

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

VOL 4
June 09, 2016

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141 Adelaide Street West | 11th Floor
Toronto, Ontario M5H 3L5
1.888.525.6666 | 416.413.7755

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 4/Volume 4 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 9th day
of June, 2016, commencing at 9:30 a.m.

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

1 REPORTED BY: Kimberley A. Neeson

2 RPR, CRR, CSR, CCP, CBC

3 Realtime Systems Administrator

4 and Deana Santedicola, RPR, CRR, CSR

5
6 A P P E A R A N C E S :

7
8 Rocco DiPucchio, Esq.,

9 & Andrew Winton, Esq., for the Plaintiff.

10 & Brad Vermeersch, Esq.

11
12 Robert A. Centa, Esq., for the Defendant,

13 & Kris Borg-Olivier, Esq., Brandon Moyse.

14 & Denise Cooney, Esq.

15
16 Kent Thomson, Esq.,

17 & Matthew Milne-Smith, Esq.,

18 & Andrew Carlson, Esq., for the Defendant,

19 West Face Capital Inc.

20
21 James Zibarras, Esq., for the Witnesses,

22 Hamish Burt and

23 Michael Leitner

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I N D E X

WITNESS

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1 -- Upon commencing at 9:40 a.m.

2

3 THE COURT: What's the state of play
4 today.

5 MR. DIPUCCHIO: You'll recall last
6 afternoon we had a discussion about the order of
7 witnesses. I am prepared to accommodate the
8 schedules of my friends' witnesses so I think we're
9 going to now switch it up and my friends are going
10 to call a few witnesses out of order.

11 MR. ZIBARRAS: Your Honour, just to
12 introduce myself to the court, I am here on behalf
13 -- as counsel for the two witnesses that are going
14 to be called, 64NM and for Tennenbaum.

15 THE COURT: Just before you get going,
16 I'm not sure what status you have. Does anybody
17 have any concerns?

18 MR. ZIBARRAS: My role, Your Honour, is
19 very limited. I'm only here because there is a new
20 lawsuit that was filed.

21 THE COURT: I understand.

22 MR. ZIBARRAS: I'm just here in case I
23 need to make any objection as it relates to the
24 overlap between those two actions.

25 THE COURT: Well --

1 MR. ZIBARRAS: You may not hear from me
2 at all, Your Honour.

3 THE COURT: Well, I'm not sure that you
4 have any status, frankly. What do you say?

5 MR. DIPUCCHIO: I agree, Your Honour, I
6 have the greatest of respect for Mr. Zibarras,
7 obviously, but I don't believe that counsel for a
8 witness has any status in the proceedings.

9 My position is Mr. Zibarras can observe
10 all he wants but he doesn't have status to make any
11 submissions, unless there is some issue of
12 privilege that arises, but I am not aware of any,
13 Your Honour.

14 THE COURT: All right. We're ready to
15 proceed.

16 MR. CARLSON: West Face calls Hamish
17 Burt.

18 HAMISH BURT: SWORN.

19 MR. CARLSON: Your Honour, good
20 morning. I'd just like to navigate you to the
21 folder that I'm going to be using for the
22 examination.

23 THE COURT: I have it. If it's the
24 affidavit, I have it.

25 MR. CARLSON: Great.

1 EXAMINATION IN-CHIEF BY MR. CARLSON:

2 Q. Mr. Burt, you're here as a
3 representative of 64NM Holdings GP LLC, which is
4 the general partner of 64NM Holdings LP; is that
5 right?

6 A. Yes.

7 Q. Can you please briefly describe to
8 the court 64NM's role in the acquisition of Wind?

9 A. 64NM Holdings LP is a special
10 purpose vehicle we established for the sole reason
11 of participating in the transaction.

12 Q. And when you say "we," who do you
13 mean?

14 A. Referring to LG Capital Investors
15 which is the family office of Mr. Lawrence Guffey.

16 THE COURT: Mr. Burt, the acoustics in
17 this room are very poor, so if you could just try
18 and keep your voice up a bit, that would be very
19 helpful.

20 THE WITNESS: Yes, Your Honour.

21 MR. CARLSON: Thank you, Your Honour.

22 BY MR. CARLSON:

23 Q. And who is Mr. Guffey?

24 A. Mr. Guffey was a former senior
25 managing director at the Blackstone Group where he

1 worked for 22 years. He retired at the end of
2 2013, having run their telecoms business.

3 Q. Mr. Burt, you swore an affidavit
4 in this proceeding on June 1st, 2016?

5 A. Yes.

6 MR. CARLSON: And, Your Honour, for
7 your reference, that's the first document in the
8 Hamish Burt folder.

9 THE COURT: I have it.

10 MR. CARLSON: It's WFC0112289, for the
11 record.

12 BY MR. CARLSON:

13 Q. Mr. Burt, in Exhibit 1 to that
14 affidavit is an affidavit that you swore in a
15 related proceeding; is that right?

16 A. Yes.

17 Q. And that was the Plan of
18 Arrangement of Mid-Bowline in January?

19 A. Yes.

20 Q. Do you adopt your affidavits as
21 evidence at this trial?

22 A. Yes.

23 Q. Mr. Burt, I'd like to ask you some
24 questions about your involvement and 64NM's
25 involvement in the Wind transaction. So can you

1 please describe your role at 64NM with respect to
2 the acquisition of Wind?

3 A. Sure. I played a supporting role
4 in the evaluation of the transaction with --
5 alongside Mr. Guffey and a primary role in the
6 establishment, structuring and execution of the
7 vehicles which we ultimately used to acquire our
8 interest in Wind.

9 Q. When did 64NM first begin pursuing
10 an acquisition of Wind?

11 A. The spring of 2014.

12 Q. And how did 64NM come to be a part
13 of the syndicate that ultimately acquired Wind in
14 September 2014?

15 A. We had just established a family
16 office in the middle of 2014 and so it was just
17 Mr. Guffey and I at that time. When we came to
18 learn of the opportunity, we recognized that we
19 needed partners in order to be able to deal with a
20 transaction of this size.

21 Mr. Guffey had a connection to
22 Mr. Lacavera who connected us with Tennenbaum and
23 then we also introduced the opportunity to
24 Blackstone.

25 Q. Mr. Burt, there's been evidence in

1 this case about a proposal made to VimpelCom by the
2 investor group that included your firm, 64NM, on
3 August 7th, 2014. Do you recall that proposal?

4 A. Yes.

5 Q. Can you please describe at a high
6 level the basic nature of the proposal?

7 A. The basic nature of the proposal
8 was a two-step process to allow us to meet the
9 well-known requirements of VimpelCom. The first
10 stage of that process allowed us to step into
11 VimpelCom's shoes and provide them with the clean
12 exit that they needed with minimal risk. In the
13 second stage we would undertake a reorganizing of
14 the vehicle's voting shares which would -- which
15 would trigger the change of control that would
16 require regulatory approval.

17 Q. And at the time that the proposal
18 was made, had 64NM formed a view about the
19 regulatory risks to 64NM in acquiring Wind using
20 that approach?

21 A. Yes.

22 Q. What was that view?

23 A. The view was that there would be
24 no issue with our participation in the consortium
25 because we had socialized the idea previously with

1 the government.

2 Q. Had 64NM formed a view concerning
3 the viability or prospects of the business of Wind?

4 A. Yes.

5 Q. What was that view?

6 A. That view was if the framework
7 that the government had proposed, most notably the
8 set-aside in the AWS3 spectrum auction, that Wind
9 could be a viable stand-alone business.

10 Q. Did you or Mr. Guffey have any
11 contact whatsoever at any step along the way with
12 Brandon Moyse?

13 A. No.

14 Q. Did Mr. Moyse -- did West Face
15 convey to you any information concerning Catalyst
16 that it had obtained from Mr. Moyse?

17 A. No.

18 Q. I understand from your affidavit
19 that you have read the affidavit of Newton Glassman
20 sworn May 27th, 2016?

21 A. Yes.

22 Q. Did West Face ever communicate to
23 you the regulatory strategy of Catalyst as
24 described in Mr. Glassman's affidavit?

25 A. No.

1 Q. Did --

2 THE COURT: Pause. Go ahead.

3 BY MR. CARLSON:

4 Q. Did the consortium including 64NM
5 ever consider demanding regulatory concessions from
6 the Government of Canada before acquiring Wind?

7 A. No.

8 MR. CARLSON: Those are my questions,
9 Your Honour, subject to re-examination.

10 MR. WINTON: Good morning, Your Honour.
11 Good morning, Mr. Burt.

12 Your Honour, at the outset I advised my
13 friends before we started that I was going to alert
14 you that in our closing arguments we will be making
15 arguments as to why evidence in Mr. Burt's
16 affidavit should be considered inadmissible, so I
17 just want to alert you to that fact.

18 CROSS-EXAMINATION BY MR. WINTON:

19 Q. Mr. Burt, if we could turn up
20 paragraph 7 of your affidavit. Your Honour, that's
21 the first document --

22 THE COURT: I've got the affidavit
23 here.

24 MR. WINTON: Great, thank you, Your
25 Honour.

1 BY MR. WINTON:

2 Q. So paragraph 7, I want to make
3 sure I understood this both from your in-chief this
4 morning and your affidavit. LG Capital was
5 established in 2014; is that correct?

6 A. Yes.

7 Q. And to be more specific, I
8 understand it was established in May 2014, correct?

9 A. I don't recall the specific date
10 LG Capital was formed.

11 Q. I didn't ask you for the specific
12 date but the month, do you recall the month it was
13 established?

14 A. I don't, I'm afraid, recall. It
15 sounds like around the correct time.

16 Q. So I'm in the right range?

17 A. You're in the right range, yes.

18 Q. Thank you. And if I understood
19 what you were saying this morning correctly, 64NM
20 is the vehicle through which LG Capital invested in
21 the Wind transaction, correct?

22 A. Correct. The limited partnership.

23 Q. Sorry, right, the limited
24 partnership through which LG Capital made its
25 investment in Wind, its contribution to purchasing

1 the equity and all the rest, correct?

2 A. Correct.

3 Q. And your role, as you described
4 it, you had the primary role of establishing the
5 vehicle to acquire the Wind interests, correct?

6 A. Correct.

7 Q. So that's the establishment of
8 64NM?

9 A. Correct.

10 Q. And 64NM was established after LG
11 Capital?

12 A. Yes.

13 Q. And was it established after the
14 proposals that were discussed this morning and in
15 your affidavit in May?

16 A. Which proposals are you referring
17 to?

18 Q. The proposals that were made to
19 VimpelCom in August 2014.

20 A. Yes.

21 Q. So you waited until the deal was
22 moving along before you established 64NM, correct?

23 A. I believe 64NM was established at
24 the beginning of September.

25 Q. Right. Okay. That's fine, thank

1 you. Paragraph 9 of your affidavit, in the
2 description of your role, you were working with
3 Mr. Guffey since May 2014, and that may assist your
4 memory as to when LG Capital was formed, May 2014
5 was when LG Capital was likely formed?

6 A. It was around that time.

7 Q. And then you say in parentheses,
8 formally since July 2014. So what did you mean in
9 your affidavit when you qualified your role as
10 formally?

11 A. The start of my employment
12 contract is July 2014.

13 Q. So prior to July you weren't
14 employed by LG Capital; fair?

15 A. Formally, no.

16 Q. You were working for LG Capital?

17 A. Yes.

18 Q. But not subject to a written
19 agreement; is that perhaps the way to describe it?
20 What I'm trying to understand is why you would
21 distinguish between your May date and your July
22 date with the "formally." What's the --

23 A. Well, I wouldn't want to say I was
24 employed by an entity in which there was not a
25 contractual agreement established between myself

1 and that entity.

2 Q. Understood, thank you. Prior to
3 July were you employed by another entity?

4 A. Not prior to my previous employer
5 in the UK, no, sir.

6 Q. I'm not sure I understand what
7 that means. Were you employed by -- you worked --

8 A. I was employed by a company prior
9 to my employment at LG Capital Investors. That
10 company, I was a partner at Promethean Investments
11 LLP, which was a UK firm.

12 Q. So were you employed by Promethean
13 in May and June of 2014?

14 A. No, sir.

15 Q. Okay. Now, paragraph 16 of your
16 affidavit, which I'd like to turn up for you, you
17 -- LG Capital, I shouldn't say you, LG Capital and
18 there's a host of other entities named here, made a
19 number of proposals to VimpelCom in June and July
20 2014. And were these proposals made as a group?
21 So was this a consortium of sorts that was making
22 these proposals or were these individual proposals
23 by these entities?

24 A. This was a consortium of sorts.

25 Q. Okay. So the four of you teamed

1 up and were making proposals to VimpelCom in
2 June/July 2014?

3 A. Yes.

4 Q. And in your affidavit you refer to
5 a number of proposals. What's the number of
6 proposals that were being made?

7 A. I -- I could not tell you a
8 specific number, I'm afraid.

9 Q. Two, three?

10 A. I don't recall the specific
11 number.

12 Q. Okay. Drafts of a share purchase
13 agreement were exchanged. How many drafts of a
14 share purchase agreement were exchanged?

15 A. I am afraid I don't recall.

16 Q. No ability to help us on that?

17 A. There were drafts exchanged but I
18 could not tell you how many drafts went between the
19 lawyers, no, sorry.

20 Q. Okay. I'm correct that the four
21 entities referred to in this paragraph, they're all
22 US-based investment vehicles, correct?

23 A. They are all US. They are all
24 firms that have their headquarters in the US, yes.

25 Q. So you understand that under --

1 from a Canadian regulatory point of view, they
2 would be considered foreign investors, correct?

3 A. I believe they would be considered
4 US investors, yes.

5 Q. But more specifically from a
6 Canadian point of view, foreign investors?

7 A. I'm not familiar with how the
8 Canadian Government classifies its investors. I
9 know that these firms have their headquarters in
10 the US.

11 Q. So when you were socializing, as
12 you put it, the Canadian Government to LG Capital,
13 you weren't doing so without an understanding as to
14 whether you were considered a foreign investor or
15 not?

16 A. We were doing so on the basis that
17 we were not Canadian.

18 Q. Okay. You understood in this
19 June/July time period that a change of control at
20 Wind would require regulatory approval by the
21 Canadian Government, correct?

22 A. Correct.

23 Q. Let's be more specific. By
24 Industry Canada? Right?

25 A. Yes, I believe so.

1 Q. And you understood there may be
2 some sensitivity at Industry Canada or at the
3 federal government as to -- with the idea of Wind
4 being sold to an American consortium?

5 A. No, sir.

6 Q. That wasn't at all a concern of
7 yours?

8 A. No, it was the -- we recognized
9 there was some sensitivity around VimpelCom's
10 ownership and it was well understood that the
11 Canadian government had a preference for a
12 Canadian-facing owner of Wind Mobile.

13 Q. And this consortium didn't have
14 that Canadian-facing owner, correct?

15 A. Not at that time, no, sir.

16 Q. And would I be correct to assume
17 that the proposals you referred to in this
18 paragraph had a provision whereby any closing of
19 the purchase would be conditional on receiving
20 regulatory approvals?

21 A. I do not remember the specific
22 provisions of those proposals.

23 Q. I'm asking about one provision.
24 Do you know if that provision that I asked about?

25 A. Not with any definitive answer,

1 no. As I stated earlier, we were a two-man shop
2 and obviously these firms are large, you know,
3 well-known private equity firms who were leading
4 the transaction. We were playing a minority role
5 in this consortium.

6 Q. Before these proposals were being
7 made, one of the two members of your two-man shop
8 would have reviewed them, correct?

9 A. Yes.

10 Q. Was it you or was it Mr. Guffey?

11 A. I am sure I reviewed share
12 purchase agreements at some stage during -- I
13 reviewed a lot of share purchase agreements during
14 our -- during our evaluation of the transaction.

15 Q. But sitting here today, you can't
16 recall whether those share purchase agreements had
17 a condition of regulatory approval?

18 A. I cannot.

19 Q. Okay. And in these proposals or
20 share purchase agreements that were being exchanged
21 referenced in this paragraph, what was the
22 enterprise value that you were offering for the
23 purchase of Wind?

24 A. Again, I would have to refresh
25 myself to the specific share purchase agreement

1 that you are referring to, if there were multiple.

2 Q. You don't recall?

3 A. I don't recall but I am sure it
4 would be -- I don't recall specifically but I am
5 sure it would be in the ballpark of where we ended
6 up.

7 Q. But you don't recall?

8 A. I don't recall specifically a
9 number, no.

10 Q. Paragraph 19, if we look beginning
11 on the fourth line, the third sentence:

12 "During the period of
13 exclusivity, VimpelCom did not
14 negotiate with us and we therefore
15 knew nothing about VimpelCom's
16 specific negotiations with
17 Catalyst."

18 Your use of the pronoun "we," who are
19 you referring to by the pronoun "we" in that
20 sentence?

21 A. LG Capital.

22 Q. Okay. So you and Mr. Guffey,
23 correct?

24 A. Yes, I believe so. I reference
25 "we" in the first line and there is parentheses

1 with LG Capital.

2 Q. But if we can put people behind LG
3 Capital, it was a two-man shop, it was you and
4 Mr. Guffey, correct?

5 A. Correct.

6 Q. So you're suggesting Mr. Guffey
7 also had no knowledge about VimpelCom's
8 negotiations with Catalyst?

9 A. We had no knowledge that Catalyst
10 were even a bidder. We believed them to be in the
11 process.

12 Q. But you had no knowledge?

13 A. Of what, sir?

14 Q. I'm going to use the singular. I
15 want to be clear here on our pronouns. So I am
16 saying you, sir, I am saying you had no knowledge
17 that Catalyst was a bidder?

18 A. I had no definitive knowledge that
19 Catalyst was a bidder. We believed Catalyst was in
20 the process.

21 Q. Right. No definitive knowledge
22 Catalyst was a bidder? I just want to make sure
23 I'm getting this right.

24 A. I had no definitive knowledge that
25 Catalyst was a bidder.

1 Q. Right. And you're saying
2 Mr. Guffey had no definitive knowledge that
3 Catalyst was a bidder?

4 A. You'd have to ask Mr. Guffey that.

5 Q. I would but he's not here today,
6 so thank you. During the exclusivity period you
7 continued to work with Globalive on formation of a
8 proposal, correct?

9 A. Which exclusivity period are you
10 referring to?

11 Q. The exclusivity period referred to
12 in paragraph 19 of your affidavit, sir.

13 A. We continued to work with our
14 consortium partners.

15 Q. You also worked with Globalive?

16 A. I don't specifically recall
17 Globalive. The main interface that we had was with
18 Tennenbaum.

19 Q. Okay. So you had no interface
20 then with Mr. Lacavera or Mr. Lockie?

21 A. I may have had some interfacing
22 with Mr. Lacavera and Mr. Lockie.

23 Q. Okay. To work on your proposal,
24 correct?

25 A. We worked -- the consortium were

1 putting a proposal together, yes.

2 Q. And they were part of the
3 consortium?

4 A. In part in what -- in what
5 respect?

6 Q. When you're putting the proposal
7 together, you are in communication with
8 Mr. Lacavera and Mr. Lockie as part of your work
9 putting together this proposal; fair?

10 A. Yes.

11 Q. Now, we know from previous
12 testimony in this case, the offer, the proposal
13 that your consortium made to VimpelCom in August
14 2014 included payment to VimpelCom of 135 million
15 dollars for their equity interest in Wind; is that
16 accurate?

17 A. Yes. If that's the correct
18 number, yes.

19 Q. Does that accord with your
20 recollection?

21 A. It accords with my recollection.

22 Q. And the offer included an offer to
23 sign within 24 to 48 hours; do you recall that?

24 A. I don't. If they said that in the
25 proposal, then that's what it was.

1 Q. And then close within a further 24
2 to 48 hours?

3 A. Again, you'd have to refer
4 directly to the proposal.

5 Q. Okay. Paragraph 22, let's look at
6 the last sentence of this paragraph. Under the
7 two-stage structure you described earlier this
8 morning, the investors were the ones who bore the
9 risk of any regulatory approval for - and here are
10 your words - either the acquisition of VimpelCom's
11 interest or the subsequent reorganization of voting
12 rights among the investors.

13 And I think we want to avoid any
14 confusion. I'm pretty sure it's understood, the
15 way you structured this, in fact that first item
16 didn't require regulatory approval. Wasn't that
17 the whole point, that you could acquire VimpelCom's
18 interest without seeking approval from the
19 regulator?

20 A. Yes, I agree that the narrative
21 there is as you described.

22 Q. That's okay, it's just a technical
23 error. But let's focus in on the second one, the
24 subsequent reorganization of voting rights among
25 the investors.

1 The risk you were bearing was that the
2 federal government or Industry Canada wouldn't
3 approve a change of control amongst the investors,
4 correct?

5 A. That was the theoretical risk.

6 Q. It was a risk you were bearing?

7 A. It was a risk that we had
8 considered.

9 Q. Right. And if that risk came to
10 pass, you would own two-thirds of the equity and
11 have one-third of the voting, correct?

12 A. Yes. If that's the way that the
13 structure was set up.

14 Q. And Mr. Lacavera would remain in
15 voting control of Wind if that came to pass?

16 A. Yes.

17 Q. And do you agree with me that in
18 the planning of these proposals and in your
19 discussions amongst the consortium, it was your
20 intention from the outset that you would be
21 replacing Mr. Lacavera as the CEO of Wind?

22 A. No.

23 Q. That wasn't your intention?

24 A. That was not our intention from
25 the start, no.

1 Q. That became part of your plan?

2 A. It was a consideration about how
3 we'd operate the business going forward.

4 Q. Right. Your consideration was you
5 would be replacing Mr. Lacavera?

6 A. The consideration was, were the
7 management team in place at the time the
8 appropriate management team to continue to run the
9 business when we got it.

10 Q. And the discussions amongst the
11 consortium was that Mr. Lacavera was not the person
12 to perform that task after you had taken control,
13 correct?

14 A. Well, he was ultimately replaced,
15 so yes.

16 Q. But that was a plan you discussed
17 during this July/August time period, correct?

18 A. I don't recall the time period
19 that it was discussed. It may well have been later
20 because obviously we had no control of the
21 transaction. Until we acquired the business, we
22 did not know what was going to happen.

23 Q. So it wasn't -- so are you sitting
24 here saying it wasn't part of your discussions
25 before you acquired control as to what you were

1 going to do when you acquired control?

2 A. Of course we had discussions with
3 how -- who would be the most appropriate management
4 team to run this business should we manage to
5 acquire it.

6 Q. Right. And in those discussions,
7 you contemplated replacing Mr. Lacavera as CEO,
8 correct?

9 A. In those discussions we
10 contemplated whether the management team in place
11 were appropriate to run the business going forward,
12 of which Mr. Lacavera is a part.

13 MR. WINTON: Sorry, Your Honour, just
14 one second.

15 BY MR. WINTON:

16 Q. Do you agree with me that if this
17 risk comes to pass that Mr. Lacavera or Globalive
18 remains in control of Wind, that would diminish the
19 value of the equity you had purchased from
20 VimpelCom?

21 A. Not necessarily, no, sir.

22 Q. No? Okay. Paragraph 23, you
23 refer to the two advantages to the approach of the
24 proposal the consortium made, right? That's your
25 word, "advantages"?

1 A. Yes.

2 Q. You knew in forming this proposal
3 that it gave you an advantage in the bidding?

4 A. It's not an advantage in the
5 bidding. We were putting together a proposal that
6 we believed best met VimpelCom's requirements.

7 Q. That's not an advantage, that's
8 just -- that's a different concept. We're talking
9 about advantages.

10 A. Correct, but in order --

11 THE COURT: He just answered you that
12 he disagreed with you. He said it's not an
13 advantage. That was your word.

14 MR. WINTON: Well, Your Honour, it's
15 his word, it's "two principal advantages to this
16 approach." It's there in 23 and it's there in 24,
17 so, with respect, it's his word and I'm asking
18 about his word.

19 THE COURT: Well, you're using a
20 different context, advantage in the bidding.
21 Anyway, you go ahead.

22 BY MR. WINTON:

23 Q. Paragraph 25. You understood
24 these advantages - your word - were what were
25 necessary to make your proposal attractive to

1 VimpelCom while it's negotiating with Catalyst,
2 correct?

3 A. I was not aware that VimpelCom was
4 negotiating with Catalyst. The proposal we put
5 forward was the best proposal that we could
6 formulate in order to meet VimpelCom's desires.

7 Q. You understood VimpelCom was in
8 exclusivity with another party; we can agree on
9 that?

10 A. Correct, we can.

11 Q. Now, we'll figure out whether or
12 not the consortium knew it was Catalyst or not, but
13 your intention in making this proposal was to
14 include what you believed to be advantages over
15 whatever discussions VimpelCom was having with the
16 entity in exclusivity; is that right?

17 A. No, sir.

18 Q. I'm going to put it to you that
19 you did know it was Catalyst in exclusivity. You
20 knew it; you didn't just assume it but you knew it?

21 A. Is that a question, sir?

22 Q. It is.

23 A. Could you repeat your question,
24 please?

25 Q. I'm putting it to you that you

1 knew, not just assumed, that Catalyst was in
2 exclusivity?

3 A. We believed it was Catalyst.

4 Q. And I'm putting it to you that you
5 knew. Do you disagree with that?

6 A. I disagree with that because we
7 believed it was.

8 Q. I'm going to put it to you that
9 you knew that Catalyst would not and could not
10 waive a regulatory approval condition?

11 A. We had no knowledge of that
12 whatsoever.

13 Q. Now, in paragraph 26, five lines
14 down, in the third -- maybe it's the fourth
15 sentence, see "To the best of my knowledge," the
16 sentence there?

17 A. Yes.

18 Q. To the best of your knowledge,
19 neither VimpelCom nor Globalive resumed
20 negotiations with the new investors until after
21 Catalyst's exclusivity expired.

22 That's to the best of your knowledge,
23 correct?

24 A. Yes, sir.

25 Q. You have no knowledge as to

1 whether other members of the consortium or
2 participants in the consortium had those
3 negotiations or discussions, correct?

4 A. Yes, sir.

5 Q. You agree with me that within the
6 consortium there is an inside circle of key
7 players?

8 A. Describe "key players."

9 Q. Mr. Guffey, Mr. Leitner,
10 Mr. Boland?

11 A. They were the principals leading
12 the transaction for each of the representative
13 parties, yes.

14 Q. And that sentence, your phrase
15 "resumed negotiations," do you agree that means
16 there were negotiations between VimpelCom and
17 Globalive before August 18th?

18 A. Sorry, could you repeat the
19 question?

20 Q. Right. You use the phrase, you
21 say "to the best of my knowledge neither VimpelCom
22 nor Globalive resumed negotiations," which suggests
23 there were negotiations at some point prior to
24 August 18th.

25 A. Prior to the period of

1 exclusivity, we had put proposals to VimpelCom.

2 Q. But not as the consortium that put
3 the proposal in in August, correct? It's a
4 different consortium?

5 A. It was a different consortium,
6 yes.

7 Q. Back to paragraph 1. If we can
8 scroll down a bit, in the second last line you
9 describe yourself as having been involved in the
10 negotiations. See that?

11 A. Yes, sir.

12 Q. But would you agree you weren't
13 directly involved in the negotiations, you were
14 more acting as Mr. Guffey's assistant or, not to
15 diminish your role, but as Mr. Guffey's number two?

16 A. Yes. Yes, sir.

17 Q. Mr. Guffey was directly involved,
18 correct?

19 A. Yes, he was.

20 Q. 27. Paragraph 27, please. I'm
21 going to put it to you that the statement, this
22 first sentence in this paragraph is incorrect and
23 that in fact LG Capital did have knowledge of the
24 details of Catalyst's negotiations with VimpelCom
25 during the exclusivity period. Do you agree with

1 that?

2 A. No, sir, that's definitively
3 incorrect.

4 Q. You, sitting here today, can't
5 speak to what Mr. Guffey knew, correct?

6 A. Correct.

7 Q. And at paragraph 28 you candidly
8 admit you don't know, sitting here today, if West
9 Face ever had knowledge of Catalyst's regulatory
10 strategy, correct?

11 A. Correct.

12 Q. You'd agree with me, though, and
13 you use that adjective in your affidavit, that that
14 information would be considered confidential to
15 Catalyst, correct?

16 A. I don't know what information to
17 which you're referring, sir.

18 Q. The information in your affidavit,
19 sir, regulatory strategy. If Catalyst had a
20 regulatory strategy, you agree that that would be
21 considered confidential?

22 A. It would depend on the contents of
23 the regulatory strategy. It sounds like an
24 opinion.

25 MR. WINTON: No further questions.

1 Thank you, Mr. Burt.

2 THE COURT: Any re-examination?

3 MR. CARLSON: No re-examination, Your
4 Honour.

5 THE COURT: I just have a question for
6 you. In your dealings with Mr. Guffey, did he ever
7 indicate to you that he knew that Catalyst was a
8 bidder or that he knew what Catalyst's negotiating
9 strategy was?

10 THE WITNESS: He indicated that he
11 believed Catalyst was a bidder in the process but
12 the regulatory strategy was never -- there was
13 never even a discussion of that.

14 THE COURT: Thank you. Any questions
15 arising out of my questions?

16 MR. CARLSON: No.

17 THE COURT: Thank you, Mr. Burt.

18 THE WITNESS: Thank you.

19 -- WITNESS EXCUSED --

20 MR. CARLSON: Your Honour, West Face
21 will call Michael Leitner and we're just going to
22 get him from our break-out room upstairs.

23 THE COURT: You're which?

24 MR. CARLSON: We're just going to go
25 find Mr. Leitner and call him.

1 THE COURT: We'll take five minutes for
2 a little technical switch.

3 -- RECESS AT 10:20 --

4 -- RESUMED AT 10:28 A.M.

5 MR. CARLSON: I'm not sure where we
6 left it, but we'll be swearing Mr. Leitner in.
7 West Face calls Michael Leitner at this time.

8 MICHAEL LEITNER: SWORN.

9 EXAMINATION IN-CHIEF BY MR. CARLSON:

10 Q. Good morning, Mr. Leitner.

11 A. Good morning.

12 Q. Your Honour, do you have Mr.
13 Leitner's examination in-chief folder?

14 THE COURT: I do.

15 BY MR. CARLSON:

16 Q. Mr. Leitner, you are a Managing
17 Partner at Tennenbaum Capital Partners; is that
18 right?

19 A. Correct.

20 Q. And Tennenbaum was a member of the
21 consortium that acquired Wind in September 2014?

22 A. That's correct.

23 Q. And you swore an affidavit in this
24 proceeding on June 1st, 2016?

25 A. I did.

1 Q. And for the record, the doc ID is
2 WFC0112222. And, Mr. Leitner, one of the exhibits
3 to that affidavit was an affidavit that you swore
4 in the Plan of Arrangement proceeding in January?

5 A. That's correct.

6 Q. Do you adopt your affidavits as
7 your evidence in this proceeding?

8 A. I do.

9 Q. Mr. Leitner, let me turn to your
10 professional background and the background of
11 Tennenbaum Capital Partners. Let's start with
12 Tennenbaum. Can you please describe what kind of
13 company Tennenbaum is and what it does?

14 A. Sure. Our firm is an
15 approximately 7 and a half billion dollar asset
16 manager focussing on direct lending and credit
17 special situations throughout North America and
18 Europe. We invest across a wide variety of
19 industries.

20 Q. Does Tennenbaum specialize in any
21 particular type of investment or investment
22 strategy?

23 A. We have strategies that involve
24 direct lending and we have strategies that involve
25 what we call special situations, which is investing

1 in distressed credit, companies that are going
2 through turnarounds, broken sale processes where we
3 will make debt or equity investments into those
4 businesses.

5 Q. What are your roles and
6 responsibilities at Tennenbaum?

7 A. Sure, I am a Managing Partner at
8 Tennenbaum. I sit on our Management Committee, and
9 I manage our technology, media and telecom
10 investment practice.

11 Q. Can you please summarize for the
12 Court your experience in the telecom industry?

13 A. Sure. I have been investing and
14 operating in that, in the telecom industry for
15 almost 25 years. I have spent some of my career as
16 an investment banker covering the technology and
17 telecom sector. I spent approximately ten years
18 working in a variety of companies within the
19 industry, at Microsoft on corporate development,
20 and I worked at three different telecom companies,
21 various different roles. I worked for a business
22 called 360 Networks which was Canadian in the role
23 of corporate development and I ran some of our data
24 centre business units. I was the CEO of another
25 telecom business called GlobeNet Communications. I

1 was head of strategy, corporate development and
2 effectively Chief Restructuring Officer of another
3 company called Wiltel Communications. All three of
4 those went through some form of re-organization or
5 restructuring.

6 And then I have been with my firm for
7 about 12 years where I have led several billion
8 dollars of investments broadly in the
9 communications and technology and media space.

10 THE COURT: And how did you avoid
11 Nortel?

12 THE WITNESS: Luck.

13 BY MR. CARLSON:

14 Q. Justice Newbould didn't have the
15 same luck.

16 I would like to turn to Tennenbaum's
17 past investments in Wind.

18 A. Sure.

19 Q. When did Tennenbaum first invest
20 in Wind?

21 A. So we got involved in Wind in the
22 summer of 2012. We started our investment in the
23 company by purchasing vendor debt from Nokia
24 Siemens which was one of the equipment vendors to
25 the company, and we acquired that debt along with

1 another firm, Providence Equity Partners, and were
2 lenders to the company from 2012 up until shortly
3 before the acquisition of Wind by the group.

4 Q. We have heard evidence in this
5 case about 150 million dollars in outstanding
6 vendor debt owed by Wind. Was the vendor debt held
7 by Tennenbaum a part of that 150 million dollars?

8 A. It was. Our firm owned
9 approximately 25 million of that vendor debt, and
10 our partners, Providence, owned another 25 million
11 dollar piece, which was all of what Nokia Siemens
12 held.

13 Q. So I would like to turn to the
14 Wind opportunity that arose in 2014. How did
15 Tennenbaum learn that VimpelCom wanted to sell its
16 equity interest in Wind?

17 A. Well, as a lender we had -- and
18 when I say "we", our firm and Providence had been,
19 you know, involved with the company for years
20 before the company found itself in the
21 circumstances of defaulting on our debt and
22 formally putting the company up for sale.

23 And over the years, when we made our
24 investment, our objective was to continue to invest
25 more capital into Wind, of which we were

1 unsuccessful in doing so.

2 And over the years that we were an
3 investor in it from 2012, 2013, 2014, I mean, a
4 number of events had transpired, and one of the
5 events was the inability of VimpelCom to take
6 complete and full control of Wind, the inability or
7 the relinquishment of their desire to bid on 700
8 megahertz spectrum, and then all of the
9 geopolitical macro events that took place in 2014
10 frankly all led to VimpelCom not putting more
11 capital into the company and letting the company
12 default on its vendor debt.

13 And shortly before the default, I spoke
14 to the treasurer of VimpelCom who told me that they
15 were defaulting on their debt, they were no longer
16 putting more money into Canada and the company
17 would be put up for a formal sale by UBS.

18 Q. At a high level, can you please
19 describe -- I'm just going to wait for His Honour.

20 THE COURT: No, go ahead.

21 MR. CARLSON:

22 Q. At a high level, can you please
23 describe the efforts Tennenbaum made to acquire
24 Wind in 2014?

25 A. Well, our firm had I guess a

1 diligence advantage in the sense that we were a
2 lender for two years, so we had a very strong
3 knowledge of the company, but like all
4 acquisitions, it was a very, very thorough
5 diligence process and work process to get to the
6 point where we were comfortable acquiring the
7 business.

8 So as part of that, we engaged in
9 extensive financial diligence. We brought forward
10 a set of advisors from CEO -- ex-CEOs of firms and
11 organizations that we felt would best exemplify the
12 kind of business model that we saw was the
13 opportunity for Wind.

14 So we brought on the ex-Public Mobile
15 CEO and some of his lieutenants as part of our
16 diligence team to craft and develop an operating
17 plan that we would take forth if we were the
18 successful owner of the business.

19 We brought on the ex-CEO of Leap
20 Wireless in the United States to help us craft and
21 just think through the diligence process.

22 And for us, much of the diligence was
23 really predicated on getting our conviction which
24 we had back in 2012 that a fourth carrier would be
25 viable in this country. And for our analysis, it

1 was clear to us that a fourth carrier would be
2 viable. In the United States, we had markets that
3 were smaller than Toronto, smaller than Vancouver,
4 that had six carriers operating profitably, two of
5 which were subsequently sold for several billions
6 of dollars, employing the same exact business model
7 as what we saw that we would be able to undertake
8 with Wind.

9 And in the Canadian marketplace, which
10 is a very, very unique mobile market, with the
11 highest wireless rates in the world, we saw a very,
12 very good opportunity for Wind to create a
13 substantial amount of value based on its product
14 offering.

15 So our diligence was predicated on the
16 value proposition that they were offering and
17 whether we would have enough wireless spectrum to
18 be able to conduct our business for the foreseeable
19 future.

20 Q. So I want to just unpack the
21 answer you gave a little bit. For the record, for
22 the Court record, who was the ex-CEO of Public
23 Mobile that you mentioned?

24 A. Alek Krystajic.

25 Q. You may need to spell that for the

1 court reporter.

2 A. That might be difficult, but I
3 will try my best. It is K-r-y-s-t-a-j-i-c, I
4 believe.

5 Q. And the ex-CEO of Leap, do you
6 recall his name?

7 A. Jerry Elliot.

8 Q. And what were the two companies
9 that you mentioned that had been sold for several
10 billion dollars in --

11 A. Leap Wireless and Metro PCS, both
12 were U.S. carriers that started out identically
13 like Wind, as start-ups and going after a lower
14 priced value proposition in a market dominated by
15 incumbents who had very high prices in their mobile
16 offerings.

17 Q. Following the completion of
18 Tennenbaum's due diligence, did Tennenbaum form a
19 view as to whether it required regulatory
20 concessions from the Government of Canada before it
21 would proceed with an acquisition of an equity
22 interest in Wind?

23 A. Our whole thesis was never
24 predicated on regulatory concessions. We never
25 needed regulatory concessions. The business model,

1 as I have highlighted, was really based upon the
2 value proposition that we could provide into the
3 Canadian marketplace. The issues that we spent
4 time with the Canadian Government, frankly, and we
5 viewed it as a partnership with the Canadian
6 Government, is number one, we were three U.S. firms
7 trying to buy a Canadian wireless company and it
8 would be, to my knowledge, the first time in the
9 history of the country that a foreign, a set of
10 foreigners would own a Canadian telecom.

11 And while the rules changed, we spent
12 quite a bit of time with the government to ensure
13 that they were comfortable with three U.S.
14 citizens, you know, effectively owning and
15 operating a wireless business and demonstrating
16 that we would be very good fiduciaries about it.

17 And the second issue that we spent time
18 with the government was how will Wind be able to
19 acquire new spectrum, and that was solved for us in
20 July when they put forth their announcement
21 associated with the AWS3 auction and set-aside.

22 Q. You mentioned that you were three
23 U.S. citizens. Who were the other two?

24 A. The other two parties that began
25 working with us through this process was Oakhill, a

1 private equity firm that is based in California,
2 and Blackstone based in New York.

3 Q. How and when did Tennenbaum become
4 a member of the consortium that included West Face?

5 A. And I'll just add to that, LG
6 Capital as well was part of our group, effectively
7 a part of Blackstone.

8 So with West Face, we reached out to
9 West Face originally in June, and it was through an
10 introduction, because one of the key components of
11 our bid was putting forth a debt refinancing of the
12 existing 150 million dollar vendor debt, because
13 the process laid out was crystal clear. The price
14 was the price; it was 300 million, and there was
15 150 million dollars of vendor debt that had to be
16 refinanced.

17 So we commenced a process of reaching
18 out to different debt financing parties, which was
19 not an easy process. We ultimately achieved our
20 debt financing commitments, but it was through that
21 where we had reached out and got acquainted with
22 West Face, and as a part of working with them as a
23 debt financing partner, we also, you know, were
24 willing to have them invest in our equity
25 syndicate.

1 Q. Why was West Face an acceptable
2 partner to Tennenbaum?

3 A. A number of reasons. Number one,
4 they are very knowledgeable about the telecom
5 sector, and when you are putting together equity
6 consortiums, you put together consortiums with
7 firms that have common vision. They see the
8 operating plan in a very similar fashion, so they
9 had a lot of sophistication about the space. They
10 were very well known in Canada. They were a
11 Canadian citizen, which was obvious for us from day
12 one that that's an important part of any equity
13 syndicate, which we didn't have.

14 So they, you know, for those reasons
15 became -- were a valuable part of, you know, what
16 we saw as putting together a good team of equity
17 investors.

18 Q. Mr. Leitner, we know from your
19 affidavit that Tennenbaum ultimately submitted a
20 proposal to VimpelCom on August 7th, 2014. If I
21 could ask that tab 5 of Mr. Leitner's examination
22 folder be turned up.

23 Sorry, Exhibit 4, please.

24 Do you recognize this email, Mr.
25 Leitner?

1 A. I do.

2 Q. Is this the proposal described in
3 your affidavit?

4 A. It is the proposal described in my
5 affidavit.

6 Q. For the record, the document ID is
7 WFC0075054. Can you please, Mr. Leitner, describe
8 your role in the formulation of this proposal?

9 A. I was one of the contributors of
10 the proposal, the legal mechanical structures that
11 we put forth in this proposal. You know, the
12 proposal at some level was a proposal that was a
13 very straightforward obvious proposal because it
14 had been done before. It was the exact way that
15 VimpelCom bought this from Orascom.

16 And as we studied the problems that --
17 or studied the situation of trying to comply with a
18 very easy, seamless closing, this was the proposal
19 that we came up with.

20 THE COURT: Sorry, did you say that it
21 had been done before or it had never been done
22 before?

23 THE WITNESS: No, this had. This
24 was -- when VimpelCom bought its interests from
25 Orascom in 2011, they did effectively the same

1 transaction that we did, which was just buying the
2 securities directly from Orascom. It wasn't a sale
3 of the company. It kept its ownership group in
4 place.

5 BY MR. CARLSON:

6 Q. Can you please describe at a high
7 level the structure of the proposal that you put
8 forth?

9 A. Sure. So the approach with this
10 proposal was we would -- step one would be the
11 purchase via a very simple securities purchase
12 agreement, similar to how a capital markets trade
13 effectively might be designed, where we simply
14 bought the debt instruments from VimpelCom and
15 their minority equity interests from VimpelCom.

16 And in lieu of doing a purchase of 100
17 percent of the company and going through a lengthy
18 exercise of a full share purchase agreement, we
19 concluded that the value of the reps, the
20 warranties, the indemnities didn't really amount to
21 a whole lot of value for us as a buyer and we just
22 simply concluded that step one, the mechanical
23 exercise of purchasing the securities was simpler,
24 it was easier, and then it had the benefit that by
25 leaving the existing equity control group in place,

1 it did not require regulatory approval or consent
2 on that step one and we were able to sign a
3 transaction and fund a transaction in, you know, a
4 day or so.

5 Step two was that we would effectively
6 re-organize the entities that funded step one, and
7 at that point we would require regulatory approval
8 because it would then go to its, you know,
9 respective owners, which would effectively have
10 been a change of control.

11 Q. And did you or others at
12 Tennenbaum have any contact with Brandon Moyse in
13 2014?

14 A. No.

15 Q. Have you ever met or spoken with
16 Mr. Moyse?

17 A. No.

18 Q. Did West Face convey to you or
19 others at Tennenbaum information of Catalyst that
20 it had obtained from Mr. Moyse?

21 A. No.

22 Q. Mr. Leitner, I understand that you
23 read the affidavit of Newton Glassman sworn May
24 27th, 2016?

25 A. Yes.

1 Q. Did West Face ever communicate to
2 you the regulatory strategy of Catalyst as
3 described in Mr. Glassman's affidavit?

4 A. No, they did not.

5 Q. It has been suggested by Catalyst
6 that without changes to the regulatory environment
7 in Canada, it was virtually impossible to finance a
8 proper build-out of Wind through arm's length means
9 like the public or private credit markets. How do
10 you respond to that suggestion?

11 A. I don't agree with that at all.
12 Again, I'll go back to how we viewed the economic
13 opportunity and economic viability of Wind and its
14 business plan in the context of Canadians' mobile
15 market.

16 We in fact were a lender to Wind, you
17 know, prior to 2014, well aware of the industry
18 dynamics and continued to make proposals to
19 VimpelCom to try to put more capital in fact into
20 the business without any need for regulatory change
21 and consider ourselves to be a debt market
22 participant.

23 We also as a part of our diligence
24 process, we spent time with a number of equipment
25 vendors -- Ericsson, Nokia, Alcatel, Huawei --

1 discussing with them about whether we could achieve
2 vendor financing to effect our LTE build-out when
3 we received spectrum, and we received financing
4 proposals as a part of our diligence process. It
5 gave us the comfort that this was a financeable
6 business by the equipment vendors, and that,
7 coupled with the equity that we were putting into
8 the company, was really all the capital that we
9 needed to create a viable business.

10 So I reject the concept that it was not
11 financeable because we had indications that it was
12 and we ourselves, it was an example of a party that
13 did fund it prior to 2014.

14 Q. And how did the business of Wind
15 perform after your consortium acquired it in
16 September of 2014?

17 A. The business performed very, very
18 well. It performed exactly as how we thought that
19 product offering would do in the marketplace. We
20 grew our net subscribers substantially. The
21 offering was very well received in the marketplace.
22 Revenue grew very successfully. We put a new
23 management team in place. As part of our
24 diligence, we had a different plan of how to run
25 the business from an operational and cost

1 standpoint, so as a result of that, EBITDA turned
2 around. We went from a business that was losing
3 money at the EBITDA line to making a substantial
4 amount of money at the EBITDA line, and we
5 overachieved every expectation that we had when we
6 went through our diligence process and, if you
7 will, underwrote our equity investment.

8 Q. Thank you, Mr. Leitner, those are
9 my questions, subject to re-examination.

10 A. You are very welcome.

11 THE COURT: Any idea how long you are
12 going to be, Mr. Winton?

13 MR. WINTON: I could be -- definitely
14 longer than it was with Mr. Burt, so I would say 20
15 minutes, half an hour, I think.

16 THE COURT: All right, then why don't
17 we just proceed. Do you want to proceed that way,
18 and then we'll take the break after?

19 MR. WINTON: Sure, thank you, Your
20 Honour.

21 CROSS-EXAMINATION BY MR. WINTON:

22 Q. Good morning, Mr. Leitner.

23 A. Good morning.

24 Q. You mentioned this morning that
25 Tennenbaum is involved in direct lending and also

1 special situations, and I understood from the way
2 you were giving your testimony this morning that
3 there is a distinction between the two in
4 Tennenbaum; is that correct?

5 A. That's correct.

6 Q. So what was the investment in
7 VimpelCom when you purchased the Nokia Siemens
8 debt? Was that a direct lending situation or a
9 special situation?

10 A. Direct lending.

11 Q. If we could turn up Mr. Leitner's
12 affidavit, which is tab 1, Your Honour, in the
13 Leitner cross-examination brief on your iPad.
14 Turning to paragraph 7, in the first sentence, sir,
15 you state that the structure that the consortium
16 used and proposed to VimpelCom was socialized by
17 Globalive. I'm just not sure I understand what the
18 verb "socialize" or to socialize something means?

19 A. Highlighted, discussed, pointed
20 out.

21 Q. Okay, so they floated it to you,
22 they made that proposal to you in the past?

23 A. Well, they highlighted that what
24 VimpelCom did to buy Orascom was a very
25 straightforward, simple structure that is

1 replicable.

2 Q. Right, but what VimpelCom did to
3 Orascom did not involve a change of control;
4 correct?

5 A. Correct.

6 Q. And while VimpelCom did
7 successfully purchase the Orascom interests, it did
8 not successfully receive regulatory approval for a
9 change of control; correct?

10 A. To my knowledge, they didn't seek
11 that.

12 Q. Okay. Did Mr. Lacavera or
13 Globalive -- and I assumed it was Mr. Lacavera,
14 excuse me -- did Globalive socialize this idea to
15 you in writing?

16 A. No, they did not.

17 Q. And these are during some
18 discussions you had I assume with Mr. Lacavera; is
19 that fair?

20 A. Mr. Guffey and Mr. Lacavera.

21 Q. All right, Mr. Guffey is not --
22 was not employed or associated with Globalive,
23 right?

24 A. Correct.

25 Q. Okay, so when you say "Globalive",

1 you are referring to Mr. Lacavera; is that fair?

2 A. Correct.

3 Q. Paragraph 13, and if it is
4 possible maybe we can scroll down to the second
5 half on page 6, so the top of page 6, and I just
6 want to make sure I get the numbers right because
7 between paragraphs 13 and 14 I think there is a
8 switch from Canadian funds to U.S. funds. You
9 testified this morning that when you purchased the
10 vendor debt, it was you said 25 million and I
11 believe that is a reference to U.S. funds; correct?

12 A. Correct.

13 Q. All right. And in the first
14 paragraph it is referenced in Canadian funds, and I
15 think to make things even more confusing, I
16 understand that the debt was actually in Euros at
17 the time and you converted it? Can you maybe help
18 us get a fix on the number?

19 A. When we acquired the debt
20 instruments, we had the currency converted to U.S.
21 dollars.

22 Q. And so going forward after your
23 purchase, you were lending or there was a lender
24 commitment of up to 25 million U.S. dollars;
25 correct?

1 A. I don't recall whether the
2 unfunded commitments were Canadian or U.S., but all
3 outstanding denominations at that point were U.S.

4 Q. Right, and if we just look at your
5 Canadian numbers at the top of page 6 of your
6 affidavit, of the 55 million dollar lending
7 commitment, at the time you purchased it, 46 was
8 already outstanding, so it was almost entirely
9 drawn in that time; fair?

10 A. Correct.

11 Q. And scrolling down to paragraph
12 14, by March 2014 it is fully drawn because you
13 were holding 25 million in debt at the time; fair?

14 A. Correct.

15 Q. So no more room for Wind to borrow
16 under this lending commitment by March 2014, right?

17 A. No more room under this lending
18 commitment, correct.

19 Q. And if I understand your evidence
20 this morning correctly, you were interested in
21 lending more money to Wind, but VimpelCom was not
22 interested in borrowing with you; fair?

23 A. Correct.

24 Q. What did Tennenbaum pay for that
25 debt when it purchased it from Nokia Siemens?

1 A. I don't recall the specific
2 number, but it was with a discount but not a
3 particularly large one. But I do not recall the
4 specific number.

5 Q. An approximate percentage? Cents
6 on the dollar?

7 A. No. It was --

8 Q. But close to face value?

9 A. It was close to face value.

10 Q. Thank you. And I think it is
11 pretty well understood by all of us now that on
12 April 30th or May 1st, or thereabouts, Wind
13 defaulted on the vendor debt, including the debt
14 owed to Tennenbaum; correct?

15 A. Correct.

16 Q. Now, this debt that you purchased,
17 it was 25 -- or sorry, it was 50 percent of the
18 Nokia Siemens commitment, and I understand from
19 your evidence both from your affidavit and this
20 morning that the other 50 percent was purchased by
21 Providence?

22 A. Correct, 50 not 15.

23 Q. Sorry, thank you for that, 50
24 percent. So between the two of you, you owned the
25 full Nokia Siemens debt, right?

1 A. Correct.

2 Q. And you described Providence at
3 one stage as I believe you used the word "partner"?

4 A. That's correct.

5 Q. And so what is the connection
6 between Tennenbaum and Providence?

7 A. Tennenbaum and many firms that
8 invest in the TMT space have close relationships
9 and we look at co-investing in opportunities
10 together, and Providence is one of those firms.
11 And the opportunity that was brought to us
12 originally was brought to us by Q, and we brought
13 in Providence who had extensive experience in the
14 Canadian telecom sector. This was their debt
15 group, not their private equity group, but
16 experience nonetheless.

17 Q. Providence, though, was not part
18 of your consortium when it later -- when you later
19 changed your strategy to trying to purchase an
20 interest in Wind; correct?

21 A. Correct.

22 Q. At paragraph 17 of your affidavit,
23 in the last sentence you describe the approach
24 taken as minimizing the regulatory risk to
25 VimpelCom; do you see that?

1 A. I do.

2 Q. And what you are describing there
3 is the regulatory or the risk that a regulator
4 would not approve a change of control that would
5 permit a prospective purchaser to purchase --
6 sorry, to purchase the hundred percent of Wind;
7 correct?

8 A. The risk that we were focussed on
9 from the outset of this process by the seller and
10 the seller's agent was one that whatever is the
11 quickest, easiest path without any regulatory risk
12 was one that would be most favoured.

13 Q. All right, I just want to make
14 sure we have an agreement on what the word
15 "regulatory risk" means, what regulatory risk you
16 are referring to.

17 So if I understand your evidence
18 properly, in your two-phase proposal, because in
19 phase one you are not actually changing control of
20 Wind, there is no need for a regulatory approval,
21 and therefore, there is no risk to VimpelCom;
22 correct?

23 A. In our last proposal, that is
24 correct, that was our proposition.

25 Q. Right, but if you go back a step,

1 before you get to that step, if you were purchasing
2 a hundred percent of Wind, which would include the
3 Globalive interest, and it does require a change of
4 control, now you do have a risk that the regulator
5 won't approve the entire transaction; correct?

6 A. There is a risk that the
7 regulatory authorities and competitive authorities,
8 that they would have to approve the change of
9 ownership to new owners, correct.

10 Q. Right, so I was right in my
11 question that I put to you; correct?

12 A. Certainly one of the risks is that
13 the two bodies that have to approve the transaction
14 actually have to approve it.

15 Q. Right, and VimpelCom's risk, the
16 risk -- you want to minimize the risk to VimpelCom.
17 The risk to VimpelCom is that those regulators
18 don't approve it; correct?

19 A. Correct.

20 Q. And if that happens and the
21 transaction is conditional on that, receiving that
22 approval, then the transaction just doesn't close
23 and VimpelCom is back to where it was before the
24 transaction was entered into; fair?

25 A. That is correct, that would be a

1 requirement.

2 Q. And that is the risk you were
3 describing at the end of paragraph 17?

4 A. That is the risk that I am
5 describing, which was any -- you know, any
6 regulatory approval process is one that the
7 regulators have to approve to consent to this
8 transaction.

9 Q. Right, so there is always a risk
10 that they don't approve it, and the question and
11 your consortium is trying to solve, the problem you
12 are trying to solve is who would bear that risk,
13 whether it was you or VimpelCom; correct?

14 A. That's correct, but also one of
15 timing.

16 Q. Right, but you are describing risk
17 here, not timing in this paragraph. That is why
18 I'm asking you about risk right now. Fair?

19 A. Okay.

20 Q. Okay. So if you take that risk
21 off of VimpelCom's shoulders, you take it out of
22 their bucket and put it into your own bucket, now
23 you are bearing the risk that the regulator doesn't
24 approve the transaction, right?

25 A. In the second step of our

1 transaction, there would be risk.

2 Q. Right, because if you don't go
3 through with the second step, then all you have
4 done is stepped into VimpelCom's shoes, and now all
5 you do is own two-thirds of the financial interest
6 but only have one-third of the voting, right?

7 A. That is why we spend time with the
8 government to make sure that we are, as vetted
9 parties, felt comfortable that they would approve
10 us as owners. We did not see that there was risk
11 to that.

12 Q. So you say you spent time with the
13 government. You went to Ottawa and visited with
14 them?

15 A. We did.

16 Q. Made presentations?

17 A. We did.

18 Q. All right, and we haven't seen any
19 of those in this record, though. So you shared
20 those views as to the regulatory risk with your
21 consortium partners?

22 A. The regulatory risk that we
23 were -- well, the regulatory issue, not the risk,
24 that we were worried about in the earliest phases
25 of this process when we visited the government was

1 when we had all U.S. firms buying and bidding for a
2 Canadian telecom asset, and we wanted to be certain
3 that the Canadian government would approve a change
4 of control to U.S. owners.

5 The times that we met with the
6 government was really solely associated in the
7 earliest phases to make sure that they were aware
8 of our bona fides as owners, that we looked at them
9 as a partner, and that they would get comfortable
10 with us as potential owners of the business.

11 Q. But you didn't get those
12 assurances. The government didn't say, well, if
13 you buy, we'll approve, right? They don't work
14 that way, do they?

15 A. No, they don't.

16 Q. Right, so you didn't have that
17 assurance before you bought VimpelCom's interest;
18 correct?

19 A. No.

20 Q. Right. And am I correct that
21 there was no discussion amongst the new consortium
22 members as to your views as to whether or not
23 Industry Canada would just approve a change of
24 control?

25 A. When you say the "new consortium

1 members", can you --

2 Q. I am referring to the consortium
3 that ultimately successfully purchased Wind. Did
4 you have discussions about this risk as to whether
5 or not phase two would get approved?

6 A. We had a number of discussions
7 about whether there would be concerns, and based
8 upon the diligence that we did and our work with
9 counsel, we just didn't feel that that was a big
10 risk we were undertaking.

11 Q. And these are discussions you had
12 prior to making that August 7th proposal or the
13 August 6th email to VimpelCom; correct?

14 A. I don't recall the timing of that.
15 You know, certainly for the months leading up to
16 through July when it was a U.S.-only consortium, we
17 spent a considerable amount of time with counsel
18 understanding whether there would be any issues
19 with U.S. owners having regulatory --

20 Q. But, sir, I'm asking you about the
21 consortium that was ultimately successful, not
22 about your other efforts right now. I'm asking you
23 to focus on the period from approximately July,
24 late July through early August when you and your
25 consortium members were forming a proposal and

1 about to make an offer to VimpelCom, okay. That is
2 the time period I'm asking you about.

3 And I'm asking you if during that time
4 period the consortium members had discussions about
5 the risk of receiving or not receiving regulatory
6 approval in your phase two?

7 A. We did have discussions about
8 risks on that and concluded that we just didn't see
9 big risks associated with it.

10 Q. Right, but those discussions were
11 all oral in nature? They weren't via email?

12 A. I don't recall all the specifics
13 of that.

14 Q. Well, we don't have any in the
15 record, so we'll assume if they had been in email,
16 they would have been produced.

17 At paragraph 19 -- and perhaps before
18 we get to this, Your Honour, I have a feeling, at
19 the pace I'm going, that this is going to be a lot
20 longer than my initial estimate.

21 THE COURT: Well, just keep going for a
22 few minutes.

23 BY MR. WINTON:

24 Q. All right, thank you.

25 Now, in this paragraph you refer to I

1 think the efforts you were describing just a few
2 minutes ago amongst the U.S.-only consortium that
3 you had initially formed, right, that Oakhill,
4 Blackstone and LG are all U.S.-based entities?

5 A. That's correct.

6 Q. Right. And you say that that
7 consortium submitted an initial indication of
8 interest on or around May 30th, and that is to
9 VimpelCom, right?

10 A. Correct.

11 Q. And that was submitted, and it was
12 submitted in writing, I assume?

13 A. Correct.

14 Q. And in that initial indication of
15 interest, was there any provision or term whereby
16 the closing of any potential purchase was
17 conditional on receiving regulatory approval?

18 A. I don't recall the specifics
19 associated with what we put into that, but if I
20 were to speculate, as we do with many offers, we
21 would have indicated that our offer would be
22 subject to whatever regulatory or legal
23 requirements there were to close the transaction.

24 Q. All right. You may not recall
25 specifically because you don't have it in front of

1 you, and we don't actually have it in our record,
2 but you are assuming it did have that condition?

3 A. I'm assuming it had whatever legal
4 or regulatory requirements to close any
5 transaction.

6 Q. As a condition of closing?

7 A. Yeah, as a condition of closing.

8 Q. Okay. At paragraph 22 --

9 THE COURT: I would just caution you,
10 Mr. Leitner, that when a witness says I'm
11 speculating, it is not very helpful. So you don't
12 have to speculate. If you can recall something,
13 you can recall it; if you don't recall it, you can
14 just say I don't recall it.

15 THE WITNESS: Okay, thank you.

16 THE COURT: Thanks.

17 BY MR. WINTON:

18 Q. And I'm actually interested in the
19 part that straddles the bottom of this page and the
20 top of the next. So you knew from your discussions
21 with VimpelCom, its advisors, and this is from the
22 bottom of page 9 and up to the top of page 10, that
23 as of late July 2014, Tennenbaum wasn't considered
24 to be a credible bidder. That was your view at the
25 time or what you were told at the time?

1 A. That's correct.

2 Q. And fair to say then that
3 VimpelCom also didn't consider LG or the other
4 members of your U.S.-based consortium to be
5 credible bidders?

6 A. One of our bidders had dropped out
7 and we made the seller's agents aware, so that made
8 us less credible.

9 Q. As a group, you were all less
10 credible?

11 A. As a group, we were all less
12 credible.

13 Q. And the ones that dropped out were
14 initially Blackstone?

15 A. Blackstone.

16 Q. Right. When you were involved in
17 discussions with VimpelCom as part of this
18 four-member U.S. consortium, did you have a fixed
19 allocation of the interests you were each going to
20 take in the final -- in the purchase?

21 A. They were moving around based upon
22 everyone's levels of interest in the transaction,
23 so we had a general view as to where those
24 interests would be, but they were moving around.

25 Q. Blackstone was a significant

1 contributor?

2 A. They were smaller than what we
3 were and Oakhill.

4 Q. Okay, so third out of the fourth?

5 A. Third out of the fourth.

6 Q. Okay. Oakhill didn't drop out
7 quite yet though, right?

8 A. That's correct.

9 Q. All right. And when you initially
10 re-engaged with West Face, Oakhill was part of that
11 engagement for --

12 A. Correct.

13 Q. -- a period of time?

14 A. Correct.

15 Q. But at this point, prior to
16 finding out that someone had entered into
17 exclusivity with VimpelCom, you had exchanged
18 drafts of an SPA?

19 A. Correct.

20 Q. Do you remember how many drafts?

21 A. I don't.

22 Q. All right. Do you recall whether
23 those drafts included a provision whereby closing
24 would be conditional upon the receipt of the
25 necessary regulatory approvals?

1 A. I don't.

2 Q. Okay, and I won't invite you to
3 speculate.

4 A. I appreciate that.

5 Q. Now, at paragraph 23, your
6 evidence at this point is you had put a significant
7 amount of time and effort into the potential
8 purchase of VimpelCom, right?

9 A. That's correct.

10 Q. And that is dating back for fair
11 to say years now?

12 A. Well, since we started in 2014.

13 Q. In 2014, but when you first
14 purchased the Nokia Siemens debt, was it in
15 anticipation of a potential purchase overall of the
16 VimpelCom interest?

17 A. No.

18 Q. So it was only in 2014 that it
19 converted into an interest in an ownership
20 potential?

21 A. Correct, because the company was
22 put up for sale.

23 Q. Okay, so now when it was put up
24 for sale, that was the time and energy you are
25 referring to?

1 A. That's correct.

2 Q. But it was considerable? You said
3 a lot, I think, to use your words in paragraph 23?

4 A. I'm sorry?

5 Q. Sorry, I apologize, that wasn't
6 what you said. "A significant amount of time",
7 that was the --

8 THE COURT: Why don't we take the
9 morning break.

10 MR. WINTON: Sure, thank you, Your
11 Honour.

12 -- RECESSED AT 11:15 A.M.

13 -- RESUMED AT 11:40 A.M.

14 THE COURT: Mr. Winton.

15 BY MR. WINTON:

16 Q. If we could turn up paragraph 24
17 of Mr. Leitner's affidavit, in this paragraph you
18 use a defined term, "new investors", Mr. Leitner,
19 and the new investors are defined as Tennenbaum,
20 64NM and West Face who engaged in discussions. So
21 just stopping there, who at West Face were you
22 engaged in discussions with?

23 A. Tony Griffin, Peter Fraser and
24 Greg Boland principally.

25 Q. So when you say "principally",

1 that applies to all three of those people?

2 A. Correct.

3 Q. Okay. Now, here you say it is to
4 the best of your recollection that it was
5 Mr. Guffey who proposed the structure you
6 ultimately adopted. You qualified it here, and so
7 is it -- it is possible it could have been West
8 Face that proposed it?

9 A. The structure that we ultimately
10 bid on, I recall getting a phone call from
11 Mr. Guffey laying the structure out, and from that
12 it became developed with the rest of the group.

13 Q. All right, it wasn't you? You
14 didn't initiate the proposal?

15 A. No, this was coming up with a new
16 creative structure that, you know, again, was
17 developed by the group but stimulated by Larry
18 reaching out to me on the topic.

19 Q. All right. You don't know where
20 Mr. Guffey got the idea from?

21 A. No, but I'll go back to what I
22 said earlier. This is a structure that had been
23 utilized before, and early on in the process, you
24 know, this was always an option that we had often
25 looked at about buying the instruments of

1 VimpelCom, but we had not contemplated one using
2 AAL's structure, even though that, you know, was
3 apparent and existed and something that AAL was
4 open to.

5 Q. In the last sentence you describe
6 this proposal as "aggressive", and in using that
7 adjective, you are saying it is aggressive for the
8 potential purchaser to structure the deal in that
9 fashion, right?

10 A. The typical structure we often
11 think about is buying a company in its entirety and
12 having the government consent that the change of
13 control is okay to do. Here we broke it up in two
14 steps.

15 Q. And that is what makes it
16 aggressive?

17 A. That is what makes it aggressive.

18 Q. Right, because now the purchaser
19 bears all the risk of not receiving the regulatory
20 approvals?

21 A. Correct.

22 Q. And specifically, just to make
23 sure, because there has been some discussion of
24 this, the regulatory approval we are talking about
25 is for the change of control of voting ownership or

1 control of Wind; correct?

2 A. Correct.

3 Q. And initially, when you define
4 "new investors" as Tennenbaum, 64NM and West Face,
5 but we established initially when this was being
6 discussed amongst the potential investors, Oakhill
7 was a party; correct?

8 A. That's correct.

9 Q. And then they dropped out sometime
10 before August 6th, right?

11 A. That's correct.

12 Q. And at some point another party
13 gets added in, and that is the Michael Serruya
14 investor, right, or the Serruya entity?

15 A. That's correct.

16 Q. They may not have been there right
17 on August 6th or 7th, but at some point after that
18 they joined your consortium?

19 A. The group that submitted the bids
20 was the three firms that are listed in paragraph
21 24, Tennenbaum, 64NM and West Face. We submitted
22 effectively our financing proposals to Globalive to
23 facilitate this. Michael Serruya came into that
24 process, I don't recall when, but the proposals
25 that we sent to the seller and seller's agents were

1 from the three of us.

2 Q. Right, and it was Globalive and
3 maybe more specifically Mr. Lacavera who connected
4 you to the Serruya interest, right?

5 A. That's correct.

6 Q. And we know from previous
7 testimony, and I don't think you were specifically
8 taken to this in your offer but --

9 THE COURT: Sorry, can you just tell me
10 who is Mr. Serruya? Everybody seems to know, but
11 I'm not --

12 THE WITNESS: He was an equity investor
13 ultimately in our purchase of the company.

14 THE COURT: I'm sorry, okay, so he was
15 with --

16 MR. WINTON: If I may try and assist,
17 Your Honour, Michael Serruya, I think he is most
18 well known and associated with the Yogun Fruz
19 entity, but is an investor, a Canadian-based
20 investor who joined the consortium at some point
21 before the consortium purchased the VimpelCom
22 interest. I believe that is correct, unless my
23 friends want to clarify that. I think we can all
24 agree or clarify that --

25 THE COURT: Well, I thought it was

1 Tennenbaum, 64NM and West Face, all right, and
2 then --

3 BY MR. WINTON:

4 Q. Right, and so just to clarify,
5 when the first proposal is made, those are the
6 three parties that made that proposal, right?

7 A. That's correct.

8 Q. But later on, other parties joined
9 your consortium before you finished the deal,
10 right?

11 A. There were other parties that came
12 in as equity investors --

13 Q. Right.

14 A. -- that, you know, were part of
15 this deal. You know, I don't want -- they weren't
16 a part of this --

17 THE COURT: All right, I just got that
18 confused. All right, go ahead.

19 BY MR. WINTON:

20 Q. Okay, I think we've cleared that
21 up, all right.

22 And the offer you made, the three of
23 you made, that offer in early August, you would
24 have paid VimpelCom 135 million for its equity
25 interest in Wind, right?

1 A. That's correct.

2 Q. With an offer to close within 48
3 hours of signing by VimpelCom on your offer?

4 A. That's correct.

5 Q. And in paragraph 26 in your
6 evidence you state:

7 "The advantage of the New
8 Investors' proposal was to meet
9 VimpelCom's desire for a speedy
10 transaction that carried little to
11 no regulatory risk to VimpelCom."

12 And let's just stop there. In fact, it
13 is no regulatory risk to VimpelCom because they
14 sell out before anyone goes to the regulator for
15 anything; fair?

16 A. Right.

17 Q. And you knew that in making this
18 proposal you were gaining an advantage over
19 whatever party was in exclusivity with VimpelCom at
20 the time?

21 A. No, I had no idea what any other
22 party was doing with VimpelCom. They very well
23 could have done the exact same transaction.

24 Q. You use the word "advantage" in
25 your affidavit?

1 A. Can you please show me where?

2 Q. Right in the first sentence:

3 "The advantage of the New

4 Investors' proposal [...]"

5 Do you see that?

6 A. Yes.

7 Q. And "advantage" is a term that
8 suggests there is a comparative going on here,
9 comparing it to something?

10 A. Right, well, the original premise
11 that had been put forth by the seller and the
12 seller's agents was that VimpelCom wanted to sell
13 their interests and have little to no regulatory
14 risk, and the advantage of what we were doing was
15 that -- and frankly, this was compared to how we
16 approached buying this the first go-around which
17 was buying a hundred percent of the company and
18 then having the government give a consent to the
19 change of control.

20 So from what we were doing, we saw that
21 as an advantage, particularly based upon what the
22 seller and the seller's agents had laid out to us.

23 Q. Now, I'm going to put to you that
24 you knew and the consortium knew that Catalyst
25 could not waive a regulatory approval condition?

1 A. So I have no idea what they could
2 or could not have done and --

3 Q. I'm going to put it to you that
4 you were in fact told this by members of West Face?

5 A. No. We were not told anything
6 about what any party was doing in this transaction.

7 Q. Now, what was the contemplated
8 share by Tennenbaum of the 135 million of the
9 equity interest in Wind when you made that early
10 August proposal?

11 A. The investors' equity commitments
12 were contemplated to be greater than 135 million,
13 and that was just the proceeds that went to
14 VimpelCom on the date of close. Our share at the
15 time, again, like all of these processes, the
16 dollar amounts were moving around slightly, but we
17 were contemplating an investment size of 70 to 100
18 million Canadian dollars.

19 Q. And is that of the overall 300
20 million of enterprise value?

21 A. No, that was of the equity
22 commitments that we were signing up to as a part of
23 this transaction.

24 Q. All right. In phase two you were
25 contemplating a realignment of the voting control

1 and equity to accord with everyone's investment
2 percentage, right?

3 A. Correct.

4 Q. And when that phase two was going
5 to take place, what percentage of the ownership did
6 you anticipate Tennenbaum taking?

7 A. We would have been approximately
8 70 to 100 million dollars over the overall equity
9 commitments, which was about 320, so whatever that
10 math is.

11 Q. Around a third, a 30 percent
12 range?

13 A. A little bit less than a third.

14 Q. Right, okay. Was there a distinct
15 cap where you tried to stay under a third?

16 A. There was no distinct cap that we
17 were solving for.

18 Q. Okay. So you were going to take
19 on under a third but roughly 30 percent of this
20 entity with no guarantee that you are going to get
21 voting control, right?

22 A. Correct.

23 Q. And that is a pretty serious risk?

24 A. We didn't evaluate it to be a
25 pretty serious risk. We were convinced that we

1 would get regulatory approval.

2 Q. If you turn to paragraph 27, you
3 had a fall-back position in case you didn't; is
4 that fair?

5 A. The fall-back position -- I'm
6 reading paragraph 27.

7 Q. Right, in the last sentence:

8 "Given that our firm was
9 already a lender to Wind, we
10 understood the rights of the various
11 loans issued in the Wind capital
12 structure and our group believed
13 that if we successfully acquired the
14 VimpelCom shareholder loans, we
15 would have a path to full ownership
16 under a CCAA or similar proceeding
17 if necessary."

18 That is your fall-back position if you
19 don't get regulatory approval?

20 A. We would have an ownership over
21 the shareholder loans, which was the vast
22 preponderance of the debt that was outstanding. In
23 the event that we did not get shareholder approval,
24 that the entity that we funded would own those
25 loans, and as a possible outcome, if the company

1 could not -- if the company had to go under a CCAA,
2 as an example, then there would simply be an
3 auction of the business and we felt that we would
4 receive our investment capital back.

5 So I mean, we viewed this as an
6 extremely, extremely remote probability because
7 with all of the work that we had done with the
8 government trying to promote our bona fides as well
9 as LG, that we felt that we would get regulatory
10 approval, and promoting with the folks in the
11 government.

12 Q. And just in that last answer, you
13 used the term "shareholder approval", and I think
14 you meant to say regulatory approval?

15 A. Thank you, regulatory approval.

16 Q. Right, I just want to make sure we
17 are clear for the record.

18 A. Thank you.

19 Q. And what you are saying is that if
20 you didn't get regulatory approval, then your
21 fall-back position, as remote as you said you
22 believed it was, your fall-back position was an
23 insolvency type proceeding where you could get
24 control that way?

25 A. No, because an insolvency

1 proceeding and taking control would still require
2 the same exact regulatory approval process that one
3 would have to go through under our first
4 transaction.

5 Q. Right.

6 A. We, if we didn't get ownership --
7 we originally structured our investment to fund the
8 purchase of all of the interests in VimpelCom. We
9 first started out by providing debt capital to an
10 entity where Globalive was providing equity. If
11 that, if we did not go through a successful
12 regulatory approval where everything would convert
13 to our pro rata shareholdings, then a loan would
14 come due and we would then make sure that our
15 investment was protected.

16 Q. Well, the term you use here is a
17 "path to full ownership under a CCAA", and I am
18 going to put it to you that is a reference to
19 control, because you already had ownership even if
20 you don't get regulatory approval, so you must be
21 referring to something else here?

22 A. No, would you please just repeat
23 what your statement was again?

24 Q. Sure. I'm putting it to you that
25 the phrase with the we would have "a path to full

1 ownership under a CCAA" is a reference to control,
2 because at the time you are going into the CCAA,
3 you already have full ownership?

4 A. That is accurate. There was no
5 circumstance where CCAA could be effected and then
6 turn over all the equity interests to the very
7 group of people that did not get regulatory
8 approval in the first place. The top company that
9 we contemplated funding had a -- it was
10 contemplated having a loan against it to fund all
11 of the purchase of the interest, so that company
12 could have gone through a CCAA and we could have
13 owned all those underlying instruments.

14 But the investors in our structure
15 under a CCAA, to my knowledge, based on what advice
16 we received, even under a CCAA that it would still
17 have to require regulatory consent.

18 Q. Right, but you are doing so in the
19 context of a CCAA instead of an approval outside of
20 CCAA, and so your feeling was that once you go into
21 a CCAA, there is more pressure to get that
22 regulatory approval?

23 A. No, not at all. I don't think
24 that was -- that is not the intent of what this
25 was.

1 Q. As a --

2 A. The only -- when we thought about
3 this structure, if we didn't get regulatory
4 approval, the focus really was how do we ensure
5 that we exit our investment. And one of the ways
6 to do that is if we didn't get regulatory approval
7 and the company went into a default, as a
8 hypothetical, then it would just simply go to a
9 court auction. I'm not saying we are a participant
10 necessarily, but at least in a court auction it
11 would get sold out, sold off, and we would get a
12 return of our investment capital.

13 Q. So that is, what you just
14 described, that is what you meant when you say in
15 your affidavit "path to full ownership", is the
16 exit through a CCAA?

17 A. The intent of what, as I'm reading
18 this, the intent of where a CCAA would come in was
19 just simply that the company would have gone to a
20 court process because it wouldn't have been able to
21 pay off its liabilities, and any and all bidders
22 would come and pay what they thought whatever the
23 fair value was. It wouldn't give us, you know,
24 necessarily an advantage one way or another. I
25 don't believe we could have taken full ownership.

1 And had, you know, Verizon or somebody else come
2 into a CCAA, they too would have had to receive
3 regulatory approval.

4 Q. All right, and just a couple of
5 minutes ago you used the phrase "exit our
6 investment". And you agree with me that when you
7 are going into an investment as a private equity
8 investor fund, you often want to know what your
9 exit strategy is before you get in; is that fair?

10 A. Uhm-hmm, that's correct.

11 Q. And when you were entering this
12 investment, was your exit strategy, did it include
13 a potential sale to one of the three incumbent
14 wireless providers in Canada?

15 A. No.

16 Q. That never crossed your mind?

17 A. No, because having been a lender
18 to this company for a few years, we understood what
19 the rules prevented. We looked at this as a
20 business that would generate a lot of EBITDA,
21 operating cash flow, would grow, could be taken
22 public. The Canadian markets have always been
23 attractive to the U.S. carriers. You know,
24 Toronto, including the U.S. cities, is the fourth
25 largest Canadian U.S. city. There are, you know, a

1 lot -- there is a lot of strategic desire by U.S.
2 carriers.

3 So we thought about exits as it could
4 be U.S. carriers; it could be a foreign carrier; it
5 could be a cable business that did not have a
6 wireless asset; it could be the public capital
7 markets.

8 Q. All right, so the consortium then,
9 just to expand on the answer, the consortium didn't
10 discuss or consider sale to an incumbent as being
11 one of its exit strategies from this purchase?

12 A. Oh, we discussed that the reasons
13 why it would not happen because of the regulatory
14 construct and, of course, we would discuss it, but
15 it was not something that we relied on by any
16 chance.

17 Q. And that was my question to you.
18 So that is not something that you considered as one
19 of your exit strategies when you went into this
20 investment as a consortium?

21 A. Selling to the incumbents was not
22 something that was discussed as an exit option for
23 us because it was not an exit option.

24 Q. I'll take that as a yes then to my
25 question, thank you.

1 At paragraph 22 --

2 THE COURT: Well --

3 THE WITNESS: Sorry, can you just --

4 THE COURT: Well, the answer is what it
5 is.

6 MR. WINTON: The answer is what it is,
7 but I think you just repeated back what I said to
8 you.

9 THE WITNESS: Why don't you ask your
10 question to me again, if you don't mind, just so we
11 are clear.

12 BY MR. WINTON:

13 Q. Sure. So a sale to an incumbent
14 was not one of the exit strategies that the
15 consortium discussed at the time it was entering
16 into this investment?

17 A. The sale to an incumbent was not
18 one of the exit strategies, yes, you are --

19 Q. Good, thank you.

20 At paragraph 22, you were informed on
21 July 23rd by UBS that VimpelCom had entered into
22 exclusivity, and you state in the second sentence
23 here that you were fairly confident that it was
24 Catalyst, right?

25 A. Correct.

1 Q. And I am going to put it to you,
2 though, that in fact you knew it was Catalyst, that
3 you weren't just fairly confident; you had direct
4 knowledge of the fact that it was Catalyst?

5 A. That is not accurate. I did not
6 know it was Catalyst.

7 Q. And I am going to put it to you
8 that West Face also knew it was Catalyst?

9 A. I do not know what West Face knew.

10 Q. Okay. Can we turn up tab 2 in the
11 cross-examination brief. There is an email -- no,
12 just scroll down to the second email. And this is,
13 for the record, WFC006995.

14 THE COURT: Just a second.

15 All right.

16 BY MR. WINTON:

17 Q. Now, the second email, and this is
18 an email chain between you and Mr. Boland, and you
19 copy somebody named Jonathan Friesel, and Mr.
20 Friesel is from Oakhill, right?

21 A. Correct.

22 Q. All right, so the three of you are
23 in an email exchange or chain, and Mr. Friesel is
24 just cc'd, so to be fair for the record, and you
25 write on July 21st, 2014:

1 "I heard Catalyst is seeking
2 exclusivity this week."

3 And that is what you heard from UBS,
4 right?

5 A. If you would go down from the
6 email, just so I can read the rest of this --

7 Q. Sure, you can scroll down.

8 A. -- for context.

9 Q. You will see that if we scroll
10 down to the bottom, I think this is the first email
11 in the chain, and so now if we go up, the first is
12 from Mr. Boland:

13 "Felix was contacted Friday.
14 He is likely granting permission
15 today."

16 And that is July --

17 A. Okay, so I had not heard from
18 anybody, UBS or any party, that Catalyst was an
19 actual bidder. You know, my job in evaluating our
20 own strategy of deploying resources and looking at
21 investments is to take my best guess of who else is
22 in this process.

23 So why I believed Catalyst was the
24 party, and in this email and others you could have
25 just replaced "Catalyst" with "other bidder", but

1 Catalyst, there was press releases associated with
2 their interests in Mobilicity. While we were
3 seeking debt financing, we are a debt financing
4 provider, we received calls from other parties that
5 we had contacted that there was another party
6 looking for financing for an upstart wireless
7 carrier in Canada by a "P" for in Canada, which I
8 presumed to be Catalyst because it couldn't have
9 been West Face.

10 You know, we had, you know, through
11 that, you know, through those industry chatter,
12 through some of the press, through their ownership
13 in Mobilicity, it, you know, was just a hypothesis
14 that we had, and as a result, in all of the emails
15 that go back and forth, I make the general
16 statement that it is Catalyst, but it could have
17 been anyone. I'm not -- this statement doesn't say
18 that it was, that I knew for a fact that it was
19 Catalyst, and no party in this process ever told me
20 that it was.

21 Q. No, it is much simpler than that
22 in this email, Mr. Leitner. You heard Catalyst is
23 seeking exclusivity, and that is what you heard?

24 A. No, I --

25 Q. That is what you repeat --

1 A. -- heard another party was seeking
2 exclusivity, and I wrote "Catalyst", because of all
3 of the inferences and other chatter which I just
4 described, my presumption was that it was Catalyst
5 that was in this process. We had also heard there
6 was another carrier in this process, and as a
7 group, we discussed constantly who else might be in
8 this process. That is what we do as bidding
9 groups.

10 Q. So sitting here today, what you
11 are saying, your evidence today is that whatever
12 you heard, you didn't hear Catalyst was in
13 exclusivity, despite what is written here in your
14 email?

15 A. That's correct.

16 Q. Okay. And then if we scroll up,
17 Mr. Boland's reply to you:

18 "We asked for that a couple
19 times and didn't work."

20 And you understood that to mean
21 Mr. Boland telling you that West Face had sought
22 exclusivity a couple of times when he says "we",
23 right?

24 A. That's correct.

25 Q. Now, if we turn back to your

1 affidavit at tab 1 of the cross-examination brief,
2 and the last paragraph that is at the bottom of
3 page 12, and if you note, it is under the heading
4 "No Knowledge of Catalyst's Regulatory Strategy",
5 and you will notice that it is unnumbered but it is
6 I believe the last paragraph of your affidavit, so
7 we can figure that out.

8 Now, your evidence as you state here
9 was that Tennenbaum did not have any knowledge of
10 the details of Catalyst's offer or its negotiations
11 with VimpelCom during the exclusivity period; do
12 you see that?

13 A. Correct.

14 Q. And I am going to put it to you
15 now that is not accurate and that you did have
16 knowledge of the offer and the negotiations?

17 A. You are making a statement that
18 is --

19 Q. And I am putting it to you and
20 asking if you agree with me?

21 A. No, I don't agree of the details
22 or its specific offer.

23 Q. Let's go to tab 3 in the
24 cross-examination folder, WFC0047832, and this is
25 an email exchange that is dated August 1st, 2014.

1 And just to stay at the top here, let's look at who
2 was involved. You have got in this email, which is
3 really the last in the chain, Mr. Fraser from West
4 Face, right, and that is Peter Fraser, as you know,
5 the partner at West Face?

6 A. Correct.

7 Q. And then you are there. It is
8 sent to you and it's sent to Mr. Guffey, who is LG
9 Capital, right? And we established Mr. Friesel who
10 is Oakhill. And then we see Mr. Boland and Mr.
11 Griffin. And then there is some people who I think
12 may be new to this, our discussions, Benjy
13 Diesbach?

14 A. Diesbach.

15 Q. And who is he associated with?

16 A. He is with Oakhill.

17 Q. He's with Oakhill. And Patrick
18 Scott?

19 A. He is an investment banker at Q
20 Advisors.

21 Q. Okay, Robert Goldschein?

22 A. He is an attorney with our firm.

23 Q. And Sean Berry?

24 A. He is a principal with our firm.

25 Q. Adam Hahn?

1 A. Adam is an associate I believe at
2 Oakhill.

3 Q. And Mr. Levy?

4 A. I don't recall who Mr. Levy is.

5 Q. All right. Turning to page 2 of
6 this document, there is an email from you, and
7 let's stop there, and that is the one at 3:45 p.m.:

8 "I just heard that VimpelCom is
9 taking the Catalyst SPA to the board
10 this weekend. There has been no
11 retrade as of yet, but parties are
12 bracing for it. Suggest we get on a
13 call to discuss. Have some feedback
14 on price levels as well."

15 Now, I'm going to suggest to you that
16 you were in fact receiving information about the
17 negotiations between Catalyst and VimpelCom?

18 A. That is not correct.

19 Q. You heard that VimpelCom was
20 taking the Catalyst SPA to the board. You knew
21 this was Catalyst who was bidding in the
22 exclusivity period because you heard it was a
23 Catalyst SPA?

24 A. So I will try to break this
25 statement down. I'll go back to what I said

1 earlier about how I used the word "Catalyst" in
2 these emails. I did not know that it was Catalyst
3 as the other party. I only surmised it based upon
4 what I described. So while I use it as a
5 reference, I did not know that it was specifically
6 them, but I would talk in emails by using that
7 name.

8 Q. I --

9 A. And --

10 Q. Sorry, I didn't mean to interrupt.
11 Go ahead.

12 THE COURT: Well, you go ahead. If you
13 are not finished, you go ahead.

14 THE WITNESS: Oh, sorry, I thought you
15 were --

16 BY MR. WINTON:

17 Q. I don't want to interrupt you. I
18 want to be fair to you, so if you have more to say,
19 go ahead. If you were finished though, no
20 pressure.

21 A. Yeah, that is good.

22 Q. Okay. So you are suggesting to me
23 that in this email and in the previous email we
24 saw, Catalyst is a placeholder for other bidder;
25 you just didn't say "other bidder" and you used

1 "Catalyst"?

2 A. That's correct.

3 Q. And from whom did you hear this
4 information?

5 A. The information of the taking the
6 SPA to the board?

7 Q. Right, the placeholder, the other
8 bidder's SPA to the board?

9 A. The existence -- the process
10 updates would have come through the advisors,
11 whether it be Q or UBS, Q was representing our
12 firm, and we constantly would seek updates on is
13 exclusivity still going, which the answers are
14 always yes, principally because it is important for
15 us to know whether we should deploy expensive
16 resources. And it is the job of the banks to, you
17 know, tell potential bidders that they are in
18 exclusivity and they just think they cannot engage
19 with us.

20 So we -- this was just simply the job
21 of the advisors to just, you know, ensure that we
22 were aware that they cannot engage with us, they
23 cannot do anything with us, and just to be mindful
24 about how we deploy resources.

25 Q. And Q is your advisor, right?

1 A. Correct.

2 Q. UBS is VimpelCom's advisor, right?

3 A. Correct.

4 Q. So Q doesn't know the status of
5 the negotiations between VimpelCom and, to be fair
6 to you and your evidence today, the other bidder
7 unless they ask UBS, right?

8 A. No one knows the status of the
9 negotiations other than that the parties are in an
10 exclusivity agreement.

11 Q. Well, you have a lot more detail
12 in this email, sir. You don't just hear they are
13 still in exclusivity. You hear that VimpelCom is
14 taking another bidder SPA to the board this
15 weekend, and that is more than just still being in
16 exclusivity?

17 A. It was presumably asked because
18 the exclusivity -- we were told that the
19 exclusivity was entered into around July 23rd, and
20 that would have been a week, about when it was
21 going to the board, and there was ostensibly a
22 reference that the process was going to the board,
23 you know, which just tells us that the exclusivity
24 is still going.

25 Q. And the information on price

1 levels, that is also just telling you that the
2 exclusivity is still going?

3 A. No. If you would not mind -- if
4 you wouldn't mind going down to some of the lower
5 emails?

6 Q. Sure, it is --

7 A. Because in a lot of emails there
8 is lots of all thoughts all put within one
9 paragraph with poor grammar, and I think this is
10 referring to a different context. So if you don't
11 mind going down --

12 Q. Sure, so Mr. Friesel from Oakhill,
13 you see from his email to the group:

14 "We are OK with doing the work.
15 Let's be efficient on the spend.
16 Please include Kevin Levy on the
17 drafts."

18 A. Yes, would you mind going down
19 farther?

20 Q. Sure, so the next one below that
21 is from you:

22 "Presuming we reconcile our
23 models (which should be done today)
24 my strong view is that we need to be
25 in a position to send to VimpelCom a

1 letter summarizing our terms; work
2 process and SPA before the end of
3 their exclusivity. We may elect
4 that we don't send for a variety of
5 tactical reasons, but we should be
6 in a position to do so. Summarizing
7 our process and economic terms are
8 straightforward, and we can hash out
9 over a call amongst principals but
10 the SPA is not a short work
11 process."

12 And it continues.

13 A. Right, okay, so if you could go
14 back up to the -- so in the context of this email,
15 the price levels I am presuming were based upon all
16 of the costs and all of the diligence that we have
17 to engage in and start spending, and the judgment
18 that we always have to make is do we want to spend
19 those resources if, you know, if and when, you
20 know, while a company might be in exclusivity.

21 The price levels of the transaction
22 were set in May. The seller could not be more
23 clear that this company costs 300 million dollars.
24 We were --

25 Q. Well -- sorry, I don't want to

1 interrupt you again. Continue.

2 A. The price level of the deal was
3 always the same price. That was, as far as I'm
4 concerned, open and transparent by the seller.

5 Q. The price level set in May was the
6 minimum expectation VimpelCom had; correct?

7 A. That was the minimum expectation
8 that they had, and as the process evolved, it
9 became the expectation that they had.

10 Q. But you had no insights unless
11 someone told you then as to what the other bidder
12 was actually bidding, because they may bid more
13 than the minimum; fair?

14 A. They very well could.

15 Q. So I'm going to suggest to you the
16 feedback on price levels was feedback on the price
17 levels of the other bidder?

18 A. I don't agree with that. That is
19 not correct.

20 Q. And you were the one who was --
21 sorry, I'll start over.

22 You were the one who was sharing this
23 information about what the status of the
24 negotiations was with your team, right, with the
25 consortium?

1 A. In this email I share, you know,
2 what, as it says, what I heard. So that went to
3 the folks on our team.

4 Q. Right, because you were getting
5 the information from Q and then you would forward
6 it along to the other consortium members?

7 A. Correct, in this case.

8 Q. Right, and Q was getting the
9 information you understood from UBS?

10 A. I believe so.

11 Q. You believe or you knew?

12 A. I believe so.

13 Q. Okay. If we could turn up the
14 document at tab 4 in the brief, and this is
15 WFC0066080, and it is an email chain between you
16 and Mr. Griffin dated July 29, 2014.

17 And let's start at the bottom of the
18 page or the middle of the page to the bottom,
19 because you will see that there is an email that
20 starts from you to Mr. Griffin, and it says "FYI",
21 but if you scroll down through the rest of the
22 page, you see that whatever the "FYI" is we haven't
23 seen, it is redacted.

24 And I just want to ask you a question.
25 Below the redaction then, the email you were

1 forwarding is from Christian Gauthier of Bennett
2 Jones, and let's stop, if we can, and let's look at
3 that list. Bennett Jones is the lawyer for
4 VimpelCom, right? You knew that?

5 A. Correct.

6 Q. So whatever Mr. Gauthier is
7 sending you is not the privileged information of
8 Tennenbaum; fair?

9 A. Well, I -- I mean, privilege, I
10 don't know.

11 Q. Okay, well, I want to be fair to
12 you. I'm not going to ask you and in the next
13 course of questions I want to be clear, especially
14 with my friend who may not have standing --

15 THE COURT: If it has been redacted,
16 then it has been redacted. So presumably if it
17 shouldn't have been, you would have brought a
18 motion, so I don't know what I should make of this.

19 BY MR. WINTON:

20 Q. Well, Your Honour, in fact, we had
21 agreed amongst counsel that we would not be
22 bringing refusals motions or motions where we would
23 be asking for adverse inferences.

24 So I do want to get this set of
25 questions into the record, but I want to be clear

1 in the next set of questions that I'm not asking
2 for and I don't want you to disclose to me any
3 information or advice you received from your
4 lawyer, okay, because I just want to make sure that
5 you understand that is not what I am asking.

6 And if you scroll up, that was the
7 exchange, and then everything after that is
8 redacted. And then what you forward to Mr. Griffin
9 is an "FYI" and we don't see what it is.

10 And do you recall, and if it is just
11 that it was legal advice, just tell me that is it
12 and we'll stop there, but do you recall what
13 information you were forwarding to Mr. Griffin on
14 July 29th?

15 A. I don't.

16 Q. Okay. And the question for Mr.
17 Griffin in response to the "FYI" that we haven't
18 seen, if we can scroll up a bit, is:

19 "When does the exclusivity
20 period expire, Michael?"

21 And the response, if we scroll up:

22 "Thursday."

23 So you had, again, this information
24 regarding the status of the exclusivity all the way
25 through?

1 A. Before the exclusivity was being
2 entered into and we were talking about exclusivity,
3 we wanted to understand the way exclusivity
4 might -- how the seller was contemplating
5 structuring it. And we were made aware that they
6 were structuring it as one week of exclusivity, and
7 the exclusivity was entered into on July 23rd, and
8 so just by math it expired Thursday.

9 Q. Okay. And in your response you
10 also write:

11 "All of the model are being
12 cleaned up. What I hoped to have
13 completed yesterday, will come our
14 this afternoon."

15 And here is the sentence I want to draw
16 your attention to:

17 "We will then send to you and
18 will get the term sheets on Mobi
19 overview to you."

20 And "Mobi" is a reference to
21 Mobilicity?

22 A. That's correct.

23 Q. So at this time was there
24 contemplation amongst the consortium that there
25 would be some combination of the Wind assets and

1 Mobilicity assets?

2 A. We were considering that as a
3 possible or very logical adjunct to what we were
4 doing with Wind, but not -- you know, certainly not
5 a condition or anything associated with what we
6 were doing, but we were just doing the financial
7 analysis and to see if there was any basis with
8 which to look at combining the businesses.

9 Q. And this is after the government
10 has announced the auction rules for the AWS3
11 spectrum, right?

12 A. Correct.

13 Q. But you are still contemplating
14 whether or not you are going to combine or you are
15 still considering a combination of Mobilicity and
16 Wind together with --

17 A. We were studying it and analyzing
18 it and to see if it would make financial and
19 operational sense and hadn't done any level of
20 diligence on it, but --

21 Q. If we could turn up tab 5 in your
22 cross-examination brief, and this is WFC0051186.
23 And if you want to read other emails in the chain,
24 by all means, but I want to draw your attention to
25 the third email where you are writing to Jordan

1 Schwartz and others, so pausing there because that
2 is a new name into this group. Mr. Schwartz you
3 understood was a representative of Michael Serruya;
4 correct?

5 A. Yes, I believe that is the case.

6 Q. All right, and we see now by
7 August 14th, which is approximately a week after
8 you delivered an offer to VimpelCom, we now have
9 you sending an email to Mr. Fraser, Patrick Barry,
10 Greg Boland, Lawrence Guffey, Tony Griffin, Patrick
11 Scott, and Michael Serruya is now in the picture,
12 and some others, and you are cc'ing, as you
13 describe, the entire team, right, and that is the
14 consortium?

15 A. The consortium is a label, but it
16 is the -- it is certainly the investment team, the
17 folks that were putting capital in.

18 Q. Right.

19 "The VimpelCom board met last
20 Thursday and Friday ostensibly to
21 approve the 'bird in hand'. It has
22 now been almost one full week and no
23 announcement. I spoke to UBS
24 yesterday asking what the latest
25 update is. Their words: 'don't

1 burn the file yet'. I don't have
2 any insights as to what the holdup
3 is or what the issues are, but
4 clearly there are issues, otherwise
5 this would have been announced.

6 Even VimpelCom's corporate approval
7 process doesn't take one week."

8 So this is again another email where
9 you are sharing with the group what you heard from
10 UBS?

11 A. Let's break this down. There are
12 a number of points of just pure conjecture on my
13 end, and then there are some process updates. So I
14 will start this in no particular order.

15 When this process began in May, I think
16 that UBS as seller's agent understood that this was
17 a complex process from every dimension, legal, tax,
18 complex business, so their guidance to us since day
19 one was effectively don't ever burn the file.

20 There may always be an opportunity to participate
21 in this, because of the complexity of this process
22 and the complexity of this company, there may be
23 lots of people that might get there and get us into
24 exclusivity and then they may drop out for a
25 variety of reasons. And I believe that had been

1 the history of the process that VimpelCom went
2 through in prior years. I'm not aware -- I know
3 that happened with Verizon.

4 So the job of the agent and what this
5 refers to is don't throw the files away because you
6 never know what may happen, and their job is just
7 keeping other parties around the table in the event
8 something happens is -- I mean, I think that is
9 part and parcel of what their job and
10 responsibilities are.

11 Q. All right, and you --

12 A. The comment about the board
13 meeting ostensibly was from just a process update
14 of are you still in exclusivity. I may have gotten
15 a comment that the board is meeting, and when I say
16 "ostensibly to approve 'the bird in hand'", that
17 was just my opinion and conjecture. I don't know
18 why else the board would be meeting.

19 But you know, the comments associated
20 with VimpelCom's corporate approval process, I have
21 no idea what goes on. I worked in a big company.
22 You know, it is just my conjecture.

23 THE COURT: So the question was, so
24 this is something you heard from UBS? That was the
25 question you were asked.

1 THE WITNESS: Okay, the "don't burn the
2 file yet" was -- came directly from UBS.

3 BY MR. WINTON:

4 Q. And you heard from UBS that "the
5 VimpelCom board met last Thursday and Friday"?

6 A. If you could scroll down just so I
7 can get the full context, and just so I see that
8 first sentence?

9 Q. Certainly, and so the full context
10 of this one, and I have a copy in my hand, so the
11 discussion seems to be around trying to schedule a
12 call with I think you, sir. And if we keep going
13 and we can go to the second page, this from
14 Mr. Schwartz on August 10th is a little more
15 substantive:

16 "I just got word from Michael
17 that he is tied up."

18 It is sent to you, so we'll assume the
19 Michael he is referring to is the one he is
20 associated with, Michael Serruya, and then trying
21 to schedule a call with Mr. Serruya. And you see
22 at the bottom still here on August 10th that
23 Mr. Schwartz writes:

24 "Still trying to connect with
25 Michael S."

1 So it seems to be that this is all
2 about, for that intermediate stage, trying to
3 schedule a call to bring Mr. Serruya into the
4 group?

5 A. Got it, and so if you go back --

6 Q. And you have your email there:

7 "I took the liberty of
8 mentioning to UBS that this last leg
9 of the commitments may come this
10 evening."

11 So you were passing on information to
12 UBS about the status of the consortium's deal,
13 right?

14 A. If you go up to -- if you go back
15 up to the email?

16 Q. Sure.

17 A. As I mentioned, there are a
18 number -- myself, our investment banker, other
19 parties would always reach out to UBS just to get a
20 sense of are they still in exclusivity and what the
21 process timing is.

22 I don't know whether the VIP board
23 meeting on Thursday and Friday came from UBS,
24 because I don't recall whether I talked to them
25 directly, or whether it came from Q advisors

1 talking to them, but in the email I do say "I spoke
2 to UBS yesterday" and that is what they referenced.

3 Q. Right, and --

4 A. This is, you know, ostensibly
5 advisors just highlighting they are still in
6 exclusivity and they cannot engage, they cannot
7 solicit, they cannot do anything with us.

8 Q. Well, it is more than just saying
9 they are still in exclusivity. They are telling
10 you about the timing of the board meeting; fair?

11 A. Again, I don't know whether
12 this -- I don't recall whether this was UBS telling
13 me this or whether it came from another advisor.

14 Q. All right, well, in this email you
15 write "I spoke to UBS", not "I heard from UBS".
16 And if you go down back to page 2 in the middle of
17 the page on August 10th you wrote just at the very
18 bottom of what is on the screen here, and now it is
19 moving up:

20 "I took the liberty of
21 mentioning to UBS [...]"

22 So are you describing conversations
23 that were intermediated by Q, or did you speak
24 directly to UBS?

25 A. Well, the ones that reference that

1 I spoke to UBS, I spoke to UBS. I'm just -- the
2 sequencing of the email that I wrote, there is one
3 fact that I don't recall whether I spoke to UBS or
4 whether it came from another advisor, but the other
5 facts where I explicitly say that I spoke to UBS,
6 it came from them.

7 Q. Okay. And then if we go back to
8 page 1, in response to your update to the entire
9 team, Mr. Boland writes:

10 "Michael and Michael [...]"

11 Which fair to assume that is a
12 reference to you and to Mr. Serruya; would you
13 agree with that?

14 A. Yes, I believe so.

15 Q. And he writes:

16 "I think it would be easy and
17 painless to put in a letter
18 enforcing willingness to provide
19 equity financing."

20 Stopping there, the letter he is
21 referring to is a letter to VimpelCom, right?

22 A. I don't know the specific
23 reference of that, but the context would be just
24 another follow-on from our offer letter that we
25 sent in the week before.

1 Q. Right, that is to VimpelCom,
2 right?

3 A. That is correct.

4 Q. The next sentence --

5 A. The letter that we sent on
6 approximately the week before, August 7th, our
7 unsolicited bid was addressed to VimpelCom.

8 Q. So you understood Mr. Boland's
9 reference to put in a letter enforcing willingness
10 to provide equity financing to suggest a letter,
11 another letter to VimpelCom; fair?

12 A. I'm just reading this.

13 Q. Yes.

14 A. (Witness reads document.)

15 In reading this, I believe that is the
16 case, but I cannot be certain.

17 Q. The next sentence:

18 "If the Catalyst deal gets
19 wobbly the more heft we have in our
20 syndicate the better."

21 And so what you understood Mr. Boland
22 to be saying was that if the Catalyst deal with
23 VimpelCom is having difficulties, then we need to
24 show VimpelCom that we have heft in our consortium
25 to back up our offer?

1 A. That is what this says.

2 Q. And I'm going to suggest to you
3 now that a reference to the Catalyst deal was based
4 on definitive knowledge that there was a Catalyst
5 deal being discussed and negotiated with VimpelCom?

6 THE COURT: Well, are you asking
7 Mr. Leitner what Mr. Boland knew?

8 MR. WINTON: Yes, I am.

9 THE COURT: That is the purport of your
10 question.

11 BY MR. WINTON:

12 Q. Yes, I am.

13 A. I don't know what Mr. Boland knew.

14 MR. WINTON: Just, sorry, Your Honour,
15 I'm almost done. Just a moment's indulgence,
16 please.

17 THE COURT: Don't be sorry.

18 MR. WINTON: Just one second, Your
19 Honour.

20 Okay, Your Honour, there is a document
21 that was not in Mr. Leitner's cross-examination
22 bundle but I understand it is in Mr. Griffin's and
23 which should be on your iPad.

24 THE COURT: Just a second. Whereabouts
25 is that, in the examination or cross?

1 MR. WINTON: The cross for Mr. Griffin,
2 and it is tab 21 in that folder.

3 THE COURT: I have it.

4 BY MR. WINTON:

5 Q. Now, on July -- sorry, the doc ID
6 is WFC0048724, and in this document, if we look at
7 the email from Mr. Friesel, the second email in the
8 chain from Oakhill to a group, including yourself,
9 Mr. Leitner:

10 "Herbst called me to say that
11 the company has entered into
12 exclusivity at the reserve price -
13 \$150 million."

14 Now, Herbst is from UBS; correct?

15 A. Correct.

16 Q. And so UBS was telling you at the
17 very outset what was the price that this other
18 bidder had started off with when they entered into
19 exclusivity; correct?

20 A. I don't know what Herbst told
21 Jonathan other than what is put in this email, and
22 for near three months of this process, which is
23 around July 23rd, the price was 150 million
24 dollars, was 300 million dollars.

25 Q. Right, the reserve price of 150

1 million is for the equity, the total equity
2 including the Lacavera interest, right?

3 A. It is for the -- well, the 300
4 million dollars is for the enterprise value of the
5 company. Whatever was left on the debt would go to
6 the equity.

7 Q. Right, and we know, and it is in
8 your affidavit, the vendor debt was 150 million?

9 A. Yeah, and accruing because they
10 weren't paying interest.

11 Q. Okay. And Mr. Friesel's report to
12 you is that the company is tied up for five to
13 seven days, so not an exact seven days, but a
14 range, five to seven days, right?

15 A. That is what the email says.

16 Q. Right, and you had no reason to
17 doubt the accuracy of Mr. Friesel's report to you?

18 A. I didn't have any reason to doubt
19 the accuracy, no.

20 MR. WINTON: Okay, no further
21 questions, Your Honour.

22 THE COURT: Any re-examination?

23 MR. CARLSON: No, Your Honour.

24 THE COURT: Thank you, Mr. Leitner.

25 THE WITNESS: Thank you.

1 -- WITNESS EXCUSED --

2 MR. DiPUCCHIO: Your Honour, that would
3 bring us to the resumption of Mr. Griffin's
4 cross-examination. I understand my friends have to
5 fetch Mr. Griffin from somewhere.

6 MR. THOMSON: He is just upstairs.

7 MR. DiPUCCHIO: And, Your Honour, I am
8 respectfully requesting we take just a two-minute
9 break, personal break, if you don't mind, before we
10 get started.

11 THE COURT: Sure. We'll take five
12 minutes.

13 -- RECESSED AT 12:37 P.M.

14 -- RESUMED AT 12:45 P.M.

15 ANTHONY GRIFFIN: UNDER PRIOR OATH.

16 CROSS-EXAMINATION BY MR. DiPUCCHIO

17 (CONT'D):

18 Q. Mr. Griffin, I would like to start
19 today by asking you specifically about the Wind
20 transaction and West Face's team in relation to
21 that transaction. Can you and I agree that there
22 were various people at West Face that played a role
23 in the Wind transaction?

24 A. Yes, that's correct.

25 Q. Amongst those were a gentleman by

1 the name of Peter Fraser who I believe you
2 described as your partner?

3 A. Yes.

4 Q. Mr. Dea, Tom Dea, correct, also
5 your partner?

6 A. Yes.

7 Q. Mr. Boland who is the CEO of West
8 Face and also your partner?

9 A. Yes.

10 Q. Yu-jia Zhu who I think you
11 described as a Vice President?

12 A. Yes.

13 Q. And of course you?

14 A. Yes.

15 Q. And was that the Wind deal team?

16 A. Yes, and the only other person who
17 would have been involved in the firm was our
18 general counsel at the time, Alex Singh.

19 Q. All right. And I take it that
20 there was no discrete division of labour as between
21 those people in relation to the various tasks that
22 needed to be performed?

23 A. No, it was quite fluid.

24 Q. So if the tasks were allocated,
25 they would have been allocated amongst that group

1 of people we discussed?

2 A. Yes, that's correct.

3 Q. And throughout the period of time
4 that you were pursuing Wind, which I take it
5 extended from around November of 2014 [sic] up
6 until obviously your successful bid in September of
7 2014; is that right?

8 A. No, that is incorrect. It started
9 earlier than that. I thought I heard you say 2014
10 November to --

11 Q. No, November of 2013.

12 A. That is correct.

13 Q. All right, so the period of time
14 that West Face took an interest in Wind extended
15 from November of 2013 to obviously your successful
16 bid in September of 2014 with the consortium?

17 A. Yes, as it pertained to a change
18 of control transaction, that is correct. As it
19 pertained to other financing efforts that the
20 company embarked upon, it pre-dated that period.

21 Q. Okay, I'm talking specifically
22 about a change of control transaction. So during
23 that period of time, November 2013 to September
24 2014, there obviously was email reporting that
25 occurred amongst your team members, right?

1 A. Yes.

2 Q. But apart from the emails, you
3 will agree with me there would have also been a lot
4 of verbal reporting?

5 A. Yes.

6 Q. And certainly there would have
7 been a lot of reporting that occurred by way of
8 telephone calls?

9 A. Yes.

10 Q. And that would have included cell
11 phone calls, as an example?

12 A. It could have. The vast majority
13 of it would have been in-office communication.

14 Q. And the deal team at Wind --
15 sorry, at West Face in relation to Wind was in
16 constant communication in connection with the Wind
17 file; is that fair?

18 A. Yes.

19 Q. There are closed door investment
20 meetings that are held at West Face?

21 A. Yes, that's correct.

22 Q. And those closed door investment
23 meetings are not only in relation to, for example,
24 the Wind deal, but the closed door investment
25 meetings take place where other opportunities are

1 discussed as well; correct?

2 A. Yes, that's correct.

3 Q. For example, one of the things
4 that your group discusses in these closed door
5 investment meetings is the deal pipeline?

6 A. Yes.

7 Q. Developments on investments that
8 you have made?

9 A. Yes.

10 Q. So as a result of that constant
11 communication and the closed door investment
12 meetings that your group had, you'll agree with me
13 that you personally never felt uninformed about any
14 part of the Wind deal?

15 A. I think that is fair, yes.

16 Q. And I suggest to you that you
17 would agree that none of the members of your deal
18 team were ever uninformed about any particular part
19 of the Wind deal?

20 A. I think the only distinction -- a
21 general statement, I think that is correct. I
22 mean, obviously amongst the partners, Greg, Peter,
23 Tom and myself, I think there would be a higher
24 level involvement and communication than might be
25 expected from our Vice President or general

1 counsel.

2 Q. Can you just keep your voice up --

3 A. Yes, sorry.

4 Q. -- Mr. Griffin, sorry, I'm even
5 having trouble hearing you. What was that last
6 part of your answer? I didn't catch it.

7 A. The communication between the four
8 partners, and myself included, would be at a
9 slightly different level of consistency than that
10 with say our general counsel or an analyst on the
11 file. But I would say it is a fair statement that
12 we were all in constant communication with one
13 another.

14 THE COURT REPORTER: I'm sorry, I would
15 just ask you to keep your voice up.

16 THE WITNESS: Okay.

17 BY MR. DiPUCCHIO:

18 Q. And generally speaking -- and you
19 can yell at me just as much as I'm yelling at you.

20 A. Yes, okay.

21 Q. And generally speaking, you'll
22 agree, though, that virtually all the members of
23 your team would have been kept very well informed
24 about any developments on the Wind deal?

25 A. Yes.

1 Q. And your team would gather
2 together weekly at minimum, right?

3 A. At a minimum, yes.

4 Q. Okay. And in fairness, you
5 certainly could meet more frequently on an ad hoc
6 basis as it was required, right?

7 A. Yes, we certainly could.

8 Q. And in the meetings, the weekly
9 meetings and the ad hoc meetings, you would, for
10 example, share information with one another about
11 what was happening in relation to the Wind deal; is
12 that fair?

13 A. Yes.

14 Q. Would you agree with me that West
15 Face itself doesn't have a highly formal -- doesn't
16 have highly formal lines of reporting within the
17 organization given its size?

18 A. I would say that is fair.

19 Q. It doesn't function like a bank?

20 A. It certainly doesn't, no.

21 Q. And by that I take it that you'll
22 agree with me that there aren't any strict silos or
23 strict reporting lines where certain people are
24 kept informed of certain things and other people
25 are kept out of the loop?

1 A. Well, that is not entirely the
2 case insofar as an analyst assigned to a specific
3 file and a specific deal team would have a high
4 level of awareness of the specifics of a
5 transaction we are working on, whereas other
6 analysts within the firm who are not involved in
7 that deal team would have very little knowledge of
8 what is happening.

9 Q. Okay, so you are drawing a
10 distinction as between an analyst that is part of
11 your deal team who you would agree with me would
12 have a high level of involvement and knowledge in
13 that particular deal, right?

14 A. That's correct.

15 Q. As opposed to an analyst that was
16 not working as part of the deal team who might not
17 have that knowledge?

18 A. Yes.

19 Q. And would you agree with me that
20 West Face itself has a flat organizational
21 structure?

22 A. Yes, I would say that is fair
23 based on the number of employees we have.

24 Q. Sir, I want to turn to some of
25 what you knew when you first became aware of the

1 Wind opportunity in November of 2013, and I take it
2 from your evidence in-chief that you became aware
3 of that opportunity through a discussion with
4 Mr. Lacavera in November; is that correct?

5 A. The very first point of contact we
6 had was a banker at RBC Dominion Securities who had
7 contacted us on behalf of Mr. Lacavera to
8 facilitate an introduction or re-introduction given
9 that we had met previously, and he had set up the
10 meeting for Tony to come in or the call to be made.

11 Q. And the first substantive
12 conversation you had about the potential
13 opportunity was in fact your conversation with
14 Mr. Lacavera in November of 2013?

15 A. Yes.

16 Q. Now, at that time I take it you'll
17 agree with me that you understood that the majority
18 equity owner of Wind had experienced several
19 regulatory setbacks?

20 A. We knew of one specific regulatory
21 setback as it pertained to their desire to take
22 advantage of the new structure that had been set up
23 by the Federal Government for small market
24 participants and foreign ownership and that was the
25 one we were chiefly aware of, was that their

1 efforts to convert into majority voting and
2 economic interest had been thwarted because of the
3 Russian parent company influence, as we understood
4 it.

5 Q. Okay, and so what you are
6 referring to there was VimpelCom's attempt in 2013
7 to effect a re-organization whereby it would have
8 majority equity and voting control of Wind?

9 A. That is right, and we understood
10 that was denied under the Investment Canada Act.

11 Q. And Investment Canada had denied
12 that, as you say?

13 A. Yes.

14 Q. And apart from that, you were also
15 aware, I think you testified about this in your
16 examination in-chief, that Orascom had initially
17 been blocked by the CRTC when it had attempted to
18 start up Wind?

19 A. Well, my recollection of what had
20 happened is a little bit different insofar as the
21 CRTC took a position that the financial structure
22 that Orascom had put in place at the time in their
23 view was non-compliant with Canadian ownership
24 requirements, and they took a very bright line
25 position on that issue.

1 And the company had largely been funded
2 with shareholder loans, and they felt the influence
3 conferred through those shareholder loans tilted
4 the balance in their view such that they felt
5 Orascom had higher indices of control than that
6 which they were representing under the shareholders
7 agreement.

8 As a consequence of that, the CRTC took
9 the bright line position that they were not
10 compliant with the foreign ownership restrictions,
11 and it was only upon intervention by the Federal
12 Government that that was subsequently overruled.

13 Q. All right, I think by your answer
14 you have made my point, which is you had a high
15 level of awareness of the issues that had been
16 experienced by Orascom when it initially tried to
17 enter the market through Wind?

18 A. Yes.

19 Q. And the attempt that we discussed
20 in 2013, VimpelCom's attempt to reorganize the
21 ownership structure such that it had majority
22 equity and voting control, that attempt and its
23 rejection was widely reported in the press, I take
24 it, at the time that the rejection occurred?

25 A. Yes, I do remember distinctly

1 public articles about that, that fact, and the
2 denial under the Investment Canada Act.

3 Q. So given that history that you and
4 I have just discussed, you'll agree with me that
5 you were well aware by late 2013 that VimpelCom had
6 become very frustrated by the regulatory framework
7 in Canada?

8 A. I would say that is fair, yes.

9 Q. And not only were you well aware
10 of that fact, but I suggest to you that that fact
11 would have been well known to anyone who followed
12 the industry with any modicum of attention?

13 A. I think that is a fair comment.

14 Q. And, sir, with respect to Catalyst
15 itself, just for one moment, you were aware that
16 Catalyst had a particular or acute involvement in
17 the telecom industry, right?

18 A. Well, we had seen or read press
19 articles where they had suggested I think two
20 things.

21 One was that they had a pre-existing
22 involvement in Mobilicity, one of the new entrant
23 competitors, which was in a restructuring itself.

24 And they had also, you know, advanced
25 the argument that Wind and Mobilicity should be put

1 together as one operating business.

2 Q. Right.

3 A. And so I think that was one of the
4 first points at which we became aware that they
5 had, you know, an interest and/or were following
6 the developments of these companies.

7 Q. And at one time were both involved
8 in terms of having debt in Mobilicity?

9 A. I don't know what the cross-over
10 point was. I'm aware of the fact that Catalyst did
11 ultimately become a creditor to Mobilicity, but I
12 don't know relative to when we entered and exited
13 what the cross-over points were, if any existed at
14 all.

15 We had exited our investment in the
16 first quarter of 2013 and prior to that had been
17 part of a creditors -- unofficial committee of
18 creditors, which they were not a part of, as best I
19 could tell at the time.

20 Q. Did you know anything at all about
21 Catalyst's other involvement in telecom deals?

22 A. No, not other than that, no.

23 Q. So for example, you didn't know
24 that one of the principals of Catalyst, Mr. de
25 Alba, would have been involved in the restructuring

1 of AT&T Latin America, let's say?

2 A. I wasn't aware of that
3 restructuring. It wasn't something that I would
4 have followed. I mostly focussed on North American
5 situations.

6 Q. Or how about Mr. Glassman's
7 involvement in NextWave in the United States, were
8 you aware of that?

9 A. No, I don't know NextWave.

10 Q. Do you know anything at all about
11 NextWave?

12 A. I don't.

13 Q. So before you made -- and, Your
14 Honour, I'm in your hands. We haven't been going
15 for a long time, but it is 1 o'clock.

16 THE COURT: That is fine. I assume you
17 are going to be awhile?

18 MR. DiPUCCHIO: I will be awhile.

19 THE COURT: All right, we'll take the
20 lunch break.

21 -- RECESSED AT 1:00 P.M.

22 -- RESUMED AT 2:20 P.M.

23 THE COURT: Mr. DiPucchio.

24 MR. DiPUCCHIO: Good afternoon, Your
25 Honour.

1 BY MR. DiPUCCHIO:

2 Q. Mr. Griffin, just before we took
3 the break, you remember we were discussing all of
4 the regulatory shall we say concerns that would
5 have applied to VimpelCom in the 2013 time frame.

6 A. Yes.

7 Q. Do you recall that? And before
8 you made your very first proposal to VimpelCom, you
9 understood all of that; in other words, you would
10 have understood right from the outset that
11 VimpelCom had concerns with respect to the
12 regulatory process in Canada?

13 A. I think yes, I would say we had a
14 reasonable understanding of it, and I think what it
15 really pertained to for VimpelCom was assuring
16 itself that it could actually extricate itself from
17 its investment in Canada, get some amount of
18 proceeds back in this process and, you know, what
19 was the path to get there because they could not do
20 that independently.

21 Q. So before you made your very first
22 bid or before you sent over your very first
23 expression of interest, you would have obviously
24 thought about ways to minimize or eliminate the
25 regulatory risk since that would likely be crucial

1 from VimpelCom's perspective; is that fair?

2 A. Yes, and I think one of the things
3 that we felt very strongly about was because we
4 were a Canadian domiciled investment fund, that we
5 wouldn't face as a bidder some of the hurdles that
6 other parties might, such as a U.S. entrant, and
7 perhaps we would be an easier party to convey the
8 business to and a more palatable party for the
9 Competition Bureau and Industry Canada was our hope
10 or expectation.

11 Q. And that was because of the fact,
12 as you just said, that West Face as a Canadian
13 investment fund would not have faced potentially
14 the same regulatory scrutiny from Investment Canada
15 or the Competition Bureau as a foreign-based
16 investor; is that fair?

17 A. Yeah, I think our hope was, look,
18 we know that the Russians were not an acceptable
19 counter-party. We didn't know if we would be
20 acceptable either, but we couldn't think of a
21 reason why we wouldn't be.

22 Q. And we'll come to your -- I know
23 you had a meeting subsequently with the Federal
24 Government officials, and we'll come to that in a
25 moment. Am I correct you met with them in May?

1 A. Yes, that's correct.

2 Q. All right, so we'll come to that.

3 Let's take a look then at the very
4 first, shall we say, expression of interest that
5 you put forward to VimpelCom. And, Your Honour,
6 that is at tab 59 of Mr. Griffin's
7 cross-examination brief.

8 We are looking at, for the record,
9 WFC0080889, Mr. Griffin, and what we have or what
10 you should have before you is a November 8th, 2013
11 letter addressed to Augie Fabela II, and he is said
12 to be -- he or she is said to be chairman emeritus
13 and co-founder of VimpelCom, and then Mr. Lacavera,
14 right?

15 A. Yes, that's correct.

16 Q. And we can't see the bottom of the
17 letter, but this is a letter that was signed by you
18 on behalf of West Face; is that right?

19 A. Yes, that's correct.

20 Q. Oh, sorry, now that I see it --

21 A. It is Alexander Singh, actually.

22 Q. -- it is Alexander Singh?

23 A. Yes.

24 Q. And Mr. Singh would have been
25 signing that presumably at your direction?

1 A. Yes, I had worked on this
2 proposal.

3 Q. Okay. And in that expression of
4 interest, if we can just scroll back up to page 1,
5 you call it in the first paragraph a formal
6 expression of interest in participating in a
7 potential transaction which would result in the
8 acquisition of all interest in Globalive Investment
9 Holdings Corp. and its subsidiaries; do you see
10 that?

11 A. Yes.

12 Q. And the enterprise value that you
13 are putting on the transaction at this point in
14 time is between 450 to 550 million dollars;
15 correct?

16 A. Yes.

17 Q. And as you describe in your
18 letter, that is comprised of 150 million dollars of
19 third party debt and then an equity value of
20 between 300 to 400 million dollars, right?

21 A. Yes, that's correct.

22 Q. And then you go on to describe in
23 the second paragraph, generally speaking, West
24 Face's business, and then in the third paragraph
25 you say you are going to need to have access to a

1 data room and reasonable access to management,
2 right?

3 A. Yes.

4 Q. And that of course refers to the
5 management of Wind?

6 A. And, yeah, it was a bit more
7 extensive than that insofar as there was also a
8 European contingent of managers that were
9 overseeing the investment on behalf of VimpelCom
10 who, you know, as we got into this process played a
11 role as well, but certainly locally the Wind
12 management group.

13 Q. All right, and the reference to at
14 least the management of Wind would have been a
15 reference to, amongst others, Mr. Lacavera, right?

16 A. Yes.

17 Q. Simon Lockie?

18 A. Yes.

19 Q. And then you just say in the last
20 paragraph of the first page that the letter is
21 being provided on a confidential basis, right?

22 A. Yes.

23 Q. And that is fairly boilerplate
24 stuff?

25 A. Yes.

1 Q. That proposals you are advancing
2 are being advanced on a confidential basis, right?

3 A. Yes.

4 Q. Okay. And I take it after West
5 Face floats this expression of interest to
6 VimpelCom, that you do receive access to the data
7 room; correct?

8 A. Yes, we did. I believe it was in
9 January, maybe the very end of December.

10 Q. All right.

11 A. I just can't recollect the
12 specific date.

13 Q. Okay. And in addition, obviously,
14 to having access to the data room, there would have
15 been a non-disclosure agreement signed prior to you
16 accessing the data room, right?

17 A. Yes.

18 Q. And is it correct to say that
19 between the period, and I think you did say this in
20 fact in your examination in-chief, that between the
21 period of January to March of 2014 there wasn't
22 much discussion or indeed not any meetings with
23 VimpelCom or its management?

24 A. Yeah, I don't recollect having a
25 meeting with VimpelCom management prior to that.

1 We were in the throes of going through the data
2 room and trying to develop a strategy as to how we
3 were going to analyze the situation, who we might
4 need to get involved to assist in that process
5 external to the firm and, you know, really
6 formulating a more crystallized proposal as a
7 culmination of that work.

8 Q. All right, so between January and
9 March, apart from your due diligence activities and
10 your internal brainstorming, there is not much that
11 happens externally vis-à-vis meetings with
12 VimpelCom or the management of Wind?

13 A. Yeah, I can't say I recall
14 anything during that period.

15 Q. And then I believe it is in April,
16 and you can correct me if I'm wrong, VimpelCom
17 withdraws its financial support for Wind in the 700
18 megahertz spectrum auction that was occurring at
19 that time; is that correct?

20 A. I thought that may have even
21 occurred a bit earlier than that, but certainly it
22 was around about the first quarter that that
23 occurred.

24 Q. All right. In terms of framing
25 it, it certainly was before you put forward your

1 first offer?

2 A. Yes, that's right.

3 Q. So at minimum, it is prior to
4 April?

5 A. Yeah, and that obviously to us
6 spoke volumes about their decision to exit as
7 opposed to continue to invest in the company.

8 Q. And that was a fact, if you will,
9 or a news item that was well known in the industry,
10 that VimpelCom had formally withdrawn its financial
11 support to Wind?

12 A. Yeah, certainly the decision not
13 to participate in the 700 auction was widely
14 reported in the press.

15 Q. And also around this time, and I
16 am talking now about the March/April time frame of
17 2014, there was also a very real possibility that
18 was known to you of Wind defaulting on about 150
19 million dollars of its third party debt, right?

20 A. Yes, I believe it was April 30th
21 of that year that that financing came due.

22 Q. Yes, and you were obviously aware
23 prior to April 30th that there was a very real
24 possibility that Wind would be defaulting on that
25 third party debt that was coming due on April 30th?

1 A. That was certainly a possibility.

2 Q. So your first proposal, your first
3 actual proposal to VimpelCom was made on April 23rd
4 of 2014; do you recall that?

5 A. If you could bring it up, that
6 would very much help to refresh my memory.

7 Q. I will certainly do that. It is
8 tab 12 of the cross-examination brief, Your Honour,
9 and this is, for the record again, WFC0066640.

10 And we are looking here at a document
11 dated April 23rd, 2014. Your counsel took you to
12 it in your examination in-chief, so I'm not going
13 to review the actual parties that it is addressed
14 to. But if you just scroll down to the end right
15 to the signature line, you will see at the bottom,
16 Mr. Griffin, this time it is signed by you;
17 correct?

18 A. Yes.

19 Q. All right. And you were, I take
20 it, primarily responsible, along with the other
21 members of your team, for putting together the
22 terms of the proposal?

23 A. Yes, our investment committee
24 would have reviewed this before it went out.

25 Q. Okay. So if you go back to the

1 actual body of the document, and what I am going to
2 turn your attention to is just the first paragraph,
3 Mr. Griffin, this particular proposal, your first
4 proposal, was to provide up to 200 million dollars
5 in first lien debt financing to the company, right?

6 A. Yes.

7 Q. And if you flip the page to the
8 second page of the letter and look at the second
9 paragraph, you will see the terms. You have the
10 initial debt financing of 200 million dollars, and
11 then you provide for a 90-day what you call option
12 period?

13 A. Yes.

14 Q. And that 90-day option period is
15 provided in order for you and VimpelCom to attempt
16 to negotiate and enter into definitive agreements
17 for a transaction which is described as the
18 additional financing; correct?

19 A. Yes.

20 Q. And that would involve valuing
21 Globalive's equity at 300 million dollars and the
22 enterprise as a whole at 500 million dollars;
23 correct?

24 A. Correct.

25 Q. And then there is the actual

1 mechanics of the transaction, but the third bullet
2 point there is that West Face, assuming this second
3 transaction is completed, West Face would own the
4 voting shares, giving it not less than two-thirds
5 of the total number of votes that may be exercised
6 at any shareholders meeting, right?

7 A. Yes.

8 Q. So really what you were
9 contemplating through this proposal was effectively
10 getting control of Wind's debt, first of all,
11 right?

12 A. Well, partially true. I mean,
13 what we were trying to do is provide an immediate
14 means for the company to address the maturity of
15 the vendor financing by effectively replacing it
16 with not only a like amount of money, but a little
17 bit more than that to finance working capital, and
18 restructuring that debt interest on the investment
19 such that it would be a convertible interest into
20 ownership of the company as opposed to just a
21 conventional note or debt financing which conferred
22 an ownership.

23 Q. And that latter part that you
24 referred to would be the second stage of the
25 transaction if in fact it was ever concluded, right

1 ?

2 A. That's correct.

3 Q. So there might have been a
4 scenario here, had this transaction gone forward,
5 where you would have essentially been a debt-holder
6 and never actually completed your option?

7 A. To answer that question, I would
8 really have to just re-read the term sheet that you
9 have got in front of me so I can recollect all the
10 mechanics.

11 Q. Okay. All right, well, if we
12 scroll down a little bit, maybe you'll see the rest
13 of the terms there.

14 A. (Witness reviews document.)

15 Yeah, if I recall what we contemplated
16 here was not necessarily that we would immediately
17 convert from the convertible debt instrument down
18 into equity. It would effectively remain. All of
19 the shareholder loans that had been advanced to the
20 company would effectively be cancelled, and in
21 return for that VimpelCom would assume in exchange
22 for that cumulative investment a minority equity
23 position in the company.

24 And I would just have to read the body
25 of the term sheet to recall whether we had any

1 forced conversion events in that convertible debt
2 instrument that would have necessitated us moving
3 from having a priority claim with the debt in
4 addition to participation in the equity upside
5 through a conversion event.

6 But I think the spirit of it was
7 effectively to put us in a majority voting position
8 on a look-through basis and also to preserve the
9 seniority of the new money that we had invested
10 relative to the VimpelCom stake in the company.

11 Q. All right. And my question quite
12 simply was that you could have, had this particular
13 transaction proceeded, you could have been left
14 holding the debt of the -- or holding the debt and
15 not actually proceeding with the equity
16 transaction; you had that option?

17 A. Yes, if I recall correctly, we
18 could have just maintained our interest in that
19 convertible debenture. And you know, part of this
20 was trying to insulate our risk, right, and make
21 sure that we had all the characteristics of an
22 equity investment with some of the downside
23 protections of the claim in the capital structure.

24 Q. All right. And just if you scroll
25 down just a bit to that next part, the paragraph

1 starting "During the option period [...]", one of
2 the provisions that you put into this proposal was
3 that in that 90-day option period, you were going
4 to have exclusivity such that none of Globalive,
5 VimpelCom or Global Telecom and AAL Holdings
6 Corporation could solicit, encourage, discuss,
7 negotiate or entertain any proposals from or
8 provide financial, operating or any other
9 non-public information to any party other than West
10 Face, right?

11 A. Yes.

12 Q. And that is, to your
13 understanding, a fairly commonplace exclusivity
14 provision in these kinds of transactions?

15 A. I would say that is a fair
16 statement.

17 Q. Now, your plan, as I understand
18 it, at that point which you discussed with Mr.
19 Boland was to essentially try to tie Wind up
20 through this exclusivity that you were proposing
21 and then go to Mobilicity ASAP?

22 A. Sorry, where do you draw that
23 inference?

24 Q. No, I'm not asking for any
25 inference. I'm asking you if that was the plan, to

1 effectively tie up VimpelCom with that option that
2 you were proposing and then proceed to approach
3 Mobilicity ASAP?

4 A. I don't necessarily recall linking
5 the two. I mean, I don't think it was a unique
6 idea that these two businesses combined together
7 would be more powerful or, you know, better
8 financed and capable of operational success. We
9 certainly thought about that possibility. The only
10 thing I'm struggling with a bit in answering your
11 question is just the sequencing of that as against
12 when we submitted this proposal.

13 Q. Okay, I'm asking you a slightly
14 different question, though. I'm not asking you
15 whether anything is common knowledge. I'm asking
16 you whether in fact that was your strategy as
17 discussed with Mr. Boland, to tie up VimpelCom
18 through this option period and then approach the
19 Mobilicity side? Do you recall that?

20 A. I honestly don't recall that
21 element of it.

22 Q. Okay, so can I ask you then and
23 Your Honour to turn up your affidavit and Exhibit
24 13 of your affidavit.

25 THE COURT: Is that in your brief?

1 By MR. DiPUCCHIO:

2 Q. I'm just trying to get
3 confirmation of that, Your Honour. It is 60, Your
4 Honour, I believe of my brief would be what was
5 Exhibit 13 of Mr. Griffin's affidavit, and this is
6 WFC0060279/1.

7 So just go down to the bottom of this
8 chain, please, so Mr. Griffin can review it.

9 A large part of this is blacked out
10 right at the very back end, as you will see, which
11 is your email to Mr. Boland of April 19, 2014, and
12 then just moving up in the chain, Mr. Boland says:

13 "Okay, let's discuss tomorrow."

14 And then moving up, this is now an
15 email from you back to Mr. Boland on April 21st in
16 which you say:

17 "Okay. We had Tony Lacavera in
18 on Monday and Friday as well re
19 Wind. There is a deal to do there
20 in two steps - Step 1 would be
21 taking out the existing vendor debt
22 of \$150 million CAD. Step 2 would
23 be negotiating an exit for
24 VimpelCom - they are sellers at \$300
25 million on the equity bracket on a

1 100% basis (and potentially lower).

2 According to Lacavera they are in
3 complete capitulation right now."

4 And then you say "Mobi [...]", which I
5 assume is a reference to Mobilicity, right?

6 A. That is correct.

7 Q. "[...] is back trying to get
8 their deal with Telus approved at
9 \$350 million but seems unlikely. If
10 we could buy Wind we could cut a
11 paper deal in common with Mobi that
12 would be more appealing to the
13 government that would give Wind all
14 of their needed spectrum for LTE."
15 Right?

16 A. Yes.

17 Q. So that was your thinking at the
18 time as proposed to Mr. Boland?

19 A. That was certainly one of the
20 strategies, reading this email. It was not a
21 pre-condition of our transaction with Wind,
22 however, that we would be able to acquire
23 Mobilicity, so --

24 Q. I didn't ask you that. I didn't
25 ask you if it was a pre-condition. I simply asked

1 you whether that was the thinking at the time on
2 your part?

3 A. Yeah, thank you for putting up
4 that email. It helped me to recall it.

5 Q. All right, and now just -- sorry,
6 were you finished?

7 A. No, I was just saying that clearly
8 that is one of the strategies that we were thinking
9 about at the time, because it did coincide with
10 Telus coming back for probably the second time and
11 trying again unsuccessfully to bid for the estate
12 of Mobilicity, and we thought that would probably
13 fail.

14 Q. Now, if you just move up, just to
15 give you the --

16 THE COURT: Could I just ask you a
17 question. What do you mean by a "paper deal"? Is
18 there some other kind of deal?

19 THE WITNESS: Yeah, a paper deal only
20 to say that we would give them the creditors'
21 roll-over equity in the merged company as opposed
22 to any cash consideration was the thinking.

23 BY MR. DiPUCCHIO:

24 Q. Now, if we just scroll up, just so
25 you have the full sense of the email chain with Mr.

1 Boland, Mr. Boland says:

2 "Sounds very interesting."

3 And then you tell him you are going to
4 put together "a letter today", which I assume ends
5 up becoming the offer that you make to VimpelCom on
6 April 23rd, right?

7 A. Yeah, I'm just reading. Yeah,
8 yes, I agree.

9 Q. Okay, and then Mr. Boland says at
10 10:00 a.m.:

11 "Can we negotiate an exclusive
12 with Wind - or a purchase of [West
13 Face Capital] [...]"

14 I assume that's the "WC", right? Do
15 you see that, Mr. Boland's email:

16 "Can we negotiate an exclusive
17 with Wind [...]"?

18 A. Yes.

19 Q. "[...] or a purchase of [...]",
20 and I am suggesting to you "WC" is a reference to
21 West Face Capital, right?

22 A. I think -- I don't know if that is
23 actually West Face Capital or a typo where it
24 should read "VC". I'm just trying to chain this
25 together here.

1 Q. That may be a typo; it may be a
2 reference to VimpelCom?

3 A. I have a feeling it may be,
4 because the rest of that sentence says "[...] or
5 purchase of WC stake subject to DD", which would be
6 due diligence "and outs." So I have a feeling that
7 it probably refers to VimpelCom as opposed to West
8 Face.

9 Q. All right, nothing much turns on
10 it, but in any event, Mr. Boland is suggesting to
11 tie them up for some time and then go to Mobi ASAP,
12 right?

13 A. Yes.

14 Q. And that is, in fact, when you
15 scroll up, you say:

16 "Yes, I think that is exactly
17 what we do - put in debt deal and
18 ask for 90 day exclusive. Coupon
19 ratchets every quarter with full
20 make whole for 1 year. Try to come
21 to heads of agreement in 90 days."

22 And that, in fact, is exactly the
23 proposal that I just took you to?

24 A. Yes, except for the detail around
25 Mobilicity, obviously. That proposal letter we put

1 in didn't have any of the contemplated detail on
2 that --

3 Q. But it had outs for you. That is
4 the point. The point is it had exactly the outs
5 that Mr. Boland was talking about while in the
6 meantime you would go to Mobilicity?

7 A. Right, I'm just trying to point
8 out to you that what the letter said as opposed to
9 what it did not say.

10 Q. All right. And then Mr. Boland,
11 just to close this off, says:

12 "Sounds good. What is the
13 backend capital plan if we do win
14 it? The only tweak I am thinking
15 about is how to pooch Mobi deal just
16 in case Telus is successful."

17 And by that, I take it that what Mr.
18 Boland is saying is this is all great, but if it
19 turns out the Telus deal actually has some legs to
20 it, we better figure out a way to pooch that deal
21 so that we are not stuck holding Wind without a
22 possibility of combining it with Mobilicity?

23 A. I would say that is a fair
24 inference.

25 Q. So very clearly at this point in

1 time, i.e., April 21, there is not just a concept
2 of combining Wind and Mobilicity. There is
3 actually a very serious concern expressed by Mr.
4 Boland that we better figure out a way that if we
5 do end up acquiring Wind, we can also combine it
6 with Mobilicity?

7 A. I think this goes -- I'll answer
8 your question yes, and the reason for that is
9 because we recognized at an early stage that the
10 Wind business, that one of the key things it needed
11 to address was its additional spectrum requirements
12 as it moved forward.

13 And we knew that the Mobilicity
14 spectrum which had been acquired in the AWS 1
15 auction at the same time that Wind bought its
16 spectrum was some of the most favourable spectrum
17 that we could go after to combine with the existing
18 Wind business.

19 And as a consequence of that and the
20 fact that we thought the incumbents would be
21 excluded or precluded from purchasing that spectrum
22 from the bankrupt estate, we might be able to get
23 it at a -- well, on any terms, but hopefully
24 favourable terms, and given that was subject to a
25 creditor approval process, unless they were going

1 to be paid out at par plus post-petition accrued,
2 you know, we had an audience to talk to.

3 Q. All right, so there is some
4 substantial, in the answer you have given me, there
5 was obviously some very substantial consideration
6 given to the possibility of combining Wind and
7 Mobilicity?

8 A. Yes.

9 Q. So now we'll turn to your
10 second -- well, let's just say this, that
11 particular proposal on April 23rd, 2014, didn't go
12 anywhere for you, right?

13 A. No, VimpelCom, you know, without a
14 lot of detail, it was not acceptable to them, our
15 proposal.

16 Q. Okay, so then let's turn to what
17 is your second kick at the can with VimpelCom, and
18 this is tab 13 of the cross-examination brief, Your
19 Honour, and it is WFC0106772. Here again the form
20 of the letter is virtually identical to the first
21 one, Mr. Griffin. It is just dated May 4th, 2014,
22 addressed to the same people.

23 And if we come to the terms that you
24 are proposing in this particular offer, let's turn
25 to page 2 of the letter, right there, the paragraph

1 starting "The transaction would have two key
2 elements [...]"; do you see that?

3 A. Yes.

4 Q. Okay. So again, here what you are
5 proposing is that on or before May 31st, 2014, West
6 Face would provide up to 200 million dollars of
7 first lien debt financing to the company, the same
8 concept for all intents and purposes that you had
9 proposed in April, right?

10 A. Yes, with the exception I believe
11 under this proposal being that that 200 million, I
12 don't believe that was a convertible instrument as
13 distinct from the prior proposal.

14 Q. And the May 31st, 2014 date I take
15 it was chosen by you because you knew that that was
16 the end of the forbearance period for that debt,
17 the 150 million dollars in debt that was coming
18 due?

19 A. I believe that is correct. It
20 would have been roughly 30 days of forbearance, and
21 so I think that is a fair assumption.

22 Q. Then in paragraph 2, the second
23 key element of your proposal was that:

24 "On or prior to May 31, 2014,
25 Globalive, VimpelCom, Global Telecom

1 and AAL Holdings Corporation and
2 West Face would enter into a
3 comprehensive letter of
4 understanding setting out the terms
5 and conditions [...]"

6 On which West Face would acquire the
7 company, right?

8 A. Yes.

9 Q. All right. So now we are talking,
10 as you say, not about a convertible debt situation,
11 but just a situation where you would be advancing
12 200 million to the company by way of first lien
13 debt and then seeking to enter into a comprehensive
14 letter of understanding that would cover off the
15 acquisition of the various equity interests?

16 A. Yes.

17 Q. So if you just go down a little
18 bit to the valuation and structure part of the
19 letter, the transaction in this case was going to
20 be based on an enterprise value for Globalive of
21 300 million dollars; correct?

22 A. Yes.

23 Q. And that assumed 160 million of
24 principal and accrued interest outstanding on the
25 existing vendor debt, right?

1 A. Yes.

2 Q. And you were valuing the equity of
3 the company at that time at 140 million dollars?

4 A. Correct.

5 Q. So if you look at the bullet
6 points under that paragraph, the first one is that
7 that particular transaction would see you getting
8 100 percent of the shares of Globalive, right,
9 through direct acquisition?

10 A. Yes.

11 Q. And VimpelCom, in the third bullet
12 point, is said to receive approximately 140 million
13 dollars in gross proceeds, and that is the effect
14 of the transaction you were proposing?

15 A. Yes.

16 Q. And again, very briefly, if you
17 flip to page 3 of the document under the heading
18 "Process and Timing", here what you are proposing,
19 broadly speaking, is that there was going to be
20 again a 90-day exclusivity period, right?

21 A. Yes.

22 Q. And what you have added in in this
23 particular case is a break fee that would be
24 payable of 20 million dollars to West Face if the
25 sale transaction didn't close and an alternative

1 transaction involving the company is completed at
2 any time prior to December 31, 2015, right?

3 A. Yes.

4 THE COURT: Where do I see that?

5 BY MR. DiPUCCHIO:

6 Q. It is under "Process and Timing",
7 Your Honour, and if you look at sort of midway, a
8 little bit closer to the bottom, it says:

9 "Will provide for a further
10 90-day exclusivity period and a
11 break fee of 20 million to be paid
12 to West Face if for any reason the
13 sale transaction does not close."

14 And, Mr. Griffin, what was the concern
15 at that stage that would have required you to
16 insert a 20 million dollar break fee payable to
17 West Face?

18 A. It wasn't really a specific
19 concern, other than, you know, if these guys found
20 another deal to do, we wanted to get paid for our
21 efforts here, and we attached a meaningful break
22 fee to the transaction and said, look, if for some
23 reason this falls apart through no fault of our own
24 and/or they decide to do another deal for some
25 reason, there is a cost to walking away from it.

1 Q. Well, that certainly wasn't going
2 to give much assurance to VimpelCom that was
3 looking for a clean exit, as you described it, was
4 it?

5 A. Was that a question or a
6 statement?

7 Q. Well, yeah, I'm asking you how
8 that is consistent with your understanding right
9 from the beginning of the piece, as you say it,
10 that VimpelCom wanted a clean exit?

11 A. Well, I think the distinction I
12 would make is that the break fee would really be
13 payable in circumstances where they have decided to
14 go in an opposite direction and it is partially, at
15 least partially, within their control to influence.
16 And so what we are providing, I would contradict
17 you, is a clean exit, but there is a cost to going
18 an alternative path.

19 Q. Well, it is a little bit more than
20 that, isn't it, Mr. Griffin, because your language
21 is that the 20 million dollar break fee to be paid
22 to West Face is if the transaction doesn't close
23 for any reason?

24 THE COURT: Well, just keep reading,
25 though.

1 MR. DiPUCCHIO: Yes, and an alternative
2 transaction?

3 THE COURT: Well, and an alternative
4 transaction.

5 BY MR. DiPUCCHIO:

6 Q. No, no, no, absolutely, I
7 understand that.

8 A. Let me clarify that. We would not
9 collect a break fee in the event the transaction
10 failed for reasons other than them choosing to do
11 another transaction that was in contravention of
12 our agreement. We don't collect break fees on that
13 basis.

14 Q. All right, so the intention here
15 wasn't to collect a break fee, for example, if
16 Industry Canada didn't approve the transaction and
17 then prior to December 31, 2015, there is another
18 transaction entered into by VimpelCom?

19 A. Well, the mere fact of choosing an
20 alternative transaction would be the trigger. We
21 didn't contemplate trying to hang them on whether
22 the Competition Bureau or Industry Canada would
23 approve the deal, to my recollection.

24 Q. All right. And then you say if
25 you -- well, first of all, under the heading

1 "Exclusivity", just below that, and we are not
2 going to keep going over it, but again you have
3 that standard common fair language you spoke of
4 where there is exclusivity provided for for a
5 90-day period, right?

6 A. Could you please scroll down just
7 so I could confirm the period? A little bit more,
8 please.

9 (Witness reviews document.)

10 Yeah, there is an exclusivity period.
11 I just -- it is a defined term, so I was just
12 looking for the day reference to corroborate it,
13 but --

14 Q. All right. And if you go down to
15 the fourth page under the heading "Conditions",
16 right there, and I'm directing your attention, Mr.
17 Griffin, now to the second-to-last bullet point
18 under that heading. One of the conditions that you
19 set out for the transaction was the receipt of two
20 things, any necessary governmental and regulatory
21 approvals or any desirable regulatory or
22 governmental approvals, right?

23 A. Yes.

24 THE COURT: Well, it says that.
25 What --

1 BY MR. DiPUCCHIO:

2 Q. Well, I'm just asking him to
3 confirm that, Your Honour. Obviously, it says what
4 it says. You can agree with me that is what it
5 says, right, Mr. Griffin?

6 A. Yes, that is what it says.

7 Q. And obviously, desirable
8 regulatory and governmental approvals is different
9 from necessary governmental approvals and
10 regulatory approvals?

11 A. Yeah, part of the -- I agree with
12 you, and part of this would reflect, you know, the
13 latitude to get input from counsel, not knowing
14 stepping off the curb here other than Industry
15 Canada and Competition Bureau approval, this is
16 just meant to capture anything else that may be
17 required, including the last part of this sentence
18 which really refers to any board consents that
19 would be required from Orascom and VimpelCom.

20 Q. Right, and I'm going to suggest to
21 you, Mr. Griffin, that what you have just described
22 would be necessary regulatory or governmental
23 approvals, not desirable regulatory and
24 governmental approvals? There is a difference, I'm
25 suggesting to you?

1 A. I read those -- I'm looking at the
2 words on the page. I just don't understand what
3 question you are asking me.

4 Q. I'm asking you, sir, you
5 understood from the get-go that a change of control
6 would require necessary regulatory and governmental
7 approvals, i.e., Industry Canada, Competition
8 Bureau, and we have talked about that?

9 A. Yes, agreed.

10 Q. So I'm telling you or suggesting
11 to you that desirable regulatory and governmental
12 approvals is what you would have wanted, what West
13 Face would have wanted over and above what was
14 strictly speaking necessary?

15 A. I won't dispute that statement. I
16 just can't put my finger on what was contemplated
17 over and above the required.

18 Q. You can't help us with what you
19 were contemplating when that language was put in
20 there?

21 A. No. I mean, it is really just to
22 provide a catch-all, I would say. There is no
23 rhyme or reason to it. If there was, I would try
24 to explain it to you.

25 Q. All right. Let's then stop there

1 in the chronology for one second with respect to
2 the offers that you were putting forward and turn
3 to your discussions at that time with the
4 regulatory and governmental bodies.

5 You and I talked earlier today about
6 the fact that you met with representatives of
7 Industry Canada and I believe the Prime Minister's
8 Office on May 21st, 2014; is that correct?

9 A. Yeah, it was certainly in the
10 month of May, I will agree with you on that date.

11 Q. And you were meeting with Industry
12 Canada and the PMO's office in Ottawa for two
13 reasons. One was to -- well, generally speaking,
14 you were meeting with them because from your
15 perspective there were certain uncertainties in any
16 transaction with VimpelCom, right?

17 A. That was one of the elements, yes.

18 Q. Okay. And what you wanted to
19 understand, amongst other things, from the Federal
20 Government officials was where the CRTC was going
21 to come out, for example, on wholesale roaming and
22 tower rates?

23 A. Not in that meeting.

24 Q. Not in that meeting?

25 A. No. If I could elaborate on that,

1 we met with Industry Canada and the PMO's office.
2 The CRTC actually operates autonomously of those
3 two units and has its own ability to provide
4 regulation. There was a hearing that was either in
5 process or shortly to go into a process where the
6 CRTC was going to re-emerge in terms of regulating
7 wholesale roaming rates in Canada. They had
8 previously not been doing that.

9 What had been imposed shortly
10 thereafter was actually a Federal
11 Government-mandated cap on wholesale data roaming
12 rates which preceded any ruling from the CRTC.

13 And so it was certainly a factor in our
14 decision and risk factors in terms of the Wind
15 investment, but it wasn't something that that
16 audience would have had any ability to influence,
17 unless the CRTC is acting in a non-autonomous
18 fashion.

19 Q. All right, that was certainly one
20 of the uncertainties, though?

21 A. Yes.

22 Q. And then the second uncertainty I
23 suggest to you that was in your mind at the time
24 was what was going to become of the additional
25 spectrum that the Canadian Government was going to

1 be auctioning, and I think that is a reference to
2 the LTE spectrum, right?

3 A. It is to the, yes, AWS3 for LTE,
4 yes, that is correct.

5 Q. And one of the particular concerns
6 you had with respect to that AWS3 spectrum was the
7 cost of the spectrum, what was going to be the cost
8 of that spectrum, right?

9 A. Yes, that was certainly one
10 element.

11 Q. So you had concern about the cost
12 of the spectrum, and I am going to suggest to you
13 that you also had concerns about the timing for the
14 auction?

15 A. Yes.

16 Q. And you had a concern about
17 whether blocks of that spectrum would be set aside
18 for non-incumbents?

19 A. Yes, correct.

20 Q. And that was obviously one of the
21 reasons for meeting with the Federal Government
22 officials, to try to get some information in
23 relation to that, right?

24 A. What we wanted to do was present
25 in that meeting really two things.

1 One was background information on West
2 Face Capital and try to hopefully paint the picture
3 that we were a palatable party that could act as an
4 acquirer of this company for those regulatory
5 approvals that had been cited.

6 The second was to say we as an investor
7 and probably most investors have a fairly common
8 set of concerns about the state of regulation in
9 the market. In addition to that -- and that goes
10 to wholesale roaming and tower sharing and whether
11 that would be mandated and at what cost.

12 And the third element was what you have
13 just cited, which is spectrum availability. We
14 knew that the business was not going to be able to
15 stand still on 3G AWS 1 standards. We would need
16 additional spectrum, and if that spectrum was to be
17 made available in a -- only in an unconstrained
18 auction with no set-aside, the costs of that would
19 be high.

20 And so what we tried to frame was a
21 list of concerns we had as an investor and a
22 potential purchaser and frame that and our interest
23 in acquiring this business.

24 Q. Thank you for that. And one of
25 the concerns that you just identified was a concern

1 that the party that was going to be purchasing Wind
2 was going to be palatable in terms of ownership for
3 the Federal Government?

4 A. Yes. We felt that they did not
5 want to see a failure of the strategy and the
6 policy decision the Tory Government had made with
7 respect to stimulating a fourth national carrier,
8 and that if they did provide, you know, approvals
9 to a purchaser, it was definitely within their
10 thinking and analysis to say, well, let's make sure
11 that whoever is buying this is going to fulfill a
12 business plan that makes sense to ensure that the
13 carrier is viable and has the financial wherewithal
14 to do so.

15 Q. And a good part of your
16 presentation, and I can take you to it if we need
17 to, a good part of your presentation to the
18 Industry Canada and Prime Minister's Office
19 officials related to the fact that West Face was a
20 Canadian entity?

21 A. Yes, that was certainly a part of
22 it.

23 Q. Because you thought that that
24 would be a strong element for the Federal
25 Government officials to bear in mind when they were

1 considering a possible acquisition by West Face of
2 the Wind business, right?

3 A. Well, I think we were trying to
4 point out that we weren't Russian and hopefully
5 that being Canadian-domiciled would certainly be
6 one factor that they may consider.

7 Q. And that you weren't foreign?

8 A. Yes, exactly.

9 Q. And one of the things you were
10 trying to do in this meeting, because you
11 understood, Mr. Griffin, that the Federal
12 Government was never going to ultimately tell you
13 in advance what they were going to decide on any of
14 these concerns or the issue of whether they would
15 approve you, West Face, as a purchaser; they
16 weren't going to give you any decisions at this
17 meeting, right?

18 A. No, that was certainly not our
19 expectation, nor did we go in mandating a series of
20 concessions or demanding that they do something
21 contrary to their stated policy objectives. That
22 was never the intent.

23 Q. What you were trying to read into
24 by meeting with them was how supportive they might
25 be to your asks, basically?

1 A. We saw no downside in taking the
2 meeting because any, you know, be it body language
3 or feedback, you know, it was not going to be
4 detrimental to our forming a view on this
5 investment, and we thought that it was a logical
6 step to make them aware of who we were and to be
7 able to put faces to names and sponsorship.

8 Q. All right, and all I'm suggesting
9 to you is that it was important to you in this
10 meeting to have the face-to-face with the
11 government officials so that you could assess their
12 body language and their attitude towards you and
13 all the rest. Those were all very important things
14 that you could take away from that meeting,
15 notwithstanding that you weren't going to get an
16 answer on your asks?

17 A. Yes, I would agree with that.

18 Q. Now, West Face itself had no prior
19 relationship with Industry Canada or the PMO's
20 office prior to your meeting on May 21st, right?

21 A. Certainly not that I had been
22 involved in. I can't speak -- and not that I
23 recollect for the firm. Whether any of my other
24 partners have had interactions with them, I do not
25 know.

1 Q. But there was nobody that you
2 could call on independently at that point in time
3 to basically introduce you to the Federal
4 Government officials or lay any groundwork; there
5 was nobody you had at West Face that you could call
6 on at that time?

7 A. Well, I wouldn't say that is a
8 fair statement. A meeting was something that we
9 asked for through the channels that had been
10 established with the company, so that seemed the
11 easiest route to go.

12 Q. All right. So what you are
13 telling me is, and I think you are actually giving
14 me the answer to my question, but just to clarify,
15 what you are saying is you had representatives of
16 Wind, the management team at Wind that could make
17 that introduction for you?

18 A. Well, we -- specifically, Wind had
19 a I think his title was Chief Legal Officer, Simon
20 Lockie, who ultimately went with us and facilitated
21 the setup of that meeting.

22 Q. Right, so other than I'm excluding
23 the Wind management because I don't consider Wind
24 management to be internal to West Face, yes, I
25 agree Wind management introduced you to the Federal

1 Government officials, but you had no independent
2 within West Face -- and maybe I'm using the wrong
3 word -- you had no ability within West Face to have
4 any access to the PMO's office or --

5 THE COURT: Well, where are you going
6 with all of this?

7 MR. DiPUCCHIO: Sorry?

8 THE COURT: Where are we going with all
9 of this? You have spent quite a bit of time on a
10 meeting, and I am just a little lost as to the
11 relevance of some of this.

12 MR. DiPUCCHIO: Well, I think there is
13 going to be some submissions made at the conclusion
14 of the trial with respect to the status of the West
15 Face discussions with Industry Canada.

16 THE COURT: That may be, but what's it
17 matter whether they had someone to go there before
18 or not?

19 BY MR. DiPUCCHIO:

20 Q. Well, that is fair. That is fair.
21 We'll move away from it, Your Honour.

22 The long and the short of it is, Mr.
23 Griffin, that Wind management made that
24 introduction for you?

25 A. Yes, specifically Simon Lockie.

1 Q. Okay. And after that one meeting
2 with Industry Canada and the PMO's office in May,
3 West Face and indeed the consortium that you
4 ultimately ended up joining had no further direct
5 discussions or meetings with anyone at Industry
6 Canada or the PMO's office until after you had
7 entered into the SPA with VimpelCom in August or
8 September of 2014; correct?

9 A. Yes, I believe that to be correct,
10 although I will qualify that by saying I can only
11 speak to meetings that West Face would have had.
12 We did not have any as a consortium. I don't know
13 if any of the members within the consortium had any
14 dialogue. But qualified with that, I would agree
15 with you.

16 Q. All right, thank you. So now
17 let's go back to where we had left off prior to
18 talking about your interactions with Industry
19 Canada and that is with respect to the offers that
20 you were submitting to VimpelCom.

21 So if we go to tab 14 now of the
22 cross-examination brief, and this is WFC0106765,
23 here we have a letter of June 3rd, 2014, Mr.
24 Griffin, and we'll skip the preliminaries of it. I
25 think we can all see that it is an offer or

1 proposal that was being made to VimpelCom and the
2 other equity-holders of Wind.

3 And this time the key components of the
4 transaction, if you look at the second paragraph:

5 "Our new proposal for the
6 transaction is as follows:

7 The West Face funds would provide
8 bridge financing to be funded 14
9 days from the date of your signing
10 of this letter, allowing you to
11 repay the Company's existing vendor
12 debt."

13 So there is some bridge financing
14 proposed, right?

15 A. Yes.

16 Q. And then what you are proposing in
17 point 2 is that there would be a subsequent SPA --
18 or sorry, a contemporaneous SPA that would provide
19 for deferred contingent consideration of 100
20 million dollars payable on obtaining sufficient
21 spectrum within 12 months to support the company's
22 LTE roll-out strategy, right?

23 A. Yes, correct.

24 Q. So what was happening here,
25 notwithstanding your appreciation for the fact that

1 VimpelCom wanted a clean exit, was you were saying
2 that we are going to enter into an SPA for
3 contingent consideration of 100 million dollars,
4 but we are not going to pay you that 100 million
5 dollars until we get spectrum within 12 months to
6 support the LTE roll-out strategy?

7 A. Yes.

8 Q. And again, if you go to the
9 "Conditions", and I am going to try to skip forward
10 a little bit here, if you go to the "Conditions" on
11 pages 4 and 5, and you will see here under the
12 heading "Conditions" -- if you just scroll down,
13 yes -- and under the heading "Conditions" we see
14 again, Mr. Griffin, the second bullet point:

15 "Receipt of any necessary or
16 desirable third party consents."
17 Do you see that one?

18 A. Yes.

19 Q. And then if you go down to the
20 fifth page, if you turn to the fifth page where you
21 talk about the contemporaneous portion of this deal
22 which is the share purchase transaction, you will
23 see moving down, the second bullet point again:

24 "Receipt of any necessary or
25 desirable regulatory and

1 governmental approvals [...]"

2 Right?

3 A. Yes.

4 Q. Now, if you can turn up tab 41 of
5 the cross-examination brief, this is WFC00068142.
6 And before I ask you some questions about this
7 document, which is the document that your counsel
8 had taken you to in your examination in-chief, by
9 June 4th Mr. Moyse had actually been hired by West
10 Face; correct?

11 A. Yes, I think it was the third week
12 in May that his offer was accepted or exchanged.

13 Q. Okay. And we have heard evidence
14 earlier in this proceeding that there is a
15 confidentiality wall that goes up at West Face, but
16 that confidentiality wall wasn't erected until June
17 19th, right?

18 A. That I can't attest to. I
19 remember -- yeah, I'm sorry, and I don't want to
20 dodge the question, I'm trying to answer it, but
21 our Chief Compliance Officer and general counsel
22 set up the wall. I just can't recollect the exact
23 date that that went up.

24 Q. All right, well, we have heard
25 evidence on this and we'll hear evidence on this,

1 so --

2 A. Okay.

3 Q. -- it doesn't matter.

4 A. Well, I'm not trying to dispute
5 it. I'm just --

6 Q. For the purposes of my question,
7 just assume it is June 19th, okay?

8 A. Okay.

9 Q. So you obviously gave evidence in
10 your examination in-chief that you had no knowledge
11 of any of Catalyst's either negotiations or offers
12 or strategies at any time in this piece, right?

13 A. That's correct.

14 Q. Okay. So I want to take you
15 through this series of emails. If you can go down
16 to the bottom of the chain, it really starts with
17 an email from you to Mr. Lacavera on June the 4th,
18 the day after you submit this proposal that we just
19 looked at, right?

20 A. Yes.

21 Q. And you ask Mr. Lacavera:

22 "What is your change of control
23 payment under a Catalyst or
24 Tennenbaum deal - i.e. what do we
25 have to work with in our bid."

1 And you gave some evidence in your
2 examination in-chief about the fact that you were
3 really asking Lacavera about his arrangements with
4 VimpelCom?

5 A. Yes, that's correct, and the
6 simple reason is that if you think about the
7 context of this transaction and the valuation that
8 was being batted around here of 300 million, it is
9 roughly a fifth of the cumulative investment that
10 had been made in the company. And what the
11 management group, including Tony, had brought to
12 our attention is that, you know, if you step back,
13 say in normal circumstances if the business sold
14 for 300 million dollars, the first 150 would go to
15 the vendor financing, the next 150 million in
16 absolute priority would go to repay the shareholder
17 loans that had been advanced by VimpelCom.

18 The problem in this situation is that
19 the management group and the Canadian content, if
20 you will, that they brought to this situation, they
21 believed that they could extort or negotiate a
22 payment from VimpelCom that in a normal absolute
23 priority waterfall would never have occurred but
24 for the fact that they had this sort of golden
25 share arrangement because of the Canadian foreign

1 ownership requirements.

2 And so what we were trying to
3 understand is, well, is that in fact the case --

4 THE COURT: Can I just suggest to you,
5 Mr. Griffin, the question was pretty simple and it
6 is better just to answer the question.

7 The question was that you gave some
8 evidence in your examination in-chief about the
9 fact that you were really asking Lacavera about
10 those arrangements with VimpelCom; and the answer
11 was yes, that's correct.

12 And now you have gone on to -- he
13 didn't ask you why. He didn't ask you for the
14 reasoning, but you have gone on at some length
15 about that --

16 THE WITNESS: Okay, sorry.

17 THE COURT: -- which I understand, but
18 it will shorten things if you just listen to the
19 question and just answer the question.

20 THE WITNESS: Yes.

21 BY MR. DiPUCCHIO:

22 Q. I appreciate that, Your Honour. I
23 didn't want to be rude to Mr. Griffin, but that
24 helps.

25 And, Mr. Griffin, I suggest to you that

1 you well understood at that time that Catalyst had
2 negotiations ongoing with VimpelCom, which is why
3 you referred to a Catalyst deal?

4 A. We had certainly read in the press
5 that they had potentially been involved, and then
6 in May, before Brandon joining, there was this
7 reference in some correspondence between counsels
8 about concern on a telecom deal that Brandon had
9 been working on, and by process of elimination, we
10 only had one telecom file ongoing. And so we had
11 always assumed that Catalyst was a potential
12 participant.

13 Q. I think you are referring there,
14 Mr. Griffin, to a telephone call that occurred, but
15 I can tell you that that telephone call occurred on
16 June 18th.

17 A. I wasn't party to it, so --

18 Q. I understand you weren't a party
19 to it, but I'm suggesting to you that what you just
20 said, i.e., that there was a telecom deal which
21 therefore alerted you to the fact that Catalyst
22 might be submitting a bid or was in the process of
23 submitting a bid, didn't occur until well after
24 this email chain?

25 A. That could be.

1 Q. Okay. So what I am suggesting to
2 you is whatever you say about a telephone call that
3 alerted you to a telecom deal, you had knowledge
4 before then, as of June 4th, that Catalyst had
5 submitted a proposal?

6 A. No, I didn't know that they had
7 submitted a proposal.

8 Q. So it is purely --

9 A. We had assumed that they were
10 involved in looking at Wind, and we knew that
11 Tennenbaum was involved in looking at Wind.

12 Q. Well, there were any number of
13 companies looking at Wind at that period of time,
14 Mr. Griffin?

15 A. Well, these had been ones that had
16 been specifically reported in the press.

17 Q. No, but there were others that
18 were reported in the press as well?

19 A. Yes, and they could have also been
20 involved.

21 Q. Right, but you specifically
22 mentioned Catalyst or Tennenbaum, and I am
23 suggesting to you the reason you specifically
24 mentioned Catalyst is not because it is purely
25 coincidental or you are an imprecise person, but

1 because you knew at that time that Catalyst had
2 submitted a proposal?

3 A. No, that is not factually correct.

4 Q. And I am going to further suggest
5 to you that the reason you knew it is because you
6 were told it by Mr. Moyse?

7 A. No, that is categorically
8 incorrect.

9 Q. All right, now move up the chain
10 and Mr. Lacavera says:

11 "Tried you, I'm on mobile."

12 So I take it there was some telephone
13 conversation that would occurred with Mr. Lacavera
14 in response to your email, right?

15 A. At some point.

16 Q. Okay. And if you just scroll up
17 further in the chain, and keep going, here now is
18 another email that you send to Mr. Lacavera on June
19 the 6th again -- the 4th, rather, at 8:50 and this
20 time you say:

21 "Tony, I think it might make
22 the most sense for us to pick up the
23 conversation with the Tennenbaum
24 group and discuss the possibility of
25 joining that syndicate. We're not

1 going to be able to better them on
2 value and I think theirs is the only
3 real proposal in front of the
4 company outside of ours - Catalyst
5 seems to be a lot of air."

6 Right?

7 A. Yes.

8 Q. So there is a couple of things
9 there.

10 Number one, you say that you are not
11 going to be able to better Tennenbaum on value,
12 right?

13 A. Yes.

14 Q. So I'm taking from that that you
15 had some information about the proposal that
16 Tennenbaum was making?

17 A. In May 2014 Tennenbaum, through
18 the company, had asked to be put in touch with us,
19 and we had a meeting that pre-dated this email.
20 The reference isn't to the specifics of the
21 proposal. It is the fact that between that
22 syndicate, which was Tennenbaum, Oakhill and
23 Blackstone, there was no way that we, West Face,
24 were going to be able to outbid those guys if they
25 decided to put a bigger number on the table.

1 Q. Okay, so one of the concerns there
2 was that you weren't going to be able to outbid
3 them?

4 A. They could blow us out of the
5 water.

6 Q. Because you knew, notwithstanding
7 everything we have heard thus far in this
8 proceeding about the fact that the price had been
9 set by VimpelCom, you understood that this was a
10 blind auction and that somebody could blow you out
11 of the water?

12 A. Sure, they certainly had the
13 financial wherewithal to do so.

14 Q. Okay, and the second thing about
15 this email is you say:

16 "Catalyst seems to be a lot of
17 air."

18 And I can tell you exactly what you
19 said in your evidence in-chief about that
20 statement. You said to your counsel from the
21 transcript, page 752, Your Honour, just if you want
22 to make a note of it, you said in-chief:

23 "Well, I guess to put it in
24 layman's terms, for all the smoke
25 and discussion about their potential

1 involvement, we had nothing to
2 substantiate that they were there,
3 that they were serious or credible.
4 I didn't know."

5 That was your answer, right?

6 A. Yes.

7 Q. And I am going to suggest to you,
8 Mr. Griffin, that that isn't the case. For you to
9 be saying "Catalyst seems to be a lot of air", you
10 had knowledge of the terms that Catalyst was
11 proposing?

12 A. No, I did not.

13 Q. And you had knowledge of the fact
14 that Catalyst was seeking or would be seeking
15 regulatory concessions as part of the transaction?

16 A. That is incorrect.

17 Q. And that is why you were saying to
18 Mr. Lacavera that "Catalyst seems to be a lot of
19 air"?

20 A. No.

21 Q. And you deny, sir, receiving that
22 knowledge from Mr. Moyse?

23 A. I categorically deny it.

24 Q. Now, sir, after this email chain,
25 approximately two weeks after, you submit another

1 proposal to VimpelCom and this one can be found at
2 tab 16 of the cross-examination brief. It is
3 WFC0059316/1 for the record.

4 And this particular proposal, Mr.
5 Griffin, if we go down to "Valuation and Structure"
6 on page 2, now has the transaction at an enterprise
7 value for Globalive of 311 million dollars, right?

8 A. Yes.

9 Q. And what that assumes is
10 approximately 160 million dollars of principal and
11 accrued interest outstanding on the existing vendor
12 debt, right?

13 A. Yes.

14 Q. And that number really never
15 changed throughout the process, did it, Mr.
16 Griffin?

17 A. Other than -- on the vendor debt,
18 other than the accrued interest component, no.

19 Q. All right. And then you have a
20 valuation this time of 151 million dollars for the
21 other interest in the company, right?

22 A. Yes.

23 Q. And this basically now is just a
24 straight purchase of the equity interest?

25 A. I believe that to be the case. I

1 would just like to see the term sheet if you --

2 Q. Yeah, please scroll down to the
3 rest of the terms in the term sheet so you can read
4 it.

5 A. (Witness reviews document.)

6 Yes.

7 Q. And this particular deal, again,
8 if you go to the "Conditions" on page 4, was very
9 consistent with the other proposals you had put
10 forward, which was the receipt of any necessary or
11 desirable regulatory and governmental approvals and
12 third party consents on terms satisfactory to us,
13 right?

14 A. Yes.

15 Q. Now, I want to take you next to --
16 I'm sorry, Your Honour?

17 THE COURT: Why don't we take the
18 afternoon break. 15 minutes.

19 -- RECESSED AT 3:29 P.M.

20 -- RESUMED AT 3:47 P.M.

21 MR. CENTA: Your Honour, just one piece
22 of housekeeping. That is the bound report of our
23 expert, and he will be testifying tomorrow.

24 THE COURT: Thank you. You said he
25 will be testifying tomorrow, is what you said?

1 MR. CENTA: Yes, tomorrow afternoon we
2 anticipate.

3 THE COURT: Nothing like an expert on
4 computers on a Friday afternoon.

5 MR. DiPUCCHIO: It is going to be
6 riveting, Your Honour.

7 THE COURT: Mr. Thomson will be asleep.

8 BY MR. DiPUCCHIO:

9 Q. Okay, Mr. Griffin, we left off and
10 I was going to take you to the next piece of this
11 chronology, which is really later in June. And we
12 had just looked at your proposal to VimpelCom on
13 June 19th, and I take it thereafter West Face was
14 really looking to potentially partner up with one
15 or other of the parties to try to take this across
16 the finish line; is that fair?

17 A. We were certainly contemplating
18 that and that specifically I didn't want to -- I
19 know there is confidentiality, an issue to this one
20 aspect of it --

21 Q. Yes.

22 A. -- but there was one particular
23 strategic that we had focussed in on working with.

24 Q. Right, and I am going to take you
25 to that, and I am going to remind you that you and

1 I can refer to that party as a strategic partner,
2 okay.

3 A. Okay.

4 Q. And Your Honour will remember who
5 that is from our discussions in chambers, or maybe
6 you don't, because I'm not going to tell you who it
7 is, Your Honour. You are going to have to --

8 THE COURT: That's all right. You can
9 slip me a piece of paper.

10 MR. DiPUCCHIO: All right, I'll slip
11 you a piece of paper.

12 BY MR. DiPUCCHIO:

13 Q. So on June 27th you send out a
14 document to your strategic partner or your proposed
15 strategic partner, and I would like to take you to
16 that. It is at tab 17 of the cross-examination
17 brief, and it is document WFC0107236, for the
18 record.

19 And here is, I guess for lack of a
20 better word, a sort of a term sheet that you send
21 over to this strategic partner outlining a proposed
22 construct for --

23 THE COURT: Oh, yes, okay.

24 MR. DiPUCCHIO: You remember now, Your
25 Honour? Good.

1 THE COURT: My memory has been --

2 MR. DiPUCCHIO: Because I was going to
3 scratch my head as to how I was going to get it to
4 you.

5 BY MR. DiPUCCHIO:

6 Q. So you were sending over really
7 what was sort of a proposed construct for how you
8 would jointly move forward?

9 A. Yes.

10 Q. Okay. And the points that I am
11 interested in are specifically number 3 where you
12 say that:

13 "[...] we have a period of
14 approximately two weeks to negotiate
15 an SPA with the vendors and WFC and
16 its legal advisor, Davies Ward, have
17 been in the process of exchanging
18 drafts of the agreement [...]"

19 Just why is it that you were of the
20 belief at that time that you had a period of
21 approximately two weeks to negotiate an SPA?

22 A. I don't recall specifically what
23 the time consequence was. It must have been
24 direction from VimpelCom or their advisors at UBS,
25 but I do not know.

1 Q. All right. And then obviously you
2 are indicating that you wanted your strategic
3 partner to be one of your co-purchasers, right?

4 A. Yes.

5 Q. And then you say in point 4 that
6 you have:

7 "[...] identified funding
8 sources of approximately \$360
9 million would be required to close
10 the transaction, comprised of
11 roughly \$310 million in purchase
12 consideration (with the first \$160
13 million used to retire principal and
14 accrued interest [...])"

15 That is consistent with a proposal that
16 you had put in about a week prior to this, right?

17 A. That is correct, with the
18 qualifier of the 50 million dollar working capital
19 number to round it to 360.

20 Q. Okay. And the next point I want
21 to draw your attention to is point 13 where you
22 say:

23 "Over a three year investment
24 period from closing, we anticipate
25 that the business will require

1 incremental equity investment of
2 between \$200 to \$300 million."

3 Right?

4 A. Yes.

5 Q. And then part of that is what is
6 going to be required to roll out the LTE, which you
7 estimate at no less than 200 million dollars, which
8 is likely conservative, you say?

9 A. Yes.

10 Q. And then you say in 14:

11 "Our models do not contemplate
12 capital outlays for the acquisition
13 of additional AWS spectrum as our
14 stand-alone business case assumes
15 future access to either of AWS3 from
16 Industry Canada and/or the
17 acquisition of Mobilicity and their
18 associated spectrum for equity
19 consideration."

20 So this was the Mobilicity/Wind
21 combination that we were talking about earlier,
22 right?

23 A. That's correct. And if I could
24 just add one thing, the strategic in question had
25 some unutilized spectrum that would have been

1 suitable outside of its current operating area that
2 was dormant that we thought would be contributory
3 to rounding out the requirements.

4 Q. Right, and we'll see that in
5 another document I think that I am going to draw
6 your attention to where you actually allocate some
7 value to that spectrum and that the strategic
8 partner would be contributing to the deal, right?

9 A. Yes.

10 Q. And then in point 16 you say:

11 "We are both in agreement that
12 changes would be made to senior
13 management of Wind post closing and
14 we would work with strategic partner
15 to arrive at suitable candidates to
16 assume those roles, including the
17 appointment of a new CEO."

18 And this is a reference, I take it, to
19 the fact that you had made a conclusion together
20 with your strategic partner at that point that
21 there would have to be changes to the management of
22 Wind post-closing, including the appointment of a
23 new CEO?

24 A. Yeah, I think we were open to some
25 enhancements to make sure that we had the right

1 team, and it wasn't clear that that strategic was
2 necessarily supportive of all of the incumbent
3 management that was there.

4 Q. Well, not only the strategic
5 partner, but you yourself were not supportive of it
6 because you say you are both in agreement?

7 A. Yes.

8 Q. And the appointment of a new CEO,
9 at the time the CEO of Wind was Mr. Lacavera,
10 right?

11 A. Yes.

12 Q. And then point 17 is something I
13 want to draw your attention to. Here you say that
14 your strategic partner:

15 "[...] has expressed an
16 interest in ultimately owning and
17 controlling 100% of newco."

18 And then you say:

19 "Similarly [West Face Capital]
20 requires a future path to liquidity
21 on its investment. Our investment
22 horizon would likely target a 5-year
23 end point in the absence of other
24 options such as an initial public
25 offering or sale of the business."

1 So am I correct that in any scenario
2 your purchase of VimpelCom's interests or the
3 equity interests in Wind were premised on a 5-year
4 investment horizon for West Face?

5 A. Well, I wouldn't be so concrete
6 about that. It is flexible. I chose five years as
7 an end point because we don't have the benefit of
8 private equity capital that provides us, you know,
9 sort of a seven-year funding stream. So this says
10 five years; that seemed like a reasonable horizon
11 date.

12 Q. All right. But you are pitching
13 it to your strategic partner as a requirement,
14 right, not a nice-to-have, a requirement?

15 A. Yes, we don't -- we run an
16 investment fund that effectively has evergreen
17 capital, so you know, we can't just sit on it
18 indefinitely. We do have a requirement to turn
19 over the investment and realize on it, and I would
20 say historically something that ran to a term of
21 five years would be one of our longer tenured
22 investments.

23 Q. And that is exactly why an exit
24 strategy is of critical importance to you, right?

25 A. Yes, at some point we have to

1 harvest the investment.

2 Q. All right.

3 A. And they had no such requirement
4 necessarily to --

5 Q. Your strategic partner?

6 A. As a strategic, they were thinking
7 probably much longer term than we were.

8 Q. And then paragraph 19 I think is
9 something that you and I have looked at a number of
10 times already today, but again, you re-affirm that
11 as part of this SPA together with your strategic
12 partner, you would need to agree on an interim
13 funding arrangement with the vendor between the
14 time the SPA is executed and the time at which we
15 receive regulatory approval and close. So very
16 clearly there would be a requirement for regulatory
17 approval in this potential transaction that you
18 were contemplating with your strategic partner,
19 right?

20 A. That's correct.

21 Q. And I am not going to take much
22 time with this, but just for the record, if you
23 turn up tab 18 of the cross-examination brief, so
24 we have it, this is document WFC0106940. This was
25 the summary term sheet dated July 8th, 2014, that

1 was being discussed as between yourself and the
2 strategic partner?

3 A. Yes.

4 Q. Okay. So that to summarize with
5 respect to what we have looked at to this point, at
6 every point at which you were submitting or West
7 Face was submitting or intending to submit an offer
8 for the equity in VimpelCom -- or in Wind, rather,
9 and I am talking about your May 4th offer, your
10 June 3rd offer, your June 19th offer, your June
11 27th offer and this particular term sheet that was
12 being discussed with your strategic partner, at
13 every point in that process you were making the
14 transaction subject to necessary and desirable
15 regulatory approvals?

16 A. Yes.

17 Q. And that was notwithstanding that
18 it was known to you right at the outset that
19 VimpelCom had concerns about the regulatory process
20 and wanted an easy close and a quick exit, right?

21 A. We didn't have a known alternative
22 to those conditions.

23 Q. Right, but that was known to you,
24 VimpelCom's intention --

25 A. Desire for an exit.

1 Q. Yes.

2 A. And I don't think their
3 expectation was any different that it would require
4 Competition and Industry Canada approval. All I'm
5 suggesting is that we didn't have any alternative
6 way of doing it at the time.

7 Q. Well, you did have an alternative,
8 right? You did have an alternative. You could
9 have done the exact same transaction you ended up
10 doing in September?

11 A. I don't dispute that. I'm just
12 saying at the time that this was pulled together,
13 that wasn't an alternative that was front and
14 centre with us and that we had contemplated
15 pursuing.

16 Q. So now, I mean, just to finish off
17 the piece with the strategic partner, that never
18 ended up going anywhere, right?

19 A. No, and in July, later in July,
20 the same month as this term sheet, they informed us
21 that for a host of reasons they didn't want to
22 proceed.

23 Q. Okay, with you? They didn't want
24 to proceed with you?

25 A. Yes, specifically with us.

1 Q. And what you do at that stage is
2 you sort of switch gears and you start
3 contemplating becoming part of a consortium that
4 was being led by Tennenbaum, right?

5 A. That is correct.

6 Q. And that happens around the last
7 let's call it ten days of July 2014; is that fair?

8 A. Yeah, I believe that is correct.

9 Q. Now, I want to take you very
10 briefly, before we embark on the next line of
11 questioning, to an article that was attached as
12 Exhibit 20 to your affidavit.

13 Now, this isn't part of my
14 cross-examination brief, Your Honour, so
15 unfortunately, you are going to have to go into Mr.
16 Griffin's affidavit and go to Exhibit 20. And
17 we'll just get it up on the screen for you in a
18 second.

19 I apologize for the technical snafu
20 here. We are just having a bit of a problem
21 getting it up on the screen, Mr. Griffin.

22 For the record, the document is
23 WFC0080891/1. Do you have it, Your Honour?

24 THE COURT: I do.

25 BY MR. DiPUCCHIO:

1 Q. Okay. For some reason we are not
2 getting it up on the screen here.

3 Well, let me put some questions to you,
4 Mr. Griffin, and then we'll see if you need to
5 actually have this article in front of you, okay.

6 What we are looking at is an article
7 that was in your affidavit in-chief, and it was an
8 article from The Globe and Mail on July 31, 2014,
9 and it speaks to rumours of potential buyers for
10 Wind. Do you remember that article? Do you
11 remember it being part of your affidavit?

12 A. I believe I remember it.

13 Q. Okay.

14 A. I would just like to have it in
15 front of me, if I could.

16 Q. And I completely sympathize with
17 you. If we could actually get it on the screen,
18 that would help.

19 A. If you want to give me a hard
20 copy, I can --

21 Q. Yeah, because of this electronic
22 trial, nobody seems to have pieces of paper. It is
23 Exhibit 20 to his affidavit.

24 Okay, all right, we have got it in
25 front of you. Do you remember that article being

1 attached to your affidavit?

2 A. Okay, yes, I have it in front of
3 me.

4 Q. And all I wanted to point out to
5 you in this article, Mr. Griffin, was at the time,
6 July 31, 2014, it was reported in The Globe and
7 Mail that the Blackstone Group was one of the
8 financial firms that had considered an investment
9 in Wind, right?

10 A. Yes.

11 Q. And you understood that, right?

12 A. Yes.

13 Q. And then the article also mentions
14 Quebecor being interested in the Wind entity,
15 right?

16 A. Yes.

17 Q. And it mentions another potential
18 player on page 2 of the article in the paragraph
19 that begins "Apart from Blackstone and Quebecor
20 [...]", just going down.

21 A. Yes.

22 Q. It is now on the big screen, Mr.
23 Griffin, just that may help you.

24 A. Okay.

25 Q. "Apart from Blackstone and

1 Quebecor, sources say smaller
2 financial players, including
3 distressed debt firms, have
4 considered taking a stake in Wind.
5 Bloomberg News reported this week
6 that large U.S. private equity firm
7 Providence Equity Partners Inc. has
8 also looked at the asset."

9 Right?

10 A. Yes.

11 Q. And then the article goes on to
12 say:

13 "Analysts caution that large
14 private equity players could be
15 reluctant to invest in the company,
16 however, as an exit strategy is
17 uncertain."

18 Right?

19 A. Yes.

20 Q. So at this time, in this Globe and
21 Mail article that you appended as Exhibit 20 to
22 your affidavit, there had been at least three
23 potential purchasers publicly identified,
24 Blackstone, Quebecor and Providence Equity
25 Partners, right?

1 A. Yes.

2 Q. And so far as you knew from this
3 article, all three of those might have been in the
4 bidding?

5 A. Well, we certainly had -- well,
6 let me be careful here. Yes, I would assume, yes.

7 Q. Now, your evidence in-chief was
8 that you only found out that Catalyst was in
9 exclusivity with VimpelCom as a result of these
10 proceedings; is that correct?

11 A. No, I believe what I attested to
12 was that we had received -- well, two things. UBS
13 had informed us that a party had entered into
14 exclusivity through a telephone call, without
15 naming the party. And through a process of
16 elimination, we certainly had assumed that it
17 wasn't us and it wasn't any members of the
18 syndicate that we had been talking to. It was
19 certainly probable that it could be Catalyst, but I
20 didn't know for sure.

21 Q. Right, so I think you are agreeing
22 with me then that your evidence in-chief was that
23 you only definitively found out that Catalyst was
24 in exclusivity with VimpelCom as a result of these
25 proceedings?

1 A. Yes, I would say that is correct.

2 Q. Okay. You also said in your
3 evidence in-chief that you had no insight into the
4 status of Catalyst's negotiations?

5 A. I didn't personally, no.

6 Q. Well, just a second. Let's go to
7 paragraph 85 of your affidavit in-chief.

8 Just a second, we are just bringing it
9 up.

10 At paragraph 85 what you say is:

11 "While we continued to work on
12 refining our proposal, we could not
13 receive any feedback from VimpelCom
14 or its advisors, nor could we
15 receive any further information from
16 Wind management as to whether our
17 proposals would be satisfactory to
18 VimpelCom. Other than the fact of
19 Catalyst's exclusivity, we had no
20 insight into the status of
21 Catalyst's negotiations and no
22 ability to influence the outcome of
23 these negotiations."

24 And that is not just personal to you;
25 you used the pronoun "we"?

1 A. That's correct.

2 Q. Okay, because you said "I didn't"?

3 A. That's right. Understood.

4 Q. So you are going further than that
5 in your evidence in-chief; you are saying nobody
6 did?

7 A. That's correct.

8 Q. And when you say there "other than
9 the fact of Catalyst's exclusivity", your evidence
10 is you didn't even know that it was Catalyst's
11 exclusivity? That should really say other than
12 some unknown bidder's exclusivity which we assume
13 to be Catalyst?

14 A. It was certainly our assumption
15 that they were one of the leading parties here.

16 Q. Okay. Now, on June -- sorry, just
17 to bring home this point, at paragraph 84, just the
18 point above, and this is the point you just made,
19 right in the middle of that paragraph your evidence
20 was:

21 "Before discussions with
22 Tennenbaum could advance however, on
23 July 23rd, 2014 (a week after Mr.
24 Moyse went on leave), West Face
25 learned from Oakhill that VimpelCom

1 had granted another bidder (which I
2 now understand to be Catalyst) an
3 exclusive negotiating period."
4 Right?

5 A. That's correct.

6 Q. Now, what I want to take you to --

7 THE COURT: Just a second.

8 MR. DiPUCCHIO: Yes, Your Honour, and
9 that is right in the middle of paragraph 84.

10 THE COURT: Go ahead.

11 BY MR. DiPUCCHIO:

12 Q. Okay, so I'm going to ask you now
13 to turn up tab 19 of the cross-examination brief,
14 and this is WFC0069995. And you see there is an
15 initial email from Mr. Boland which talks about
16 Felix being contacted Friday. Felix is
17 Mr. Saratovsky for VimpelCom?

18 A. Yes.

19 Q. And the email goes on to say:

20 "He is likely granting
21 permission today."

22 That is a reference to the fact that
23 you needed permission from VimpelCom to become part
24 of this Tennenbaum consortium or to exchange
25 information as part of the Tennenbaum consortium?

1 A. I believe that is correct.

2 Q. Okay.

3 A. I know we specifically sought
4 permission from Felix to speak to one another and
5 to exchange information, and so I think that is
6 fair.

7 Q. And now if you scroll up --

8 THE COURT: I just don't quite
9 understand. You needed permission from him, that
10 is, VimpelCom, to speak to whom?

11 THE WITNESS: This was specifically not
12 just to speak to Tennenbaum but actually to
13 exchange diligence findings and information with
14 Tennenbaum and the consortium members.

15 THE COURT: That I do understand, but I
16 was a little quizzical as to why you would need his
17 permission to go and talk to Tennenbaum. You
18 wouldn't be talking to Tennenbaum. It would be
19 sharing what you learned in the due diligence with
20 Wind.

21 THE WITNESS: So this Tennenbaum was
22 party to an NDA, and we were party to an NDA, but
23 then we asked Felix Saratovsky, their counsel, to
24 allow us to exchange information freely.

25 THE COURT: That each of you obtained

1 under the NDAs?

2 THE WITNESS: That's correct, and to
3 work on a -- in the spirit of working on a joint
4 proposal.

5 BY MR. DiPUCCHIO:

6 Q. And just moving up in that chain,
7 what you see here, Mr. Griffin, is an email from
8 Mr. Leitner of Tennenbaum to Mr. Boland. You are
9 not copied on this, so I don't want to mislead you
10 in that respect. But the email says:

11 "I heard Catalyst is seeking
12 exclusivity this week."

13 And then if you scroll up, Mr. Boland
14 says:

15 "We asked for that a couple
16 times and didn't work."

17 And I take that to be a reference to
18 the fact that you had asked for exclusivity a
19 couple of times, right?

20 A. Yes, I think that is a logical tie
21 between the two comments.

22 Q. And did Mr. Boland tell you that
23 Mr. Leitner told him that Catalyst was seeking
24 exclusivity?

25 A. That information was certainly

1 discussed.

2 Q. All right. And when Mr. Boland
3 told you, I take it Mr. Boland didn't say to you
4 that a company, an unknown company that we will
5 assume is Catalyst is seeking exclusivity this
6 week?

7 A. No, he would have conveyed what
8 Mr. Leitner conveyed to him in this email.

9 Q. And you had no reason to
10 disbelieve that?

11 A. It seemed credible. I don't know
12 where the information came from.

13 Q. I never asked you where the
14 information came from. I simply said you were told
15 that Catalyst was seeking exclusivity?

16 A. Yes.

17 THE COURT: Well, that is not quite
18 right. The man said that Mr. Leitner said I heard
19 it, which is somewhat different from being told
20 that they are.

21 MR. DiPUCCHIO: No, no, the reference
22 to being told was Mr. Boland told him that, told
23 Mr. Griffin that, not what Mr. Leitner was told.
24 Mr. Boland is the one that is copied on this email,
25 Your Honour, and my questions prior to that were

1 directed to whether Mr. Boland told Mr. Griffin
2 that Catalyst was seeking exclusivity that week.
3 In any event --

4 THE COURT: My only point was it is not
5 quite as definite as being told that is what is
6 happening. Whoever is conveying it is saying "I
7 heard".

8 MR. DiPUCCHIO: Fair enough. Fair
9 enough. I take that point, Your Honour. That is
10 fair.

11 BY MR. DiPUCCHIO:

12 Q. And at tab 20 of the
13 cross-examination brief, which is WFC0059172, here
14 is where -- and Your Honour was asking what the
15 email was all about in relation to Felix
16 Saratovsky. Here is where it says at the bottom
17 that he is willing to provide consent for us to
18 speak with you and exchange information, right?

19 A. Yes.

20 Q. And then Mr. Leitner responds to
21 that email and this time it is directly to you.
22 And this time it doesn't come from Mr. Boland. It
23 comes directly from Mr. Leitner, and he says:

24 "I spoke with Felix. We are
25 free to work together. We should

1 try and speak today. Catalyst may
2 have this in exclusivity by the end
3 of the week."

4 Right?

5 A. Yes.

6 Q. So again, bearing His Honour's
7 caution in mind, he doesn't say they will be in
8 exclusivity. He says they may have exclusivity
9 this week, right?

10 A. Yes.

11 Q. But there is no doubt that Mr.
12 Leitner is telling you that it is Catalyst?

13 A. He is certainly taking that
14 position, yes.

15 Q. No, it is not a position. He is
16 telling you it is Catalyst. This is definitive.
17 He is not saying the company, I don't know who it
18 is, but probably it is Catalyst. He is saying it
19 is Catalyst?

20 A. That is what his email says, but I
21 didn't do anything to test the veracity of the
22 information that was being received.

23 Q. I'm not suggesting you were
24 required to cross-examine him, sir. I'm just
25 suggesting that that's what he told you?

1 THE COURT: Well, it says what it says.

2 BY MR. DiPUCCHIO:

3 Q. Yes, okay. Now, if you go to tab
4 21 of the brief, and this is WFC0048724, here, Mr.
5 Griffin, you are copied and Mr. Boland forwards to
6 you, along with Mr. Fraser and Mr. Dea, a copy of
7 an email that he had been copied on from a
8 Mr. Jonathan Friesel; do you see that?

9 A. Yes.

10 Q. And Jonathan Friesel was
11 associated with Oakhill Capital; correct?

12 A. That's correct.

13 Q. Which was at that time part of the
14 consortium?

15 A. Yes.

16 Q. And I take it the reason Mr.
17 Boland is the one being copied on the original
18 email is because Mr. Boland was really sort of
19 leading the discussions with the other members of
20 the consortium?

21 A. Well, he certainly had a leading
22 role. I don't know as to why this specific email
23 included this distribution list, but he certainly
24 played a pivotal part in the consummation of the
25 deal.

1 Q. Okay. And Mr. Friesel writes to
2 say:

3 "Herbst called me [...]"

4 And just stopping there, Herbst, as I
5 understand it, was a representative of UBS?

6 A. Yes, that would be Jonathan
7 Herbst.

8 Q. Okay, and Jonathan Herbst of UBS
9 were the advisors to VimpelCom in this process,
10 right?

11 A. That is correct.

12 Q. Okay, so Herbst calls Mr. Friesel
13 to say:

14 "[...] that the company has
15 entered into exclusivity", and then
16 he says, "at the reserve price -
17 \$150 million."

18 A. Yes.

19 Q. And this is a piece of information
20 that has then been forwarded to you, right?

21 A. Yes.

22 Q. Now, you know, Mr. Griffin, that
23 based on all of the exclusivity provisions that you
24 were including in the drafts of the proposals that
25 you were putting forward to VimpelCom, you knew

1 that disclosure of the reserve price was a piece of
2 confidential information?

3 A. Well, we knew what the reserve
4 price was.

5 Q. No, no, no. Of course you knew
6 what the reserve price was, but you didn't know
7 that a party had gone in at the reserve price?

8 A. That is fair.

9 Q. So this was a piece of
10 confidential information?

11 A. I really -- well, I don't know how
12 to answer that.

13 Q. What is the difficulty?

14 THE COURT: Well, it was confidential
15 to whom? I don't quite understand what you are
16 getting at here.

17 BY MR. DiPUCCHIO:

18 Q. Well, it is confidential, Your
19 Honour, obviously to the parties to the exclusivity
20 agreement, which would be in this case VimpelCom
21 and its advisors and whomever they are referring to
22 as the company that has entered into the
23 exclusivity, right.

24 Right, Mr. Griffin?

25 MR. THOMSON: Your Honour, may I rise

1 and raise an issue in the absence of the witness?

2 THE COURT: Sure. Would you mind just
3 stepping outside for a minute so that the lawyers
4 can have a discussion?

5 THE WITNESS: Sure.

6 [Witness exits the courtroom.]

7 THE COURT: Mr. DiPucchio, the reason I
8 said what I said was, assuming you are right that
9 it is confidential, if VimpelCom through UBS
10 chooses to disclose it to these people, what can be
11 made of that?

12 MR. DiPUCCHIO: Well --

13 THE COURT: That is why I was --

14 MR. DiPUCCHIO: No, that is fair.

15 THE COURT: That is why I was
16 quizzical.

17 MR. DiPUCCHIO: That is obviously a
18 fair question.

19 THE COURT: It might have been
20 confidential until UBS disclosed it, at which point
21 it is not confidential. That was what I had in
22 mind, but I don't know what Mr. Thomson has got in
23 mind.

24 MR. DiPUCCHIO: Well, we'll let Mr.
25 Thomson speak in a second, but Your Honour, you are

1 going to be hearing submissions from me at the
2 conclusion of the trial that what this is evidence
3 of, together with some other things I'm going to go
4 to, is a general attitude amongst West Face and the
5 consortium partners to confidential information and
6 the use of that confidential information in a
7 bidding process.

8 THE COURT: Is it confidential once UBS
9 discloses it?

10 MR. DiPUCCHIO: Well, I believe it is,
11 because UBS can't unilaterally disclose a piece of
12 confidential information without the consent of the
13 other party to the exclusivity agreement, Your
14 Honour. That is the point.

15 THE COURT: Well, they may have -- all
16 right, never mind.

17 MR. DiPUCCHIO: No, no, obviously, Your
18 Honour, there is all sorts of implications to it.
19 That is not my intention, and it forms no part of
20 this case, which I suspect is what my friend is
21 going to say.

22 It is simply the inference that I am
23 going to ask you to draw at the conclusion of the
24 trial, and it is one piece of evidence to that
25 inference, that's all.

1 THE COURT: Okay, I understand.

2 MR. THOMSON: So there is a backdrop to
3 what is going on here that you should know exists,
4 and this comes from the discovery that took place
5 three weeks ago of Mr. de Alba.

6 And so I have handed you a small little
7 brief that contains an extract from the discovery
8 on May 11th as well as an answer to that
9 undertaking.

10 So the relevant part of the transcript,
11 Your Honour, is in tab 1 at question 503 where Mr.
12 Milne-Smith is asking questions of Mr. de Alba, and
13 at question 503 he asks whether Mr. de Alba has:

14 "[...] any evidence that
15 VimpelCom or any of its affiliates
16 as defined in the agreement breached
17 the exclusivity agreement?"

18 And Mr. DiPucchio says:

19 "Well, okay, help me out with
20 this. You guys made a big deal
21 about an inducing claim being
22 completely separate from what we're
23 dealing with here, so why is that
24 relevant?"

25 And Mr. Milne-Smith says:

1 "If you are not pursuing it --"

2 And Mr. DiPucchio says:

3 "Well, I'm not saying I'm not
4 pursuing it. I'm just trying to
5 figure out why it's relevant to this
6 proceeding."

7 And Mr. Milne-Smith says:

8 "Because I'm still not clear if
9 you are pursuing it in this
10 proceeding."

11 Skipping down to question 504:

12 "Are you pursuing an inducing
13 breach claim in this proceeding?"

14 And Mr. DiPucchio says:

15 "I don't think we have to
16 answer that today, counsel. In this
17 proceeding?"

18 And Mr. Milne-Smith says at line 23:

19 "In this proceeding, the one
20 that's going to trial."

21 And the answer is:

22 "No, obviously the pleadings
23 aren't for inducing."

24 And then at 505:

25 "Are you pursuing a claim in

1 this proceeding that AAL Telecom
2 Holdings Incorporated, any of its
3 subsidiaries or any of its three
4 principals [...] are you pursuing a
5 claim that any of those parties have
6 breached any kind of legal duty or
7 obligation to Catalyst in respect of
8 their discussions with West Face?"
9 [Court reporter interrupts.]

10 MR. THOMSON: So question at 505:

11 "Are you pursuing a claim in
12 this proceeding that AAL Telecom
13 Holdings Incorporated, any of its
14 subsidiaries or any of its three
15 principals that I will identify -
16 Mr. Scheschuk, Mr. Lacavera or
17 Mr. Lockie - are you pursuing a
18 claim that any of those parties have
19 breached any kind of legal duty or
20 obligation to Catalyst in respect of
21 their discussions with West Face?"

22 Mr. DiPucchio says:

23 "Mr. DiPucchio: As part of
24 this claim?

25 Mr. Milne-Smith: Yes.

1 Mr. DiPucchio: Let me consider
2 that question and I'll get back to
3 you on that, okay? I think the
4 answer to that is no, obviously, but
5 let me just consider that, okay?"
6 So that's the way it's left.

7 And then the answer to undertaking is
8 at tab 2, and you will see the relevant answer is
9 number 48 on page 12:

10 "To the extent that Catalyst
11 intends to lead evidence at trial
12 concerning a breach of exclusivity
13 by VimpelCom, to advise what this
14 evidence will be, including
15 identifying which communications
16 between West Face and VimpelCom that
17 Catalyst alleges were in breach of
18 exclusivity."

19 And the answer that came back just
20 before the trial is:

21 "Catalyst does not intend to
22 lead evidence concerning a breach of
23 the exclusivity agreement between
24 Catalyst and VimpelCom in this
25 proceeding."

1 And then the last intervening event was
2 last Wednesday when we were provided with the new
3 Catalyst Statement of Claim where West Face and
4 others are being sued for 750 million dollars for
5 breach of contract, inducing breach and so on, and
6 the relevant contract is the exclusivity agreement
7 between VimpelCom and Catalyst.

8 So I rise simply to say this, that
9 there has not been I don't believe a question asked
10 in four hours that connects any of this examination
11 to the cause of action actually asserted in this
12 case, namely, the dissemination to West Face of
13 confidential information of Catalyst by Moyse.
14 None of it connects.

15 And so I rise with respect to questions
16 of relevance of this.

17 There is another case at play here, and
18 we have to be careful. There are rights at stake
19 not only to the parties before this Court but of
20 non-parties, and I worry a little bit about where
21 we now are and where we appear to be heading.

22 Those are my respectful submissions.

23 MR. CENTA: If I can also make
24 submissions on behalf of Mr. Moyse, this line of
25 questioning is quite -- is raising difficult issues

1 for Mr. Moyse. The case before you, Your Honour,
2 is that but for Brandon Moyse delivering Catalyst's
3 confidential information about Wind to West Face,
4 West Face would not have been able to close the
5 transaction with Wind and therefore has caused 600
6 million dollars of damage to Catalyst, and that is
7 why Catalyst is pursuing my client.

8 Yet this line of evidence that they are
9 attempting to elicit today combined with their
10 pleading they filed on the eve of this trial, in
11 the pleading they filed on the eve of this trial,
12 and I assume they have got good faith to make these
13 allegations of material fact, at paragraph 76:

14 "Between April 2014 and August
15 2018, Lacavera repeatedly
16 communicated Catalyst's confidential
17 information to the consortium either
18 jointly or to assist, among others,
19 West Face in their efforts to
20 prevent Catalyst from successfully
21 purchasing Wind."

22 Paragraph 77:

23 "Lacavera transmitted critical
24 information regarding Catalyst's
25 confidential negotiating

1 communications with VimpelCom."

2 79:

3 "West Face, among others,
4 knowingly received and misused this
5 confidential information, that is,
6 the Lacavera-provided confidential
7 information, to create its proposal
8 and to gain an unfair advantage over
9 Catalyst in its negotiation with
10 VimpelCom."

11 And in paragraph 93:

12 "As a result of the misconduct
13 of the conspirators, including
14 Mr. Lacavera, VimpelCom breached the
15 exclusivity agreement and breached
16 its duty of good faith during its
17 negotiations with Catalyst and as a
18 result of that misconduct were able
19 to purchase Wind to Catalyst's
20 detriment."

21 So I'm faced in this action with
22 allegations that they are -- that this is to be
23 laid at the feet of my client.

24 And what I heard Mr. DiPucchio say is
25 what I want you to do, Your Honour, is to look at

1 this evidence as bad character evidence on behalf
2 of West Face and their principals, and then we are
3 going to ask you to infer that Mr. Moyse must have
4 been the cause -- must have been the source of that
5 information and therefore make findings against
6 him.

7 And that is profoundly unfair when they
8 have started another action for 750 million dollars
9 against parties who are not present or here to
10 defend themselves, and certainly not fair to my
11 client who is now facing a very difficult
12 situation, having listened to hours of evidence
13 that doesn't come within 30 miles of linking him to
14 this case.

15 THE COURT: Your client is not a
16 defendant in the other action; correct?

17 MR. CENTA: No, he is not.

18 THE COURT: All right, then it strikes
19 me this evidence, if anything, helps your client in
20 this case because it just shows it is UBS that is
21 disclosing something, not your client.

22 In any event, what do you say,
23 Mr. DiPucchio?

24 MR. DiPUCCHIO: Well, Your Honour, I
25 was going to make the point that the submissions

1 that have just been made to you somehow imagine a
2 situation where only one person can be giving
3 confidential information to a party.

4 THE COURT: Well, is it going to be
5 your case that because UBS disclosed something,
6 that somehow that rests at the feet of the
7 defendants in this case?

8 MR. DiPUCCHIO: No, no, that is not --

9 THE COURT: Then why are you leading
10 the evidence?

11 MR. DiPUCCHIO: Because for two
12 reasons, Your Honour.

13 Number one, this was essentially an
14 allegation that was made by Mr. Griffin in his
15 affidavit that there was no confidential
16 information, that they would never use confidential
17 information, and I'm entitled to test that. And
18 that is point number one.

19 And point number two is that I'm going
20 to be making submissions to you at the end of the
21 day that this was a consortium that essentially
22 knew that it had to float a Hail Mary in order to
23 rescue this deal from the grips of a Catalyst
24 exclusivity and were going to use every single tool
25 at their disposal, including confidential

1 information from a number of sources, including
2 Moyse, in order to get themselves across the finish
3 line and that they had no hesitation in doing that.

4 Does this particular piece of evidence,
5 am I actually alleging that that is a cause of
6 action? No, that will be for another day and
7 another time, potentially.

8 THE COURT: Well, are you finished this
9 line of questioning?

10 MR. DiPUCCHIO: I'm pretty much
11 finished the line of questioning.

12 THE COURT: Well, I'll just take it
13 under advisement. Where the Hail Mary is I'm not
14 sure, but I'll just take this under advisement.
15 You can deal with it later, but I take it you are
16 finished with this line?

17 MR. DiPUCCHIO: Yes, I actually am,
18 Your Honour. And the last point I was going to
19 make was that was the only question I was going to
20 ask on it.

21 THE COURT: Okay, let's get the witness
22 back in.

23 [Witness re-enters the courtroom.]

24 THE COURT: Mr. Griffin, lawyers get
25 rambunctious sometimes. They want to get up on

1 their feet and duke it out.

2 BY MR. DiPUCCHIO:

3 Q. Mr. Griffin, if I could just take
4 you then to tab 61 for a moment of my -- oh, it
5 won't be on your iPad, Your Honour, unfortunately.
6 This is sort of again I believe a late-breaking
7 development, but it will be on your screen. And
8 we'll put it on your iPad.

9 So if you scroll down, we are at page 2
10 of the document, and just go to page 1 for a
11 second, just so Mr. Griffin -- I'm sorry, keep
12 going down, keep going down. Right here. This is
13 notes of a call with the Tennenbaum Group, July 30,
14 2014.

15 THE COURT: Do we know whose notes
16 these are?

17 BY MR. DiPUCCHIO:

18 Q. My understanding is they are notes
19 that were taken -- yeah, this is a West Face
20 production, Your Honour, and I can give you the
21 number, it is WFC0108192, and my understanding is
22 that they were notes that were produced by Yu-jia
23 Zhu. Do you know that, Mr. Griffin?

24 A. That seems reasonable as an
25 assumption, yes.

1 Q. And do you recall having a call
2 with the Tennenbaum Group on July 30th, 2014?

3 A. I don't recall the specifics of
4 this call. I mean, I'm happy to read through the
5 notes, but --

6 Q. Well, I really just wanted to
7 point out two things. Number one is that point
8 number 8 in the notes talks about Mobilicity,
9 right?

10 A. Yes.

11 Q. And I take it the reason why you
12 are speaking with Tennenbaum as of July 30th of
13 2014 about Mobilicity is that there is still very
14 much a discussion ongoing with respect to the
15 combination of Mobilicity and Wind?

16 A. Yes, the spectrum that Mobi had
17 was still of importance to us.

18 Q. Okay, and this is after -- this is
19 after the government has announced its AWS3
20 spectrum option, right?

21 A. Yes.

22 Q. Okay. So you are still,
23 notwithstanding -- because I understood from your
24 evidence in-chief that once the government had
25 announced the AWS3 spectrum option, that took that

1 concern completely off the table for you, and now
2 you were good to go with a business plan that
3 involved operating Wind?

4 A. Well, it is not entirely the case
5 because what we were still trying to optimize for
6 was how could we get a sufficient amount of
7 spectrum at the most opportunistic price with the
8 highest degree of certainty, and there were
9 vagaries still of that option process that didn't
10 necessarily provide us with the same degree of
11 certainty if we could, by comparison, go and buy
12 Mobilicity at a known price --

13 Q. Right.

14 A. -- and negotiate that transaction
15 with the creditors.

16 Q. Right. So that is a completely
17 different answer, I'm going to suggest to you, than
18 your evidence in-chief in which you said that that
19 Mobilicity -- sorry, that spectrum auction that was
20 announced by the government completely took that
21 concern off the table for you?

22 A. Well, no, it is not contradictory.
23 It is true. We knew that there were two paths to
24 go. We could go through this AWS3 auction and it
25 would be a suitable outcome, if there was a reserve

1 set aside and a sufficiently low reserve price.

2 This Mobi process was another potential
3 way to go if we could negotiate a price that was
4 suitable.

5 Q. Right.

6 A. All the parameters or the amount
7 of spectrum that Mobi had was different than what
8 had been created in the set-aside, and the pricing
9 discovery was also an entirely different process.

10 So I don't dispute what you are saying.
11 I'm just saying that they are not mutually
12 exclusive. They are related.

13 Q. Right, and the simple point here,
14 Mr. Griffin, is that the simple announcement by the
15 government that there was going to be an AWS3
16 spectrum auction doesn't necessarily solve the
17 issue because you don't know how much of that is
18 going to be reserve and you don't know what the
19 price is going to be. You still have a significant
20 concern there; there is still a significant
21 uncertainty?

22 A. Well, they did in fact -- and I
23 just can't recollect the stages. There was --
24 there were pronouncements on the size of the
25 set-aside, which I think was 30 megahertz, and

1 there was an eventual announcement on the reserve
2 price and the bid conditions. And so I just can't
3 recollect whether that all came at once as part of
4 the first announcement or whether it was released
5 in stages.

6 Q. Okay, that latter piece of
7 information, how much was reserved and the reserve
8 price, may have come after you actually submitted
9 your bid as part of the consortium, right?

10 A. I just can't recollect what
11 specifics were produced when. I remember there was
12 a release by Industry Canada announcing that
13 set-aside auction, and I believe that was -- I
14 think that was in July of that year.

15 Q. Yes, and you are quite right about
16 that, and that was in your evidence in-chief that
17 the government had done a release, but you didn't
18 know the details of it I'm suggesting to you?

19 A. I'm pretty sure, if we could go
20 back to that article, they at a minimum had
21 announced what the quantum of the set-aside was
22 going to be and the rough timing for it. I can't
23 remember if they referenced a reserve price that
24 was established.

25 Q. Okay. Now, if we move down on

1 that note to point number 10, and this again is
2 just going to your evidence that you didn't know
3 anything about Catalyst's participation in the bid
4 or anything in relation to the status of their
5 negotiations, and I am going to suggest to you that
6 this note which says:

7 "Catalyst has been there the
8 whole time at \$150 million. We were
9 not there on process timing, and
10 they were."

11 That directly contradicts what you have
12 told this Court?

13 A. I'm not actually sure if the
14 reference in this, if you could scroll back up,
15 whether this is to Mobi or to Wind.

16 Q. Well --

17 A. Could you just go back up?
18 (Witness reviews document.)

19 A little bit further, please.

20 Q. Just keep going up.

21 A. (Witness reviews document.)

22 Yeah, see, this is all part of point 8?
23 Yeah.

24 Q. Sorry?

25 A. Well, I was just saying if you

1 look at the beginning of point 8, and I didn't
2 write this note, so I'm just trying to --

3 THE COURT: The only question I would
4 like to ask is do we know whether this is something
5 that somebody from Tennenbaum was telling you or
6 whether it was somebody from your side was telling
7 Tennenbaum? Do we know?

8 BY MR. DiPUCCHIO:

9 Q. I can ask that question of Mr.
10 Griffin.

11 Mr. Griffin, can you recollect whether
12 this is something that Tennenbaum was telling you
13 or whether you were telling Tennenbaum?

14 A. No, I don't recollect.

15 Q. Okay. Anyways, just scroll back
16 down. So notwithstanding that point number 9 is a
17 reference to Oakhill having not gone to IC yet --

18 A. Right.

19 Q. -- that is very clearly a
20 reference to the Wind transaction, isn't it?

21 A. Yes, I would say that is fair.

22 Q. So is your evidence that,
23 notwithstanding that, you are suggesting that point
24 10 which talks about Catalyst having been there the
25 whole time at 150 million dollars is a reference to

1 Mobilicity and not Wind?

2 A. No, I'm just relaying to you I
3 needed to read points 8, 9 and 10 in sequence. I
4 think that is probably a fair assumption that it
5 refers to Wind and not to Mobilicity.

6 Q. All right.

7 A. I just don't -- not being the
8 author of the note, I don't know.

9 Q. All right, fair enough, you are
10 not the author of the note. But can I take it then
11 that there is agreement between you and I when you
12 read paragraph 10 that in fact you did have insight
13 into the status of Catalyst's negotiations at this
14 time?

15 A. Well, I don't think we had -- I
16 know we didn't have any information as to the terms
17 of the deal, other than, you know, this debate we
18 were having about this last email that you produced
19 from Oakhill, you know, there was no difference in
20 terms of what is being suggested here to what was
21 suggested in that email.

22 Q. And if you turn to tab 24 of the
23 cross-examination brief, this is an email chain,
24 and I'm really interested in the -- well, first of
25 all, what it forwards is a Mobilicity term sheet,

1 right? Do you see that in the subject line?

2 A. Yes.

3 Q. "Mobilicity term sheet"?

4 A. Yes.

5 Q. On July 30th. And what was that
6 term sheet, do you recall?

7 A. I believe it was probably a
8 proposal to the Mobilicity CRO on the terms of a
9 purchase of either the company or spectrum and/or a
10 combination of the two companies as a means of
11 creating an exit proposal for the bankrupt estate
12 of Mobilicity.

13 Q. So this is still the combination
14 option, Mobilicity and Wind, right?

15 A. Yes.

16 Q. And that is July 30th, you are
17 still talking about that obviously?

18 A. Yes.

19 Q. Okay. And then if you go to --

20 THE COURT: Just a second. Where does
21 it say anything about a Mobilicity term sheet?

22 MR. DiPUCCHIO: Right in the subject
23 line of the email, Your Honour, and it is actually
24 an attachment, you will see "MOBI LOI (marked)
25 PDF".

1 And so if you go into this actual
2 document and the attachment, you'll see that term
3 sheet. It is not in my brief because I don't
4 intend to take the witness to it.

5 THE COURT: It is a term sheet for
6 what?

7 MR. DiPUCCHIO: Or it may not have even
8 been produced, as I now understand.

9 THE COURT: It is a term sheet for
10 what?

11 BY MR. DiPUCCHIO:

12 Q. Well, the witness just described
13 that it was a term sheet either for the purchase of
14 Mobilicity or for the purchase of spectrum from
15 Mobilicity, and he couldn't recall which. I
16 thought that was the witness's answer.

17 A. Yes, that is fair, some derivation
18 of that.

19 Q. And I don't think I actually
20 referenced a document number. It is WFC0070195,
21 for the record.

22 In the middle of that email exchange,
23 Mr. Griffin, here again you see an email from you
24 to Yu-jia Zhu and Mr. Dea, who again were members
25 of your team, right?

1 A. Uhm-hmm.

2 Q. You have to say "yes" or "no".

3 A. Oh, sorry, yes.

4 Q. And what you say in the second
5 paragraph is:

6 "Catalyst exclusivity ends
7 Thursday."

8 Right?

9 A. Yes.

10 Q. Not an unnamed bidder, but
11 Catalyst?

12 A. Yes.

13 Q. Then if you turn to tab 26 of the
14 cross-examination brief, and this is WFC0047832,
15 here we see an email chain, Mr. Griffin, and I'm
16 going to just ask you to refer to --

17 THE COURT: Tab 26? "Error: PDF file
18 format is not recognized".

19 MR. DiPUCCHIO: That is what is coming
20 up on your screen, Your Honour? Okay, that is
21 interesting. Well, maybe -- you have seen this one
22 before. You have actually seen it.

23 THE COURT: I know who can fix it.
24 I'll just watch this one here.

25 BY MR. DiPUCCHIO:

1 Q. Yes, you have actually seen this
2 one before, Your Honour.

3 So if you go to the second page of that
4 document, what I am interested in is the email from
5 Mr. Leitner to a number of recipients, including
6 yourself, on August 1st at 3:45; do you see that?

7 A. Yes.

8 Q. And Mr. Leitner is conveying to
9 you information that he has heard that VimpelCom is
10 taking the Catalyst share purchase agreement to the
11 board this weekend, right?

12 A. Yes.

13 Q. So that is a bit of a specific
14 piece of information in relation and which tells
15 you a couple of things. Number one, that there is
16 actually a Catalyst SPA, apparently, right?

17 A. That is what he is referring to.

18 Q. And that it is being actually
19 taken to the board of VimpelCom that weekend?

20 A. Yes.

21 Q. Now, I take it at this point in
22 time, Mr. Griffin, you understand, because Mr.
23 Leitner is telling you that he has heard that
24 VimpelCom is taking this Catalyst SPA to the board,
25 that timing is now critical for them?

1 A. Oh, I think certainly yes, we
2 thought that if we had any suggestions to make in
3 terms of an alternative proposal, we'd best get our
4 act together.

5 Q. Okay, it is sort of a desperate
6 situation at this point in time because you know
7 that there is a Catalyst SPA that is being taken to
8 the board and you certainly want to do something to
9 get the board to think again about what it might do
10 in relation to that SPA?

11 A. Well, I just want to be very
12 specific about this answer. I did not have any
13 definitive knowledge of the Catalyst SPA going to
14 the board, but I had no reason not to think that
15 this was not occurring as Mr. Leitner had
16 suggested. There was no upside to assuming the
17 contrary.

18 Q. Well, what I am going to suggest
19 to you, Mr. Griffin, is that in fact you did have
20 specific knowledge that Catalyst was involved in
21 this process and that it had an SPA that it was
22 negotiating with VimpelCom; that is what I am going
23 to suggest to you, that you had specific knowledge
24 of it. Do you agree with me?

25 A. No, again, this is being conveyed

1 by Mr. Leitner. This is not coming from West Face,
2 nor myself.

3 Q. All right, and I am going to
4 suggest to you further, because I have to, that
5 that specific knowledge that you had that Catalyst
6 was involved in the process and had an SPA that it
7 was negotiating with VimpelCom came in part from
8 Mr. Moyse?

9 A. No, that is categorically
10 incorrect.

11 Q. And --

12 A. Let me just point out, I mean,
13 Brandon in August --

14 Q. No, I really don't want you to
15 point out anything.

16 A. Well, I would like to finish my
17 answer, if you don't mind.

18 Q. All right. All right, go ahead.
19 We are going to be here --

20 A. I was just going to say that the
21 date of reference of this email, I mean, Brandon
22 had not been working at West Face. In addition to
23 all the other steps we had taken to ring-fence him
24 in terms of confidentiality walls, Brandon was well
25 past a month and a half or more not having been in

1 the employ of West Face Capital, nor being in
2 contact with us in any regard.

3 Q. Well, let's just get one thing
4 straight. Number one is you are only testifying
5 here today of your own direct knowledge, right?

6 A. That is my direct knowledge.

7 Q. You can't know what Mr. Boland,
8 for example, knows?

9 A. No, I'm speaking directly to
10 Brandon Moyse and the question you posed to me,
11 which was whether I gained any knowledge about a
12 Catalyst offer or thinking or negotiations with
13 respect to Wind, and I'm trying to provide you a
14 very clear answer on that front.

15 Q. And what you are suggesting to me
16 is because Mr. Moyse was physically not at the West
17 Face offices, that that puts an end to that
18 speculation?

19 A. No. That is not what I am
20 suggesting. I'm suggesting that it was never an
21 issue because we took steps to ring-fence him right
22 from the outset of his employment, and that is very
23 specific.

24 Q. Yes, I understand that. But you
25 are not speaking for Mr. Boland and you are not

1 speaking for Mr. Fraser, right?

2 A. Well, what I am telling you is
3 that this was set up across the firm, the
4 confidentiality wall, and it applied to everyone,
5 including Mr. Fraser, Mr. Boland, Mr. Dea and all
6 the staff.

7 Q. I understand that, sir. But just
8 answer my question. You are not speaking for Mr.
9 Boland and you are not speaking for Mr. Fraser?

10 A. I'm speaking for myself.

11 Q. And at this stage of the game,
12 August 1st, when you get this piece of information
13 from Mr. Leitner, fair to say you are in a blind
14 auction process or at least you are supposed to be
15 in a blind auction process for VimpelCom's interest
16 in Wind, right?

17 A. Well, I think we knew that clearly
18 given what we had been told about the exclusivity
19 proceedings, we were probably going to end up
20 losing this transaction.

21 Q. All right, but again, just answer
22 my question --

23 A. Sorry, could you just ask --

24 Q. -- so that we can get through this
25 a little quicker, okay.

1 A. Yeah.

2 Q. You are supposed to be in a blind
3 auction process?

4 A. Yes.

5 Q. Okay. And you have told us
6 multiple times and you have insisted that you had
7 no insight into Catalyst's bidding strategy or
8 indeed the terms of its bid?

9 A. That is correct.

10 Q. And you believe at the time I
11 think you said in your evidence in-chief that as of
12 August 1st that the Wind business was at an
13 inflection point and that the economics of the Wind
14 business were very good?

15 A. We thought they would improve
16 markedly.

17 Q. All right. And you believe also,
18 as I heard you say in your evidence in-chief, that
19 the announcement of the AWS3 spectrum set-aside
20 auction was a critical event in terms of giving you
21 comfort that there was a go-forward plan with Wind?

22 A. That and also, yes, and the
23 imposition of the wholesale roaming caps which was
24 also announced in August.

25 Q. And your consortium was not going

1 to be looking for any concessions from a regulatory
2 perspective, right?

3 A. We had never asked for concessions
4 at any point in time.

5 Q. And it was never in your
6 contemplation from the very first conversation that
7 you described in November of 2013 right until you
8 closed the transaction to seek any kind of
9 concessions in relation to spectrum? That was
10 never in your contemplation, right?

11 A. Yes, not to be confused with
12 conditions to closing, concessions was not part of
13 the equation.

14 Q. Okay, ever?

15 A. Not with the government.

16 Q. Okay. And let's see what your
17 consortium does now that it has this information
18 that Catalyst's SPA is being taken to the board in
19 a blind auction process, so let's go to -- sorry,
20 I'm just going to find it here.

21 First of all, tab 28 of the
22 cross-examination brief, so here is where there is
23 a discussion that is taking place now amongst the
24 members of the consortium on August 5th, and I want
25 to take you to the email from Mr. Leitner on August

1 5th at 5:21 p.m., which is at the very bottom of
2 the first page and, for the record, this is
3 WFC0057030.

4 And what Mr. Leitner says to you is:
5 "I thought about keeping that
6 in a separate agreement."

7 And the reference to "that" is, you
8 will see it at the bottom of the chain, "an outline
9 of the specific preconditions to us converting the
10 debt instrument to equity in newco", okay. So you
11 are now talking about this new mechanic that you
12 are going to use in order to complete this
13 purchase, right?

14 A. Uhm-hmm, can you just scroll down
15 so I can see that?

16 Q. Sure, absolutely. I apologize,
17 I'm going a little faster, but I'm just trying
18 to --

19 A. Okay, yeah, I'm with you.

20 Q. Just scroll down. Go down
21 further. Right there you say:

22 "Michael, I think the major
23 item missing from the current draft
24 is an outline of the specific
25 preconditions to us converting the

1 debt instrument to equity in newco."

2 A. Yes.

3 Q. Okay. Now, if you go up, you say:

4 "I thought about keeping that
5 in a separate agreement."

6 Sorry, Mr. Leitner says:

7 "I thought about keeping that
8 in a separate agreement. The debt
9 commitment letter needs to be clean.
10 That is what VimpelCom will review.
11 I didn't want them to get concerned
12 about the other complexities. I
13 figure let's get these out the door
14 as they are subject to a number of
15 things, SPA, docs, etc."

16 And then he goes on.

17 So the intention here is to put
18 together an offer that VimpelCom is going to review
19 hopefully at the same time that it is reviewing the
20 Catalyst offer when the matter is at the board
21 level, right?

22 A. Yes, we wanted to get in an offer
23 that, you know, see if we could get their
24 attention.

25 Q. Okay. And now if we go to the

1 actual offer, it is tab 29 of my cross-examination
2 brief, and this is WFC0051622/1. And here is the
3 email, when you go down to the email from Mr.
4 Leitner, right there, from Mr. Leitner to
5 Mr. Saratovsky and Jonathan Herbst and a gentleman
6 by the name of Faaiz Hasan, and who was he, by the
7 way?

8 A. That I don't recall. Yeah, I'm
9 sorry.

10 Q. All right. And do you see the
11 subject line of Mr. Leitner's email to these
12 gentlemen is "Superior proposal to purchase Wind
13 Canada"?

14 A. Yes.

15 Q. And I'm going to suggest to you
16 that the reason the words "superior proposal" were
17 used is because you were referencing the fact that
18 your proposal was superior to the proposal that you
19 knew was before the board on behalf of Catalyst?

20 A. It is very difficult for me to
21 attest to that, because I didn't write it. I would
22 prefer that you ask Mr. Leitner that question.

23 Q. Well, I understand that you may
24 not have written it --

25 THE COURT: This wasn't put to Mr.

1 Leitner, was it?

2 MR. DiPUCCHIO: This particular email?

3 THE COURT: This question.

4 MR. DiPUCCHIO: No, this particular
5 question I don't think was put to Mr. Leitner, no.
6 No, but he is -- in fairness, Your Honour, I think
7 he is part of the consortium. He can have a view
8 to it. If he doesn't have anything to contribute,
9 he doesn't have anything to contribute. I can
10 still put the question to him. He is part of the
11 consortium, so I can ask him what his understanding
12 was as to why the words "superior proposal" were
13 being used.

14 THE COURT: Well, I'm anticipating --
15 there has been a couple of times today that you
16 have put things to this witness of Mr. Leitner in
17 documents which I didn't hear being put to Mr.
18 Leitner, and I'm anticipating there is going to be
19 a Browne and Dunn argument at some point on some of
20 this stuff.

21 MR. DiPUCCHIO: Well, I think, with
22 respect, the rest of the documents I put to the
23 witness were put to Mr. Leitner.

24 THE COURT: Well, I know this one --

25 MR. DiPUCCHIO: Your Honour is quite

1 right about this, this proposal.

2 THE COURT: This superior proposal, the
3 words "superior proposal" were not put to Mr.
4 Leitner.

5 BY MR. DiPUCCHIO:

6 Q. No, no, I understand, and I am
7 going to come to the actual offer itself, Your
8 Honour, that uses similar words and it is on behalf
9 of the -- and signed on behalf of West Face as
10 well.

11 So I take Your Honour's point. I'm not
12 going to spend a lot of time on it. I was just
13 simply asking him whether he had any understanding
14 at all as to why the words "superior proposal" were
15 being used.

16 A. No, I mean, not having authored it
17 and not having the ability to provide input to the
18 header he selected, I just -- it is difficult for
19 me to answer that question.

20 Q. Okay, and the offer itself
21 indicates that you expected that the superior
22 proposal would be evaluated during the upcoming
23 board meeting, right?

24 THE COURT: This is a small point. You
25 have been using all these things as offers, but I

1 don't think you mean them literally as an offer
2 because they are all proposals, aren't they?

3 MR. DiPUCCHIO: That is fair enough.
4 It is a proposal. I think we have been using that
5 term interchangeably throughout, but I take Your
6 Honour's point that it is a proposal.

7 THE COURT: Yes. Which tab were you
8 going to?

9 BY MR. DiPUCCHIO:

10 Q. No, I was just in the same
11 document. I was reading the first paragraph of the
12 actual email from Mr. Leitner in which he says:

13 "We will deliver to you and
14 your board of directors for
15 evaluation during your upcoming
16 board meeting [...]"

17 So the expectation was, Mr. Griffin,
18 that the proposal that was being put forward by
19 your consortium was going to be evaluated by the
20 board of VimpelCom during the board meeting that
21 you understood from Mr. Leitner was scheduled in
22 order to consider the Catalyst proposal?

23 A. Look, I don't have knowledge of
24 the specifics of the board meeting that was set up,
25 nor why he chose his words the way he did. But I

1 will agree with you that this was being presented
2 at a board meeting at VimpelCom. Again, it is just
3 difficult for me to answer these questions given
4 that I wasn't the author of this proposal.

5 Q. Well, I understand you weren't the
6 author, and that is fair, but I just took you to
7 email chains that you were copied on --

8 A. Uhm-hmm, yes.

9 Q. -- in which you were told by Mr.
10 Leitner that he had understood that the board would
11 be meeting in order to consider the Catalyst SPA?

12 A. Yes.

13 Q. Right? So you had that knowledge?

14 A. What he had conveyed to me, yes.

15 Q. Right, and then this proposal by
16 its very terms was pitched to VimpelCom such that
17 it would be evaluated at that upcoming board
18 meeting? That was the intention on behalf of the
19 consortium?

20 A. We certainly wanted to get a
21 proposal in to them. The only thing I'm just
22 struggling with is if it is one and the same board
23 meeting. That is all.

24 Q. And then just look at the third
25 bullet point -- well, let's look at the second

1 bullet point. And again, I understand and I
2 appreciate these are not -- you didn't write the
3 email, okay. I appreciate that. The email says:

4 "Our proposal will be superior
5 to any other offer as our proposal
6 will not require regulatory approval
7 and our Investor Group will be able
8 to close and fund the transaction
9 within 24-48 hours after signing."

10 Right?

11 A. Yes.

12 Q. And that was being pitched as
13 being superior to any other offer, right?

14 A. We thought it was a unique and
15 elegant idea, because we were stepping into
16 VimpelCom's shoes effectively.

17 Q. Right.

18 A. And avoiding what we thought --
19 our view, and this was to be confirmed, avoiding a
20 stage one regulatory approval and that process by
21 buying the shareholder loans and the equity that
22 VimpelCom held in Wind.

23 Q. But there was nothing unique about
24 that proposal, per se, Mr. Griffin, because we have
25 heard evidence in this proceeding already from Mr.

1 Leitner that that was something that had been in
2 contemplation for a long time, because that is
3 exactly how VimpelCom purchased Orascom's interest?

4 A. Well, the idea certainly didn't
5 emanate with us. It was brought to our attention
6 by Mr. Guffey and Leitner, and that is what -- how
7 this proposal got formulated. So I wish we could
8 take credit for it, but it wasn't -- it didn't
9 emanate with us. I know the idea had been batted
10 around --

11 Q. Well, let me just stop you, and
12 maybe we'll close out on this point. I'm going to
13 suggest to you, Mr. Griffin, that despite your
14 evidence, in fact this idea did come from you as a
15 result of knowledge you had about Catalyst's
16 bidding strategy and the fact that your proposal
17 would be superior to Catalyst's because they
18 couldn't waive regulatory approval and wouldn't
19 waive regulatory approval; do you agree or
20 disagree?

21 A. I disagree with that.

22 MR. DiPUCCHIO: Your Honour, it is past
23 5:00. I am in your hands as to what -- I do have a
24 little bit more, so we are not going to be finished
25 in less than ten minutes.

1 THE COURT: You are going to be less
2 than ten minutes?

3 MR. DiPUCCHIO: No, I said I don't know
4 that I will be finished in less than ten minutes,
5 so I don't want to make a promise that I'm going to
6 be just ten minutes and then --

7 THE COURT: I thought we were ahead of
8 time, and now I'm wondering if we are getting
9 behind time. What is the time forecast like?

10 MR. DiPUCCHIO: We may be a little
11 bit -- certainly I'm a little bit behind, Your
12 Honour, I accept that. I suspect I will be, just
13 flipping through here, and I'll probably be able to
14 clean this up, I will probably be another 15 to 30
15 minutes would be my guess.

16 THE COURT: What else is on tomorrow?

17 MR. MILNE-SMITH: We have on first
18 Mr. Lockie and then Mr. Dea and then Ms. Kapoor and
19 then Mr. Zhu.

20 THE COURT: When is all that going to
21 take place?

22 MR. MILNE-SMITH: We believe all of
23 those witnesses will be very short, and in
24 consultation with my friends, I believe their
25 cross-examinations will be very short. And then if

1 we have time, we'll also go to Mr. Lo, and that
2 leaves only Mr. Moyse.

3 Your Honour, would it be possible for
4 us to excuse the witness and I make some brief
5 follow-on remarks on our last discussion before we
6 adjourn Court?

7 THE COURT: Sure.

8 Unfortunately, you are going to have to
9 come back tomorrow morning, Mr. Griffin, but it
10 shouldn't take too long tomorrow morning.

11 THE WITNESS: Okay.

12 [Witness exits the courtroom.]

13 MR. MILNE-SMITH: So, Your Honour, I
14 understand you have already taken this under
15 advisement and I don't intend to argue the point
16 any further.

17 I would just like you to note our
18 position that the fact that I didn't stand up any
19 more does not mean that we found that line of
20 questioning by Mr. DiPucchio after the objection to
21 be any different from the line of questioning that
22 led to it, notwithstanding the fact that he said he
23 was done with that line of questioning. In fact,
24 the only thing we saw is that he transitioned from
25 purely arguing breach of confidence by UBS or other

1 non-Moyse people to arguing inducing breach of
2 contract in saying that it was supposed to be put
3 before the board of VimpelCom.

4 So we are not sure, again, how this
5 relates to the case before this Court as opposed to
6 the case commenced last Wednesday. I will leave
7 that to you under advisement, Your Honour. As
8 before, I just wanted to note our position on what
9 had happened after.

10 MR. DiPUCCHIO: Your Honour, I don't
11 think we have to waste a lot of time on this, Your
12 Honour, but simply to respond to that, I don't know
13 what my friends expect me to do, not question on
14 the proposal that has been put forward?

15 THE COURT: Well, as I said, I'm going
16 to reserve on this, so --

17 MR. DiPUCCHIO: All right.

18 THE COURT: Why don't I see just the
19 three of you in my office for a minute, how is
20 that?

21 MR. DiPUCCHIO: Sure.

22
23 -- Adjourned at 5:06 p.m.
24
25

REPORTERS' CERTIFICATE

We, KIMBERLEY A. NEESON, RPR, CRR, CSR, CCP, CBC, Realtime Systems Administrator, Certified Shorthand Reporter, and Deana Santedicola, RPR, CRR, CSR, certify;

That the foregoing proceedings were taken before us at the time and place therein set forth;

That the testimony of the witnesses and all objections made at the time of the examination were recorded stenographically by us and were thereafter reviewed for accuracy.

Dated this 10th day of October, 2016.



NEESON COURT REPORTING INC.

PER:KIM NEESON, RPR, CRR, CSR, CCP, CBC
REALTIME SYSTEMS ADMINISTRATOR,
& DEANA SANTEDICOLA, RPR, CRR, CSR

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