

Court File No.: CV-16-1159500CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

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

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANT,  
NOVUS WIRELESS COMMUNICATIONS INC.**

1. The Defendant, Novus Wireless Communications Inc. ("Novus"), admits the allegations contained in the first sentence of paragraph 127, the first sentence of paragraph 128, and the first sentence of paragraph 130 of the Amended Statement of Claim.
2. Novus has no knowledge in respect of the allegations contained in paragraphs 2-8, 10, 12-50, 52-62, 118-119 and 121 of the Amended Statement of Claim.
3. Except as hereinafter expressly admitted, Novus denies each and every other allegation contained in the Amended Statement of Claim and denies that the Plaintiff is entitled to the relief set out in the Amended Statement of Claim.

## Background

4. Novus is a company in the business of telecommunications based in Vancouver, British Columbia with office at 300-112 E 3<sup>rd</sup> Ave, Vancouver, British Columbia, V5T 1C8.

5. Novus had initial discussions with Anthony Lacavera, the principal of Globalive Capital Inc. ("**Globalive**"), a Canadian private equity firm which held an interest in WIND Mobile Corp. ("**WIND**") indirectly through Globalive Investment Holdings Corp. ("**GIHC**"), about participating in the acquisition of WIND from VimpelCom Ltd. ("**VimpelCom**") in or about June, 2014. Mr. Lacavera later approached Novus after the expiry of the exclusivity period as between VimpelCom and The Catalyst Group Inc. ("**Catalyst**") to discuss participating in the transaction at issue in these proceedings.

6. The other investors ultimately consisted of a consortium that included the defendants West Face Capital Inc. ("**West Face**"), Tennenbaum Capital Partners LLC ("**Tennenbaum**"), LG Capital Investors LLC ("**LG**"), and Serruya Private Equity Inc. ("**Serruya**") (collectively with Novus and Globalive, the "**Consortium**").

7. Novus denies that it was involved in any conspiracy with anyone, including any other member, or members, of the Consortium as alleged in the Amended Statement of Claim or otherwise. To the contrary, Novus had no contact with members of the Consortium other than as described in paragraph 5, above, before Mr. Lacavera presented it with the terms to participate with the Consortium in the acquisition of WIND, which was after the expiry of the exclusivity period as between VimpelCom and Catalyst.

8. Prior to that date, Novus was not involved in any negotiations as between the members of the Consortium and VimpelCom.

9. Novus also had no knowledge as to the existence of a previous exclusivity agreement as between VimpelCom and Catalyst.

10. On August 25, 2014, VimpelCom granted the Consortium exclusive rights to negotiate the purchase of its interest in WIND.

11. Thereafter, on September 16, 2014, the parties signed and closed an agreement by which an acquisition vehicle created by the Consortium, Mid-Bowline Group Corp. (“**Mid-Bowline**”) acquired VimpelCom’s interests in WIND based on an enterprise value of \$300 million. That transaction did not involve a change of control of WIND, since Globalive continued to be the majority voting shareholder, and as a result did not require regulatory approval.

12. On February 3, 2016, the Honourable Justice Newbould approved a Plan of Arrangement (the “**Plan of Arrangement**”) pursuant to section 182 of the *Business Corporations Act* (Ontario). The Plan of Arrangement effected the sale by the Consortium of all outstanding shares of Mid-Bowline to Shaw Communications Inc.

#### **Allegations Denied**

13. Contrary to paragraphs 51, 53 and 63-114 of the Amended Statement of Claim, Novus denies that it was involved in the transaction at issue in these proceedings until after Catalyst’s period of exclusivity expired on August 18, 2014.

14. Contrary to paragraphs 63-77 of the Amended Statement of Claim, at no time did Novus participate in a conspiracy to induce VimpelCom to breach its exclusivity agreement with Catalyst. Novus did not join the Consortium until after the expiry of the exclusivity agreement between VimpelCom and Catalyst. Moreover, Novus's decision to participate in the Consortium was not connected to any intent to induce a breach of Catalyst's exclusivity agreement.

15. Contrary to paragraphs 98-101 and 104-107 of the Amended Statement of Claim, Novus did not have or misuse Catalyst's confidential information.

16. Contrary to paragraphs 126 and 133 of the Amended Statement of Claim, Catalyst suffered no detriment from the acquisition of WIND by the Consortium. Catalyst would not have acquired WIND even absent the involvement of members of the Consortium, as determined in a finding of fact made by the Honourable Justice Newbould in his Reasons for Decision in previous proceedings by Catalyst arising out of the Consortium's acquisition of WIND, described in more detail below.

#### **Abuse of Process**

17. Catalyst's claim ought to be dismissed as an abuse of process and is barred by the doctrines of issue estoppel and cause of action estoppel.

18. The circumstances giving rise to this claim are the same as those underlying Catalyst's claims in its action at Court File No. CV-16-11272-00CL, which has already been heard and decided by the Honourable Justice Newbould (the "**Moyse Action**").

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19. Catalyst commenced the Moyses Action in June, 2014 against Brandon Moyses and West Face. Catalyst unsuccessfully claimed that West Face had acquired its interest in WIND by misusing Catalyst's confidential information concerning its bidding strategy, which was allegedly provided by Mr. Moyses, a former junior analyst at Catalyst who was employed briefly by West Face in 2014.

20. In Reasons for Decision issued August 18, 2016, the Honourable Justice Newbould found as a fact that:

- (a) the unsolicited offer of August 7, 2016 (which pre-dates Novus's involvement in the Consortium) did not affect VimpelCom's negotiations with Catalyst prior to the expiry of the exclusivity period on August 18, 2014;
- (b) Catalyst failed to complete its proposed acquisition of WIND because it refused to accept VimpelCom's request for a break fee; and
- (c) Catalyst would never have completed its proposed acquisition of WIND because it could not have obtained regulatory concessions from the Government of Canada that it required before so doing.

21. Accordingly, Catalyst cannot have suffered compensable loss or harm because of any of the conduct alleged in this proceeding.

22. Moreover, and contrary to paragraph 131 of the Amended Statement of Claim, Catalyst knew of the circumstances concerning the Consortium's acquisition of WIND

by no later than March, 2015. Catalyst ought to have raised its allegations of inducing breach of contract as against Novus in previous proceedings.

23. Catalyst initially opposed approval by the Court of the proposed Plan of Arrangement, as its implementation, in their submission, would have affected Catalyst's claim in the Moyse Action. In his Reasons for Decision in Court File No. CV-15-11238-00CL concerning the Plan of Arrangement, the Honourable Justice Newbould found as a fact that Catalyst was aware of the facts underlying its claim for inducing breach of contract by no later than March, 2015, and that Catalyst's decision "to lie in the weeds until the hearing of the application and assert such a right to stop the plan of arrangement is troubling indeed and not acting in good faith."

24. Catalyst elected not to assert its claim of inducing breach of contract until the hearing of the application for court approval of the sale of the same company, WIND, that Catalyst had already sued West Face about over a year earlier.

25. In his Reasons for Decision, Justice Newbould stated that "waiting and seeing how things are going in the litigation process before springing a new theory at the last moment is not to be encouraged." Accordingly, he ordered that the hearing concerning the Plan of Arrangement was not to consider any claim for inducing breach of contract.

26. Justice Newbould did not, however, limit the scope of the claims which Catalyst could pursue in the Moyse Action. Catalyst elected not to proceed against Novus in the Moyse Action, which arose from the same circumstances concerning allegations of misuse of confidential information and inducing breach of contract.

27. Catalyst's attempt at litigation-by-installment gives rise to a risk of inconsistent judicial decisions and should be dismissed on that basis.

**Relief Requested**

28. Novus requests that this action be dismissed against it with costs payable on a full or substantial indemnity basis.

December 23, 2016

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Defendants

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Proceeding commenced at TORONTO

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MT DOCS 15889783