the
9 Wharton School of Business?

10 A. I do.

11 Q. And you have testified that before
12 you founded Catalyst in 2001 or 2002, you were a
13 Managing Director of Cerberus Capital Management in
14 the U.S.?

15 A. That is true.

16 Q. Am I right that you also worked
17 for Sprott Securities in Canada?

18 A. Not quite. I helped Sprott
19 address a regulatory problem, I think it was in
20 '94.

21 Q. And I understand that you articulated
22 for the McCarthys law firm in Toronto?

23 A. Also not completely accurate. I
24 did part of my articles at McCarthys.

25 Q. Did you ever practice law?

1 A. I did not.

2 Q. Now, you would agree with me, I'm
3 sure, based on those answers, that you are
4 certainly not a specialist in communications law in
5 Canada; correct?

6 A. I am not a specialist in
7 communications law.

8 Q. Nor are you a specialist in the
9 area of law concerning the management of wireless
10 spectrum in Canada; fair enough?

11 A. Can you repeat the question,
12 please?

13 Q. You are not a specialist in the
14 area of law concerning the management of wireless
15 spectrum in Canada?

16 A. Not in the area of law, that's
17 correct.

18 Q. You have never been employed by
19 the Government of Canada?

20 A. No.

21 Q. You have never been a member of
22 the staff of a Federal or Provincial Cabinet
23 Minister?

24 A. No.

25 Q. You have never been employed by

1 the CRTC or by Industry Canada; correct?

2 A. No.

3 Q. Now, am I correct that you serve
4 as the Chief Investment Officer of Catalyst?

5 A. Formally that is probably correct.
6 All investment decisions are made by committee,
7 though. There has never been a decision in the
8 firm where there hasn't been unanimous consent.

9 Q. Am I right that the decision to
10 move forward with an investment at Catalyst is
11 subject to your final say?

12 A. Every partner has a veto, so I
13 don't know who has a final say if everybody has a
14 negative veto.

15 Q. Can we pull up, please, tab 35 of
16 your cross-examination brief, and you will find
17 here, Mr. Glassman, a transcript of a
18 cross-examination conducted of Mr. Riley. Of
19 course, you know Mr. Riley?

20 A. Well.

21 Q. Mr. Riley is the Chief Operating
22 Officer of Catalyst?

23 A. He is.

24 Q. He is one of the three partners
25 that run the firm?

1 A. He is.

2 Q. He is intimately familiar with the
3 way in which Catalyst operates?

4 A. Should be.

5 Q. And if we turn in this transcript,
6 please, to page 21, and look at question 68, the
7 question that was put was:

8 "Question: Although you would
9 agree with me that Brandon had no
10 decision-making power on whether
11 Catalyst would actually move forward
12 on a potential new investment?

13 Answer: I think he would have
14 input, but the ultimate decision on
15 that is made by the chief investment
16 officer Newton Glassman, in
17 conjunction with the input from top
18 to bottom.

19 Question: Fair to describe that
20 level of input as being low level?

21 Answer: I wouldn't describe it
22 that way, because in the context of
23 preparing investment memos and the
24 back and forth, he would have a good
25 view on what investments we were

1 going to make and how we were
2 looking at them.

3 Question: The decision to move
4 forward on a new investment
5 opportunity though would be made at
6 the partner level, correct?

7 Answer: Yeah, chief investment
8 officer."

9 I take it you would agree with Mr.
10 Riley's evidence concerning your role in making
11 investment decisions with Catalyst; fair enough?

12 A. Not in total. In part I would
13 agree with it.

14 Q. And will you please pull up tab 39
15 of the cross-examination binder. There is another
16 transcript of Mr. Riley being cross-examined by my
17 partner Mr. Milne-Smith on May 13th of 2015, and if
18 I can ask you to turn, please, to page 51 of the
19 transcript. Scroll down, please, to the bottom of
20 the page. You will see question 206 Mr.
21 Milne-Smith's question was:

22 "Question: Okay. I take it,
23 as COO", that would be chief
24 operating officer, "you do not make
25 any final investment decisions at

1 Catalyst?

2 Answer: No. Let me qualify
3 that. Investment decisions are made
4 by all three partners, but
5 ultimately, the final say would be
6 Newton Glassman's as the chief
7 investment officer."

8 And I take it you would agree with that
9 evidence of Mr. Riley?

10 A. Only in part. Formally, that is
11 correct. The way I operate within the firm is that
12 we will not and I will not approve something until
13 the entire deal team and everybody agrees with it,
14 because, as I said earlier, I believe it is the
15 most fair way, since everybody has money in the
16 fund.

17 Q. So let's just test that
18 proposition. So if you had decided you wanted to
19 proceed with the acquisition of Wind Mobile and you
20 obtained all of the regulatory concessions you were
21 looking for from the Government of Canada and a
22 very favourable purchase price and Brandon Moyse,
23 sitting back here in the back right of the
24 courtroom, and Brandon Moyse stood up in a meeting
25 and said "Mr. Glassman, I disagree", your evidence

1 under oath is he would have the right to veto that
2 investment; correct?

3 A. No, not in that circumstance,
4 because internally the decision would have been
5 made long before we went for regulatory approval.

6 And I'll give you an example. There
7 was an investment called Cott Beverage. In the
8 process of doing the analysis on the deal, an
9 analyst was opposed to the deal, stopped Gabriel
10 and I in the hall, made his argument to us, and we
11 dropped the deal after that discussion because he
12 was analytically correct.

13 Q. Is it not the case that the way
14 you operate within the firm is that you will not
15 approve anything until the entire deal team and
16 everybody agrees with it, everybody; isn't that the
17 case?

18 A. All the professionals agree with
19 it and before we get to a point of no return,
20 before we initiate the investment.

21 Q. All right.

22 A. Once we have started the
23 investment, in the example you gave we would have
24 already made a commitment to the government.

25 Q. So let's roll the clock back a

1 bit. If Mr. Moyse had stood up early on when you
2 had this idea of merging Wind and Mobilicity, you
3 felt it was a terrific idea to build a fourth
4 national carrier, and little Brandon Moyse had
5 stood up in a meeting before you had reached the
6 point of no return and said "Mr. Glassman, I
7 disagree", that would have been the end of it;
8 correct?

9 A. It would have either been the end
10 of that deal, or it would have caused increased
11 analysis and discussion until Mr. Moyse and the
12 others agreed, as was the example I gave you in
13 Cott Beverages.

14 Q. I'm going to suggest to you, Mr.
15 Glassman, because I'm obliged to, that that
16 evidence is not credible. It is simply false.
17 There is no way in the world you would have ceded
18 control of your firm to a junior analyst like Mr.
19 Moyse who may have been at the firm for three weeks
20 by the time he was added to a deal team?

21 A. I stand by the testimony, and I
22 can give you examples where it has actually
23 happened in the past, including Cott Beverages.

24 Q. Am I right that Mr. Riley was the
25 person at Catalyst primarily responsible for

1 managing this litigation against Moyse and West
2 Face on a day-to-day basis? Is that a fair
3 statement?

4 A. Sure.

5 Q. Mr. Riley has sworn five
6 affidavits in this proceeding; are you aware of
7 that?

8 A. Something like that.

9 Q. And the first affidavit was sworn
10 June 26th of 2014, within three days of Mr. Moyse
11 commencing his employment with West Face; are you
12 aware of that?

13 A. I am.

14 Q. Am I right that indeed Mr. Riley
15 was the only employee of Catalyst to swear any
16 affidavit in this proceeding before you and Mr. de
17 Alba did so about ten days ago, on Friday, May 27th
18 of this year; fair enough?

19 A. I'm not sure. I think Mr. de Alba
20 may have sworn either in this case or in another
21 case, so I'm not sure.

22 Q. You can't point to the affidavit
23 he swore in this case?

24 A. Well, if it is not in the record,
25 then that is correct.

1 Q. It is not in the record.

2 A. Then it is correct.

3 Q. And it is Mr. Riley who has
4 reviewed hundreds of thousands of productions in
5 this case rather than you; fair enough?

6 A. He has absolutely reviewed more of
7 it than I have.

8 Q. Am I right that you participated
9 in none of Mr. Moyse's meetings or discussions with
10 representatives of West Face?

11 A. Of course not.

12 Q. And therefore, Mr. Glassman, in
13 fairness, you can't sit here and testify under oath
14 concerning what was said or not said during any of
15 those meetings or discussions; fair enough? You
16 weren't there?

17 A. That is true.

18 Q. You have not attached to your
19 affidavit even one document in which Mr. Moyse
20 conveyed to West Face the confidential information
21 of Catalyst concerning either Wind Mobile or
22 VimpelCom; correct?

23 A. No, but we have evidence of other
24 confidential information that he passed on and
25 conveniently wiped electronic devices, contrary to

1 a Court order. I'm allowed to make an inference
2 from that.

3 Q. No, will you come back and answer
4 my question.

5 A. I think I did.

6 Q. Let me put it to you again simply.
7 Just try to follow the questions. You have not
8 attached to your affidavit a single document in
9 which Mr. Moyse conveyed to West Face confidential
10 information of Catalyst concerning either Wind
11 Mobile or VimpelCom? That was the question.

12 A. We believe he has destroyed that
13 evidence.

14 Q. I'm going to put it to you for the
15 third time. Mr. Glassman, this is your last
16 chance. You have not attached to your affidavit a
17 single document in which Mr. Moyse conveys to West
18 Face confidential information of Catalyst
19 concerning either Wind Mobile or VimpelCom, have
20 you?

21 A. I stand by my answers.

22 Q. Well, we'll deal with that in
23 argument.

24 Now, let me turn to the Monday morning
25 meetings. You testified at some length during your

1 examination in-chief earlier this morning about the
2 so-called packages for those meetings that you say
3 your 14 million dollar proprietary software
4 generates; do you recall that?

5 A. In part that is what the software
6 generates.

7 Q. You stated that you prepare
8 packages for each of these Monday meetings?

9 A. I don't prepare them. The firm
10 prepares them, yes.

11 Q. And you said that those packages
12 are, and I'm going to quote you back directly and
13 these are your words, sir, taken from the realtime
14 transcript, you said those packages are "put on the
15 table for everybody to take [a] copy of that at the
16 beginning of the meeting"?

17 A. That's correct.

18 Q. Those were your words?

19 A. That's correct.

20 Q. And, sir, are you able to explain
21 why Catalyst has not produced even one package for
22 those meetings that pertains to the Wind Mobile
23 transaction?

24 A. The packages don't pertain only to
25 Wind Mobile. They pertain to everything in process

1 at the firm. As I said, the cover page, which is a
2 summary, produces pipeline, which is highly
3 confidential, it is everything that we have either
4 analyzed or are in the process of analyzing, deals
5 in process and deals in the portfolio.

6 Q. Okay. So your evidence then under
7 oath, Mr. Glassman, is that you made the deliberate
8 choice not to produce any of those packages because
9 they pertain to transactions other than Wind? That
10 was a choice you made; correct?

11 A. I made no decision about it. I
12 have no idea whether it was discussed with Mr.
13 Riley or whether it was a decision of counsel based
14 on privilege or confidentiality. I have no idea
15 why that decision was made, but it wasn't made by
16 me.

17 Q. So you are guessing. When I asked
18 you why Catalyst has not produced a single package
19 that pertains to the Wind transaction, you are
20 guessing; correct?

21 A. I'm not guessing. I'm not even
22 providing you with a guess. I have no idea.

23 Q. Now, you are no doubt aware that
24 Mr. Moyse resigned from Catalyst on Saturday, May
25 24th of 2014? Are you aware of that?

1 A. I am aware that Mr. Moyse
2 purported to resign by email on Saturday, May the
3 24th.

4 Q. Are you aware that Mr. Riley sent
5 Mr. Moyse home on Monday, May 26th, 2014?

6 A. I am.

7 Q. Am I correct, based on your
8 affidavit, that Catalyst's discussions and
9 negotiations with VimpelCom continued until at
10 least mid-August of 2014?

11 A. Sure.

12 Q. And am I right that during that
13 period multiple drafts of a share purchase
14 agreement were exchanged between Catalyst on one
15 side and VimpelCom on the other?

16 A. Of course.

17 Q. And Catalyst of course modified
18 its position on a number of points, and VimpelCom
19 also modified its position on others; fair enough?

20 A. To the best of my recollection, we
21 only modified our position on what I would consider
22 secondary or irrelevant issues.

23 Q. All right. Well, of course you
24 weren't here when Mr. de Alba testified, were you?

25 A. No.

1 Q. And of course you don't know what
2 he said about the modifications to Catalyst's
3 position from time to time?

4 A. No, but I know what the directions
5 to the team were.

6 Q. And just to make sure we have the
7 division of roles straight, am I right that Mr. de
8 Alba was the principal negotiator in this
9 transaction on behalf of Catalyst?

10 A. He was the principal person
11 negotiating with VimpelCom and other parties. We
12 had daily conversations during the negotiations.

13 Q. Just to be clear, as I understood
14 your evidence, and maybe I missed it, I thought
15 that Mr. de Alba was Catalyst's lead negotiator on
16 the deal and directed Catalyst's deal team and your
17 advisors?

18 A. Yeah, lead, with the other side.
19 That doesn't mean that he wasn't informed and
20 keeping me informed of everything.

21 Q. I have simple little questions.

22 A. And I am answering --

23 Q. We are going to get along just
24 fine if you answer my questions, and we are not
25 going to get along very well if you start to give

1 speeches. So just try to stay with the questions.

2 The question is very simple. De Alba
3 was Catalyst's lead negotiator on the deal and
4 directed Catalyst's deal team and your advisors;
5 correct?

6 A. Yes, lead.

7 Q. Am I right that you were primarily
8 responsible for Catalyst's negotiations with
9 Industry Canada and the Federal Government?

10 A. Yes, primarily.

11 Q. Now, am I right that wholly apart
12 from whatever discussions and negotiations may have
13 taken place with VimpelCom, that Catalyst's
14 discussions with the Government of Canada continued
15 all the way through the period from March of 2014
16 to at least August 2014?

17 A. Yes, some informal discussions
18 continued.

19 Q. And am I correct that you, Mr.
20 Glassman, had no contact whatsoever with Mr. Moyse
21 in the period after he was sent home by Mr. Riley
22 on May 26th of 2014?

23 A. None to my recollection.

24 Q. You certainly did not keep Mr.
25 Moyse advised of Catalyst's discussions and

1 negotiations with either VimpelCom or with the
2 Government of Canada; correct?

3 A. Of course not.

4 Q. Nor, to your knowledge, did Mr.
5 Riley or Mr. de Alba?

6 A. I would hope not.

7 Q. And you say the same thing, I take
8 it, with respect to Catalyst's professional
9 advisors, people from Faskens and Morgan Stanley?

10 A. I would hope not.

11 Q. Now, you gave evidence, and again
12 I took note of this in your evidence in-chief, you
13 said that Catalyst had a flat, flat, you actually
14 used the word twice, a flat, flat structure
15 internally?

16 A. We do.

17 Q. And I take it what you mean by
18 that is that you are careful to keep each other
19 apprised of significant developments along the way
20 in respect of transactions that Catalyst is
21 pursuing; correct?

22 A. Not quite correct. That is the
23 result of a flat, flat structure.

24 Q. And of course you achieved that
25 result at Catalyst. You made sure to keep Mr.

1 Riley advised and Mr. de Alba advised and they kept
2 you advised about significant developments along
3 the way as the transaction proceeded?

4 A. I would hope so.

5 Q. You certainly didn't keep Mr.
6 Riley in the dark, did you?

7 A. I would hope not.

8 Q. And as an example, when the
9 transaction came to an end in August of 2014, you
10 made certain Mr. Riley was aware of why that
11 transaction came to an end, didn't you?

12 A. I don't know if I did, but one of
13 us on the deal team would have made sure that Mr.
14 Riley knew, or should have.

15 Q. And there is simply no way, there
16 is simply no way that Mr. Riley wouldn't have known
17 as an example that at the end of the discussions in
18 mid-August of 2014 VimpelCom asked for a break fee
19 from Catalyst? He had to have known that; correct?

20 A. I think that "no way",
21 quote/unquote, is an exaggeration. I can imagine
22 one or two scenarios where he wouldn't have known
23 about it in time, including the fact that he might
24 have been on vacation while it happened.

25 Q. He would certainly know by the

1 time he got back from vacation, wouldn't he,
2 because you would have told him?

3 A. He would have known by the end of
4 the transaction, for sure. He wasn't involved day
5 to day.

6 Q. Now, let me take you to this
7 meeting that took place on Thursday, March 27 of
8 2014. You have testified in-chief that Mr. Riley,
9 you and your government relations advisor
10 Mr. Drysdale attended meetings with the Government
11 of Canada in Ottawa on March 27th; correct?

12 A. Correct.

13 Q. You, Mr. Riley and Mr. de Alba and
14 others at Catalyst prepared a PowerPoint
15 presentation for use during the course of that
16 meeting; correct?

17 A. I didn't say I prepared it. I
18 said I gave input to it and that others prepared
19 it, primarily Mr. Moyse.

20 Q. You were involved in the
21 preparation of the PowerPoint?

22 A. I was involved.

23 Q. And you said you looked at perhaps
24 the first draft, but you certainly looked at the
25 last draft?

1 A. For sure.

2 Q. And you had made sure that that
3 last draft was accurate in every respect before it
4 was tabled with the Government of Canada; correct?

5 A. I would have tried to have made
6 sure it was accurate.

7 Q. You are a smart man, aren't you,
8 sir?

9 A. Arguable.

10 Q. You were well aware of the state
11 of affairs at Catalyst by the time that
12 presentation was made on March 27th?

13 A. I don't understand the question.

14 Q. You would have been well aware of
15 the state of affairs at Catalyst concerning the
16 Wind transaction, as an example, by March 27th?
17 You weren't being kept in the dark by your team,
18 were you?

19 A. On what subject?

20 Q. On the Wind transaction.

21 A. No, I was -- I hope I wasn't being
22 kept in the dark.

23 Q. So before we turn to the actual
24 presentation, which we'll get to momentarily, let's
25 establish, if we can, a consensus concerning the

1 state of affairs between Catalyst on one side and
2 VimpelCom on the other as at the time of that
3 meeting with the government on March 27th. And I'm
4 going to try and reach a consensus with you on six
5 matters, so let me go through them quickly.

6 First, am I correct that Catalyst only
7 entered into a confidentiality agreement with
8 VimpelCom several days before the meeting on
9 Saturday, March 21 of 2014?

10 A. I'm not sure of the date.

11 Q. Will you please pull up tab 10 of
12 the cross-examination binder.

13 THE COURT: Which one, 10.1 or 10.2?

14 BY MR. THOMSON:

15 Q. There is a covering email, and
16 then there is an attachment to it, Your Honour, so
17 it should be .1.

18 And, Your Honour, you'll find here, or
19 I hope you'll find here a document which should
20 have the numbers CCG0023894. Perhaps it is the
21 next document. There we are.

22 And, Mr. Glassman, you'll have in front
23 of you on the computer screen, I hope, a document
24 entitled "Confidentiality Agreement" between
25 VimpelCom and then below that the Catalyst Capital

1 Group Inc.; do you have that?

2 A. I see that.

3 Q. And do you see the date of the
4 agreement on the first line which is March 21 of
5 2014?

6 A. Yes.

7 Q. So I take it we can now agree that
8 Catalyst entered into a confidentiality agreement
9 with VimpelCom several days before the meeting on
10 Saturday, March 21?

11 A. Sure, that confirms for me that
12 there was information being exchanged before that.

13 Q. All right. Again, we are not
14 going to get along well if you start doing that.
15 I'm just asking you a simple question, which is the
16 date of the agreement.

17 A. And I am trying to make sure that
18 I don't mislead the Court.

19 Q. Now, am I right, Mr. Glassman,
20 that as of March 27th, 2014, Catalyst had not yet
21 obtained access to the data room of VimpelCom and
22 Wind?

23 A. On or about that, I think that's
24 correct.

25 Q. Okay, listen to my question. As

1 of March 27th, 2014, Catalyst had not yet obtained
2 access to the data room of VimpelCom and Wind?

3 A. I don't know that for a fact. I
4 don't know the date specifically when we first went
5 to the data room, and nor was such required for the
6 presentation.

7 Q. Did I ask you that?

8 A. I'm just trying to make sure the
9 Court is not misled.

10 Q. Your Honour, at some point I'm
11 going to ask you for a direction to the witness.
12 It will help me through this. But let's try and
13 see how far we get.

14 Please pull up tab 41. And, Mr.
15 Glassman, you'll have on your screen now a
16 transcript of the examination for discovery of your
17 partner, Mr. de Alba, conducted about three weeks
18 ago, on May 11, 2016.

19 A. I see that.

20 Q. Do you have that? And will you
21 please pull up page 40 of the transcript. And
22 scroll down a bit, please. And, Mr. Glassman, I'm
23 at questions 146 to 148, so the questions were
24 these:

25 "Question: Now, am I correct

1 that as of the date of this
2 presentation, March 27th, you had
3 not yet executed a signed
4 non-disclosure agreement?

5 Answer: I need to check the date
6 of the NDA."

7 You were asked for the date of it by
8 undertaking, and below that Mr. Winton says, well,
9 you can assume that's -- we'll let you know if that
10 is incorrect and assume that is correct unless we
11 tell you otherwise. And of course, we have now
12 established the actual date is March 21.

13 And it is the next question I'm
14 interested in where Mr. Milne-Smith says:

15 "Question: Am I also correct
16 that you did not yet have access to
17 the data room? You didn't get into
18 the data room until May, correct?

19 Answer: Not at that point in
20 time.

21 Question: Meaning I'm correct?

22 Mr. Winton: You're correct."

23 And I take it you have no reason to
24 disagree with Mr. De Alba's evidence that Catalyst
25 did not obtain access to the data room of Wind

1 until early May of 2014?

2 A. Correct.

3 Q. That is my second point.

4 My third point, as of March 27th of
5 2014, am I right that Catalyst had not yet retained
6 Morgan Stanley to assist it in respect of the Wind
7 transaction?

8 A. I have no idea of the exact date
9 that we retained formally Morgan Stanley.

10 Q. Can you please pull up tab 13 of
11 the cross-examination binder. And, Your Honour,
12 this is document CCG0028356, a series of emails.
13 And can you please scroll down the page. And stop,
14 please.

15 And, Mr. Glassman, you will have in
16 front of you, I hope, an email toward the bottom of
17 that first page of this document from Mr. de Alba
18 of May 6th of 2014 to Ben Babcock and Edward King
19 of Morgan Stanley; do you have that?

20 A. I do.

21 Q. And you would be familiar with
22 Mr. Babcock certainly as being the senior person
23 for Morgan Stanley that assisted Catalyst in
24 respect of the Wind transaction?

25 A. I know that.

1 Q. And my description of Mr. Babcock
2 is correct, that he was the senior person?

3 A. I don't know the relative
4 seniority of Ed and Ben, but I assume Ben was the
5 more senior.

6 Q. Okay, where he says on May 6th of
7 2014:

8 "Ben and Ed: Would like to
9 engage [Morgan Stanley] on the
10 acquisition of Wind Canada. As you
11 might be aware, and as per our
12 discussions process is moving fast
13 and due diligence can start this
14 week. Please provide engagement
15 letter and propose the team that
16 will work on the mandate. Let's
17 go!!!!"

18 So I took it from this that they were
19 retained in early May of 2014 to assist Catalyst;
20 fair enough?

21 A. As I said earlier, they were
22 formally retained at that time. That doesn't mean
23 they didn't do work before that, which would be
24 typical in this kind of situation.

25 Q. My fourth point, as of March 27 of

1 2014, am I right that Catalyst had yet to retain a
2 technical expert to assist it in respect of the
3 Wind transaction, that is, someone with expertise
4 in the areas of the operation of wireless networks,
5 wireless spectrum and the like?

6 A. My answer would be the same as it
7 is with Morgan Stanley, which is that if that is
8 the date, that's the date of formal engagement.

9 Q. Will you please turn up tab 18 of
10 the cross-examination binder. Your Honour, these
11 are a series of emails in document CCG0018051.

12 And the emails I'm interested in, Mr.
13 Glassman, are on the second page of this chain, and
14 you have got to read from the bottom to top. So
15 please scroll to the middle of the page where
16 you'll find an email from George Yao at Morgan
17 Stanley to Zach Michaud. And just so we have it,
18 Mr. Michaud was the Vice President of Catalyst?

19 A. He was.

20 Q. He worked as a member of the core
21 deal team on the Wind transaction?

22 A. He was.

23 Q. So the question that is posed by
24 Mr. Yao of Morgan Stanley to Mr. Michaud on May
25 16th at 12:40 p.m. was:

1 "Zach, have you reached out to
2 our recommended technical expert
3 yet? Thanks."

4 And then scroll up, please. And
5 Mr. Michaud says:

6 "Not yet, after the diligence
7 session."

8 And scroll up, please. And above that
9 at 12:42 p.m. Yao says:

10 "Got it. So for item number 4
11 on the agenda, I gather it's going
12 to be a discussion on how our
13 technical diligence team can gain
14 access to perform [due diligence]?"
15 And then just above that Michaud writes
16 back on May 16th and says:

17 "Yes, I would also still say we
18 are in the process of getting a
19 technical expert given our original
20 choices had conflicts. This was
21 Ben's idea as well."

22 So I took it from this that Catalyst
23 had not yet retained a technical expert, others had
24 conflicts and you are in mid-May of 2014 in the
25 process of lining someone up; fair enough?

1 A. Again, I stand by the same answer
2 I gave earlier. We had not formally retained the
3 people, anyone, including the technical expert
4 suggested by Morgan Stanley. That didn't mean and
5 that does not mean that we didn't have technical
6 input before that date.

7 Q. Am I right that Catalyst
8 ultimately reached out to and retained a firm
9 called LCC Design Services Inc. to assist it as
10 technical experts on this transaction?

11 A. I think so.

12 Q. That is a firm based in Chantilly,
13 Virginia?

14 A. I don't know where it is based.

15 Q. Turn up, please, tab 19 of the
16 cross-examination brief. And here you'll find,
17 Your Honour, document CCG0009547, an email chain
18 involving Daniel Batista at the Faskens firm. And
19 if you flip to the second page of the emails,
20 you'll find an email from someone named Summit
21 Nahar at LCC to Mr. Michaud, copied to Mr. de Alba,
22 where it says:

23 "Zach, attached is the LCC
24 agreement template. Please fill out
25 your address and sign and return. I

1 will have our COO sign and send you
2 a fully executed copy."

3 And that is of course in mid-May of
4 2014. And I took it from that that the agreement
5 to retain LCC was entered into sometime around May
6 19 of 2014?

7 A. I don't know when, because the
8 next page says that Daniel Batista had specific
9 technical issues, so I had no idea when the formal
10 agreement, and I emphasize formal, was executed.

11 Q. Now, fifth, am I right that there
12 were no negotiations that you are aware of with
13 VimpelCom between the date that Catalyst executed
14 the confidentiality agreement with VimpelCom we
15 have already looked at on Friday, March 21, and
16 your meeting with the Government of Canada several
17 days later on March 27th?

18 A. I have no idea if Gabriel spoke
19 with them, and I don't know what you mean by
20 "negotiations". I'm -- there is a high likelihood
21 that there was some discussion.

22 Q. Sixth, am I right that as of March
23 27 of 2014 there had not yet been a single draft of
24 a share purchase agreement exchanged between
25 Catalyst and VimpelCom?

1 A. What date, sorry?

2 Q. March 27, 2014.

3 A. I have no idea. I assume not.

4 But I don't know for a fact.

5 Q. I'm going to suggest to you, sir,
6 that the first draft of any such agreement was only
7 provided by UBS to Morgan Stanley some seven weeks
8 later on March -- sorry, on May 12, rather, of
9 2014; do you accept that?

10 A. That sounds appropriate.

11 Q. And if we turn, just so we have it
12 in the record, to tab 17 of the cross-examination
13 binder, you will find a series of emails. The
14 document number, Your Honour, is CCG0009525. And
15 you will see, Mr. Glassman, in the middle of the
16 page Mr. Turgeon of UBS writes to Mr. Babcock and
17 says:

18 "Here it is."

19 At the top of the page, Mr. Babcock
20 writes to Mr. de Alba, Mr. Michaud and others at
21 Morgan Stanley and says:

22 "Don't know if you have this,
23 apparently still some tax
24 structuring been done but this is
25 what they have in mind."

1 And if you turn to the attachment, pull
2 up the attachment, please, and here, Your Honour,
3 you'll find a document CCG0009527. And, Mr.
4 Glassman, we are advised that this is the first
5 draft of the share purchase agreement provided by
6 VimpelCom to Catalyst?

7 A. I'm sorry, I'm confused. Can you
8 go back to the email chain?

9 Q. Just before we do that, just hang
10 on and go back to the attachment for a moment. I
11 want to identify the document. Let me just put the
12 proposition to you, and then we'll go back to the
13 chain.

14 We were instructed, we were advised in
15 this case that this is the first draft, the draft
16 of May 9 of 2014, the first draft of a share
17 purchase agreement provided by VimpelCom to
18 Catalyst. That is the proposition I'm putting to
19 you. I take it you don't know one way or the
20 other?

21 A. I need to see the email chain,
22 because I thought that I saw that the header refers
23 to the SPA, but I thought I saw on the body on the
24 second page referring to something else.

25 Q. All right, let's go back to the

1 email chain.

2 A. Can you go down, please?

3 Q. Go back to the email chain, is
4 that what you are referring to?

5 A. You see where it says:

6 "Can you give me a call please
7 regarding this issue of providing
8 the underlying operating model -
9 fairly critical given the tight
10 timelines."

11 Q. Yes.

12 A. I don't understand why that is
13 connected to something, because it says "Here it
14 is" above it, which must mean the operating model,
15 and I don't know how that relates to the SPA.

16 Q. You don't know one way or the
17 other?

18 A. No, but that sounds to me like it
19 might have been the wrong attachment. And that
20 makes sense when you look at the tax structuring
21 comment.

22 Q. Now, you will see at the top of
23 that email --

24 A. Yes.

25 Q. Scroll up, please. You see the

1 "Re" line "Attachments: Form of SPA doc"?

2 A. Yes, but the body refers to an
3 operating plan and the sentence right underneath it
4 refers to tax structuring. Those are unusual for a
5 share purchase agreement.

6 Q. Now, pull up, please -- well,
7 leave it there for a second. Pull up, but take a
8 note of the number, you see it is CCG9525. Do you
9 have that? Do you have the number?

10 A. Yes.

11 Q. Okay, just memorize the number for
12 one minute, and now pull up the transcript of Mr.
13 de Alba's discovery at tab 41 of the
14 cross-examination binder, please. And please turn
15 to page 65 of that transcript. And I am at the
16 very bottom of page 65, Mr. Glassman, question 243
17 where Mr. Milne-Smith, and this is a discovery
18 conducted three weeks ago, Mr. Milne-Smith says:

19 "That's fine. Could you now
20 turn please to CCG9525."

21 Do you have that?

22 A. Yes, I see that.

23 Q. That is the document we looked at
24 about two seconds ago. So this attaches at 9527 a
25 draft share purchase agreement. That is the

1 agreement we looked at three seconds ago?

2 A. It might be.

3 Q. And then the question at 244:

4 "Question: So the email at the
5 top of the chain is Ben Babcock to
6 various people at Catalyst and
7 Morgan Stanley attaching the form of
8 share purchase agreement?

9 Answer: Correct.

10 Question: And then if you flip
11 over to the share purchase agreement
12 at 9527 --

13 Answer: Yes.

14 Question: -- my understanding is
15 that this is sort of the draft form
16 of agreement that VimpelCom has
17 provided to interested purchasers.
18 This is their first draft; is that
19 right?

20 Answer: I do not know if it is
21 the first draft but is a draft."

22 [-- Court reporter appeals.]

23 BY MR. THOMSON:

24 Q. So, Mr. Glassman, I am now at the
25 end of question 246, so just so we have it, the

1 answer was:

2 "Answer: I do not know if it
3 is the first draft but it is a
4 draft."

5 And at question 247:

6 "Question: If you could advise
7 me, Mr. Winton, if I have that
8 wrong? I'm pretty sure we're on
9 common ground here."

10 And Mr. Winton says:

11 "I think maybe what we can
12 agree is that it's the first draft
13 sent by VimpelCom to Catalyst."

14 So I take it you can agree easily,
15 based on this transcript, with my proposition, Mr.
16 Glassman, that this is the first draft of a share
17 purchase agreement sent by VimpelCom to Catalyst?

18 A. I have no idea if I can agree with
19 you, because I don't know if that is the first one,
20 and I don't even know if there has been some
21 screw-up with the attachment since the body of the
22 emails refer to things that are not normally found
23 in an SPA. I'm not in a position to agree or
24 disagree. I don't know.

25 Q. So you are not prepared to accept

1 the assurance given by your counsel at discovery
2 three weeks ago; correct?

3 A. As much as I like Andrew, he is
4 fully capable of making a mistake too. I don't
5 know. I have no idea.

6 Q. All right. Now, let me turn to
7 the PowerPoint presentation. Please pull up tab
8 11. And, Your Honour, this is hard to read, but it
9 is embedded in the top right-hand corner of the
10 document, and it is CCG0011565.

11 And, Mr. Glassman, you have testified
12 both in-chief and at least in part in
13 cross-examination this morning that you did play a
14 role in the preparation of this presentation;
15 correct?

16 A. Absolutely.

17 Q. Mr. de Alba and Mr. Riley also
18 played a role?

19 A. For sure.

20 Q. And am I correct that when Mr.
21 Moyse was formatting the presentation, he did so
22 based on notes given to him by you, by Riley and by
23 de Alba?

24 A. I know for sure with notes from de
25 Alba. He may have had oral direction from me or

1 notes from me. I don't know which. But in the
2 aggregate, there would have been notes from at
3 least some sub-group of the three of us.

4 Q. All right. Are you able to leave
5 that on the screen and pull up Mr. Glassman's
6 affidavit? If you can't, just go to the affidavit,
7 it is at tab 1.

8 So, Your Honour, tab 1 of the
9 cross-examination brief is Mr. Glassman's
10 affidavit, and that is CCG0028711. Mr. Glassman,
11 I'm going to take you to page 6 of the affidavit
12 and in particular paragraph 16. So just put the
13 affidavit up, please, and just expand it. And go
14 to paragraph 16.

15 And I take it, of course, you reviewed
16 the affidavit carefully before you swore it?

17 A. I did.

18 Q. And you ensured that it was
19 accurate in every respect?

20 A. I hope I did.

21 Q. Now --

22 A. To the best of my ability.

23 Q. I'm going to take you to the third
24 sentence of the paragraph that begins with the
25 words "Moyse was responsible [...]"

1 A. Yes.

2 Q. "Moyse was responsible for
3 creating the presentation slides
4 based on extensive internal prior
5 discussions (including industry
6 dynamics and deal strategy) [...]"
7 And it is the next part I want to take
8 you to.

9 A. Yes.

10 Q. "[...] notes given to him by
11 me, Riley and de Alba."

12 A. Yes.

13 Q. I took it from that statement in
14 your affidavit that he prepared this based at least
15 in part on notes given to him by you, by Riley and
16 by de Alba?

17 A. Or it could also be read by notes
18 from one of or more of me, Riley and/or de Alba.

19 Q. Well, sorry, you don't use
20 "and/or". You say "notes given to him by me, Riley
21 and de Alba"?

22 A. I don't remember providing notes.
23 I may have. I know for a fact that de Alba for
24 sure would have given him notes, and I know for a
25 fact that I participated in discussions and

1 providing direction.

2 Q. And, Mr. Glassman, where are the
3 notes? Did Catalyst destroy those notes too?

4 A. If we had the notes, we would have
5 provided them. And if I wrote notes, I would have
6 provided them.

7 Q. I take it the notes were destroyed
8 by Catalyst?

9 A. Only if I had notes. I may not
10 have provided personal notes, as I have already
11 said prior to this.

12 Q. I'm sorry, I have got to put this
13 to you because I'm obliged to. What you are saying
14 now is directly contrary to what you said in your
15 affidavit sworn ten days ago?

16 A. I don't think so. I read the
17 sentence structure differently than you.

18 Q. All right, we'll let the judge
19 read the sentence structure to himself. I'm just
20 suggesting to you that although you try to lay at
21 Mr. Moyse's feet the preparation of this
22 presentation, the notes he used to prepare it were
23 destroyed by you, by Riley, de Alba or others at
24 Catalyst?

25 A. I never destroyed any document

1 other than what was requested by the government to
2 be destroyed.

3 Q. And while we are on that subject,
4 who exactly at the Government of Canada asked
5 Catalyst to destroy its work product that went into
6 the presentation? Who made that request and when?

7 A. No, that is not quite what I said.
8 What I said was that they asked us to destroy
9 previous drafts and stick with whatever final draft
10 we brought with us. They didn't ask us to destroy
11 evidence. They asked us to destroy drafts leading
12 up to what we eventually submitted to them and
13 showed them.

14 Q. And who made the request and when
15 did they make it?

16 A. I don't remember exactly. I know
17 that it was requested prior to the meeting through
18 Bruce Drysdale to us, and I know it was requested
19 at the end of the Industry Canada meeting.

20 Q. All right. So the request was not
21 made to you; correct?

22 A. To me personally?

23 Q. Yes.

24 A. Only at the end of the Industry
25 Canada meeting.

1 Q. So your evidence is that at the
2 end of the Industry Canada meeting, someone from
3 Industry Canada said, "Look, please destroy every
4 draft you have of this presentation"? Is that your
5 evidence?

6 A. I think the wording they used was
7 something to the effect of, "Can you please make
8 sure that you live with what you only showed us.
9 Since we haven't seen anything else, we would
10 prefer that only this exist."

11 Q. Who made that request?

12 A. I think it was Kelly. It was
13 either Kelly or Ian Stewart.

14 Q. And do you have a note of that
15 discussion?

16 A. No. We took no notes during the
17 meeting.

18 Q. There is no note made after the
19 meeting in which that request was recorded in any
20 way; correct?

21 A. Correct.

22 Q. Now, with respect to Mr. Moyse,
23 surely we can agree on this, that Mr. Moyse was not
24 the architect of Catalyst's strategy in dealing
25 with the Government of Canada?

1 A. Correct.

2 Q. You were; correct?

3 A. I was the chief architect.

4 Q. Acting in collaboration with
5 Riley, de Alba and Drysdale; correct?

6 A. I don't know if I would consider
7 Bruce Drysdale as one of the architects. We took
8 input from Drysdale and others, but the architects
9 generally were the partners and I was the chief
10 architect.

11 Q. Mr. Moyse was not invited to
12 attend the meeting with the Government of Canada on
13 March 27th?

14 A. No.

15 Q. For that matter, neither were
16 people at Catalyst that were substantially more
17 senior to him, including as an example Mr. de Alba,
18 correct, also not invited?

19 A. He might have been invited. We
20 chose not to bring him. I actually do think he was
21 invited, but we chose not to take him.

22 Q. Mr. Michaud, the Vice President,
23 was not invited?

24 A. He might have been invited, but we
25 for sure chose not to take him.

1 Q. Now, go back to the PowerPoint
2 presentation, please, at tab 11 of the
3 cross-examination binder. Am I correct that the
4 PowerPoint presentation outlined regulatory
5 concessions that Catalyst needed in order to carry
6 out a Wind transaction?

7 A. The presentation literally
8 outlines both the existing environment and multiple
9 options available to the government and the
10 concessions that we thought would be necessary for
11 any one of those options.

12 Q. All right.

13 A. If any, because option 3 has none.

14 Q. Is it fair to say that regulatory
15 risk was a major sticking point for Catalyst?

16 A. Absolutely. Critical.

17 Q. And with respect to Mr. Drysdale,
18 let's introduce him to Justice Newbould, if we can.
19 Pull up tab 31. And, Your Honour, at tab 31 is
20 document WFC0110505. This is an extract from the
21 website of a firm called Drysdale Forstner and
22 Hamilton. Are you familiar with that firm, Mr.
23 Glassman?

24 A. Quite.

25 Q. And you will see, if you scroll

1 down a bit on the first page under the heading "The
2 DFH Difference" and then under the heading
3 "Background", and scroll down, please. Just the
4 first sentence under the heading "Background" says:

5 "DFH Public Affairs was formed
6 in 2007 by Bruce Drysdale, Gordon
7 Forstner and Ian Hamilton."

8 I take it you have worked with this
9 firm on a number of occasions in the past?

10 A. We have.

11 Q. Including Mr. Drysdale?

12 A. We have.

13 Q. And if we turn to the second page
14 of the document, you will find a photograph of
15 Mr. Drysdale. I take it you recognize that
16 photograph?

17 A. I do.

18 Q. And Mr. Drysdale says in his bio:

19 "Bruce Drysdale is a founding
20 principal of DFH based in the
21 Toronto office. Bruce advises
22 global and Canadian companies on a
23 variety of strategic, public policy,
24 stakeholder and corporate
25 positioning issues in the natural

1 resources, industrial and telecom
2 sectors. Bruce has also led public
3 affairs campaigns and approvals for
4 large transactions in Canada and
5 other jurisdictions."

6 In the next paragraph he describes
7 himself as being the:

8 "[...] Vice President of
9 Government and Public Affairs for
10 Inco Limited [...]" until early
11 2007.

12 And if you skip down to the next
13 paragraph, his bio says:

14 "Prior to his eight years at
15 Inco, Bruce headed the natural
16 resources practice for Canada's
17 largest public affairs consulting
18 firm. In this role, Bruce provided
19 counsel on a variety of public
20 policy, regulatory, legislative and
21 communications matters. Bruce began
22 his career in government as a
23 political and policy advisor to
24 three Canadian Cabinet Ministers in
25 Ottawa, in the Office of the

1 Minister of Indian and Northern
2 Development, the Office of the
3 Minister of National Defence, and
4 the Prime Minister's Office."

5 I take it, to your knowledge, that is
6 an accurate description of Mr. Drysdale's
7 background and experience?

8 A. I have no personal knowledge of
9 his involvement at Inco or in government.

10 Q. You have no reason to disagree
11 with his description of himself, do you?

12 A. No.

13 Q. And am I right that one of the
14 reasons Catalyst retained Mr. Drysdale was because
15 he did in fact have a great deal of experience in
16 dealing with the Government of Canada?

17 A. And telecom issues, both.

18 Q. He had a depth of experience in
19 dealing with the government that you, Mr. Riley and
20 Mr. de Alba did not have?

21 A. For sure.

22 Q. He had relationships with people
23 in the Government of Canada that you did not have;
24 correct?

25 A. Until he introduced us.

1 Q. Including with senior people at
2 Industry Canada, in the Privy Council Office and in
3 the Prime Minister's Office; fair enough?

4 A. Until we developed them, yes.

5 Q. And you testified that
6 representatives of each of those departments or
7 offices attended your meetings on March 27 of 2014;
8 correct?

9 A. I'm sorry, I didn't hear the first
10 part of your sentence.

11 Q. You testified that representatives
12 of each of those departments or offices of Industry
13 Canada, the Privy Council Office and the Prime
14 Minister's Office attended your meetings in Ottawa
15 on March 27th?

16 A. More accurately, I think I
17 testified that senior people in each of those
18 offices attended.

19 Q. And am I right that those people
20 included, most notably, a gentleman named James
21 Nicholson who was the Director of Policy of
22 Industry Canada?

23 A. Yes. That was a separate one of
24 the four meetings.

25 Q. Now, am I right that during the

1 course of this meeting on March 27, you walked
2 representatives of the government through your
3 PowerPoint presentation?

4 A. We walked them through parts of
5 it, yes.

6 Q. And if I can turn now to the
7 presentation at slide 2, and that is at tab 11 of
8 the cross-examination binder. Stay there, please.
9 So the second slide of the presentation is entitled
10 "Overview." And scroll down, please -- no, scroll
11 up then. Get the heading. The slide is entitled
12 "Overview"; do you have that?

13 A. Yes.

14 Q. And you say under the heading
15 "Overview" in the first bulleted section:

16 "The decision and action
17 timelines have tightened following
18 Mobilicity's March 21, 2014 court
19 filing."

20 And the third bullet underneath that
21 heading says:

22 "Catalyst is in advanced
23 discussions with VimpelCom to gain
24 control of Wind Canada but the
25 process is tight on time."

1 Do you see that?

2 A. I do.

3 Q. And, Mr. Glassman, again, under
4 our rules of Court, I'm obliged to put it to you
5 and so I will. That statement was simply false?

6 A. I disagree with you.

7 Q. For all of the six reasons we have
8 already reached a consensus on, as of March 27 of
9 2014, as it turns out, there were no ongoing
10 negotiations between Catalyst and VimpelCom; fair
11 enough?

12 A. Not only is your statement
13 incorrect where you say we have achieved a
14 consensus on your six issues, because I'm pretty
15 sure we didn't achieve consensus on a number of
16 them, there are different ways of describing
17 advanced discussions. You can have advanced
18 discussions on an informal basis. We had. There
19 is no point, for example, in exchanging an SPA
20 unless you already have fundamental agreement on
21 terms.

22 Q. Okay. Well, I'm glad you raised
23 that point. Am I right that as of March 27 of
24 2014, VimpelCom had yet to take even the first step
25 to stake out its turf as to the terms on which it

1 was prepared to proceed with a transaction with
2 Catalyst? It hadn't happened yet, had it?

3 A. I'm not sure that is correct
4 either, and you would have to ask Mr. de Alba. My
5 recollection is that he had travelled numerous
6 times to Europe and had meetings with them, and
7 they may have unofficially made it very clear to
8 him what they would think is appropriate.

9 Q. Well, let's try to see if we can
10 achieve a bit of common ground here, Mr. Glassman.
11 Turn to slide 6, please. So at slide 6 you'll find
12 a slide entitled "Economics of Creating the 4th
13 Wireless Network"; do you have that?

14 A. I do.

15 Q. And if you look under the second
16 heading "Economic Implications/Requirements"?

17 A. Yes.

18 Q. You see the first bullet says:
19 "Wind Canada purchase price:"

20 THE COURT: What is the date of this?

21 MR. THOMSON: This is March 27 of 2014.

22 THE COURT: Oh, sorry, this isn't it.
23 I thought you said tab 6.

24 MR. THOMSON: I'm sorry, I probably
25 did. This is tab 11, Your Honour.

1 THE COURT: But you are on the
2 presentation, all right.

3 MR. THOMSON: Yes, I am, and I should
4 have said page 6, I believe. So it is page 6 of
5 tab 11, which is the March 27 --

6 THE COURT: I have it.

7 BY MR. THOMSON:

8 Q. And, Your Honour, I was at the
9 heading "Economic Implications/Requirements" and
10 the first bullet below that which says:

11 "Wind Canada purchase price:
12 \$500 million."

13 And, Mr. Glassman, just so we have it,
14 on this slide what you were doing was setting out
15 for people in the Government of Canada your
16 estimated cost or expense, if you will, associated
17 with creating the fourth wireless network in
18 Canada?

19 A. As of March 27th.

20 Q. And just so we have this slide,
21 you told the Government of Canada that the required
22 investment would be in the range of 1.5 to 2
23 billion dollars?

24 A. Yes.

25 Q. And you then explained the

1 components of that figure, so one of the components
2 was the first bullet:

3 "Wind Canada purchase price:
4 \$500 million."

5 Correct?

6 A. Yes. At that time.

7 Q. And am I correct that from the
8 outset of the discussions with Catalyst in May of
9 2014, VimpelCom made clear that its asking price
10 was actually a fraction of that amount?

11 A. Sorry, can you repeat the
12 question?

13 Q. From the very outset of its
14 discussions with Catalyst in May of 2014, VimpelCom
15 made clear that its asking price was actually a
16 fraction of that amount?

17 A. It was also only one component of
18 the purchase price.

19 Q. Am I right?

20 A. Their component of the purchase
21 would have been ultimately less than that, yes.

22 Q. And if we now please pull up tab
23 15. And, Your Honour, these are a series of emails
24 of May 6th and 7th of 2014. It is CCG0009482.
25 And, Mr. Glassman, I'm interested in the email that

1 starts this chain, and you have to read from the
2 bottom up, so turn to the second page, please,
3 where you will find an email from Mr. Turgeon at
4 UBS to Mr. de Alba. Do you see that in the middle
5 of the page?

6 A. Yes. What is the date on this
7 email?

8 Q. That particular email is not
9 dated, but it is forwarded by de Alba to you,
10 Riley, Michaud and others on May 6th of 2014 at
11 3:25 p.m.?

12 A. I see that.

13 Q. And Turgeon says in the email to
14 de Alba:

15 "Gabriel, please find attached
16 Wind Canada's latest management
17 presentation and business plan. As
18 discussed this morning", and so he
19 is recording a discussion with de
20 Alba, "can you get back to me with a
21 confirmation (email or letter) that
22 you are prepared to explore the
23 acquisition of the whole of Wind
24 Canada under the following
25 conditions: Cash transaction of

1 \$300 million on an enterprise value
2 basis."

3 Do you see that?

4 A. I do.

5 Q. Now, Mr. Milne-Smith has already
6 gone through with Mr. de Alba in some detail what
7 that meant, so I'm not going to repeat all of that
8 with you. But the purchase price that VimpelCom
9 was looking for for the whole of Wind Canada was
10 300 million dollars on an enterprise value basis,
11 and you would have been made aware of that by Mr.
12 de Alba on May 6th; correct?

13 A. On or about.

14 Q. Well, the email to you is May 6th,
15 2014. I take it you read your emails when you
16 receive them?

17 A. Not always, not immediately. It
18 depends on what else is going on that day. I could
19 have read it the next day. That's why I said on or
20 about.

21 Q. Well, I'm going to suggest to you
22 that you must have read it that day because you
23 responded to it --

24 A. Well, then I read it.

25 Q. -- within 30 minutes of the email

1 being sent. Scroll to the bottom of the next page,
2 please, so scroll to the bottom of page 1 of these
3 emails. Yes, there you have it. You see at the
4 very bottom of that page?

5 A. Yes.

6 Q. So May 6 of 2014 at 4:04 p.m., and
7 just so you have it, de Alba's email was sent at
8 3:25 p.m., so half an hour later you send an email
9 back in which you say:

10 "Technically not \$300 million
11 in cash (although it could be), \$300
12 million in total value, and we get
13 to choose between replacing current
14 vendor financing or renegotiating
15 with them", et cetera, et cetera.

16 And I take it from this that what you
17 are referring to is that as of this exchange of May
18 6 of 2014, Wind Canada had roughly 150 million
19 dollars in vendor debt outstanding; correct?

20 A. As of that date, yes.

21 Q. And just so His Honour has this
22 for his notes, when I refer to "vendor debt", I
23 mean debt owed by Wind to vendors of equipment that
24 Wind had purchased along the way in building out
25 its network; correct?

1 A. At that time, yes.

2 Q. And what you are referring to is
3 that a significant portion of this 300 million
4 dollar purchase price might have been used to
5 either deal with or retire the vendor debt;
6 correct?

7 A. Not retire. Either purchase or
8 replace, which would probably also require further
9 enhancement.

10 Q. Now --

11 A. So the purchase of Wind would
12 require buying, just to be clear, VimpelCom or its
13 subsidiary's interest in Wind. It would require a
14 whole bunch of other capital, including probably
15 augmenting certain things, number one, so it is
16 very easy to understand why you might be confused
17 between a 300 million dollar number and a 500
18 million dollar number.

19 There are two reasons. One is March
20 26th versus May 7th, and the other is that our own
21 internal analysis showed us that we had to build
22 out certain parts of the network. So to, quote,
23 "buy" Wind, we would still have to do a whole bunch
24 of things that would still require money, not the
25 least of which is deal with potentially other

1 stakeholders, including vendors and other
2 shareholders.

3 Q. Are you finished?

4 A. I am.

5 Q. Were you aware at the time of this
6 meeting that one of the government's --

7 THE COURT: Which meeting?

8 MR. THOMSON: I'm sorry?

9 THE COURT: When you say "this
10 meeting", are you talking about the March 27th?

11 BY MR. THOMSON:

12 Q. Yes, I'm sorry, I apologize. I'm
13 going back to the March 27th meeting. If you have
14 the document, I'm just trying to give you a number.

15 On the March 27th meeting, were you
16 aware at the time of that meeting that one of the
17 government's policy goals was to support the
18 creation of a successful fourth national wireless
19 carrier?

20 A. Absolutely.

21 Q. Am I right that in doing so, the
22 government was focussed on the Canadian consumer?

23 A. I would say they were primarily
24 focussed on the retail customer, which you would
25 call the consumer/customer.

1 Q. All right, so if we go back to the
2 slide presentation of March 27, please, at tab 11,
3 and if you turn to slide 3, you will find a slide
4 entitled "The Government is Focussed on the
5 Canadian Consumer"; do you have that?

6 A. I do.

7 Q. And am I right, just to get our
8 terms straight before I get into the content of the
9 slides, that as of March of 2014 the incumbent
10 carriers in Canada were Rogers, Telus and Bell?

11 A. Nationally, yes.

12 Q. Together they occupied a dominant
13 position in the wireless market with a combined
14 market share in excess of 85 percent?

15 A. As they do today. It is actually
16 a little bit more today.

17 Q. Am I right that the government's
18 concern was that Canadian consumers were paying
19 higher prices than they should and that they had a
20 relatively poor service selection?

21 A. That was the government's public
22 articulated position, yes.

23 Q. And that is reflected in your
24 slide?

25 A. Yes.

1 Q. Slide 3. Am I right that the
2 government's goal was to increase the level of
3 competition in the wireless industry in Canada?

4 A. The government's ultimate goal was
5 to reduce the cost to the consumer and preferably
6 also simultaneously increase the quality of
7 service. The way they would explain it in a short
8 version was choice or competition, but it was
9 actually the result of the competition or their
10 hoped result of the competition that was more
11 important to them than the competition itself.

12 Q. And if you turn to slide 6, you
13 will find a slide entitled, again, "Economics of
14 Creating the 4th Wireless Network", which we looked
15 at a moment ago, and one of the positions you were
16 taking with the government, one of the explanations
17 you gave for the concessions you were asking for
18 was that the investment required to create a
19 successful fourth wireless network in Canada would
20 be in the range of 1.5 to 2 billion dollars, a
21 significant investment?

22 A. Huge.

23 Q. And there is a reference here,
24 again for His Honour's notes, you'll see under the
25 heading "Economic Implications" there is a darkened

1 bolded section saying that the total initial
2 investment is 917 million dollars, and then a
3 reference just below that to "LTE network build";
4 do you have that?

5 A. I see it.

6 Q. At 250 to 500 million dollars.
7 And just so His Honour has it, LTE was then the
8 most advanced fourth generation technology used to
9 provide wireless services in Canada; correct?

10 A. I don't know if it was the most
11 advanced. It was one of the methodologies of
12 providing fourth generation technology.

13 Q. It was certainly one of the most
14 advanced?

15 A. Yeah.

16 Q. And these were services that Wind
17 was then not providing?

18 A. Couldn't.

19 Q. Because it didn't have the
20 spectrum?

21 A. Correct.

22 Q. Now, against that backdrop, you
23 then provide the government with three strategic
24 options, and so let's look at those quickly, as
25 well as the regulatory concessions Catalyst said

1 that it would require in order to proceed. And
2 turn, please, to Option 1, and you will find that
3 at slide 7.

4 And as I understand Option 1, it was --
5 it involved, rather, a combination of Wind Canada
6 and Mobilicity to create a fourth national carrier
7 focussed on the retail market; correct?

8 A. Yes.

9 Q. And the position taken by Catalyst
10 and the representation it made to the Government of
11 Canada was that:

12 "Negotiations with VimpelCom
13 are well advanced but no deal can be
14 completed without establishing a
15 viable regulatory and economic
16 framework."

17 A. That's right, no deal for Wind and
18 Mobilicity.

19 Q. And let's just make sure we have
20 this. Again, come back to your own words. Did
21 VimpelCom own Mobilicity?

22 A. No, it says, if you read it
23 carefully, "Combination of Wind Canada/Mobilicity
24 to create a fourth network."

25 And the bullet point says:

1 "Negotiations with VimpelCom
2 are well advanced", which implies
3 about Wind, "but no deal can be
4 completed", meaning the
5 Wind/Mobilicity deal, "without
6 establishing a viable regulatory and
7 economic framework."

8 Q. I see. That is just not what the
9 slide says.

10 A. It is exactly what the slide says.

11 Q. It is exactly not what the slide
12 says, Mr. Glassman.

13 A. Well, we can read English
14 differently. It is absolutely what it says. It
15 says the combination of Wind and Mobilicity.

16 Q. And then let's look at what you
17 told the government that this Option 1, that is,
18 the creation of this fourth national carrier
19 focussed on the retail market, would require. So
20 it would require a series of regulatory
21 concessions; correct?

22 A. We believed it did.

23 Q. And one of the concessions, the
24 last one on the page, was:

25 "The ability to exit the

1 investment with no restrictions in 5
2 years."

3 And then below that:

4 "Catalyst will make an
5 undertaking that before selling to
6 an incumbent, it will pursue an IPO
7 or another strategic sale prior to
8 the end of the 5 year period."

9 So that was the position that you took
10 with the Government of Canada on March 27th as to
11 what Option 1 would have required; correct?

12 A. That was our analysis and view, in
13 order to get a combined Wind/Mobilicity.

14 Q. Is it fair to say that your view
15 and Catalyst's view was that a combination of Wind
16 and Mobilicity would be stronger and more viable
17 than either company operating separately on a
18 stand-alone basis?

19 A. Absolutely.

20 Q. And indeed, am I right that you
21 had expressed that view in public comments to the
22 media a number of months before the meeting on
23 March 27th?

24 A. I don't recall.

25 Q. Pull up, please, tab 6 of the

1 cross-examination binder. This is document, Your
2 Honour, WFC0078062, and it is an article from the
3 Financial Post entitled "Mobilicity bondholder
4 looking to get in on action if Verizon comes to
5 Canada", an article written by Theresa Tedesco and
6 Christine Dobby of June 27, 2013. Do you have
7 that, Mr. Glassman?

8 A. I do.

9 Q. I take it you speak with Ms.
10 Tedesco from time to time from the National Post?

11 A. On occasion.

12 Q. And you will see the headline
13 below the picture is:

14 "Catalyst Capital Group eyes
15 rumoured Verison-Wind Mobile deal."

16 Do you have that?

17 A. I see the headline.

18 Q. And the part I want to take you to
19 is the very bottom of that first page where you are
20 quoted, and so the article says:

21 "Newton Glassman, co-founder
22 and managing partner of Catalyst,
23 would not comment on the nature of
24 his firm's involvement with Verizon
25 or Wind. However, he told the

1 Financial Post that Catalyst 'is not
2 interested in Mobilicity on a
3 standalone basis. Never were; never
4 will be'."

5 And then at the top of the next page:

6 "Why? 'Mobilicity on its own
7 is a flea on an elephant's butt of
8 wireless telecom in Canada. The
9 only way to build a fourth wireless
10 provider in Canada is through Wind
11 because of the subscriber base and
12 spectrum.'"

13 And I take it those are comments you
14 made to the National Post around the time this
15 article was published in June of 2013?

16 A. Yes, June of '13.

17 Q. Now, let me take you back to the
18 presentation at tab 11 of March 27 of 2014, again
19 to slide 7 with respect to Option 1. Now, am I
20 right in saying this, that you talked earlier in
21 your evidence in-chief about the official position
22 taken by the Government of Canada during the course
23 of your meetings on March 27 of 2014 that you
24 certainly received no commitment by anyone from the
25 Government of Canada that if Catalyst were to

1 pursue an acquisition of Wind and complete it, the
2 government would then permit Catalyst to exit its
3 investment in Wind with no restrictions in five
4 years; that commitment was not made, was it?

5 A. There was no official commitment
6 on any regulatory request made.

7 Q. Including that one?

8 A. Including that one, nor did we
9 expect it.

10 Q. And that was the most important
11 concession Catalyst was looking for at the time of
12 the meetings on March 27th, wasn't it?

13 A. No, it wasn't the most important.
14 They were all very important, and we didn't expect
15 any of them to be conceded at that time.

16 Q. So if Mr. de Alba testified no
17 more than two hours ago in this very courtroom that
18 that was the most important concession Catalyst was
19 seeking from the Government of Canada, your
20 evidence under oath is that Mr. de Alba was simply
21 wrong; correct?

22 A. No, my evidence is that they were
23 all very, very important, and at different times
24 different parts of them and different concessions
25 were very important. To me, it was a very

1 important concession. I don't know if I would
2 characterize it as the most important.

3 So for example, if they gave the
4 concession for six years instead of five years or
5 seven and a half years instead of five years, that
6 would still be a victory.

7 Q. They gave you no such concession?

8 A. Yes, but you said it is the most
9 important, and as is, it is not the most important.

10 Q. Okay, answer this question. They
11 gave you no such concession during the meeting on
12 March 27th, did they?

13 A. Nor did we expect one, and the
14 whole team knew we didn't expect one.

15 Q. And indeed, if we fast-forward all
16 the way to the end of the story, Mr. Glassman, am I
17 right that the Government of Canada never gave
18 Catalyst that concession, did they?

19 A. Nor did we ever expect them to
20 until we delivered them a deal.

21 THE COURT: Mr. Glassman, it would be
22 helpful if you just answered the questions. You
23 are not here to argue the case, which is what you
24 are engaging in.

25 BY MR. THOMSON:

1 Q. And part of Catalyst's exit
2 strategy involved at the end of five years the
3 unrestricted right to sell or transfer either Wind
4 or its wireless spectrum to one or more of the
5 incumbents?

6 A. Not quite. Our ask was for a
7 five-year period.

8 Q. That was Catalyst's exit strategy
9 as represented to the Government of Canada during
10 the meetings on March 27 of 2014; correct?

11 A. That was our ask.

12 Q. Now, your view and Catalyst's
13 position was that these concessions were required
14 in order to make the retail carrier option viable;
15 correct?

16 A. Yes.

17 Q. In your view, Catalyst's request
18 to sell the fourth wireless carrier without
19 restrictions after five years was crucial; correct?

20 A. I don't know what you mean by
21 "crucial". Very, very important.

22 Q. Pull up the witness's affidavit,
23 please, at tab 1, and pull up, please, paragraph
24 29. At the start of paragraph 29, Mr. Glassman,
25 you say this:

1 "All of the concessions sought
2 from [Industry Canada] were
3 important. However, Catalyst's
4 request to sell the fourth wireless
5 carrier without restriction, after
6 five years was crucial", your word,
7 not my word, "was crucial given the
8 retroactive and unilateral changes
9 to the historical licences and the
10 impact on the economics of Option 1
11 and 2 and the financeability of
12 either."

13 Do you accept that Catalyst's request
14 to sell the fourth wireless carrier without
15 restrictions after five years was crucial to
16 Catalyst?

17 A. Crucial in the context of, yes, in
18 my use of the word "crucial", yes. As I said
19 earlier, I don't know what you mean by "crucial".

20 Q. I'm just using your word, sir.
21 And had a direct and important bearing on the
22 financeability of the option?

23 A. Absolutely.

24 Q. And you said in-chief, and these
25 were your words, let me give them back to you, you

1 said, quote:

2 "No bank is going to lend you
3 against something that you can't
4 sell, because that means the
5 collateral value is zero."

6 A. I think I said more than a bank.
7 I think I said a bank or an arm's length third
8 party.

9 Q. I'm just quoting your words back
10 from the transcript.

11 A. I think my quote -- I think my
12 quote was a bank or an arm's length third party.

13 Q. Well, that is not what you said.
14 In any event, let me just put it right to you.
15 Your view at the time was and still is that no bank
16 was going to lend against something you can't sell
17 because that means the value of the collateral is
18 zero; correct?

19 A. It means that in light of the
20 retroactive and unilateral changes, I did not and I
21 still did not believe that you could finance that,
22 that's right, and there were articles at the time
23 in the press saying that.

24 Q. And of course, what you can't
25 account for is what happened with the financing of

1 the operations of Wind Mobile after the West Face
2 consortium acquired Wind in September of 2014, can
3 you?

4 A. There were lots of intervening
5 events in that time too.

6 Q. Now, let me turn to Option 2,
7 which is slide 8. Am I right that Catalyst's
8 second option involved combining Wind and
9 Mobilicity to create a fourth national wireless
10 carrier but focussed on the so-called wholesale
11 market rather than on the retail market?

12 A. Yes.

13 Q. Option 2 contemplated creating
14 this national wireless carrier by combining Wind
15 and Mobilicity that would rent its wireless
16 spectrum to the existing incumbent carriers;
17 correct?

18 A. It is an oversimplification, but
19 yes.

20 Q. Of course, you understood at the
21 time that Catalyst had no right to proceed with
22 Option 2 without the approval of the Government of
23 Canada; correct?

24 A. Correct.

25 Q. Option 2 also required regulatory

1 concessions to be viable?

2 A. Fewer, but yes.

3 Q. And if we turn to slide 8, if you
4 have it in front of you, and look under the heading
5 "Requires".

6 A. Yes.

7 Q. If you look at the second bullet
8 under the heading "Requires" -- well, I'll go
9 through them both, so first:

10 "Potential to
11 partner/exchange/rent spectrum from
12 and to incumbent to fill spectrum
13 requirements for nationwide
14 communications."

15 That was the first requirement;
16 correct?

17 A. Subordinate licensing, yes.

18 Q. The second was the:

19 "Ability to exit the investment
20 with no restrictions in five years."

21 And with the same undertaking referred
22 to in Option 1; correct?

23 A. Correct.

24 THE COURT: Mr. Thomson, whenever it is
25 convenient, we'll stop for lunch.

1 MR. THOMSON: It is fine now, Your
2 Honour. Thank you.

3 THE COURT: Okay, we'll stop now until
4 2:15.

5 -- RECESSED AT 12:57 P.M.

6 -- RESUMED AT 2:23 P.M.

7 THE COURT: Mr. Thomson.

8 BY MR. THOMSON:

9 Q. Thank you, Your Honour.

10 Mr. Glassman, just before we broke for
11 lunch, we were discussing the March 27th, 2014
12 meeting with the Government of Canada.

13 A. Yes.

14 Q. Am I right that as of the time of
15 the meeting with the Government of Canada on March
16 27th, your belief was that without the regulatory
17 changes that Catalyst had asked for, that the
18 fourth carrier would only be able to compete in the
19 short term with incumbents on price and then,
20 because of their size, incumbents would quickly
21 squeeze a fourth carrier out of the market?

22 A. It was my view.

23 Q. It was also your view that in the
24 regulatory environment that existed in 2014, new
25 entrants such as Wind were not equipped to survive

1 any kind of competitive war with the incumbents,
2 and that was your view; correct?

3 A. It was.

4 Q. And that is what you told the
5 government?

6 A. Yes, and internally.

7 Q. Now, am I correct that as a matter
8 of firm policy, Catalyst needed increased certainty
9 about how you could monetize any investment it
10 might make in Wind within five years or less?

11 A. Not quite. It would be more
12 accurate to say that with any investment, not just
13 Wind, we always have to look at an exit strategy,
14 as does every investment firm.

15 Q. And that is a matter of firm
16 policy at Catalyst; correct?

17 A. Yeah, to the best of my knowledge,
18 it is firm policy at every firm. It is one of the
19 risk factors.

20 Q. And am I also right that
21 throughout this entire process, your job was to
22 identify the worst possible scenario that might
23 arise and then attempt to mitigate or eliminate the
24 risk associated with that scenario?

25 A. I'm sorry, can you repeat the

1 question?

2 Q. Your job throughout this matter
3 was to identify the worst possible scenario that
4 might arise and then mitigate or eliminate the risk
5 associated with that scenario; is that a fair
6 statement of your job?

7 A. I think it is an
8 oversimplification of my job.

9 Q. Turn up tab 25-B, please. And
10 you'll find here, Your Honour, document CCG0024640.
11 This is a series of emails, Mr. Glassman, that you
12 were involved in with Mr. Levin and Mr. de Alba on
13 August 11, 2014, and the one I want to take you to
14 is at the top of the second page, an email you
15 wrote on August 11th of 2014 at 8:54 a.m. Do you
16 have that?

17 A. Yes.

18 Q. And the part that I am interested
19 in is the second sentence where you say about four
20 words into that sentence, you say:

21 "[...] my job is to identify
22 the worst scenario and then
23 mitigate/eliminate risk related to
24 such. That is exactly what I am
25 doing here and am now demanding this

1 deal be publicly disclosed [...]"
2 and so on.

3 I'm going to come back to this email
4 momentarily, but I want to understand the
5 description of what you perceived your job to be.

6 So it was, as I understand it based on
7 your email, to identify the worst scenario and then
8 mitigate/eliminate the risk relating to that
9 scenario?

10 A. No, I think you are taking my
11 email out of context. There is an exchange going
12 on, and I clearly meant that it was one of my jobs,
13 one of the issues I have to deal with is that
14 particular issue. This is a conversation with
15 somebody who has been my and my firm's counsel for
16 20-odd years, and he was my counsel before he was
17 my firm's counsel. He knows exactly what I meant
18 by it.

19 Q. You are referring to Mr. Levin
20 now?

21 A. I am.

22 THE COURT: Just before you go any
23 further, I'm trying to get into the laptop and I
24 have to select a wireless network. Which one do I
25 select?

1 MR. DiPUCCHIO: That is a good
2 question.

3 [DISCUSSION OFF THE RECORD.]

4 THE COURT: Okay.

5 MR. THOMSON: Are you in now?

6 THE COURT: Yes.

7 BY MR. THOMSON:

8 Q. Mr. Glassman, we have been
9 discussing both before the break and just after the
10 break your views about the prospects and the
11 viability of Wind Mobile; fair enough?

12 A. Or a fourth network of which Wind
13 was a part, a potential part.

14 Q. And are you prepared to concede,
15 in fairness, Mr. Glassman, in 2014 others may have
16 had a different view than you did concerning those
17 issues?

18 A. I think that there was a range of
19 opinions, but the vast majority of knowledgeable
20 people in telecom, including people that have been
21 quoted in the press such as analysts, had a very
22 similar view, perhaps different at the margins in
23 terms of degree or otherwise, but generally, in
24 terms of the competitive landscape, very similar.

25 Q. You don't profess to be the only

1 person in Canada or the United States with business
2 acumen, do you?

3 A. God no.

4 Q. You don't profess to be the only
5 person in Canada or the United States with
6 knowledge of the way in which the wireless industry
7 operates?

8 A. For sure not.

9 Q. And of course, you don't profess
10 to be the only person in Canada who in 2014 knew a
11 thing or two about the operations of Wind Mobile?

12 A. Of course not.

13 Q. Wind was a private company and not
14 a public company; correct?

15 A. To the best of my knowledge, it
16 was quasi public because I think a piece of their
17 debt was traded in the institutional market, so it
18 wasn't public equity but there was I think a piece
19 of debt, and I might be wrong, but I think a piece
20 of the debt traded in the institutional market.

21 Q. Would you accept this, in
22 fairness, Mr. Glassman, that West Face, Tennenbaum
23 and Mr. Guffy and Mr. Lacavera and the Government
24 of Canada may all have had different views than you
25 did concerning the prospects of Wind in 2014?

1 A. They may have, and they may not
2 have. I don't know what their views were. I have
3 an insight into the government's views.

4 Q. Now, let me look at slide 9, which
5 is option -- so this is now slide 9 of your
6 presentation at tab 11 of the cross-examination
7 binder. So this was so-called Option 3; correct?

8 A. It was part of Option 3, yeah.

9 Q. And Option 3, just reading the
10 slide, involved a CCAA Mobilicity Court process
11 sale to Telus with or without government support;
12 fair enough?

13 A. That is what it is headlined, yes.

14 Q. And that is what is described in
15 the slide. So it goes on to say, as an example,
16 one bullet down:

17 "If the government does not
18 support Mobilicity's sale to Telus,
19 litigation will be used to force a
20 sale."

21 You were telling the government that if
22 that litigation were to erupt in the Mobilicity
23 CCAA process, that the litigation would be public
24 and then create a confrontation between all the
25 people listed on the box on the left and the

1 Government of Canada; correct?

2 A. A little bit more than that. What
3 is not on the slide was that we were telling the
4 government that the current stakeholders in the
5 Telus proposed transaction would not be successful
6 because of the way it was structured but that the
7 estate would eventually get it right. And that is
8 why you see on the left-hand side it says,
9 "Mobilicity estate, court approved monitor, Ontario
10 court, industry incumbents", because there was a
11 variation of what was about to happen related to a
12 Telus or Telus as an example of an incumbent that
13 we thought would be forthcoming.

14 Q. Now, skip down to the bottom of
15 the slide, scroll down, please, and in the
16 second-last bullet on the page one of the things
17 you told the Government of Canada on March 27th was
18 that if this were to happen the:

19 "VimpelCom deal will be off the
20 table."

21 Correct?

22 A. Yes.

23 Q. And you also told the government
24 that the:

25 "Government will be facing a

1 long and inconvenient 'front page'
2 battle that will be characterized as
3 a policy failure."

4 Correct?

5 A. Yes, that is what I wrote, or what
6 we --

7 Q. And then you also told -- I'm
8 sorry?

9 A. What we wrote.

10 Q. You also told the Government of
11 Canada that if that were to happen, "Catalyst will
12 have to support the Mobilicity estate" in the
13 litigation against the government; correct?

14 A. Yes. And the last bullet is that
15 we would continue to support the government as long
16 as our contractual rights were respected, a very
17 important point.

18 Q. Now, am I right that by the time
19 of this meeting, you and Mr. Riley were both aware
20 that the Government of Canada had blocked on at
21 least one or two occasions a proposed sale of
22 Mobilicity to Telus?

23 A. I can't remember if it is before
24 March 27th because I just don't have the dates of
25 the Telus transactions, but ultimately you are

1 correct. I think it was blocked three times or
2 four times, mostly because of where and how it was
3 structured.

4 Q. The government had done so both
5 before and after Mobilicity was forced to file for
6 protection under the CCAA; correct?

7 A. I don't remember if the first
8 proposal from Telus was before the CCAA.

9 Q. Please pull up tab 5. And, Your
10 Honour, here you will find a news release issued by
11 the Government of Canada on June 4th of 2013. It
12 is WFC0111504. And, Mr. Glassman, you will find
13 here a news release issued by the Government of
14 Canada entitled "Harper government protecting
15 consumers and increasing competition in Canadian
16 wireless sector"?

17 A. I see it.

18 Q. And you will see the date of the
19 news release is June 4th of 2013?

20 A. I do.

21 Q. And it refers to The Honourable
22 Christian Paradis, Minister of Industry?

23 A. I see that.

24 Q. And You will see it says in the
25 first paragraph that he today announced decisions

1 to further promote competition in the Canadian
2 wireless telecommunications market to give
3 Canadians access to the latest technology at better
4 prices.

5 And the part that I am interested in is
6 the last two paragraphs on the first page.

7 A. The first page, sorry?

8 Q. The last two paragraphs on the
9 first page saying:

10 "The Minister also announced
11 that 'Telus' application to transfer
12 Mobilicity's spectrum licences will
13 not be approved. Mobilicity's
14 licences were among those set aside
15 for new entrants in the 2008
16 advanced wireless services auction,
17 which included restrictions on
18 transferring licences to
19 incumbents", and so on.

20 And so the first block --

21 A. Sorry, I hope you did notice that
22 the last paragraph, the second-last line says,
23 quote:

24 "[...] ahead of the five-year
25 limit [...]"

1 Q. Well, we'll come back to that, but
2 let's just put that in the record so we have it:

3 "'Our government has been clear
4 that spectrum set-aside for new
5 entrants was not intended to be
6 transferred to incumbents. We will
7 not waive this condition of licence
8 and will not approve this, or any
9 other, transfer of set-aside
10 spectrum to an incumbent ahead of
11 the five-year limit,' said Minister
12 Paradis. 'Our government will
13 continue to allow wireless providers
14 access to the spectrum they need to
15 compete and improve services to
16 Canadians. We are seeing Canadian
17 consumers benefit from our policies
18 and we will not allow the sector to
19 move backwards. I will not hesitate
20 to use any and every tool at my
21 disposal to support greater
22 competition in the market.'"

23 So my point was very simple, which is
24 the Harper government blocked the proposed sale of
25 Mobilicity to Telus. This now is in June of 2013,

1 which was before Mobilicity filed for protection
2 under the CCAA; fair enough?

3 A. Yes, and ahead of the five-year
4 limit which would expire sometime after that date.

5 Q. I'm going to come back to that.
6 I'm just trying to establish timing now.

7 A. Uhm-hmm.

8 Q. Again, we are back to the debate
9 we had before lunch. Just please answer my
10 questions. This is before Mobilicity filed for
11 protection under the CCAA, is it not?

12 A. I think Mobilicity filed in
13 September of 2013.

14 Q. You are right. And then the
15 Minister -- well, I'll stay with this one. You are
16 aware that the Minister of Industry blocked that
17 sale for transfer even after a proposed Plan of
18 Arrangement to sell Mobilicity to Telus for 380
19 million dollars was approved by this Court on May
20 28, 2013? Were you aware of that?

21 A. I am, which is why our experience
22 at NextWave became incredibly important.

23 Q. And let's turn up tab 7, please,
24 of the cross-examination binder. So here you will
25 see a decision rendered by Justice Newbould on

1 September -- sorry, on October 4th of 2013
2 concerning the filing by Mobilicity under the CCAA.
3 This is WFC0111546.

4 And if you scroll down, please, into
5 the judgment, keep scrolling, and stop there,
6 please, you will see at the very first paragraph of
7 the judgment that Justice Newbould says that on
8 September 30th, the Applicants, Mobilicity Group,
9 applied for protection under the CCAA.

10 So the first blocking took place before
11 the filing for CCAA protection; fair enough?

12 A. When you say "blocking", I'm
13 assuming you mean of the Telus proposed
14 transaction?

15 Q. Yes.

16 A. Yes.

17 Q. And then there was another
18 blocking of a proposed transfer of spectrum from
19 Mobilicity to Telus in October of 2013. Were you
20 aware of that?

21 A. I don't remember the exact date,
22 but I'll take your word for it that it was in
23 October or November.

24 Q. Okay, pull up, please, tab 8. So
25 tab 8 is document WFC0111314. This is a Globe and

1 Mail article entitled -- sorry, of October 30 of
2 2013 entitled "Mobilicity's outlook murky as Ottawa
3 rejects Telus bid." And it goes on to refer to the
4 government having rejected in late October of 2013
5 Telus's second attempt to purchase the
6 cash-strapped wireless carrier?

7 A. Which I think was still within the
8 five years of the original licence.

9 Q. Am I right that, again, in March
10 of 2014 Telus lost another battle with the
11 Government of Canada in its efforts to acquire
12 Mobilicity?

13 A. On or about March. I don't know
14 the exact date.

15 Q. Okay, pull up the witness's
16 affidavit, please, tab 1, and turn, please, to
17 paragraph 15 of Mr. Glassman's affidavit where you
18 say, Mr. Glassman, in the first sentence of
19 paragraph 15:

20 "In March of 2014, Telus fought
21 and lost to the Federal Government
22 over its efforts to purchase the
23 holding company of Mobilicity."

24 A. Yes.

25 Q. I take it that was the correct

1 date in your affidavit sworn about ten days ago?

2 A. It doesn't say when in March, so I
3 assume it was in March, and it says "the holding
4 company of Mobilicity", which is critical as well.

5 Q. Now, it was against that important
6 backdrop, I'm going to suggest to you, that is, the
7 Telus acquisition of Mobilicity or its spectrum
8 having been rejected three times by the government
9 starting in June of 2013, that your meeting with
10 the government took place on March 27th; fair
11 enough?

12 A. That is a statement of fact. I'm
13 not sure if there was a question there.

14 Q. All these events had taken place
15 by the time you met with the government on March
16 27th; correct?

17 A. Yes, yes.

18 Q. Now, the reaction of
19 representatives of the Government of Canada to the
20 presentations made to them on March 27th, and
21 again, I took a careful note of your evidence
22 in-chief, you said that there were two reactions,
23 what you call an explicit official reaction;
24 correct?

25 A. Correct.

1 Q. And then you said that there was
2 an unofficial reaction. So let's stay with the
3 explicit official reaction, and again, I'm going to
4 quote your words back to you directly. The
5 explicit official reaction of the Government of
6 Canada on March 27th was, quote, "we will not give
7 you or anybody else regulatory relief"; correct?

8 A. Correct.

9 Q. And then with respect to the
10 unofficial reaction, you said it was this, quote:

11 "We appreciate your input, and
12 we are particularly interested in
13 understanding the litigation and
14 your personal experience,
15 Mr. Glassman, in NextWave and why
16 you think this is as bad, if not
17 worse, than NextWave."

18 That was the unofficial reaction?

19 A. That was part of the unofficial
20 reaction.

21 Q. And are you able to point to even
22 one contemporaneous document that either refers to
23 or records an alleged softening of the Government
24 of Canada's position towards the regulatory
25 concessions Catalyst had sought?

1 A. Only my experience with them.

2 Q. There is no note, no email, no
3 memo of you, Riley, Drysdale recording that having
4 taken place?

5 A. There are emails, and I believe
6 there's quite a few of them, of my telling the team
7 contemporaneous at that time that I believed that
8 it was a negotiating position by the government and
9 that they were softening.

10 Q. I see. Well, I'll wait for
11 Mr. DiPucchio to show Justice Newbould those emails
12 because I haven't seen them.

13 MR. DiPUCCHIO: Well, you can show
14 them, if you are going to challenge them.

15 BY MR. THOMSON:

16 Q. Now, I'm going to suggest to you
17 that there was in fact no softening that took place
18 either in the meeting of March 27th or after and
19 you were made well aware of that lack of softening
20 as the events unfolded in July and August of 2014?

21 A. You are utterly and completely
22 wrong.

23 Q. And all you have done, Mr.
24 Glassman, is put self-serving statements into the
25 mouths of unnamed people at the Government of

1 Canada in your affidavit who of course are not
2 before the Court and have played no role in this
3 proceeding; fair enough?

4 A. Is there a question there?

5 Q. Yes, that is what you have done,
6 isn't it?

7 A. It is not.

8 Q. And no one from the Government of
9 Canada ever committed to grant Catalyst the
10 unrestricted right to sell Wind or its spectrum to
11 an incumbent carrier, it never had, did it?

12 A. As I said earlier, nor would they
13 have to until there was a deal in front of them.

14 Q. And nobody ever committed to give
15 you that right after there was a deal in front of
16 them, did they?

17 A. Nor would they have to, nor should
18 they from a game theory perspective until the deal
19 was in front of them.

20 Q. I'm not discussing game theory.
21 I'm talking about the actual facts of what
22 happened. It never happened, did it?

23 A. No, nor did we expect it to, which
24 was communicated to the whole team.

25 Q. Nor did anyone from the Government

1 of Canada ever approve of Catalyst's wholesale
2 strategy as reflected in Option 2, did they? It
3 never happened?

4 A. I don't know what you mean by
5 "approve".

6 Q. Nobody ever approved the strategy.
7 No one ever said we will give you the right to
8 proceed down that path, did they?

9 A. No, the same answer. They didn't
10 have to until there was a deal in front of them and
11 a request.

12 Q. Now, let's talk about Mobilicity
13 for a moment and go back to tab 7, please, of the
14 cross-examination binder. This is the -- scroll to
15 the top, please, of the first page. This is a
16 decision of Justice Newbould again of October 4,
17 2013, WFC0111546.

18 Am I right that as of the time of these
19 proceedings, Catalyst held roughly 32 percent of
20 the first lien notes issued by Mobilicity?

21 A. Just over 32 percent.

22 Q. Roughly 62 million dollars in
23 first lien notes?

24 A. Yes.

25 Q. And Catalyst certainly did not own

1 or control Mobilicity at least as of the time of
2 this decision in October of 2013, did it?

3 A. As later events would show, we de
4 facto had -- we did not legally control it, but we
5 de facto ended up controlling its destiny.

6 THE COURT: Well, I have to ask you
7 again, please don't argue the case. Just answer
8 the question.

9 THE WITNESS: Well, I didn't know if he
10 meant legally.

11 THE COURT: He didn't ask you what
12 happened later.

13 THE WITNESS: But I didn't know if he
14 meant legally or de facto, because legally we did
15 not; de facto we clearly did.

16 BY MR. THOMSON:

17 Q. Let's just stay with what we know.
18 Certainly as of the date of this decision of
19 Justice Newbould of October 4th of 2013, am I right
20 that Justice Newbould approved the proposed DIP
21 lending facility over the objections of Catalyst?

22 A. He did.

23 Q. Justice Newbould approved the
24 continued appointment of Mr. Aziz as the Chief
25 Restructuring Officer of Mobilicity over the

1 objections of Catalyst?

2 A. He did.

3 Q. Justice Newbould stayed an
4 oppression claim commenced by Catalyst attacking
5 the bridge notes facility of Mobilicity over the
6 objections of Catalyst?

7 A. He did.

8 Q. Now, with respect to this issue of
9 this threat of litigation against the Government of
10 Canada that you refer to in your affidavit and you
11 also discussed it at length in your examination
12 in-chief this morning, again, if I can take you
13 back one last time to tab 11, which is the March
14 27th PowerPoint presentation, please, at slide 9.
15 This is Option 3 dealing with the CCAA Mobilicity
16 Court process sale to Telus with or without the
17 government's support. Do you see that?

18 A. I do.

19 Q. And we can easily agree, I'm sure,
20 Mr. Glassman, that this slide refers to the CCAA
21 proceedings involving Mobilicity rather than to
22 other litigation involving Wind?

23 A. Correct.

24 Q. And you refer in your affidavit
25 and your evidence in-chief this morning to some

1 other different type of litigation which you say
2 some independent third party might commence against
3 the Government of Canada resulting from what you
4 characterize as the unilateral imposition by the
5 government of retroactive conditions imposed on
6 spectrum licences issued by the government in 2008
7 at the time of the AWS spectrum auction; correct?

8 A. Correct.

9 Q. And you will agree with me, I'm
10 sure quite readily, that that other litigation is
11 not referred to in Catalyst's slides of March 27,
12 2014?

13 A. It actually is. It is tangential
14 and related to this slide that you are showing
15 right now.

16 Q. It is not referred to in any of
17 Catalyst's contemporaneous documents produced in
18 this litigation, is it?

19 A. The theme of it is. The actual
20 specifics of who would bring it, no.

21 Q. You are no doubt aware that
22 wireless spectrum in Canada is public property
23 owned by the Government of Canada?

24 A. Absolutely.

25 Q. Wireless spectrum in Canada --

1 A. Actually, not correct. It is
2 owned by the Government of Canada but licensed for
3 its use, which in the NextWave decision FCC lost
4 because others had property rights in that
5 spectrum.

6 Q. Does the FCC carry on business in
7 Canada?

8 A. No.

9 Q. Let's turn up tab 30 to make this
10 simple and see if we can reach agreement on one
11 simple proposition. Tab 30, please, of the
12 cross-examination binder. And here you will find
13 document WFC0111523, a decision of Justice Newbould
14 in a case called Quadrangle v. The Attorney General
15 of Canada; do you have that?

16 A. I do.

17 Q. And let's turn to paragraph 7 of
18 that judgment where Justice Newbould says:

19 "The defendant, Industry
20 Canada, is responsible for and has
21 complete control over the Canadian
22 wireless telecommunications market.
23 It owns Canada's radio frequency
24 spectrum and it determines who may
25 use that spectrum, for what

1 purposes, and on what conditions."

2 I take it you would agree with those
3 findings, would you not, sir?

4 A. Not completely. I think for the
5 purposes of this action, that was correct. If
6 other fact patterns were in front of the judge, he
7 would have to consider those in the context of what
8 rights had been either leased, purchased or
9 otherwise granted by Industry Canada to a licensee
10 holder, as the FCC had to.

11 Q. In 2007 and 2008 the Government of
12 Canada conducted a public auction of the so-called
13 AWS spectrum in Canada; correct?

14 A. Correct.

15 Q. The government established a
16 policy framework concerning that auction?

17 A. Including the rights that the
18 licensee would get.

19 Q. The Government of Canada
20 established a policy framework concerning that
21 auction; correct?

22 A. Correct.

23 Q. And if we turn up, please, tab 3
24 of the cross-examination brief, you will find
25 document WFC0111642, the policy framework of the

1 Government of Canada for the auction of spectrum
2 licences for advanced wireless services and other
3 spectrum in the 2 gigahertz range; do you see that?

4 A. I do.

5 Q. This is the policy framework that
6 was established by the government concerning that
7 spectrum auction; correct?

8 A. I'm not sure that it includes any
9 amendments or any adjustments that they made after
10 November 20, 2007.

11 Q. Now, am I right that in conducting
12 this spectrum auction, the government set aside 40
13 megahertz of spectrum for new entrants in certain
14 designated blocks?

15 A. I don't remember the amount, but
16 yes, they set aside -- it was a set-aside of
17 spectrum.

18 Q. And if we turn to page 5 of the
19 document, and I guess let's use the numbers in the
20 top right-hand corner, so page 6 in the top
21 right-hand corner under the heading "Spectrum Set
22 Aside":

23 "Forty megahertz of AWS
24 spectrum will be set aside for new
25 entrants only in frequency blocks B,

1 C and D"?

2 A. I see that.

3 Q. And am I right that the government
4 also prohibited spectrum acquired by new entrants
5 in the auction from being transferred to incumbents
6 for five years?

7 A. It did.

8 Q. Now, am I also right in saying
9 this, conversely, the government did not confer
10 upon new entrants the unrestricted right to sell
11 that spectrum to whoever they wanted for any reason
12 they wanted at the end of the five-year period;
13 correct?

14 A. I'm just thinking about your
15 question. There was an understanding that the
16 government would allow reasonable and that it would
17 act reasonably after the five years; otherwise,
18 there was no point in having a five-year
19 moratorium.

20 Q. The understanding of whom?

21 A. Everybody in the industry.

22 Q. I see.

23 A. Including the lenders that lent
24 hundreds of millions of dollars against the
25 collateral of the spectrum.

1 Q. Can we agree on this, Mr.
2 Glassman, that to your knowledge the transfer of
3 wireless spectrum in this country has always been
4 subject to the approval of the Government of
5 Canada?

6 A. Of course.

7 Q. Am I right, Mr. Glassman, if we
8 turn to tab 45 of the cross-examination brief, so
9 at tab 45 is document WFC0112324, and this is the
10 so-called Schedule B of Catalyst that lists all of
11 the documents over which it has asserted a claim of
12 privilege in this case, and you will see a total of
13 five documents; do you have that?

14 A. I see six. I think it is six, but
15 yeah.

16 Q. Let's call it six. I take it from
17 this Schedule B and from the lack of production in
18 this case that Catalyst did not seek or obtain a
19 legal opinion from its lawyers at Faskens, or any
20 other firm for that matter, concerning the merits
21 of this litigation against the government that you
22 discuss in paragraphs 13 to 31 of your affidavit;
23 is that fair enough?

24 A. To the best of my knowledge, we
25 never sought a formal opinion, no, nor did we think

1 we had to.

2 Q. Now, let me take you to paragraph
3 17 of your affidavit. Sorry, scroll back, yes, to
4 17. And I'm interested in the last several lines
5 of paragraph 17, so on page 7 of the affidavit
6 where you say in the last sentence of paragraph 17:

7 "Catalyst informed Industry
8 Canada and the Federal Government
9 that if the right stakeholders
10 initiated such an action, Catalyst
11 would have no legitimate choice but
12 to support such due to our fiduciary
13 duty to our investors - and expected
14 such action to ultimately win."

15 You then say this:

16 "IC counsel, in particular,
17 ultimately agreed with this
18 conclusion."

19 Do you see that?

20 A. I do.

21 Q. And you would accept, I'm sure,
22 Mr. Glassman, that you did not identify in your
23 affidavit which Industry Canada counsel allegedly
24 agreed with Catalyst's conclusion?

25 A. I did not identify him in my

1 affidavit.

2 Q. You did not specify in your
3 affidavit when they did so or under what
4 circumstances; correct?

5 A. I did not, but I will tell you it
6 was in the May meeting.

7 Q. And I am going to suggest to you
8 that all you have done, Mr. Glassman, in fairness
9 to the Court and to my client, is put self-serving
10 and unattributed hearsay statements into the mouth
11 of an unidentified lawyer from Industry Canada who
12 has played no role in these proceedings?

13 A. You are unequivocally wrong and
14 factually incorrect.

15 Q. And once again, Mr. Glassman, you
16 can't point to a single contemporaneous document
17 that records or reflects anyone from Industry
18 Canada having made that statement or accepting
19 Catalyst's conclusion, can you?

20 A. I attended the meetings. I know
21 exactly what they said and why.

22 Q. And then you do the same thing
23 again, sir, in paragraph 20 of your affidavit, in
24 the sentence just at the bottom of page 7 and
25 carrying over to page 8 where you say:

1 "[Industry Canada] had to
2 demonstrate a willingness to adhere
3 to the original terms of the
4 spectrum licences granted to
5 Mobilicity and Wind. I made it
6 clear, and internal Industry Canada
7 counsel essentially confirmed, that
8 we believed these conditions would
9 likely be reinstated in any event,
10 either ultimately or through
11 litigation or the government's own
12 decision."

13 And again, you failed to identify in
14 your affidavit who this internal Industry Canada
15 counsel allegedly was that gave you the
16 confirmation you refer to in the affidavit;
17 correct?

18 A. Clearly.

19 Q. And again, you can't point to any
20 contemporaneous document that reflects or records
21 that confirmation having been given, can you?

22 A. It makes perfect common sense if
23 you know the facts that that would be the internal
24 conclusion.

25 Q. What is the answer to my question?

1 You can't point to a single contemporaneous
2 document that reflects or records that confirmation
3 having been given, can you?

4 A. Well, as I said earlier, it was
5 clear in an email to the rest of the team that it
6 was my view that the position had softened, and I
7 included in that discussion the very next day,
8 which was May the 13th with the entire team, a
9 discussion of why that was and how it came, so I
10 think that is contemporaneous.

11 Q. And we have no documents
12 concerning that presentation to your own people, do
13 we?

14 A. We have an email that talks about
15 my sending it to the rest of the team.

16 Q. Now, can we agree on this much,
17 Mr. Glassman, that even if we were to take you at
18 your word and assume that some unidentified lawyer
19 at Industry Canada made such a statement in a
20 meeting you attended, that others at the Government
21 of Canada and the Department of Justice might well
22 have had a different view about the strengths and
23 weaknesses of this hypothetical claim you refer to
24 at length in your affidavit; is that fair enough to
25 say?

1 A. People can have all kinds of
2 opinions. I had the most experience with the most
3 closely related set of facts.

4 Q. Now, let me deal with the
5 destruction of Catalyst's PowerPoint. Am I right
6 that immediately following this meeting with the
7 Government of Canada on March 27 of 2014, either
8 you, Mr. Riley or Mr. de Alba instructed everyone
9 at Catalyst who had received a copy of this
10 PowerPoint presentation to destroy it?

11 A. I think that the team members
12 were -- my memory is that the team members were
13 asked to destroy it and we were keeping a master
14 file.

15 Q. And they were asked to destroy it
16 by you, Riley or de Alba; correct?

17 A. I think so. As you can see, the
18 firm kept a copy.

19 Q. Well, let me show you what we were
20 told. Turn up, please, Mr. Riley's transcript from
21 May of 2015. This is tab 39 of the
22 cross-examination binder. And please turn to
23 question 334, and here is what Mr. Riley said when
24 he was cross-examined on this very point May 13 of
25 2015:

1 "Question: Okay. And I
2 understand from e-mail received from
3 your counsel last night that the
4 PowerPoint presentation in question
5 has been -- was destroyed shortly
6 after it was given?

7 Answer: Yes.

8 Question: And no records of it
9 have been maintained?

10 Answer: That is correct."

11 So the understanding of Mr. Riley
12 certainly as of May of 2015 was that every copy of
13 the PowerPoint had been destroyed; fair enough?

14 A. I don't know if you are talking
15 about the March presentation or the May
16 presentation.

17 Q. It is the March presentation.

18 A. Well, you just said May, and in
19 any event, that is just not my recollection. My
20 recollection was that we were keeping a master.

21 Q. And so Catalyst was then asked to
22 check the accuracy of that answer, and so let me
23 show you what we got back. And so I would ask you
24 to pull up, please, tab 40 of the cross-examination
25 binder and turn to answer number 8, so number 8 at

1 the bottom of the page:

2 "Further to [undertaking] 7, to
3 provide any documents that support
4 Mr. Riley's suggestion that Mr.
5 Moyse was involved with Wind Mobile
6 before the two-week period in
7 question."

8 The answer to that question was:

9 "As previously explained, all
10 copies of the PowerPoint prepared in
11 March 2014 were destroyed."

12 So that is the answer we got back after
13 people checked with others at Catalyst as to what
14 happened to the PowerPoint.

15 A. Well, clearly it was discovered.

16 Q. And clearly someone found a copy.
17 But my point is the intention within Catalyst, the
18 intention within Catalyst as of March 2014 was to
19 destroy every single copy; correct?

20 A. No, I think the intention was to
21 destroy any copies in the hands of junior people.

22 Q. Okay, so what we were told then
23 during this cross-examination then was incorrect.
24 Let me then take you back to another examination
25 and look at Mr. de Alba's discovery transcript

1 which is my tab 41, please, and look at questions
2 140 and 141. Question 140 and 141, so stop there.

3 And you will see, just go up a bit,
4 please, to 139, so question:

5 "Question: We were informed
6 early [...]"

7 And this is the examination for
8 discovery three weeks ago:

9 "Question: We were informed
10 early in the course of this
11 litigation by your counsel that this
12 presentation we're looking at,
13 CCG11565, was destroyed after it was
14 presented. Are you aware of that?

15 Answer: As the information was
16 critical, we advise -- or it was
17 advised that the presentations were
18 destroyed so that the information
19 would not be floating around.

20 Question: It was advised by
21 who?"

22 And Mr. Winton says:

23 "I think I can assist. Let me
24 try to assist."

25 Mr. Milne-Smith says: "Okay."

1 And Mr. Winton says:

2 "My understanding, and Mr. de
3 Alba can correct me if this is
4 incorrect, is that after the -- at
5 the presentation the copies of this
6 PowerPoint were requested back from
7 the government members who attended.

8 Mr. Milne-Smith: Yes.

9 Mr. Winton: And taken back by
10 Catalyst and destroyed and a
11 direction went out to all members of
12 the deal team who had touched this
13 presentation to destroy all copies
14 from their records as well.

15 By Mr. Milne-Smith:

16 Question: And who made that
17 order?"

18 And Mr. Winton says:

19 "I understand it was either Mr.
20 Riley or Mr. Glassman or Mr. de
21 Alba."

22 And I take it that that is an accurate
23 summary of what happened? An instruction was given
24 and every copy at Catalyst was destroyed but
25 apparently one was not?

1 A. I don't think that is right. This
2 is a conversation between counsel, Mr. Milne-Smith
3 and Mr. Winton. They had an understanding and
4 Mr. Winton says that he understands it was either
5 Mr. Riley or Mr. Glassman or Mr. de Alba. It is
6 Mr. Winton that says that all members of the deal
7 team who touched this presentation were
8 suggested -- were directed to destroy it. And that
9 is just not my recollection.

10 Q. And his statements on the record
11 were never disavowed or corrected by anyone at
12 Catalyst; fair enough?

13 A. This is the first time I have seen
14 it. I can't speak to anybody else.

15 THE COURT: Can I ask a question, Mr.
16 Thomson?

17 MR. THOMSON: Yes.

18 THE COURT: The answer given by
19 Mr. Winton was that the government was asked to
20 hand back the presentations to you. I don't think
21 Mr. de Alba was there, but you were there.

22 THE WITNESS: Yes.

23 THE COURT: Do you recall that, were
24 they asked to give them back to you?

25 THE WITNESS: They asked us to take

1 them back.

2 BY MR. THOMSON:

3 Q. Now, to be crystal clear, you were
4 not asked by the Government of Canada to destroy
5 this presentation; correct?

6 A. Not this version, no.

7 Q. And in fact, your evidence
8 in-chief was that the government, and these were
9 your words when asked by Justice Newbould, you
10 said:

11 "The final product they had no
12 problem with our keeping."

13 A. That's right, the final.

14 Q. Now, am I right that within
15 roughly three weeks of your meeting with the
16 Government of Canada on March 27 of 2014 that yet
17 another Telus/Mobilicity transaction surfaced?

18 A. For the holding company.

19 Q. And let me ask you to turn up,
20 please, tab 12 of the cross-examination binder, and
21 here you will see emails with Mr. Drysdale and
22 others of April 18 of 2014. Your Honour, this is
23 CCG0009114.

24 And again, Mr. Glassman, you have to
25 read up from the bottom of the email chain, so let

1 me take you to the second page of the document
2 where you will find an email from Zach Michaud to
3 himself April 17th of 2014 at 11:46 p.m. saying:

4 "Mobilicity announced its
5 proposed transaction with Telus."

6 Do you see that?

7 A. I do.

8 Q. And then if you go up above and go
9 now back to the first page of this email chain, you
10 will find an email at the bottom of the first page
11 from Mr. de Alba to Mr. Drysdale, Mr. Riley and
12 others, and the question he asked is:

13 "Bruce, is the government in
14 support of this deal/transfer?"

15 Do you see that?

16 A. I do.

17 Q. And just above that, Drysdale
18 writes back on April 18th at 8:46 a.m. and says:

19 "Gabriel, the Harper government
20 remains clear it will not approve
21 this deal or transfer. Telus is
22 well aware of Ottawa's position.
23 This just sets up the legal battle
24 in my opinion."

25 And just above that de Alba writes back

1 the same day at 8:48 a.m., two minutes later, to
2 Drysdale and copied to Riley and others and says:

3 "Thanks Bruce, this seems
4 consistent with the previous
5 posture. Were you able to check on
6 this today? Any sense on how they
7 plan to defend its position? Will
8 their approach be legal and public
9 opinion?"

10 And then Drysdale writes back at 8:54
11 a.m. and says:

12 "Gabriel, very much so.
13 Minister Moore will likely come out
14 to say it will not approve the
15 proposed deal given market
16 concentration", and so on.

17 Now, I take it this exchange was
18 brought to your attention around the time it was
19 sent on April 18th of 2014?

20 A. I don't remember. But I think it
21 is very important to point out Mr. Drysdale's
22 comment about it setting up the litigation, which
23 is at the end of his email that is on the bottom of
24 page 1, I think it's page 1.

25 Q. Mr. Glassman, here we have a dog

1 that didn't bark issue. You will find no reference
2 in these emails to any softening of the Government
3 of Canada's position; fair enough?

4 A. Which position?

5 Q. The government's position
6 concerning the transfer of wireless spectrum from
7 new entrants to incumbents.

8 A. Not in this series of emails.

9 Q. Now --

10 A. But we do have evidence of a
11 tactical error.

12 Q. Let me take you to May 6th and 7th
13 and ask you to turn, please, to tab 15 of the
14 cross-examination binder where you will find emails
15 of May 6th and 7th, 2014. Your Honour, this is
16 CCG0009482.

17 And the email I'm interested in, Mr.
18 Glassman, is at the top of the first page, so it is
19 an email from you to Mr. de Alba, copied to Riley,
20 Moyse, Levin and Drysdale, where you say on May
21 7th:

22 "Government has told us today
23 via Bruce D [...]"

24 Would that be Bruce Drysdale?

25 A. It is.

1 Q. "Government has told us today
2 via Bruce Drysdale that they will
3 not give us in writing the right to
4 sell spectrum in five years. My
5 response is that that takes 'Option
6 1' off the table and we would only
7 be willing to build a wholesale
8 leasing business specifically with
9 the incumbents as the customers.
10 They know this. We are going to
11 Ottawa next week."

12 So I take it that this exchange sets
13 out accurately your reaction to this news you
14 obtained from the government as of May 6th that
15 because they would not give you in writing at that
16 point the right to sell spectrum in five years,
17 Option 1 is now off the table?

18 A. That is part of my reaction. It
19 is not the entirety of my reaction. The other
20 parts of my reaction had been discussed verbally
21 and this was confirming to people what we had
22 expected the government to say and do at that stage
23 of the negotiation.

24 Q. And that is exactly what you did
25 not say in the email. You didn't write back on May

1 7th of 2014 and say, "Hey, Bruce, no big deal, who
2 cares, never expected to get a commitment in
3 writing from the government because, until we had a
4 deal in hand, they wouldn't give us a commitment";
5 that was simply not said, was it?

6 A. I didn't have to say it to Bruce.
7 He knew it.

8 Q. And in fact, you said exactly the
9 opposite. You said because the government has told
10 us they will not give us in writing the right to
11 sell wireless spectrum in five years, Option 1 is
12 now off the table; we would only be willing to
13 build a wholesale leasing business specifically
14 with the incumbents as the customers. That was
15 your position as of May 7th, wasn't it?

16 A. Obviously, unless they actually
17 turned around and changed their position on selling
18 spectrum.

19 Q. And I am putting it to you, Mr.
20 Glassman, straight up that your contemporaneous
21 documents are flatly inconsistent with your
22 evidence today, flatly inconsistent. Do you accept
23 that?

24 A. I do not agree.

25 Q. And of course, am I right in

1 saying this, your wholesale option, the notion that
2 you would form a fourth national wireless carrier
3 to lease spectrum to the incumbents, I'm going to
4 suggest to you did little, if anything, to increase
5 the level of competition at the retail level of
6 trade which of course had been the government's
7 priority for more than seven years dating back to
8 2007?

9 A. That is just simply factually
10 incorrect. If you want, I can walk you through how
11 it increases competition.

12 Q. Throughout the entire period from
13 March to September of 2014, am I right that you
14 remained adamant that any share purchase agreement
15 Catalyst might enter into with VimpelCom contained
16 a condition of government approval?

17 A. Yes.

18 Q. And you then met with the
19 government on May 12th of 2014?

20 A. Yes. May 11th or May 12th? May
21 12th.

22 Q. By the time of your meeting with
23 the government on May 12th, you were aware that
24 VimpelCom was proceeding on the basis of a total
25 enterprise value of 300 million dollars?

1 A. For their interest.

2 Q. For the whole company?

3 A. For their interest in the whole
4 company.

5 Q. You weren't here when Mr. de Alba
6 testified. It was for the whole company, wasn't
7 it?

8 A. At that point, yes, but there were
9 other investments that had to be made.

10 Q. Now, let's turn to the meeting
11 with the Government of Canada on May 12th of 2014.
12 You attended a meeting with Riley and Drysdale?

13 A. Yes.

14 Q. And you also used another
15 PowerPoint presentation during that meeting?

16 A. We did.

17 Q. One that you, Riley and de Alba
18 all played a role in preparing?

19 A. A role, yes.

20 Q. And if we turn up, please, tab 16
21 of the cross-examination binder, you will find
22 document CCG0009517. This is the presentation made
23 to the government on May 12th; correct?

24 A. I think so. I would -- if you
25 could turn the page, it probably has the date.

1 Yeah, it is the May 12th presentation.

2 Q. Am I right that you, Riley and de
3 Alba all reviewed the PowerPoint presentation
4 carefully before the meeting?

5 A. Probably some reviewed it more
6 carefully than others.

7 Q. You did so to ensure that it
8 described accurately the existing state of affairs
9 as well as the position of Catalyst; correct?

10 A. To the best of our ability.

11 Q. And if you could turn to the
12 second slide entitled "Overview", do you have that?
13 You say in the first bullet:

14 "Since our March 27 meeting the
15 environment to achieve the
16 government's policy objectives has
17 worsened, and the government could
18 soon be facing CCAA
19 protection/bankruptcy of both
20 Mobilicity and Wind", and so on.

21 One of the messages you intended to
22 convey and did convey to the government on May 12th
23 was that in the period since you last met, roughly
24 five or six weeks before on March 27th, things had
25 gotten worse; correct?

1 A. Correct.

2 Q. You told the government that in
3 the wake of VimpelCom's abandonment of Wind, Wind
4 was now in default with its lenders?

5 A. Amongst other issues. I don't
6 know if they are completely related, but yes, they
7 had defaulted and not paid an interest payment in
8 that period.

9 Q. And that is in your slide too in
10 the fourth paragraph:

11 "VimpelCom has abandoned Wind
12 Canada."

13 A. Well, they wrote it off to zero,
14 and they weren't allowing the company to pay to
15 stay current on its vendor debt, so that sounds
16 like abandonment to me.

17 Q. "VimpelCom has abandoned Wind
18 Canada as the investment is worth
19 zero to them, and they have refused
20 to inject any additional money into
21 the business. Wind Canada is now in
22 default with its lenders who are
23 pushing to be repaid by issuing a
24 default notice and also threatening
25 to file the company for CCAA."

1 Your position was that Wind is now in
2 dire straits and they had been abandoned by
3 VimpelCom?

4 A. Yeah, it is actually missing
5 another point, which was that Wind was burning
6 roughly 10 to 15 million dollars a month of
7 operating costs.

8 Q. And the point you make to the
9 government is that VimpelCom is now refusing to
10 inject any additional money into the business?

11 A. That is what we were told.

12 Q. Okay.

13 A. Told and observed. You know, you
14 don't default --

15 Q. Can we turn now to slide 4, and
16 under the heading "Economics of Creating the Fourth
17 Wireless Network", you may recall that you had a
18 similar slide on the March 27th presentation?

19 A. I do.

20 Q. And whereas in the March 27th
21 presentation the estimated cost to create the
22 fourth wireless network was 1.5 to 2 billion
23 dollars, you have now increased that estimate to
24 2.05 to 2.3 billion dollars?

25 A. Correct.

1 Q. And, sir, if you look above that
2 total calculation to the top of that series of
3 bullets just under the heading "Economic
4 Implications or Requirements", you see you have a
5 Wind Canada purchase price of 500 million dollars?

6 A. Yes.

7 Q. And of course, you had been told
8 on May 6th or 7th, and I took you to that this
9 morning, that what VimpelCom was looking for was a
10 purchase price based on a total enterprise value of
11 300 million dollars?

12 A. But that is not the entire
13 purchase price to the buyer. That is only what
14 they are writing a cheque to VimpelCom for.

15 Q. That included both the amounts to
16 VimpelCom and dealing with the vendor debt, as you
17 said in your email on May 6th or May 7th; correct?

18 A. But not dealing with other issues.

19 Q. Now, let's turn to slide 5, Option
20 1. Am I right that as of May 12th of 2014 you
21 continued to represent to the government that no
22 deal could be completed with VimpelCom without
23 establishing a viable regulatory and economic
24 framework?

25 A. I'm sorry, what is the question?

1 Q. You continued to represent to the
2 Government of Canada that no deal could be
3 completed with VimpelCom without establishing a
4 viable regulatory and economic framework; correct?

5 A. Yes.

6 Q. And am I right that during this
7 meeting, you made it absolutely clear to the
8 government that in the absence of these concessions
9 that Catalyst had sought, it would be virtually
10 impossible to finance Wind's operations, including
11 a proper build-out of its wireless network through
12 arm's length means?

13 A. That is our view, and that was our
14 view.

15 Q. And that is what you told the
16 government; correct?

17 A. It is.

18 Q. During this meeting on May 12th,
19 you told the government that Option 1 had now
20 become severely hindered; correct?

21 A. Correct.

22 Q. And if we turn to slide 6 which
23 deals with Option 2, you told the government on May
24 12th that Option 2, the creation of a wholesale
25 leasing carrier, was fast becoming the only

1 feasible option; correct?

2 A. Only feasible option for a fourth
3 carrier.

4 Q. Now, once again, representatives
5 of the Government of Canada who attended the
6 meeting on May 12th did not agree to grant to
7 Catalyst any of the regulatory concessions you had
8 asked for?

9 A. Nor did we expect them to.

10 Q. Instead, they told you they
11 remained concerned regarding granting approval for
12 the only remaining feasible option, namely the
13 wholesaler option or Option 2; correct?

14 A. That is exactly what we expected
15 and discussed with the whole deal team.

16 Q. And that is what they told you,
17 that they remained concerned regarding granting
18 approval for the only remaining feasible option,
19 namely the wholesaler option or Option 2; correct?

20 A. I don't quite think that is what
21 they said. My memory is that they said that it
22 wasn't something that they would prefer and it
23 wasn't something that they would necessarily
24 support. They weren't quite as adamant as I think
25 you are suggesting, or at least their body language

1 undermined their language, so they may have said it
2 but we didn't believe them completely.

3 Q. Is it fair to say that officially
4 Industry Canada remained concerned regarding
5 approval of the wholesaler option?

6 A. Yes, they were concerned.
7 Concerned.

8 Q. They refused to commit to permit
9 Catalyst to exit any investment it might make in
10 Wind without restrictions in five years?

11 A. Of course, nor did we expect them
12 to do it without a deal in front of them.

13 Q. And your belief at the time of the
14 meeting on May 12th of 2014 was that Industry
15 Canada was taking a hard negotiating position with
16 Catalyst?

17 A. Absolutely, and rightly so.

18 Q. Now, am I right that within one
19 week of the meeting with Industry Canada, Catalyst
20 obtained a written opinion from Faskens concerning
21 the issue of the transfer of wireless spectrum?

22 A. I have no idea if it was one week.
23 I don't even remember the opinion.

24 Q. Now, pull up, please, tab 19-A
25 where you will find an opinion written to the

1 Catalyst Group sent to Mr. de Alba in particular of
2 May 19 of 2014 from the Faskens firm, a gentleman
3 by the name of Steve Acker; do you have that?

4 A. I see it. It is actually to Mr.
5 de Alba and Mr. Michaud.

6 Q. And if you look to the bottom of
7 the first page, you will see that Faskens says in
8 summary:

9 "It will be evident from the
10 discussion below that there will be
11 a significant approval process
12 inherent in Globalive seeking to
13 acquire and/or obtain access to
14 spectrum owned by others. However,
15 it seems likely the government would
16 be supportive of Globalive's and
17 Catalyst's efforts so long as
18 Globalive is seeking to establish a
19 viable fourth national cellular
20 company."

21 And then they say this at the top of
22 the next page:

23 "That support would likely not
24 extend to any comfort as to the
25 government's willingness to

1 ultimately approve a transfer of
2 spectrum licences to Globalive in
3 due course to any of Bell" -- it
4 should say "[from] Globalive in due
5 course to any of Bell, Telus or
6 Rogers. However, it may be possible
7 for Catalyst to obtain comfort from
8 the government that no option will
9 necessarily be precluded in several
10 years' time."

11 So that was the advice you received
12 from Faskens as of the 19th of May?

13 A. And as you will notice, it is
14 incredibly carefully worded.

15 Q. Your Honour, that was document
16 CCG0026600.

17 Turn to page 7, please, of the opinion.
18 You will see at the top of page that 7 Faskens
19 says:

20 "It is important to note that
21 as the transfer framework and
22 government policy introduced in [a
23 particular document] is recent and
24 relatively untested, it is difficult
25 to predict how it will be applied or

1 even what the government intends by
2 'undue concentration'. However, the
3 current government has made it clear
4 that any proposed transfer of
5 commercial mobile spectrum to an
6 incumbent will be subject to very
7 close scrutiny and, in the current
8 climate, most unlikely to succeed.
9 Indeed, since the introduction of
10 CPC-2-1-23, the government has only
11 approved of transfers arising out of
12 internal corporate re-organizations
13 where no change in spectrum
14 concentration occurs."

15 Again, advice you received from your
16 lawyers at Faskens as of May 19 of 2014; correct?

17 A. And again, incredibly carefully
18 worded, including the phrase, quote, "relatively
19 untested, it is difficult to predict." The rest is
20 opinion by the writer, and I had more experience in
21 this than the writer did.

22 THE COURT: Mr. Glassman, it would
23 really help if you just dealt with the questions.

24 BY MR. THOMSON:

25 Q. Did you know that several years

1 ago Faskens merged with a firm called Johnston &
2 Buchan in Ottawa?

3 A. No, but I'll take your word for
4 it.

5 Q. Have you ever even heard of
6 Johnston & Buchan?

7 A. Vaguely.

8 Q. Would you have known that Johnston
9 & Buchan was the leading communications firm in
10 Canada before it merged with Faskens?

11 A. Okay.

12 Q. And do you know the depth of
13 experience that Johnston & Buchan had dealing with
14 wireless spectrum dating back 10, 20, 30 years?

15 A. So?

16 Q. But you claim to have more
17 experience in matters of this sort than the Faskens
18 firm did?

19 A. On this issue. On this issue.

20 Q. Okay. Now, let me fast-forward,
21 Mr. Glassman, to try to cut through this and get
22 you out of here. Let's go to July 25 of 2014, and
23 I would ask you to turn up, please, tab 21.

24 So at tab 21 you will see emails of
25 July 25 of 2014. And, Your Honour, these are at

1 CCG0025815. And they are emails dated July 25,
2 2014, involving Mr. de Alba and Mr. Glassman and
3 others.

4 Am I right, Mr. Glassman, that on July
5 25 of 2014 Mr. Nicholson of Industry Canada reached
6 out to Mr. Drysdale, your government relations
7 consultant?

8 A. Can you go to the bottom of the
9 chain, please?

10 Q. I'll make it easy for you. Let me
11 go to the second page of the emails and look at the
12 email in the middle of the second page. This is
13 from Mr. Drysdale to Mr. de Alba and Mr. Riley on
14 July 25 at 2:17 p.m.

15 A. Yes.

16 Q. Do you have that?

17 A. I do.

18 Q. And Mr. Drysdale says:

19 "James Nicholson reached out to
20 me today. We had a good
21 conversation. He was not as
22 negative on your proposed
23 transaction as I believed he would
24 be. They likely won't have an issue
25 with any straight up purchase of

1 Wind by Catalyst (depending where
2 money comes from). He also
3 indicated that Industry Canada would
4 allow the transfer of spectrum (I
5 remain skeptical). He suggested the
6 regulator would have views on
7 licensing of asset going forward.

8 Lastly, Nicholson implied that
9 Catalyst seeking any concessions was
10 a dead end, as we have gone down
11 that road twice before with them,
12 and they are unlikely to be
13 flexible."

14 So that was at 2:17 p.m.

15 If you then go to the top of the page
16 and look at what he says at 3:54 p.m., an hour and
17 a half later, and he says:

18 "I worry we end up with a
19 stranded asset where Ottawa allows
20 us to buy Wind and approves transfer
21 of spectrum but won't licence
22 operation to be a re-seller or won't
23 give us concessions to build it out.
24 Then they limit who we can sell it
25 to."

1 So you receive a negative message from
2 Mr. Nicholson at Industry Canada, coupled with a
3 warning from your government relations consultant
4 on July 25 that you could end up with a stranded
5 asset if you march down the path that you are on?

6 A. Not quite. He says that
7 Mr. Nicholson has reached out to him, which is
8 incredibly significant that James reached out to
9 him proactively. They had a good conversation, and
10 he was not as negative on the proposed transaction
11 as Mr. Drysdale suggested.

12 Q. Right.

13 A. He then goes through the
14 mechanics, which is all posturing, in my opinion.
15 This gave me incredible insight into what was going
16 on.

17 Q. And the warning you were given was
18 that your request for concessions might well be at
19 a dead end, right?

20 A. Right, until we deliver them a
21 live deal. It is at a dead end until you give them
22 a live deal.

23 Q. And of course, that is not what
24 Mr. Drysdale says in the email, does he?

25 A. Mr. Drysdale is not in the

1 business of investing. Mr. Drysdale is advising
2 purely on government relations.

3 Q. And he had more experience --

4 A. He says what he is worried about.

5 Q. And he had more experience in
6 matters of this sort than you did; correct?

7 A. Generally. Not on this issue,
8 neither in telecom nor on a specific issue where
9 there was a transferability issue as to whether it
10 was property, whether the government had the right
11 to do it or not. No one in Canada had that
12 experience, no one. Only people in the U.S. did,
13 and me.

14 Q. And this email exchange points out
15 an important distinction, Mr. Glassman, between
16 regulatory approval concerning an acquisition of
17 Wind by Catalyst on one side and the granting to
18 Catalyst of regulatory concessions on the other;
19 fair enough?

20 A. Different kinds of regulatory
21 concessions, yes.

22 Q. And the point being made by
23 Mr. Drysdale was that the government might well
24 grant you approval to buy Wind without giving you
25 any of the concessions you have asked for; that is

1 how you could end up with a stranded asset?

2 A. That is what he was worried about.
3 That was a scenario that was of deep concern to
4 him, as it should be.

5 Q. Now, let me then take you forward
6 to the first page of these emails and look at Mr.
7 de Alba's reaction at the bottom of the first page,
8 July 25 at 4:01 p.m., so the same day Mr. de Alba
9 says:

10 "Instead of worry we need your
11 help to turn it around!!"

12 Correct?

13 A. That is typical of my partner,
14 yes, he is putting pressure on Drysdale to try and
15 get it -- improve the probability of it ahead of
16 time and before there is a deal.

17 Q. And what Mr. de Alba doesn't say
18 is, "Bruce, don't worry, take a Valium, everything
19 is fine, we fully expect the government will do
20 nothing to help us until we have a signed deal";
21 that is not said, is it?

22 A. I would kill him if he did. I
23 would never take the pressure off our advisors. I
24 would make them do everything they could to
25 actually deliver it ahead of time and reduce the

1 risk.

2 Q. And if we then scroll up the page,
3 you write an email back the same day at 5:47 p.m.
4 where you say:

5 "Maybe we are being set up by
6 government to try and pressure us
7 for no/minimal concessions..."
8 Do you see that?

9 A. Yeah, I don't see who it is to.
10 It is to Gabriel, yeah.

11 Q. It's to de Alba.

12 A. Yeah.

13 Q. It's not to Drysdale. This is not
14 taking --

15 A. Yes.

16 Q. Just listen to me. This isn't
17 about taking pressure off your consultant. This is
18 your email, candid email to your partner?

19 A. Right.

20 Q. And you don't say, "Hey, Gabe, no
21 worries, my partner, everything is fine, don't
22 expect anything from the government until we have a
23 signed deal"; that statement is simply never made,
24 is it?

25 A. Nor would I ever make it to any

1 deal member. I would never relieve the tension on
2 any deal member on any deal at any point in time.

3 Q. Well, but wait, wait, wait. I
4 thought we had a flat, flat structure where
5 everybody knew everything?

6 A. We do. That doesn't mean that I
7 am not the instigator of pressure.

8 Q. So you weren't being straight-up
9 with Mr. de Alba; that is your evidence?

10 A. He knows exactly who I am. He
11 knows exactly what I was doing. He has worked with
12 me for 14 years. He knows I'm never going to let
13 up the pressure. Ask him.

14 Q. And then let's look at what Mr. de
15 Alba recommends and see what happens next. So at
16 the top of the page, de Alba writes back the same
17 day at 7:36 p.m. and he says:

18 "That is what I told Bruce, was
19 my fear is he was eager to connect
20 us with the government but not in a
21 dynamic to get concessions, just to
22 build the most basic credibility.
23 As the government response was we do
24 not believe you have an exclusivity,
25 Quebecor is telling us that they are

1 close to putting Wind and Mobilicity
2 together. Bruce was also saying
3 that they might sabotage our deal
4 not by refusing an approval but by
5 not responding timely to the share
6 purchase agreement end date or by
7 whispering to VimpelCom challenges
8 questions about the deal. I do
9 believe that the government is going
10 to scrutinize the business plan.
11 Our financial capacity to fund such,
12 and will check our investors. As I
13 did not trust the dynamic I suggest
14 we do not talk to the government
15 until we have the SPA signed.
16 Challenge with such is that we have
17 less flexibility. I am available if
18 you want to connect."

19 So his recommendation is no further
20 discussions with the government until we have a
21 signed share purchase agreement in hand?

22 A. In fact, there is your proof that
23 Gabriel knew exactly what I was doing, because he
24 wants to increase the pressure on the government by
25 not showing up until the SPA is signed and put the

1 pressure on them. It is in his second-last
2 sentence.

3 Q. I have a slightly different theory
4 of what happened here, which we'll talk about
5 momentarily. In any event, his recommendation was
6 no further discussions with the government until we
7 have executed a share purchase agreement with
8 VimpelCom; correct?

9 A. Which is the correct advice.

10 Q. And am I right that there were in
11 fact no further meetings that you or Mr. Riley or
12 Mr. de Alba attended with representatives of the
13 Government of Canada concerning the Wind
14 transaction at any time between the date of this
15 email on July 25 of 2014 and the completion of the
16 West Face transaction in mid-September of 2014?

17 A. Where is the question?

18 Q. That was the question. There were
19 in fact no further meetings that you, Riley or --

20 A. That is a statement of fact. You
21 are making a statement. Where is the question to
22 me?

23 Q. Just listen. There were in fact
24 no further meetings that you, Riley or de Alba
25 attended with representatives of the Government of

1 Canada concerning Wind at any time before West Face
2 completed its acquisition of Wind in mid-September
3 of 2014, were there?

4 A. None directly. Bruce Drysdale and
5 others maintained open contact with the government.

6 Q. And let's show --

7 A. We obviously had a channel.

8 Q. Let's show Justice Newbould what
9 happened as a result of Drysdale's continued
10 connections with the government and turn to August
11 3, a week later.

12 So pull up tab 23, please. So at tab
13 23 you will see a series of emails of August 3 of
14 2014, Mr. Glassman, that you were copied on or sent
15 to or from you. This, Your Honour, is CCG0025843.

16 And, Mr. Glassman, I want to take you
17 to the second page of the emails and read from the
18 bottom to the top, to have them in sequence. So on
19 Sunday, August 3 at 9:15 a.m., Mr. Drysdale writes
20 to you and Mr. de Alba, copied to Mr. Riley, an
21 email entitled "Ottawa Insights"; do you have that?

22 A. I do.

23 Q. And he says in his email:

24 "I was in Ottawa late last week
25 and met with James Nicholson in

1 Minister Moore's office for 45
2 minutes."

3 So just so we have it for the record,
4 if we pull out our calendars, the email we looked
5 at about two minutes ago was dated Friday, July 25,
6 and the meetings that are being referred to here
7 take place the very next week, the week of Monday,
8 July 28th.

9 So he says that:

10 "I was in Ottawa late last week
11 [...]"

12 Which would make it around the 31st,
13 possibly the 1st. He says:

14 "[...] and met with James
15 Nicholson in Minister Moore's office
16 for 45 minutes."

17 And he was, again, a senior official
18 from Industry Canada; correct?

19 A. I think he might have even been
20 the Chief of Staff of the Minister.

21 Q. And he says:

22 "I also had coffee with a
23 senior [Privy Council Office]
24 official. I was able to have frank
25 conversations with both, while also

1 pushing the Catalyst position.
2 Below please see some feedback and
3 insights from Nicholson and the
4 [Privy Council Office]. You will
5 want to factor these into your
6 discussions/negotiations."

7 So let's take them one at a time.
8 First, he says:

9 "[Industry Canada] and the
10 [Privy Council Office] and the
11 [Prime Minister's] Office are
12 adamant that the current federal
13 policy will not change."

14 Second, he says:

15 "Nicholson clarified the
16 federal position saying Minister
17 Moore and [Industry Canada]
18 officials would not be opposed to
19 Catalyst buying Wind but Ottawa
20 would not provide concessions
21 Catalyst outlined in its May
22 presentation for building out a
23 fourth carrier nor would Ottawa
24 allow Catalyst or anyone else to
25 become a re-seller."

1 The next bullet:

2 "Nicholson said that if
3 Catalyst signs a sale and purchase
4 agreement with Wind it should do so
5 with a clear understanding it would
6 have to build out a fourth carrier
7 without concessions and without the
8 ability to sell to an incumbent
9 after 5 years."

10 So all I'm going to suggest to you, Mr.
11 Glassman, clear and unequivocal messages being
12 conveyed to you through Mr. Drysdale by senior
13 people in Industry Canada and in the Privy Council
14 Office as of August 3 of 2014; fair enough?

15 A. Not completely fair. If you look
16 at the second bullet and you read it carefully, he
17 says that Nicholson and IC officials would not be
18 opposed to Catalyst buying Wind, and then sets up a
19 framework. There is no reason why one would
20 believe that the government would actually be in
21 favour of us buying it at that point unless they
22 knew that there were going to be further
23 discussions about the concessions. So the rest of
24 that bullet and the bullet afterwards is all
25 table-setting, in my opinion.

1 Q. They drew the very distinction you
2 and I discussed about three minutes ago between
3 regulatory approval for a Wind acquisition on one
4 hand and the granting of regulatory concessions on
5 the other?

6 A. Yes, because it is a two-step
7 process, and if they were willing to approve the
8 first step, they knew they were going to have a
9 problem in the second step or else there would be
10 litigation with other parties. That was the whole
11 message. This email confirms to me that they knew
12 exactly what the consequences would be and that
13 they were trying desperately to set the table for
14 the future discussion about regulatory concessions.

15 Q. They certainly did not tell you
16 they were prepared to make the concessions. In
17 fact, they told you, am I right, exactly the
18 opposite?

19 A. No one over the age of 15 with any
20 kind of experience in negotiation would do that.

21 Q. Well, let me --

22 MR. DiPUCCHIO: Let me interrupt for
23 one second. I think in fairness, Your Honour, the
24 way the screen is set up, there is a final
25 paragraph to that.

1 MR. THOMSON: I'm coming to that.

2 MR. DiPUCCHIO: Oh, okay. Well, I just
3 wanted to be fair to the witness because the
4 witness doesn't see it, Mr. Thomson.

5 MR. THOMSON: Okay, just scroll down.

6 THE COURT: You go ahead, Mr. Thomson.

7 BY MR. THOMSON:

8 Q. Let me now continue on with the
9 email. So the next bullet:

10 "Nicholson and the [Privy
11 Council Office] both told me that
12 Quebecor (both prior to PKP [...])"
13 And that would be Pierre Karl Peladeau?
14 Yes?

15 A. Sure.

16 Q. "[...] both told me that
17 Quebecor (both prior to [Pierre Karl
18 Peladeau] running for office as a
19 separatist and since) has lobbied
20 hard in Ottawa at all levels for
21 concessions to build out a fourth
22 carrier and have been told Ottawa
23 will not be providing them with any
24 concessions (beyond what regulatory
25 changes are being rolled out by the

1 CRTC in coming months). Nicholson
2 said Minister Moore and Prime
3 Minister Harper are entrenched.
4 There will be no flip flop."
5 Correct?

6 A. That is an awesome point. It
7 tells us that the government is so worried about it
8 that they are trying to create a horse race between
9 Quebecor as a potential bidder and Catalyst as a
10 potential bidder and that they are trying to tell
11 us, and be careful, because if it is a horse race,
12 we might be able to put some weight behind our no
13 concessions language.

14 What it tells me, which the average
15 reader may not get, is that Quebecor was telling
16 the government the exact same thing, they are going
17 to need concessions.

18 Q. And the government --

19 A. And that means that the government
20 knows that no matter what they do, they are going
21 to end up having a political problem about
22 concessions if one of us wins.

23 Q. What you were being told by the
24 government clearly and unequivocally through
25 Mr. Drysdale was this had reached the very highest

1 levels of government, it reached the Minister of
2 Industry and the Prime Minister of Canada? Take it
3 one step at a time. You were told that, were you
4 not?

5 A. Sir, with the greatest of respect,
6 there is a big difference between people's words
7 and people's actions. We were depending on
8 people's actions, and that is a very telling
9 development.

10 Q. Try to stay with me.

11 A. And in fact, if you look at it, it
12 says later that, quote, the government used
13 language called "mitigating strategies".

14 Q. I'm coming to that.

15 A. Which in our world means they had
16 nothing. They didn't even have a plan B.

17 Q. Mr. Glassman, one step at a time.
18 You were being told by the Government of Canada
19 through Mr. Drysdale that this had reached the very
20 highest levels of government, including the
21 Minister of Industry, Mr. Moore, and the Prime
22 Minister of Canada. Can we agree on at least that?

23 A. Sure, and it also tells me that
24 they are panicked.

25 Q. And, Mr. Glassman, you were told

1 clearly and unequivocally on August 3 of 2014 that
2 the Minister of Industry and the Prime Minister of
3 Canada were entrenched in their position and there
4 would be no flip flop; that is what you were told?

5 A. Except they were saying that they
6 would approve the actual purchase to Catalyst, and
7 they are implying they would approve a purchase to
8 Quebecor, which means that they both know full well
9 that there is a battle coming after whatever
10 approval of those two they provide.

11 And the last bullet makes the point.
12 They didn't have anything. They had no substance
13 to their, quote, "mitigating strategies". They
14 didn't even call it a plan B. They didn't even
15 indicate what they were going to do. They had
16 nothing. All they had was trying to put as much
17 pressure as they could on the potential bidder or
18 winner to reduce the demand for the nature of
19 concessions that was likely to come. At least they
20 knew it was coming from either Catalyst or Quebecor
21 if either of them won.

22 Q. Just tell me when you are
23 finished.

24 A. I'm done.

25 Q. Good. The next bullet:

1 "Nicholson said that if nobody
2 steps forward to build out a fourth
3 carrier as a straight-up proposition
4 (no concessions, no ability to sell
5 to incumbents after 5 years) then
6 the Harper government has mitigating
7 strategies in place to deal with
8 that scenario."

9 Something else you were told by Mr.
10 Drysedale on August 3; correct?

11 A. Yeah, a very telling statement.

12 Q. And am I right that you never went
13 back to the government to ask what the mitigating
14 strategies were?

15 A. I didn't need to. We know what
16 the language means.

17 Q. Nor did Mr. Drysdale on your
18 behalf; correct?

19 A. I don't know if he did. I don't
20 think he did.

21 Q. I'm going to suggest to you that
22 none of the messages and threats of litigation and
23 public embarrassment that you and Mr. Riley had
24 conveyed to the government on March 27th and on May
25 12th had found a receptive audience?

1 A. Is there a question there?

2 Q. Yes.

3 A. You can make whatever suggestion
4 you want. It doesn't make it right. You are
5 wrong.

6 Q. The government clearly had a
7 different view than you and others at Catalyst may
8 have, and they refused to blink?

9 A. No, you are saying the government
10 had a different view. What they told me was that
11 they actually agreed with our view and were very
12 worried about it. And even the change in
13 attendance between March 27th's presentation and
14 the May 12th presentation and the questions during
15 that meeting made it very clear that they
16 understood that there was a very real problem.

17 Q. And here we are now months later
18 at August 3 and you are confronted, Mr. Glassman,
19 with a major and potentially insurmountable
20 problem. Now, let me explain to you what the
21 problem is.

22 You had represented to the Government
23 of Canada on May 12th that Catalyst was staring
24 down the pipe at an investment that could be as
25 much as 2.3 billion dollars to build out a fourth

1 national wireless carrier; correct?

2 A. I don't know if it said as much as
3 2.3, or as much as 2.3 to 2.5.

4 Q. Let's use your higher number, 2.5
5 billion dollars --

6 A. Whatever is in the presentation.

7 Q. And just so we have it, that is in
8 the context of a transaction where you had
9 represented to the government that unless they were
10 prepared to grant you the concession you needed for
11 your exit strategy, you could not obtain external
12 financing; correct?

13 A. I said I believe the language we
14 used in the presentation was that we do not believe
15 it would be possible to finance it from banks or
16 arm's length third parties.

17 Q. And there is no way in the world
18 Catalyst was going to put up 2.3 billion dollars of
19 its own money to build the fourth national wireless
20 carrier, were you?

21 A. Not all was equity. Why would we
22 ever do that in all equity? No one else would
23 either.

24 Q. As of, just pick a date, August
25 2014, what was the total amount of funds you had

1 under administration at Catalyst, the total amount?

2 A. Unlevered, somewhere around
3 2-and-change billion dollars; levered, somewhere
4 around 12 billion dollars.

5 Q. Now, am I right that you had also
6 represented to Catalyst -- well, let me skip past
7 that. Let me get back to what you said. Having
8 received the email from Mr. Drysdale, take a look
9 at your reaction. So scroll up to midway through
10 the first page of these emails at tab 23 of the
11 cross-examination binder, so your email, do you
12 have that, of August 3 of 2014 at 9:58 a.m. where
13 you say --

14 A. I see that. I see the opening
15 line where I confirm what I just told you, that I
16 think it is all positioning.

17 Q. "Thanks Bruce. My view on
18 reading this is that it's all
19 positioning [...]"

20 THE COURT: Just a second. Where is
21 this?

22 MR. THOMSON: This is the witness's
23 email of August 3 of 2014 at 9:58 a.m. It is the
24 middle of the first page, Your Honour.

25 THE COURT: Yes, I see that here.

1 BY MR. THOMSON:

2 Q. And, sir, you say this:

3 "Thanks Bruce. My view on
4 reading this is that it's all
5 positioning and they themselves are
6 not sure what they will do until
7 someone is before them with a
8 specific list of demands.

9 Mitigating strategies is code for
10 they have no real plan B since they
11 don't yet know what they will be
12 facing. To disprove my theory,
13 someone would have to tell me
14 details of their mitigating
15 strategies so that we could evaluate
16 such against our requests."

17 And pausing there for a moment, you
18 confirmed a moment ago no one did give you the
19 details of the government's mitigating strategies;
20 correct?

21 A. Sure.

22 Q. You then say:

23 "It also tells me that they
24 know this is a complete cluster-fuck
25 right now and that they really don't

1 know how it's going to end.
2 Interesting that their opening
3 position would be an outright
4 refusal on any/all we suggested to
5 them in our [deck last week].
6 Finally, if they truly have made the
7 below position clear to Quebecor,
8 they have literally hurt Quebecor's
9 likelihood of doing a fourth carrier
10 [...]" --

11 A. It doesn't say "our deck last
12 week"; it says "in our last deck", because it
13 wasn't the week before, it was May 12th.

14 Q. "Finally, if they truly have
15 made the below position clear to
16 Quebecor they have literally hurt
17 Quebecor's likelihood of doing a
18 fourth carrier alone and approve our
19 or anyone who controls Wind."

20 You say:

21 "Mobilicity is basically
22 irrelevant now since the new AWS 3
23 spectrum is so cheap. Mobilicity's
24 spectrum value has been decimated so
25 long as acquired by someone with an

1 existing presence in Ontario, etc.,
2 (given the AWS 3 rules). If I am to
3 take them at their word re Quebecor
4 it would make sense and fit well
5 with Quebecor's comments about not
6 making this a priority for their
7 capital, needing/talking with
8 potential partners", et cetera.
9 And then you say this:

10 "Bruce, do they understand that
11 without making the spectrum
12 transferable at some time in the
13 future they have literally made it
14 impossible for anyone to get
15 financing/debt (since without
16 eventual transferability there is no
17 collateral value against which
18 lenders will lend) and therefore a
19 fourth carrier cannot and will not
20 make anyone reasonable minimum rate
21 of return? Notwithstanding their
22 words to you, this last point needs
23 to be drummed home to them this
24 weekend", in capital letters, "given
25 the timing of what is going on."

1 So your view at the time was that
2 government had succeeded because they refused to
3 grant concessions and making it literally
4 impossible for anyone to get financing or debt to
5 fund the creation of the fourth national wireless
6 carrier, and that's what you told Mr. Drysdale;
7 correct?

8 A. That is what I told Mr. Drysdale.
9 It is not exactly what I thought. It is close to
10 what I thought, but a lot of this email was to help
11 educate Bruce about why I thought the government
12 was taking the strategy they were taking and why I
13 thought my particular read in particular, but also
14 Gabriel's and likely Jim's, was that the government
15 not only had made a tactical error, but it is
16 exactly what we would expect them to do. And that
17 is why I wanted Bruce to carry the water back to
18 the government and make sure that they knew that
19 there is a very big risk that they have actually
20 undermined the collateral value to close to zero.

21 Q. And what you then said in the last
22 sentence of that email is:

23 "This last point needs to be
24 drummed home to them this weekend",
25 in capital letters, you were

1 shouting in your email, "given the
2 timing of what is going on."

3 And of course, this email is being sent
4 on Sunday, August 3, so what you were saying to
5 Drysdale is --

6 A. Also not a fair characterization.
7 Putting it in capitals does not mean I was
8 screaming or yelling at Bruce. I was making the
9 point that it is very important.

10 Q. You were making the point
11 emphatically?

12 A. Yes, but that doesn't mean I was
13 screaming. You said I was screaming.

14 Q. What you were saying was this is
15 urgent and you had better get back to them today;
16 it's Sunday and it's got to get done this weekend?

17 A. Yeah, I wanted him to. I wanted
18 him to set the table.

19 Q. And again, sir, Mr. Glassman, what
20 you never said to Drysdale is, "Look, Bruce, don't
21 worry about it, expected all this would happen,
22 didn't expect to get a single concession until we
23 had a signed deal in hand"? That you never said,
24 did you?

25 A. Nor would I ever. Only an idiot

1 would say that. I would keep the pressure up on
2 Bruce and any member of the team to the very last
3 second, as I should.

4 Q. Your view at the time was that no
5 one would believe that they could earn a reasonable
6 rate of return without certainty of an exit
7 strategy or regulatory changes; correct?

8 A. Well, I actually think it says
9 more than that. I think it says that and without
10 being able to go to lenders, so without leverage,
11 without actually having a levered return on the
12 situation and without having an exit strategy.

13 THE COURT: Mr. Thomson, we are going
14 to take an afternoon break. Is this a decent time?

15 MR. THOMSON: Yes, it is, thank you.

16 -- RECESSED AT 3:55 P.M.

17 -- RESUMED AT 4:10 P.M.

18 BY MR. THOMSON:

19 Q. Mr. Glassman, am I right that you
20 wanted and needed to resolve the regulatory issues
21 you had raised with the Government of Canada before
22 Catalyst acquired Wind and not after?

23 A. No, that is not correct.

24 Q. Could you turn up your affidavit,
25 please, and go to tab 1, paragraph 4, and in the

1 second sentence you say the following:

2 "I was primarily responsible
3 for Catalyst's negotiations with
4 Industry Canada and the Federal
5 Government concerning", this is what
6 you say, "critical regulatory issues
7 that I had decided needed to be
8 resolved before Catalyst purchased
9 Wind."

10 A. Yes, resolved one way or the
11 other, and it really should have said closed on
12 Wind. That is not what your question said.

13 Q. The question I asked you was you
14 wanted and needed to resolve these regulatory
15 issues before Catalyst purchased Wind, and I take
16 it the answer is "correct"? Your own words.

17 A. Yes, resolved and purchased being
18 the key phrases.

19 Q. That is the question you were
20 asked. Now, because of course if you obtained
21 regulatory approval for an acquisition of Wind
22 without obtaining the regulatory concessions you
23 had sought, you could expose Catalyst to the risk
24 of having to proceed with what Mr. Drysdale had
25 referred to as a stranded asset; fair enough?

1 A. Not correct. Resolved could be
2 resolved in one of two ways. If it was resolved in
3 a manner that was not good, meaning we didn't get
4 the concessions we wanted, we still always had the
5 ability to join with people in Option 3. Resolved.
6 It didn't say "resolved positively". It says
7 "resolved".

8 Q. Let me take you to paragraph 20 of
9 your affidavit where you said the following:

10 "It was communicated to
11 [Industry Canada] that Catalyst was
12 willing to be supportive of Industry
13 Canada's stated policy, put large
14 amounts of capital at risk and pull
15 together all of the necessary pieces
16 to build the fourth carrier.
17 However, before Catalyst would take
18 on this risk, [Industry Canada] had
19 to help via changes to the
20 regulatory framework before the
21 'fourth carrier' could increase
22 consumer choice/reduce pricing or
23 compete with the incumbents or
24 support a wholesale operator."
25 I take it that was true evidence when

1 you gave it roughly ten days ago when you swore
2 your affidavit?

3 A. Absolutely, as the opening phrase
4 says, "It was communicated to IC", absolutely
5 accurate.

6 Q. Now, am I right that that is
7 precisely why you intended to continue to negotiate
8 with the Government of Canada for the concessions
9 Catalyst had sought in the period after the share
10 purchase agreement with VimpelCom was executed but
11 before the transaction closed; correct?

12 A. I don't understand the question.

13 Q. You intended to continue to
14 negotiate with the government for the concessions
15 Catalyst was seeking in the interim period between
16 the signing of the agreement with VimpelCom and the
17 closing of the transaction?

18 A. Well, of course, by definition we
19 would have to continue discussions with them.

20 Q. Okay. Now, let me take you to the
21 last issue I have for you, which is the failure of
22 the Catalyst transaction. Am I right that
23 throughout the proposed transaction with Catalyst,
24 VimpelCom made it clear that the transaction was
25 subject to the approval of its board?

1 A. You would have to ask Mr. de Alba
2 what was communicated on that issue.

3 Q. Pull up tab 20, please, and I am
4 just going to pick one example to illustrate the
5 point and try to get you out of here, Mr. Glassman.

6 And here you will find a series of
7 emails of July 13 of 2014 involving Mr. de Alba and
8 Mr. Levin, Babcock and others. This is CCG0024196.
9 And the email I'm interested in is the very last
10 one on the page, on the first page, so just, sorry,
11 scroll to the middle of the page. It is an email
12 from Faaiz Hasan of VimpelCom to Mr. de Alba and
13 copied to others, and you will see he sets out a
14 series of points which don't matter for my
15 question. I'm interested in the very bottom of the
16 page where he says:

17 "Please note that the above
18 terms/SPA is subject to VimpelCom
19 board approval."

20 A. I'm sorry, can you go up to see
21 who sent it to me -- or who sent it to us, I mean?

22 Q. Yes, Faaiz Hasan of VimpelCom.

23 A. Yeah, so that is a pretty
24 formalized and normal routine statement. It would
25 also be expected that the board was informed as

1 major developments occurred in the course of a
2 deal.

3 Q. I take it that no one from
4 VimpelCom told you, start with you, no one from
5 VimpelCom told you that its board would be a rubber
6 stamp in granting its approval; correct?

7 A. That is not quite right. What I
8 was told was that subject to us meeting their
9 economic terms and having a fully negotiated SPA,
10 we should assume that the board would approve it.

11 Q. Who told you that?

12 A. Numerous people on the deal team,
13 some of the lawyers involved, Gabriel, others.

14 Q. Who from VimpelCom told you that?

15 A. No one from VimpelCom told it to
16 me, but it would also make sense in my experience
17 of deals. Nobody puts a surprise in front of their
18 board to have it turned down.

19 Q. In your affidavit you fault the
20 VimpelCom board for not following what you call a
21 typical approach that you would expect to see in a
22 transaction of this nature; correct?

23 A. I'm sorry, where do I say that?

24 Q. At paragraph 43 of your affidavit.

25 A. Yeah.

1 Q. Okay.

2 A. I remember saying that, or
3 something to that effect.

4 Q. Am I right that before this
5 transaction, you had never negotiated a transaction
6 with VimpelCom?

7 A. Correct.

8 Q. You had no previous experience
9 dealing with the board of VimpelCom; correct?

10 A. Correct, but we had done research
11 and we had gotten input from others who had.

12 Q. And you retained Morgan Stanley
13 because of its depth of experience in the banking,
14 in the investment banking world; correct?

15 A. I don't know what that question
16 means. We hired Morgan Stanley because we had a
17 relationship with them and that they are good at
18 this kind of stuff.

19 Q. And you trusted their advice?

20 A. To the extent that I trust any
21 advisor. Everything we get from an advisor has to
22 be at least questioned.

23 Q. And whereas you had no previous
24 experience dealing with the board of VimpelCom, did
25 you know that Mr. Babcock at Morgan Stanley did?

1 A. I think he had had one or two
2 experiences with them. I don't remember exactly.

3 Q. Can you pull up, please, tab 24,
4 where you will find a series of emails involving
5 Mr. de Alba and others of August 8 of 2014. And,
6 Your Honour, this is CCG0024567.

7 And, Mr. Glassman, I want to take you
8 to the bottom of the first page where you will find
9 an email from Mr. Babcock of Morgan Stanley of
10 August 8th of 2014 to Mr. Levin copied -- of
11 Faskens copied to de Alba and another person at
12 Faskens re timing, and he says this:

13 "I would add. All my
14 experience with this board [...]"

15 Which is the board of VimpelCom. I'm
16 happy to walk through all the emails, if you would
17 like.

18 "All my experience with this
19 board is there is nothing normal
20 about it. There is a lot of
21 complexity between management and
22 the board and constant games between
23 Telnor and Alfa, all of which
24 frustrates outsiders."
25 And did you know that that advice had

1 been given by Morgan Stanley to your deal team?

2 A. Well, that advice tells me not to
3 trust them. That advice tells me they are not
4 trustworthy and that they have played dirty tricks
5 in the past. That is what that says, which
6 eventually they actually did, coincidentally right
7 around that date.

8 Q. Now, am I right that when the
9 board of VimpelCom considered the proposed
10 transaction with Catalyst in August of 2014, the
11 board became concerned about the potential risks
12 associated with obtaining regulatory approval?

13 A. That is not correct. The board
14 had and management had already agreed to take the
15 risk of regulatory issues. They became newly
16 concerned about it after -- what appears to be
17 after or on or around August the 7th.

18 Q. Pull up, please, the
19 cross-examination brief at tab 25. Now, these are
20 emails of August 11th, 2014 between Mr. Saratovsky
21 of VimpelCom and Mr. de Alba and others. This is
22 CCG0027248.

23 And, Mr. Glassman, just going back to
24 the last answer you just gave, tell Justice
25 Newbould exactly when this transaction was

1 submitted to the board of VimpelCom before August
2 11 of 2014. Tell him what the date is, tell him
3 what they were asked to consider and what they
4 said. Go ahead.

5 A. I have no idea. I don't know what
6 the date they actually received it. I know that I
7 was told that the deal was done and that there was
8 a call on this same day, August the 11th, with
9 Industry Canada where VimpelCom themselves
10 confirmed to the government that the deal was done
11 but for a small few little technical issues, and
12 that only on this date was the first time that they
13 started making a big deal again about something
14 that had already been agreed to, which was
15 regulatory issues. And we now know why.

16 Q. So let's just take this one step
17 at a time. When you said, as you did at 4:19 p.m.
18 today, that the board had already agreed to take
19 the risk of regulatory issues, that answer was
20 clearly wrong, wasn't it?

21 A. No, that is not wrong.

22 Q. Because you can't point to any
23 circumstance where the board of this company had
24 considered this transaction before August 11 of
25 2014, can you?

1 A. No, but I can rely on the advice
2 of advisors, my deal team, people giving -- and
3 their own management giving assurances to my deal
4 team. We have the right to rely on those people.

5 Q. Mr. Glassman --

6 A. And then we know why they made a
7 180-degree turn.

8 Q. I say this with the greatest of
9 respect --

10 A. Because they got something that
11 was inappropriate in the interim.

12 Q. I say this with the greatest deal
13 of respect. You, sir, are making it up as you go
14 along, aren't you?

15 A. No, I think you are trying to put
16 a square peg in a round hole. Poorly, I might add.

17 Q. Now, let me take you then to the
18 contemporaneous --

19 THE COURT: Can I just ask a question.
20 Mr. Glassman, did you ever talk to anybody at
21 VimpelCom who was on the board who told you what
22 the board did or didn't do?

23 THE WITNESS: No, but I got reports
24 about the board --

25 THE COURT: No, I just asked you that.

1 THE WITNESS: No one specific, no one
2 that is directly on the board, but lots of reports.

3 THE COURT: All right.

4 BY MR. THOMSON:

5 Q. Let me take you to the story the
6 contemporaneous documents tell us, Mr. Glassman,
7 and ask you to look at the emails at tab 25 and, in
8 particular, the one at the very top of the first
9 page. This is now August 11 of 2014 at 7:38 a.m.
10 You would recognize Mr. Saratovsky as being the
11 chief negotiator on behalf of VimpelCom? Do you
12 know that?

13 A. One of the negotiators. I don't
14 know if he was the chief.

15 Q. All right, writing to Mr. de Alba
16 on August 11 of 2014, and if we pull out our handy
17 calendars, because the days of the week may matter
18 as we go through this unraveling, this is now
19 Monday, August 11, and he says this:

20 "The board members are
21 concerned about the consequences of
22 not getting regulatory approval.
23 After our experience with the
24 government, they are concerned about
25 the government's behaviour and

1 therefore wanted us to seek
2 protection in case the government
3 does not approve. They view the
4 interim funding as the amount at
5 risk so we need to discuss this
6 point. The second point is what
7 happens if we don't get approval by
8 December 31 but the parties want to
9 extend. How do we cover the funding
10 and planning after that. I want to
11 stress that we are open to finding
12 solutions to these that work for
13 both of us and I'm sure we can get
14 through this quickly. I am also
15 sure that we can get approval and
16 signing this week and we are
17 planning for it internally."

18 So you are told, at least de Alba is
19 told on August 11 of 2014 on the Monday that the
20 board of VimpelCom was concerned about the
21 consequences of not getting regulatory approval;
22 correct?

23 A. Well, he actually has two
24 contradictory statements. The sentence, the second
25 sentence says the board, they are concerned about

1 the government's approval, and then he says that I
2 want to stress we are open to finding solutions and
3 that I am sure we can get the approval and signing
4 it this week. That tells me that at that point it
5 wasn't a deal-breaker. He was testing an issue.
6 Otherwise, he would have said it is a deal-breaker.

7 Q. You see, I have got little bitty
8 questions, and I'm going to take this one step at a
9 time, so try to stay with me.

10 You are told on August 11 of 2014 by
11 Mr. Saratovsky that the board of VimpelCom was
12 concerned about the consequences of not getting
13 government approval; can we agree on that?

14 A. He says that.

15 Q. And then skip down to the next
16 sentence, and he says:

17 "After our experience with the
18 government", that is the Government
19 of Canada, "they are concerned about
20 the government's behaviour and
21 therefore wanted us to seek
22 protection in case the government
23 does not approve."

24 So now you are told that because of the
25 board's concern about the risks or consequences of

1 not getting approval from the government, they want
2 the deal team to seek protection?

3 A. Seek, not guarantee.

4 Q. Just listen. You were told that
5 they wanted, that the board wanted the deal team to
6 seek protection for VimpelCom; were you not told
7 that?

8 A. For the first time after they had
9 concluded the issue prior to August the 7th.

10 Q. I have just taken you to that, and
11 you told me four minutes ago you are not aware of
12 the board ever considering the transaction before
13 August 11?

14 A. No, I said I wasn't personally
15 aware. That doesn't mean that the board wasn't
16 aware of it. I said that I would have assumed and
17 it would have been normal for the board to be kept
18 informed.

19 Q. Sir, Mr. Glassman, I'm not going
20 to go over the same ground again. I'm going to
21 stand by the evidence you gave five minutes ago on
22 the very same point.

23 A. Me too.

24 Q. And then the next sentence:

25 "They view the interim funding

1 as the amount of risk, so we need to
2 discuss this point."

3 Now, let's just pause there for a
4 moment and take you back to a discussion you and I
5 had just before the break where you said in one of
6 your PowerPoints that the board of VimpelCom or
7 VimpelCom as a company had effectively cut off
8 funding for Wind Mobile in 2014; correct?

9 A. Yeah.

10 Q. And what the board is saying is if
11 we fund the operations of this company between the
12 date of signing a share purchase agreement with
13 Catalyst and the time the transaction is scheduled
14 to close and the government turns the deal down, we
15 need protection for our interim funding, we don't
16 want to be out that money. That is what they are
17 telling you; correct?

18 A. Well, they are not quite saying
19 that they'll fund it. They are saying that they
20 see it as at risk. They are not saying who will be
21 at risk.

22 Q. Clearly if it is a risk to
23 VimpelCom, they must be providing the funding?

24 A. No, that is not clearly right.
25 They may have had other arrangements. I don't know

1 what they were doing. I know that they were losing
2 roughly between 8 and 10 million dollars a month in
3 working capital. That is a very normal sentence to
4 find in a transaction for post-closing or
5 post-agreement prior to closing working capital
6 adjustments, especially for a business that is
7 losing money.

8 Q. And I'm going to suggest to you
9 that this very concern we have identified, that
10 they viewed the interim funding as the amount at
11 risk so they need to discuss this point, that led
12 directly to a request made about three days later
13 by the chairman of VimpelCom's board to Morgan
14 Stanley for a break fee in the range of 5 to 20
15 million dollars?

16 A. You can suggest whatever you want.
17 I have no idea if they were linked.

18 Q. You are aware, of course, that
19 that request was made by the chair of VimpelCom's
20 board to Morgan Stanley for a break fee in the
21 range of 5 to 20 million dollars about two or three
22 days after this email was sent; correct?

23 A. I'm a hundred percent aware that
24 sometime after the 7th and effectively after the
25 11th at night when they announced the deal to

1 Industry Canada, their posture on a whole host of
2 issues started changing with no explanation at the
3 time to us.

4 Q. Well, pull up Mr. de Alba's
5 affidavit, please, at tab 43, and turn to paragraph
6 157 where de Alba says:

7 "By August 15, 2014, VimpelCom
8 had adopted the position that it had
9 to manage the regulatory risk in a
10 more active manner. Specifically,
11 the chairman of VimpelCom's board
12 told Morgan Stanley that he wanted a
13 5 to 20 million dollar break fee if
14 Catalyst was so confident that it
15 would receive regulatory approval."

16 And I take it you have no evidence to
17 the contrary; correct?

18 A. I have evidence that it was a
19 brand new issue that just came up out of nowhere.

20 Q. I keep asking simple questions and
21 you keep giving speeches. The very simple question
22 is, several days later a request was made by the
23 chairman of VimpelCom's board to Morgan Stanley for
24 a break fee in the range of 5 to 20 million
25 dollars; isn't that true?

1 A. Yes.

2 Q. Now, am I correct that as of
3 August 11, 2014, VimpelCom had not secured board
4 approval for the Catalyst transaction?

5 A. I have no idea. I don't sit on
6 their board.

7 Q. And you were becoming impatient,
8 weren't you?

9 A. I was becoming very worried.

10 Q. Turn to tab 25-A, please. So at
11 tab 25-A you will see a series of emails exchanged
12 back and forth with you and others of August 11 of
13 2014, and this is CCG0024632. And I want to take
14 you to the email at the bottom of the first page
15 from Mr. Saratovsky of VimpelCom to Mr. Levin,
16 copied to de Alba, Babcock, and to about 14 or 15
17 other people at UBS, and so on, and you will see
18 the email says "Re: Exclusivity agreement signed",
19 he says:

20 "We will do all we can to
21 expedite but the reality is that we
22 have two public company boards that
23 need to approve it so I don't want
24 to set unrealistic expectations."
25 And then if you go above that, you will

1 see that that email ends up being sent on to you by
2 Levin at Faskens, and your response is at the top
3 of the first page, your email of August 11, 2014 at
4 10:17 a.m. sent to Levin and de Alba, and you say:

5 "Tell him that's his problem to
6 manage now. I expect this to be
7 press released today. Otherwise, no
8 deal. I am fed up. I do not want
9 to hear a single more excuse from
10 them."

11 So unpacking that a little bit, you
12 were told on August 11 that VimpelCom did not have
13 board approval, and in fact, it needed approval
14 from two public company boards before they could
15 proceed; correct?

16 A. Yeah, we saw it as a stall tactic,
17 which it was.

18 Q. I'm just asking what you were
19 told, sir. You were told on August 11 that
20 VimpelCom did not yet have board approval and in
21 fact needed the approval of two public company
22 boards; correct?

23 A. Yes, as a stall tactic, and then
24 they announced the deal to Industry Canada the same
25 day.

1 MR. THOMSON: Your Honour, this is
2 becoming a little bit exasperating, but I guess --

3 THE COURT: Well, Mr. Glassman wants to
4 argue his case. I asked him not to, but --

5 BY MR. THOMSON:

6 Q. He persists.

7 So, sir, you are the author of your own
8 misfortune, and we'll be making submissions about
9 this as we move forward.

10 So let's look at your reaction. Your
11 reaction was not one of sympathy for VimpelCom.
12 You asked Levin and de Alba to tell VimpelCom that
13 that was their problem to manage, and you expected
14 this to be press released today on August 11 of
15 2014, otherwise there was no deal; correct?

16 A. Yes, with a positive result.

17 Q. Well, we are going to see how
18 positive the result was in just about one minute.
19 By August 11, Mr. Glassman, you were furious not
20 only with VimpelCom but also with your own deal
21 team; correct?

22 A. No. Furious with VimpelCom,
23 frustrated with my deal team.

24 Q. Well, let's just see what you said
25 at the time. Turn up, please, tab 25-B. Again,

1 this is another series of emails on August 11 of
2 2014, the very same day. This is document
3 CCG0024640, a series of emails that you were
4 involved in.

5 And let me start at page 4 of this
6 email chain, an email you sent again on August 11
7 of 2014, Mr. Glassman, at 8:12 a.m. Do you have
8 that at the bottom of the page? On August 11 of
9 2014 at 8:12 a.m. you write an email and this goes
10 up the chain. We'll see where it goes in a minute.
11 You write and say:

12 "I am done with this situation.
13 Either it's announced immediately
14 and is fully binding subject to
15 regulatory approval (has always been
16 the deal) or Catalyst is out right
17 now."

18 So by 8 o'clock on the morning on
19 August 11 you are becoming frustrated and upset;
20 fair enough?

21 A. I'm pushing people, pushing
22 everybody.

23 Q. Just above that, Mr. Levin's
24 response at 8:19 a.m., and Levin writes back to you
25 copied to de Alba and says:

1 "Let's see what we can
2 organize. They need board approval
3 and do not have it."

4 Again, you are told for the second time
5 on the 11th they don't have board approval;
6 correct? Correct?

7 A. No, Jon is repeating what they
8 have already been told.

9 Q. You were being told by your
10 lawyer, Mr. Levin, who you have been dealing with
11 for 25 years, you say, that they need board
12 approval and they do not have it?

13 A. No, you misunderstand my answer.
14 He is basing that statement on what he has been
15 told, so he is just repeating the same piece of
16 information.

17 Q. It is a simple question. You were
18 being told by your lawyer that they need board
19 approval and they do not have it?

20 A. It is the same information. It is
21 from the same source.

22 Q. And then just above that, let's
23 see what your reaction is, Mr. Glassman, about six
24 minutes later. At 8:25 a.m. you write back and you
25 say:

1 "That's now their problem."

2 And then you say this:

3 "I am furious - both at them
4 and at our own team."

5 That is why I suggested to you five
6 minutes ago that by August 11 you were furious not
7 only with VimpelCom but also with your own deal
8 team?

9 A. Okay, so I told them that I was
10 furious at them.

11 Q. And then you go on to refer to
12 some other issues, and you say:

13 "To allege that somehow there
14 is no way to gain control of the
15 collateral unless Tennenbaum
16 voluntarily sells is both
17 legally/factually wrong but
18 ridiculous. To allow the other side
19 to use such to buy a delay is naive
20 and amateurish. They are allowed to
21 try any tactic they desire but it's
22 our job to decide which ones are
23 legitimate and acceptable and which
24 are not. The situation is not the
25 first one they have tried on us.

1 And they re-traded the last time
2 when we were close to the finish
3 line. It is their job to manage
4 their own board and get whatever
5 approvals they need. It is our
6 team's job to manage me, and I am
7 fed up and done."

8 So you sent that email, did you not, at
9 8:25 a.m.?

10 A. I clearly did.

11 Q. On the 11th?

12 A. I clearly did. And it shows my
13 distrust of their tactics.

14 Q. And Levin writes back, sir, three
15 minutes later to tell you that your concerns are
16 unfounded. He says:

17 "I don't think the Tennenbaum
18 situation is being used by them in
19 the way you say. We gave them a
20 solution to it so that is not likely
21 an issue."

22 You then write back at the top of that
23 page four minutes later at 8:32 a.m.:

24 "I was told yesterday that in
25 fact it was the issue - the reality

1 is that our side should not have
2 ever been allowed it to be more than
3 a momentary process discussion. Now
4 we are in the position where it has
5 been used to introduce unnecessary
6 and uncontrollable external deal
7 risk. That is not good and it's
8 definitely not the way Catalyst runs
9 deals."

10 Levin writes back six minutes later,
11 seven minutes later, at 8:39 a.m. the same day,
12 August 11:

13 "It was momentary. As soon as
14 it was identified as an issue,
15 Gabriel and I dispelled it."

16 And then you say the following at the
17 top of that page at 8:54 a.m.:

18 "Clearly not just momentary -
19 by definition, since I had to jump
20 in and try to understand what was
21 said by the other side. Worse, very
22 clear to me that it was either an
23 attempt to delay (or evidence of
24 cold feet/change of heart by them)
25 or incompetent counsel on their

1 side. All bad from my perspective,
2 and my job is to identify the worst
3 scenario and then mitigate/eliminate
4 risk related to such. That is
5 exactly what I am doing and am now
6 demanding this deal be publicly
7 disclosed/press released today if
8 they want it to continue/remain
9 alive. That is no longer negotiable
10 for me. I don't trust them and
11 their behaviour makes even less
12 sense in the larger scheme of what
13 is going on between the big
14 personalities (Harper, Fridman,
15 Putin) on a much bigger scale."

16 So your position as of 8:54 a.m. on
17 August 11 was if the deal isn't press released
18 today, it is done, you are out?

19 A. Announced, and it was announced to
20 Industry Canada that night.

21 Q. Look at your words.

22 A. I understand what I wrote.

23 Q. "This deal be publicly
24 disclosed/press released today"?

25 A. Yeah.

1 Q. Not a discussion with Industry
2 Canada, press released?

3 A. And they gave me exactly the best
4 they could. I don't know a lot of companies that
5 would go to Industry Canada and make a disclosure
6 and then say they didn't have board approval when
7 they talked to the regulator.

8 Q. We'll talk about that in about one
9 minute, what happened on the night of August 11.

10 And then just to finish the discussion
11 and to just skip through a bit of this, go to the
12 top of the next page, the top of the first page,
13 that being an email you sent August 11 at 10:33
14 a.m. on the issue of board approval. You say:

15 "It's their problem to solve.

16 I will not allow us to own their
17 process issues. I have my own
18 problems related to this timing, not
19 the least of which is a call with
20 Harvard today and a complicated AP",
21 that's your advisory panel, "a
22 complicated [advisory panel] meeting
23 tomorrow. I have to have this in
24 the public domain today."

25 Correct?

1 A. Yes.

2 Q. Not a call with Industry Canada.
3 "I have to have this in the public domain today"?

4 A. Yes, I was using other issues as a
5 way of pushing my team, that's right, rightly so,
6 and got a result.

7 Q. Surely, Mr. Glassman, you weren't
8 being dishonest with your deal team, were you?

9 A. I was pushing my deal team and I
10 was using whatever means I had. They knew about
11 the advisory panel meeting, they knew about issues
12 with Harvard, and they knew that it would be a
13 reasonable thing that I needed something to tell
14 them both, and I did. It just wasn't exactly what
15 I asked for. It was one step less than that.

16 Q. You weren't being dishonest with
17 your deal team, were you?

18 A. I was clearly manipulating my deal
19 team and managing them.

20 Q. Because that is what you do, isn't
21 it, you manipulate, you mislead?

22 A. No, I didn't say that. I said
23 that I manipulated them on this issue. They would
24 know that any disclosure to the advisory panel
25 would probably be good enough. They would know

1 that I'm pushing them, and they would understand
2 exactly what I am saying.

3 Q. Am I right --

4 A. They wouldn't be quite as literal
5 as you are.

6 Q. Am I right that there was in fact
7 no press release announcing a Catalyst transaction
8 on August 11 of 2014?

9 A. As I have said earlier, there was
10 a call with Industry Canada.

11 Q. And am I right that you were told
12 on the very next day, on Tuesday, August 12th, that
13 a press release could not be issued unless and
14 until VimpelCom obtained board approval?

15 A. It is possible I was told that.

16 Q. Pull up, please, tab 25-C where
17 you will find a series of emails of August 12 of
18 2014. And, Your Honour, these are CCG0027262.

19 And, Mr. Glassman, I want to take you
20 to the middle of the second page of this document,
21 and we'll take these in sequence, where you were
22 told on August 12 of 2014 at 8:09 a.m. -- sorry, at
23 least Catalyst was told by Mr. Saratovsky, and you
24 will see his email to Mr. de Alba of August 12 at
25 8:09 a.m. where he says:

1 "Gabriel, we should not issue a
2 press release until we know when we
3 are going to have board approvals.
4 I cannot guarantee that I will
5 secure a board approval on the
6 current terms. You have agreed to
7 provide a line of credit to
8 refinance the vendor debt on the
9 same terms as the existing vendor
10 debt. We will likely draw down the
11 credit line soon after signing. We
12 need any drawdowns under the credit
13 line to come due no earlier than 3
14 months after termination of the SPA.
15 This is because if the deal fails
16 due to a government rejection, we
17 need some breathing room to remarket
18 the company without having to go
19 into CCAA. You and I both believe
20 that government approval should not
21 be an issue but we have had a bad
22 experience with the government in
23 the past, and we need some
24 protection to be able to preserve
25 value if our deal blows up."

1 So again, the position of VimpelCom was
2 that there isn't board approval, that there should
3 be no press release issued until there is board
4 approval, and Mr. Saratovsky specifically told your
5 chief negotiator that he could not guarantee that
6 he would be able to secure board approval on the
7 current terms; fair enough?

8 A. That is what it says.

9 Q. Now, let's then deal with this
10 call with Industry Canada that took place on August
11 11 of 2014. Go to paragraph 45 of your affidavit
12 where you say in paragraph 45 at the top of page
13 18:

14 "Despite VimpelCom's sudden
15 concerns about regulatory risk,
16 during the late evening on August
17 11, 2014, I understand from de Alba
18 that Catalyst and VimpelCom had a
19 call with Industry Canada during
20 which the parties told Industry
21 Canada that 'the deal was done'."
22 Do you see that?

23 A. I do.

24 Q. I took it from your affidavit that
25 you were not on the call?

1 A. I was not.

2 Q. And of course, as of August 11 of
3 2014, you knew fully well that there was no board
4 approval from VimpelCom, and we have been through
5 that; correct?

6 A. I'm sorry, say that again?

7 Q. You knew that there had been no
8 board approval from VimpelCom as of August 11th?

9 A. Okay.

10 Q. You knew that?

11 A. I was told that, yeah, no formal
12 board approval.

13 Q. Well, no board approval?

14 A. No formal board approval.

15 Q. So now we are into a formal versus
16 informal. They informally had approved it; who
17 told you that? Who told you the board of VimpelCom
18 had informally approved the deal?

19 A. Nobody had to tell me anything.
20 Normal practice and my experience for 26 years,
21 fairly successfully, is that no management team
22 would ever take a deal to the one yard line and
23 then spring a surprise on their board, unless they
24 intended to use the board as a way to scuttle the
25 deal, which appears to have happened here.

1 Q. We have been around that mulberry
2 bush five minutes ago; I'm not going to retread
3 that ground again.

4 A. And I was also told about this
5 call from Bruce Drysdale.

6 Q. Pardon me?

7 A. I was also told about this call by
8 Bruce Drysdale.

9 Q. Now, I'm going to suggest to you
10 that in these circumstances, Catalyst had no basis
11 whatsoever for telling Industry Canada on the
12 evening of August 11 of 2014 that the deal was done
13 because it clearly was not?

14 A. VimpelCom told Industry Canada.

15 Q. Well, you weren't on --

16 A. By both parties.

17 Q. Well, you weren't on the call,
18 were you?

19 A. But VimpelCom was, and I know
20 VimpelCom was, and if they didn't think the deal
21 was done, they would have protested. They didn't.

22 Q. You don't know what the precise
23 words were?

24 A. No, but I had it from two separate
25 sources, Bruce Drysdale and Gabriel.

1 Q. Are you able to show me a
2 contemporaneous document?

3 A. No.

4 Q. Am I right that by Thursday,
5 August 14 of 2014 you had concluded that Catalyst's
6 transaction with VimpelCom was in fact technically
7 dead?

8 A. Either dead or deeply in trouble.

9 Q. And pull up, please, tab 25-D.
10 You will find a series of emails of August 14th of
11 2014 which are, Your Honour, CCG0028615.

12 And, Mr. Glassman, you'll find here a
13 series of emails that you exchanged back and forth
14 with a reporter named Boyd Irman; do you see that?

15 A. They haven't moved it, but I
16 remember this.

17 Q. And Mr. Irman is a reporter with
18 The Globe and Mail, is he?

19 A. I don't know if he still is. I
20 think he was then.

21 Q. All right. And the email I'm
22 interested in is at the very top of the first page.
23 It says:

24 "I suspect the opposing deal
25 team has leaked this to put pressure

1 on us. The [strict] fact [...]" --
2 or the "straight fact"?

3 Is it "strict fact" or "straight fact"?

4 A. I think it is supposed to be
5 "strict".

6 Q. "The [strict] fact is that
7 although we continue to have
8 exclusivity, the deal is technically
9 dead so I was careful in my response
10 [...]"

11 So that was your perspective as of
12 August 14, was that this deal with VimpelCom was
13 technically dead?

14 A. Well, either the deal or certainly
15 the exclusivity, because there was something very
16 fishy about what was going on. This was a
17 whipped-off email, so I don't know if I meant the
18 deal. I certainly meant the exclusivity was
19 clearly leaked and something else was going on. It
20 was very clear that there were troubles.

21 Q. And, Mr. Glassman, you may have
22 noted that we have been through a series of emails
23 about the exchanges with VimpelCom, board approval,
24 about the risk to the deal, the status of the deal,
25 and of course not one of your emails was sent or

1 copied to Lorne Creighton; correct? These were all
2 to you, between you, de Alba, Riley, and Levin?

3 A. I think on these issues, yeah.

4 Q. And am I right that Creighton was
5 the analyst at Catalyst who stepped into the shoes
6 of Mr. Moyse after Moyse left Catalyst in May of
7 2014?

8 A. I believe so.

9 Q. These emails weren't even copied
10 to Zach Michaud who, as you said earlier, was a
11 Vice President of Catalyst who was involved
12 throughout the Wind transaction as a member of the
13 core deal team; correct?

14 A. I believe so.

15 Q. And am I right that you were
16 picking and choosing who to send emails to and who
17 to copy on the emails?

18 A. Well, I was certainly choosing
19 only to talk to my two partners about it.

20 Q. You could easily have sent these
21 emails to every investment professional at Catalyst
22 or at least to the entire core deal team at
23 Catalyst but you chose not to do so; correct?

24 A. Clearly.

25 Q. Now, am I right that, to finish

1 the story, Friday, August 15 of 2014 is the date
2 that the chairman of VimpelCom's board tells Morgan
3 Stanley that he wants a break fee of 5 to 20
4 million dollars if regulatory approval is not
5 granted within 60 days?

6 A. I don't know the exact date, but
7 you have demonstrated that it did come from them.

8 Q. Let's go to your affidavit, I hope
9 one last time. Turn to paragraph 46 where you say
10 this:

11 "I'm told by de Alba that
12 Catalyst and VimpelCom had agreed on
13 a timetable for regulatory approvals
14 weeks earlier. However, suddenly by
15 August 15, 2014 VimpelCom insisted
16 on a new term that provided for a 5
17 to 20 million dollar break fee if
18 regulatory approval was not granted
19 within 60 days, which everyone knew
20 was highly unusual, and, on its own,
21 unreasonable."

22 I take it that is the timing of the
23 request that was made?

24 A. You said August 15th, and I wrote
25 "by August 15th". I don't know the exact date that

1 it happened.

2 Q. Okay. And am I right, if we read
3 on in your affidavit, you say:

4 "Ultimately, Catalyst could not
5 close the deal with VimpelCom
6 because of VimpelCom's insistence on
7 this new term."

8 Which I took to mean that Catalyst had
9 not agreed to the term VimpelCom had asked for;
10 correct?

11 A. Correct.

12 Q. Now, just to finish the story, if
13 we then turn to the last event I wanted to review
14 with you and turn to tab 25-E, you will find a
15 series of emails that deal with that request for
16 this break fee and so on. This is August 15, 2014,
17 and this is CCG0024802. And we can start halfway
18 down the first page, and you will find an email
19 from Mr. Levin of August 15th of 2014 at 2:37 p.m.;
20 do you have that?

21 A. I see it.

22 Q. Mr. Levin says:

23 "They are out to lunch, and I
24 think we should tell them."

25 Above that, de Alba says in an email at

1 2:38 p.m.:

2 "Absolutely."

3 And then just above that, Mr. Babcock
4 from Morgan Stanley says:

5 "Tell them and shut down
6 communication. This needs to go
7 past the exclusivity time as [...]"

8 And he says "Alksey" and I assume that
9 is a reference to Aleksey Reznikov, the chair of
10 VimpelCom; is that how you read that?

11 A. I am assuming you are right.

12 Q. "This needs to go past the
13 exclusivity time and [the chair of
14 VimpelCom] needs to see his
15 alternatives and their terms."

16 And I take it that Catalyst did in fact
17 follow the advice given to it by Faskens and by
18 Morgan Stanley, that it did tell VimpelCom that
19 this term was unacceptable, and it then shut down
20 communications, allowed this period of exclusivity
21 to come to an end and allowed VimpelCom to consider
22 its alternatives?

23 A. I don't know the exact timing, but
24 I know that the exclusivity expired on August 18th.

25 Q. Right.

1 A. And the conclusion that you have
2 posed is correct. I just don't know the timing of
3 exactly when it was communicated or how it was
4 communicated.

5 Q. Am I right that, to your
6 knowledge, Catalyst did in fact continue to pursue
7 its acquisition of Wind Mobile in the period after
8 its exclusivity expired on August 18th?

9 A. I believe so.

10 Q. And am I also right that Catalyst
11 has refused to make any disclosure or production
12 concerning its efforts to acquire Wind in the
13 period after August 18 in this case?

14 A. I think it was half-hearted. I
15 think it was just phone calls, I believe.

16 MR. THOMSON: Thank you very much, Mr.
17 Glassman. Those are all of my questions.

18 THE COURT: Yes, Mr. Centa?

19 MR. CENTA: I'm in your hands, Your
20 Honour, if you want me to proceed now, or I can
21 take overnight and shorten this up and come back
22 tomorrow.

23 THE COURT: That is the old promise.

24 MR. CENTA: I'll stand and deliver
25 tomorrow morning.

1 THE COURT: Sometimes it is give me
2 time and I'll shorten it, and then the time goes by
3 and it has lengthened it. What is it going to be?

4 MR. CENTA: It is my chess clock, Your
5 Honour, and I will do my best.

6 THE COURT: All right, we'll stop now.

7 Okay, we'll come back at 9 o'clock
8 tomorrow morning.

9
10 -- Adjourned at 4:52 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed.

Dated this 1st day of October, 2016.



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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