

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

**MOTION RECORD OF THE DEFENDANT/MOVING PARTY
WEST FACE CAPITAL INC.
(VOLUME 14 OF 19)**

December 7, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

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**VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES
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Defendants

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Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner of the
Province of Ontario, while a Student at Law.
Expires April 13, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

MEMORANDUM RE 9:30 APPOINTMENT ON JANUARY 11, 2016

1. The Catalyst Capital Group Inc. (“Catalyst”) has requested an appointment to obtain directions in relation to the Application to approve a Plan of Arrangement involving Mid-Bowline Group Corp. (the “Applicant”).¹

2. The proposed Plan of Arrangement includes a provision that deems to release all causes of action or claims “based on or in any way relating to” the shares of the Applicant.² Catalyst is concerned that, under the guise of a hearing to approve the Plan of Arrangement, the Court is being asked to make a final determination of Catalyst’s claim in an action bearing Court File No. CV-14-507120 (“the Catalyst Claim”). The defendants to that claim are West Face Capital Inc. (“West Face”), a significant shareholder of the Applicant, and Brandon Moyse, neither of whom are parties to this Application.

¹ Notice of Application, Court File No. CV-15-11238-00CL, with attached proposed Plan of Arrangement, **Tab A**.

² Plan of Arrangement, art. 4.5, **Tab A**.

The Purpose of Mid-Bowline's Request for a Hearing

3. On Monday, January 4, 2016, the parties attended a 9:30 appointment, during which counsel for the Applicant requested that the hearing be scheduled regarding the proposed Plan of Arrangement. The Court scheduled the hearing for four days starting January 25, 2016 (the "January Hearing"). What was not made explicit or understood at this appointment and only became clear in later discussions with counsel was that counsel for Mid-Bowline will ask the Court to finally determine the Catalyst Claim at the January Hearing in an undefined and unprecedented "trial".

4. Catalyst wishes to raise three preliminary issues with the proposed January Hearing, which were communicated to the Applicant and the purchaser Shaw Communications Inc. ("Shaw") by letter dated January 6, 2016.³

Issue 1: The Court is Being Asked to Hear a Case that is Not Properly Before It

5. It is now clear that this Court is being asked to finally adjudicate a claim in an action that is not properly before it. The proceeding before this Court under Court File No. CV-15-11238-00CL is an Application to approve a Plan of Arrangement under the *Business Corporations Act*.⁴ Catalyst's position is that this Court does not have the jurisdiction to determine issues in an action that is not before it and involves different parties.

6. Commenced on June 25, 2014, the Catalyst Claim involves breach of confidence allegations against West Face and a then-employee of West Face, who was a former employee of Catalyst (Moyse). The claim includes a claim for a constructive trust over the Mid-Bowline shares

³ Letter from R. DiPucchio to M. Milne-Smith/A. Carlson and M. Schaffer, dated January 6, 2016, **Tab B**.

⁴ RSO 1990, c B.16 ("*OBCA*").

owned by West Face and a claim for an accounting of all profits earned by West Face in relation to the shares of the Applicant. Other than these issues with respect to West Face's shares, the Catalyst Claim does not involve any dispute in relation to the Applicant itself.

7. The Catalyst Claim has been proceeding on the regular civil list for the past 18 months, but is still at a very early stage due to various interlocutory motions and attempted appeals that have been heard or might be heard. Pleadings are not even closed, as the defendant Moyse has yet to deliver a statement of defence. There are various motions and appeals presently ongoing. The parties have not even started the discovery process: they have not agreed on a Discovery Plan, exchanged Affidavits of Documents or conducted examinations for discovery. Most notably, there is still an ongoing interlocutory dispute in relation to the appointment of an ISS to forensically image and examine certain of West Face's computers and servers.

8. Leaving aside the jurisdictional issue, for the Court to "hear" and determine the Catalyst Claim in the context of some undefined "trial" taking place under the guise of a plan approval application with two weeks' notice would be to ignore and disregard virtually all of the procedural and substantive rights afforded to Catalyst as a plaintiff under the *Rules of Civil Procedure*, including Rules 30 (Discovery of Documents), 31 (Examination for Discovery), 48 (Listing for Trial), 50 (Pre-Trials), and 53 (Evidence at Trial).

9. It appears that the actions of the Applicant are in fact being directed by West Face. This raises questions as to the fairness of the conduct of West Face, which took no steps to challenge the Catalyst Claim despite its obvious awareness of the pending Shaw transaction. By manufacturing an avenue by which this Court is being now asked to finally adjudicate the Catalyst Claim in a mere

matter of weeks, West Face seeks to usurp the Court's process and hijack the Catalyst Claim. This is an abuse of the Court's process.

Issue 2: Illegality of the Plan of Arrangement is a Threshold Issue

10. Catalyst submits that before the Court may consider ordering what in effect would become a trial of a claim over which it has no jurisdiction, it must first address two threshold questions: (1) whether the Plan of Arrangement in its current state is capable of being approved; and (2) whether the Plan of Arrangement provisions allow for determinations of third party claims in this fashion.

11. Similar to the law concerning Plans of Arrangement in a *CCAA* context, the Court should not allow a party to proceed with a Plan of Arrangement approval hearing if at the outset that Plan cannot be sanctioned because its terms cannot be sanctioned at law.⁵ It is Catalyst's position that a Plan of Arrangement under the *OBCA* cannot extinguish third party rights at all, much less finally eliminate a separate, unrelated, and unresolved claim against a shareholder of the Applicant.

12. Catalyst intends to ask the Court to determine these important threshold issues before the parties address the form of any "trial" (assuming the Court finds that it has the jurisdiction to order such a trial).

Issue 3: This Dispute Can be Avoided Through Implementation of Catalyst's Proposal

13. All of these issues can be resolved, the dispute avoided, and the Plan approved without any objection from Catalyst if a proposal advanced by Catalyst was accepted. In a letter to the Applicant and Shaw dated January 6, 2016, Catalyst proposed a solution that protects the rights of

⁵ *Crystallex International Corp., Re*, 2013 ONSC 823, paras 9-13, and *Doman Industries Ltd., Re*, 2003 BCSC 376, paras. 8-11.

all parties while allowing the Plan of Arrangement and transaction to proceed unhindered. The proposal is as follows:

- (i) West Face will agree to place its proceeds from the sale of the Applicant into escrow pending a final determination of the Catalyst Claim;
- (ii) Catalyst will agree to amend its statement of claim to remove the claim for a constructive trust over West Face's shares in the Applicant and to restrict its claim to a tracing of the proceeds of the sale of the Applicant;
- (iii) Following this amendment, Catalyst will not object to the Plan of Arrangement;
- (iv) Catalyst and West Face will agree to the appointment of an ISS to review the electronic devices of an agreed-upon set of custodians at West Face, pursuant to a document review protocol to be agreed upon or settled by the Court; and
- (v) Catalyst and West Face will agree on an expedited discovery and trial schedule following receipt of the ISS report, with a goal of completing a trial of Catalyst's tracing claim by July 30, 2016.

14. Thirty minutes after the letter was sent, counsel for the Applicants/West Face responded as follows: "Your proposed offer is unacceptable to West Face, and therefore to the shareholders of Mid-Bowline."⁶ Catalyst has requested clarification of what aspects of the proposal are objectionable to the Applicant, but has not yet received a reply.⁷

⁶ Email from M. Milne-Smith to R. DiPucchio, dated January 6, 2016, Tab C.

⁷ Email from R. DiPucchio to M. Milne-Smith, dated January 8, 2016, Tab D.

15. There is no need for the Catalyst Claim to be released as part of the Plan of Arrangement because the Plan can be being implemented without this dispute simply by holding the proceeds of West Face in escrow.

Conclusion

16. We look forward to discussing these issues with the parties and the Court at the appointment on Monday, January 11, 2016.

January 8, 2016

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IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182
AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*
AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw
Communications Inc., and 1503357 Alberta Ltd.

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MEMORANDUM

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TAB A

C15-11238-0001 5033

Commercial List Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*



AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

NOTICE OF APPLICATION

TO: THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE APPLICANT. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List at 330 University Avenue, 7th Floor, Toronto on ~~a date to be established by the Commercial List Office at 10:00 a.m.~~ or as soon after that time as the matter can be heard.

96
January 4, 2016

10:30 a.m.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application, or to be served with any documents in the Application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.


IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer and file it, with proof of service, in the court office where the Application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 23, 2015

01

Issued by:



Address of Court Office:
330 University Avenue
7th Floor
Toronto, ON M5G 1R7

A. Anissimova
Registrar

TO: THE HOLDERS OF COMMON SHARES OR OPTIONS OF MID-BOWLINE GROUP CORP. SET OUT IN SCHEDULE "A"

AND TO: The Catalyst Capital Group. Inc.
77 King St. W.
Toronto ON M5K 2A1

APPLICATION

1. The Applicant, Mid-Bowline Group Corp. (the "Corporation"), makes application for:

- (a) an order concluding as to the fairness to the shareholders and optionholders of the Corporation of, and approving and implementing, the plan of arrangement (the "Plan of Arrangement") proposed by the Corporation pursuant to section 182 of the *Business Corporations Act* (Ontario), as amended (the "OBCA"), substantially in the form attached as Appendix "A" to this Notice of Application; and
- (b) such further and other relief as this Honourable Court deems just.

2. THE GROUNDS for the Application are:

- (a) all statutory requirements under the OBCA have been fulfilled;
- (b) the proposed Plan of Arrangement is in the best interests of the Corporation, is fair and reasonable to the stakeholders of the Corporation, and is put forward in good faith;
- (c) section 182 of the OBCA;
- (d) rules 14.05(2) and 38 of the *Rules of Civil Procedure*; and
- (e) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

- (a) the affidavit of Anthony Griffin and such other affidavits as shall be put before the Court, and the exhibits thereto and other materials referred to therein, to be filed; and
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

December 23, 2015



DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington St. W.
Toronto, ON M5V 3J7

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Tel: 416.863.5595
Andrew Carlson (LSUC #58850N)
Tel: 416.367.7437

Fax: 416.863.0871

Lawyers for the Applicant

LIST OF SHAREHOLDERS

Globalive Turbine Corp. 1
Globalive Turbine Corp. 2
Globalive Turbine 3 LP
Serruya Private Equity Inc.
Luxembourg Famous Star SARL
Tennenbaum Opportunities Partners V, LP
Tennenbaum Opportunities Fund VI, LLC
Special Value Opportunities Fund, LLC
Special Value Expansion Fund, LLC
Tennenbaum Senior Loan Fund IV-B, LP
Tennenbaum Special Situations Fund IX, LLC
Tennenbaum Special Situations IX-O, LP
Siguler Guff Hearst Opportunities Fund, LP
Maycomb Holdings IV, LLC
WAL Telecom L.P.
64NM Holdings, LP
Robert MacLellan
David Carey
Hamid Akhavan
Peter Rhamey
Alek Krstajic

LIST OF OPTIONHOLDERS

5038

Alek Krstajic
Glen Campbell
Bruce Kirby
Bob Boron
Brian O'Shaughnessy
Ted Flanigan
Tamer Saleh
Atif Ahmad
Nora Brooks
John Lucato
Jennifer Douglas
Dean Price
Asser El Shanawany
Hamid Akhavan
Ed Antecol
Radek Krasny
Frank Bassano
Amor Mohammed
Magued Sorial
Ronny Hanna
Charbel Rizk
Wendy Perego
Mathew Flanigan

Pierre Methe
Paul Bourque
Paul Stevens
Brian Lloyd
Adel Awad
Ashraf Demian
Stephen Kalyta
Mark Elson
Chris Golde
Terry Hubbs
Algis Akstinas
Solomon Chung
Krishna Charan
Mootaz El Sowehy
Mohammed Belmqadem
Tony Marinelli
Mohammad Ahmad
Sharon Xu
Mark Smith
Linda Kowlessar
Sujatha Kumar
Globalive Turbine Corp. 1
Brice Scheschuk
Simon Lockie

APPENDIX A

Plan of Arrangement

FORM OF PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE BUSINESS CORPORATIONS ACT (ONTARIO)

ARTICLE 1 INTERPRETATION

1.1 Definitions.

In this Plan of Arrangement, the following words and terms shall have the meanings hereinafter set forth:

"**Arrangement**" means the arrangement of the Corporation under section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the Arrangement Agreement and Section 5.1 hereof or made at the discretion of the Court in the Final Order (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably).

"**Arrangement Agreement**" means the Arrangement Agreement dated effective December 16, 2015 among Guarantor, Purchaser, the Corporation and the Vendors providing for, among other things, the Arrangement, as the same may be amended, supplemented and/or restated from time to time.

"**Arrangement Resolution**" means a special resolution of Shareholders in the form of Exhibit A to the Arrangement Agreement.

"**Articles of Arrangement**" means the articles of arrangement of the Corporation in respect of the Arrangement that are required by the OBCA to be sent to the Director after the Final Order is made, which shall be in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably.

"**business day**" means a day, other than a Saturday or Sunday, on which commercial banks in Toronto, Ontario and Calgary, Alberta are open for business.

"**Cash Consideration**" means an amount per Purchased Share equal to the Purchase Price.

"**Certificate**" means the certificate of arrangement giving effect to the Arrangement, issued pursuant to subsection 183(2) of the OBCA after the Articles of Arrangement have been filed.

"**Corporation**" means Mid-Bowline Group Corp., a corporation existing under the OBCA.

"**Court**" means the Superior Court of Justice (Commercial List) in Toronto, Ontario.

"**Director**" means the Director appointed pursuant to section 278 of the OBCA.

"**Effective Date**" means the date of the Certificate.

"**Effective Time**" means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Corporation, the Vendors' Representatives and Purchaser may agree to in writing before the Effective Date.

"**Election Deadline**" means 5:00 p.m. (Toronto time) on the business day which is five business days preceding the Effective Date.

"Election Form" means the election form delivered to and specified for use by holders of Eligible Option Shares in connection with the Arrangement.

"Eligible Option Shares" means Purchased Shares acquired pursuant to the exercise of Replacement Options that were issued in exchange for Management Options and Former Management Options.

"Exchange Ratio" means, subject to adjustment (if any) as provided in Section 3.5, the ratio of the Purchase Price to the Market Price.

"Final Order" means the order of the Court, in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) on appeal.

"Former Shareholders" means, at and following the Effective Time, the holders of Purchased Shares immediately prior to the Effective Time.

"Former Management Options" means the option commitments to acquire an aggregate of 300,000 shares in the capital of the Corporation at a price of \$1.00 per share held by the Former Officers.

"Former Officers" means each of Simon Lockie and Brice Scheschuk, being the former Chief Regulatory Officer and Chief Financial Officer, respectively, of WIND Mobile Corp.

"Globalive Options" means the options to acquire an aggregate of 10,000,000 shares in the capital of the Corporation at a price of \$1.00 per share held by Globalive Turbine Corp. 1.

"Guarantor" means Shaw Communications Inc., a corporation existing under the laws of the Province of Alberta.

"Guarantor Shares" means the Class B Non-Voting Participating Shares in the capital of Guarantor.

"Letter of Transmittal" means the letter of transmittal delivered to and specified for use by Shareholders in connection with the Arrangement in form and substance satisfactory to the Purchaser and the Vendors' Representatives, each acting reasonably; provided, however, that no Letter of Transmittal shall be required in respect of Purchased Shares issued pursuant to subsection 3.1(c).

"Management Options" means the options to acquire shares in the capital of the Corporation pursuant to the Option Plan as set out in Schedule B to the Disclosure Letter.

"Market Price" means a per share amount equal to the volume weighted average trading price of the Guarantor Shares on the TSX during the last 10 trading days occurring immediately prior to the Effective Date.

"OBCA" means the *Business Corporations Act* (Ontario).

"Option Loan" means the non-interest bearing loan made by the Purchaser to Globalive Turbine Corp. 1 in connection with the exercise or deemed exercise of the Globalive Options in accordance with this Plan of Arrangement, in an amount equal to the aggregate exercise price in respect of such Options as of the Effective Date.

"**Option Plan**" means the 2015 Stock Option Plan of the Corporation as adopted by the Board of Directors of the Corporation on September 24, 2015, effective as of March 23, 2015, and ratified on December 16, 2015, in the form provided to Purchaser.

"**Options**" means, collectively, the Management Options, the Globalive Options and the Former Management Options.

"**Plan of Arrangement**", "hereof", "herein", "hereto" and like references mean and refer to this plan of arrangement, as the same may be amended, supplemented and/or restated from time to time.

"**Purchase Price**" has the meaning set forth in the Arrangement Agreement, as such amount may be adjusted in accordance with the terms thereof.

"**Purchased Shares**" means the issued and outstanding shares in the capital of the Corporation as of the Effective Time, including any shares issued on the exercise or deemed exercise of Options in accordance with the Arrangement Agreement and this Plan of Arrangement.

"**Purchaser**" means 1503357 Alberta Ltd., a corporation existing under the laws of the Province of Alberta.

"**Replacement Option**" means an option to purchase shares in the capital of the Corporation granted in replacement of a Management Option or Former Management Option on the basis set forth in subsection 3.1(b);

"**Shareholders**" means the holders of Purchased Shares.

"**Share Consideration**" means a number (or fraction) of Guarantor Shares equal to the Exchange Ratio per Purchased Share.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**TSX**" means the Toronto Stock Exchange.

"**Unvested Options**" means all Management Options and Former Management Options that are not Vested Options.

"**Vendors**" means each of the Persons listed on the execution page of the Arrangement Agreement under the heading "Vendors".

"**Vested Options**" means the Management Options and Former Management Options that have vested prior to the Effective Date in accordance with the terms of the Arrangement Agreement.

Words and phrases used herein that are defined in the Arrangement Agreement and not defined herein shall have the same meaning herein as in the Arrangement Agreement. Words and phrases used herein that are defined in the OBCA and not defined herein or in the Arrangement Agreement shall have the same meaning herein as in the OBCA, unless the context otherwise requires.

1.2 Interpretation Not Affected By Headings, etc.

The division of this Plan of Arrangement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement.

1.3 Article References

Unless the contrary intention appears, references in this Plan of Arrangement to an Article, Section or subsection by number or letter or both refer to the Article, Section or subsection respectively, bearing that designation in this Plan of Arrangement.

1.4 Number and Gender

In this Plan of Arrangement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender shall include all genders.

1.5 Date for Any Action

If the date on which any action is required to be taken hereunder by any of the parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.

1.6 Statutory References

Unless otherwise indicated, references in this Plan of Arrangement to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

1.7 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

**ARTICLE 2
ARRANGEMENT AGREEMENT**

2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to, and is subject to the provisions of, the Arrangement Agreement. This Plan of Arrangement shall become effective at, and be binding at and after, the Effective Time on the Corporation, Guarantor, Purchaser, the Vendors and all Persons who were immediately prior to the Effective Time holders or beneficial owners of Purchased Shares or Options.

**ARTICLE 3
ARRANGEMENT**

3.1 Arrangement

Commencing at the Effective Time, the following events or transactions shall occur and shall be deemed to occur in the following sequence without any further act or formality:

- (a) Purchaser will make the Option Loan to Globalive Turbine Corp. 1 and Globalive Turbine Corp. 1 will direct the Purchaser to pay the proceeds of the Option Loan to the Corporation in satisfaction of the exercise price of the Globalive Options in accordance with Section 3.1(c);
- (b) each Vested Option outstanding at the Effective Time will be exchanged for a Replacement Option to acquire such number of Purchased Shares that is equal to the fraction obtained when the difference, if positive, between the Purchase Price and the

exercise price of such Option is divided by the Purchase Price; provided, however, that if the difference between the Purchase Price and the exercise price of any such Option produces a negative amount, then such Option shall be terminated and of no further force and effect. All terms and conditions of a Replacement Option shall be the same as the Option for which it was exchanged, except that each Replacement Option shall be exercisable pursuant hereto at a price of \$0.00001 per Purchased Share; notwithstanding the foregoing, if it is determined in good faith that the excess of the aggregate fair market value of the shares of the Corporation subject to a Replacement Option immediately after the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Replacement Option (such excess referred to as the "In the Money Amount of the Replacement Option") would otherwise exceed the excess of the aggregate fair market value of the shares of the Corporation subject to such Vested Option immediately before the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Vested Option, (such excess referred to as the "In the Money Amount of the Vested Option"), the previous provisions shall be modified so that the In the Money Amount of the Replacement Option does not exceed the In the Money Amount of the Vested Option, but only to the extent necessary to qualify for the provisions of subsection 7(1.4) of the Tax Act.

- (c) each holder of Replacement Options will be deemed to have exercised all such Replacement Options and Globalive Turbine Corp. 1 will be deemed to have exercised the Globalive Options and (i) holders of Replacement Options will pay the exercise price in respect thereof to the Corporation in cash, (ii) the Purchaser will pay the aggregate amount loaned to Globalive Turbine Corp. 1 in Section 3.1(a) above to the Corporation in satisfaction of the exercise price thereof and each holder of Replacement Options and Globalive Turbine Corp. 1 shall be deemed to have received the number of Purchased Shares issuable in respect of each Replacement Option or Globalive Option, as applicable, exercised in accordance with this Section 3.1(c) and (iii) each holder of Options who becomes a holder of Purchased Shares pursuant to this Section 3.1(c) shall be deemed to have executed a Joinder Agreement to the Arrangement Agreement and shall be considered a Vendor thereunder;
- (d) (i) each outstanding Purchased Share (other than Eligible Option Shares) shall be transferred by the holder thereof to Purchaser in exchange for the Cash Consideration therefor, provided that Globalive Turbine Corp. 1 will be deemed to have directed Purchaser to retain an amount equal to the amount loaned by Purchaser to it to acquire Purchased Shares on exercise of the Globalive Options pursuant to Section 3.1(a) in repayment of the Option Loan, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Purchased Shares so transferred and (iii) Purchaser shall be recorded as the registered holder of such Purchased Shares so transferred and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances;
- (e) (i) each outstanding Eligible Option Share shall be disposed of by the holder thereof to Purchaser in accordance with the election or deemed election of such holder pursuant to Section 3.2 in exchange for the Cash Consideration or the Share Consideration therefor, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Eligible Option Shares so transferred and (iii) the name of such holder shall be added to the register of holders of Guarantor Shares in respect of the Share Consideration received by such holder, and Purchaser shall be recorded as the registered holder of such Eligible Option Shares so exchanged and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances; notwithstanding the foregoing, if it is determined in good faith that the aggregate fair market value of the Guarantor Shares immediately after the issuance of the Guarantor Shares would otherwise exceed the fair market value of the Purchased Share exchanged

for such Guarantor Shares immediately before the issuance of the Guarantor Shares, the previous provisions shall be modified so that the aggregate fair market value of such Guarantor Shares does not exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares, but only to the extent necessary to qualify for the provisions of subsection 7(1.5) of the Tax Act; and

- (f) the Option Plan and all Unvested Options shall be terminated and shall be of no further force or effect.

3.2 Election Regarding Eligible Option Shares

With respect to the exchange of Eligible Option Shares effected pursuant to subsection 3.1(e):

- (a) each holder of Eligible Option Shares may elect to receive either:
 - (i) Cash Consideration in respect of all Eligible Option Shares held by such holder (with a requirement in the Election Form for any holder other than a Former Officer to undertake to apply at least 50% of the net after tax proceeds from such Cash Consideration to acquire Guarantor Shares in the market through a broker designated by Guarantor);
 - (ii) Cash Consideration in respect of up to 50% of the Eligible Option Shares held by such holder and Share Consideration in respect of the remaining Eligible Option Shares held by such holder; or
 - (iii) Share Consideration in respect of all Eligible Option Shares held by such holder;
- (b) the election provided for in subsection 3.2(a) shall be made by each holder of Eligible Option Shares by delivery to Purchaser, prior to the Election Deadline, of a duly completed Election Form indicating such holder's election; and
- (c) any holder of Eligible Option Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Share Consideration pursuant to clause (iii) of subsection 3.2(a) in respect of such Eligible Option Shares.

3.3 Letters of Transmittal and Election Forms

Any Letter of Transmittal and Election Form, once delivered to Purchaser, shall be irrevocable and may not be withdrawn by a Shareholder.

3.4 No Fractional Guarantor Shares and Rounding of Cash Consideration

- (a) In no event shall any fractional Guarantor Shares be issued under this Plan of Arrangement. Where the aggregate number of Guarantor Shares to be issued to a Shareholder as consideration under this Plan of Arrangement would result in a fraction of a Guarantor Share being issuable, the number of Guarantor Shares to be issued to such Shareholder shall be rounded down to the closest whole number and no additional consideration shall be provided to such Shareholder in lieu of the issuance of a fractional Guarantor Share.
- (b) If the aggregate cash amount which a Shareholder is entitled to receive under this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Shareholder shall be entitled to receive shall be rounded down to the nearest whole \$0.01.

3.5 Adjustments to Exchange Ratio

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, stock dividend (including any dividend or distribution of securities convertible into Guarantor Shares or Purchased Shares, other than stock dividends paid in lieu of ordinary course dividends), consolidation, reorganization, amalgamation, arrangement, recapitalization or other like change with respect to Guarantor Shares or Purchased Shares occurring after the date of the Arrangement Agreement (and not in breach of the terms of the Arrangement Agreement) and prior to the Effective Time.

ARTICLE 4 DELIVERY OF CONSIDERATION

4.1 Delivery of Share Consideration and Cash Consideration

- (a) At the Effective Time, upon confirmation by Purchaser that certificates representing all of the Purchased Shares (other than any certificates in respect of Purchased Shares issued pursuant to Section 3.1(c)) have been delivered to the Purchaser together with duly completed Letters of Transmittal in respect thereof, the Purchaser shall (i) pay, or cause to be paid to Davies Ward Phillips & Vineberg LLP, in trust for and on behalf of the Vendors, in cash by way of wire or electronic transfer of immediately available funds to such bank account specified in writing by the Vendors' Representatives (or such other means as may be agreed to by Purchaser and the Vendors' Representatives) an amount equal to the aggregate Cash Consideration payable pursuant to Article 3 less the amount of the Option Loan and (ii) deliver or caused to be delivered to the applicable Vendors certificates (or, at Purchaser's option, evidence of direct registration) representing the number of Guarantor Shares that each Vendor is entitled to receive under the Arrangement.
- (b) Subject to Article 10 of the Arrangement Agreement, the Vendors' Representatives shall cause Davies Ward Phillips & Vineberg LLP to release to each Vendor such portion of the aggregate Cash Consideration to which such holder is entitled pursuant to Article 3. For the avoidance of doubt, Globalive Turbine Corp. 1's entitlement to the aggregate Cash Consideration shall be calculated net of the amount of the Option Loan made to Globalive Turbine Corp. 1 in accordance with Section 3.1(a).

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Purchased Shares that were exchanged pursuant to subsections 3.1(d) or 3.1(e) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, Purchaser will deliver in exchange for such lost, stolen or destroyed certificate, the cash amount or the Guarantor Shares, or any combination thereof, that such Person is entitled to receive pursuant to subsection 3.1(d) or 3.1(e). When authorizing the delivery of such consideration in exchange for any lost, stolen or destroyed certificate, the Person to whom the consideration is being delivered shall, as a condition precedent to the delivery of such consideration, give a bond satisfactory to Guarantor and Purchaser in such sum as Guarantor and Purchaser may direct, or otherwise indemnify Guarantor and Purchaser in a manner satisfactory to Guarantor and Purchaser against any claim that may be made against Guarantor or Purchaser with respect to the certificate alleged to have been lost, stolen or destroyed.

4.3 Withholding Rights

Guarantor and Purchaser shall deduct and withhold from any consideration otherwise payable to any holder of Eligible Option Shares such amounts as Guarantor or Purchaser are required to deduct and withhold with respect to such payment under the Tax Act, the United States *Internal Revenue Code* of

1986 or any provision of provincial, state, local or foreign tax law, in each case as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Eligible Option Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. The determination of whether an amount is required to be deducted or withheld shall be at the sole discretion of Guarantor and Purchaser.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances, adverse claims or other claims of third parties of any kind.

4.5 Paramountcy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein.

ARTICLE 5 AMENDMENTS

5.1 Amendments to Plan of Arrangement

- (a) The Corporation, the Vendors' Representatives and Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must: (i) be set out in writing; (ii) be approved by the Corporation, the Vendors' Representatives and Purchaser; and (iii) be filed with the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement that is directed by the Court shall be effective only if: (i) it is consented to in writing by each of the Corporation, the Vendors' Representatives and Purchaser (in each case, acting reasonably); and (ii) if required by the Court, it is consented to by Shareholders, voting in the manner directed by the Court.
- (c) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Purchaser, provided that it concerns a matter that is solely of an administrative nature required to better give effect to the administrative implementation of this Plan of Arrangement and is not adverse to the interests of any Former Shareholder or former holders of Options.

ARTICLE 6 FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as

may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein.

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182
AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*
AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders
and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

MS-11238-0000

Commercial List File No.

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF APPLICATION

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington St. W.
Toronto, ON M5V 3J7

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Lawyers for the Applicant

TAB B

Rocco DiPucchio

Direct (416) 598-2268 rdipucchio@counsel-toronto.com
File No. 13552

Lax O'Sullivan Lisus Gottlieb LLP

Suite 2750, 145 King Street W, Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730 www.counsel-toronto.com

Lax
O'Sullivan
Lisus
Gottlieb

January 6, 2016

BY EMAIL

WITH PREJUDICE

Matthew Milne-Smith/Andrew Carlson
Davies Ward Phillips & Vineberg LLP
Suite 400, 155 Wellington Street West
Toronto ON
M5V 3J7

Michael Schaffler
Dentons
Suite 400, 77 King Street West
Toronto-Dominion Centre
Toronto Ontario M5K 0A1

Dear Counsel:

**Re: Re. Mid-Bowline Group Corp.
Court File No. CV-15-11238-00CL**

We write to express our concern at the manner in which your clients are attempting to mis-use the Plan of Arrangement process under the OBCA to determine and release our client's claim against West Face Capital for a constructive trust over West Face's interest in Mid-Bowline Group.

Initially, from our review of the Notice of Application you delivered last week, we understood that the purpose of hearing before Justice Newbould was to determine whether the Court has the jurisdiction to approve a Plan of Arrangement that seeks to release Catalyst's claim.

In light of our discussion on January 4 concerning the evidence Mid-Bowline expects to adduce at the hearing, we now understand that what is intended is a form of mini-trial of our client's claim for breach of confidence in the *Catalyst v. Moyse and West Face* action, notwithstanding the fact that Mid-Bowline and Shaw are not parties to that action, that the Commercial List has no authority to partially determine an action on the regular list and that the action is currently the subject of ongoing procedural motions, including our client's pursuit of the appeal against Justice Glustein's dismissal of the motion to authorize an ISS to review West Face's devices. This is to say nothing of the fact that the parties have not even begun the documentary and oral discovery phase in that proceeding.

It is now apparent to us that the only reason why Mid-Bowline and Shaw are proceeding with this transaction by way of a Plan of Arrangement is to seek to compromise and release Catalyst's claim against West Face. Your clients seek to use

the Plan of Arrangement provisions solely in an attempt to hijack the ongoing proceedings between Catalyst and West Face/Moyse, and in so doing deprive Catalyst of its procedural and discovery rights in pursuing that action.

We do not believe that the Court has the jurisdiction to grant the relief requested pursuant to the provisions of the OBCA. If you are aware of any case in Canada where a Plan of Arrangement has been used in this fashion, we invite you to share it with us at your earliest convenience. We also do not believe the Court has the jurisdiction to hear and determine the "trial" of our client's claim that Mid-Bowline has presently scheduled for the week of January 25, 2016 under the guise of its notice of application to approve the proposed Plan of Arrangement.

To be clear, Catalyst is not interested in holding up a sale of the shares of Wind to Shaw. To that end, it proposes the following compromise to resolve the situation so that the transaction can proceed in a manner that addresses the concerns of Shaw and Mid-Bowline, and removes the need for the four day hearing scheduled to commence in less than three weeks:

- West Face will agree to place the proceeds of the sale of Wind that it receives into escrow pending a final determination of Catalyst's claim;
- Catalyst will agree to amend its statement of claim to remove the claim for a constructive trust over West Face's shares in Wind and to restrict its claim to a tracing of the proceeds of the sale of Wind;
- Following this amendment, the Plan of Arrangement can proceed without objection from Catalyst;
- Catalyst and West Face will agree to the appointment of an ISS to review the electronic devices of an agreed upon set of custodians at West Face, pursuant to a document review protocol to be agreed upon or settled by the Court; and
- Catalyst and West Face will agree on an expedited discovery and trial schedule following receipt of the ISS report, with a goal of completing a trial of Catalyst's tracing claim by July 30, 2016.

We believe this proposed solution represents a fair compromise which protects Catalyst's rights in its existing action, while also acknowledging your client's and Shaw's alleged interest in proceeding with the sale transaction without delay. Under our proposed resolution, there is no need for the Plan of Arrangement to affect Catalyst's claim because Shaw will take the Wind shares free and clear of any ownership claim by Catalyst.

In light of the expedited schedule that West Face has imposed, we intend to bring our concerns and proposed solution to the attention of Justice Newbould at a 9:30 appointment at the earliest opportunity, and to raise the fairness and jurisdiction issues

as threshold matters that must be determined by the Court before it can consider what we now understand to be the true nature of your client's application.

May I please hear from you without delay so that we can, if necessary, schedule a 9:30 appointment with Justice Newbould this week or early next week?

Yours truly,

A handwritten signature in black ink, appearing to read 'Rocco DiPucchio', with a long, wavy flourish extending to the right.

Rocco DiPucchio

RDP/AJW

TAB C

Lynn Rowley

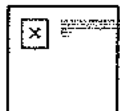
From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-06-16 1:26 PM
To: Lynn Rowley; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: RE: Mid-Bowline Group Corp.

Rocco,

Your proposed offer is unacceptable to West Face, and therefore to the shareholders of Mid-Bowline. I do not agree that we were anything but explicit in our intentions before Justice Newbould, but am available for a 9:30 appointment today, tomorrow, Monday or Tuesday.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

155 Wellington Street West
 Toronto, ON M5V 3J7

T 416.863.5595
 mmilne-smith@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Lynn Rowley [<mailto:lrowley@counsel-toronto.com>]
Sent: January 6, 2016 12:56 PM
To: Milne-Smith, Matthew; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: Mid-Bowline Group Corp.

Please see the attached letter sent on behalf of Rocco DiPucchio.

Lynn Rowley

Assistant to Shaun F. Laubman
 and Lauren P.S. Epstein
 Direct: (416) 598-8051
lrowley@counsel-toronto.com

Lax O'Sullivan Lisus Gottlieb LLP
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 T 416 598 1744 F 416 598 3730



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TAB D

Lynn Rowley

From: Rocco DiPucchio
Sent: January-08-16 10:27 AM
To: 'Milne-Smith, Matthew'
Cc: Andrew Winton; Lauren Epstein; Carlson, Andrew; 'michael.schafner@dentons.com'
Subject: RE: Mid-Bowline Group Corp. [IWOV-CLIENT.FID57103]

Importance: High

WITH PREJUDICE

Matt,

Further to your email below, is there a particular provision of our client's proposal that is unacceptable to Mid-Bowline? As you know, our client does not wish to interfere with the planned transaction with Shaw, but it will not voluntarily waive any of its procedural and substantive rights in the Catalyst v. West Face and Moyses litigation that is currently before the Superior Court. If you could let us know what specific part of our proposal is unacceptable to your client, perhaps a workaround or solution can be found.

Rocco Di Pucchio
 Direct: (416) 598-2268
rdipucchio@counsel-toronto.com

Lax O'Sullivan Lissus Gottlieb LLP
 Suite 2750, 145 King Street West
 Toronto ON M5H 1J8 Canada
 T 416 598 1744 F 416 598 3730
counsel-toronto.com



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From: Milne-Smith, Matthew [<mailto:MMilne-Smith@dwpv.com>]
Sent: January-06-16 1:26 PM
To: Lynn Rowley; Carlson, Andrew; 'michael.schafner@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: RE: Mid-Bowline Group Corp.

Rocco,

Your proposed offer is unacceptable to West Face, and therefore to the shareholders of Mid-Bowline. I do not agree that we were anything but explicit in our intentions before Justice Newbould, but am available for a 9:30 appointment today, tomorrow, Monday or Tuesday.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

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mmilne-smith@dwpv.com

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Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: Mid-Bowline Group Corp.

Please see the attached letter sent on behalf of Rocco DiPucchio.

Lynn Rowley

Assistant to Shaun F. Laubman
and Lauren P.S. Epstein

Direct: (416) 598-8051

lrowley@counsel-toronto.com

Lax O'Sullivan Liusu Gottlieb LLP

Suite 2750, 145 King Street West
Toronto ON M5H 1J8 Canada

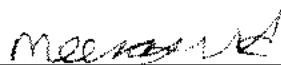
T 416 598 1744 F 416 598 3730

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This is Exhibit "24" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner with
Province of Ontario, while a Student-at-Law.
Expires April 13, 2018.

Court File No. [CV-15-11238-00CL](#)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

**RESPONDING MEMORANDUM RE
JANUARY 11, 2016 9:30 APPOINTMENT**

1. The Applicants file this brief memorandum in response to Catalyst's memorandum received late Friday afternoon. The Applicants' position can be stated very briefly.

Purpose of the Hearing

2. The Applicants have been explicit in their intentions. The Final Order requested would grant Shaw clear title to the shares of WIND Mobile held by the Applicant Mid-Bowline Group Corp. The Applicants therefore seek an expedited hearing to determine whether Catalyst has an interest in those shares.
3. None of Catalyst's three "issues" raised in their memorandum has any merit.

Issue 1: The Issue is Properly Before the Court

4. Catalyst complains that this Court is being asked to “determine issues in an action that is not before it and involves different parties.”¹ This complaint is a triumph of form over substance. The substance of Catalyst’s claim of a constructive trust over the shares of WIND Mobile controlled by West Face Capital Inc. has been put squarely before this Court by the relief sought.
5. The purpose of the plan of arrangement provisions in s. 182 of the Ontario *Business Corporations Act* is to effect fundamental corporate changes in circumstances where the rights of corporate stakeholders will be affected. There is no reason why actual shareholder rights can be compromised, but merely asserted constructive rights – in this case, rights asserted by Catalyst – cannot.
6. Indeed, plans of arrangement have been used by Canadian courts to compromise claims of actual or alleged stakeholders raised in related proceedings.² In both *BCE* and *Pacifica Papers*, separate actions or applications for oppression were heard together with, and determined at the same time as, contested applications for approval of proposed plans of arrangement. In both cases, complaints of oppression were dismissed and approvals of the proposed plans of arrangement were granted. Similarly, this Court has the authority to hear Catalyst’s claim over the WIND shares in determining whether to grant the relief requested by way of plan of arrangement.

¹ Catalyst Memorandum, para. 5.

² See, e.g., *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69; *Pacifica Papers Inc. v. 3017970 Nova Scotia Co.*, 2001 BCCA 486

7. In any event, any procedural or jurisdictional objections can be resolved by simply transferring the underlying Moyse action to the Commercial List, and directing an expedited trial of an issue focussed on Catalyst's claim to West Face's interest in WIND. That trial can be consolidated with the plan of arrangement approval hearing.
8. There will be no prejudice to Catalyst or any other party by expediting a trial of this issue. The Moyse action has been stayed against Brandon Moyse in favour of arbitration, and so West Face and Catalyst are the only parties to the remaining proceeding. As a result of the extensive interlocutory proceedings brought by Catalyst, the parties are intimately familiar with each other's cases:
 - (a) During the Moyse litigation, between March and May 2015, West Face filed six affidavits, with voluminous exhibits, from four different West Face employees and one employee of WIND. Catalyst cross-examined four of these witnesses and declined to cross-examine the fifth;
 - (b) In support of this Plan of Arrangement, West Face filed an additional affidavit from one of its affiants in the Moyse litigation, Tony Griffin, which attaches all of the relevant evidence from that case;
 - (c) West Face disclosed approximately 1,500 documents in March 2015, including all emails to, from or copied to Mr. Moyse found on West Face's computers;
 - (d) West Face disclosed an additional 322 documents on January 9, 2016 along with an affidavit of documents; and
 - (e) West Face offered in March 2015 to produce to the Independent Supervising Solicitor³ ("ISS") all documents on West Face's computer system accessed by Mr. Moyse, none of which are relevant to the matters

³ The ISS was appointed pursuant to the order of Mr. Justice Lederer dated November 10, 2014 in order to examine computer records of Brandon Moyse that had been preserved on June 21, 2014, with the consent of all parties. The ISS found no evidence that Mr. Moyse had transmitted any confidential information to West Face. *The Catalyst Group Inc. v. Moyse*, 2014 ONSC 6442.

in issue. This offer was ignored. West Face has now also offered to produce those 252 documents to Catalyst on a counsels' eyes-only basis.

9. Contrary to Catalyst's submission in paragraph 7 of its memorandum, there is only one motion or attempted appeal that relates to this proceeding. That is Catalyst's motion for the ISS to scrutinize West Face's computer records. This motion was dismissed in July 2015 by Justice Glustein.⁴ An attempted appeal remains outstanding only because Catalyst improperly purported to appeal to the Court of Appeal, refused to abandon its appeal until shortly before the hearing of West Face's motion to quash, and now must bring a motion to extend time to seek leave to appeal to the Divisional Court. That motion, and any ensuing motion for leave to appeal, could take months to resolve.
10. Again, Catalyst's objections elevate form over substance. There has been ample substantive discovery on both sides. Any requests for additional production or discovery beyond West Face's existing voluminous productions, can and should be dealt with by way of expedited case management conducted by the Justice of the Commercial List designated to hear the Plan of Arrangement proceedings, as would ordinarily occur in real-time litigation before the Commercial List.

Issue 2: There Is No Need for Preliminary Motions

11. There is no need for a preliminary motion on jurisdiction. This Court can hear arguments on jurisdiction at the hearing of the Plan of Arrangement proceedings. This is an urgent matter. An appealable preliminary motion would be a transparently tactical exercise.

⁴ *The Catalyst Group Inc. v. Moyse*, 2015 ONSC 4388

Issue 3: Catalyst's Proposal Is Unacceptable and Unfair to West Face

12. Catalyst expects West Face to agree to:
- (a) a time-consuming ISS process⁵ that Justice Glustein has already rejected (for comparison, a much narrower ISS process that involved examining only Mr. Moyses's documents took almost three months); and
 - (b) an injunction against disbursements of sale proceeds without meeting the test for injunctive relief or providing an undertaking as to damages, which requirements Justice Glustein found that Catalyst had failed to satisfy in their July 2015 injunction motion.
13. All that Catalyst's recent proposal demonstrates is that its claim is about money. There is no suggestion that the sale to Shaw is improvident. There is therefore no reason to oppose the closing of this transaction. If Catalyst is concerned about its ability to recover damages, then both parties should share an interest in an expedited hearing.
14. It is essential that this matter be resolved expeditiously. West Face is a fiduciary for a diverse group of institutional and individual investors. With the realization of the WIND transaction, these investors may expect to be able to reap the benefits of the investment, but the uncertainty of this litigation may interfere with West Face's ability to redeploy the proceeds on their behalf. Given the importance of liquidity to investors in hedge funds like West Face, this could cause irreparable harm to West Face's reputation and interests. Among other things, West Face will suffer significant prejudice if a hearing to determine the merits of Catalyst's claims is significantly delayed:

⁵ Catalyst has not defined which custodians it proposes to be subject to the ISS process; what time period is to be covered; nor whether West Face's computer servers are to be subject to the process.

- (a) West Face may have to liquidate other parts of its investment portfolio in order to meet certain redemption requests;
 - (b) Investment in one of West Face's funds is currently eligible for RRSP treatment. If West Face cannot redeem the funds of certain investors as a result of the looming Catalyst claim, it could endanger the RRSP eligibility of that fund, causing significant prejudice to many of West Face's investors; and
 - (c) Certain of West Face's incentive payments on the WIND investment will be reduced by the passage of time as net returns per annum are diluted.
15. If proceeds are put into escrow, West Face will suffer additional harm, including:
- (a) West Face may have to suspend redemptions and subscriptions in one or more of its funds, harming its reputation and business; and
 - (b) West Face will be unable to deploy its capital. Its investors will lose potential investment returns and West Face will lose potential incentive payments.
16. The Applicants do not intend to work any unfairness. This matter can be heard and determined fairly and properly during the week of January 25, 2016. Catalyst has presented no compelling reason for an adjournment. The Applicants will at all times conduct themselves in accordance with the principles that govern the Commercial List.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 10, 2016

DAVIES WARD PHILLIPS & VINEBERG LLP
40th Floor, 155 Wellington Street West
Toronto Canada M5V 3J7

Kent E. Thomson (LSUC #24264J)
Matthew I. Milne-Smith (LSUC #44266P)

This is Exhibit "25" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner *ad hoc*,
Province of Ontario, while a Student-at-law,
Expires April 13, 2018.

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.
JUSTICE NEWBOULD

) ✓ TUESDAY, THE 14TH 1/14
)
) DAY OF JANUARY, 2016

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACT CAPITAL INC.

Defendants



ORDER

THIS MOTION, made by the Defendant West Face Capital Inc., for an Order transferring this action to the Commercial List before Mr. Justice Newbould was heard this day at 330 University, Avenue.

ON READING the Motion Record filed in support of this motion, and the consents filed;

AND ON BEING ADVISED that the Plaintiff does not oppose the relief sought;

1. THIS COURT ORDERS that this action shall be and is hereby transferred to the Commercial List and shall be listed on the Commercial List.

Rm Stillman

JAN 18 2016

**R. Stillman, Registrar
Superior Court of Justice**

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 18 2016

The Catalyst Capital Group Inc.
Plaintiff and
Brandon Moyses and West Face Capital Inc.
Defendants

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 WELLINGTON STREET WEST
TORONTO ON M5V 3J7

Kent E. Thomson (LSUC#24642J)
Matthew Milne-Smith (LSUC#44266P)
Andrew Carlson (LSUC#58850N)
Tel: 416.863.0900
Fax: 416 863 0871

Lawyers for the Defendant
West Face Capital Inc.

This is Exhibit "26" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

**RESPONDING MOTION RECORD OF
THE RESPONDENT, THE CATALYST CAPITAL GROUP INC.**

January 25, 2016

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

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Tel: 416 598-2268

Lauren P. S. Epstein LSUC#: 64015O
lepstein@counsel-toronto.com
Tel: 416 645 5078
Fax: 416 598 3730

Lawyers for the Respondent,
The Catalyst Capital Group Inc.

TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
155 Wellington Street West
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Matthew Milne-Smith LSUC#: 44266P

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Andrew Carlson LSUC#: 58850N

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Lawyers for the Applicant

AND TO: **DENTONS CANADA LLP**
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Michael Schafler

Tel: (416) 863-4457

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Lawyers for the Respondent,
Shaw Communications Inc.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

AFFIDAVIT OF JAMES A. RILEY

I, James A. Riley, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. (“Catalyst”), a Respondent in this proceeding, and, as such, have knowledge of the matters contained in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I swear this affidavit in response to the efforts by Mid-Bowline Group Corp. (“Mid-Bowline”) to seek approval of a plan of arrangement (the “Plan”) pursuant to which Shaw Communications Inc. (“Shaw”) will acquire all of the outstanding shares of Mid-Bowline (the “Transaction”).
3. Catalyst is currently pursuing an action against West Face Capital Inc. (“West Face”), an indirect shareholder of Mid-Bowline, in relation to the manner in which a consortium of investors

led by West Face was able to acquire Wind Mobile Corp. (“Wind”) in 2014 (the “Action”). A copy of Catalyst’s Amended Amended Statement of Claim is attached hereto as Exhibit “A”.

4. In the Action, Catalyst seeks, among other things, a constructive trust over all property, including securities and other financial instruments, acquired by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of the misuse by West Face of Catalyst’s confidential information. In addition or in the alternative, Catalyst seeks an accounting of all profits earned by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of the misuse of Catalyst’s confidential information.

5. The relief set out above was added to the Action following the unusual circumstances in Summer 2014 pursuant to which the consortium led by West Face (the “West Face Group”) was able to successfully negotiate the purchase of Wind. The West Face Group’s success was based on what has been described as an “unsolicited” offer to purchase Wind that was delivered to VimpelCom Ltd. (“VimpelCom”), Wind’s parent company, during a period when VimpelCom and Catalyst were engaged in confidential negotiations under a contractual exclusive negotiation period.

6. Prior to the commencement of Mid-Bowline’s application to approve the Plan, there had been no steps taken to being documentary or oral discoveries by any of the parties to the Action. No affidavits of documents had been exchanged, nor had the parties even agreed on the scope of documentary or oral discovery.

7. Amongst other things, the parties were waiting for the outcome of Catalyst’s efforts to appeal an order of Justice Glustein dismissing a motion brought by Catalyst to authorize an

Independent Supervising Solicitor (“ISS”) to review forensic images of electronic devices belonging to West Face.

8. Catalyst was formally served with Mid-Bowline’s Notice of Application on December 31, 2015. The Plan as originally filed was intended to complete the Transaction such that:

- (a) Shaw would acquire Mid-Bowline’s shares free and clear of any claims of third parties; and
- (b) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to Mid-Bowline’s shares would be deemed to be settled, compromised, released and determined without liability.

9. On January 4, 2016, the next business day after the Notice of Application was served on Lax O’Sullivan Lisus Gottlieb LLP (“LOLG”), Catalyst’s counsel, LOLG, counsel from Davies Ward Phillips and Vineberg LLP (“Davies”), Mid-Bowline’s and West Face’s outside counsel, and counsel from Dentons Canada LLP (“Dentons”), Shaw’s outside counsel, attended a 9:30 appointment at the Commercial List to discuss, among other things, a schedule for the hearing of application to approve the Plan.

10. I understand from Mr. DiPucchio that after the 9:30 appointment concluded, Matthew Milne-Smith, a lawyer at Davies, described for Catalyst’s counsel the evidence that the applicant intended to adduce in support of the application. It was only following that conversation that Mr. DiPucchio fully appreciated that Mid-Bowline intended the Plan approval application to finally determine the merits of Catalyst’s claim against West Face.

11. By letter dated January 6, 2016, from Mr. DiPucchio to Davies and Dentons, Catalyst expressed its concerns about the Plan. Attached hereto as Exhibit "B" is a copy of Mr. DiPucchio's January 6, 2016 letter to counsel for Mid-Bowline/West Face and Shaw.

12. In the January 6, 2016 letter, Catalyst made a with prejudice offer to withdraw its opposition to the Plan if West Face agreed to hold its share of the proceeds from the Transaction in escrow. By email dated January 6, 2016, Mr. Milne-Smith communicated West Face's and Mid-Bowline's rejection of Catalyst's offer. Attached hereto as Exhibit "C" is a copy of Mr. Milne-Smith's January 6, 2016 email to Mr. DiPucchio.

13. Catalyst scheduled a second appointment at the Commercial List to bring those concerns to the attention of the Court. That second appointment was heard on January 11, 2016. I understand from Mr. DiPucchio that at this second 9:30 appointment, Catalyst expressed its concerns regarding the process by which Mid-Bowline was seeking to have the Court determine Catalyst's claim in the Action through the Plan hearing, and in particular drew the Court's attention to the fact that there was still a potential appeal outstanding with respect to an ISS.

14. It is my understanding from a discussion with Mr. DiPucchio following the 9:30 appointment held on January 11, 2016 that the Court agreed that it would be unfair for the Plan hearing to determine the merits of the Action. The Court made arrangements with the Divisional Court to expedite Catalyst's motion for leave to appeal Justice Glustein's dismissal of Catalyst's ISS motion. Attached hereto as Exhibit "D" is a copy of an email dated January 11, 2016, from Mr. Justice Newbould to counsel for Catalyst, West Face/Mid-Bowline and Shaw confirming that the motion for leave to appeal would be heard on January 19, 2016.

15. It is my understanding from Mr. DiPucchio that the Plan hearing would not be decided on its merits as originally scheduled on January 25, 2016 pending a discussion amongst the parties as to the terms by which the Plan might be amended so that West Face's proceeds from the Transaction could be held in escrow pending an expedited trial of Catalyst's claim.

16. Mid-Bowline's application record was served on January 11, 2016. Following the outcome of the January 11, 2016 appointment, Catalyst did not file any responding evidence or a factum as it was waiting for the outcome of the motion before the Divisional Court and a further appointment with the Court to determine the basis upon which the Plan hearing was going to proceed in order to understand what position it might need to take in response the application and what evidence, if any, was required in response.

17. The motion for leave to appeal was not heard on January 19, as originally scheduled, but on January 21, 2016. The motion was dismissed with reasons delivered on January 22, 2016, one business day before the originally scheduled return date for the hearing of Mid-Bowline's application.

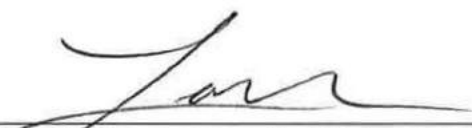
18. In the afternoon of January 22, 2016, counsel for West Face sent an email to Mr. DiPucchio proposing a potential amendment to the language of section 4.5 of the Plan. An amended Plan was served on counsel for Catalyst only this morning, and is attached as Exhibit "E". I have not even had an opportunity to consider the amended Plan language or what position Catalyst might take in response to the now amended Plan.

19. Counsel for West Face also served a Notice of Motion for a trial of an issue prior to the 9:30 appointment this morning. The Notice of Motion is attached hereto as Exhibit "F".

20. Catalyst has always intended to oppose the compromise of its claim via a Plan, particularly in circumstances that do not fully protect its right to trace the proceeds of the Transaction as may be appropriate. In lieu of a claim for a constructive trust and an order holding the West Face proceeds of the Transaction in escrow, Catalyst intends to seek as relief in the Action an order tracing all of the proceeds of the sale. This would involve amendments to the existing claim that would, at first glance, be precluded by the proposed Plan.


21. Catalyst also believes it deserves the opportunity to have its claim heard and determined through a process that is fair and reasonable. That includes, at minimum, the opportunity for proper documentary discovery, examinations and the ability to amend the claim to take into account information learned for the first time through the materials filed on this application.

SWORN BEFORE ME at the City of
Toronto, in the on January 25, 2016



Commissioner for Taking Affidavits
(or as may be)

LAUREN P.S. EPSTEIN

} 

JAMES A. RILEY

TAB A

This is Exhibit "A" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

AMENDED AMENDED STATEMENT OF CLAIM

PURSUANT TO CONFORMEMENT A

AMENDED THIS MODIFIÉ CE

RULE/LA REGLE 26.02 ()

THE ORDER OF L'ORDONNANCE DU DATED / FAIT LE

Plaintiff

REGISTRAR
SUPERIOR COURT OF JUSTICE

TO THE DEFENDANT(S):

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed

by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date

June 25/14
~~June 25, 2014~~
~~October 9, 2014~~
~~December 16, 2014~~

Issued by

N. Mohammed

Local Registrar

Address of

court office: 393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: Brandon Moyse
23 Brant Street, Apt. 509
Toronto ON M5V2L5

AND TO: West Face Capital Inc.
2 Bloor Street East, Suite 3000
Toronto, ON M4W 1A8

CLAIM

1. The Plaintiff claims:
 - (a) An interim, interlocutory and/or permanent injunction restraining the defendant Brandon Moyse ("Moyse"), his agents or any persons acting on his direction or on his behalf, and the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted, from:
 - (i) Soliciting or attempting to solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised or sponsored by Catalyst or the Catalyst Fund Limited Partnership IV (the "Fund") as at June 25, 2014, until June 25, 2015;
 - (ii) Interfering with the Plaintiff's relationships with its employees which, without limiting the generality of the foregoing, shall include any attempt to induce employees of the Plaintiff to leave their employment with the Plaintiff; and
 - (iii) Using or disclosing the Plaintiff's confidential and proprietary information (including, without limitation, (i) the identity or contact information of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of the Fund, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund (iv)

investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about Catalyst and employees of Catalyst (collectively, the "Confidential Information") in any way, including in relation to any present- and future-related business;

- (b) An order requiring the defendants to immediately return to Catalyst (or its counsel) all Confidential Information in their possession or control;
- (c) An order prohibiting any of the defendants from, in any way, deleting, modifying or in any way interfering with any of their electronic equipment, including computers, servers and mobile devices, until further Order of this Honourable Court;
- (d) An interim, interlocutory and permanent injunction prohibiting the defendant Brandon Moyse ("Moyse") from commencing or continuing employment at the defendant West Face Capital Inc. ("West Face") until December 25, 2014;
 - (d.1) An interim, interlocutory and permanent injunction prohibiting West Face from voting its interest in Data and Audio Visual Enterprises Wireless Inc. in any proposed transaction involving Wind Mobile;
 - (d.2) General damages as against West Face in an amount to be particularized prior to trial;

(d.3) A constructive trust over all property, including, but not limited to, securities, security interests, debts and other financial instruments, acquired by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;

(d.4) In addition or in the alternative to the relief sought in paragraph 1(d.3), an accounting of all profits earned by West Face, its officers, directors, employees, agents, any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;

- (e) Punitive damages in the amount of \$300,000, as against West Face, and \$50,000, as against Moyse;
- (f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The plaintiff's costs of this action on a substantial indemnity basis, plus the applicable H.S.T.; and
- (h) Such further and other relief as to this Honourable Court may seem just.

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

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

3. Catalyst uses a “flat” entrepreneurial staffing model whereby its analysts are given substantial training, autonomy and responsibility at a relatively early stage in their career as compared to its competitors in the special situations investments for control industry.

4. Moreover, Catalyst uses a unique compensation scheme to compensate its employees – in addition to their base salary and annual bonus, employees participate in a “60/40 Scheme” whereby the “carried interest” of each Fund is allocated sixty per cent to the deal team and forty per cent to Catalyst. The carried interest refers to the twenty per cent profit participation Catalyst may enjoy, subject to certain conditions.

5. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. At all material times, Catalyst employed only two investment analysts, and the deal teams on which Moyse participated involved only three or four Catalyst professionals. The 60/40 Scheme granted Catalyst’s employees a partner-like interest in the success of the company.

The Defendants

6. West Face is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. In December 2013, West Face formed a credit fund for the purpose of competing directly with Catalyst in the special situations investments for control industry.

7. Moyse is a resident of Toronto. Pursuant to an employment agreement dated October 1, 2012 (the “Employment Agreement”), Moyse was hired as an investment analyst by Catalyst effective November 1, 2012. Moyse had substantial autonomy and responsibility at Catalyst. He was primarily responsible for analysing new investment opportunities of distressed and/or undervalued situations where Catalyst could invest for control or influence.

The Special Situation Investment Market in Canada

8. The Canadian market for special situations investing is very competitive. A small number of Canadian firms seek opportunities to invest in situations where a corporation is distressed or undervalued, or face events that can have a significant effect on the company's operations, such as proxy battles, takeovers, executive changes and board shake-ups.

9. In these special situations, an investment firm's strategic plans and investment models are crucial to successfully executing an investment plan. Confidentiality is paramount: if a competitor has access to a firm's plans and modelling for a particular special situation, the competitor can "scoop" the opportunity, or it can take an adverse investment position which make the firm's plans either too costly to execute or, depending on the timing of the adverse action, can cause the plan to incur significant losses after it is past the point of no return.

10. Depending on how advanced a firm is in executing its investment strategy, a competitor's adverse position can have disastrous, immeasurable effects on the firm's goodwill and/or will cause a firm to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

11. Within the special situations investment industry, "investment for control or influence" is a sub-industry with unique characteristics. "Investment for control or influence" refers to acquiring controlling or influential equity or debt positions in distressed companies in order to add value through operational involvement in an investment target by, among other things:

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;

- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing turnaround plans;
- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

12. The "investment for control or influence" sub-industry within the distressed investment industry has unique needs, including the need to ensure that employees are unable to resign and begin working for a competitor for a reasonable period of time in order to ensure that the competitor is unable to take advantage of the former employee's knowledge of the firm's strategic plans and models.

13. In the special situations for control industry, information is critical. The ability to collect and analyze information and to prepare confidential plans for complex investment opportunities is the difference between a plan's success or failure. For this reason, it is commonplace for firms specializing in the special situations for control or influence industry to require its employees to agree to a non-competition covenant prior to commencing employment. Likewise, when a competitor hires directly from a firm within the industry, it is commonplace for the competitor to respect the other firm's non-competition covenant by not directly employing a lateral hire in the same market as they worked for the competitor during the term of the non-competition covenant.

The Employment Agreement

14. Under the Employment Agreement, Moyse was paid an initial salary of \$90,000 and an annual bonus of \$80,000. Moyse was also granted options on equity in Catalyst and participated

in the 60/40 Scheme. Moyses's equity compensation (options and the 60/40 Scheme) was equal to or exceeded his base salary and annual bonus.

15. The Employment Agreement also included the following non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"):

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

the 12 months prior to your ceasing to be an employee of [Catalyst].

Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such partnership of or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about [Catalyst] and employees of [Catalyst] and the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to [Catalyst] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular' businesses, such opportunities that you become aware of by reason of your employment with [Catalyst].

16. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect. In addition, Moyse acknowledged that if he breached the terms of the Restrictive Covenants, it would cause Catalyst irreparable harm and that Catalyst

would be entitled to injunctive relief to prevent him from continuing to breach the Restrictive Covenants.

17. Under the Employment Agreement, Moyse was required to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

18. Moyse executed the Employment Agreement on October 3, 2012. In so doing, he acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyse Breaches the Employment Agreement

19. On May 26, 2014, Moyse informed Catalyst of his intention to resign from Catalyst and to begin working for West Face.

20. Through its counsel, Catalyst communicated its intention to enforce the Restrictive Covenants. Through their counsel, the Defendants responded by communicating their intention to breach the Restrictive Covenants, in particular the non-competition covenant.

21. Moreover, on or about June 18, 2014, Moyse's counsel communicated Moyse's intention to commence employment at West Face on June 23, 2014, prior to the expiry of the thirty-day notice period provided for in the Employment Agreement.

22. Catalyst continued to pay Moyse his salary until June 20, 2014, when it became clear to Catalyst that Moyse intended to breach the Employment Agreement.

The Misappropriation and Conversion of Catalyst's Confidential Information

23. As part of his deal screening/analysis responsibilities, Moyse performed valuations of companies using methodologies that are proprietary and unique to Catalyst in order to identify new investment opportunities for Catalyst.

24. Moyse received the Confidential Information in his capacity as an analyst at Catalyst, as acknowledged in the Employment Agreement.

25. In breach of his duty of confidence, Moyse forwarded the Confidential Information from his work email address – which is controlled by Catalyst – to his personal email address and to his personal Internet file storage accounts – which he alone controls – without Catalyst's knowledge or approval. The Confidential Information Moyse forwarded to his personal control includes information concerning projects Moyse was working on immediately prior to his resignation from Catalyst, including, but not limited to:

- (a) Catalyst Weekly Reports – this document contains a summary of all existing investments and contemplated investment opportunities;
- (b) Quarterly letters reporting on results of Catalyst's activities;
- (c) Internal research reports;
- (d) Internal presentations and supporting spreadsheets; and
- (e) Internal discussions regarding the operations of companies in which Catalyst has made investments.

26. There was no legitimate business reason for Moyse to deal with the Confidential Information in this manner.

27. Moyse has wrongfully and unlawfully taken Catalyst's Confidential Information to advance his own business interests, and the interests of West Face, to the detriment of Catalyst. The Confidential Information was imparted to Moyse in confidence during the course of his employment with Catalyst and the unauthorized use of such information by the Defendants constitutes a breach of confidence.

West Face Induced Moyse to Breach the Employment Agreement

28. West Face and Moyse engaged in prolonged discussions regarding Moyse's resignation from Catalyst and immediate employment at West Face thereafter. During the course of these discussions, the parties discussed Moyse's contractual obligations to Catalyst.

29. Prior to Moyse's resignation from Catalyst, West Face was aware of the terms of the Employment Agreement and Moyse's duties and obligations to Catalyst, including the Restrictive Covenants. Nevertheless, West Face unlawfully induced Moyse to breach the Employment Agreement with, and his obligations owed to, Catalyst, including, but not limited to the Restrictive Covenants.

30. Moyse and West Face knew that Catalyst intended to promote Moyse to the position of "associate" in 2014. But for West Face's inducement to Moyse to resign from Catalyst and commence employment at West Face before the end of the six-month non-competition period, Moyse would still be employed at, and would continue to honour his contractual obligations to, Catalyst.

Catalyst Will Suffer Irreparable Harm

31. Catalyst will suffer irreparable harm as a result of West Face's unlawful inducement of Moyse to breach the Employment Agreement. In particular, without limiting the generality of the foregoing, Catalyst risks losing its strategic advantage with respect to distress for control investments it has been planning for several months of which Moyse, in his role as analyst at Catalyst, is aware.

32. If Moyse is permitted to commence employment at West Face, a direct competitor to Catalyst, before the expiry of the six-month non-competition period, West Face will gain an unfair advantage in the small distressed investing for control industry by learning about investment opportunities Catalyst was studying and Catalyst's plans for taking advantage of those opportunities.

33. These opportunities and strategies are unique to Catalyst and are crucial to its success – if those plans are compromised, Catalyst will suffer a loss that cannot be measured in mere damages. The damage will include damage to Catalyst's reputation as a leading distress for control investor and to its ability to solicit additional investments in its funds.

34. Moreover, by using the Confidential Information for their personal benefit and to Catalyst's detriment, Moyse and West Face will cause Catalyst to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

West Face Misused Catalyst's Confidential Information Concerning the Wind Opportunity

34.1 One of the special situations that Catalyst was studying before Moyse terminated his employment with Catalyst concerned Wind Mobile ("Wind"), a Canadian wireless

telecommunications company. Moyses was a member of Catalyst's investment team studying the Wind opportunity and was privy to Catalyst's Confidential Information concerning its plans concerning Wind opportunity, which included a potential acquisition of Wind.

34.2 In June 2014, Catalyst brought a motion for interim and interlocutory relief seeking, among other things, the return of any and all Confidential Information from West Face and Moyses. In particular, Catalyst was concerned about the potential communication of its Confidential Information relating to the Wind opportunity.

34.3 Catalyst's motion for interim relief was heard on July 16, 2014 and settled on consent.

34.4 Catalyst's motion for interlocutory relief was scheduled to be heard on August 7, 2014 but was adjourned to October 10, 2014. As a result, the motion for interim relief has not yet been determined.

34.5 On or about September 16, 2014, West Face publicly announced that it was leading a consortium of investors to purchase Wind. This was the very outcome Catalyst was concerned about when it learned that Moyses, a participant on Catalyst's Wind team, was joining West Face.

34.6 West Face wrongfully used Catalyst's Confidential Information, which it solicited and obtained from Moyses, to obtain an unfair advantage over Catalyst in its negotiations with Wind. But for the transmission of Confidential Information concerning Wind from Moyses to West Face, West Face would not have successfully negotiated a purchase of Wind.

34.7 As a result of West Face's misuse of Catalyst's Confidential Information, Catalyst has suffered damages, particulars of which will be provided prior to trial.

Through Moyses, West Face has Catalyst's Confidential Information Concerning Mobilicity

34.8 On September 29, 2013, Data & Audio-Visual Enterprises Holdings Inc. ("Holdings") and its wholly owned subsidiaries, Data & Audio-Visual Enterprises Wireless Inc. ("Wireless") and 8440522 Canada Inc. (collectively with Wireless and Holdings, the "Applicants" or "Mobilicity") filed an application for an Initial Order under the Companies' Creditors Arrangement Act (Canada) ("CCAA") in order to restructure their business and affairs or complete a sale of their business and assets.

34.9 Catalyst owns over \$60 million in First Lien Notes issued by Wireless pursuant to a First Lien Indenture dated April 20, 2011 (the "First Lien Notes").

34.10 West Face owns approximately \$3 million in First Lien Notes.

34.11 For several months, both before and after Mobilicity applied for CCAA protection, Catalyst studied Mobilicity as a special situation. Moyses was a member of Catalyst's investment team in the Mobilicity situation. In that respect, Moyses was privy to Catalyst's confidential information concerning its analysis of the Mobilicity situation.

34.12 West Face has wrongfully used Catalyst's Confidential Information concerning the Mobilicity opportunity to obtain an unfair advantage over Catalyst with respect to that opportunity. If West Face is able to vote its interest in Mobilicity with the benefit of its wrongful possession of Catalyst's Confidential Information, Catalyst will suffer irreparable harm.

Unjust Enrichment

34.13 As a result of the foregoing, West Face has been enriched by its wrongful conduct. It has managed to acquire property, including, but not limited to, securities, secured debt and other

financial instruments, that it would not have been able to acquire but for its misuse of Catalyst's Confidential Information.

34.14 Catalyst suffered a deprivation that corresponds to West Face's enrichment. But for West Face's conduct, Catalyst would have acquired the property that West Face acquired through its misuse of Catalyst's Confidential Information.

34.15 There is no juristic reason for West Face's enrichment and it would be unjust for West Face to retain the property it acquired through its wrongful conduct. Catalyst is entitled to a constructive trust over all property acquired by West Face to remedy West Face's unjust enrichment resulting from its misuse of Catalyst's Confidential Information.

34.16 In addition or in the alternative, if a constructive trust is unavailable because West Face has sold the property it wrongfully acquired or for any other reason, Catalyst is entitled to an accounting of all profits earned by West Face as a result of its misuse of Catalyst's Confidential Information and payment of those profits to Catalyst.

Punitive Damages

35. Catalyst claims that the Defendants' egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst's rights and interests so as to entitle ~~Execaire~~ Catalyst to a substantial award of punitive, aggravated and exemplary damages.

36. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiff for punitive damages as described in subparagraph 1(e) above.

37. Catalyst proposes that this action be tried at Toronto.

~~June 25, 2014~~
October 9, 2014

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
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Toronto, Ontario M5H 1J8

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Fax: (416) 598-3730

Lawyers for the Plaintiff

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

LAX O'SULLIVAN SCOTT LISUS LLP

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Lawyers for the Plaintiff

TAB B

This is Exhibit "B" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Rocco DiPucchio

Direct (416) 598-2268 rdipucchio@counsel-toronto.com
File No. 13552

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Lax
O'Sullivan
Lisus
Gottlieb

January 6, 2016

BY EMAIL

WITH PREJUDICE

Matthew Milne-Smith/Andrew Carlson
Davies Ward Phillips & Vineberg LLP
Suite 400, 155 Wellington Street West
Toronto ON
M5V 3J7

Michael Schafler
Dentons
Suite 400, 77 King Street West
Toronto-Dominion Centre
Toronto Ontario M5K 0A1

Dear Counsel:

**Re: Re. Mid-Bowline Group Corp.
Court File No. CV-15-11238-00CL**

We write to express our concern at the manner in which your clients are attempting to mis-use the Plan of Arrangement process under the OBCA to determine and release our client's claim against West Face Capital for a constructive trust over West Face's interest in Mid-Bowline Group.

Initially, from our review of the Notice of Application you delivered last week, we understood that the purpose of hearing before Justice Newbould was to determine whether the Court has the jurisdiction to approve a Plan of Arrangement that seeks to release Catalyst's claim.

In light of our discussion on January 4 concerning the evidence Mid-Bowline expects to adduce at the hearing, we now understand that what is intended is a form of mini-trial of our client's claim for breach of confidence in the *Catalyst v. Moyses and West Face* action, notwithstanding the fact that Mid-Bowline and Shaw are not parties to that action, that the Commercial List has no authority to partially determine an action on the regular list and that the action is currently the subject of ongoing procedural motions, including our client's pursuit of the appeal against Justice Glustein's dismissal of the motion to authorize an ISS to review West Face's devices. This is to say nothing of the fact that the parties have not even begun the documentary and oral discovery phase in that proceeding.

It is now apparent to us that the only reason why Mid-Bowline and Shaw are proceeding with this transaction by way of a Plan of Arrangement is to seek to compromise and release Catalyst's claim against West Face. Your clients seek to use

the Plan of Arrangement provisions solely in an attempt to hijack the ongoing proceedings between Catalyst and West Face/Moyse, and in so doing deprive Catalyst of its procedural and discovery rights in pursuing that action.

We do not believe that the Court has the jurisdiction to grant the relief requested pursuant to the provisions of the OBCA. If you are aware of any case in Canada where a Plan of Arrangement has been used in this fashion, we invite you to share it with us at your earliest convenience. We also do not believe the Court has the jurisdiction to hear and determine the "trial" of our client's claim that Mid-Bowline has presently scheduled for the week of January 25, 2016 under the guise of its notice of application to approve the proposed Plan of Arrangement.

To be clear, Catalyst is not interested in holding up a sale of the shares of Wind to Shaw. To that end, it proposes the following compromise to resolve the situation so that the transaction can proceed in a manner that addresses the concerns of Shaw and Mid-Bowline, and removes the need for the four day hearing scheduled to commence in less than three weeks:

- West Face will agree to place the proceeds of the sale of Wind that it receives into escrow pending a final determination of Catalyst's claim;
- Catalyst will agree to amend its statement of claim to remove the claim for a constructive trust over West Face's shares in Wind and to restrict its claim to a tracing of the proceeds of the sale of Wind;
- Following this amendment, the Plan of Arrangement can proceed without objection from Catalyst;
- Catalyst and West Face will agree to the appointment of an ISS to review the electronic devices of an agreed upon set of custodians at West Face, pursuant to a document review protocol to be agreed upon or settled by the Court; and
- Catalyst and West Face will agree on an expedited discovery and trial schedule following receipt of the ISS report, with a goal of completing a trial of Catalyst's tracing claim by July 30, 2016.

We believe this proposed solution represents a fair compromise which protects Catalyst's rights in its existing action, while also acknowledging your client's and Shaw's alleged interest in proceeding with the sale transaction without delay. Under our proposed resolution, there is no need for the Plan of Arrangement to affect Catalyst's claim because Shaw will take the Wind shares free and clear of any ownership claim by Catalyst.

In light of the expedited schedule that West Face has imposed, we intend to bring our concerns and proposed solution to the attention of Justice Newbould at a 9:30 appointment at the earliest opportunity, and to raise the fairness and jurisdiction issues

as threshold matters that must be determined by the Court before it can consider what we now understand to be the true nature of your client's application.

May I please hear from you without delay so that we can, if necessary, schedule a 9:30 appointment with Justice Newbould this week or early next week?

Yours truly,

A handwritten signature in black ink, appearing to read 'Rocco DiPucchio', with a long, wavy flourish extending to the right.

Rocco DiPucchio

RDP/AJW

TAB C

This is Exhibit "C" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Lauren Epstein

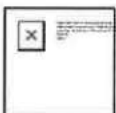
From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-06-16 1:26 PM
To: Lynn Rowley; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: RE: Mid-Bowline Group Corp.

Rocco,

Your proposed offer is unacceptable to West Face, and therefore to the shareholders of Mid-Bowline. I do not agree that we were anything but explicit in our intentions before Justice Newbould, but am available for a 9:30 appointment today, tomorrow, Monday or Tuesday.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

155 Wellington Street West
Toronto, ON M5V 3J7

T 416.863.5595
mmilne-smith@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Lynn Rowley [<mailto:lrowley@counsel-toronto.com>]
Sent: January 6, 2016 12:56 PM
To: Milne-Smith, Matthew; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: Mid-Bowline Group Corp.

Please see the attached letter sent on behalf of Rocco DiPucchio.

Lynn Rowley

Assistant to Shaun F. Laubman
and Lauren P.S. Epstein
Direct: (416) 598-8051
lrowley@counsel-toronto.com

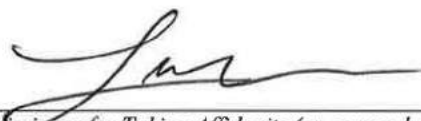
Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730



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TAB D

This is Exhibit "D" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Andrew Winton

From: Newbould, Mr. Justice Frank (SCJ) <Frank.Newbould@scj-csj.ca>
Sent: January-11-16 12:23 PM
To: Milne-Smith, Matthew
Cc: Thomson, Kent; Carlson, Andrew; Rocco DiPucchio; Andrew Winton; Schafler, Michael (michael.schafler@dentons.com); Basmadjian, Ara (ara.basmadjian@dentons.com)
Subject: RE: Re. Mid-Bowline Group Corp., Court File No. CV-15-11238-00CL

The motion for an extension of time to file the leave application and the leave application will be dealt with together with two hours scheduled for Tuesday January 19. You are to all get your material in quickly. Please have that done by Friday at the latest.

From: Milne-Smith, Matthew [mailto:MMilne-Smith@dwpv.com]
Sent: January-10-16 9:16 PM
To: Newbould, Mr. Justice Frank (SCJ)
Cc: Thomson, Kent; Carlson, Andrew; Rocco DiPucchio (rdipucchio@counsel-toronto.com); Andrew Winton (awinton@counsel-toronto.com); Schafler, Michael (michael.schafler@dentons.com); Basmadjian, Ara (ara.basmadjian@dentons.com)
Subject: Re. Mid-Bowline Group Corp., Court File No. CV-15-11238-00CL

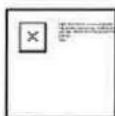
Dear Mr. Justice Newbould,

I apologize for the intrusion, and for the hour of this email. Attached is a very brief response to the Memorandum of Catalyst Capital Group Inc. in respect of tomorrow morning's 9:30 appointment.

Yours very truly,

Matthew Milne-Smith

cc. Kent Thomson, Andrew Carlson, *Davies Ward Phillips & Vineberg LLP*, Counsel to the Applicants
 Michael Schafler, Ara Basmadjian, *Dentons LLP*, Counsel to Shaw Communications Inc.
 Rocco Di Pucchio, Andrew Winton, *Lax O'Sullivan Lisus Gottlieb LLP*, Counsel to Catalyst Capital Group Inc.



Matthew Milne-Smith | Bio

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 mmilne-smith@dwpv.com

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TAB E

This is Exhibit "E" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Exhibit D

Plan of ArrangementFORM OF PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE
BUSINESS CORPORATIONS ACT (ONTARIO)ARTICLE 1
INTERPRETATION1.1 Definitions.

In this Plan of Arrangement, the following words and terms shall have the meanings hereinafter set forth:

"Arrangement" means the arrangement of the Corporation under section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the Arrangement Agreement and Section 5.1 hereof or made at the discretion of the Court in the Final Order (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably).

"Arrangement Agreement" means the Arrangement Agreement dated effective December 16, 2015 among Guarantor, Purchaser, the Corporation and the Vendors providing for, among other things, the Arrangement, as amended by amending agreement dated January 25, 2016, and as the same may be further amended, supplemented and/or restated from time to time.

"Arrangement Resolution" means a special resolution of Shareholders in the form of Exhibit A to the Arrangement Agreement.

"Articles of Arrangement" means the articles of arrangement of the Corporation in respect of the Arrangement that are required by the OBCA to be sent to the Director after the Final Order is made, which shall be in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably.

"business day" means a day, other than a Saturday or Sunday, on which commercial banks in Toronto, Ontario and Calgary, Alberta are open for business.

"Cash Consideration" means an amount per Purchased Share equal to the Purchase Price.

"Certificate" means the certificate of arrangement giving effect to the Arrangement, issued pursuant to subsection 183(2) of the OBCA after the Articles of Arrangement have been filed.

"Corporation" means Mid-Bowline Group Corp., a corporation existing under the OBCA.

"Court" means the Superior Court of Justice (Commercial List) in Toronto, Ontario.

"Director" means the Director appointed pursuant to section 278 of the OBCA.

"Director Shares" means any Purchased Shares registered in the name of a director or former director of the Corporation as at December 16, 2015 and as at the Effective Time.

"Effective Date" means the date of the Certificate.

"Effective Time" means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Corporation, the Vendors' Representatives and Purchaser may agree to in writing before the Effective Date.

"Election Deadline" means 5:00 p.m. (Toronto time) on the business day which is five business days preceding the Effective Date.

"Election Form" means the election form delivered to and specified for use by holders of Eligible Option Shares and/or Director Shares, as applicable, in connection with the Arrangement.

"Eligible Option Shares" means Purchased Shares acquired pursuant to the exercise of Replacement Options that were issued in exchange for Management Options and Former Management Options.

"Exchange Ratio" means, subject to adjustment (if any) as provided in Section 3.5, the ratio of the Purchase Price to the Market Price.

"Final Order" means the order of the Court, in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) on appeal.

"Former Shareholders" means, at and following the Effective Time, the holders of Purchased Shares immediately prior to the Effective Time.

"Former Management Options" means the option commitments to acquire an aggregate of 300,000 shares in the capital of the Corporation at a price of \$1.00 per share held by the Former Officers.

"Former Officers" means each of Simon Lockie and Brice Scheschuk, being the former Chief Regulatory Officer and Chief Financial Officer, respectively, of WIND Mobile Corp.

"Globalive Options" means the options to acquire an aggregate of 10,000,000 shares in the capital of the Corporation at a price of \$1.00 per share held by Globalive Turbine Corp. 1.

"Guarantor" means Shaw Communications Inc., a corporation existing under the laws of the Province of Alberta.

"Guarantor Shares" means the Class B Non-Voting Participating Shares in the capital of Guarantor.

"Letter of Transmittal" means the letter of transmittal delivered to and specified for use by Shareholders in connection with the Arrangement in form and substance satisfactory to the Purchaser and the Vendors' Representatives, each acting reasonably; provided, however, that no Letter of Transmittal shall be required in respect of Purchased Shares issued pursuant to subsection 3.1(c).

"Management Options" means the options to acquire shares in the capital of the Corporation pursuant to the Option Plan as set out in Schedule B to the Disclosure Letter.

"Market Price" means a per share amount equal to the volume weighted average trading price of the Guarantor Shares on the TSX during the last 10 trading days occurring immediately prior to the Effective Date.

"**OBCA**" means the *Business Corporations Act* (Ontario).

"**Option Loan**" means the non-interest bearing loan made by the Purchaser to Globalive Turbine Corp. 1 in connection with the exercise or deemed exercise of the Globalive Options in accordance with this Plan of Arrangement, in an amount equal to the aggregate exercise price in respect of such Options as of the Effective Date.

"**Option Plan**" means the 2015 Stock Option Plan of the Corporation as adopted by the Board of Directors of the Corporation on September 24, 2015, effective as of March 23, 2015, and ratified on December 16, 2015, in the form provided to Purchaser.

"**Options**" means, collectively, the Management Options, the Globalive Options and the Former Management Options.

"**Plan of Arrangement**", "**hereof**", "**herein**", "**hereto**" and like references mean and refer to this plan of arrangement, as the same may be amended, supplemented and/or restated from time to time.

"**Purchase Price**" has the meaning set forth in the Arrangement Agreement, as such amount may be adjusted in accordance with the terms thereof.

"**Purchased Shares**" means the issued and outstanding shares in the capital of the Corporation as of the Effective Time, including any shares issued on the exercise or deemed exercise of Options in accordance with the Arrangement Agreement and this Plan of Arrangement.

"**Purchaser**" means 1503357 Alberta Ltd., a corporation existing under the laws of the Province of Alberta.

"**Replacement Option**" means an option to purchase shares in the capital of the Corporation granted in replacement of a Management Option or Former Management Option on the basis set forth in subsection 3.1(b);

"**Shareholders**" means the holders of Purchased Shares.

"**Share Consideration**" means a number (or fraction) of Guarantor Shares equal to the Exchange Ratio per Purchased Share.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**TSX**" means the Toronto Stock Exchange.

"**Unvested Options**" means all Management Options and Former Management Options that are not Vested Options.

"**Vendors**" means each of the Persons listed on the execution page of the Arrangement Agreement under the heading "Vendors" and each holder of Purchased Shares who becomes a party to the Arrangement Agreement by executing (or being deemed to execute) a Joinder Agreement.

"**Vested Options**" means the Management Options and Former Management Options that have vested prior to the Effective Date in accordance with the terms of the Arrangement Agreement.

Words and phrases used herein that are defined in the Arrangement Agreement and not defined herein shall have the same meaning herein as in the Arrangement Agreement. Words and phrases used herein that are defined in the OBCA and not defined herein or in the Arrangement Agreement shall have the same meaning herein as in the OBCA, unless the context otherwise requires.

1.2 Interpretation Not Affected By Headings, etc.

The division of this Plan of Arrangement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement.

1.3 Article References

Unless the contrary intention appears, references in this Plan of Arrangement to an Article, Section or subsection by number or letter or both refer to the Article, Section or subsection respectively, bearing that designation in this Plan of Arrangement.

1.4 Number and Gender

In this Plan of Arrangement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender shall include all genders.

1.5 Date for Any Action

If the date on which any action is required to be taken hereunder by any of the parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.

1.6 Statutory References

Unless otherwise indicated, references in this Plan of Arrangement to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

1.7 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

**ARTICLE 2
ARRANGEMENT AGREEMENT****2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to, and is subject to the provisions of, the Arrangement Agreement. This Plan of Arrangement shall become effective at, and be binding at and after, the Effective Time on the Corporation, Guarantor, Purchaser, the Vendors and all Persons who were immediately prior to the Effective Time holders or beneficial owners of Purchased Shares or Options.

**ARTICLE 3
ARRANGEMENT****3.1 Arrangement**

Commencing at the Effective Time, the following events or transactions shall occur and shall be deemed to occur in the following sequence without any further act or formality:

- (a) Purchaser will make the Option Loan to Globalive Turbine Corp. 1 and Globalive Turbine Corp. 1 will direct the Purchaser to pay the proceeds of the Option Loan to the

Corporation in satisfaction of the exercise price of the Globalive Options in accordance with Section 3.1(c);

- (b) each Vested Option outstanding at the Effective Time will be exchanged for a Replacement Option to acquire such number of Purchased Shares that is equal to the fraction obtained when the difference, if positive, between the Purchase Price and the exercise price of such Option is divided by the Purchase Price; provided, however, that if the difference between the Purchase Price and the exercise price of any such Option produces a negative amount, then such Option shall be terminated and of no further force and effect. All terms and conditions of a Replacement Option shall be the same as the Option for which it was exchanged, except that each Replacement Option shall be exercisable pursuant hereto at a price of \$0.00001 per Purchased Share; notwithstanding the foregoing, if it is determined in good faith that the excess of the aggregate fair market value of the shares of the Corporation subject to a Replacement Option immediately after the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Replacement Option (such excess referred to as the "**In the Money Amount of the Replacement Option**") would otherwise exceed the excess of the aggregate fair market value of the shares of the Corporation subject to such Vested Option immediately before the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Vested Option, (such excess referred to as the "**In the Money Amount of the Vested Option**"), the previous provisions shall be modified so that the In the Money Amount of the Replacement Option does not exceed the In the Money Amount of the Vested Option, but only to the extent necessary to qualify for the provisions of subsection 7(1.4) of the Tax Act.
- (c) each holder of Replacement Options will be deemed to have exercised all such Replacement Options and Globalive Turbine Corp. 1 will be deemed to have exercised the Globalive Options and (i) holders of Replacement Options will pay the exercise price in respect thereof to the Corporation in cash, (ii) the Purchaser will pay the aggregate amount loaned to Globalive Turbine Corp. 1 in Section 3.1(a) above to the Corporation in satisfaction of the exercise price thereof and each holder of Replacement Options and Globalive Turbine Corp. 1 shall be deemed to have received the number of Purchased Shares issuable in respect of each Replacement Option or Globalive Option, as applicable, exercised in accordance with this Section 3.1(c) and (iii) each holder of Options who becomes a holder of Purchased Shares pursuant to this Section 3.1(c) shall be deemed to have executed a Joinder Agreement to the Arrangement Agreement and shall be considered a Vendor thereunder;
- (d) (i) each outstanding Purchased Share (other than Eligible Option Shares and Director Shares) shall be transferred by the holder thereof to Purchaser in exchange for the Cash Consideration therefor, provided that Globalive Turbine Corp. 1 will be deemed to have directed Purchaser to retain an amount equal to the amount loaned by Purchaser to it to acquire Purchased Shares on exercise of the Globalive Options pursuant to Section 3.1(a) in repayment of the Option Loan, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Purchased Shares so transferred and (iii) Purchaser shall be recorded as the registered holder of such Purchased Shares so transferred and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances;
- (e) (i) each outstanding Eligible Option Share and Director Share shall be disposed of by the holder thereof to Purchaser in accordance with the election or deemed election of such holder pursuant to Section 3.2 in exchange for the Cash Consideration or the Share Consideration therefor, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Eligible Option Shares and/or Director Shares, as applicable, so transferred and (iii) the name of such holder shall be added to the register of holders of Guarantor Shares in respect of the Share Consideration

received by such holder, and Purchaser shall be recorded as the registered holder of such Eligible Option Shares and Director Shares so exchanged and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances; notwithstanding the foregoing, if it is determined in good faith that the aggregate fair market value of the Guarantor Shares immediately after the issuance of the Guarantor Shares would otherwise exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares immediately before the issuance of the Guarantor Shares, the previous provisions shall be modified so that the aggregate fair market value of such Guarantor Shares does not exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares, but only to the extent necessary to qualify for the provisions of subsection 7(1.5) of the Tax Act, if applicable; and

- (f) the Option Plan and all Unvested Options shall be terminated and shall be of no further force or effect.

3.2 Election Regarding Eligible Option Shares and Director Shares

With respect to the exchange of Eligible Option Shares and Director Shares effected pursuant to subsection 3.1(e):

- (a) each holder of Eligible Option Shares and/or Director Shares, as applicable, may elect to receive either:
- (i) Cash Consideration in respect of all Eligible Option Shares and/or Director Shares, as applicable, held by such holder (with a requirement in the Election Form for any holder of Eligible Option Shares other than a Former Officer to undertake to apply at least 50% of the net after tax proceeds from ~~such~~ the Cash Consideration in respect of such Eligible Option Shares to acquire Guarantor Shares in the market through a broker designated by Guarantor);
 - (ii) Cash Consideration in respect of up to 50% of the Eligible Option Shares and/or Director Shares, as applicable, held by such holder and Share Consideration in respect of the remaining Eligible Option Shares and/or Director Shares, as applicable, held by such holder; or
 - (iii) Share Consideration in respect of all Eligible Option Shares and/or Director Shares, as applicable, held by such holder;
- (b) the election provided for in subsection 3.2(a) shall be made by each holder of Eligible Option Shares and/or Director Shares, as applicable, by delivery to Purchaser, prior to the Election Deadline, of a duly completed Election Form indicating such holder's election; ~~and~~
- (c) any holder of Eligible Option Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Share Consideration pursuant to clause (iii) of subsection 3.2(a) in respect of such Eligible Option Shares; ~~and~~
- ~~(d) any holder of Director Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Cash Consideration pursuant to clause (i) of subsection 3.2(a) in respect of such Director Shares.~~

3.3 Letters of Transmittal and Election Forms

Any Letter of Transmittal and Election Form, once delivered to Purchaser, shall be irrevocable and may not be withdrawn by a Shareholder.

3.4 No Fractional Guarantor Shares and Rounding of Cash Consideration

- (a) In no event shall any fractional Guarantor Shares be issued under this Plan of Arrangement. Where the aggregate number of Guarantor Shares to be issued to a Shareholder as consideration under this Plan of Arrangement would result in a fraction of a Guarantor Share being issuable, the number of Guarantor Shares to be issued to such Shareholder shall be rounded down to the closest whole number and no additional consideration shall be provided to such Shareholder in lieu of the issuance of a fractional Guarantor Share.
- (b) If the aggregate cash amount which a Shareholder is entitled to receive under this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Shareholder shall be entitled to receive shall be rounded down to the nearest whole \$0.01.

3.5 Adjustments to Exchange Ratio

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, stock dividend (including any dividend or distribution of securities convertible into Guarantor Shares or Purchased Shares, other than stock dividends paid in lieu of ordinary course dividends), consolidation, reorganization, amalgamation, arrangement, recapitalization or other like change with respect to Guarantor Shares or Purchased Shares occurring after the date of the Arrangement Agreement (and not in breach of the terms of the Arrangement Agreement) and prior to the Effective Time.

ARTICLE 4 DELIVERY OF CONSIDERATION

4.1 Delivery of Share Consideration and Cash Consideration

- (a) At the Effective Time, upon confirmation by Purchaser that certificates representing all of the Purchased Shares (other than any certificates in respect of Purchased Shares issued pursuant to Section 3.1(c)) have been delivered to the Purchaser together with duly completed Letters of Transmittal in respect thereof, the Purchaser shall (i) pay, or cause to be paid to Davies Ward Phillips & Vineberg LLP, in trust for and on behalf of the Vendors, in cash by way of wire or electronic transfer of immediately available funds to such bank account specified in writing by the Vendors' Representatives (or such other means as may be agreed to by Purchaser and the Vendors' Representatives) an amount equal to the aggregate Cash Consideration payable pursuant to Article 3 less the amount of the Option Loan and (ii) deliver or caused to be delivered to the applicable Vendors certificates (or, at Purchaser's option, evidence of direct registration) representing the number of Guarantor Shares that each Vendor is entitled to receive under the Arrangement.
- (b) Subject to Article 10 of the Arrangement Agreement, the Vendors' Representatives shall cause Davies Ward Phillips & Vineberg LLP to release to each Vendor such portion of the aggregate Cash Consideration to which such holder is entitled pursuant to Article 3. For the avoidance of doubt, Globalive Turbine Corp. 1's entitlement to the aggregate Cash Consideration shall be calculated net of the amount of the Option Loan made to Globalive Turbine Corp. 1 in accordance with Section 3.1(a).

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Purchased Shares that were exchanged pursuant to subsections 3.1(d) or 3.1(e) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, Purchaser will deliver in exchange for such lost, stolen or destroyed certificate, the cash amount or the Guarantor Shares, or any combination thereof, that such Person is entitled to receive pursuant to subsection 3.1(d) or 3.1(e). When authorizing the delivery of such consideration in exchange for any lost, stolen or destroyed certificate, the Person to whom the consideration is being delivered shall, as a condition precedent to the delivery of such consideration, give a bond satisfactory to Guarantor and Purchaser in such sum as Guarantor and Purchaser may direct, or otherwise indemnify Guarantor and Purchaser in a manner satisfactory to Guarantor and Purchaser against any claim that may be made against Guarantor or Purchaser with respect to the certificate alleged to have been lost, stolen or destroyed.

4.3 Withholding Rights

Guarantor and Purchaser shall deduct and withhold from any consideration otherwise payable to any holder of Eligible Option Shares or Director Shares such amounts as Guarantor or Purchaser are required to deduct and withhold with respect to such payment under the Tax Act, the United States *Internal Revenue Code* of 1986 or any provision of provincial, state, local or foreign tax law, in each case as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Eligible Option Shares or Director Shares, as applicable, in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. The determination of whether an amount is required to be deducted or withheld shall be at the sole discretion of Guarantor and Purchaser.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances, adverse claims or other claims of third parties of any kind.

4.5 Paramourtcy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein-; provided, however, that nothing in this section 4.5 shall be construed to extinguish the right of The Catalyst Capital Group Inc. to continue to assert its claims against West Face Capital Inc. in Ontario Superior Court of Justice Court File No.: CV-14-507120 (provided that the potential liability of West Face Capital Inc. is limited to the net profit of West Face Capital Inc. in respect of this Arrangement), with the exception of any constructive trust or equivalent remedy which shall be deemed to have been settled, compromised, released and determined without liability, along with all other claims in this section 4.5.

ARTICLE 5 AMENDMENTS

5.1 Amendments to Plan of Arrangement

- (a) The Corporation, the Vendors' Representatives and Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the

Effective Time, provided that each such amendment, modification and/or supplement must: (i) be set out in writing; (ii) be approved by the Corporation, the Vendors' Representatives and Purchaser; and (iii) be filed with the Court.

- (b) Any amendment, modification or supplement to this Plan of Arrangement that is directed by the Court shall be effective only if: (i) it is consented to in writing by each of the Corporation, the Vendors' Representatives and Purchaser (in each case, acting reasonably); and (ii) if required by the Court, it is consented to by Shareholders, voting in the manner directed by the Court.
- (c) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Purchaser, provided that it concerns a matter that is solely of an administrative nature required to better give effect to the administrative implementation of this Plan of Arrangement and is not adverse to the interests of any Former Shareholder or former holders of Options.

ARTICLE 6

FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein.

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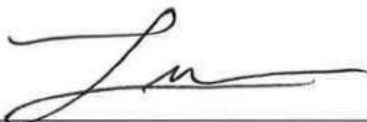
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Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	33

TAB F

This is Exhibit "F" referred to in the Affidavit of James A. Riley
sworn January 25, 2016



Commissioner for Taking Affidavits (or as may be)

LAUREN P.S. EPSTEIN

Commercial List File No.:
Superior Court File No.: CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff /Responding Party

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/Moving Party

**NOTICE OF MOTION
(Motion for Trial of an Issue)**

The Plaintiffs will make a motion to the Honourable Mr. Justice Newbould, on January 25, 2016, at 330 University Avenue, Toronto, ON.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

1. To the extent necessary, an Order directing the trial of an issue in this action concerning Catalyst's claims pertaining to the acquisition or sale West Face

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Capital Inc. of an indirect interest in WIND Mobile Inc. (the "**WIND Claim**"), to be heard by Mr. Justice Newbould of the Commercial List on an expedited basis on a date to be fixed by Mr. Justice Newbould.

2. That the trial of an issue referred to in paragraph 1 be heard by Mr. Justice Newbould prior to, at the same time as or following the Plan of Arrangement approval hearing in Commercial List Court File No. CV-11238-00CL (the "**Arrangement Application**");

3. To the extent necessary, an Order prior to or at the same time as the trial of an issue dismissing Catalyst's claim for a constructive trust in respect of the WIND Claim and confining Catalyst's claim to an accounting of the net profits received by West Face in respect of the WIND Claim;

4. An Order permitting this motion to be heard on an expedited basis; and

5. Such further and other relief as counsel may request and this Court may deem just.

The Grounds for the Motion Are:

6. Mid-Bowline Group Corp. is the indirect owner of all of the outstanding shares of WIND Mobile Corp. West Face Capital Inc is one of the four principal owners of Mid-Bowline.

7. The shareholders of Mid-Bowline have entered into an Arrangement Agreement providing for the sale to an affiliate of Shaw Communications Inc. of Mid-Bowline and its indirect interest in WIND Mobile.

8. Pursuant to the Arrangement Agreement, Mid-Bowline has commenced the Arrangement Application. The Arrangement Agreement has been unanimously approved by the shareholders and Directors of WIND.

9. The arrangement of Mid-Bowline was necessary because of Catalyst's claim for a constructive trust in relation to its WIND Claim in this action. Shaw requires free and clear title to the shares of WIND.

10. Catalyst has neither asserted a claim over the shares of WIND not owned by West Face, nor asserted any claim for damages in respect of its WIND Claim beyond West Face's net profits in respect of its investment in WIND.

11. To the extent that it is necessary to resolve Catalyst's claim for a constructive trust over the shares of WIND controlled by West Face, Catalyst's claim in that regard must be decided before or at the same time as the hearing of the Arrangement Application.

12. The issues raised by Catalyst's claim for a constructive trust are the same issues at stake in the Arrangement Application. There is no challenge or objection to the Arrangement Application other than by Catalyst.

THE FOLLOWING EVIDENCE WILL BE RELIED UPON at the hearing of the motion

13. The pleadings and proceedings herein;

14. Various affidavits filed by the Applicant in respect of the Arrangement Application; and

15. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 25, 2016

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THE CATALYST CAPITAL GROUP INC
(Plaintiff)

and

BRANDON MOYSE et al.
(Defendants)

Commercial List File No.:
Court File No.: CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Motion For Trial of An Issue)**

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MID-BOWLINE GROUP CORP.
Applicant

-and- THE CATALYST CAPITAL GROUP INC. et al.
Respondents

5131

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF JAMES A. RILEY

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IN THE MATTER OF the Business Corporations Act, R.S.O. 1990, c. B.16, as amended, Section 182
AND IN THE MATTER OF Rule 14.05(2) of the Rules of Civil Procedure
AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders
and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING MOTION RECORD OF THE
RESPONDENT, THE CATALYST
CAPITAL GROUP INC.**

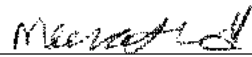
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This is Exhibit "27" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-law,
Expires April 13, 2018

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

RESPONDING PARTY'S FACTUM

January 25, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

RESPONDING PARTY'S FACTUM

PART I - INTRODUCTION

1. The Responding Party, The Catalyst Capital Group Inc. ("Catalyst"), opposes the approval of the Plan of Arrangement (the "Plan") involving Mid-Bowline Group Corp. ("Mid-Bowline").
2. Under the guise of a hearing to approve the Plan of Arrangement, the Court is being asked to make a final determination that would significantly prejudice Catalyst's claim in an action bearing Court File No. CV-14-507120 (the "Catalyst Claim"). The defendants to that claim are West Face Capital Inc. ("West Face"), a significant shareholder of Mid-Bowline, and Brandon Moyse, neither of whom are parties to this Application.
3. There are three reasons the Court should refuse to approve the proposed Plan of Arrangement. First, the Court cannot approve this Plan because it purports to extinguish aspects of the Catalyst Claim. The Court does not have the jurisdiction under s. 182 of the *OBCA* to compromise the claim of a third party.

4. Second and in the alternative, even if the Court did have such jurisdiction, this Plan of Arrangement has been put forward in a way that unduly prejudices the rights of Catalyst, as Catalyst will be denied its right to procedural fairness and its right to have its claims addressed on their merits through a fair trial.

5. Third and in any event, the Plan does not satisfy the Supreme Court's test for approval of a Plan of Arrangement because: a) it has not been put forward in good faith; b) it serves no valid business purpose; and c) it does not resolve competing interests in a fair and balanced way.

PART II - SUMMARY OF FACTS

6. Catalyst relies on the facts as set out in the Affidavit of Jim Riley, sworn January 25, 2016.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

7. Catalyst respectfully submits that there is one issue to be determined on this Application:

- (a) Should this Court approve the Plan of Arrangement of Mid-Bowline pursuant to s. 182 of the *OBCA*?

8. Catalyst submits that the Plan of Arrangement, as proposed, cannot be approved.

(A) UNILATERAL RELEASE OF THIRD PARTY CLAIM IS NOT WITHIN THE COURT'S POWER

9. The Court should not allow a party to proceed with a Plan of Arrangement approval hearing if at the outset that Plan cannot be sanctioned because its terms cannot be sanctioned at law. This is the same principle that applies in the context of a *CCAA* Plan of Arrangement.¹

¹ *Crystallex International Corp., Re*, 2013 ONSC 823, paras 9-13, and *Doman Industries Ltd., Re*, 2003 BCSC 376, paras. 8-11.

10. A Plan of Arrangement under s. 182 of the *OBCA* allows a corporation to undertake a fundamental change in the corporate ownership or structure. It does not permit an applicant to exterminate the substantive or procedural rights of third parties.

11. Commenced on June 25, 2014, the Catalyst Claim involves breach of confidence allegations against West Face and a then-employee of West Face, who was a former employee of Catalyst (Moyses).² The claim alleges that West Face misused Catalyst's confidential information in connection with its purchase of WIND Mobile Inc. Thus, the claim includes a claim for a constructive trust over the Mid-Bowline shares owned by West Face and a claim for an accounting of all profits earned by West Face, its officers, directors, employees, agents, any persons acting under its direction or on its behalf.

12. Articles 4.4 and 4.5 of the Plan of Arrangement would extinguish Catalyst's claim for a constructive trust and would preclude any attempt by Catalyst to trace the funds associated with West Face's shares. The effect of this would be to almost entirely remove any ability on the part of Catalyst to be compensated for its damages and to enforce its judgment.

13. There is nothing in s. 182 (or s. 192 of the *CBCA*) that suggests that interests other than those of securityholders can be affected by a plan of arrangement. The words of the statute do not permit any interpretation that a plan of arrangement could affect the rights of other third parties.

14. This must be contrasted with a plan of arrangement in the context of *CCAA* proceedings, which proceedings explicitly put at issue the interest of many different stakeholders, including unsecured creditors and, at times, third parties. The Court's power under a plan of arrangement in the *CBCA/OBCA* context is far more narrow than under the *CCAA* process because of the different

² Amended Amended Statement of Claim, Exhibit "A" to the Riley Affidavit, Responding Motion Record, Tab 1A.

circumstances (the corporation is not insolvent) and process (there is no claims process under the *CBCA/OBCA*).

15. The distinction between plans of arrangement under the *CCAA* and the *OBCA/CBCA* is further illuminated by the law on third parties releases in a plan of arrangement under the *CCAA*. In *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, Blair J.A. emphasized that it is the broad nature of the *CCAA* that allows for the inclusion of third party releases in a plan or compromise.³ He reached this conclusion on the basis of the characteristics of the *CCAA* itself as well as the requirements and protections built into the arrangement process within that Act, which provides significant safeguards.

16. As this matter is an Application under the *OBCA*, the Mid-Bowline Plan of Arrangement does not have these protections, which are conditions precedent to the inclusion of third parties releases. The Plan of Arrangement and specifically Articles 4.4 and 4.5 do not reflect a compromise – which is the basis of such outcomes in the *CCAA* context. If this were a Plan of Arrangement as is truly contemplated under the *OBCA*, it would simply be a re-arrangement of the company's corporate structure. It has involved no procedural safeguards for third parties precisely because the rights of third parties are not intended to be effected.

17. The Supreme Court's analysis in the *BCE* decision contemplates that only the interests of securityholders need to be explicitly considered by the Court when approving a plan of arrangement.⁴ The Court's discussion clearly suggests that s. 192 contemplates that only the rights of securityholders will be affected by s. 192. There is no basis whatsoever for the proposition that third party interests may be compromised.

³ 2008 ONCA 587 [“*Metcalfe*”]

⁴ *BCE Inc., Re*, [2008] 3 S.C.R. 560 [“*BCE*”], at paras. 130-5.

18. This view is echoed by the authors of the *Annotated Canada Business Corporations Act*, who wrote:

Subsection 192(4) is silent on whether the court can grant a corporation's request for a stay of legal or arbitral proceedings or of termination of contracts pending the fairness hearing. One of the several arguments that could be made against the validity of stay orders is that the rights of ordinary creditors (*i.e.*, creditors other than those who hold debt obligations issued by the corporation) are not subject to an arrangement under s. 192. Staying the rights of ordinary creditors is inconsistent with their immunity from s. 192 proceedings.⁵

19. Thus, neither the words of the statute nor the case law nor the commentary supports the proposition that a Plan of Arrangement under the *OBCA* can exterminate third party claims as the Mid-Bowline Plan of Arrangement purports to do.

(B) THE PLAN UNDULY PREJUDICES CATALYST'S RIGHTS

20. In the alternative, even if the Court did have the requisite jurisdiction, this Plan of Arrangement has been put forward in a way that unduly prejudices the rights of Catalyst. If the Plan is approved, Catalyst will be denied its right to procedural fairness and to have its claims enjoy the protections of the *Rules of Civil Procedure*.

21. The Catalyst Claim is still at a very early stage, as set out in the Riley Affidavit. Pleadings are not closed, as the defendant Moyse has yet to deliver a statement of defence. As of the date of service of the Notice of Application, the parties had not even started the discovery process: they had not agreed on a Discovery Plan, exchanged Affidavits of Documents, or conducted examinations for discovery.

⁵ (Toronto: Carswell, 2013 [looseleaf]), p. 1-446.77 (emphasis added).

22. Leaving aside the jurisdictional issue, for the Court to curtail the Catalyst Claim under the guise of a plan approval application would be to ignore and disregard virtually all of the procedural and substantive rights afforded to Catalyst as a plaintiff under the Rules of Civil Procedure, including Rules 30 (Discovery of Documents), 31 (Examination for Discovery), 48 (Listing for Trial), 50 (Pre-Trials), and 53 (Evidence at Trial).

23. Furthermore, should this Plan be approved in its current state, Catalyst will be denied its right to have all substantive aspects of its Claim addressed on their merits through a fair trial. There will be no witnesses. There will be no evidence. There will simply be a Court Order with the effect of extinguishing broad aspects of the Catalyst Claim, in the absence of a trial.

(C) THE PLAN OF ARRANGEMENT FAILS THE *BCE* TEST

24. Even setting aside the serious concerns regarding the Court's jurisdiction and the denial of basic fairness to Catalyst with respect to its Claim, this Plan of Arrangement must fail because it does not satisfy the test set out by the Supreme Court of Canada in *Re BCE Inc.*⁶

25. Upon proposing a Plan of Arrangement, the applicant corporation bears the onus of satisfying the Court that the Plan ought to be approved.⁷ The test for approval of a plan of arrangement under the *OBCA/CBCA* was established by the Supreme Court in *BCE* as follows:

- (a) Have the statutory procedures been met?;
- (b) Was the application put forward in good faith?; and
- (c) Is the arrangement fair and reasonable?⁸

⁶ *BCE*.

⁷ *Magna International Int., Re*, 2010 ONSC 4685 (Div Ct) [*"Magna Div Ct"*], at para. 35; *BCE*, at para. 137.

26. The Plan proposed by Mid-Bowline fails both the second and third criteria. It has not been put forward in good faith and it is not fair and reasonable.

(i) The Plan Is Not Proposed in Good Faith

27. The Plan cannot be approved because it has not been proposed in good faith. Instead, it has been proposed and specifically structured in order to curtail Catalyst's ability to advance its Claim.

28. In its factum, Mid-Bowline states: "The only reason the proposed transaction is proceeding by way of a plan of arrangement is to provide Shaw with title to the shares of WIND free and clear of a claim by The Catalyst Capital Group Inc. for a constructive trust over the shares of WIND that are indirectly held by West Face Capital Inc. through Mid-Bowline."⁹ In actual fact, the Plan goes farther than simply providing Shaw with the shares "free and clear". The Plan puts up a blockade to Catalyst's ability to trace the funds associated with the transaction.

29. A Plan of Arrangement cannot be used to extinguish another party's claims. Using the Plan or Arrangement process in this way is an abuse of process and is not a good faith basis on which to seek the Court's blessing.

(ii) The Plan is Not Fair and Reasonable

30. Furthermore, the Mid-Bowline Plan fails both prongs of the test to determine whether a Plan is fair and reasonable:

(a) It does not serve a valid business purpose; and

⁸ *Magna Div Ct*, at para. 35; citing *BCE*, at para. 137.

⁹ Moving Party's Factum, para. 2.

(b) It does not resolve interests in a fair and balanced way.¹⁰

31. In *BCE*, the Supreme Court commented on the purpose of plans of arrangement:

The purpose of s. 192, as we have seen, is to permit major changes in corporate structure to be made, while ensuring that individuals and groups whose lights [sic] may be affected are treated fairly. In conducting the s. 192 inquiry, the judge must keep in mind the spirit of s. 192, which is to achieve a fair balance between conflicting interests.¹¹

32. The Supreme Court has said that when considering the approval of a plan of arrangement, the focus is on the terms and impact of the arrangement itself and whether “viewed substantively and objectively” it is suitable for approval.¹²

The Plan Does Not Have a Valid Business Purpose

33. There is no valid business purpose to the Plan. The Applicant has stated explicitly that the *only reason* the transaction is proceeding by way of a plan of arrangement is to extinguish parts of Catalyst’s claim. The unilateral extinguishment of third party claims is not a valid business purpose that would satisfy the Supreme Court’s analysis in *BCE*.

34. In *BCE*, the Supreme Court held that a valid business purpose recognizes that the burden imposed by the arrangement must be justified by the interests of the corporation.¹³ The Court further held that “[a]n important factor for courts to consider when determining if the plan of

¹⁰ *Magna Div Ct*, at para. 36; citing *BCE*, at para. 138.

¹¹ *BCE*, at para. 128.

¹² *BCE*, at para. 136.

¹³ *BCE*, at para. 145.

arrangement serves a valid business purpose is the necessity of the arrangement to the continued operations of the corporation.”¹⁴

35. Extinguishing third party claims is not necessity to the continued operations of Mid-Bowline or, for that matter, of WIND.

The Plan is Not A Fair Balancing of Rights

36. Moreover, the Plan is not a fair balancing of rights. The question of whether the arrangement is “fair and balanced” must be answered in a contextual and fact-specific way. The Supreme Court has set out a number of non-exhaustive factors:

- (a) the outcome of an informed and procedurally fair shareholder vote;
- (b) the approval of the arrangement by a special committee of independent directors;
- (c) the presence of a fairness opinion from a reputable expert;
- (d) the repute of the directors and advisors who endorse the arrangement;
- (e) the proportionality of the compromise between securityholders,
- (f) the position of securityholders before and after the arrangement;
- (g) the impact of the arrangement on the rights of securityholders;
- (h) the access of shareholders to dissent and appraisal remedies;
- (i) the market reaction to the announcement of the arrangement; and
- (j) the presence (or absence) of a liquid trading market into which securityholders can sell their securities.¹⁵

37. Even setting aside the issues raised above regarding whether the interests of third parties can be affected at all by a plan of arrangement, the factors set out by the Supreme Court indicate

¹⁴ *BCE*, at para. 146.

¹⁵ *BCE*, at paras. 152-3; set out in *Magna Div Ct*, at paras. 38 to 40 and 56 to 57.

clearly that a Court will look at, *inter alia*, the proportionality of the compromise and the outcomes for certain groups (see, for example, items e, f, and g).

38. It is neither proportionate nor a “fair balancing of rights” for interests of a third party to be unilaterally extinguished in exchange for no consideration. This is particularly true when there is a method of achieving the same goal (carrying out the transaction) without the necessity of extinguishing these rights.

39. In *9171665 Canada Ltd.*, the Court refused to approve a Plan of Arrangement proposed under the *CBCA*, *inter alia*, because the interests of one group of creditors had not been adequately protected.¹⁶ The Plan purported to fully extinguish a right of the first secured lien noteholders, although that group had not been given an opportunity to vote on the Plan. The Court commented:

The reasonable expectations of creditors regarding priorities should be a factor to consider in assessing fairness. This is especially true when those creditors have not been given a vote. I find the Plan unfair because it unfairly purports to extinguish a right which may have accrued to the first secured lien noteholders. I can understand the motivation to restructure, but I can also understand the first secured lien noteholders' motivation to resist where their contractual rights have been potentially altered without the chance to vote.¹⁷

40. Similar reasoning could be applied here. Catalyst was given no opportunity to participate in the Plan of Arrangement process and its interests are not being protected.

41. Furthermore, while it is important to note the many differences between the *OBCA* context and the *CCAA* context, many of which have been noted above, the law relating to the inclusion of third party releases in a plan or compromise in the *CCAA* context can be applied by analogy.

¹⁶ 2015 ABQB 633[“917”].

¹⁷ 917, at para. 40.

42. In *Nelson Education Limited, Re*, the Court was asked to approve a sale transaction of substantially all the assets of a company under *CCAA* protection.¹⁸ As part of the sale, the applicants requested broad releases be ordered by the Court. Newbould J. refused to allow the releases.

43. His Honour applied the test established by Blair J.A. in *Metcalfe* that a release was valid if there was a reasonable connection between the third party claim being compromised and the benefits of restructuring afforded by the plan. Newbould J. found that the releases were improper because the beneficiaries of the release were providing nothing to those whose claims were being released.¹⁹

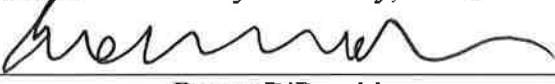
44. Even ignoring the significant differences between the *CCAA* and *OBCA* context, this reasoning applies here. The extinguishment of Catalyst's rights in the Mid-Bowline Plan of Arrangement is improper because the beneficiary of the release (West Face) is providing nothing to those whose claims are being released (Catalyst).


45. In a situation where the Plan of Arrangement does not serve a valid business purpose and is not a fair balancing of rights, it ought not to receive this Court's approval.

PART IV - ORDER REQUESTED

46. Catalyst respectfully submits that the Application be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2016.



Rocco DiPucchio


Lauren Epstein

¹⁸ 2015 ONSC 5557 [*Nelson*].

¹⁹ *Nelson*, at para. 50.

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SCHEDULE "A"**LIST OF AUTHORITIES**

1. *Crystallex International Corp., Re*, 2013 ONSC 823
2. *Doman Industries Ltd., Re*, 2003 BCSC 376
3. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587
4. *BCE Inc., Re*, [2008] 3 S.C.R. 560
5. *Magna International Int., Re*, 2010 ONSC 4685 (Div Ct)
6. *9171665 Canada Ltd.*, 2015 ABQB 633
7. *Nelson Education Limited, Re*, 2015 ONSC 5557

SCHEDULE "B"**TEXT OF STATUTES, REGULATIONS & BY - LAWS**1. ***Business Corporations Act, RSO 1990, c B.16***

182. (1) In this section,

"arrangement", with respect to a corporation, includes,

(a) a reorganization of the shares of any class or series of the corporation or of the stated capital of any such class or series,

(b) the addition to or removal from the articles of the corporation of any provision that is permitted by this Act to be, or that is, set out in the articles or the change of any such provision,

(c) an amalgamation of the corporation with another corporation,

(d) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act,

(e) a transfer of all or substantially all the property of the corporation to another body corporate in exchange for securities, money or other property of the body corporate,

(f) an exchange of securities of the corporation held by security holders for other securities, money or other property of the corporation or securities, money or other property of another body corporate that is not a take-over bid as defined in Part XX of the Securities Act,

(g) a liquidation or dissolution of the corporation,

(h) any other reorganization or scheme involving the business or affairs of the corporation or of any or all of the holders of its securities or of any options or rights to acquire any of its securities that is, at law, an arrangement, and

(i) any combination of the foregoing.

2. ***Canada Business Corporations Act, RSC 1985, c C-44***

Definition of "arrangement"

192. (1) In this section, "arrangement" includes

(a) an amendment to the articles of a corporation;

- (b) an amalgamation of two or more corporations;
- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act;
- (d) a division of the business carried on by a corporation;
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;
- (f) an exchange of securities of a corporation for property, money or other securities of the corporation or property, money or securities of another body corporate;
- (f.1) a going-private transaction or a squeeze-out transaction in relation to a corporation;
- (g) a liquidation and dissolution of a corporation; and
- (h) any combination of the foregoing.

Where corporation insolvent

(2) For the purposes of this section, a corporation is insolvent

- (a) where it is unable to pay its liabilities as they become due; or
- (b) where the realizable value of the assets of the corporation are less than the aggregate of its liabilities and stated capital of all classes.

Application to court for approval of arrangement

(3) Where it is not practicable for a corporation that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the corporation may apply to a court for an order approving an arrangement proposed by the corporation.

Powers of court

(4) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Director;
- (b) an order appointing counsel, at the expense of the corporation, to represent the interests of the shareholders;

- (c) an order requiring a corporation to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs;
- (d) an order permitting a shareholder to dissent under section 190; and
- (e) an order approving an arrangement as proposed by the corporation or as amended in any manner the court may direct.

Notice to Director

(5) An applicant for any interim or final order under this section shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

Articles of arrangement

(6) After an order referred to in paragraph (4)(e) has been made, articles of arrangement in the form that the Director fixes shall be sent to the Director together with the documents required by sections 19 and 113, if applicable.

Certificate of arrangement

(7) On receipt of articles of arrangement, the Director shall issue a certificate of arrangement in accordance with section 262.

Effect of certificate

(8) An arrangement becomes effective on the date shown in the certificate of arrangement.

R.S., 1985, c. C-44, s. 192; 1994, c. 24, s. 24; 2001, c. 14, s. 96.

IN THE MATTER OF the Business Corporations Act, R.S.O. 1990, c. B.16, as amended, Section 182
AND IN THE MATTER OF Rule 14.05(2) of the Rules of Civil Procedure
AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders
and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

FACTUM

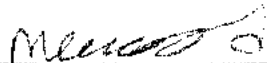
LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Rocco DiPucchio LSUC#: 38185I
rdipucchio@counsel-toronto.com
Tel: 416 598-2268

Lauren P. S. Epstein LSUC#: 640150
lepstein@counsel-toronto.com
Tel: 416 645 5078
Fax: 416 598 3730

Lawyers for the Respondent,
The Catalyst Capital Group Inc.

This is Exhibit "28" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 13, 2018.

Drover, Lisa

From: Rocco DiPucchio <rdipucchio@counsel-toronto.com>
Sent: January 31, 2016 1:42 PM
To: Milne-Smith, Matthew; Lauren Epstein
Cc: Thomson, Kent; Schafler, Michael (michael.schafler@dentons.com); Robert A. Centa (robert.centa@paliareroland.com); Basmadjian, Ara (ara.basmadjian@dentons.com)
Subject: Re: WIND Mobile

Matt,

I am writing to advise that I have received instructions from my client to withdraw the claim for a constructive trust over the shares of Wind Mobile as pled in our statement of claim against West Face and Moyse. I will be advising Justice Newbould of this tomorrow and will undertake to the Court to amend the claim accordingly in due course.

In my view, this renders the Plan unnecessary based on your client's representation to the Court that the matter can proceed by way of Share Purchase Agreement but for the constructive trust claim. Alternatively, the Plan certainly would not need to, and should not, affect any of my client's other claims as pleaded or potential, as you seemed to acknowledge in our last 9:30 with Justice Newbould.

This leaves the issue of setting a schedule for the trial of our client's claim against West Face and Moyse, which we will be submitting no longer needs to happen by March 1 in view of my advice. We will be asking for the Court to set a schedule and trial dates that accommodate my other obligations over the next few months so that I can continue to represent Catalyst. I am of course willing to discuss reasonable scheduling with you and Mr. Centa today or tomorrow morning.

Rocco DiPucchio
Lax O'Sullivan Lissus Gottlieb LLP
(416) 598-2268

----- Original message -----

From: "Milne-Smith, Matthew" <MMilne-Smith@dwpv.com>
Date: 01-29-2016 22:08 (GMT-05:00)
To: Rocco DiPucchio <rdipucchio@counsel-toronto.com>, Lauren Epstein <lepstein@counsel-toronto.com>
Cc: "Thomson, Kent" <KentThomson@dwpv.com>, "Schafler, Michael (michael.schafler@dentons.com)" <michael.schafler@dentons.com>, "Robert A. Centa (robert.centa@paliareroland.com)" <robert.centa@paliareroland.com>, "Basmadjian, Ara (ara.basmadjian@dentons.com)" <ara.basmadjian@dentons.com>
Subject: WIND Mobile

Rocco,

In paragraph 50(i) of his Reasons, Justice Newbould directed us to attend on February 1 at 9:30 to resolve the issues to be tried beginning February 22, 2016.

The defendants, West Face Capital Inc. and Brandon Moyle, propose the following issues for trial relating to Catalyst's claim for breach of confidence in respect of WIND Mobile:

1. Did Brandon Moyle convey confidential information belonging to Catalyst, about WIND Mobile, to West Face?
2. If the answer to the first question is "Yes", did West Face misuse such information in its efforts to acquire securities and any other interests in WIND Mobile in 2014?
3. If the answer to the second question is "Yes", what was the cause of Catalyst's failure to acquire those securities and any other interests in WIND Mobile, and was that cause attributable to West Face's conduct?

During our telephone conversation yesterday, you mentioned that Catalyst needs to conduct an examination for discovery of West Face before trial. While this is not contemplated by paragraph 50 of Justice Newbould's Reasons, in the spirit of co-operation West Face is willing to produce Tony Griffin for a full additional day of examination by Catalyst. Please advise at your earliest convenience when you wish to conduct the examination.

I also attach an amendment to art. 4.5 of the Plan of Arrangement that you and counsel to Shaw have proposed. I have used a clean version as we have re-structured the paragraph. We are willing to accept this language provided that we maintain the February 22, 2016 trial date.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

155 Wellington Street West
Toronto, ON M5V 3J7

T 416.863.5595
mmilne-smith@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply e-mail or by telephone (collect if necessary), delete this e-mail and destroy any copies.

This is Exhibit "29" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner of the
Province of Ontario, while a Student, and as
Expires April 13, 2018.

Commercial List Court File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 3RD DAY
)	
MR. JUSTICE NEWBOULD)	OF FEBRUARY, 2016



IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

ORDER

THIS APPLICATION, made by the Applicant, Mid-Bowline Group Corp. ("**Mid-Bowline**"), pursuant to section 182 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "**OBCA**"), for an Order approving a proposed Plan of Arrangement of Mid-Bowline was heard on January 25, 2016 at the Court House at 330 University Avenue, Toronto, Ontario, and Reasons for Judgment were released on January 26, 2016. These Reasons directed that the parties attend a 9:30 a.m. appointment on February 1, 2016. A further 9:30 a.m. appointment was held this day.

ON READING the materials filed by the Applicant and by The Catalyst Capital Group Inc. ("**Catalyst**"), and on hearing the submissions of counsel for the

Applicant, counsel for Shaw Communications Inc. ("**Shaw**"), counsel for Catalyst, and counsel for Brandon Moyses, respectively;

AND ON BEING ADVISED at the 9:30 a.m. appointment on February 1, 2016 that Catalyst had agreed to withdraw, with prejudice, any constructive trust claim over or in relation to the interests in the Applicant and WIND Mobile Corp. being acquired by Shaw pursuant to the Plan of Arrangement, as amended, and on being advised of Catalyst's undertaking to amend its pleading in the Superior Court of Justice proceeding bearing Court File No. CV-14-507120 to that effect;

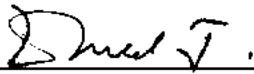
AND ON BEING ADVISED that the Application is now proceeding on consent on the basis of the Plan of Arrangement, as amended;

AND UPON BEING SATISFIED that: (i) the Plan of Arrangement, as amended, fulfills the statutory requirements for an arrangement as set out in section 182 of the OBCA; and (ii) the terms and conditions of the Plan of Arrangement, as amended, are fair and reasonable.

1. **THIS COURT ORDERS** that the Arrangement, as described in the Plan of Arrangement attached as Schedule "A" to this Order, shall be and is hereby approved.

2. **THIS COURT ORDERS** that the Applicant shall be entitled to seek leave to vary this Order upon such terms and upon giving such notice as this Court may direct, to seek the advice and directions of this Court as to the implementation of this Order, and to apply for such further order or orders as may be appropriate.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



FEB 03 2016


SCHEDULE "A"

**PLAN OF ARRANGEMENT
UNDER SECTION 182 OF THE
BUSINESS CORPORATIONS ACT (ONTARIO)**

Exhibit D

Plan of ArrangementFORM OF PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE
BUSINESS CORPORATIONS ACT (ONTARIO)ARTICLE 1
INTERPRETATION1.1 Definitions.

In this Plan of Arrangement, the following words and terms shall have the meanings hereinafter set forth:

"Arrangement" means the arrangement of the Corporation under section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the Arrangement Agreement and Section 5.1 hereof or made at the discretion of the Court in the Final Order (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably).

"Arrangement Agreement" means the Arrangement Agreement dated effective December 16, 2015 among Guarantor, Purchaser, the Corporation and the Vendors providing for, among other things, the Arrangement, as amended by amending agreement dated January 25, 2016, and as the same may be further amended, supplemented and/or restated from time to time.

"Arrangement Resolution" means a special resolution of Shareholders in the form of Exhibit A to the Arrangement Agreement.

"Articles of Arrangement" means the articles of arrangement of the Corporation in respect of the Arrangement that are required by the OBCA to be sent to the Director after the Final Order is made, which shall be in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably.

"business day" means a day, other than a Saturday or Sunday, on which commercial banks in Toronto, Ontario and Calgary, Alberta are open for business.

"Cash Consideration" means an amount per Purchased Share equal to the Purchase Price.

"Certificate" means the certificate of arrangement giving effect to the Arrangement, issued pursuant to subsection 183(2) of the OBCA after the Articles of Arrangement have been filed.

"Corporation" means Mid-Bowline Group Corp., a corporation existing under the OBCA.

"Court" means the Superior Court of Justice (Commercial List) in Toronto, Ontario.

"Director" means the Director appointed pursuant to section 278 of the OBCA.

"Director Shares" means any Purchased Shares registered in the name of a director or former director of the Corporation as at December 16, 2015 and as at the Effective Time.

"Effective Date" means the date of the Certificate.

"Effective Time" means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Corporation, the Vendors' Representatives and Purchaser may agree to in writing before the Effective Date.

"Election Deadline" means 5:00 p.m. (Toronto time) on the business day which is five business days preceding the Effective Date.

"Election Form" means the election form delivered to and specified for use by holders of Eligible Option Shares and/or Director Shares, as applicable, in connection with the Arrangement.

"Eligible Option Shares" means Purchased Shares acquired pursuant to the exercise of Replacement Options that were issued in exchange for Management Options and Former Management Options.

"Exchange Ratio" means, subject to adjustment (if any) as provided in Section 3.5, the ratio of the Purchase Price to the Market Price.

"Final Order" means the order of the Court, in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) on appeal.

"Former Shareholders" means, at and following the Effective Time, the holders of Purchased Shares immediately prior to the Effective Time.

"Former Management Options" means the option commitments to acquire an aggregate of 300,000 shares in the capital of the Corporation at a price of \$1.00 per share held by the Former Officers.

"Former Officers" means each of Simon Lockie and Brice Scheschuk, being the former Chief Regulatory Officer and Chief Financial Officer, respectively, of WIND Mobile Corp.

"Globalive Options" means the options to acquire an aggregate of 10,000,000 shares in the capital of the Corporation at a price of \$1.00 per share held by Globalive Turbine Corp. 1.

"Guarantor" means Shaw Communications Inc., a corporation existing under the laws of the Province of Alberta.

"Guarantor Shares" means the Class B Non-Voting Participating Shares in the capital of Guarantor.

"Letter of Transmittal" means the letter of transmittal delivered to and specified for use by Shareholders in connection with the Arrangement in form and substance satisfactory to the Purchaser and the Vendors' Representatives, each acting reasonably; provided, however, that no Letter of Transmittal shall be required in respect of Purchased Shares issued pursuant to subsection 3.1(c).

"Management Options" means the options to acquire shares in the capital of the Corporation pursuant to the Option Plan as set out in Schedule B to the Disclosure Letter.

"Market Price" means a per share amount equal to the volume weighted average trading price of the Guarantor Shares on the TSX during the last 10 trading days occurring immediately prior to the Effective Date.

"OBCA" means the *Business Corporations Act* (Ontario).

"Option Loan" means the non-interest bearing loan made by the Purchaser to Globalive Turbine Corp. 1 in connection with the exercise or deemed exercise of the Globalive Options in accordance with this Plan of Arrangement, in an amount equal to the aggregate exercise price in respect of such Options as of the Effective Date.

"Option Plan" means the 2015 Stock Option Plan of the Corporation as adopted by the Board of Directors of the Corporation on September 24, 2015, effective as of March 23, 2015, and ratified on December 16, 2015, in the form provided to Purchaser.

"Options" means, collectively, the Management Options, the Globalive Options and the Former Management Options.

"Plan of Arrangement", **"hereof"**, **"herein"**, **"hereto"** and like references mean and refer to this plan of arrangement, as the same may be amended, supplemented and/or restated from time to time.

"Purchase Price" has the meaning set forth in the Arrangement Agreement, as such amount may be adjusted in accordance with the terms thereof.

"Purchased Shares" means the issued and outstanding shares in the capital of the Corporation as of the Effective Time, including any shares issued on the exercise or deemed exercise of Options in accordance with the Arrangement Agreement and this Plan of Arrangement.

"Purchaser" means 1503357 Alberta Ltd., a corporation existing under the laws of the Province of Alberta.

"Replacement Option" means an option to purchase shares in the capital of the Corporation granted in replacement of a Management Option or Former Management Option on the basis set forth in subsection 3.1(b);

"Shareholders" means the holders of Purchased Shares.

"Share Consideration" means a number (or fraction) of Guarantor Shares equal to the Exchange Ratio per Purchased Share.

"Tax Act" means the *Income Tax Act* (Canada).

"TSX" means the Toronto Stock Exchange.

"Unvested Options" means all Management Options and Former Management Options that are not Vested Options.

"Vendors" means each of the Persons listed on the execution page of the Arrangement Agreement under the heading "Vendors" and each holder of Purchased Shares who becomes a party to the Arrangement Agreement by executing (or being deemed to execute) a Joinder Agreement.

"Vested Options" means the Management Options and Former Management Options that have vested prior to the Effective Date in accordance with the terms of the Arrangement Agreement.

Words and phrases used herein that are defined in the Arrangement Agreement and not defined herein shall have the same meaning herein as in the Arrangement Agreement. Words and phrases used herein that are defined in the OBCA and not defined herein or in the Arrangement Agreement shall have the same meaning herein as in the OBCA, unless the context otherwise requires.

1.2 Interpretation Not Affected By Headings, etc.

The division of this Plan of Arrangement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement.

1.3 Article References

Unless the contrary intention appears, references in this Plan of Arrangement to an Article, Section or subsection by number or letter or both refer to the Article, Section or subsection respectively, bearing that designation in this Plan of Arrangement.

1.4 Number and Gender

In this Plan of Arrangement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender shall include all genders.

1.5 Date for Any Action

If the date on which any action is required to be taken hereunder by any of the parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.

1.6 Statutory References

Unless otherwise indicated, references in this Plan of Arrangement to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

1.7 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

ARTICLE 2
ARRANGEMENT AGREEMENT**2.1 Arrangement Agreement**

This Plan of Arrangement is made pursuant to, and is subject to the provisions of, the Arrangement Agreement. This Plan of Arrangement shall become effective at, and be binding at and after, the Effective Time on the Corporation, Guarantor, Purchaser, the Vendors and all Persons who were immediately prior to the Effective Time holders or beneficial owners of Purchased Shares or Options.

ARTICLE 3
ARRANGEMENT**3.1 Arrangement**

Commencing at the Effective Time, the following events or transactions shall occur and shall be deemed to occur in the following sequence without any further act or formality:

- (a) Purchaser will make the Option Loan to Globalive Turbine Corp. 1 and Globalive Turbine Corp. 1 will direct the Purchaser to pay the proceeds of the Option Loan to the

Corporation in satisfaction of the exercise price of the Globalive Options in accordance with Section 3.1(c):

- (b) each Vested Option outstanding at the Effective Time will be exchanged for a Replacement Option to acquire such number of Purchased Shares that is equal to the fraction obtained when the difference, if positive, between the Purchase Price and the exercise price of such Option is divided by the Purchase Price; provided, however, that if the difference between the Purchase Price and the exercise price of any such Option produces a negative amount, then such Option shall be terminated and of no further force and effect. All terms and conditions of a Replacement Option shall be the same as the Option for which it was exchanged, except that each Replacement Option shall be exercisable pursuant hereto at a price of \$0.00001 per Purchased Share; notwithstanding the foregoing, if it is determined in good faith that the excess of the aggregate fair market value of the shares of the Corporation subject to a Replacement Option immediately after the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Replacement Option (such excess referred to as the "**In the Money Amount of the Replacement Option**") would otherwise exceed the excess of the aggregate fair market value of the shares of the Corporation subject to such Vested Option immediately before the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Vested Option, (such excess referred to as the "**In the Money Amount of the Vested Option**"), the previous provisions shall be modified so that the In the Money Amount of the Replacement Option does not exceed the In the Money Amount of the Vested Option, but only to the extent necessary to qualify for the provisions of subsection 7(1.4) of the Tax Act.
- (c) each holder of Replacement Options will be deemed to have exercised all such Replacement Options and Globalive Turbine Corp. 1 will be deemed to have exercised the Globalive Options and (i) holders of Replacement Options will pay the exercise price in respect thereof to the Corporation in cash, (ii) the Purchaser will pay the aggregate amount loaned to Globalive Turbine Corp. 1 in Section 3.1(a) above to the Corporation in satisfaction of the exercise price thereof and each holder of Replacement Options and Globalive Turbine Corp. 1 shall be deemed to have received the number of Purchased Shares issuable in respect of each Replacement Option or Globalive Option, as applicable, exercised in accordance with this Section 3.1(c) and (iii) each holder of Options who becomes a holder of Purchased Shares pursuant to this Section 3.1(c) shall be deemed to have executed a Joinder Agreement to the Arrangement Agreement and shall be considered a Vendor thereunder;
- (d) (i) each outstanding Purchased Share (other than Eligible Option Shares and Director Shares) shall be transferred by the holder thereof to Purchaser in exchange for the Cash Consideration therefor, provided that Globalive Turbine Corp. 1 will be deemed to have directed Purchaser to retain an amount equal to the amount loaned by Purchaser to it to acquire Purchased Shares on exercise of the Globalive Options pursuant to Section 3.1(a) in repayment of the Option Loan, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Purchased Shares so transferred and (iii) Purchaser shall be recorded as the registered holder of such Purchased Shares so transferred and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances;
- (e) (i) each outstanding Eligible Option Share and Director Share shall be disposed of by the holder thereof to Purchaser in accordance with the election or deemed election of such holder pursuant to Section 3.2 in exchange for the Cash Consideration or the Share Consideration therefor, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Eligible Option Shares and/or Director Shares, as applicable, so transferred and (iii) the name of such holder shall be added to the register of holders of Guarantor Shares in respect of the Share Consideration

received by such holder, and Purchaser shall be recorded as the registered holder of such Eligible Option Shares and Director Shares so exchanged and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances; notwithstanding the foregoing, if it is determined in good faith that the aggregate fair market value of the Guarantor Shares immediately after the issuance of the Guarantor Shares would otherwise exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares immediately before the issuance of the Guarantor Shares, the previous provisions shall be modified so that the aggregate fair market value of such Guarantor Shares does not exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares, but only to the extent necessary to qualify for the provisions of subsection 7(1.5) of the Tax Act, if applicable; and

- (f) the Option Plan and all Unvested Options shall be terminated and shall be of no further force or effect.

3.2 Election Regarding Eligible Option Shares and Director Shares

With respect to the exchange of Eligible Option Shares and Director Shares effected pursuant to subsection 3.1(e):

- (a) each holder of Eligible Option Shares and/or Director Shares, as applicable, may elect to receive either:
 - (i) Cash Consideration in respect of all Eligible Option Shares and/or Director Shares, as applicable, held by such holder (with a requirement in the Election Form for any holder of Eligible Option Shares other than a Former Officer to undertake to apply at least 50% of the net after tax proceeds from the Cash Consideration in respect of such Eligible Option Shares to acquire Guarantor Shares in the market through a broker designated by Guarantor);
 - (ii) Cash Consideration in respect of up to 50% of the Eligible Option Shares and/or Director Shares, as applicable, held by such holder and Share Consideration in respect of the remaining Eligible Option Shares and/or Director Shares, as applicable, held by such holder; or
 - (iii) Share Consideration in respect of all Eligible Option Shares and/or Director Shares, as applicable, held by such holder;
- (b) the election provided for in subsection 3.2(a) shall be made by each holder of Eligible Option Shares and/or Director Shares, as applicable, by delivery to Purchaser, prior to the Election Deadline, of a duly completed Election Form indicating such holder's election;
- (c) any holder of Eligible Option Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Share Consideration pursuant to clause (iii) of subsection 3.2(a) in respect of such Eligible Option Shares; and
- (d) any holder of Director Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Cash Consideration pursuant to clause (i) of subsection 3.2(a) in respect of such Director Shares.

3.3 Letters of Transmittal and Election Forms

Any Letter of Transmittal and Election Form, once delivered to Purchaser, shall be irrevocable and may not be withdrawn by a Shareholder.

3.4 No Fractional Guarantor Shares and Rounding of Cash Consideration

- (a) In no event shall any fractional Guarantor Shares be issued under this Plan of Arrangement. Where the aggregate number of Guarantor Shares to be issued to a Shareholder as consideration under this Plan of Arrangement would result in a fraction of a Guarantor Share being issuable, the number of Guarantor Shares to be issued to such Shareholder shall be rounded down to the closest whole number and no additional consideration shall be provided to such Shareholder in lieu of the issuance of a fractional Guarantor Share.
- (b) If the aggregate cash amount which a Shareholder is entitled to receive under this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Shareholder shall be entitled to receive shall be rounded down to the nearest whole \$0.01.

3.5 Adjustments to Exchange Ratio

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, stock dividend (including any dividend or distribution of securities convertible into Guarantor Shares or Purchased Shares, other than stock dividends paid in lieu of ordinary course dividends), consolidation, reorganization, amalgamation, arrangement, recapitalization or other like change with respect to Guarantor Shares or Purchased Shares occurring after the date of the Arrangement Agreement (and not in breach of the terms of the Arrangement Agreement) and prior to the Effective Time.

ARTICLE 4
DELIVERY OF CONSIDERATION

4.1 Delivery of Share Consideration and Cash Consideration

- (a) At the Effective Time, upon confirmation by Purchaser that certificates representing all of the Purchased Shares (other than any certificates in respect of Purchased Shares issued pursuant to Section 3.1(c)) have been delivered to the Purchaser together with duly completed Letters of Transmittal in respect thereof, the Purchaser shall (i) pay, or cause to be paid to Davies Ward Phillips & Vineberg LLP, in trust for and on behalf of the Vendors, in cash by way of wire or electronic transfer of immediately available funds to such bank account specified in writing by the Vendors' Representatives (or such other means as may be agreed to by Purchaser and the Vendors' Representatives) an amount equal to the aggregate Cash Consideration payable pursuant to Article 3 less the amount of the Option Loan and (ii) deliver or caused to be delivered to the applicable Vendors certificates (or, at Purchaser's option, evidence of direct registration) representing the number of Guarantor Shares that each Vendor is entitled to receive under the Arrangement.
- (b) Subject to Article 10 of the Arrangement Agreement, the Vendors' Representatives shall cause Davies Ward Phillips & Vineberg LLP to release to each Vendor such portion of the aggregate Cash Consideration to which such holder is entitled pursuant to Article 3. For the avoidance of doubt, Globalive Turbine Corp. 1's entitlement to the aggregate Cash Consideration shall be calculated net of the amount of the Option Loan made to Globalive Turbine Corp. 1 in accordance with Section 3.1(a).

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Purchased Shares that were exchanged pursuant to subsections 3.1(d) or 3.1(e) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, Purchaser will deliver in exchange for such lost, stolen or destroyed certificate, the cash amount or the Guarantor Shares, or any combination thereof, that such Person is entitled to receive pursuant to subsection 3.1(d) or 3.1(e). When authorizing the delivery of such consideration in exchange for any lost, stolen or destroyed certificate, the Person to whom the consideration is being delivered shall, as a condition precedent to the delivery of such consideration, give a bond satisfactory to Guarantor and Purchaser in such sum as Guarantor and Purchaser may direct, or otherwise indemnify Guarantor and Purchaser in a manner satisfactory to Guarantor and Purchaser against any claim that may be made against Guarantor or Purchaser with respect to the certificate alleged to have been lost, stolen or destroyed.

4.3 Withholding Rights

Guarantor and Purchaser shall deduct and withhold from any consideration otherwise payable to any holder of Eligible Option Shares or Director Shares such amounts as Guarantor or Purchaser are required to deduct and withhold with respect to such payment under the Tax Act, the United States *Internal Revenue Code* of 1986 or any provision of provincial, state, local or foreign tax law, in each case as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Eligible Option Shares or Director Shares, as applicable, in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. The determination of whether an amount is required to be deducted or withheld shall be at the sole discretion of Guarantor and Purchaser.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances, adverse claims or other claims of third parties of any kind.

4.5 Paramountcy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein; provided, however, that nothing in this section 4.5 shall be construed to extinguish any right of The Catalyst Capital Group Inc. to assert any of the following matters, with the exception of any constructive trust or equivalent remedy over the Purchased Shares, which shall be deemed to have been settled, compromised, released and determined without liability, along with all other claims in this section 4.5:

- (a) its existing claims as asserted in the Amended Amended Statement of Claim as amended December 16, 2014 in the proceeding bearing Court File No.: CV-14-507120 in the Ontario Superior Court of Justice, against West Face Capital Inc. and Brandon Moyse;
- (b) as against any person (as defined in the OBCA), any potential claim for a tracing of the money received by West Face Capital Inc. from the disposition of its interest in the Corporation pursuant to the Arrangement; or

- (c) as against the Former Shareholders, any potential claim relating to their acquisition from VimpelCom Ltd. of their interest directly or indirectly in WIND Mobile Corp., including, to the extent permitted by law, for a tracing of the money received by them pursuant to the Arrangement.

ARTICLE 5 AMENDMENTS

5.1 Amendments to Plan of Arrangement

- (a) The Corporation, the Vendors' Representatives and Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must: (i) be set out in writing; (ii) be approved by the Corporation, the Vendors' Representatives and Purchaser; and (iii) be filed with the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement that is directed by the Court shall be effective only if: (i) it is consented to in writing by each of the Corporation, the Vendors' Representatives and Purchaser (in each case, acting reasonably); and (ii) if required by the Court, it is consented to by Shareholders, voting in the manner directed by the Court.
- (c) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Purchaser, provided that it concerns a matter that is solely of an administrative nature required to better give effect to the administrative implementation of this Plan of Arrangement and is not adverse to the interests of any Former Shareholder or former holders of Options.

ARTICLE 6 FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein.

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182
AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194
AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders
and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

Commercial List File No. CV-15-11238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

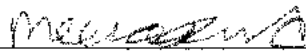
ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 WELLINGTON STREET WEST
TORONTO ON M5V 3J7

Matthew Milne-Smith (LSUC #44266P)
Email: mmilne-smith@dwpv.com
Tel: 416.863.5595
Fax: 416.863.0871

Lawyers for the Applicant

This is Exhibit "30" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner *ad hoc*,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

Call w/
Rocco

416-598-2268

Feb 2?

- Free week May 16 - 20
May 23 - 27.

- Second of those two weeks.

- Rocco: I believe this will prove industry break
on May.

- involving a # of other parties.

Ken: -

Assuming we could get other investors to agree to
May?

Rocco: I guess so.

at end of day just talking about money.

Let me think about that. I may want it all
together.

If we can accomplish everything by May.

In principle I'm not objecting to that.

You guys will be up following week in GM.

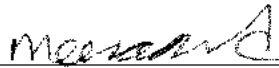
Thursday (Friday preceding week).

Row: Here's what will do.
I'll commit to Stocking of those two weeks.

You wait here from me.

At minimum we'll have trial or claim.

This is Exhibit "31" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Ananda Persaud, a Commissioner, 2016,
Province of Ontario, while a Student and as of,
Expires April 13, 2018

Call w/
Rocco

Feb 2?

416-598-2268

-Free week May 16-20
 May 23-27

-second of those two weeks.

-Rocco: I believe they will prove inducing breach
 on May

 involving a # of other parties.

Kent:

Assuming we could get other investors to agree to May?

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 At end of day just talking about money.

 Let me think about that. I may want it all
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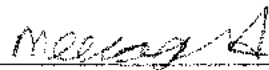
Thursday (Friday preceding week.

Rocco: Here's what will do.
 I'll commit to blocking off those two weeks.

You won't here from me.

At minimum we'll have trial of claim.

This is Exhibit "32" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Melissa Amanda Perseaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

COUNSEL SLIP

5172

COURT FILE NO CN-15-11238-00CL

DATE FEB 3RD 2016

NO ON LIST /

TITLE OF
PROCEEDING

MID-BOWLING GROUP CORP v CATALYST CAPITAL GROUP INC.

COUNSEL FOR:

PHONE & FAX NOS

PLAINTIFF(S) Kent Thomson 416 863 0900 (P)

APPLICANT(S) Matthew Milne-Smith 416 863 0871 (CF)

PETITIONER(S) mmilne-smith@dmprv.com
for Mid-Bowling

COUNSEL FOR:

PHONE & FAX NOS

DEFENDANT(S) Rocco DiPuccio (P) 416 598 2268

RESPONDENT(S) Lauren Epstein (F) 416 598 3730
for Catalyst Capital Group Inc

February 3, 2016
Trial set for 6
days starting
May 18/16.

Shaw Communications Inc.

Michael Schafler / Ara Basmadjian

michael.schafler@dentons.com / ara.basmadjian@dentons.com

(T): 416.863.4511

(F): 416.863.4592

James Zibanas
Branch Thomas Zibanas LLC
counsel for Globalize
Liquorban
64 NM Holdings
Siguler Aull.

Robert A. Centa
for Brandon Mayse

416-646-4714
416-646-4701 (F)
Robert. Centa @ PALIAREROLAND.COM

DAVID STEINBERG

PAPE BARRISTERS

for JAMES RILEY

T. 416.364.8798

F. 416.364.8855

e. dss@papebarristers.com

TOM CURRY
for option-
holders and
other minor
shareholders

This is Exhibit "33" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires April 13, 2018.

Court of Appeal File No. C62655
Court File No. CV-14-507120

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/
Appellant

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/
Respondents

SUPPLEMENTARY NOTICE OF APPEAL

The Appellant amends the Notice of Appeal dated September 13, 2016 in the following manner:

1. To replace the Preamble and the Relief Requested with the following:

THE PLAINTIFF APPEALS to the Court of Appeal from the Judgment of the Honourable Justice F. Newbould, which dismissed the Plaintiff's action, dated August 18, 2016 (the "Judgment"), made at Toronto and from the decision of the Honourable Justice F. Newbould, awarding costs of the trial to West Face Capital Inc. in the amount of \$1,239,965, dated October 7, 2016 (the "Costs Order"), both made at Toronto, Ontario.

THE APPELLANT ASKS that the Judgment and Costs Order be set aside and Judgment be granted as follows:

1. Ordering that a new trial be held before another Judge of the Superior Court of Justice;
2. An award of costs of the trial and this appeal in the Plaintiff's favour; and

2. To add the following text after paragraph 30:

E. Denial of Procedural Fairness in Fact Findings

30. The trial judge deprived Catalyst of procedural fairness by barring Catalyst from advancing certain claims and leading facts about these claims but then making factual findings about these claims in any event.

31. Prior to the trial, the trial judge refused to permit Catalyst to amend its Statement of Claim to include allegations that West Face had induced VimpelCom to breach a contract that provided Catalyst with an exclusive negotiating period with VimpelCom (the “Exclusivity Agreement”).

32. The trial judge held that Catalyst’s allegations of inducing breach of contract against West Face would not form any portion of the trial between Catalyst, West Face and Moyse (the “Moyse Litigation”).

33. Catalyst issued a new Statement of Claim prior to the trial in which it alleged, *inter alia*, that West Face and other parties that were part of the “Consortium” to purchase Wind (and that were not named in the Moyse Litigation) had induced VimpelCom to breach the Exclusivity Agreement and that VimpelCom had breached the Exclusivity Agreement (“VimpelCom Litigation”). Moyse was not named in the VimpelCom Litigation.

34. West Face brought the VimpelCom Litigation to the attention of the trial judge at the trial of the Moyse Litigation. It also objected to testimony during the trial of the Moyse Litigation on the basis that the testimony may impact the VimpelCom Litigation. The trial judge granted West Face’s objection.

35. Despite his prior ruling and the ruling on the objection at trial, the trial judge made the following findings of fact concerning Catalyst's dealings with VimpelCom:

- (a) The trial judge concluded that no one at Tennenbaum Capital Partner LLC or 64NM Holdings GP LLC knew the details of any offer made by Catalyst to VimpelCom during the period of the Exclusivity Agreement;
- (b) The trial judge concluded that VimpelCom had no substantive communication with the members of the Consortium, including West Face, during the term of the Exclusivity Agreement; and
- (c) The trial judge concluded that there was no evidence that VimpelCom's board of directors looked at the Consortium's proposal during the exclusivity period with Catalyst or that the Consortium's proposal played any part in the decision of VimpelCom to demand a break fee from Catalyst.

36. The trial judge erred in law and fact and denied Catalyst procedural fairness by making these findings despite having barring Catalyst from advancing claims that relate to these facts and preventing Catalyst from leading evidence on these facts.

37. After the Judgment was released, the defendants in the VimpelCom Litigation, including West Face, sought to have the VimpelCom Litigation struck on the basis of the trial judge's findings.

F. Errors of Fact and Law in Determining Costs

38. Catalyst seeks this Court's leave to appeal the Costs Order.

39. Leave to appeal should be granted to correct errors of law and errors of mixed fact and law that the trial judge made in rendering the Costs Order.
40. The trial judge erred by concluding that Catalyst's conduct in the litigation was reprehensible, scandalous or outrageous and warranted an award of costs on a substantial indemnity scale.
41. The trial judge made the following palpable and overriding errors of mixed fact and law in finding that West Face was entitled to costs on a substantial indemnity scale:
- (a) The trial judge erred in relying on the evidence given by Newton Glassman during trial to make determinations about Catalyst's conduct in the litigation;
 - (b) The trial judge erred in concluding that it was improper for Catalyst to prosecute its action on the basis of the confidentiality wall that West Face erected after Moyse commenced his employment with West Face; and
 - (c) The trial judge erred in concluding that Catalyst's prosecution of its action was based on unfounded allegations of West Face's conduct.
42. These palpable and overriding errors led the trial judge to improperly conclude that West Face was entitled to costs on a substantial indemnity basis.
43. The trial judge also erred in accepting the quantum of costs claimed by Moyse without deduction for excessive costs.
3. To amend the basis of the Appellate Court's Jurisdiction in the following manner:

1. Sections 6(1)(b) and 133(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
2. The Judgment of Justice Newbould dismissing the Plaintiff's action is final;
3. Leave to appeal the Judgment is not required;
4. Catalyst requests that the appeal of the Costs Order be joined with the appeal of the Judgment; and
5. Leave to appeal the Costs Order is required.

October 21, 2016

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Kristian Borg-Olivier LSUC#: 53041R
Tel: (416) 646-7490

Fax: 416-646-4301

Lawyers for the Defendant/Respondent,
Brandon Moyse

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
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Tel: (416) 863-0900

Andrew Carlson LSUC#: 58850N
Tel: (416) 863-0900

Fax: 416-863-0871

Lawyers for the Defendant/Respondent,
West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC.
Plaintiff (Appellant)

-and- BRANDON MOYSE et al.
Defendants (Respondents)

Court of Appeal File No.
Court File No. CV-14-507120

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY NOTICE OF APPEAL

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

Suite 2750, 145 King Street West
Toronto, Ontario M5H 1J8

Rocco DiPucchio LSUC#: 38185I

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Bradley Vermeersch LSUC#: 69004K

Tel: (416) 646-7997

bvermeersch@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff/Appellant

This is Exhibit "34" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meena Aranda Persaud, a Commissioner, s. 43,
Evidence Act, Province of Ontario, while a Student at Law,
Expires April 13, 2018

Feb 7, 2016

Call w/ Rocco and Rob Conk, Kris,

Matt: First question is whether you intend to Amend?

Rocco: Yes — we probably will. But is your

Matt: First induce, second on other things.

Rocco: Don't mean to suggest other party not to

likely will be amending the claim.

We have to reflect CA endorsement re: May 10.

Spoken of something.

Matt: That has to come before discoveries.

Rocco: Will look at what we need to sharpen up.

Rob: What about other potential defendants?

Focco: Plan isn't to roll those guys into this action?

Matt: might be indirectly breach?

Focco: My thought is separate action.

MMS: ^{links to} so breach of confidence.

~~Matt~~ Focco: yes.

Matt: what about you productions?

Focco: Person just walked out the door. Figure out how to staff this and see what we haven't even started that fast.

MMS: we stick over letter with initial letter. we are being reasonable. keep us in loop to extent appropriate.

Focco: Let me get clarity —

Rocco: once we get idea and have conversation about what to produce.

Shad at what you put in your letter.

MMS: Core is negotiations with Unipellcom.
Confidential info that Brandon had.

Rocco: Additional day of discovery?

Matt: No more than that.

Rocco: Realistically — discoveries in early April is as good as we can do.

MMS: } Discussion sat April regarding need to
idea of additional discovery.

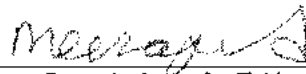
Rob: How we're going to use previous affidavits and existing crosses.

MMS: witness - list.
We may need experts back in if you pursue spoliation.

Forco: Look at claim, make amendments, get handle on docs in short order.

I'll get handle on that.

This is Exhibit "35" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, s. 43,
Province of Ontario, while a Student-at-Law
Expires April 13, 2018.

Feb 7, 2016

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keep us in loop to extent appropriate

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Confidential info that Brandon had.

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Matt: No more than that.

Rocco: Realistically – discovery in early April is as good as we can do.

MMS: } [Discussion] but April largely agreed to.
} Idea of additional disclosure.

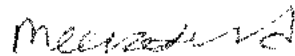
Rob: How we're going to use previous affidavits and existing crosses.

MMS: Witness – list
We may need experts back in if you pursue spoliation

Rocco: Look at claim, make amendments, get handle on docs in short order.

I'll get handle on that.

This is Exhibit "36" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, s/s,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

5188

AMENDED THIS Feb. 25/16 PURSUANT TO
MODIFIÉ DE _____ CONFORMÉMENT A
 RULE/LA RÈGLE 28.02 (A)

THE ORDER OF _____
L'ORDONNANCE DU _____

DATED / DATÉ LE _____

REGISTRAR / BREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-16-11272-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

AMENDED, AMENDED, AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed

5189

-2-

by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and \$400.00 for costs and have the costs assessed by the Court.

Date June 25 /14
~~June 25, 2014~~
~~October 9, 2014~~
~~December 16, 2014~~
~~February 25, 2016~~

Issued by

"N. Mohammed"

Local Registrar

Address of

court office: 393 University Avenue
 10th Floor
 Toronto, Ontario
 M5G 1E6

TO: ~~Brandon Moyse~~
~~23 Brant Street, Apt. 509~~
~~Toronto ON M5V 2L5~~

AND TO: ~~West Face Capital Inc.~~
~~2 Bloor Street East, Suite 2000~~
~~Toronto, ON M4W 1A8~~

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
 Barristers and Solicitors
 155 Wellington Street West
 35th Floor
 Toronto ON M5V 3H1

Chris G. Paliare LSUC#: 13367P
 Tel: (416) 646-4318
 Fax: 416-646-4301
Robert A. Centa LSUC#: 44298M
 Tel: (416) 646-4314
 Fax: 416-646-4301
Kristian Borg-Olivier LSUC#: 53041R
 Tel: (416) 646-7490
 Fax: 416-646-4301

Lawyers for the Defendant,
 Brandon Moyse

5190

-3-

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
Barristers and Solicitors
155 Wellington Street West
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Matthew Milne-Smith LSUC#: 44266P

Tel: (416) 863-0900

Fax: (416) 863-0871

Andrew Carlson LSUC#: 58850N

Tel: (416) 863-0900

Fax: 416-863-0871

Lawyers for the Defendant,
West Face Capital Inc.

CLAIM**1. The Plaintiff claims:**

- (a) An interim, interlocutory and/or permanent injunction restraining the defendant Brandon Moyse ("Moyse"), his agents or any persons acting on his direction or on his behalf, and the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted, from:
- (i) Soliciting or attempting to solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised or sponsored by Catalyst or the Catalyst Fund Limited Partnership IV (the "Fund") as at June 25, 2014, until June 25, 2015;
 - (ii) Interfering with the Plaintiff's relationships with its employees which, without limiting the generality of the foregoing, shall include any attempt to induce employees of the Plaintiff to leave their employment with the Plaintiff; and
 - (iii) Using or disclosing the Plaintiff's confidential and proprietary information (including, without limitation, (i) the identity or contact information of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of the Fund, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund (iv)

- investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about Catalyst and employees of Catalyst (collectively, the "Confidential Information") in any way, including in relation to any present- and future-related business;
- (b) An order requiring the defendants to immediately return to Catalyst (or its counsel) all Confidential Information in their possession or control;
- (c) An order prohibiting any of the defendants from, in any way, deleting, modifying or in any way interfering with any of their electronic equipment, including computers, servers and mobile devices, until further Order of this Honourable Court;
- (d) An interim, interlocutory and permanent injunction prohibiting the defendant Brandon Moyse ("Moyse") from commencing or continuing employment at the defendant West Face Capital Inc. ("West Face") until December 25, 2014;
- ~~(d.1) An interim, interlocutory and permanent injunction prohibiting West Face from voting its interest in Data and Audio Visual Enterprises Wireless Inc, in any proposed transaction involving Wind Mobile;~~
- (d.1) General damages as against West Face in an amount to be particularized prior to trial;

~~(d.3) A constructive trust over all property, including, but not limited to, securities, security interests, debts and other financial instruments, acquired by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;~~

~~(d.2) In addition or in the alternative to the relief sought in paragraph 1(d.2), An accounting of all profits earned by West Face, its officers, directors, employees, agents, any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;~~

~~(d.3) In addition or in the alternative, general damages as against Moyse for spoliation;~~

- (e) Punitive damages in the amount of \$300,000, as against West Face, and \$50,000, as against Moyse;
- (f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The plaintiff's costs of this action on a substantial indemnity basis, plus the applicable H.S.T.; and
- (h) Such further and other relief as to this Honourable Court may seem just.

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

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

3. Catalyst uses a "flat" entrepreneurial staffing model whereby its analysts are given substantial training, autonomy and responsibility at a relatively early stage in their career as compared to its competitors in the special situations investments for control industry.

4. Moreover, Catalyst uses a unique compensation scheme to compensate its employees – in addition to their base salary and annual bonus, employees participate in a "60/40 Scheme" whereby the "carried interest" of each Fund is allocated sixty per cent to the deal team and forty per cent to Catalyst. The carried interest refers to the twenty per cent profit participation Catalyst may enjoy, subject to certain conditions.

5. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. At all material times, Catalyst employed only two investment analysts, and the deal teams on which Moyse participated involved only three or four Catalyst professionals. The 60/40 Scheme granted Catalyst's employees a partner-like interest in the success of the company.

The Defendants

6. West Face is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. In December 2013, West Face formed a credit fund for the purpose of competing directly with Catalyst in the special situations investments for control industry.

7. Moyse is a resident of Toronto. Pursuant to an employment agreement dated October 1, 2012 (the "Employment Agreement"), Moyse was hired as an investment analyst by Catalyst effective November 1, 2012. Moyse had substantial autonomy and responsibility at Catalyst. He was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.

The Special Situation Investment Market in Canada

8. The Canadian market for special situations investing is very competitive. A small number of Canadian firms seek opportunities to invest in situations where a corporation is distressed or undervalued, or face events that can have a significant effect on the company's operations, such as proxy battles, takeovers, executive changes and board shake-ups.

9. In these special situations, an investment firm's strategic plans and investment models are crucial to successfully executing an investment plan. Confidentiality is paramount: if a competitor has access to a firm's plans and modelling for a particular special situation, the competitor can "scoop" the opportunity, or it can take an adverse investment position which make the firm's plans either too costly to execute or, depending on the timing of the adverse action, can cause the plan to incur significant losses after it is past the point of no return.

10. Depending on how advanced a firm is in executing its investment strategy, a competitor's adverse position can have disastrous, immeasurable effects on the firm's goodwill and/or will cause a firm to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

11. Within the special situations investment industry, "investment for control or influence" is a sub-industry with unique characteristics. "Investment for control or influence" refers to acquiring controlling or influential equity or debt positions in distressed companies in order to add value through operational involvement in an investment target by, among other things:

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;

- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing turnaround plans;
- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

12. The "investment for control or influence" sub-industry within the distressed investment industry has unique needs, including the need to ensure that employees are unable to resign and begin working for a competitor for a reasonable period of time in order to ensure that the competitor is unable to take advantage of the former employee's knowledge of the firm's strategic plans and models.

13. In the special situations for control industry, information is critical. The ability to collect and analyze information and to prepare confidential plans for complex investment opportunities is the difference between a plan's success or failure. For this reason, it is commonplace for firms specializing in the special situations for control or influence industry to require its employees to agree to a non-competition covenant prior to commencing employment. Likewise, when a competitor hires directly from a firm within the industry, it is commonplace for the competitor to respect the other firm's non-competition covenant by not directly employing a lateral hire in the same market as they worked for the competitor during the term of the non-competition covenant.

The Employment Agreement

14. Under the Employment Agreement, Moyses was paid an initial salary of \$90,000 and an annual bonus of \$80,000. Moyses was also granted options on equity in Catalyst and participated

in the 60/40 Scheme. Moyses's equity compensation (options and the 60/40 Scheme) was equal to or exceeded his base salary and annual bonus.

15. The Employment Agreement also included the following non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"):

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

the 12 months prior to your ceasing to be an employee of [Catalyst].

Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such-partnership of or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about [Catalyst] and employees of [Catalyst] and the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to [Catalyst] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular' businesses, such opportunities that you become aware of by reason of your employment with [Catalyst].

16. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect. In addition, Moyse acknowledged that if he breached the terms of the Restrictive Covenants, it would cause Catalyst irreparable harm and that Catalyst

would be entitled to injunctive relief to prevent him from continuing to breach the Restrictive Covenants.

17. Under the Employment Agreement, Moyses was required to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

18. Moyses executed the Employment Agreement on October 3, 2012. In so doing, he acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyes Breaches the Employment Agreement

19. On May 26, 2014, Moyses informed Catalyst of his intention to resign from Catalyst and to begin working for West Face.

20. Through its counsel, Catalyst communicated its intention to enforce the Restrictive Covenants. Through their counsel, the Defendants responded by communicating their intention to breach the Restrictive Covenants, in particular the non-competition covenant.

21. Moreover, on or about June 18, 2014, Moyses's counsel communicated Moyses's intention to commence employment at West Face on June 23, 2014, prior to the expiry of the thirty-day notice period provided for in the Employment Agreement.

22. Catalyst continued to pay Moyses his salary until June 20, 2014, when it became clear to Catalyst that Moyses intended to breach the Employment Agreement.

The Misappropriation and Conversion of Catalyst's Confidential Information

23. As part of his deal screening/analysis responsibilities, Moyse performed valuations of companies using methodologies that are proprietary and unique to Catalyst in order to identify new investment opportunities for Catalyst.

24. Moyse received the Confidential Information in his capacity as an analyst at Catalyst, as acknowledged in the Employment Agreement.

25. In breach of his duty of confidence, Moyse forwarded the Confidential Information from his work email address – which is controlled by Catalyst – to his personal email address and to his personal Internet file storage accounts – which he alone controls – without Catalyst's knowledge or approval. The Confidential Information Moyse forwarded to his personal control includes information concerning projects Moyse was working on immediately prior to his resignation from Catalyst, including, but not limited to:

- (a) Catalyst Weekly Reports – this document contains a summary of all existing investments and contemplated investment opportunities;
- (b) Quarterly letters reporting on results of Catalyst's activities;
- (c) Internal research reports;
- (d) Internal presentations and supporting spreadsheets; and
- (e) Internal discussions regarding the operations of companies in which Catalyst has made investments.

26. There was no legitimate business reason for Moyse to deal with the Confidential Information in this manner.

27. Moyse has wrongfully and unlawfully taken Catalyst's Confidential Information to advance his own business interests, and the interests of West Face, to the detriment of Catalyst. The Confidential Information was imparted to Moyse in confidence during the course of his employment with Catalyst and the unauthorized use of such information by the Defendants constitutes a breach of confidence.

West Face Induced Moyse to Breach the Employment Agreement

28. West Face and Moyse engaged in prolonged discussions regarding Moyse's resignation from Catalyst and immediate employment at West Face thereafter. During the course of these discussions, the parties discussed Moyse's contractual obligations to Catalyst.

29. Prior to Moyse's resignation from Catalyst, West Face was aware of the terms of the Employment Agreement and Moyse's duties and obligations to Catalyst, including the Restrictive Covenants. Nevertheless, West Face unlawfully induced Moyse to breach the Employment Agreement with, and his obligations owed to, Catalyst, including, but not limited to the Restrictive Covenants.

30. Moyse and West Face knew that Catalyst intended to promote Moyse to the position of "associate" in 2014. But for West Face's inducement to Moyse to resign from Catalyst and commence employment at West Face before the end of the six-month non-competition period, Moyse would still be employed at, and would continue to honour his contractual obligations to, Catalyst.

Catalyst Will Suffer Irreparable Harm

31. Catalyst will suffer irreparable harm as a result of West Face's unlawful inducement of Moyse to breach the Employment Agreement. In particular, without limiting the generality of the foregoing, Catalyst risks losing its strategic advantage with respect to distress for control investments it has been planning for several months of which Moyse, in his role as analyst at Catalyst, is aware.

32. If Moyse is permitted to commence employment at West Face, a direct competitor to Catalyst, before the expiry of the six-month non-competition period, West Face will gain an unfair advantage in the small distressed investing for control industry by learning about investment opportunities Catalyst was studying and Catalyst's plans for taking advantage of those opportunities.

33. These opportunities and strategies are unique to Catalyst and are crucial to its success – if those plans are compromised, Catalyst will suffer a loss that cannot be measured in mere damages. The damage will include damage to Catalyst's reputation as a leading distress for control investor and to its ability to solicit additional investments in its funds.

34. Moreover, by using the Confidential Information for their personal benefit and to Catalyst's detriment, Moyse and West Face will cause Catalyst to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

West Face Misused Catalyst's Confidential Information Concerning the Wind Opportunity

34.1 One of the special situations that Catalyst was studying before Moyse terminated his employment with Catalyst concerned Wind Mobile ("Wind"), a Canadian wireless

telecommunications company. Moyse was a member of Catalyst's investment team studying the Wind opportunity and was privy to Catalyst's Confidential Information concerning its plans concerning Wind opportunity, which included a potential acquisition of Wind.

34.2 In June 2014, Catalyst brought a motion for interim and interlocutory relief seeking, among other things, the return of any and all Confidential Information from West Face and Moyse. In particular, Catalyst was concerned about the potential communication of its Confidential Information relating to the Wind opportunity.

34.3 Catalyst's motion for interim relief was heard on July 16, 2014 and settled on consent.

34.4 Catalyst's motion for interlocutory relief was scheduled to be heard on August 7, 2014 but was adjourned to October 10, 2014. As a result, the motion for interim relief has not yet been determined.

34.5 On or about September 16, 2014, West Face publicly announced that it was leading a consortium of investors to purchase Wind. This was the very outcome Catalyst was concerned about when it learned that Moyse, a participant on Catalyst's Wind team, was joining West Face.

34.6 West Face wrongfully used Catalyst's Confidential Information, which it solicited and obtained from Moyse, to obtain an unfair advantage over Catalyst in its negotiations with Wind. But for the transmission of Confidential Information concerning Wind from Moyse to West Face, West Face would not have successfully negotiated a purchase of Wind.

34.7 As a result of West Face's misuse of Catalyst's Confidential Information, Catalyst has suffered damages, particulars of which will be provided prior to trial.

~~**Through Moyses, West Face has Catalyst's Confidential Information Concerning Mobilicity**~~

~~34.8 On September 29, 2013, Data & Audio Visual Enterprises Holdings Inc. ("Holdings") and its wholly owned subsidiaries, Data & Audio Visual Enterprises Wireless Inc. ("Wireless") and 8440522 Canada Inc. (collectively with Wireless and Holdings, the "Applicants" or "Mobilicity") filed an application for an Initial Order under the Companies' Creditors Arrangement Act (Canada) ("CCAA") in order to restructure their business and affairs or complete a sale of their business and assets.~~

~~34.9 Catalyst owns over \$60 million in First Lien Notes issued by Wireless pursuant to a First Lien Indenture dated April 20, 2011 (the "First Lien Notes").~~

~~34.10 West Face owns approximately \$3 million in First Lien Notes.~~

~~34.11 For several months, both before and after Mobilicity applied for CCAA protection, Catalyst studied Mobilicity as a special situation. Moyses was a member of Catalyst's investment team in the Mobilicity situation. In that respect, Moyses was privy to Catalyst's confidential information concerning its analysis of the Mobilicity situation.~~

~~34.12 West Face has wrongfully used Catalyst's Confidential Information concerning the Mobilicity opportunity to obtain an unfair advantage over Catalyst with respect to that opportunity. If West Face is able to vote its interest in Mobilicity with the benefit of its wrongful possession of Catalyst's Confidential Information, Catalyst will suffer irreparable harm.~~

~~**Unjust Enrichment**~~

~~34.13 As a result of the foregoing, West Face has been enriched by its wrongful conduct. It has managed to acquire property, including, but not limited to, securities, secured debt and other~~

financial instruments, that it would not have been able to acquire but for its misuse of Catalyst's Confidential Information.

34.14 Catalyst suffered a deprivation that corresponds to West Face's enrichment. But for West Face's conduct, Catalyst would have acquired the property that West Face acquired through its misuse of Catalyst's Confidential Information.

34.15 There is no juristic reason for West Face's enrichment and it would be unjust for West Face to retain the property it acquired through its wrongful conduct. Catalyst is entitled to a constructive trust over all property acquired by West Face to remedy West Face's unjust enrichment resulting from its misuse of Catalyst's Confidential Information.

34.16 In addition or in the alternative, if a constructive trust is unavailable because West Face has sold the property it wrongfully acquired or for any other reason, Catalyst is entitled to an accounting of all profits earned by West Face as a result of its misuse of Catalyst's Confidential Information and payment of those profits to Catalyst.

Moyse Destroyed Evidence

34.17 On July 16, 2014, at the hearing of Catalyst's motion for interim relief, the parties consented to an interim order (the "Interim Order"), pursuant to which, *inter alia*:

- a) The defendants agreed to preserve their records, whether electronic or otherwise, that relate to Catalyst, and/or relate to their activities since March 27, 2014 and/or relate to or are relevant to any of the matters raised in the action, except as otherwise agreed to by Catalyst; and
- b) Moyse consented to the creation of a forensic image of his personal computer, iPad and smartphone, to be held in trust by his counsel pending the outcome of the motion for interlocutory relief (the "Images").

34.18 Pursuant to the Interim Order, the Images were created on July 21, 2014.

34.19 On November 10, 2014, Justice Lederer granted Catalyst's motion for an Order authorizing an Independent Supervising Solicitor ("ISS") to analyze the Images created pursuant to the Interim Order. The parties retained Stockwoods LLP to act as the ISS, which then retained a forensic IT expert to assist with the analysis and review of the electronic data.

34.20 In its report, the ISS revealed that on the morning of July 16, 2014, Moyse downloaded and installed military-grade deletion software (known colloquially as "scrubbing software" and referred to herein as the "Scrubber") on his personal computer. On July 20, 2014, the night before the Images were created, Moyse launched the Scrubber program.

34.21 Moyse admitted to downloading the Scrubber and admitted to having deleted his Internet browsing history. By deleting his web browsing history, Moyse deleted evidence relating to his activities since March 27, 2014. The web browsing history included, among other things, his use of personal web-based email services such as "Gmail", evidence of Moyse's use of web-based storage services at issue in this action, and evidence of Moyse's web-searching activity.

~~34.22. Moyses intentionally destroyed evidence relevant to the wrongdoing of himself and West Face with the knowledge that doing so would harm Catalyst's ability to prove its claims in this Action.~~

~~34.20. As a result of Moyses's actions, Catalyst has been deprived of evidence of the wrongdoing of the Defendants, which deprivation has caused Catalyst damage.~~

Punitive Damages

35. Catalyst claims that the Defendants' egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst's rights and interests so as to entitle ~~Execaire~~ Catalyst to a substantial award of punitive, aggravated and exemplary damages.

36. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiff for punitive damages as described in subparagraph 1(e) above.

37. Catalyst proposes that this action be tried at Toronto.

5208

-21-

June 25/14
~~June 25, 2014~~
~~October 9, 2014~~
~~February 25, 2016~~

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Lawyers for the Plaintiff

This is Exhibit "37" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 13, 2016.

Andrew Winton

Direct 416 644-5342 awinton@counsel-toronto.com
File No. 13094

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Lax
O'Sullivan
Lisus
Gottlieb

April 8, 2016

BY EMAIL

Matthew Milne-Smith

Davies Ward Phillips & Vineberg LLP
Suite 400, 155 Wellington Street West
Toronto ON
M5V 3J7

Dear Sir:

**Re: The Catalyst Capital Group Inc. v Brandon Moyse et al.
Court File No. CV-14-507120**

We write in regard to the Affidavit of Documents served on January 9, 2016. Our review indicates that West Face may not have produced all of the relevant non-privileged documents within its possession, control or power. Further production is required.

We have identified several categories of documents omitted from West Face's production and listed them below. This is not an exhaustive list. We would expect that production of these categories will provide further insight into West Face's conduct and may require additional production.

We request the following:

- All correspondence (which includes emails, text messages, group chats (*ie.* Blackberry Messenger), instant messages, faxes, letters, etc.) internally at West Face regarding the hiring of Brandon Moyse.
- All correspondence (which includes emails, text messages, group chats (*ie.* Blackberry Messenger), instant messages, faxes, letters, etc.) internally at Wind Face regarding WIND Mobile, Globalive, Anthony Lacavera, and/or Vimpelcom prior to April 2014.
- All correspondence (which includes emails, text messages, group chats (*ie.* Blackberry Messenger), instant messages, faxes, letters, etc.) with external parties concerning WIND Mobile, Globalive, Anthony Lacavera, and/or Vimpelcom prior to April 2014.

- All documents (including correspondence, files, records, notes, memorandum, presentations, etc) provided to West Face by Anthony Lacavera, including copies of the documents exchanged through the Dropbox account that West Face gained access to on April 16, 2014 (see, for example WFC0066120)
- All documents (including all financial models, investment memorandum, presentations, etc.) relating to West Face's analysis of WIND Mobile, Globalive, and/or Vimpelcom.
- All documents (including models, memorandum, briefing notes, presentations) relating to West Face's analysis of wireless spectrum, spectrum mapping or wireless spectrum auctions.
- All documents prepared for discussions with the Government of Canada, including Industry Canada, including presentations, memorandum, briefing notes, etc. regarding WIND Mobile, Globalive, and/or Vimpelcom.
- All documents relating to West Face's due diligence regarding WIND Mobile, Globalive, and/or Vimpelcom.
- All phone records for the period of March 2014 to November 2014 for West Face employees involved in the WIND Mobile transaction including, without limitation, Mr. Boland and Mr. Griffin

It appears that there are a few administrative issues with West Face's production. In particular, some attachments to emails were not included with the production (see for example, WFC0042962). We ask that West Face produce all attachments.

It also appears that the redactions applied by West Face are overly broad making it difficult to understand the reason for the redaction. For example, West Face has redacted large portions of emails including the date and the "to" and "from" lines (see WFC0059335, WFC0066080, WFC0065618). We ask that the redactions be clawed back so that we can understand the basis for them.

We can also advise that given the nature of the documents in Catalyst's productions, we intend to seek a sealing order for the purpose of discoveries and trial.

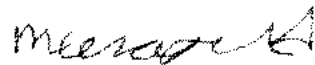
Yours truly,



Andrew Winton

c.c Andrew Carlson (Davies)
Robert A. Centa/Kris Borg-Olivier (Paliare Roland)

This is Exhibit "38" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

PLAINTIFF'S CASE CONFERENCE MEMORANDUM

1. The parties requested a case conference to address documentary discovery issues in regards to the upcoming trial. The purpose of this case conference memo is to inform the Court of Catalyst's concerns regarding deficiencies in the defendants' productions.

Additional Productions Required from West Face

2. West Face disclosed two categories of documents in its affidavit of documents: (i) emails to, from and copied to Moyse during the approximately three-week period that he was actively employed at West Face; and (ii) emails between West Face and VimpelCom concerning the Wind Transaction. Only 322 emails and attachments were disclosed by West Face in this second category of documents.

3. Catalyst seeks three categories of additional documents from West Face:

- (a) **Correspondence prior to March 16, 2014¹**: The first correspondence concerning Wind that appears in West Face's production is from April 2014, after Moyse had

¹ West Face has agreed to produce additional correspondence between March 16 and April 16, 2014 but takes the position that advises that correspondence prior to Moyse's first contact with West Face (March 16, 2014) is irrelevant.

been in contact with West Face. Additional production is required to understand the timing and nature of West Face's interest in Wind before its partners met with Moyse on March 26, 2014.

- (b) **Correspondence/Documents between the Consortium/Lacavera:** Catalyst has produced a large number of documents evidencing communication between members of the deal team and the information that the team was using to make decisions. West Face has produced very few communications between members of the consortium formed for the Wind Transaction. Additionally, it has held back documents referred to in relevant emails, including a web-based file sharing program used by Lacavera to communicate data to West Face within the relevant time period. These documents are important to the action.
- (c) **Wind Analysis Documents:** Catalyst has produced hundreds of documents relevant to its financial models, investment memorandum, due diligence, spectrum map and related presentations concerning the Wind opportunity. West Face has not. These documents are fundamental to the action – Catalyst is entitled to investigate how West Face analyzed the Wind opportunity before and after it engaged in communications with Moyse.

Relevance Extends Beyond Negotiations between West Face and Vimpelcom

4. To date, West Face has only produced its correspondence to or from Vimpelcom. It has not produced the full extent of its internal communications nor has it produced communications involving its counsel or a detailed Schedule B. By contrast, Catalyst has produced hundreds of documents that fall within these categories including communications with its transaction counsel.

5. The documents sought by Catalyst from West Face are relevant to the issue of whether Moyses communicated confidential information to West Face in relation to the Wind Transaction and whether West Face used this information as part of its pursuit of the same deal.

Moyse Waived Waived Solicitor-Client Privilege With Respect to Some Correspondence

6. Moyses's sworn evidence to date is that he did not fully understand the scope of the preservation order that required him to preserve the contents of his personal computer and/or the nature of the forensic examination that would potentially be conducted by an Independent Supervising Solicitor. Moyses's sworn evidence is also that he discussed these issues with his counsel after he was ordered to produce his computer for imaging on July 16, 2014, but before he launched the Scrubber software on July 20, 2014. Catalyst's position is that Moyses has put his state of mind at issue in relation to a key issue in this litigation (spoliation) and waived privilege over his communications with counsel on this particular issue.

Sealing Order

7. The documents that Catalyst has produced contain confidential and highly sensitive information not only related to the Wind Transaction, but also to Catalyst's process and approach to an investment opportunity which is in the nature of proprietary trade secrets. The very nature of this action favours strong protection of Catalyst's confidential and highly sensitive information. Accordingly, Catalyst intends to seek a sealing order over the documents containing its confidential information that have been produced in this action.

April 12, 2016

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THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120
648/15

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

CASE CONFERENCE MEMORANDUM

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This is Exhibit "39" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Choudhury, Notary Public,
Province of Ontario, My Notary Public Commission Expires April 13, 2016.

Court File No.: CV-16-11272-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**WEST FACE'S RESPONDING CASE CONFERENCE MEMORANDUM
(Case Conference on April 13, 2016)**

1. West Face is delivering this memorandum in response to Catalyst's case conference memorandum received late Tuesday afternoon.

West Face's Document Productions to Date

2. To date, West Face has made considerable efforts and has incurred significant expense to search for, collect, identify, and produce all relevant, non-privileged documents within its possession. West Face assessed relevance based on the testimony of James Riley, Catalyst's Chief Operating Officer and the **only** affiant Catalyst has ever put forward in this action. Mr. Riley swore five affidavits in this action, and one affidavit in the related Mid-Bowline plan of arrangement application. Mr. Riley testified that the **only** confidential information regarding WIND that Catalyst alleged Mr. Moyse had conveyed to West Face was the "need or the desire to have [the] government on side before entering a transaction", and the government's "consideration of future transfers of spectrum". Mr. Riley agreed that this "completely covered the landscape" of what Catalyst confidential information regarding WIND was at issue in this action.¹

¹ See Transcript of Cross-Examination of James Riley held May 13, 2015, qq. 378-388.

3. Based on Mr. Riley's explanation of Catalyst's theory, West Face first searched for any evidence that Mr. Moyse had communicated any Catalyst confidential information to West Face. For this reason, West Face's counsel collected, reviewed, and produced all of the relevant, non-privileged emails to/from Brandon Moyse's West Face email account **and** all of the relevant, non-privileged emails to/from Mr. Moyse's personal email accounts found on West Face's servers. West Face estimates there were approximately 1,500 such documents. While West Face formally included these documents in its Affidavit of Documents dated January 9, 2016, it had previously produced them to Catalyst in March 2015 in the context of Catalyst's motion before Justice Glustein.

4. Second, given Mr. Riley's evidence that Catalyst was particularly focused on regulatory issues, and in the absence of any indication that Mr. Moyse had communicated any information about WIND, West Face made significant efforts to collect and produce all relevant documents relating to its acquisition of WIND in September 2014. Specifically, West Face's counsel ran search terms on the emails of West Face's five key custodians (its four Partners and a Vice President)² directed at retrieving two types of emails: (i) emails relating to West Face's internal regulatory strategy concerning its acquisition of WIND; and (ii) emails relating to its negotiations with VimpelCom and/or its co-investors more generally.

5. These search terms resulted in an initial set of 14,633 emails (not including attachments). After further de-duplication there were 10,597 emails. West Face's counsel reviewed each and every one of the emails within this set falling between January 1, 2014 and September 16, 2014 (the date the WIND transaction was announced), which West Face determined to be the most relevant date range. West Face identified approximately 322 of these 10,597 emails as being relevant to Catalyst's claim. West Face produced these documents in its Affidavit of Documents on January 9, 2016.

² These are the same five custodians Catalyst identified on its motion before Justice Glustein as being most important to its case.

6. In addition to the documents that West Face formally included in its Affidavit of Documents, West Face has also delivered a number of other documents in the form of exhibits to affidavits and in response to questions asked by Catalyst's cross-examinations on those affidavits. Catalyst will have a further opportunity to request additional productions during the upcoming examinations for discovery.

7. West Face's productions should also be considered in light of the fact that Catalyst has already sought, and lost, a motion for an interlocutory order authorizing an Independent Supervising Solicitor (an "ISS") to create forensic images of West Face's electronic devices. In dismissing that motion, Justice Glustein held:

- "There is no evidence that West Face has failed to comply with its production obligations..." (at para. 52);
- "West Face even offered to turn over its own confidential information created, accessed or modified by Moyse to the ISS, but Catalyst has not accepted this offer" (at para. 54);
- "Further, West Face has produced voluminous records relating to the allegations Catalyst has made...." (at para. 56).

8. After all of this, there is no evidence that Mr. Moyse transferred Catalyst's confidential information to West Face. Catalyst cannot even identify what information Mr. Moyse is supposed to have disclosed.

Catalyst's Request for Additional Productions by West Face

9. On Friday, April 8, 2016 – three months after receiving West Face's Schedule A productions and the last day for raising document production issues according to the parties' consent timetable as endorsed by Justice Newbould – Catalyst sent West Face a letter requesting production of a number of broad categories of documents.

10. West Face respectfully submits that many of these additional categories are either irrelevant and/or not proportionate in light of the thorough document production efforts West Face has already undertaken in the absence of any evidence that any

confidential information has been conveyed. However, West Face indicated to Catalyst its willingness to search for and produce documents responsive to some of these requests.

11. The following summarizes the additional categories of documents requested by Catalyst that are still in issue, and West Face's position with respect to those requests:

- **Request:** All correspondence regarding/concerning WIND, Globalive, Anthony Lacavera, and/or VimpelCom prior to April 2014. **Response:** West Face is willing to search for and produce emails from March 16, 2014 – the date that Mr. Moyses first contacted West Face seeking employment – to March 31, 2014.
- **Request:** All documents provided to West Face by Anthony Lacavera. **Response:** This is a fishing expedition. These documents are not relevant to Catalyst's claim that Mr. Moyses (not Mr. Lacavera) provided specific, confidential information concerning Catalyst's regulatory strategy to West Face. This request must also be considered in light of Catalyst's prior threat to pursue an action for inducing breach of contract.
- **Request:** All documents relating to West Face's analysis and/or due diligence of WIND. **Response:** These documents are not relevant and/or not proportionate to Catalyst's claim. West Face has thousands of documents relating to its analysis and/or due diligence of WIND, none of which Mr. Moyses created, accessed, or modified. West Face already offered to produce all documents created, accessed, or modified by Mr. Moyses, which Catalyst refused.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of April, 2016.

DAVIES WARD PHILLIPS & VINEBERG LLP
Lawyer for the Defendant, West Face Capital
Inc.

THE CATALYST CAPITAL GROUP INC.
Plaintiff

and

BRANDON MOYSE AND WEST FACE
CAPITAL INC.
Defendants

Court File No.: CV-16-11272-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

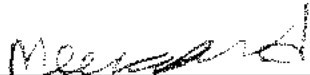
**WEST FACE'S RESPONDING CASE
CONFERENCE MEMORANDUM
(Case Conference on April 13, 2016)**

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Lawyers for the Defendant, West Face
Capital Inc.

This is Exhibit "40" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner for Taking Affidavits,
Province of Ontario, while in Good Standing,
Expires April 13, 2018.

**West Face Capital Inc. v.
Brandon Moyse and West
Face Capital Inc.**

Anthony Griffin
on Tuesday, May 10, 2016

neesons

141 Adelaide Street West, Floor 11
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 the Examination for Discovery of ANTHONY GRIFFIN, taken at the offices of Davies Ward Phillips & Vineberg LLP, 39th Floor, 155 Wellington St. West, Toronto, Ontario, on the 10th day of May, 2016.

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

Andrew Winton, Esq., for the Plaintiff

Brad Vermeersch, Esq.,

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

Brandon Moyse

Matthew Milne-Smith, Esq., for the Defendant,

& Andrew Carlson, Esq., West Face Capital Inc.

ALSO PRESENT: Philip Panet, In-House Counsel, West
Face Capital

REPORTED BY: Deana Santedicola, RPR, CRR, CSR

I N D E X

WITNESS: ANTHONY GRIFFIN	PAGES
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The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose

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INDEX OF EXHIBITS

NO. DESCRIPTION

PAGE/LINE NO.

(No Exhibits Marked)

1 -- Upon commencing at 10:10 a.m.

2

3 ANTHONY GRIFFIN: SWORN.

4 EXAMINATION BY MR. WINTON:

5 1 Q. Good morning, Mr. Griffin.

6 A. Good morning.

7 2 Q. You have been sworn. And just to
8 recap where we are at, you are here attending an
9 examination for discovery as the representative of
10 West Face Capital Inc.?

11 A. Yes.

12 3 Q. And prior to today's attendance,
13 you swore three affidavits in this proceeding;
14 correct?

15 A. Yes.

16 4 Q. And you were cross-examined last
17 year on May 8th, 2015?

18 A. Yes.

19 5 Q. It's almost exactly a year ago,
20 okay.

21 And since that cross-examination, the
22 third of your three affidavits was sworn on January
23 8th, 2016, and you have that open in front of you?

24 A. Yes.

25 6 Q. And in paragraph 1 of your January

1 8th affidavit you state you were the partner who
2 initially had primary responsibility for the Wind
3 transaction; correct?

4 A. Yes.

5 7 Q. And what do you mean by the word
6 "primary" in the phrase "primary responsibility"?

7 A. That is referring to the fact that
8 I had sourced the transaction and I had had the
9 initial discussions with the management group at
10 Wind.

11 8 Q. So your reference to the
12 management group, that is Mr. Lacavera and the
13 others --

14 A. Yes, and -- sorry, go ahead.

15 9 Q. And the others, so who else would
16 that include, Lacavera and?

17 A. Principally Lacavera at the start,
18 yes, and the Chief Financial Officer, Brice
19 Scheschuk.

20 MR. MILNE-SMITH: That's B-r-i-c-e
21 S-c-h-e-s-c-h-u-k, subject to being corrected by
22 the smart guys next to me here.

23 BY MR. WINTON:

24 10 Q. And while you may have sourced the
25 transaction, the other partners at Wind all had a

1 role to play in the transaction at various stages;
2 correct?

3 MR. MILNE-SMITH: Sorry, you said at --

4 THE DEPONENT: Sorry, at West Face

5 or --

6 BY MR. WINTON:

7 11 Q. Sorry, yes, various partners at
8 West Face; correct?

9 A. They did, as the transaction
10 progressed.

11 12 Q. Right. Including Peter Fraser?

12 A. Correct.

13 13 Q. And Mr. Dea, Tom Dea?

14 A. Correct.

15 14 Q. And to some extent, although it
16 seems from what we have reviewed a more limited
17 extent, Mr. Boland?

18 A. Yes, he was involved as well.

19 15 Q. Right. And then your Vice
20 President, Yu-jia Zhu, also had a lot of
21 responsibility; correct?

22 A. Yes.

23 16 Q. Just to round out who was working
24 on the deal at West Face, in addition to the
25 individuals we have just mentioned, there was also

1 Peter Brimm?

2 A. No, he was not working on it.

3 17 Q. No? Aland Wang?

4 A. No.

5 18 Q. Nandeep Bamrah?

6 A. No.

7 19 Q. Graeme McLellan?

8 A. No.

9 20 Q. So those four didn't work on the
10 deal?

11 A. They did not.

12 21 Q. At all?

13 A. No.

14 22 Q. Did you have any analysts at West
15 Face working on the deal?

16 A. Well, Yu-jia Zhu is effectively an
17 analyst in a Vice President's role.

18 23 Q. So he played the role of analyst
19 for the deal team?

20 A. That's correct.

21 24 Q. And in terms of the hierarchy at
22 the firm, below Mr. Zhu no one at West Face was
23 working on the deal?

24 A. No.

25 25 Q. As in that's correct?

1 A. Yes.

2 26 Q. If you could pull up West Face
3 production WFC0051454.

4 MR. MILNE-SMITH: I have 51454.

5 BY MR. WINTON:

6 27 Q. It is an email -- it is two
7 emails, but the first is from Mr. Dea, the top one
8 is from Mr. Dea to Mr. Fraser on May 1st, 2014,
9 5:43 p.m.?

10 MR. MILNE-SMITH: Yes, we have that.

11 BY MR. WINTON:

12 28 Q. Thank you. And just let's do the
13 chain in order. The first in time email is from
14 Mr. Fraser to Mr. Scheschuk, and I'll pronounce it
15 a different way each time I say it today so just
16 bear with me, and Mr. Fraser explains that:

17 "We", meaning West Face, "are
18 partitioning the work on Globalive.
19 I'll be looking after transaction
20 structure and tax loss preservation
21 along with our counsel Davies."

22 And then moving up to the next email
23 from Mr. Dea to Mr. Fraser, Mr. Dea wrote:

24 "Hey Peter, as I think about it
25 tax/structure/comp is all the same

1 thing, so we could just work on
2 these points together."

3 So with that now as context, do you
4 recall now the work was partitioned at West Face on
5 the deal?

6 A. Well, I think that as the file got
7 more advanced, each of the four partners became
8 involved in differing capacities. We talked with
9 Davies, our external counsel, about items such as
10 the diligence list, the key documents that we
11 needed to see in connection with the transaction,
12 and talked about the distribution of who would
13 review what in that process, you know, as between
14 Davies and West Face to start, and also with our
15 external consultant, a group called Altman
16 Vilandrie, which is an industry consultant.

17 And we developed a work plan as to sort
18 of the critical items that we needed to review and
19 diligence through the process, and basically most
20 of the partitioning was as between the external
21 consultant, legal counsel and what West Face would
22 take responsibility for directly.

23 29 Q. Okay, so the outside consultant,
24 you referred to them as an "industry consultant"?

25 A. Yes.

1 30 Q. Which industry did you mean when
2 you said "industry"?

3 A. They specialize in the telecom
4 industry more broadly.

5 31 Q. And just as an overview statement,
6 we are mindful of the need to protect privilege and
7 we are not trying to ask questions that would lead
8 you to inadvertently waive privilege, and your
9 counsel is going to be very vigilant about that,
10 and I want to make it clear I'm not looking to
11 unnecessarily -- or you know, let's just say trick
12 you into answering questions.

13 So if I ask questions about Davies, I'm
14 not looking for specific advice or, you know,
15 discussions you have had with Davies unless I say
16 so and we can have a discussion as to whether or
17 not those questions are proper.

18 So I just want to say that as an
19 overview now.

20 But if you can describe generally if
21 Altman was the industry specialist in terms of
22 their review of documents, what was Davies
23 specializing in?

24 MR. MILNE-SMITH: So I appreciate that
25 proviso, and so I think you are on safe ground, and

1 I think you'll tell me if you disagree, you are not
2 going to waive any privilege as long as you just
3 talk about sort of the subject areas or the
4 responsibilities of Davies and just stay away from
5 any specific advice, the content of any advice they
6 gave you.

7 THE DEPONENT: Sure.

8 So some of the things that would come
9 to mind would be initially putting together a
10 diligence list for the transaction which would
11 include not just issues fundamental to the business
12 but issues that they would raise in terms of a
13 legal review, things like environmental, things
14 like taxation.

15 So part of the initial exercise was
16 working through the data room materials that had
17 been made available to us in the transaction by the
18 vendor. Obviously, at later stages there would be
19 the actual transaction documents themselves, the
20 sale and purchase agreement probably being the most
21 important of those, shareholders agreement, comp
22 agreements for the continuing management group
23 post-transaction.

24 And then out of that diligence list,
25 they had a series of items that they wanted to

1 review, you know, including the tax records of the
2 company. This was a company that generated
3 substantial operating losses historically, so we
4 needed to validate the validity of those losses and
5 whether they would continue to be available to the
6 company post-transaction.

7 So those are some of the things that
8 would come to mind.

9 BY MR. WINTON:

10 32 Q. Okay. And then what were the
11 tasks that West Face was taking on directly?

12 A. So we were reviewing all of the
13 diligence room materials that were made available
14 to us, a substantive portion of which was forming a
15 view on really a few things, one, the valuation of
16 the business, which was really an exercise in
17 financial modelling which we took on most directly,
18 trying to come to a future forecast of what the
19 performance of the business would be under our
20 ownership, what the returns on the investment would
21 be under various scenarios, the financing mix that
22 would be put against the company as between debt
23 and equity.

24 And working with our industry
25 consultant, a key part of this was forming a view

1 on what the capital requirements of the business
2 would be going forward and, closely related to
3 that, what the additional wireless spectrum
4 requirements would be for the company to support
5 its growth in the future. And from that, there is
6 a forecast of not only the spectrum requirements
7 but what physical network infrastructure needed to
8 be built out to accommodate the growth of the
9 company.

10 And so our job was to roll all of that
11 data effectively into a financial model that would
12 provide a guesstimate as to what the future
13 performance and funds flow of this business would
14 be if we were to proceed with acquiring it.

15 33 Q. Within West Face, how were those
16 tasks divided up? So for instance, if you look at
17 this May 1st exchange of emails, the impression one
18 gets from Mr. Fraser's email is that West Face had
19 an internal division of different subject areas or
20 tasks?

21 A. I don't recall if it was ever
22 formalized to the degree reflected in that email.
23 We at the partner level worked in a fairly
24 collaborative fashion, so while someone may take a
25 primary role in terms of tracking down documents or

1 liaising with our external consultants on a
2 particular issue, we were all working as part of
3 one group.

4 So I can't recall that there was a
5 discrete division of labour analogous to what is
6 referenced in this email.

7 34 Q. With no discrete division of
8 labour then, it may be that whomever was available
9 or had time or who took the initiative on a certain
10 task would take that task or matter on, is that
11 fair, between the three of you?

12 A. Yeah, I think it morphed over
13 time. You know, some of these issues faded to the
14 background.

15 Part of the diligence process, if I
16 could give you an example, would be let's say that
17 we had some doubts as to the tax losses and their
18 applicability going forward, one of us may have
19 spent time with Davies tracking down that specific
20 issue. If we had reached a conclusion on that,
21 that would have been the end of it and we would
22 have moved on to another issue.

23 But it is very difficult to sort of
24 provide a blow-by-blow recount of how the tasks
25 were allocated at the time, given how much time has

1 passed.

2 35 Q. Right, but in terms of allocation,
3 it appears from this email, at least, that the idea
4 around May 1st was if tasks were to be allocated,
5 they would be allocated amongst yourself, Mr. Dea
6 and Mr. Fraser?

7 A. And Mr. Boland and Yu-jia Zhu.

8 36 Q. Okay. Well, Mr. Boland is not
9 copied on this email exchange.

10 A. That's correct.

11 37 Q. That is why I left him off.

12 A. Yes.

13 38 Q. So --

14 A. It is one email out of probably,
15 you know -- well, in this particular case he is not
16 copied on the email. It may have been he was out
17 of the office that day. I have no idea.

18 39 Q. So amongst the five of you who
19 were working the deal?

20 A. Sorry, what is the question?

21 40 Q. So just to go back then, just to
22 make sure I'm accurate in my recap, it would be
23 amongst any one of the five of you, Mr. Dea,
24 Mr. Fraser, yourself, Mr. Boland and Mr. Zhu?

25 MR. MILNE-SMITH: You mean the work was

1 allocated among those five?

2 BY MR. WINTON:

3 41 Q. Yes.

4 A. Correct.

5 42 Q. And to the extent someone would
6 report back to the team, fair to say most often by
7 way of email?

8 A. It could be verbally as well.

9 43 Q. Okay.

10 A. So we -- you know, everything in
11 connection with this deal outside the data room, we
12 will run a file folder, like most firms will for a
13 specific deal, and that will act as a central
14 repository on our common drive for any file that we
15 worked on, and everyone will populate it with
16 sub-folders as to different topics and you could
17 trace where the work product came from.

18 44 Q. How would you trace where the work
19 product came from?

20 A. You can see who has ownership of
21 the file, who created a file, if it came externally
22 or internally.

23 45 Q. Is this using special software to
24 track these data points?

25 A. No, this is just common property

1 listings in terms of Microsoft Office, Excel.

2 46 Q. I don't think that folder or the
3 folder hierarchy was produced to us?

4 MR. MILNE-SMITH: I mean, we have
5 searched through that hierarchy for relevant data
6 and produced the results of that.

7 BY MR. WINTON:

8 47 Q. Right, okay. But can we get a
9 screen shot of the folder showing the folder
10 hierarchy?

11 U/A MR. MILNE-SMITH: I'll take that under
12 advisement.

13 BY MR. WINTON:

14 48 Q. Okay. And I just want to clarify
15 something. In terms of any documents that were
16 produced to us, were they produced with meta data
17 available to us, or was the meta data scrubbed?

18 MR. MILNE-SMITH: Do you know?

19 MR. CARLSON: I don't know if it was
20 produced with the meta data available. It wasn't
21 scrubbed, but maybe in the imaging process it was
22 lost or I don't know. It would have been the
23 documents that we produced in the most recent
24 tranche following Justice Newbould's case
25 conference.

1 MR. WINTON: Right.

2 MR. CARLSON: So if they were
3 stand-alone documents that weren't attached to
4 emails, they came from this folder that Tony
5 referenced.

6 MR. WINTON: Okay.

7 MR. MILNE-SMITH: So the answer is we
8 don't know and didn't take any steps to
9 particularly preserve or delete meta data.

10 MR. CARLSON: And actually, sorry, I
11 can say this. I believe we produced Excel
12 documents in native format, so those would have all
13 the meta data intact.

14 MR. WINTON: Okay, well, I think that
15 with respect to Word documents, we'll have to
16 discuss what to do about meta data. If it has been
17 removed and if it is actually available from the
18 original source, then we may be requesting
19 disclosure of the meta data.

20 MR. MILNE-SMITH: If there is any
21 particular documents you want to know the meta data
22 about, we are happy to do it. What I can tell you
23 for sure is because of other searches we did
24 earlier in the case, none of them involved Brandon
25 Moyse as an author or editor.

1 MR. WINTON: All right.

2 MR. MILNE-SMITH: So I'm confident in
3 that.

4 BY MR. WINTON:

5 49 Q. And fair to say, Mr. Griffin, that
6 you weren't always kept apprised of everything your
7 partners were working on --

8 A. In connection with this file?

9 50 Q. -- in connection with this file?

10 A. No, I think we were in constant
11 communication.

12 51 Q. So to the extent that any one
13 partner was undertaking a task or speaking to
14 someone about the deal, all five of you would know?

15 A. Well, the four of us sit on an
16 Investment Committee. We sit in a common room with
17 one another basically on a trading floor. There is
18 constant communication back and forth in, you know,
19 our closed door investment meetings about what we
20 are up to, not just on this file but on all files,
21 our deal pipeline and the like, developments on
22 investments.

23 And so I would say that is not the case
24 that we were at any point uninformed or I myself
25 was uninformed.

1 52 Q. How often would you meet as an
2 Investment Committee?

3 A. Typically, if for no other reason
4 than scheduled get-togethers, it would be weekly,
5 but often times it would be on an ad hoc basis in
6 response to a transaction or developments, but at
7 least weekly.

8 53 Q. At least weekly but possibly more
9 on an ad hoc basis if something came up that
10 required the four of you to meet and talk?

11 A. That's correct.

12 54 Q. And in these meetings you would
13 share information with one another about what you
14 were doing on let's just focus on the Wind deal,
15 for example?

16 A. Yes, that would be typical.

17 55 Q. Do you take notes or does anyone
18 at the meeting take notes when these Investment
19 Committee meetings take place?

20 A. Not typically, no.

21 56 Q. No?

22 A. No.

23 57 Q. Do you keep a diary of Investment
24 Committee meetings? Like do you have a general
25 running diary?

1 A. No, I don't think we do.

2 58 Q. And none of the partners keep a
3 diary, like a notebook for their meetings?

4 A. Oh, we write notes, you know, on a
5 constant basis on all files.

6 59 Q. Okay, and what happens to those
7 notes?

8 A. It depends. You know, some of
9 them we will put into a file folder for a deal, so
10 if there is something important in terms of an
11 update memo or a development that we want a record
12 of, we will typically post it to the folder for
13 that specific deal.

14 There is stuff that we don't write down
15 that is just, you know, common knowledge, just kept
16 in our heads, and you know, then I'm sure we have
17 all got notebooks and the like that we maintain.

18 60 Q. Would you take handwritten notes
19 with respect to the Wind transaction?

20 A. Of course.

21 61 Q. And did you show those to counsel
22 as part of the search for and production of
23 relevant documents?

24 A. I don't recall, actually.

25 62 Q. Counsel, did you review

1 handwritten notebooks from any of the partners?

2 MR. MILNE-SMITH: I know we saw -- not
3 handwritten, but I know we have seen from the -- he
4 referred to some of them will get posted when they
5 are of significance into the folder, and I know we
6 have seen some of those; correct?

7 MR. CARLSON: I have looked through the
8 folder, and I can't actually recall handwritten
9 notes.

10 MR. MILNE-SMITH: No, no, I'm saying
11 typed up.

12 MR. CARLSON: Oh, yes, that's right,
13 yeah.

14 MR. MILNE-SMITH: I don't think we have
15 seen anything handwritten, other than Brandon's
16 notebook.

17 BY MR. WINTON:

18 63 Q. Okay, well, I'm going to ask that
19 you review any handwritten notes that any member of
20 the deal team, so any of the five members of the
21 deal team, created with respect to the Wind
22 transaction to determine whether any of those notes
23 are relevant to the categories of documents or
24 relate to the categories of documents that have
25 already been produced in this action?

1 U/A MR. MILNE-SMITH: Okay, I will review
2 the documents. We will look to see if any
3 handwritten notes exist, and I will take under
4 advisement production upon determining their
5 relevance, any privilege issues and so forth.

6 BY MR. WINTON:

7 64 Q. If there are documents that you
8 review and you determine that, having reviewed
9 documents, you think in your opinion none of them
10 are relevant, then I just want to know that fact as
11 well so that we can at least understand that these
12 documents exist and then we can decide what more to
13 do about that?

14 U/T MR. MILNE-SMITH: Should I reach that
15 determination, I will so advise you.

16 BY MR. WINTON:

17 65 Q. Thank you.

18 So on this issue, turn up West Face
19 document WFC0108177, please.

20 MR. MILNE-SMITH: So these are notes
21 dated November 4th, '13, Wind Mobile Canada?

22 MR. WINTON: Correct.

23 MR. MILNE-SMITH: Okay, yes.

24 BY MR. WINTON:

25 66 Q. And this is an example I think of

1 the potential absence of meta data, because it is
2 unclear and it is definitely not disclosed in the
3 Schedule "A" from West Face who is the author of
4 these notes, is it? Do we know that?

5 MR. MILNE-SMITH: Yeah, we don't have
6 anything in the "author" field.

7 MR. WINTON: Okay.

8 MR. MILNE-SMITH: Oh, sorry, but I do
9 have "Yu-jia notes" in another field, so --

10 MR. WINTON: What field is that?

11 MR. MILNE-SMITH: It is probably an
12 internal field that we --

13 MR. CARLSON: Oh, those are my --

14 MR. MILNE-SMITH: Yeah, these are
15 Andrew's notes.

16 MR. WINTON: Okay, so --

17 MR. MILNE-SMITH: So these are
18 Yu-jia's.

19 MR. WINTON: Can we just go off the
20 record for one second.

21 (DISCUSSION OFF THE RECORD.)

22 BY MR. WINTON:

23 67 Q. So I don't think Mr. Griffin is
24 going to be able to answer this question. I'm
25 happy to have Mr. Carlson or you, Mr. Milne-Smith,

1 answer this question for us.

2 How was it determined that these notes
3 from doc ID 108177 were authored by Mr. Zhu?

4 MR. MILNE-SMITH: Andrew, do you know?

5 MR. CARLSON: We spoke to Yu-jia about
6 this.

7 MR. MILNE-SMITH: We asked Yu-jia.

8 MR. WINTON: So it wasn't anything in
9 the document properties that was able to identify
10 that for you?

11 MR. CARLSON: There may be something in
12 the document properties, but it might also have
13 been -- we might also have known from where it was
14 saved and also just from conversations with Yu-jia.

15 BY MR. WINTON:

16 68 Q. Okay. I think I just want to put
17 it out there then that in follow-up to the previous
18 undertaking request, which I believe you took under
19 advisement, about production of the screen shot of
20 the file folder for this deal --

21 MR. MILNE-SMITH: Yes.

22 BY MR. WINTON:

23 69 Q. -- that we may ask as a follow-up
24 that specific folders be drilled down and we see
25 the screen shots of anything else. And so we'll

1 have to have a discussion about how far that goes,
2 but if there is a folder and, depending on the
3 title of that folder, we may ask for the internal
4 screen shot of that folder as well and carry it
5 from there.

6 And just to be sure that no one takes
7 the position we didn't ask for it, I'm asking for
8 it now.

9 U/A MR. MILNE-SMITH: Understood. Also
10 under advisement.

11 BY MR. WINTON:

12 70 Q. Right, okay.

13 Now, these notes dated November 4th,
14 2013, Mr. Griffin, do you recall if you were
15 involved in whatever discussion led to Mr. Zhu
16 creating these notes?

17 A. Yes, I would have been.

18 71 Q. And what happened here? Can you
19 explain the background or context for these notes?

20 A. Can you give me a minute to read
21 it?

22 72 Q. Sure.

23 A. (Witness reviews document.)

24 This would have reflected some of our
25 initial discussions or meetings with the management

1 group and probably a first attempt at summarizing
2 the background to the VimpelCom ownership position
3 in Wind and their interest in potentially exiting
4 at some point in the future from that ownership
5 position, including some high level references to
6 government policy on a fourth national wireless
7 carrier in Canada and at that time open issues with
8 respect to expected future CRTC rulings insofar as
9 wholesale roaming and tower sharing were concerned
10 as between new entrants and incumbents.

11 MR. MILNE-SMITH: I'm just showing him
12 the second page now.

13 BY MR. WINTON:

14 73 Q. Right.

15 A. (Witness reviews document.)

16 And a summary of basically the Canadian
17 spectrum landscape as it existed at that date as
18 between the incumbents, the new entrants and
19 references to future auctions of both AWS1, 700
20 megahertz and AWS3 spectrum in Canada.

21 74 Q. Towards the bottom of the second
22 page, so the bottom five points with content in
23 them begins with:

24 "Need to show VimpelCom who the
25 parties are."

1 Do you see that, sir?

2 A. Yes.

3 75 Q. What do you recall of the
4 discussion that is summarized in these notes?

5 A. I think what is being referred to
6 here is VimpelCom had a series of false starts in
7 exiting the business. They wanted to know that
8 parties they were dealing with had the financial
9 wherewithal, if they showed up to consummate a
10 transaction that they were serious, and obviously
11 the importance of getting an agreement on roaming
12 in Canada for the business.

13 76 Q. Okay, if I could unpack that for a
14 second, so the second bullet point that I am
15 referring to, which is really the third from the
16 bottom in content reads:

17 "We would like to know who you
18 are first."

19 Whose voice is that point being made
20 in? Is that VimpelCom or is that Globalive or
21 someone else?

22 A. I think it is referring to us
23 providing information about the West Face group and
24 investment funds that would allow VimpelCom to form
25 a view as to who we were and that we had

1 credibility.

2 MR. WINTON: Let's just go off for a
3 second.

4 (DISCUSSION OFF THE RECORD.)

5 BY MR. WINTON:

6 77 Q. So were these notes the result of
7 an in-person meeting with someone in particular?

8 A. We would have had an initial
9 meeting with Tony Lacavera. I believe he was the
10 only one from the management group that attended at
11 the time, and that was back in November of 2013.

12 78 Q. Anyone on behalf of VimpelCom?

13 A. No, not at that time.

14 79 Q. So whatever you are hearing about
15 VimpelCom is coming to you through Mr. Lacavera?

16 A. That is correct.

17 80 Q. And so just to get back to that
18 point third from the bottom:

19 "We would like to know who you
20 are first."

21 Mr. Lacavera is telling West Face that
22 that's what VimpelCom is going to need to see, is
23 something about who West Face is before you start
24 talking real terms of a transaction or a potential
25 transaction; is that fair?

1 A. I believe that is what is being
2 referred to, not having written the note myself,
3 trying to interpolate the reference, but if you
4 read the prior point where it says:

5 "They are gun shy", being
6 VimpelCom. "They have had false
7 starts with Birch Hill", who is
8 another private equity group
9 referenced here.

10 And then they go on to say that:

11 "Birch Hill didn't come up with
12 the money."

13 I suppose referring to a discussion or
14 a semblance of a deal that pre-existed our
15 involvement.

16 I think the point is basically
17 VimpelCom didn't want to embark on another process
18 with a new set of potential buyers and end up with
19 the same result, which was a conclusion of a
20 process without a transaction.

21 81 Q. Had you been aware of the Birch
22 Hill discussions with VimpelCom prior to this
23 meeting?

24 A. No.

25 82 Q. So what you learned about it or

1 whatever you knew about it came from Mr. Lacavera?

2 A. I don't know if it is the only
3 source. I can't recall if it was mentioned in the
4 press at the time.

5 83 Q. Okay.

6 A. Quite possibly. There was a lot
7 of speculation in the press as to whether VimpelCom
8 was going to remain as an investor in Wind Canada.
9 I believe, if I recall correctly, there were
10 references to certain strategics potentially
11 emerging from the United States that may take an
12 interest in the business, some of the Canadian
13 incumbent firms, such as Rogers, Bell or Telus,
14 having an interest in the franchise, and then
15 private equity generally.

16 84 Q. But you understood at the time
17 that the Federal Government's appetite to let
18 either an American large telco or one of the
19 incumbents take over Wind, the Federal Government
20 wasn't keen on that, right?

21 A. Certainly as it pertained to the
22 three large incumbent firms in Canada, Bell, Telus
23 and Rogers, they wanted to stimulate a fourth
24 competitor in the market.

25 And I can't recall the date of this,

1 the occurrence of this event specifically, but
2 whether it was before or after this meeting, there
3 were changes made to the foreign ownership laws in
4 Canada as it pertained to the acquisition of small
5 market participants by -- who were deemed sort of
6 non-incumbent Canadian firms and/or foreign
7 entrants that would have allowed a foreign entrant
8 to come in and acquire a business like Wind that
9 represented I believe under 10 percent market share
10 in the telecom market in Canada.

11 And that was seen as a move to
12 basically not only curtail the incumbents taking
13 over a business like Wind but to try to stimulate
14 or acknowledge that a transfer may be approved to
15 one of the other Canadian firms that didn't have a
16 vested interest in the wireless industry or a
17 foreign entrant who might provide very
18 well-capitalized competition to Bell, Telus and
19 Rogers domestically.

20 I just can't recall whether that change
21 in legislation had occurred before or after this
22 meeting.

23 MR. MILNE-SMITH: Yeah, and, Counsel, I
24 believe both in Mr. Griffin's March 7th affidavit
25 at paragraph 28 this is referenced, and I think

1 there is some more detail on it in Mr. Lockie's
2 affidavit about that whole regulatory history and
3 the 10 percent ownership threshold.

4 BY MR. WINTON:

5 85 Q. The fact that the Birch Hill
6 effort, such as it was, didn't work out because
7 Birch Hill didn't come up with the money, that
8 wasn't public knowledge; would you agree?

9 A. I don't know.

10 86 Q. You found that out, though, from
11 Mr. Lacavera that Birch Hill didn't come up with
12 the money?

13 A. No, as I said, I don't know,
14 because I can't recall what discussion there was
15 publicly at the time about who was involved or what
16 deal may have been concocted. And I didn't write
17 this note, so I --

18 87 Q. Who else from West Face attended
19 this meeting with Mr. Lacavera besides yourself and
20 Mr. Zhu?

21 A. I don't recall if there were more
22 people in it than the two of us at the time. I
23 would have to check if we have a record of anything
24 in the calendar.

25 88 Q. Well, I'll let counsel decide

1 then. I would like to ask that you do check or
2 someone check the records to see if you can answer
3 that question, and if the records don't disclose,
4 if you can ask Mr. Zhu?

5 U/T MR. MILNE-SMITH: I'll make that
6 inquiry, and I'll correct this if I'm wrong, but
7 you can take it as my best recollection that this
8 was actually a phone call on November 4th.

9 BY MR. WINTON:

10 89 Q. Well, then we can clarify that if
11 that is necessary.

12 If you could ask Mr. Zhu if he recalls
13 if this fact about whether Birch Hill didn't work
14 out because it didn't come up with the money was
15 public knowledge or inside knowledge that was
16 learned from Mr. Lacavera and if you could offer if
17 he can shed any light on that question?

18 MR. MILNE-SMITH: Okay, I will ask him
19 that, but again, I can tell you from my own
20 knowledge that there was press speculation about
21 Birch Hill's involvement. I have read newspaper
22 articles from 2013 talking about it. And you know,
23 I don't know whether we knew that or whether the
24 public knew that it was for lack of financing, but
25 obviously there was discussion of a deal and then a

1 deal didn't happen.

2 MR. WINTON: Right, but if there is
3 this point of because it was they didn't come up
4 with the money, that is what we are interested in
5 finding out, if that was something that Mr. Zhu had
6 understood originally or if that was something he
7 learned from Mr. Lacavera?

8 U/T MR. MILNE-SMITH: We'll ask him.

9 BY MR. WINTON:

10 90 Q. Okay. If you could turn to
11 document WFC0108179.

12 MR. MILNE-SMITH: Yes, Globalive
13 questions?

14 BY MR. WINTON:

15 91 Q. Yes, so now we don't have a date,
16 as I understand it, or an author for this document?

17 MR. MILNE-SMITH: We have a date of
18 December 19th, 2013, and again, this is coded
19 "Yu-jia notes".

20 BY MR. WINTON:

21 92 Q. Okay, this is effectively a single
22 page. There is a number 9 on the second page with
23 nothing populated, and so we'll call it a one-page
24 set of questions for Mr. Zhu. Do you recall the
25 context of the generation of this document, Mr.

1 Griffin?

2 A. I don't specifically.

3 93 Q. Did you review it as part of your
4 preparation for today?

5 A. Yes.

6 94 Q. And did you ask Mr. Zhu any
7 questions about this document as part of your
8 preparation for today?

9 A. I did not.

10 95 Q. What did you understand Mr. Zhu
11 was doing in creating this document with these
12 eight categories of questions?

13 A. I don't know who the intended
14 audience was. It could be anything from a question
15 list for future management meetings. It could be a
16 summary of diligence discussions that we wanted to
17 have with our external industry consultant. I
18 don't know who the intended audience was.

19 96 Q. You had previously referenced
20 investor committee meetings, and as I understand
21 it, and you can correct me if I'm wrong, those
22 would be meetings of the four partners, you,
23 Mr. Fraser, Mr. Dea and Mr. Boland; correct?

24 A. Yes.

25 97 Q. Mr. Zhu was not on the Investment

1 Committee?

2 A. He was not.

3 98 Q. But if you were having what you
4 just referred to as management meetings, that would
5 be a meeting that would include Mr. Zhu; is that
6 fair?

7 A. I would characterize them as a
8 meeting of the deal team or discussions of the deal
9 team.

10 99 Q. Okay. What kind of formal
11 structure or event happens when you create a deal
12 team? Does anything official happen within West
13 Face? Is there a sort of a deal opening document
14 or any kind of process like that?

15 A. I don't know if it is that
16 formalized. I think there is a -- you know, we at
17 the partner level discuss how we are going to
18 allocate not only our time but the resources of the
19 analysts that we employ. There would be an
20 acknowledgment amongst the partners communicated to
21 the analysts in question as to how they were going
22 to be spending their time and on what files.

23 So in this case, there would have been
24 communication with Yu-jia probably verbally saying,
25 look, you are the analyst that we have appointed to

1 work on this and you will be reporting to us.
2 We'll discuss the scope of what is involved,
3 meetings, events, diligence items that we need to
4 track down. We are not set up with very I would
5 say, you know, highly formal lines within our
6 organization, given its size. It doesn't function
7 like a bank.

8 100 Q. Right. Then, Counsel, I'm going
9 to ask if you could ask Mr. Zhu what was the
10 context or what led to the creation of these, of
11 this document and these questions and what was
12 their intended use?

13 MR. MILNE-SMITH: So this document was
14 created the day after, if you look at Mr. Griffin's
15 affidavit and I think probably Mr. El-Shanawany's
16 affidavit, they refer to a management presentation
17 that West Face received on December 18th.

18 And so unless you hear otherwise from
19 us, you can conclude that these are questions
20 generated by West Face following that management
21 presentation.

22 BY MR. WINTON:

23 101 Q. And as of this date, have you had
24 any direct discussions with VimpelCom?

25 A. At this time?

1 102 Q. Yes.

2 A. I don't believe -- this was when,
3 November?

4 MR. MILNE-SMITH: December 19 is the
5 date of the notes. You had the management
6 presentation on the 18th.

7 THE DEPONENT: Okay. And then I'm
8 trying to recall when we would have exchanged a
9 confidentiality agreement with representatives of
10 VimpelCom.

11 MR. MILNE-SMITH: Right.

12 THE DEPONENT: And if that predated
13 this or not.

14 MR. MILNE-SMITH: The confidentiality
15 agreement with VimpelCom was December 7, 2013.

16 THE DEPONENT: Okay.

17 BY MR. WINTON:

18 103 Q. Was the confidentiality agreement
19 produced? We are just having --

20 MR. CARLSON: Our NDA with VimpelCom?

21 MR. WINTON: Yes.

22 MR. CARLSON: Yes. If you give me a
23 minute, I can find it.

24 MR. WINTON: Sure, please. And why
25 don't we go off the record while you do that.

1 (DISCUSSION OFF THE RECORD.)

2 BY MR. WINTON:

3 104 Q. So let's turn up now for a second
4 0107228, the confidentiality agreement.

5 MR. MILNE-SMITH: Got it.

6 BY MR. WINTON:

7 105 Q. And if I understand then
8 correctly, Mr. Griffin, this was the only
9 confidentiality or non-disclosure agreement that
10 West Face signed with VimpelCom?

11 A. To the best of my recollection,
12 yes.

13 106 Q. And so even after the data room
14 was opened and created and West Face got access to
15 the data room, this is the confidentiality
16 agreement that applied?

17 A. Yes, that would have predated any
18 access to information.

19 107 Q. Right. As I understand it,
20 though, I don't think a data room had been opened
21 as of December 2013; correct?

22 A. I don't recall the exact date when
23 it would have been established by UBS, who was the
24 financial advisor. I don't know when they opened
25 it or when the first point at which we gained

1 access to it.

2 108 Q. Well, I think as far as the first
3 date on which West Face gained access to it is a
4 fair question to ask of the Defendants, and so I'm
5 going to ask that if you can't give us that
6 information, that West Face undertake to let us
7 know what is the date that they first gained access
8 to the data room?

9 MR. MILNE-SMITH: Yes, we'll make that
10 inquiry.

11 Yeah, I'm not sure that you are right,
12 Counsel, that it wasn't in December, because
13 Mr. El-Shanawany's affidavit of March 9th, 2015,
14 refers to signing the NDA, and it says:

15 "Having signed the NDA, West
16 Face received access to Wind's
17 virtual data room from VimpelCom so
18 it could commence due diligence."

19 MR. CARLSON: And also in paragraph 32
20 of Tony's March 7th, 2015 affidavit, he mentions:

21 "Shortly after entering into
22 the confidentiality agreement with
23 VimpelCom and Orascom, West Face
24 received access to the data room and
25 then participated in a management

1 presentation from Wind on December
2 18, 2013."

3 MR. MILNE-SMITH: So I think you can
4 take it that the access to the data room was
5 received between December 7th and December 18th of
6 2013.

7 And I will just add, Counsel, what you
8 may be thinking of is that Mr. Griffin's affidavit
9 also states that in May of 2014 Davies Ward
10 received access to the data room, so that may be
11 what you are thinking of.

12 MR. WINTON: That may have been why I
13 was asking the questions I was. Thank you.

14 MR. MILNE-SMITH: Yes.

15 BY MR. WINTON:

16 109 Q. At paragraph 14, which begins on I
17 think page 5 of this document, I'm going to ask
18 some questions about that and so I would suggest
19 you review that. It is just on the bottom of page
20 5, and let me know when you have done so and then I
21 will ask you my questions.

22 A. (Witness reviews document.)

23 Yes.

24 110 Q. And just to start, sir, you are
25 familiar generally with the common terms of a

1 confidentiality or non-disclosure agreement;
2 correct?

3 A. I would say generally, yes.

4 111 Q. And generally speaking, you would
5 agree that the fact that you were even entering
6 into a non-disclosure agreement or confidentiality
7 agreement is in itself something you would like to
8 keep confidential?

9 A. I'm sorry, I'm not sure I
10 understand the question.

11 112 Q. Sure. The very fact that you have
12 entered into this agreement with another party in
13 relation to a potential transaction, that in itself
14 is a confidential piece of information; correct?

15 A. Yes.

16 113 Q. And as we see in paragraph 14 of
17 this agreement, one of the terms of the
18 confidentiality agreement was that neither party
19 would disclose without consent of the other party
20 the fact that it has entered into negotiations;
21 correct?

22 A. Yes.

23 114 Q. And the terms or conditions of
24 those negotiations, so the content of those
25 negotiations would also be considered confidential?

1 A. Yes.

2 115 Q. So in this particular transaction,
3 your expectation is that VimpelCom would keep
4 confidential anything you are sharing with
5 VimpelCom; correct?

6 A. Yes.

7 116 Q. And likewise, their expectation is
8 whatever they tell you, you would keep
9 confidential?

10 A. Yes.

11 117 Q. How does Globalive fit into this
12 world of confidentiality? They are not a party to
13 the confidentiality agreement, right?

14 A. Not this one.

15 118 Q. Right. Did you have a
16 confidentiality agreement with Globalive?

17 MR. MILNE-SMITH: Just could you
18 clarify what you mean by "Globalive", because there
19 are a lot of Globalive entities.

20 MR. WINTON: So whichever Globalive
21 entity was controlled by Mr. Lacavera.

22 MR. MILNE-SMITH: Okay. So you are not
23 talking about one of the Wind sort of operating
24 entities controlled by Orascom or VimpelCom?

25 BY MR. WINTON:

1 119 Q. No, we are talking about
2 Mr. Lacavera's Globalive.

3 A. The way this worked was UBS was
4 sitting as financial advisor. VimpelCom --

5 120 Q. So stop. To whom?

6 A. To VimpelCom.

7 121 Q. Okay.

8 A. VimpelCom and the Orascom entities
9 and UBS had complete transparency in terms of our
10 dialogue with anyone involved in the management of
11 Wind in Canada or in Europe, which would have
12 included the Canadian management team.

13 As to how they asked for the terms of
14 this confidentiality agreement to be set up, you
15 would have to ask them as to how they were
16 satisfied that this adequately addressed their
17 concerns over confidentiality. It wasn't up to us
18 to decide.

19 122 Q. When you say that VimpelCom and
20 Orascom had complete transparency, are you
21 suggesting then that whatever you were discussing
22 with Mr. Lacavera was at all times visible to and
23 known by VimpelCom or Orascom?

24 A. No, that is not what I am
25 suggesting. What I am suggesting is that the

1 process -- how can I put it? There are various
2 touch points to representatives of a company.
3 There was a Canadian management group, a management
4 group in Italy, the Russian parent company and its
5 board, and at various times, you know, various
6 parties took the lead in terms of things like
7 setting up management meetings and presentations.
8 So it wasn't something dictated by us. It was
9 decided by them.

10 123 Q. Was there then a separate
11 confidentiality agreement with the Lacavera
12 Globalive entities?

13 A. I don't personally recall.

14 124 Q. Well, so, Counsel, then maybe you
15 can assist on this point. Was there a separate
16 confidentiality agreement as between West Face and
17 the Lacavera-controlled Globalive entities?

18 MR. MILNE-SMITH: I don't believe so.
19 Just you didn't ask a time-limited question, and so
20 I have to give you this answer. The March 7, 2015
21 affidavit of Mr. Griffin attaches as Exhibit 2 an
22 expired NDA with Globalive from November 4, 2009.

23 MR. WINTON: Right, and I'm aware of
24 that.

25 MR. MILNE-SMITH: Right.

1 MR. WINTON: And I think we both assume
2 or we both agree that that didn't apply to this
3 transaction.

4 MR. MILNE-SMITH: No, it did not.

5 MR. WINTON: So if I could be more
6 specific then, for this transaction from 2013 into
7 2014, was there a confidentiality agreement with
8 the Lacavera Globalive entities?

9 MR. MILNE-SMITH: Not to our knowledge.

10 BY MR. WINTON:

11 125 Q. Just going back to some notes
12 questions, just to wrap up some of our questions
13 about documents, WFC0108491.

14 MR. MILNE-SMITH: Yes, I have that.

15 BY MR. WINTON:

16 126 Q. And while there is a date on the
17 document, I just want to confirm that is actually
18 the date, the actual date of the document, or the
19 document was created on December 18th, 2013?

20 MR. MILNE-SMITH: I mean, the date we
21 have in our field is December 19th.

22 MR. WINTON: Okay.

23 MR. MILNE-SMITH: And again, it appears
24 to be authored by Mr. Zhu.

25 BY MR. WINTON:

1 127 Q. So these notes appear to have two
2 different topics, one entitled at the top
3 "Government of Canada", reading out the
4 abbreviation, "Change on Wireless Roaming", and the
5 second heading about halfway down the page is
6 "Notes From Management Presentation".

7 Just to make sure we are clear on this,
8 can you please ask Mr. Zhu what was the context or
9 what led to the creation of these notes?

10 MR. MILNE-SMITH: Well, there is the
11 management presentation on the 18th.

12 BY MR. WINTON:

13 128 Q. Yes, but the top half doesn't seem
14 to be following into that, so that is why I'm
15 wondering how it is there was also a series of
16 notes on the change on wireless roaming. What was
17 the source of this information?

18 U/T MR. MILNE-SMITH: I think you can
19 conclude that there were publicly announced
20 government policy initiatives, but we'll let you
21 know if it is to the contrary.

22 BY MR. WINTON:

23 129 Q. Okay. Turning to WFC0108498.

24 MR. MILNE-SMITH: Yes.

25 BY MR. WINTON:

1 130 Q. The document is an email from
2 Mr. Boland to Bruce McDonald at RBC dated January
3 13th, 2014, and the third paragraph reads:

4 "We are working on Wind - still
5 academic at this point, but if there
6 is any merit to the business, I will
7 circle back to see if something
8 works for you guys."

9 And just to pause there, Mr. Griffin,
10 would you agree that as of mid-January 2014, the
11 Wind transaction was accurately described by
12 Mr. Boland as being "academic"?

13 A. Well, I'm just reading verbatim
14 what his email says.

15 131 Q. Yes. Would you agree with that,
16 or any reason to disagree with Mr. Boland's
17 description of the status of the Wind transaction
18 from West Face's perspective?

19 A. I can't recall the context. You
20 would have to ask Mr. Boland.

21 132 Q. All right. Well, from your
22 perspective, was the status of the transaction
23 academic or would you describe it as being more
24 than academic as of mid-January?

25 A. I would say it was more than

1 academic insofar as the time we were committing to
2 it, but it was certainly at its early stages.

3 133 Q. Then if you could ask Mr. Boland
4 what led him to describe it in his email as being
5 "still academic at this point"?

6 U/T MR. MILNE-SMITH: We will ask him.

7 BY MR. WINTON:

8 134 Q. Thank you. I'm just trying to
9 figure out which affidavit to bring to your
10 attention on a certain point.

11 MR. MILNE-SMITH: If you want to tell
12 me the issue, I might be able to help.

13 MR. WINTON: Well, I'm trying to fill
14 in the blanks between January 2014 and April 2014.

15 MR. MILNE-SMITH: Yes.

16 MR. WINTON: So I'm looking at
17 paragraph 32 of Mr. Griffin's March 7th, 2015
18 affidavit and --

19 MR. MILNE-SMITH: This just has
20 highlighting but no writing on it.

21 BY MR. WINTON:

22 135 Q. That is fine. What we have is the
23 paragraph Mr. Carlson pointed us to, paragraph 32
24 of that affidavit on page 12, and we skip from
25 access to the data room in the management

1 presentation in December 2013 to by April '14 the
2 discussions had progressed.

3 And I am looking through your more
4 recent affidavit, and I don't know that I have seen
5 anything that fills in that time period with any
6 more information about what exactly was going on on
7 the West Face side in that three- to four-month
8 period between sort of the management presentation
9 in December and the retention of counsel in April
10 2014. So can you help me out and tell me what you
11 were doing or what the deal team was doing?

12 A. We would have been going through
13 the data room materials, reviewing the business,
14 financial forecasts that had been provided to us by
15 the management group through the UBS data room,
16 formulating our own internal models, discussing the
17 transaction internally, thinking about a deal
18 template that would be suitable for the purposes of
19 an offer that we would put forward, which
20 ultimately culminated in us putting in our first
21 proposal.

22 136 Q. And this review of the data room
23 during this stage, was that undertaken by members
24 of the West Face deal team or had Altman been
25 retained at this point to help you out?

1 A. I actually don't recall when -- we
2 do have a separate engagement letter that we signed
3 with Altman Vilandrie. I can't remember the date
4 at which they became involved, so I would have to
5 go back and look at that.

6 137 Q. All right, and I don't think we
7 actually received production of the Altman
8 engagement letter or contract.

9 U/A MR. MILNE-SMITH: I'll take under
10 advisement the contract, but I will undertake to
11 advise you of the date of the agreement.

12 MR. WINTON: Well, I think I could help
13 out on that, because if you just turn quickly to
14 WFC0054181.

15 MR. MILNE-SMITH: Okay, so yes, they
16 had made a proposal in May, May 8th.

17 BY MR. WINTON:

18 138 Q. Right, if you turn between
19 pages, sort of at the bottom of page 1 to the top
20 of page 2 of this document, there is an email from
21 you, Mr. Griffin, to Mr. Fraser and Mr. Dea and Mr.
22 Zhu where you are referring to an Altman proposal?

23 A. Yes.

24 139 Q. And that may assist your memory
25 that prior to this date, it is probably fair to say

1 you hadn't yet engaged Altman to assist with your
2 due diligence reviews; fair?

3 A. I would say that is fair.

4 140 Q. Okay. So likely prior to this
5 date or whenever that engagement was formalized,
6 entered into, it would have been primarily West
7 Face, but to be more specific, you retained counsel
8 in April and so prior to April it would have been
9 only West Face; is that fair?

10 A. I don't recall the date that we
11 first talked to Davies, but it would have been
12 sometime in that window.

13 141 Q. Okay, well --

14 A. And so it was West Face and Davies
15 working on this.

16 142 Q. Right. To be fair, I guess your
17 affidavit says at paragraph 32 "by April 2014", and
18 so can you let me know or can West Face let me know
19 what is the exact date when Davies was retained
20 with respect to this potential transaction?

21 MR. MILNE-SMITH: I struggle on the
22 word "exact date", but I'll take it under
23 advisement.

24 MR. WINTON: To the extent a precise
25 date can be pinpointed.

1 MR. MILNE-SMITH: I mean, just so
2 understand, Counsel, I mean, Pat Barry is a -- you
3 know, he almost plays the role of a traditional
4 lawyer on retainer. I mean, he talks to the
5 principals of West Face on a regular basis about a
6 variety of matters. And as to when Davies became
7 actively engaged, I think it is in the sort of late
8 April or early May time frame that has already been
9 reflected in the documents.

10 MR. WINTON: Well, I think given what
11 else was happening in April and May 2014, to the
12 extent we can pinpoint a precise date or time
13 period or no-later-than date for the opening of a
14 specific file for this potential transaction,
15 anything that would assist on those points.

16 U/A MR. MILNE-SMITH: I'll take it under
17 advisement and see what level of precision might be
18 possible.

19 BY MR. WINTON:

20 143 Q. Thank you. And in late April, it
21 is in paragraph 32 of your March affidavit and you
22 describe it there, the initial offer from West Face
23 was a combination of refinancing debt and equity
24 that would have kept VimpelCom involved as a part
25 owner of Wind; correct?

1 A. Yes.

2 144 Q. Even though you had understood
3 initially that VimpelCom was looking to exit this
4 investment?

5 A. It actually wasn't entirely clear.
6 The financial advisor had said they would look at a
7 range of alternatives, everything between a full
8 exit to a continuing interest. And what they did
9 reflect, though, was that they had an immediate
10 issue with respect to maturing vendor financing or
11 debt and that that was providing a date certain in
12 terms of when additional capital had to come into
13 the company.

14 And so at this point in time, we were
15 trying to be responsive to that date, knowing that
16 injecting debt capital had a different risk profile
17 than injecting equity capital which would be
18 inherently junior.

19 And we were also cognizant of the fact
20 that there would be additional funding required to
21 be invested in the business, so we were trying to
22 match their objectives with the amount of capital
23 that we thought we could commit to the transaction
24 while also ensuring that we had additional capital
25 to follow should additional injections be required

1 once we got involved.

2 So the way that we had approached
3 dealing with the combination of those issues and
4 being responsive to their request was to come
5 forward with this proposal which was, you know, as
6 described or reflected here.

7 MR. MILNE-SMITH: Counsel, should we
8 give the reporter a break?

9 MR. WINTON: Sure, let's do that.

10 MR. MILNE-SMITH: If this is a
11 convenient time for you?

12 MR. WINTON: Sure, thanks.

13 -- RECESSED AT 11:32 A.M.

14 -- RESUMED AT 11:41 A.M.

15 BY MR. WINTON:

16 145 Q. If you could turn to WFC0068348.

17 MR. MILNE-SMITH: Yes.

18 BY MR. WINTON:

19 146 Q. This is a series of emails that
20 are dated between April 27th, 2014, and end on
21 April 28th, 2014, and attach two copies of I guess
22 what I will call an offer letter to Globalive. And
23 one of the versions attached is a clean copy dated
24 April 27, 2014, that is signed by Mr. Singh on
25 behalf of West Face. Counsel, if you can be

1 showing these documents to Mr. Griffin.

2 MR. MILNE-SMITH: Yes.

3 BY MR. WINTON:

4 147 Q. And the reason I'm bringing these
5 to your attention, sir, is to try and pinpoint a
6 time in April when this letter was actually
7 submitted to Globalive Wireless Management Corp.,
8 and if the signed version -- is this the signed
9 version on April 27th the version that was actually
10 delivered to Globalive?

11 A. My best knowledge, yes.

12 148 Q. And it is addressed to
13 Mr. Lacavera and not to anyone at VimpelCom. Why
14 was that?

15 A. I don't actually recall what the
16 line of communication was in terms of who we were
17 asked to send it to, but it would have been
18 responsive to whatever had been requested of us in
19 terms of direction.

20 149 Q. Okay. Your understanding, though,
21 was that VimpelCom ultimately had approval or had
22 to approve the terms of any debt restructuring or
23 any term sheet that was being offered to Globalive?

24 A. Yes.

25 150 Q. And this proposal that is

1 contained here, the document for the specific clean
2 letter, the doc ID for the record is WFC0068358,
3 and this is the proposal we had discussed prior to
4 the break which was an offering of debt with a
5 potential sort of future payment that might be
6 considered equity or more debt down the road?

7 A. Right.

8 151 Q. And the idea was to take care of
9 the vendor debt that was maturing very shortly to
10 take care of the immediate financing needs and then
11 figure out what more would be done once that was
12 taken care of?

13 A. Yes, if I recall correctly, the
14 vendor debt or at least one component of it was
15 maturing in May of 2014, and if it wasn't addressed
16 by that date, they would have entered either a
17 negotiated forbearance period or a default. It
18 probably would have gone to a 30-day cure period
19 followed by a default if not remedied. So that is
20 what we were trying to be responsive to.

21 152 Q. Right. And this particular offer
22 didn't go over well or wasn't well received by
23 VimpelCom; fair?

24 A. I think in my affidavit, in that
25 same section you referenced from the -- is it the

1 March 7th affidavit?

2 153 Q. Yes.

3 A. In that same paragraph I make
4 reference to the fact that the two individuals at
5 UBS, Jonathan Herbst and Francois Turgeon, had
6 provided a response reflecting VimpelCom's comments
7 to that term sheet, and yes, I would say that is a
8 fair characterization that what we proposed at the
9 time was not exactly what their client was looking
10 for.

11 And I will just add, it did, however,
12 reflect what we thought we were initially being
13 asked to provide, and their desires or expectations
14 basically changed midstream.

15 154 Q. Okay, well, and now I just want to
16 clarify something, and it may need to be by way of
17 undertaking. Because the letter we had just
18 referred to was signed and your understanding was
19 this was the one that was sent, I'm just not sure
20 that may be correct.

21 If you could turn to WFC0106685?

22 MR. MILNE-SMITH: Sorry, 010, and what
23 are the last four digits?

24 MR. WINTON: 6685.

25 MR. MILNE-SMITH: Yes.

1 BY MR. WINTON:

2 155 Q. Now, here we have an unsigned
3 letter, but it is a different form of letter from
4 West Face and addressed to many more recipients but
5 sets out, if you look at page 2, a somewhat
6 different proposal, still more or less along the
7 lines you describe but with slightly different
8 terms?

9 A. Yes.

10 156 Q. And so I think the question is
11 which -- well, was either of these letters actually
12 sent to Globalive or VimpelCom around these dates,
13 or were these still just internal drafts and
14 internal discussions, maybe roping in Mr. Lacavera
15 but not yet formally presented to the VimpelCom
16 folks?

17 MR. MILNE-SMITH: Well, he has told you
18 already that he believes the April 28th one was
19 sent.

20 BY MR. WINTON:

21 157 Q. Okay.

22 A. And then on May 1st, when we
23 received the response from UBS to the original
24 letter that went in, which would have reflected a
25 response to that proposal you first referenced, we

1 worked on an alternative proposal which is
2 reflected here, and I would have to read the
3 entirety of it but, in essence, trying to bridge
4 the gap between VimpelCom's revised desires or
5 expectations as to how this transaction would work
6 and what we initially proposed.

7 MR. CARLSON: And there is actually a
8 signed version of the May 4th proposal.

9 MR. WINTON: Yes?

10 MR. CARLSON: WFC0106772.

11 BY MR. WINTON:

12 158 Q. Okay, thanks.

13 So if you could turn to WFC0052574.

14 MR. MILNE-SMITH: I have 52574, yes.

15 BY MR. WINTON:

16 159 Q. This is emails from you -- the top
17 email is something just you are forwarding to
18 Mr. Fraser and Mr. Dea, but below are emails
19 exchanged between Mr. Lacavera and yourself.

20 And you are referencing in the first
21 email at the bottom of the chain, May 4th, 2014, at
22 7:52 p.m., you are I assume attaching the version,
23 the signed version of the letter that Mr. Carlson
24 just referred us to; is that fair?

25 A. I would like to see the

1 attachment, if you could produce it, just so I can
2 confirm that.

3 160 Q. Okay, well, this version doesn't
4 have the attachment on it, from what I can see,
5 but --

6 A. Yeah, unless you can produce the
7 attachment, I don't want to speculate as to what
8 may be attached to it.

9 161 Q. Okay. I'm not sure that that was
10 actually produced to us. We are trying to search
11 for it in our database, but the original email from
12 Mr. Griffin to Mr. Lacavera -- and it could be
13 Mr. Vermeersch is just struggling, but --

14 MR. CARLSON: I'm looking too.

15 BY MR. WINTON:

16 162 Q. All right, well, here is what I am
17 going to suggest in the interests of time. The
18 original wasn't produced to us or may not have been
19 produced to us. And perhaps offline, Counsel, we
20 could get an undertaking that it be confirmed that
21 the version that was attached to the email to
22 Mr. Lacavera at 7:52 p.m. is the same signed
23 version that was identified to us by Mr. Carlson
24 earlier, 0106772, in that that's what was being
25 shown to Mr. Lacavera at that time?

1 U/T MR. MILNE-SMITH: We'll make our best
2 efforts to make that determination.

3 BY MR. WINTON:

4 163 Q. Okay. And in the response from
5 Mr. Lacavera, he provides you with his comments to
6 whatever it is that you had sent him and makes some
7 suggestions as to what else you may wish to add or
8 include in your communication; do you see that?

9 A. Yes.

10 MR. MILNE-SMITH: Do you want to just
11 give me the document number again?

12 MR. WINTON: We were at 0052574.

13 MR. MILNE-SMITH: Okay, we have got it
14 back.

15 BY MR. WINTON:

16 164 Q. All right, so I'm focussing on
17 Mr. Lacavera's email to you of 9:02 p.m.

18 A. Yes.

19 (Witness reviews document.)

20 165 Q. Now, Mr. Lacavera and just his
21 role in all of this is he is part of the management
22 of Globalive or Wind; correct?

23 A. He was Chief Executive Officer and
24 I believe also Chairman of Wind.

25 166 Q. Which is the target of the

1 transaction that you are trying -- or the company
2 you are trying to acquire; correct?

3 A. Yes.

4 167 Q. And in engaging in these
5 discussions with you, he is giving you tips or
6 information, suggestions that he thinks will help
7 make your offer more attractive to VimpelCom;
8 correct?

9 A. In this case he is commenting on
10 the regulatory conditions in our term sheet which
11 are one of the few conditions to closing of our
12 transaction.

13 168 Q. Right. He is commenting, but he
14 is giving you suggestions that are meant to try and
15 make your offer more attractive to VimpelCom;
16 correct?

17 A. What he is suggesting is two
18 things.

19 Number one, West Face, being a
20 Canadian-owned and controlled entity, is a
21 palatable counter-party for the purposes of any
22 subsequent Canadian government approvals that would
23 be required to effectuate the transfer of Wind
24 itself, which we all understood to be the case.

25 The second was -- well, and really it

1 related to the same point, is that if you fall into
2 that category, then the approval process for
3 conveyance of this business to a new ownership
4 group would be very expedient, which we also
5 understood to be the case.

6 And he is also referencing some
7 difficulties that Birch Hill had in some proposal
8 that they had made which ran contrary to the
9 Canadian Government's expectations.

10 169 Q. Mr. Griffin, you understood that
11 the purpose behind Mr. Lacavera's email to you was
12 to offer you suggestions that would make West
13 Face's offer more attractive to VimpelCom?

14 MR. MILNE-SMITH: He has answered the
15 question.

16 MR. WINTON: No, he hasn't. He has
17 described the email to me. He hasn't told me what
18 he understood the intention behind it was.

19 MR. MILNE-SMITH: Well, he is not able
20 to tell you what Lacavera's intention is. He has
21 described what he understood the document to mean.

22 MR. WINTON: No, I am asking what he
23 understood Mr. Lacavera's intention to be.

24 R/F MR. MILNE-SMITH: Okay, that question
25 is refused on the basis of relevance and the fact

1 that it has already been answered.

2 BY MR. WINTON:

3 170 Q. It has not.

4 You were in regular contact with
5 Mr. Lacavera while you were putting together West
6 Face's various offers; correct?

7 A. We were instructed to be in
8 contact with all components of the management
9 group, including Tony Lacavera.

10 MR. MILNE-SMITH: Let's just take a
11 pause here, Counsel, because this case is a case
12 about information being passed from Brandon Moyse
13 allegedly to West Face, and it seems like you are
14 conducting a discovery on whether there was
15 information passed from Tony Lacavera to West Face
16 and I struggle to see the relevance, unless you are
17 fishing to commence a different action.

18 MR. WINTON: No, I'm not.

19 MR. MILNE-SMITH: Can you explain the
20 relevance to me?

21 MR. WINTON: Sure. I'm trying to
22 understand the sources of whatever information were
23 within the sphere of West Face's understanding, so
24 that is one.

25 Two, trying to understand the extent to

1 which West Face was diligent in ensuring it didn't
2 have access to information it shouldn't have had
3 access to in the course of this bidding process.

4 MR. MILNE-SMITH: From Catalyst?

5 MR. WINTON: From anyone.

6 MR. MILNE-SMITH: Okay.

7 BY MR. WINTON:

8 171 Q. So I think those are both related
9 points and relevant points. I can assure you I'm
10 not fishing for the purpose you have suggested.

11 So back to your answer, Mr. Griffin,
12 when you were instructed to deal with management,
13 who were you instructed by?

14 A. Well, UBS was running the process,
15 so Jonathan Herbst and Francois Turgeon were really
16 the key points of contact as agents. We were
17 instructed, allowed, encouraged to speak to Pietro
18 Cordova, the European contingent of the Wind Mobile
19 management group, the local management group for
20 the Canadian content, if you will, which was
21 comprised of the individuals such as Tony and Brice
22 and Simon Lockie and their management group here.

23 We were instructed to also communicate
24 with Felix Saratovsky and the Amsterdam-based
25 management group at VimpelCom who was overseeing

1 this whole transaction process and acting as, you
2 know, I guess a liaison to the board of VimpelCom
3 in overseeing this process and liaising with UBS.

4 So it was a fairly large number of
5 individuals.

6 172 Q. But those instructions were for
7 the purpose of gathering information?

8 A. For anything pertaining to Wind,
9 including how we, you know, addressed our letters
10 and our proposals, which you see would have changed
11 as we got deeper in this process, communication of
12 our bids, our questions regarding the process, all
13 of those individuals were available to us.

14 173 Q. And were available for
15 information, but were they also available or was it
16 also your understanding that it was open to them to
17 assist you in drafting or forming of your offers?

18 A. There was no understanding in that
19 regard. I think that Felix certainly communicated
20 to us, Felix Saratovsky communicated to us and UBS
21 communicated to us what the desires of VimpelCom
22 were in terms of the way that they exited this
23 business, and that became more and more clear after
24 we put in the initial proposal which came back with
25 a response of this doesn't exactly do it for us.

1 We want a more conclusive exit from the Canadian
2 business.

3 And what had also happened in and
4 around that time and was reported in the press was
5 that VimpelCom had been trying to convert its
6 minority voting but majority economic position in
7 Wind into a majority vote and majority economic
8 position following on the changes that the Federal
9 Government had made to the foreign ownership laws,
10 and they had been blocked by the Canadian
11 Government from doing so.

12 And so that really changed their
13 motivations and made them, you know, really a
14 forced seller from our perspective, and that is
15 partly probably reflective of why they responded
16 the way they did to our initial proposal, was our
17 inference was that the choices were the company was
18 either going to find a buyer in the short term or
19 it was going to file for Canadian insolvency
20 proceedings, that VimpelCom was not going to put
21 additional capital into the business.

22 And that really defined how we
23 proceeded from that point forward and was
24 communicated by UBS and by Felix, and that is why
25 we revised our offer the way we did the second

1 time.

2 174 Q. If we could turn to WFC0042554.

3 MR. MILNE-SMITH: Yes, a May 12th
4 email?

5 BY MR. WINTON:

6 175 Q. It is, but all of the emails below
7 the first two are -- or, sorry, below the first
8 three are May 11th.

9 MR. MILNE-SMITH: Yes.

10 BY MR. WINTON:

11 176 Q. And appear to be referring to a
12 meeting that took place on May 12th, and on page 2
13 there appears to be from you, Mr. Griffin, a list
14 of people who will be attending this meeting?

15 A. Yes.

16 177 Q. And do you recall what the meeting
17 was about and where it took place or the
18 circumstances of this meeting that is referred to
19 in this document?

20 A. It would have been in Toronto. I
21 don't know -- can I just read this for a second?

22 178 Q. Sure.

23 A. (Witness reviews document.)

24 I can check this in my calendar, but I
25 believe the location was probably the Wind Mobile

1 Toronto offices here downtown.

2 179 Q. It appears from the fact that, and
3 you are reading along, the deal team from West Face
4 minus Mr. Boland, members from Altman Vilandrie and
5 references to analysts under contract, that this
6 was perhaps a diligence meeting or --

7 A. Yes.

8 180 Q. -- the purpose to get these new
9 members of the team up to speed and asking the
10 questions they wanted to ask; is that fair?

11 A. We would have by that time
12 undoubtedly engaged Altman Vilandrie and Peter
13 Rhamey and George Horhota all for the purposes of
14 assisting with a combination of really industry
15 diligence and business diligence on the Wind
16 business as it stood at that time.

17 And so this would have been probably
18 one of our first opportunities to get everyone in
19 the same room and do a comprehensive day of
20 diligence on the operational side of things,
21 addressing issues such as the network architecture,
22 wireless spectrum requirements, customer metrics,
23 things that wouldn't have necessarily been readily
24 available in the data room and are more -- how can
25 I put it? We would have presented a list of issues

1 that we wanted to go through with the management
2 group and the operational team, give them an
3 opportunity to respond to those questions and also
4 to produce any follow-up information that, you
5 know, again, wasn't supplied in the data room.

6 MR. MILNE-SMITH: Counsel, just in
7 terms of where it happened, on page 1 you will see
8 Mr. Griffin saying:

9 "When we arrive this
10 morning..."

11 So obviously this confirms his
12 recollection that it was the West Face team going
13 to see Wind.

14 BY MR. WINTON:

15 181 Q. And that was my assumption. Thank
16 you, Counsel.

17 On page 2, in listing the members of
18 the team, it is unclear from this and from your
19 prior answers, what role were Peter Rhamey and
20 George Horhota playing on the deal team?

21 A. So my partner Peter Fraser had a
22 long-standing relationship with Peter Rhamey.
23 Peter was a telecom analyst at the Bank of Montreal
24 for quite some period of time and had principal
25 responsibility for covering Canadian telecom, and

1 George Horhota was his partner.

2 When Peter left the Bank of Montreal as
3 an analyst, he set up a private consulting group,
4 and Peter -- well, I guess all of us agreed that
5 there was potentially some value that Peter and
6 George could bring to our diligence process in
7 connection with Wind, similar to Altman Vilandrie.
8 And Peter was a local resource available to us,
9 whereas Altman Vilandrie was based out of the
10 United States.

11 And given his extensive familiarity
12 with the Canadian incumbent telecom companies, the
13 new entrants, and really everything to do with the
14 legislative framework in Canada, we all thought it
15 would be a good idea to reach out to him and get
16 his assistance. So we would have signed a separate
17 engagement letter with his group.

18 182 Q. I guess it doesn't hurt to ask if
19 I could get a copy of that engagement letter,
20 Counsel?

21 MR. MILNE-SMITH: The Altman Vilandrie
22 engagement letter?

23 MR. WINTON: No, I think I already
24 asked for that one.

25 MR. MILNE-SMITH: Oh, okay, the Peter

1 Rhamey one?

2 MR. WINTON: Yes, please.

3 U/A MR. MILNE-SMITH: I'll take it under
4 advisement.

5 MR. WINTON: Let's just take a break
6 for one second.

7 (DISCUSSION OFF THE RECORD.)

8 BY MR. WINTON:

9 183 Q. The document that I want to take
10 you to is WFC0059009.

11 MR. MILNE-SMITH: Yes.

12 BY MR. WINTON:

13 184 Q. And it is an email chain, the last
14 and so top email in the chain is from Mr. Rhamey to
15 Mr. Fraser, but it starts with an email from Lisa
16 Goetz from Globalive and internal to Globalive and
17 then forwarded to you and Mr. Dea by Mr. Lockie,
18 and there appears to be a PowerPoint presentation
19 that is then attached as document number WFC0059013
20 and that is a PowerPoint presentation.

21 In our version of this, it appears that
22 we also have attached another document in the
23 family, WFC0059093, and that is the document I want
24 you to turn up.

25 MR. MILNE-SMITH: Okay, I have that as

1 being part of a separate family. By my coding,
2 59093 was attached to 59089.

3 MR. WINTON: Okay, well, that might
4 explain something. 59089 and we had it as 59009.

5 MR. MILNE-SMITH: Correct, because if
6 you will see, 59089 is talking about the vendor
7 arrangement/pricing.

8 MR. WINTON: Right.

9 MR. MILNE-SMITH: So it makes sense
10 that it would attach the Huawei letter.

11 MR. WINTON: Right, but our version of
12 that in the database doesn't have an attachment
13 associated with it, which leads me to wonder, and I
14 think so maybe a discussion we are going to have
15 offline about what kind of database was sent to us
16 versus the database that you have, because we don't
17 have -- we didn't have this document paired up with
18 it.

19 MR. MILNE-SMITH: Well, I note, and it
20 may have just been a problem with coding, because I
21 note for us 59089 does not indicate an attachment.

22 MR. WINTON: Right.

23 MR. MILNE-SMITH: But the child, 59093,
24 does indicate the parent being 59089. So someone
25 may just have missed a field.

1 MR. WINTON: But not in our version of
2 it. In our version, the parent was the 59009.

3 MR. MILNE-SMITH: Oh.

4 MR. WINTON: So I think offline we are
5 going to -- and we don't need to do this on the
6 record.

7 MR. MILNE-SMITH: Sure.

8 MR. WINTON: But I just want to put on
9 the record the fact that we have some concerns
10 about how it is --

11 MR. CARLSON: I think I can figure that
12 out. I suspect --

13 MR. MILNE-SMITH: Don't worry about it.

14 MR. WINTON: Yeah, I just want to say
15 now for the record that we do have some concerns
16 about what was given to us versus what you have as
17 far as the quality of the database, because
18 obviously that affects our ability to actually
19 review and make sense of the documents produced.

20 MR. MILNE-SMITH: We will work in good
21 faith to sort out any such miscommunications.

22 MR. WINTON: I have no doubt we will.

23 Okay, let's take a break then, because
24 I need a second to review this email.

25 MR. MILNE-SMITH: Yes.

1 (DISCUSSION OFF THE RECORD.)

2 MR. WINTON: So while we were off the
3 record, it was pointed out to us that Mr. Centa has
4 the same database that the Davies folks have and
5 that same database that was sent to Mr. Centa was
6 sent to us. And we also established we are using
7 different software from what the Defendants are
8 using.

9 So it appears that whatever has
10 happened, we can acknowledge that it doesn't appear
11 to have happened because something was sent to us
12 that wasn't sent to the Defendants or because of
13 what was sent to us by West Face.

14 MR. MILNE-SMITH: And again, we will
15 work together with you to sort out any
16 technology-related coding issues.

17 BY MR. WINTON:

18 185 Q. That is fine, thank you.

19 So at document 59089, which is an email
20 from Mr. Lacavera to you, Mr. Griffin, and
21 attaching, among other things, I guess -- or maybe
22 it is just one document -- sorry, this actually
23 looks like two documents. Two documents are
24 referred to; one is an Excel document and the other
25 is a PDF.

1 But the one I'm interested in I think
2 is the PDF, which is the 59093 from Huawei. But
3 just to start with the email, this is a fairly
4 detailed discussion from Mr. Lacavera concerning
5 vendor agreements and the status of the vendor
6 financing with what look to be vendor-by-vendor
7 updates on where vendor financing and forbearance
8 stands.

9 And my question to you, sir, is was it
10 your understanding that the information being
11 shared with you by Mr. Lacavera was common or
12 available to anyone who was investigating or
13 contemplating a Wind transaction and had entered
14 into a confidentiality agreement with VimpelCom?

15 A. As far as I know.

16 186 Q. So --

17 A. But I have no way of knowing. I
18 mean, all of the information dissemination from the
19 company was being handled by a combination of
20 VimpelCom, UBS, Pietro Cordova, Brice Scheschuk,
21 Tony Lacavera, Simon Lockie. It was up to the
22 management, board, you know, VimpelCom who got
23 what. It is, you know, these are inquiries that we
24 were making in terms of diligence items that would
25 have been -- you know, would have come out of our

1 investigation of the company beginning in, you
2 know, December of 2013.

3 And one of the key issues was not only
4 what was going to happen with the existing vendor
5 financing, which we had talked about previously,
6 but in addition to that is while acknowledged that
7 the company needed additional spectrum and
8 additional network infrastructure to support its
9 customer growth going forward, and one of the key
10 things we had to figure out was, okay, where is
11 this money going to come from? Is it going to be
12 third party provided vendor financing in addition
13 to what is there today if the company is
14 recapitalized? Or is it going to be additional
15 equity injections from us if we become a or single
16 owner of this business? What debt capacity does
17 this company have, because that was really going to
18 define -- and let me step back.

19 You had to define what you believed the
20 business needed in terms of spectrum. The network
21 architecture would sort of fall out of that because
22 it would be very dependent on what spectrum this
23 company had going forward. The capital would fall
24 out of that, which would be defined by what the
25 hard costs of that infrastructure were. And then

1 how much equity financing we had to put in
2 potentially would be defined by how much secured
3 debt was available to at least partially defray the
4 costs of this infrastructure.

5 187 Q. Okay. The document attached,
6 59093, is a letter from Huawei to Globalive. Do
7 you have that open?

8 MR. MILNE-SMITH: Yes.

9 BY MR. WINTON:

10 188 Q. And marked "private and
11 confidential", and on page 2, the second paragraph
12 states that:

13 "This letter is strictly
14 confidential and may not be
15 disclosed by Globalive without the
16 written consent of Huawei and/or
17 financial institutions."

18 So stopping there, in reviewing a
19 document such as this that on its face states that
20 it may not be disclosed by Globalive, did you have
21 any concerns that you were seeing a document or
22 information that wasn't meant to be shared with
23 someone outside of the Globalive family?

24 A. No, because it was really up to
25 the vendor to make a determination as to what was

1 made available to us. We didn't know of the
2 existence of any specific document that we were
3 requesting. This data was provided to us in the
4 course of our diligence. I don't even know if
5 there was a finite period to this proposal or the
6 confidentiality provisions. You would have to ask
7 VimpelCom.

8 189 Q. Then to the extent that whether
9 this was or wasn't subject to some confidentiality
10 term that Globalive was a party to, that wasn't a
11 concern of yours?

12 A. No, we had signed a
13 confidentiality agreement with the vendor. The
14 vendor, you know, had their own legal team on this
15 headed by Felix Saratovsky.

16 As to what they disclosed and to whom
17 they disclosed it, it is really for them to
18 determine the provisions of the confidentiality. I
19 don't know what they have agreed to.

20 190 Q. Back to 59089, this is May 11th,
21 and I think we had established through a review of
22 the email chain from May 11th and 12th that there
23 was a meeting at Wind's offices on the 12th. As of
24 this time period, was West Face aware of whether
25 there were other parties conducting diligence or

1 considering offers or making offers for Wind?

2 A. No, I don't think we had any
3 transparency. I mean, there was -- we certainly
4 expected that it would be a competitive process.

5 191 Q. But no insight?

6 A. No. I think -- yeah, I mean, to
7 the best of my recollection, I don't recall having
8 any view. I mean, we -- there was a lot of
9 discussion in the press about, you know, who may be
10 circling this company. Mobilicity was sort of
11 concurrently having financial distress issues of
12 its own. There was a lot of speculation going
13 around as to whether Verizon or one of the American
14 companies would come back.

15 We knew, you know, of things like the
16 composition of what the lender group was for
17 diligence in terms of the existing vendor
18 financing. We knew there was unconventional
19 parties in there that, because this lender facility
20 had splintered, that once the company sort of hit
21 more difficult times and parties like Huawei and
22 Alcatel I believe it was, and I think there was a
23 third, had decided for their own financial risk
24 control issues that they were going to part with
25 some of their debt exposure to this company

1 provided through those vendor facilities. And we
2 knew that that financial interest had been sort of
3 splintered and conveyed to some -- at least one
4 financial investor, Tennenbaum Capital, who had
5 become a lender in the vendor financing facility.

6 And so any one time someone like that
7 shows up, you know that, you know, they are either
8 there to clip coupons on the expectation of getting
9 repaid and cashed out, or there is a bigger agenda.

10 And you know, that is I would say about
11 all the insight we had. We suspected, you know,
12 other private equity groups in Canada would be
13 looking at this. Birch Hill may not be dead. Like
14 who knows.

15 192 Q. And if any of your partners had
16 that information available to them, you would
17 expect them to share that with you pretty much
18 right away, right?

19 A. I don't -- sorry, share
20 information about anyone being involved in the
21 process?

22 193 Q. If they learned of another bidder
23 on the scene, the actual identity of another
24 bidder, you would expect that to be something that
25 would be shared with you if it was one of your

1 partners finding out?

2 A. Oh, I'm sure, yeah, I mean, I'm
3 sure we shared everything about this file that we
4 thought was germane to furthering our understanding
5 of it.

6 194 Q. Right, because I understand you
7 are here on behalf of West Face, but you can only
8 speak to what you know directly and that is why I'm
9 asking this question.

10 A. Correct.

11 195 Q. And I am trying to make sure I
12 know what you know and what others might know that
13 you weren't aware of. But from what you are
14 telling me, and you'll correct me if I'm wrong, if
15 you weren't aware of another bidder, your
16 assumption is that means no one on your team, deal
17 team, was aware of another bidder?

18 A. I would think we were all
19 generally informed of what is going on, yes.

20 196 Q. And have the same level of
21 information about what is going on?

22 A. I mean, look, there can always be
23 informational asymmetries, but you know, we tend to
24 keep each other informed of what is going on in the
25 files that are important to the firm.

1 197 Q. And your expectation would be that
2 your partners would keep you informed?

3 A. As a general statement, yes.

4 198 Q. If you could turn to WFC0058172.

5 MR. MILNE-SMITH: 58172?

6 MR. WINTON: Yes.

7 MR. MILNE-SMITH: 58172, yes.

8 BY MR. WINTON:

9 199 Q. Yes, so emails starting I guess
10 the latest date is May 15th, 2014, but initially at
11 May 14th, 2014, and you will see this is I think a
12 branch off the same root of the PowerPoint
13 presentation email as requested that we previously
14 saw with a PowerPoint attached, and the document
15 there, the parent was 0059009.

16 A. Uhm-hmm.

17 200 Q. And what I would like to draw to
18 your attention here, Mr. Griffin, is on the bottom
19 of page 2, top of page 3, you are sending
20 suggestions to Mr. Lockie regarding the content of
21 this PowerPoint presentation; do you see that?

22 A. Yes.

23 201 Q. And I am going to try and refresh
24 your memory, and perhaps you recall, this was a
25 presentation that it appears Wind was going to go

1 and make to the Federal Government; correct?

2 A. I think this stemmed from a
3 meeting that we actually had in Ottawa with both
4 Industry Canada and the Prime Minister's office
5 that Simon attended with West Face, because we had
6 asked -- let me step back.

7 One of the biggest uncertainties in
8 this transaction was where the CRTC was going to
9 come out on wholesale roaming and tower access,
10 what was going to become of the additional spectrum
11 that the Canadian Government had set -- or had
12 discussed auctioning, which was a combination of
13 AWS1, AWS3 and 700 megahertz blocks.

14 And the question was really what was
15 the timing going to be and also was the government
16 going to adopt another set-aside process where
17 non-incumbent bidders were given sort of
18 preferential access to set aside blocks of the same
19 spectrum, whereas the incumbents would compete in
20 an open, unconstrained auction.

21 The third thing was the Canadian
22 Government in its various capacities needed to be
23 satisfied in our view that any party buying Wind
24 was, you know, A, Canadian or at least palatable in
25 terms of who ownership was going to transfer to; B,

1 had the wherewithal to carry this company
2 financially, because that was going to be, you
3 know, an improvement on where things stood in the
4 current ownership structure with VimpelCom, and
5 someone that they would be happy to ordain as a new
6 owner or partial owner of this business.

7 So what we wanted was an opportunity
8 to, you know, have an audience with the
9 decision-makers in Ottawa and say, look, these are
10 the things that are important to us as potential --
11 before we step off the curb and buy this business,
12 we are not going to give you an ultimatum or tell
13 you this is the way it has to be. What we are
14 going to try to communicate is that we are a real
15 and serious financial sponsor. These are issues
16 that are of concern not just to us but to any
17 buyer, and let's see if we can get any type of
18 direction out of this process.

19 202 Q. So you met with the Federal
20 Government?

21 A. Yes.

22 203 Q. And for all the purposes and to
23 have that discussion as you described it, and
24 Mr. Lockie attended with you?

25 A. Yes.

1 204 Q. So help me understand why in the
2 email in the middle of the page Mr. Lockie is
3 sending an email that is to you and Mr. Dea where
4 he describes his meetings in Ottawa and then offers
5 to speak and then offers to debrief, "but the
6 meetings went well" and then summarizes what he
7 did?

8 A. Yeah, this is in response to our
9 diligence inquiries, so there would have been a
10 series of meetings, probably some of which he had
11 independently. There was only one that we jointly
12 attended on a specific day. And part of the
13 diligence process was trying to form a view as to
14 which way Industry Canada, the CRTC and the PMO's
15 office were leaning on these issues, and can we at
16 all further our understanding.

17 For example, if the CRTC were to say
18 wholesale roaming rates are going to be imposed on
19 the industry at a rate of 10 cents, well, that
20 would be information that would be, you know,
21 helpful to further our understanding of, you know,
22 which way the government was leaning.

23 And we never got there, right. They
24 are not going to ever tell you what they are going
25 to decide. But you know, you are trying to read

1 into how supportive these parties are to
2 stimulating continued competition with a fourth
3 wireless carrier.

4 And I think that what we are expressing
5 are things that, if you look at the conditions of
6 our term sheet and, you know, what are the
7 diligence items we are concerned about, these are
8 very important issues to the business, the spectrum
9 availability, the cost of the spectrum, access to
10 incumbent networks, the cost of access to incumbent
11 networks. We wanted to gather as much information
12 as we could, you know, before we committed to
13 buying this company, and at least have an
14 opportunity for our voice to be heard as a
15 potential sponsor.

16 205 Q. Well, I'm going to suggest to you
17 Mr. Lockie was doing a little more than that, and
18 so I just want to direct your attention to the
19 second paragraph of his email of May 15th, 5:04
20 p.m., and he wrote:

21 "I will debrief but the
22 meetings went well. I positioned
23 WF", which I presume to mean West
24 Face, "very favourably as compared
25 to other interested parties, and

1 CoS", which I presume to mean Chief
2 of Staff, "Maunder and the key
3 MinO", whatever that means, "contact
4 Jim Nicholson, as well as the key
5 folks at IC will make themselves
6 available (and are keen) to meet
7 with us next week. Please provide
8 some times that work and attendees,
9 and we need to develop a careful
10 script."

11 So with the benefit of having reviewed
12 that, I'm going to suggest to you that in fact what
13 Mr. Lockie and Mr. Lacavera were doing through
14 their contacts with the Federal Government was
15 trying to help West Face get out in front and
16 become a sort of favoured position with the
17 government as the potential buyer of Wind; is that
18 fair?

19 A. Well, you would have to ask them.
20 What we had asked for was very explicit, which was
21 we wanted an audience with the Federal Government
22 to state our case and put our best foot forward as
23 to why we should be an acceptable counterparty to
24 own the company, so he was being responsive to our
25 request for a meeting.

1 So as to what he said and how he
2 positioned it, I would ask that you ask him.

3 206 Q. So you are denying my suggestion
4 that you were looking to the Wind management to
5 position West Face as favourably as possibly with
6 the government ahead of other potential bidders?

7 A. We wanted the Federal Government
8 to have a reason to meet with us and establish
9 credibility. We didn't have a relationship with
10 Industry Canada or the PMO's office or the CRTC,
11 you know, that we would have called on
12 independently.

13 207 Q. As of mid-May, did you already
14 have some kind of understanding or agreement with
15 Mr. Lacavera as to what role his company would have
16 in a Wind that West Face successfully purchased?

17 A. I don't know if we did at the
18 time. I mean, I would have to defer to the term
19 sheet and what it specified. We certainly knew
20 that, you know, the West Face principals were not
21 going to come in and assume the day-to-day
22 management roles of this business. We don't do
23 that. We usually work with the resources that are
24 there and optimize the teams as required.

25 I don't know if at that juncture we had

1 gotten into specifics of, you know, whether Tony
2 was going to be CEO or Pietro was going to stay on
3 or the guys, you know, VP Finance was going to be
4 there in the future. We were sort of doing this in
5 incremental steps.

208

6 Q. Well, the appearance that arises
7 from your communications with Mr. Lockie,
8 Mr. Lacavera and Mr. Scheschuk over this period of
9 time is that they are diligently working to
10 position West Face as the favoured bidder both with
11 VimpelCom and the Federal Government, and you are
12 suggesting that was on their own initiative and not
13 as part of some co-operative agreement or
14 understanding with West Face?

15 MR. MILNE-SMITH: Well, first of all,
16 the premise of your question is your interpretation
17 and don't take us to be accepting it.

18 MR. WINTON: All right.

19 MR. MILNE-SMITH: That said, I'm happy
20 for the witness to answer the question about --

21 BY MR. WINTON:

209

22 Q. Well, to get to your point then,
23 do you agree with that premise?

24 A. I think there is a couple of
25 important things to understand.

1 You know, if the alternative was this
2 company filing for bankruptcy protection, which
3 would have been a pretty negative and conclusive
4 outcome for this company and the management's
5 employment and investment in the firm, they all had
6 a vested interest in seeing an orderly transition
7 in the ownership structure of this business. And
8 they knew that whether it was us or another party
9 involved in that process, that, you know, transfer
10 of ownership was a much better outcome than seeing
11 VimpelCom file the company for CCAA protection,
12 because you know, they were investors in the
13 business, had equity stakes, you know, probably
14 value their jobs with the company. And they also
15 had, I can only assume, instructions from
16 VimpelCom, the parent and joint equity-holder, to
17 see if there was an ability to surface a
18 transaction with a credible sponsor that would be
19 acceptable to the government.

20 Whether we were their favoured bidder
21 or just one of many bidders, I don't know. Whether
22 they were having similar dialogues with other
23 parties in this process and saying the same things
24 and positioning them the same way, I mean, all I
25 can tell you is what we asked for in terms of

1 communication with the government, and they can
2 characterize it whatever way they want. But I have
3 no knowledge of, you know, whether they were saying
4 one thing in this email and talking about us in a
5 different capacity internally.

6 210 Q. If you could turn to WFC0049308.

7 MR. MILNE-SMITH: Yes.

8 BY MR. WINTON:

9 211 Q. The document at the initial or
10 sort of at the bottom of this chain is May 21st,
11 2014, at 9:53 a.m., and it is from Wind Mobile
12 Corporate Reporting to a series of recipients, none
13 of whom I think it is fair to say are members of
14 the West Face deal team; is that correct?

15 A. Yes.

16 212 Q. And then it is forwarded to you
17 and Mr. Zhu by Mr. Scheschuk, and is this a
18 document that -- or this report, is this something
19 that would be included in the data room?

20 A. Yes.

21 213 Q. Okay, so the fact that you are
22 getting --

23 A. Now, can I answer that question?

24 214 Q. Yes.

25 A. What you have to understand is the

1 data room materials that we would have received on
2 day one would have provided a static snapshot of
3 where the business was. We would be asking for
4 continued updates of the quarterly financial
5 statements and performance reports, including the
6 KPIs or key performance indicators of the business.

7 And that information makes its way into
8 the data room and it is also provided in forms like
9 this under our confidentiality agreement.

10 215 Q. All right, so you are getting this
11 at 10:44 p.m. and that is part of the regular
12 disclosure or updating process as far as how you
13 conduct due diligence on the transaction?

14 A. What we have asked for is
15 basically we are tracking and monitoring -- they
16 have a budget for the year. This process goes on
17 for a number of months. One of the key pieces of
18 information you can glean from continued tracking
19 of the business is how the company is performing as
20 against that budget, and that informs a view as to,
21 well, is the forecast for that current year
22 achievable and does that bring in any, you know,
23 expectations or differences of opinion in the
24 long-range forecast that the company has furnished
25 in terms of subscriber growth, churn rates, average

1 revenue per user. So this would feed into that,
2 informing that view.

3 216 Q. I understand the value of the
4 information. What I am concerned with and what I
5 am trying to ask you about, Mr. Griffin, is how it
6 came into your possession.

7 So this isn't something you downloaded
8 or accessed from the data room. This is a document
9 that on the same day as it is disclosed internally
10 at Wind Mobile is being sent to you by Wind
11 Mobile's Chief Financial Officer.

12 A. Yes.

13 217 Q. Not from the data room but
14 directly to you and Mr. Zhu with the most
15 up-to-date financial or key active metrics
16 information that the company itself has, right?

17 A. Uhm-hmm, yes.

18 218 Q. And it may be several days more or
19 a different time period when this works its way
20 into the data room, right?

21 A. Yes.

22 219 Q. So what you are getting is direct
23 access to the data, rather than having to wait for
24 it to show up in the data room, right?

25 A. Yes.

1 220 Q. And my suggestion to you is that
2 this is part of an effort that you encouraged and
3 sought from the Wind Mobile management, which is to
4 have access to data directly from them rather than
5 having to wait until it got to the data room and
6 going through the standard process of accessing
7 the diligence data.

8 A. There is no standard process of
9 accessing this data. I could show you dozens of
10 examples of things that are received outside the
11 scope of what is populated in the data room in a
12 diligence process in any deal we work on.

13 221 Q. And does that include management
14 of the target going to a government meeting and
15 positioning West Face as the favoured bidder?

16 A. Well, I think I have answered that
17 question. That is your inference that we are a
18 favoured bidder, and I think I have fully addressed
19 that in the prior response.

20 222 Q. If you could turn to WFC0045386.

21 MR. MILNE-SMITH: Yes.

22 BY MR. WINTON:

23 223 Q. This is an email entirely internal
24 at West Face. The email I'm interested in is the
25 one you authored Monday, June 2nd at 11:55 a.m.,

1 and it is entitled "Transaction Outline" in the
2 body of the email, not the subject line, but the
3 body says "Transaction Outline" and it has three
4 points that outline a transaction.

5 The first point refers to funding that
6 would be provided by West Face's Core Investment
7 Fund and Long-Term Credit Fund.

8 And so with that as an introduction, I
9 just want to understand how many funds were
10 operating at West Face in June 2014?

11 A. We had two.

12 224 Q. The Core Investment and the
13 Long-Term Credit?

14 A. Yes.

15 225 Q. All right. We had seen earlier in
16 this proceeding reference to an Alternate Credit
17 Fund?

18 A. That is one and the same as the
19 Long-Term Credit Fund.

20 226 Q. That is the Long-Term Credit Fund?

21 A. Yes.

22 227 Q. All right. And is any one of the
23 partners specifically a manager of any one of these
24 two funds?

25 A. They share the same Investment

1 Committee.

2 228 Q. The four of you?

3 A. Yes.

4 229 Q. Okay, so no one partner is
5 specifically responsible for overseeing either of
6 the funds?

7 A. Tom Dea and I spend probably more
8 time on the credit fund, the Alternative Credit
9 Fund --

10 230 Q. Yes.

11 A. -- in terms of its day-to-day
12 management.

13 231 Q. Yes?

14 A. And also split our time with the
15 Core Investment Fund, as we have called it here.

16 232 Q. And so with that --

17 A. And Peter and Greg would spend
18 less of their time on the Long-Term Credit Fund and
19 more exclusively focussed on the Core Investment
20 Fund.

21 233 Q. And the two funds have different
22 mandates?

23 A. They do.

24 234 Q. And this is going to hopefully go
25 quickly, because I think we are just confirming and

1 making sure with reference to these titles that we
2 understand the difference.

3 The Core Investment Fund has a slightly
4 shorter horizon in terms of its investments;
5 correct?

6 A. The way I would characterize it, I
7 would say that is fair. The other substantive
8 differentiation is that the Core Investment Fund is
9 set up as an evergreen investment vehicle, so the
10 capital that it has, I think of it more as a static
11 pool that is available day in and day out with an
12 ability to draw in additional capital as required.

13 Whereas the Credit Fund is certainly
14 focussed on longer term opportunities, certainly
15 focussed on debt-oriented opportunities as opposed
16 to equity, but we draw capital in that vehicle
17 exclusively as a draw fund, and so only when we
18 have a transaction to fund do we call the capital
19 from our limited partners.

20 So to contrast, that amount of money is
21 not sitting there, you know, in West Face accounts
22 day in and day out unless it is otherwise being
23 invested in a credit vehicle.

24 235 Q. So if we can maybe explain it a
25 different way and in a way that someone like me

1 might understand better, is it fair to say then so
2 for the Alternate Credit Fund what you get are
3 funding commitments from LPs, but you don't
4 actually call on those commitments until you need
5 the money to invest in a potential transaction?

6 A. That is basically right.

7 236 Q. Right, so that it is, as you said,
8 it is not sitting in your accounts; your LPs or
9 whoever has committed the money can control it
10 until -- unless and until you call on it, but you
11 have the commitment up front so you know you can
12 call on it when you need it?

13 A. That's correct, yeah, subject only
14 to having an available investment opportunity.

15 237 Q. Right. And do the funds have
16 dedicated employees at West Face working on them?

17 A. No. It is really, you know, we
18 have a fairly small team at West Face. There is
19 four partners, and I believe we have got four
20 analysts right now.

21 238 Q. Okay.

22 A. And they are interchangeable in
23 terms of, you know, what they may work on. As it
24 pertains to a specific name, if there is any sort
25 of cross-ownership in a capital structure of an

1 issuer, the analyst would be typically the same in
2 each case, the partners following it the same.

3 239 Q. Right. And in your division
4 between four partners and, as you currently put it,
5 four analysts, Mr. Zhu is one of those analysts?

6 A. That's correct.

7 240 Q. Just with the title of Vice
8 President?

9 A. Yes.

10 241 Q. So the senior most of the
11 analysts?

12 A. He was one of our first hires,
13 yes.

14 242 Q. Okay. And the hierarchy is that
15 for the analyst role there is a vice president, and
16 below would you be calling them an associate, is
17 that right? Is that the --

18 A. Phil, it is an analyst or
19 associate beneath? I believe it is --

20 MR. PANET: Associate.

21 THE DEPONENT: Associate.

22 BY MR. WINTON:

23 243 Q. And then at the bottom of the
24 hierarchy would be an analyst or --

25 A. There is nothing beneath.

1 244 Q. So people come in as associate at
2 West Face?

3 A. Yes.

4 245 Q. Okay, good. And so any one of the
5 analysts, whether associate or vice president,
6 could work on assisting on a deal for either of the
7 funds, just to make sure I understood your prior
8 answer?

9 A. Yes, we can -- the partners decide
10 how the resources are going to be allocated in
11 terms of their work flow.

12 246 Q. The Long-Term Credit Fund, is that
13 a fund that was started at the end of 2013?

14 A. Yes.

15 247 Q. And prior to that, there was just
16 the one fund, the Core Investment Fund?

17 A. That's correct.

18 MR. WINTON: Okay, it is 1:00 p.m., and
19 I think now is a good time to stop.

20 MR. MILNE-SMITH: Okay.

21 MR. WINTON: Thanks.

22 -- RECESSED AT 1:00 P.M.

23 -- RESUMED AT 1:48 P.M.

24 BY MR. WINTON:

25 248 Q. In your January 8th, 2016

1 affidavit, at paragraph 59, and it is on page 26.

2 MR. MILNE-SMITH: Sorry, which
3 paragraph?

4 BY MR. WINTON:

5 249 Q. 59, top of page 26.

6 A. Yes.

7 250 Q. So this statement that you make in
8 this paragraph that you were not aware of any of
9 Catalyst's plans, strategies or negotiations
10 concerning Wind isn't time-limited. It seems to
11 suggest that what you are saying is at no time
12 while West Face was pursuing the Wind transaction
13 were you aware of Catalyst's plans, strategies or
14 negotiations?

15 A. Can I just refer to the preceding
16 paragraph?

17 (Witness reviews document.)

18 Correct.

19 251 Q. And just to sort of clear up or
20 pick up from something we discussed before lunch,
21 you are not only in a sense speaking on your behalf
22 but you assume that the same would be true of any
23 of your partners and Mr. Zhu as far as the West
24 Face members of the deal team that none of you were
25 aware of Catalyst's plans, strategies or

1 negotiations concerning Wind; correct?

2 A. Nothing was conveyed to me that
3 would be different.

4 252 Q. Okay. Well, that is a careful
5 answer and right of you to do so. So I'm going to
6 ask for an undertaking that if any of the other
7 members of the deal team at West Face, being
8 Mr. Fraser, Mr. Dea, Mr. Zhu and Mr. Boland, if
9 they will also confirm the same statement that none
10 of them were aware of any of Catalyst's plans,
11 strategies or negotiations concerning Wind?

12 U/T MR. MILNE-SMITH: Yes, we will do that.

13 BY MR. WINTON:

14 253 Q. Would you agree, Mr. Griffin, that
15 if you had been made aware of Catalyst's plans,
16 strategies or negotiations concerning Wind, that
17 that would give you an advantage in the pursuit, in
18 your pursuit, in West Face's pursuit of the Wind
19 transaction?

20 A. That if I knew of their plans,
21 negotiations or strategies?

22 254 Q. Yes.

23 A. That would give me an advantage?

24 255 Q. Yes.

25 A. I suppose you could make that

1 inference.

2 256 Q. I'm asking you if you would agree
3 with that statement?

4 A. It depends on specifics, but I
5 mean, if you are referring to -- it is hard to
6 generalize I would say.

7 257 Q. Well, it is your affidavit and so
8 these are the words you used. You used Catalyst's
9 "plans, strategies or negotiations" that broadly.
10 Would awareness of Catalyst's plans, strategies or
11 negotiations give you an advantage in your pursuit
12 of the Wind transaction?

13 MR. MILNE-SMITH: He has answered the
14 question.

15 BY MR. WINTON:

16 258 Q. You would agree that you wouldn't
17 want Catalyst to be aware of West Face's plans,
18 strategies or negotiations concerning Wind;
19 correct?

20 A. I would expect our confidentiality
21 to be maintained.

22 259 Q. Is that a yes to my question?

23 A. Yes.

24 260 Q. You understood that from West
25 Face's perspective, Catalyst's plans, strategies or

1 negotiations concerning Wind were confidential to
2 Catalyst?

3 A. Yes.

4 261 Q. You wouldn't expect to be made
5 privy to those plans or strategies or negotiations;
6 correct?

7 A. Not in the normal course, no.

8 262 Q. If you could turn to WFC0068142,
9 and it is an email chain dated June 4th, 2014,
10 between you and Mr. Lacavera.

11 MR. MILNE-SMITH: 68142, yes.

12 BY MR. WINTON:

13 263 Q. If you start at the bottom of the
14 chain, the first email is from you to Mr. Lacavera
15 sent at 11:05 a.m. on June 4th, and you are asking
16 Mr. Lacavera:

17 "What is your change of control
18 payment under a Catalyst or
19 Tennenbaum deal, i.e., what do we
20 have to work with in our bid? Is it
21 a fixed number of you have a
22 negotiated deal?"

23 I think that meant to be saying "or",
24 I'm not sure, but here is an email where you are
25 asking Mr. Lacavera information about other

1 bidders' terms?

2 MR. MILNE-SMITH: I don't -- you are
3 going to have to ask him that question, because I
4 don't necessarily accept that premise.

5 BY MR. WINTON:

6 264 Q. Okay, do you disagree with that
7 statement?

8 A. Yes, let me clarify. There was
9 actually under the shareholders agreement that
10 Mr. Lacavera had which governed his relationship
11 and voting and economic interests with VimpelCom
12 and Wind Mobile, there were provisions in that
13 agreement, whether it was us, a third party
14 purchaser, the parties named in this email, anyone,
15 in fact, where he could end up with a change of
16 control payment that was a deal that he had struck
17 with actually VimpelCom to provide for a situation
18 where VimpelCom as minority voting owner but
19 majority economic owner wanted to exit or sell the
20 business. And I think it probably even pre-dates
21 their ownership back to Orascom.

22 We had seen a copy of that shareholders
23 agreement as part of the data room materials, and
24 we knew that as part of this process and thinking
25 about the continuing management role in the

1 company, whether it was through an option plan,
2 cash compensation or equity ownership, there was a
3 target that we had to meet in terms of the
4 management group's financial interest and also
5 Tony's financial interests as part of that group.

6 That was agreed between him and
7 VimpelCom when this process started. And so it is
8 actually not specific to any one of those parties
9 or even to us, but in tabling something that
10 didn't -- you know, had their continued involvement
11 in the management of the company, we knew there was
12 a certain threshold that had to be met to at least
13 provide a level of equivalency to what he would get
14 if the business sold to Rogers or it sold to
15 Tennenbaum and Tennenbaum said, you guys are going
16 off into the sunset, we don't need you anymore.

17 265 Q. I'm going to suggest you are
18 actually asking very specifically about the terms
19 that Mr. Lacavera would receive or the payment he
20 would receive under the terms of a deal proposed by
21 Catalyst or Tennenbaum?

22 A. No, that is actually not accurate,
23 because that negotiation, and you could ask Tony or
24 Simon, that agreement was something that existed
25 between the management group and VimpelCom to

1 provide for an eventuality such as this. It is not
2 something that actually -- to my knowledge, he may
3 have had agreements with these parties over what
4 his terms were, but his change of control payment
5 was specified under an agreement with VimpelCom.

6 266 Q. You were asking what the terms
7 were under these other bidders' bids because you
8 wanted to know what economics you had to include in
9 your own bid?

10 MR. MILNE-SMITH: He has answered the
11 question twice now. I mean, perhaps, Counsel, if
12 you want to take us to the Catalyst deal that
13 provided for a change of control payment to
14 Lacavera, then I'm happy to look at it and have you
15 question him based on it.

16 But I'm pretty confident, based on my
17 review of the documents, there is no such term, and
18 so you know what he is saying is true and you know
19 the proposition you are putting to him is false.

20 MR. WINTON: I know what he is
21 asking --

22 MR. MILNE-SMITH: There is no change of
23 control provision.

24 MR. WINTON: I know what he is asking
25 for, and what I am not getting back is what I feel

1 is an accurate answer. So I'm dealing with it as I
2 want to.

3 MR. MILNE-SMITH: Well, that is fine.
4 You can not like the answer, but he has given it.

5 THE DEPONENT: I mean, I can try to
6 explain it again.

7 BY MR. WINTON:

8 267 Q. That is okay. I don't need you to
9 explain the same thing again.

10 And Mr. Lacavera's response is to call
11 you, not to email you, right?

12 A. Yes.

13 268 Q. How did you know on June 4th that
14 there was a Catalyst deal?

15 A. We didn't.

16 269 Q. So you --

17 A. I don't even know if there was a
18 Catalyst deal.

19 270 Q. You picked Catalyst out of the
20 air?

21 A. No, there was press speculation
22 about a number of parties that were circling this
23 company.

24 271 Q. So on June 4th when you refer to
25 Catalyst, you are saying that was just a name you

1 picked out because of the press speculation and not
2 because you actually knew that Catalyst was in the
3 bidding for Wind?

4 A. I didn't know. Tony never
5 provided me with any information to confirm as
6 such.

7 272 Q. And you didn't know it is what you
8 are telling me?

9 A. No.

10 273 Q. Okay. And none of your deal-mates
11 at West Face and no one else on the deal team knew
12 it?

13 A. I think that is a fair statement.

14 MR. MILNE-SMITH: Counsel, I just want
15 to confirm this in the affidavit, but I thought
16 that by this point, June 4th, had you guys
17 specifically warned West Face about a telecom deal
18 with regards to Mr. Moyse by June 4th?

19 MR. WINTON: There is a letter from Mr.
20 DiPucchio to Mr. Boland of June 1st.

21 MR. MILNE-SMITH: Right, so --

22 MR. WINTON: It refers to a telecom
23 deal.

24 MR. MILNE-SMITH: Right, okay, so --

25 MR. WINTON: It doesn't refer to Wind.

1 MR. MILNE-SMITH: I understand.

2 MR. WINTON: Okay.

3 MR. MILNE-SMITH: But you add that to
4 press speculation about Catalyst being interested
5 in Wind, and I think it is not too hard to put two
6 and two together.

7 BY MR. WINTON:

8 274 Q. All right, Mr. Griffin, now that
9 your counsel has clarified, do you want to change
10 your answer?

11 A. No.

12 275 Q. Okay, then I guess it doesn't
13 matter.

14 If you would turn to page 1, your email
15 from 8:50 p.m. to Mr. Lacavera, towards the bottom
16 of page 1:

17 "Tony, I think it might make
18 the most sense for us to pick up the
19 conversation with the Tennenbaum
20 group to discuss the possibility of
21 joining that syndicate. We are not
22 going to be able to do better than
23 on value. I think theirs is the
24 only real proposal in front of the
25 company outside of ours. Catalyst

1 seems to be a lot of air."

2 This is nine hours later, roughly, nine
3 and a half hours later, and now you are referring
4 to "Catalyst seems to be a lot of air", which is
5 I'm going to suggest to you a more definitive
6 statement about an actual bid; is that fair?

7 A. That is my inference that if they
8 are around the hoop, who knows if they will get
9 there.

10 276 Q. So that is your interpretation?
11 That is your explanation of what you meant by
12 "Catalyst seems to be a lot of air", that if there
13 is a Catalyst deal, it is just a lot of air?

14 A. My --

15 277 Q. There is a missing "if"?

16 A. Yes.

17 278 Q. When you are sending this email to
18 Mr. Lacavera, your evidence then is you didn't
19 actually have any understanding of any terms of a
20 Catalyst offer?

21 A. Certainly not.

22 279 Q. Did you have any understanding or
23 information about the terms of a Tennenbaum group
24 offer?

25 A. Not at that time. We weren't part

1 of their syndicate.

2 280 Q. You were aware that the Tennenbaum
3 group was bidding?

4 A. We knew that they would be a
5 potential bidder. I think even pre-dating that,
6 Michael Leitner at Tennenbaum had made contact with
7 my partner Greg at some point.

8 281 Q. Potential bidder or actual bidder
9 by this point?

10 A. I didn't know. I don't think we
11 were at a point where they had actually called for
12 final proposals, best and last.

13 282 Q. And in that last sentence, by
14 "they" you mean VimpelCom?

15 A. VimpelCom.

16 283 Q. If you could turn to WFC0047334.

17 MR. MILNE-SMITH: Yes.

18 BY MR. WINTON:

19 284 Q. The first email in this chain at
20 the bottom is from you to Mr. Fraser, Mr. Dea and
21 Mr. Zhu June 5th, 9:36 a.m., and you seem to be
22 communicating the terms of a Tennenbaum deal to
23 your deal partners, and then you refer in the
24 second paragraph that:

25 "The other alternative is

1 working exclusively with Lacavera."

2 So by now, the next day, June 5th at
3 9:30 in the morning, you do have an understanding
4 of the terms of a Tennenbaum deal; correct?

5 A. We had spoken to them at some
6 point, and probably following that email where I
7 had indicated we would reach out to them.

8 285 Q. Right.

9 A. And that would be with Michael
10 Leitner.

11 286 Q. Mr. Zhu forwards your email to Pat
12 McGuire and Nandeeep Bamrah, and who are they?

13 A. Pat McGuire was a trader at our
14 shop, he sat on the trading desk. And Nandeeep
15 Bamrah is one of the other analysts.

16 287 Q. Do you know why he forwarded this
17 email to them?

18 A. I don't.

19 288 Q. Mr. Bamrah writes back:

20 "I thought GB", I assume
21 Mr. Boland, "had said that he didn't
22 want to partner with Tennenbaum."

23 Do you understand how Mr. Bamrah had
24 that information available to him?

25 A. I don't know.

1 289 Q. Counsel, can you ask Mr. Bamrah
2 how it is he came to know that Mr. Boland didn't
3 want to partner with Tennenbaum?

4 U/T MR. MILNE-SMITH: Is he still at the
5 firm?

6 MR. PANET: Who?

7 MR. MILNE-SMITH: Nandeep.

8 MR. PANET: Yes.

9 MR. MILNE-SMITH: Yes, we'll ask him.

10 BY MR. WINTON:

11 290 Q. Mr. Zhu's response:

12 "That was before we realized we
13 couldn't afford it."

14 Is that a reference to the fact that by
15 June 5th West Face now understands that if it is
16 going to be a successful bidder for Wind, it can't
17 go it alone?

18 A. Yeah, I would say our combination
19 of understanding the up-front purchase price of the
20 business and the follow-on financing commitments
21 associated with the network build would be
22 substantive.

23 291 Q. If you turn to WFC0053535.

24 MR. MILNE-SMITH: Yes.

25 BY MR. WINTON:

1 292 Q. In this email chain, it is
2 Mr. Lacavera -- the first email at the top is
3 Mr. Lacavera to you at 9:59 a.m., and Mr. Lacavera
4 writes:

5 "Tony, as discussed, West Face
6 can approach T with a four-way
7 scenario at 75 million each."
8 And he continues from there.

9 I'm going to suggest that the
10 impression one gets from these emails is that you
11 had a discussion with Mr. Lacavera where he
12 conveyed to you the terms of the Tennenbaum offer
13 and not a discussion you had with anyone at
14 Tennenbaum?

15 A. No, that is not accurate. In
16 fact, the valuation -- yeah, I mean, back on the
17 4th we already referenced the fact that we were
18 going to speak to Tennenbaum, which we did. They
19 informed us of the composition of their proposed
20 syndicate, which had included Blackstone and
21 Oakhill. Oakhill ended up backing out at some
22 point. Blackstone seemed to be sort of not there
23 either. And that left Tennenbaum with a problem as
24 well, which was they weren't going to fund the
25 entirety of the deal themselves either.

1 And while we didn't have necessarily a
2 plan at the outset of working together, we kind of
3 became useful to each other in terms of
4 consummating the transaction.

5 And the valuation, just to put a finer
6 point on this, of 300 million, that had been
7 communicated from the outset by UBS and VimpelCom
8 through the process, and I think I make reference
9 to that, which is that was the bar that VimpelCom
10 had set, saying if you can meet this enterprise
11 value of 300 million dollars, we are willing to
12 sell there. And that was clearly communicated by
13 Jonathan Herbst and Francois Turgeon, and you know,
14 you'll see that value, plus or minus 10 or 15
15 million dollars, repeat throughout the proposals we
16 have made and the references we make.

17 So what we are talking about here is
18 how we were going to split the funding.

19 293 Q. If you could turn to WFC0052231.

20 MR. MILNE-SMITH: Yes.

21 BY MR. WINTON:

22 294 Q. The bottom email in this chain is
23 from Mr. Lacavera to you June 11 at 1:37 p.m., and
24 Mr. Lacavera writes:

25 "I spoke with Larry Guffey. He

1 is going to give you a call shortly
2 to discuss the opportunity."

3 And what is Mr. Lacavera referring to
4 in that email?

5 A. This is just further discussions
6 in terms of the composition of the syndicate. So
7 Larry Guffey is a former principal of Blackstone,
8 and Blackstone had I believe it was three sort of
9 separate connections to this transaction.

10 One was their conventional private
11 equity funds which are referenced in the original
12 Oakhill deal.

13 The second was their tactical
14 opportunities group, which was really a partners
15 fund that was set up for smaller opportunities that
16 weren't suitable for the private equity group.

17 And then Larry himself ran the telecom
18 portfolio, as I understand it, for a number of
19 years at Blackstone, sat on the board of Deutsch
20 Telekom and other companies, and I guess had been
21 advising Blackstone through his bid at the company
22 and around this transaction. And when it became
23 clear that Blackstone private equity and tactical
24 opportunities were not going to pursue it, I guess,
25 you know -- and I don't have full visibility on

1 this. Larry got the green light to look at this
2 independently, because the size of the investment
3 wasn't really going to be suitable for them, you
4 know, and/or they decided they didn't want to
5 participate in the transaction for other reasons.

6 295 Q. Who is Silver Eagle?

7 A. I think -- is that --

8 MR. MILNE-SMITH: Do you have any
9 confidentiality concern about who it might be?

10 THE DEPONENT: Well, I'm just trying
11 to -- I honestly don't remember.

12 BY MR. WINTON:

13 296 Q. Okay, well, subject to
14 confidentiality concerns, maybe --

15 A. I was just going to ask our
16 counsel if --

17 MR. MILNE-SMITH: Let's go off for a
18 second.

19 (DISCUSSION OFF THE RECORD.)

20 U/A MR. MILNE-SMITH: We'll take it under
21 advisement. We just want to make sure there is no
22 confidentiality issues the way we have to deal with
23 the strategic party.

24 MR. WINTON: Right.

25 MR. MILNE-SMITH: But I expect we'll be

1 able to tell you, and I don't think it really
2 amounts to anything, but I just have to take it
3 under advisement.

4 MR. WINTON: Okay. Can we go off the
5 record for a second then.

6 (DISCUSSION OFF THE RECORD.)

7 BY MR. WINTON:

8 297 Q. If you turn to WFC0049852.

9 MR. MILNE-SMITH: Yes.

10 BY MR. WINTON:

11 298 Q. The second email in this chain is,
12 starting from the top, June 24th, 2014, at 2:59
13 p.m., and Mr. Griffin is writing to someone, it
14 looks like it is to Brice Scheschuk:

15 "Okay, I understand. Tony had
16 sent me the draft of the Rogers
17 Network sharing agreement, but there
18 are no numbers in it. One other
19 question. At some point you guys
20 had sent a slide deck detailing the
21 prior bid history. I can't locate
22 that document."

23 What prior bid history are you
24 referring to in this email?

25 A. That would be the AWS auctions

1 themselves, because one thing we were trying to
2 determine here is what were the -- there was a
3 whole series of clearing prices in terms of the
4 prior auctions both for the incumbents and
5 non-incumbents, and then those were also
6 differentiated as between the various spectrum
7 bands. And so AWS1 spectrum would trade for a
8 different price than AWS3 versus 700, and then the
9 incumbent prices would be different than the
10 non-incumbent prices, and that would go all the way
11 back to I think 2008 was the original auction
12 process for the AWS1.

13 MR. WINTON: Let's go off the record
14 for a second, please.

15 (DISCUSSION OFF THE RECORD.)

16 BY MR. WINTON:

17 299 Q. Now, please turn to WFC0108004.

18 MR. MILNE-SMITH: Yes.

19 BY MR. WINTON:

20 300 Q. This, as far as I understand, has
21 no meta data associated with it. We don't know who
22 the author is, and we don't know what the actual
23 date of the document is. It just says July 2014.

24 So this, Mr. Griffin, looks like it is
25 West Face's deal memo; is that fair? Is that what

1 you would call it?

2 A. Can you just scroll through it so
3 I can see it?

4 301 Q. Sure.

5 A. (Witness reviews document.)

6 Yes. Yeah, it is certainly one of
7 them.

8 302 Q. Right, and there are --

9 A. I believe this was -- if I could
10 just clarify?

11 303 Q. Yes.

12 A. You had asked about the two funds
13 earlier, and I believe this was produced for the
14 purposes of a -- I think this was the one that we
15 used for the capital call for the debt component of
16 the Wind transaction for the Alternate Credit Fund.

17 304 Q. So linked to that conversation we
18 had before lunch, for the Alternate Credit Fund you
19 have to call on the capital which is committed to
20 you but not made available until you actually have
21 a deal pending; correct?

22 A. That's correct.

23 305 Q. And the --

24 A. Or one that -- so we have a notice
25 period.

1 306 Q. Right.

2 A. We have to put out a capital call.
3 There is a time period. And I don't know how much
4 detail I can get into. We have a number of
5 different LPs.

6 307 Q. Yes?

7 A. One of the specific LPs has very
8 specific notice provisions in terms of what
9 information we provide on a deal. They are subject
10 to confidentiality provisions pursuant to the
11 limited partnership agreement. And this would have
12 been one of the documents that we produced in
13 connection with that capital call process.

14 308 Q. Okay. We have a number of
15 iterations of a memo like this in the productions.
16 Are different iterations supplied to different LPs,
17 or was this just a matter of it is drafted and
18 there was a final draft at some point?

19 A. Yeah, it is more the latter,
20 actually. So there would be iterations where we
21 would have version control on the document, and
22 then this would have been the final one, I imagine.

23 309 Q. Well, it may not be this one. I
24 don't want to hold you to that, because we have
25 other versions of this document I think in the

1 productions that we can't just track down.

2 I guess what I would like to know, by
3 way of undertaking if necessary, is on what date
4 the deal memo was sent to the LPs and which
5 document in the productions is the final version of
6 the deal memo that was sent to those LPs?

7 U/A MR. MILNE-SMITH: I'll take it under
8 advisement.

9 BY MR. WINTON:

10 310 Q. Now, before the break I believe we
11 talked about a visit, a trip you made to Ottawa to
12 meet with Industry Canada and other representatives
13 of the Federal Government, right?

14 A. Yes.

15 311 Q. And if you turn to WFC0109439,
16 there is a --

17 MR. MILNE-SMITH: Yes, I have that.

18 BY MR. WINTON:

19 312 Q. There is a PowerPoint presentation
20 that appears to be a version, if not the version,
21 and I'm not asking you to tell me that now, of the
22 PowerPoint you presented to the government. Is
23 that an accurate description of this document?

24 A. Yes.

25 313 Q. So in the database, in the

1 document database that was given to us, the author
2 of this is Paolo Deluca. Does that name mean
3 anything to you?

4 MR. PANET: Can I answer that?

5 MR. MILNE-SMITH: Sure.

6 MR. WINTON: Sure.

7 MR. PANET: He is someone else at West
8 Face. He doesn't have anything to do with this.
9 He must have created another document that he was
10 using as a template. He has no involvement in this
11 transaction. So whoever did this went and took
12 another presentation and entirely changed the
13 content but kept this slide.

14 MR. WINTON: It is probably from the
15 meta data then.

16 MR. PANET: Exactly.

17 MR. WINTON: Okay, thank you for that.

18 THE DEPONENT: He wasn't involved in
19 the transaction in any capacity.

20 BY MR. WINTON:

21 314 Q. Great, thanks.

22 Again, we have different versions of
23 this PowerPoint in the record, some including with
24 some markups. What I would like to do is ask for
25 the same undertaking, that you identify the version

1 in the productions that is the actual version
2 presented to the government when you visited them
3 in Ottawa?

4 U/T MR. MILNE-SMITH: Yes, we'll do that.
5 We'll make reasonable efforts to do so.

6 BY MR. WINTON:

7 315 Q. Thanks. What was Jordan
8 Schwartz's role in the West Face bid on Wind?

9 A. I believe he was an advisor or
10 associate of Michael Serruya, but I don't -- beyond
11 that, I think I met him on one occasion, so I can't
12 really profess to know the relationship there.

13 316 Q. Okay. On document WFC0040179 --
14 MR. CENTA: Sorry, what was that number
15 again?

16 MR. WINTON: 0040179. Are you there?

17 MR. MILNE-SMITH: Yes.

18 BY MR. WINTON:

19 317 Q. So my question is what is the
20 nature of the redactions in this document?

21 MR. MILNE-SMITH: I believe it was
22 privilege.

23 MR. WINTON: On what basis?

24 MR. MILNE-SMITH: Solicitor-client.

25 BY MR. WINTON:

1 318 Q. The response from Patrick Scott,
2 and is he -- is Patrick Scott a lawyer?

3 A. No, he is an advisor.

4 319 Q. Okay. Patrick Scott is writing in
5 the second email in this chain starting from the
6 top on August 15th at 11:14 a.m. to Mr. Boland and
7 Mr. Fraser:

8 "I just want to make sure I
9 understand what you are saying in
10 your note below."

11 And then asks a question.

12 Presumably, the note below is in the
13 redactions?

14 MR. MILNE-SMITH: Yes.

15 BY MR. WINTON:

16 320 Q. And Mr. Scott is asking a question
17 of Mr. Boland and Mr. Fraser. Mr. Scott is not a
18 lawyer. On what basis is the note below that
19 Mr. Scott is asking about privileged?

20 MR. MILNE-SMITH: Do you recall,
21 Andrew?

22 MR. CARLSON: I don't. I suspect it is
23 communications with Davies.

24 MR. MILNE-SMITH: Yes.

25 MR. CARLSON: And then just this kind

1 of was a branch off of that conversation where
2 Patrick Scott replied only to Greg Boland and Peter
3 Fraser.

4 MR. WINTON: Okay. Well, there is not
5 much we can do now in this forum, but I'm going to
6 ask, Counsel, you revisit and review the redactions
7 and confirm that the communications that are
8 redacted are actually in the nature of the seeking
9 or providing of legal advice and not just
10 communications with a lawyer who has been involved
11 in the file for other reasons and therefore maybe
12 they shouldn't be subject to privilege.

13 MR. MILNE-SMITH: I understand.

14 MR. WINTON: Thank you.

15 MR. MILNE-SMITH: Hang on a second, can
16 we just go off?

17 MR. WINTON: Yes.

18 (DISCUSSION OFF THE RECORD.)

19 BY MR. WINTON:

20 321 Q. So pulling open document
21 WFC0051186, this is a version of the -- well, it is
22 not quite the exact chain, but it is a version that
23 has some of the emails that were redacted?

24 MR. MILNE-SMITH: What was redacted
25 from the email we were just looking at is included

1 in this email.

2 BY MR. WINTON:

3 322 Q. Thank you. That is a more clear
4 way of saying what I was trying to say. Thanks,
5 Counsel.

6 So I do want to, though, ask a couple
7 of questions about the redaction. So the
8 redaction, as I understand, is claimed on the basis
9 that Mr. Fraser on August 10th at 1:20 p.m. is
10 relaying a communication that summarizes legal
11 advice received from Pat Barry at Davies; correct?

12 MR. MILNE-SMITH: Correct.

13 MR. WINTON: But he is relaying it to,
14 among others, Lawrence Guffey, Michael Leitner and
15 Jordan Schwartz who are not clients of the Davies
16 firm; correct?

17 MR. MILNE-SMITH: Who at that point
18 were acting in a consortium and therefore enjoyed a
19 joint privilege with West Face.

20 MR. WINTON: Was there a common
21 interest privilege agreement entered into between
22 the parties?

23 MR. MILNE-SMITH: Are you aware of one?

24 THE DEPONENT: I don't know.

25 MR. MILNE-SMITH: No, not to our

1 knowledge.

2 MR. PANET: Not to my knowledge.

3 MR. WINTON: Okay, so to the extent
4 that common interest privilege is being claimed, it
5 is not on a contractual basis but just on --

6 MR. MILNE-SMITH: Common law.

7 MR. WINTON: -- the basis of the facts,
8 common law?

9 MR. MILNE-SMITH: Yes.

10 MR. WINTON: And then so for the same
11 reason that Mr. Barry replies to the group at 2:08
12 p.m. on August 10th and replies to non-clients of
13 the firm, it has been redacted and privilege is
14 claimed on the basis of common interest privilege
15 over whatever is written there; correct?

16 MR. MILNE-SMITH: I mean, I think it's
17 a common interest that extends the solicitor-client
18 privilege.

19 BY MR. WINTON:

20 323 Q. Right, okay, thank you.

21 What was the common interest then that
22 existed among the consortium as of August 10th?

23 MR. MILNE-SMITH: Trying to acquire
24 Wind Mobile.

25 BY MR. WINTON:

1 324 Q. In your January 8th, 2016
2 affidavit, Exhibit 2 --

3 MR. MILNE-SMITH: Yes.

4 BY MR. WINTON:

5 325 Q. No, I don't think that is right.
6 I have got this.

7 A. This one?

8 326 Q. January 8th, 2016, Exhibit 2
9 according to the exhibit stamp, page 56 of whatever
10 record it was in.

11 MR. MILNE-SMITH: Hang on, let's go off
12 for a second.

13 MR. WINTON: Sure.

14 (DISCUSSION OFF THE RECORD.)

15 BY MR. WINTON:

16 327 Q. All right, we are all set.

17 So, Mr. Griffin, you are looking at
18 Exhibit 2 to your affidavit sworn January 8th,
19 2016, and it is a list of shareholders of
20 Mid-Bowline; correct?

21 A. Yes.

22 328 Q. The company that ultimately became
23 the owner of Wind Mobile, right?

24 A. Yes.

25 329 Q. Which of these shareholders are

1 funds owned or controlled by West Face?

2 A. WAL Telecom LP.

3 330 Q. Yes?

4 A. I believe that is the only one.

5 331 Q. So WAL Telecom LP is the West Face
6 shareholder?

7 A. Yes.

8 332 Q. And which of the two funds owned
9 shares or an interest in WAL Telecom LP?

10 A. Both of the -- principally the
11 Long-Term Opportunities Fund, and secondarily the
12 Alternative Credit Fund in a much diminished
13 capacity to what the Long-Term Opportunities Fund
14 held.

15 333 Q. If you could turn to WFC0109530,
16 please.

17 MR. MILNE-SMITH: The phone calls?

18 MR. WINTON: Yes.

19 MR. MILNE-SMITH: Yes.

20 BY MR. WINTON:

21 334 Q. These are the records, such as
22 they are, produced to us by West Face showing calls
23 to and from Brandon Moyse. This information starts
24 on May 22nd, 2014, and ends on September 2nd, 2015.

25 Mr. Griffin, I'm not sure if you will

1 know the answer to this but I'm just going to throw
2 it out there. Do we know why the record starts on
3 May 22nd?

4 A. I don't.

5 335 Q. Were there any phone calls -- is
6 it just that that's when the first call in the
7 records is found, or is it just an inability to
8 produce records before then?

9 MR. PANET: Do you want me to answer
10 that?

11 MR. MILNE-SMITH: Yeah, Mr. Panet
12 compiled this.

13 MR. PANET: It was January 1st, 2014,
14 through to December 31st, 2015, so I couldn't find
15 any calls prior to May 22nd.

16 MR. WINTON: And the records that were
17 being reviewed to derive this information are what
18 records?

19 MR. PANET: West Face's land lines.

20 MR. WINTON: Okay.

21 MR. PANET: So can I --

22 MR. MILNE-SMITH: Yeah.

23 MR. PANET: -- explain it a bit?

24 Okay, so this is a pool of all of the
25 land line calls, so the incoming calls on land

1 lines and the out-going calls.

2 The out-going calls are coded all on
3 the same number, so I can't tell who is making
4 out-going calls, and so that is the WF general
5 line. And then you will see who is -- so all the
6 originating ones from West Face are just coded as
7 the general line because I can't -- it just comes
8 out of the main trunk, so I can't tell whose call
9 it is.

10 But it is a search for four telephone
11 numbers for Brandon, and I believe it was his
12 Catalyst land line, his Catalyst cell, his personal
13 cell phone and his home telephone number, and a
14 search of all those against our land line records
15 from January 1st, 2014, to December 31st, 2015.

16 MR. WINTON: Okay. I need to take a
17 break for a bit, and maybe we can just take a
18 mid-afternoon break.

19 MR. MILNE-SMITH: Sure.

20 -- RECESSED AT 2:44 P.M.

21 -- RESUMED AT 2:55 P.M.

22 BY MR. WINTON:

23 336 Q. So we are picking up where we left
24 off at the document with the telephone records, and
25 if it is possible to have two documents open at

1 once, or at least having had the benefit of the
2 explanation of how this data was collected, if we
3 can turn to WFC0109290.

4 A. Yes.

5 337 Q. This starts at the bottom of the
6 chain is April 24th, 2014, from Mr. Dea to Brandon
7 Moyse and copied to Nikol Markovic, and what I am
8 interested in is on the first page Mr. Dea writes
9 to Mr. Moyse on May 16th at 2:54 p.m. and from his
10 BlackBerry it appears writes:

11 "Please call when you get a
12 minute."

13 And the chain then jumps or picks up
14 again on May 22nd.

15 The phone call, if one actually
16 occurred on the 16th, isn't tracked in the log we
17 were given by West Face. Do we have an explanation
18 for that?

19 MR. MILNE-SMITH: We don't know whether
20 a call actually occurred. I know that just by the
21 date, May 16th, that Mr. Moyse was in I think
22 Thailand by then.

23 So I don't know whether or not that
24 call actually occurred, though I would note that if
25 Mr. Moyse was calling in from one of those -- from

1 something other than those four phones that
2 Mr. Panet listed, it wouldn't show up in our
3 search. We would have to know the phone number
4 that Mr. Moyse was using.

5 MR. WINTON: If he is in Thailand on
6 May 16th, the chances are -- and I am not sure that
7 is accurate -- but if he was, then the records that
8 were reviewed would show a phone call coming in on
9 May 16th from a number originating in Thailand,
10 which one could presume is from Mr. Moyse at that
11 time, so --

12 MR. MILNE-SMITH: Maybe. I don't know
13 if it gets routed through a domestic line or --

14 MR. PANET: And he could have called on
15 a pay phone or something like that.

16 BY MR. WINTON:

17 338 Q. Okay. What I am going to ask is
18 review the records for May, and particularly May
19 16th, and if there is an overseas call and if it
20 can be traced or identified as being a call from
21 Mr. Moyse, if you can update the record with the
22 time and length of the call?

23 MR. PANET: The other thing is I
24 suppose the call could have taken place any time
25 between May 16th and May 22nd. It didn't

1 necessarily --

2 MR. WINTON: I understand. I asked for
3 a very specific undertaking, and that is all I'm
4 going to ask.

5 U/T MR. MILNE-SMITH: Okay, we'll look for
6 that.

7 BY MR. WINTON:

8 339 Q. Can you also speak to Mr. Dea and
9 ask him if he recalls if on that day, May 16th, the
10 Friday, he recalls a telephone conversation with
11 Mr. Moyse?

12 U/T MR. MILNE-SMITH: I will ask him.

13 BY MR. WINTON:

14 340 Q. And if he does, the contents of
15 that telephone conversation, the full recollection
16 of that telephone conversation from Mr. Dea,
17 please?

18 U/A MR. MILNE-SMITH: I'll take that under
19 advisement, but we will make the inquiry.

20 BY MR. WINTON:

21 341 Q. Were any efforts made to review
22 records of the partners of West Face's mobile
23 phones for this time period?

24 MR. MILNE-SMITH: I don't believe so.

25 BY MR. WINTON:

1 342 Q. Any efforts made to acquire cell
2 phone records?

3 MR. MILNE-SMITH: My understanding is
4 there would have to be -- actually, my
5 understanding is that the cell phone companies
6 don't keep records going back that far, or at least
7 they don't -- you would have to seek a Court order
8 from the cell phone companies. I thought we found
9 that out from looking for Brandon's cell phone
10 records.

11 BY MR. WINTON:

12 343 Q. Right. I wasn't just referring to
13 the recent time period, but at any point since this
14 litigation commenced, was there any effort made to
15 acquire cell phone records, last year when there
16 was a request for phone records any efforts made?

17 U/A MR. MILNE-SMITH: I'll take it under
18 advisement.

19 BY MR. WINTON:

20 344 Q. Okay. In the log of phone calls
21 that was produced, so back to 0109530, under the
22 "Call Duration" column there are some that are
23 obviously minutes and seconds and some that are
24 just stand-alone numbers, like 42 in the fifth
25 entry and 27 too below that?

1 MR. MILNE-SMITH: Yes.

2 MR. WINTON: Does that just mean it is
3 42 seconds?

4 MR. MILNE-SMITH: Those are seconds,
5 yes.

6 MR. WINTON: Was it an electronic
7 search of the records that was conducted, or did
8 someone manually go through the records and look
9 for the four numbers?

10 MR. PANET: It was an electronic
11 search.

12 BY MR. WINTON:

13 345 Q. Who is Allison Campbell?

14 A. Do you want me to answer that?
15 She basically does our payroll and HR.

16 346 Q. Supriya Kapoor?

17 A. She is head of or our Chief
18 Compliance Officer.

19 MR. MILNE-SMITH: You'll recall that
20 there were a number of emails between Mr. Moyse and
21 Ms. Kapoor in the time after his suspension
22 relating to his personal trading activities.

23 BY MR. WINTON:

24 347 Q. Have efforts been made to identify
25 who the speaker is at West Face when the

1 originating contact is the West Face general line?

2 MR. MILNE-SMITH: I think we determined
3 for the May 22nd call that, and I mean, there were
4 cross-examinations about that call, I think, so I'm
5 pretty sure that one is Mr. Dea.

6 For the short ones --

7 MR. CARLSON: Sorry --

8 MR. WINTON: The June 9th?

9 MR. MILNE-SMITH: No, I'm talking about
10 the May 22nd.

11 MR. WINTON: Yeah, I got that one.

12 MR. MILNE-SMITH: Okay.

13 MR. WINTON: That one I wasn't as
14 concerned about because I think we do have that
15 information. June 9th, though?

16 MR. MILNE-SMITH: No, we didn't make
17 inquiries. Given how short they were, we quite
18 frankly couldn't imagine that anyone would remember
19 these calls of less than a minute.

20 BY MR. WINTON:

21 348 Q. Can you ask -- is Ms. Kapoor
22 still -- is it Ms. or Mr.?

23 MR. PANET: Ms.

24 BY MR. WINTON:

25 349 Q. Ms. Kapoor, is she still at West

1 Face?

2 A. Yes.

3 350 Q. Can you ask her if to the best of
4 her recollection she was the one who called
5 Brandon's personal mobile on June 19th?

6 MR. MILNE-SMITH: June 19th, so the
7 6:11 p.m. call?

8 MR. WINTON: Yes.

9 U/T MR. MILNE-SMITH: We'll ask her.

10 BY MR. WINTON:

11 351 Q. Thank you. WFC0108732, please.

12 MR. MILNE-SMITH: Yes.

13 BY MR. WINTON:

14 352 Q. And this seems to be a calendar,
15 an Outlook calendar invite for a meeting to be held
16 April 15th from 2:30 to 3:30 in which you, Mr.
17 Griffin, were one of the listed required attendees?

18 A. Yes.

19 353 Q. And I think it is pretty clear
20 from what we have established already in the record
21 that this was the meeting set up for you and
22 Mr. Fraser and Mr. Zhu to meet with Brandon Moyse
23 as part of an interview; correct?

24 A. Yes, that is my recollection.

25 354 Q. And did the interview last an

1 hour, as scheduled?

2 A. I don't know. I don't know.
3 we -- what I do remember is that we saw him
4 sequentially as opposed to together, but I don't
5 recall the duration of the meeting.

6 355 Q. Do you recall any of the contents
7 of your interview with Mr. Moyse on April 15th,
8 2014?

9 A. Generically speaking, we went
10 through his resumé, talked about his educational
11 background, how he performed in school, mostly
12 post-secondary, training he had received at his
13 prior employment, which I can't remember where he
14 originally started, if it was UBS or CSFB or one of
15 the American firms.

16 356 Q. Well, we know he did pass through
17 Credit Suisse?

18 A. Credit Suisse, yes, in leveraged
19 finance. So we talked about that and what his
20 experience was around the debt markets, because we
21 were looking for someone chiefly for the
22 Alternative Credit Fund in terms of their, you
23 know, what their assignment or role was going to be
24 because we needed some additional resources there.

25 357 Q. And the Alternate Credit Fund is

1 the fund where you have committed capital but need
2 to put together a deal memo before you can deploy
3 that capital; correct?

4 A. That's correct.

5 358 Q. And so you were looking for
6 someone to help in analyzing deals that would
7 qualify for that particular fund?

8 A. That was a primary focus, yes.

9 359 Q. And looking for someone who could
10 assist in the drafting of those deal memos?

11 A. Memos, yes, also who had an
12 understanding of the way trust indentures and
13 credit agreements worked, so we wanted someone who
14 had experience in leveraged finance or direct
15 lending, and deal memos were certainly part of the
16 financial modelling.

17 360 Q. Did you ask while you were meeting
18 with Mr. Moyse, did you ask him what he was working
19 on at Catalyst?

20 A. No, I don't recall talking to him
21 about that.

22 361 Q. Did you ask him about his
23 experience at Catalyst at all?

24 A. Well, I asked him generally why he
25 was departing and what he was interested in doing

1 going forward.

2 362 Q. Okay, and what did he tell you?

3 A. I think he just expressed some
4 general dissatisfaction with his career path at the
5 firm and wanting to move on to another opportunity
6 and wanting to assume some greater levels of
7 responsibility in terms of deal files and analysis
8 and really, you know, progress his career
9 advancement.

10 363 Q. Do you understand or did you know
11 why Mr. Zhu was part of the group that was
12 interviewing Mr. Moyse?

13 A. Yeah, we wanted him to -- because
14 he was the senior most of the analysts and this was
15 a junior role, we have commonly included him in our
16 recruiting efforts in terms of interviewing
17 potential candidates, and I think on that
18 particular day as well Greg was either unavailable
19 or wasn't slated to meet with him, so it really
20 fell to Tom and Peter and Yu-jia and myself.

21 364 Q. Was Mr. Zhu the only -- well,
22 first of all, I think he is the only person at the
23 time who had the title of Vice President; correct?

24 A. That's correct.

25 365 Q. And he is the only analyst who met

1 with Mr. Moyse as part of the interview process?

2 A. On that day, yes. I don't know if
3 there was any subsequent meetings with Graeme
4 McLellan or Nandeep Bamrah or Peter Brimm at the
5 time or Aland Wang, but to my -- if there were, I'm
6 not aware.

7 366 Q. Right, but on that day, it looks
8 like it was only Mr. Zhu?

9 A. That was the only list of
10 invitees, yes.

11 367 Q. If you turn or pull up WFC0109148,
12 there is an email from Mr. Dea to you and
13 Mr. Fraser and Mr. Zhu asking if you could write a
14 synopsis of your interviews with Mr. Moyse. Did
15 you?

16 A. I don't recall if we provided an
17 email response or if we sat down and talked about
18 it.

19 368 Q. Well, we haven't seen anything I
20 think in the productions, so --

21 MR. MILNE-SMITH: We haven't seen
22 anything either.

23 MR. WINTON: Presumably, if they
24 existed, we can assume they would have been
25 produced?

1 MR. MILNE-SMITH: Yes.

2 BY MR. WINTON:

3 369 Q. Okay. Just because it is a
4 specific document and there is no debate about
5 relevance, can we get an undertaking to
6 specifically look for responses to this email?

7 U/T MR. MILNE-SMITH: Yes.

8 BY MR. WINTON:

9 370 Q. And produce, if found?

10 U/T MR. MILNE-SMITH: Yes.

11 BY MR. WINTON:

12 371 Q. Thank you. And is it possible you
13 may have drafted a synopsis in handwritten format?

14 A. I don't recall taking notes,
15 handwritten or otherwise, in that meeting.

16 372 Q. Okay.

17 A. I had a copy of his resumé, and
18 that was about it.

19 373 Q. If you turn to WFC0109149.

20 MR. MILNE-SMITH: Yes.

21 BY MR. WINTON:

22 374 Q. And this is an email chain
23 specifically between you and Mr. Dea, and the email
24 from you at 9:26 a.m. on April 24th asks Mr. Dea if
25 he had any concerns about "Brandon's decision to

1 share those internal memos with us, lack of
2 judgment in terms of privy nature of information."

3 And I take it from this that you at the
4 time had understood Brandon was sending memos that
5 he should not have sent from Catalyst over to West
6 Face as part of his job application; correct?

7 A. Yeah, my view personally was that,
8 and this was why I flagged this to Tom, was to say,
9 you know, Tom, you are handling this situation. I
10 am just going to flag for you that you better
11 figure out if, you know, any of this material is
12 actually confidential or not and how to handle, you
13 know, deal with this, because we do take our
14 obligations with respect to confidentiality
15 seriously.

16 And you know, what I am pointing out in
17 the email is, you know, if one of our guys had done
18 this and it did in fact contain confidential
19 information, then I think we would obviously be
20 concerned about the lack of judgment shown in that
21 capacity.

22 375 Q. Well, you have seen the documents
23 that are at issue, those memos. You have seen them
24 before, either at the time or as part of the
25 preparation for this examination; correct?

1 A. Yeah, I think in my prior
2 affidavit I said I had opened one of them
3 pertaining to Homburg.

4 376 Q. Yes.

5 A. I haven't seen the balance of the
6 memos. I remember some of the titles on the memos,
7 but I haven't subsequently reviewed them as part of
8 this process.

9 377 Q. Right, and when you opened the
10 Homburg memo, you saw that it was stamped on the
11 front "private and confidential"; correct?

12 A. I believe it was, and that is what
13 gave rise to the email.

14 378 Q. Right, but you don't have reason
15 to believe that it was marked "confidential" but
16 didn't actually contain confidential information?

17 A. I wasn't taking any risk around
18 it. I was, you know -- and there is no upside to
19 guessing about it.

20 379 Q. Right, and you are not suggesting
21 sitting here today that the document isn't actually
22 confidential to Catalyst?

23 A. I'm not taking a side on it. I
24 just, as you said, kind of read the header and
25 said, look, let's -- I'm not going to guess about

1 it. Whether it is public or not public
2 information, Tom, please go and figure out what the
3 background is here.

4 380 Q. Well, I'm going to ask, Counsel,
5 maybe for West Face's position as a party whether
6 it is going to take the position that any of the
7 four memos are not in fact confidential or don't
8 contain confidential information?

9 U/T MR. MILNE-SMITH: Okay, we'll let you
10 know our position on that.

11 BY MR. WINTON:

12 381 Q. Thank you. And the basis for that
13 position? If the position is that it doesn't
14 contain confidential information, does not, then
15 the basis for that position?

16 U/T MR. MILNE-SMITH: I understand.

17 BY MR. WINTON:

18 382 Q. Thank you.
19 If you could turn to --

20 MR. MILNE-SMITH: So, Counsel, does
21 that mean you don't have an issue with someone at
22 West Face actually reviewing these memoranda in
23 detail? Because I'm actually not sure anybody at
24 West Face has done that out of, you know, leftover
25 concern about the assertions of confidentiality.

1 Certainly Mr. Carlson and I have read them in
2 detail, but I'm not sure anybody at West Face has.
3 Can I take it you waive any objection to someone at
4 West Face doing so?

5 MR. WINTON: Why don't we deal with
6 that offline. I don't think I'm going to answer
7 that here.

8 MR. MILNE-SMITH: Okay.

9 MR. WINTON: Okay. It's a good
10 question.

11 MR. PANET: But what do we do about the
12 undertaking?

13 MR. WINTON: Well, the undertaking
14 obviously is subject to us agreeing to do so.

15 MR. MILNE-SMITH: Right.

16 BY MR. WINTON:

17 383 Q. WFC0109175.

18 MR. MILNE-SMITH: Yes.

19 BY MR. WINTON:

20 384 Q. And this is an email chain. The
21 original message is from Mr. Dea to the other three
22 partners, including yourself, Mr. Griffin, sent May
23 16th, 2014, and it appears to be a summary of
24 Mr. Dea's review of Mr. Moyse's references and then
25 summing up the claim for why the firm ought to hire

1 Brandon; is that fair?

2 A. Yes.

3 385 Q. And at the bottom of the first
4 page Mr. Dea writes:

5 "We need someone now to help
6 process debt pipeline more
7 effectively."

8 What is the reference to "debt
9 pipeline" referring to?

10 A. That is deals for the Alternative
11 Credit Fund.

12 386 Q. Okay. And on the second page, top
13 of the second page, the second order of business is
14 to "move forward with the possible O&G analyst";
15 what is "O&G" referring to?

16 A. That refers to oil and gas.

17 387 Q. Can you ask Mr. Dea to explain
18 what he meant by the sentence:

19 "His experience at Catalyst
20 looks like it has rounded out his
21 experience better", Counsel?

22 U/T MR. MILNE-SMITH: Yes, we'll ask him
23 that.

24 BY MR. WINTON:

25 388 Q. Thank you. Ask him what he meant

1 by that and what was the statement based on,
2 please?

3 U/T MR. MILNE-SMITH: Okay.

4 BY MR. WINTON:

5 389 Q. Thank you. Mr. Griffin, you
6 responded at 10:29 a.m.:

7 "Can we repurpose the two
8 turrets that Rasheed and Paul have
9 and kick them over to desk three as
10 we add these guys."

11 And is your reference to "these guys" a
12 reference to Mr. Moyse and to the oil and gas
13 analysts you were contemplating hiring?

14 A. Yes.

15 390 Q. And what are you referring to when
16 you refer to "turrets"?

17 A. Phone stations.

18 391 Q. Are these in the open trading
19 area?

20 A. Exactly.

21 392 Q. So a person of Brandon's level and
22 role doesn't have an office?

23 A. No, not a -- they may have a
24 shared office that they can use with a, you know,
25 sort of jump seat in terms of computer access and

1 phone, that you can log in, you know, as you see
2 fit, but you know, 80 percent of the time, 75
3 percent of the time they'll be sitting on the desk,
4 unless they are in a meeting or a conference room.

5 393 Q. And so just so I understand the
6 office geography at West Face, analysts will have
7 an -- sorry, analysts are just at the desk in the
8 open area?

9 A. Yes.

10 394 Q. Including Mr. Zhu?

11 A. Yes.

12 395 Q. And the partners have offices, I
13 assume?

14 A. We do.

15 396 Q. Yes?

16 A. Yes, and we also have seating, you
17 know, if we choose to come out for trading purposes
18 and sit on the trading desk to transact in
19 secondary market securities, we'll come out and sit
20 there.

21 397 Q. Right, but to the extent that you
22 are conducting the type of business you conduct
23 when you are reviewing and contemplating the Wind
24 transaction, you would do that from your office?

25 A. Usually conference rooms, which

1 are separate from the trading floor.

2 398 Q. Okay.

3 A. So if you walk in the front door
4 of our office, we have two large conference rooms
5 that are separated from the trading floor and the
6 office areas.

7 399 Q. I'm thinking, Counsel, it might be
8 of some assistance if we had a floor plan of the
9 West Face office made available to us?

10 U/A MR. MILNE-SMITH: I'll take it under
11 advisement.

12 BY MR. WINTON:

13 400 Q. Would you hold discussions about
14 transactions out in the open trade floor area?

15 A. No, not typically, because it is a
16 very noisy environment with a lot of cross-talk, so
17 if you want to have a discussion with someone,
18 particularly me and, you know, partners at the
19 firm, we don't all sit together side by side. And
20 so we would really -- we don't hold Investment
21 Committee meetings on the trading floor. We
22 don't -- other than what we are trading in the
23 secondary market and checking on order flow, we are
24 not, you know, yelling across a desk having
25 conversations about transactions.

1 401 Q. Well, just because you have said
2 "not typically", does that mean you don't or it is
3 possible you did have some discussions about the
4 Wind transaction out on the trading floor?

5 A. Well, we knew that with the
6 confidentiality wall that had been established for
7 that specific transaction over and above any normal
8 circumstances that there was not to be, you know,
9 any open conversations about that transaction in a
10 general environment.

11 MR. WINTON: All right, if we could
12 take a break. I'm just going to check my notes. I
13 think we may only have to go back to that other
14 thing.

15 MR. MILNE-SMITH: Sure, yes.

16 MR. WINTON: We'll go off the record.

17 -- RECESSED AT 3:21 P.M.

18 -- RESUMED AT 3:24 P.M.

19 MR. WINTON: We have agreed that there
20 is one document that we are going to ask questions
21 about in a confidential transcript.

22 And so other than the questions that we
23 are about to ask in that transcript, subject to the
24 undertakings, under advisements that are answered,
25 any refusals that are answered and production of

1 any additional documents, that concludes our
2 examination for discovery.

3 Thank you, Mr. Griffin.

4 MR. MILNE-SMITH: And just for the
5 record, the confidentiality concern is one
6 expressed by a third party. It is not being
7 asserted or advanced by either of the parties at
8 this table, but we are respecting the concerns
9 expressed by a third party.

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12 -- Adjourned at 3:25 p.m.
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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR, CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 10th day of May, 2016.



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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This is Exhibit "41" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner for Taking Affidavits,
Province of Ontario, while a Student
Expires April 13, 2018.

**Catalyst Capital Group
Inc. v. Brandon Moyse and
West Face Capital Inc.**

Gabriel De Alba
on Wednesday, May 11, 2016

neelsons

141 Adelaide Street West, Floor 11
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 the Examination for Discovery of GABRIEL DE ALBA, taken at the offices of Lax O'Sullivan Lisus Gottlieb LLP, 27th Floor, 145 King Street West, Toronto, Ontario, on the 11th day of May, 2016.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 23 Q. Yes. And am I correct that

15 Catalyst never pursued an investment in Arcan?

16 A. We never -- well, we analyze it.

17 24 Q. Yes.

18 A. We spend resources on it.

19 25 Q. Yes.

20 A. We spend team's time on it, which

21 cost us money, and then we did not make an

22 investment in terms of the securities but we did

23 invest time on it.

24 [REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 27 Q. You're not suggesting that West
5 Face tried to pursue an investment in Rona, Homberg
6 or NSI, are you?

7 A. I do not know what they pursued.

8 28 Q. Okay. That's fine if you don't
9 know. The point is, you have no evidence that West
10 Face pursued such an investment?

11 A. No, I don't have the evidence. I
12 personally don't.

13 29 Q. Putting aside Wind, which we're
14 going to spend most of today on, what confidential
15 information -- and putting aside this March 27
16 email --

17 A. Can I just -- I don't know if they
18 pursued again an investment of the securities. I
19 wonder if they spend time also looking at those
20 situations with the intention to invest.

21 30 Q. Okay, you wonder but you have no
22 evidence that they did?

23 A. Yeah, I don't have the evidence.

24 [REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 39 Q. I'm asking a different question.

12 I'm not asking how he knew about what Catalyst was

13 pursuing. How did Mr. Moyse, when he was at

14 Catalyst, know what West Face was doing? Did you

15 know that at Catalyst?

16 A. In those discussions we analyze

17 who could be the competitors on a certain deal.

18 40 Q. Okay.

19 A. And it's natural that in Canadian

20 situations, West Face is a common competitor.

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

7 █ [REDACTED]

8 47 Q. Okay. So am I correct that in

9 that context of the CRTC decision in 2009 Globalive

10 contacted Catalyst about being a potential source

11 of Canadian capital for Wind?

12 A. Yes, that's correct.

13 48 Q. Okay. And you chose not to pursue

14 that investment with Globalive at that time?

15 A. We did extensive work, that work

16 was archived into our files and library, and at

17 that point in time we did not invest, indeed.

18 █ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

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8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 54 Q. Okay. And then just going on

22 through the history of Wind Mobile, in or about

23 June 2012 the government amended -- the federal

24 government amended the Telecommunications Act to

25 permit foreign ownership of non-incumbent wireless

1 companies under 10 percent market share. Do you
2 recall that incident?

3 A. Correct.

4 55 Q. And am I correct that in that
5 context Globalive again approached Catalyst about
6 potentially investing? Is that right?

7 A. Probably, yeah. I believe
8 discussions happened at the time.

9 [REDACTED]

24 59 Q. Okay, that was my next question.
25 So in 2013, as I understand it, is when VimpelCom

1 first started to explore selling its interest in
2 Wind Mobile; is that right?

3 A. That's correct.

4 60 Q. And they approached you in that
5 context?

6 A. That's correct. We approached
7 them too, it was an active pursue from our side.

8 61 Q. Right.

9 A. Including multiple emails and
10 communications and meetings that took place and
11 including, I believe, exchange of proposals towards
12 an acquisition.

13 [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

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[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

20 78 Q. You mentioned -- we've talked

21 about the core deal team to distinguish it from

22 your overall investment team with respect to Wind.

23 Did you have a core deal team for Mobilicity as of

24 the end of 2013, say?

25 A. All of the investment members who

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4

95

Q. Right. And I take it, given the

5

history of Wind that we've discussed, you were

6

aware that regulatory approvals were a key concern

7

for VimpelCom?

8

A. For -- correct.

9

96

Q. They were -- they wanted to be

10

sure that any deal they entered into for the sale

11

of Wind would obtain the necessary regulatory

12

approvals, right?

13

A. Correct.

14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 117 Q. Okay. And am I correct that there

17 are no emails discussing any terms other than an

18 NDA?

19 MR. WINTON: I'm not sure we're going

20 to agree with that.

21 BY MR. MILNE-SMITH:

22 118 Q. Okay. If there are any documents

23 demonstrating negotiations or discussions other

24 than concerning the terms of an NDA between those

25 two dates, please point them to me?

1 U/T MR. WINTON: We'll do that by way of
2 undertaking.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

139

Q. We were informed early in the course of this litigation by your counsel that this presentation we're looking at, CCG11565, was destroyed after it was presented. Are you aware of that?

16
17
18
19
20
21
22
23
24
25

A. As the information was critical, we advise -- or it was advised that the presentations were destroyed so that the information would not be floating around.

140

Q. It was advised by who?

MR. WINTON: I think I can assist. Let

1 me try to assist.

2 MR. MILNE-SMITH: Okay.

3 MR. WINTON: My understanding, and
4 Mr. de Alba can correct me if this is incorrect, is
5 that after the -- at the presentation the copies of
6 this PowerPoint were requested back from the
7 government members who attended.

8 MR. MILNE-SMITH: Yes.

9 MR. WINTON: And taken back by Catalyst
10 and destroyed and a direction went out to all
11 members of the deal team who had touched this
12 presentation to destroy all copies from their
13 records as well.

14 BY MR. MILNE-SMITH:

15 141 Q. And who made that order?

16 MR. WINTON: I understand it was either
17 Mr. Riley or Mr. Glassman or Mr. de Alba.

18 BY MR. MILNE-SMITH:

19 142 Q. Do you recall?

20 A. I don't recall.

21 143 Q. Is it Catalyst's general practice
22 to destroy copies of presentations made to
23 government?

24 A. It is. It is also industry
25 practice to keep information that is critical

1 confidential.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

15 146 Q. Now, am I correct that as of the
 16 date of this presentation, March 27th, you had not
 17 yet executed a signed non-disclosure agreement?

18 A. I need to check the date of the
 19 NDA.

20 147 Q. You can advise me by way of
 21 undertaking; is that fine, counsel?

22 U/T MR. WINTON: Yes, we'll let you know if
 23 that's incorrect. You can assume that's correct
 24 unless we tell you otherwise.

25 BY MR. MILNE-SMITH:

1 148 Q. Am I also correct that you did not
 2 yet have access to the data room? You didn't get
 3 into the data room until May, correct?

4 A. Not at that point in time.

5 149 Q. Meaning I'm correct?

6 MR. WINTON: You're correct.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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39 [REDACTED]

40 [REDACTED]

41 [REDACTED]

42 [REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

46 [REDACTED]

47 [REDACTED]

48 [REDACTED]

49 [REDACTED]

50 [REDACTED]

1

2

3

162

Q. Sure. So the first bullet says

4

that:

5

"...no deal can be completed

6

without establishing a viable

7

regulatory and economic framework."

8

Am I correct that the rest of the page

9

is setting out what Catalyst perceives to be a

10

viable regulatory and economic framework?

11

A. Correct.

12

163

Q. Okay. And am I also correct that

13

all the points listed there under the heading of

14

"Requires" are not in place as of March 27th? In

15

other words, these are changes that need to be

16

made?

17

A. Some of them might have partial

18

implementation.

19

164

Q. Such as?

20

A. Using the third bullet that says

21

"using incumbent's networks outside licensed

22

areas." There might be some of them which already

23

there have been agreements.

24

165

Q. Okay. So more work was needed but

25

there was some helpful regulatory structure on that

1 point?

2 A. I believe so.

3 166 Q. Okay. And looking specifically at
4 the last one, "Ability to exit the investment with
5 no restrictions in five years," I take it we're
6 agreed that at that point in time that condition
7 was not satisfied because the government wouldn't
8 permit sale of spectrum to incumbents?

9 A. Correct.

10 167 Q. If you go to the next page, page 8
11 of 11565, this sets out what Catalyst perceives as
12 option 2, which is combining Wind and Mobilicity to
13 create a fourth national carrier focused on the
14 wholesale market; is that right?

15 A. Correct.

16 168 Q. And when you look at the
17 requirements listed further down the page, that
18 also includes the ability to exit the investment
19 with no restrictions in five years, the same as we
20 saw for option 1?

21 A. Correct.

22 169 Q. And am I also right that the
23 ability to operate on the wholesale market is not
24 something that was permitted by the government at
25 that time?

1 A. Correct.

2 170 Q. And just to jump ahead in time a
3 little bit, am I also correct that by, just pick a
4 point in time, August 18, 2014, when your
5 exclusivity with VimpelCom expired, the government
6 had not approved unrestricted sale to incumbents;
7 is that right? There had been no regulatory change
8 on that front?

9 A. Correct.

10 171 Q. And the government also had not
11 approved a wholesale strategy?

12 A. There were ongoing discussions on
13 both points.

14 172 Q. Yes, but they hadn't approved it?

15 A. Right.

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

2 192

Q. Okay. Let's go to CCG0028351.

3

This is an email that starts with -- about the

4

middle of the page you will see there is an email

5

from Francois Turgeon at UBS. I understand UBS

6

were the bankers for VimpelCom on this deal; is

7

that correct?

8

A. That's right.

9 193

Q. Francois Turgeon and I think

10

Jonathan Herbst were the two lead individuals at

11

UBS?

12

A. Correct.

13 194

Q. So he sends you the latest

14

management presentation and business plan from Wind

15

Canada, and then you thank him for it and you say:

16

"Due diligence can start on

17

Friday or Monday."

18

I take it from this, your words there,

19

that due diligence had not started until that

20

point?

21

A. That's wrong.

22 195

Q. Okay. So what you said to him was

23

wrong?

24

A. No. What you're saying is wrong.

25

Due diligence had started at Catalyst much earlier.

1 The level of -- the due diligence with the company.

2 196 Q. Ah, okay. So due diligence with

3 the company can start on Friday or Monday is what

4 you meant?

5 A. Correct.

6 197 Q. So due diligence to you means

7 something you can do purely internally and based on

8 public information?

9 A. Yeah, absolutely.

10 198 Q. Mr. Turgeon then replies --

11 A. You have to do it. I mean, you

12 always have to do it.

13 199 Q. Mr. Turgeon replies:

14 "In terms of due diligence I

15 assume that you would like a

16 management presentation and then

17 would complete your due diligence

18 via access to data room."

19 So I take it that there had not been a

20 management presentation as of this date, May 6th?

21 A. May I read the email?

22 200 Q. Sure.

23 A. (Witness reads document). May I

24 also clarify that the email of May 6th, in

25 recognition of all the previous work that Catalyst

1 has done, and I'm going to quote from the banker at
2 UBS, he says "can you also provide due diligence
3 request and timeline to complete your review,"
4 implying that they knew that we had already done a
5 lot of work on the company before.

6 201 Q. But obviously you hadn't reviewed
7 anything provided by the company because you hadn't
8 been given any access to the company's information?

9 A. We will have received information
10 from the company that will be in the public domain.

11 202 Q. Okay. So that was not received
12 from the company, that was about the company that
13 you obtained in the public domain?

14 A. Or from the company that would be
15 in the public domain. The company had regulatory
16 filings.

17 203 Q. Right. But nothing was provided
18 directly to you by the company, until this time?

19 A. Yes, they provide a framework for
20 a discussion and they provide responses to our
21 various proposals. Therefore during this period of
22 time, the main deal parameters have been
23 established.

24 204 Q. And can you produce all evidence
25 of that because I haven't --

1 U/A MR. WINTON: I think this is the same
2 request you've asked for now, by my count, three
3 times. I'll take it under advisement because I
4 think we've made various undertakings and/or given
5 under advisements and we're just going to stick to
6 the same answers.

7 MR. MILNE-SMITH: Okay. Well, we're up
8 to May 6th now, so just make sure it goes up to
9 that date.

10 MR. WINTON: I think your previous
11 questions were up to May 6th.

12 MR. MILNE-SMITH: Okay.

13 MR. WINTON: Now we're clear that's
14 what you mean.

15 BY MR. MILNE-SMITH:

16 205 Q. And is it also included in the
17 advisements you have given to produce any evidence
18 of Catalyst pursuing a Wind deal between the March
19 22 document we looked at and May 6? Can I take it
20 that's also included?

21 MR. WINTON: Yes.

22 BY MR. MILNE-SMITH:

23 206 Q. Can you please turn to CCG28356.
24 This is also on May 6th, and you'll see about
25 two-thirds of the way down the page there is an

1 email from you to Ben Babcock. I understand he was
2 at Morgan Stanley; is that right?

3 A. Yes.

4 207 Q. And he was the head of the Morgan
5 Stanley team that worked on the Wind deal for
6 Catalyst?

7 A. Correct.

8 208 Q. Okay. So your email says you
9 would like to engage MS, being Morgan Stanley, on
10 the acquisition of Wind Canada.

11 "As you might be aware and as
12 per our discussions, process is
13 moving fast and due diligence can
14 start this week."

15 So I should read that to mean that due
16 diligence of information provided by the company
17 can start this week?

18 A. Correct.

19 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

12 218

Q. So you go on in the second paragraph to say:

"This can be positioned to our advantage with the government to get the required clarity on the ability to sell spectrum and/or monetize the investment. The following type of argument can be presented to the government.

'We are the Canadian solution. We will focus on building the stand-alone fourth player, but even from a debt financing/capital markets perspective, no lender will

1 provide funding unless there is
2 clarity on how the collateral and
3 ultimately the business can be sold
4 and when.'"

5 The collateral you are referring to
6 there is primarily the spectrum, correct?

7 A. Correct.

8 219 Q. So you were saying that the
9 presentation, the argument that should be made to
10 the government is that no lender will provide
11 funding unless you had the ability to sell the
12 spectrum to an incumbent?

13 A. Can you repeat the question?

14 220 Q. You were advocating, making an
15 argument to the government that no lender will
16 provide funding unless a purchaser of Wind had the
17 ability to sell the spectrum to an incumbent?

18 A. I think the answer is broader than
19 that. It says how the collateral and ultimately
20 the business can be sold and when. It goes to the
21 essence that the government is a critical component
22 of the deal as we have already predetermined an
23 acquisition value from the previous email. We are
24 now trying to wrap up how to set up the capital
25 structure which would include the ability to get

1 third party financing.

2 221 Q. Yes.

3 A. And the argument, it's an argument
4 to be brought to the government is if there is no
5 clarity, the ability to get third party financing
6 will be greatly impaired.

7 222 Q. And the clarity you were looking
8 for was the ability to sell to an incumbent after
9 five years, as you had pitched to the government
10 back in March?

11 A. That would be the negotiating
12 point. That would be the key negotiating request.

13 223 Q. And when you said no lender will
14 provide funding without that clarity, you were
15 saying the truth there, that was your truthful
16 opinion?

17 A. That was a negotiating
18 presentation.

19 224 Q. Are you saying -- that's not quite
20 an answer to my question. You were saying the
21 truth, regardless of whether it was a negotiating
22 position or not? You weren't going to say
23 something false to the government, right?

24 A. No lender would provide funding in
25 that context. However, you can always adjust, as

1 mentioned to you, to obtain the funding.

2 225 Q. It doesn't say in that context.
3 It says no lender will provide funding unless there
4 is clarity on the ability to sell spectrum to an
5 incumbent.

6 A. If you read the beginning of the
7 sentence it says "The following type." Type of
8 argument, it's a type of argument.

9 226 Q. So it was advocacy, it wasn't
10 necessarily the truth, is what you're saying?

11 MR. WINTON: I think the word "truth"
12 is kind of throwing Mr. de Alba off here. It is a
13 negotiation. It is a position to take to the
14 government.

15 BY MR. MILNE-SMITH:

16 227 Q. But not necessarily what you
17 believe? Is that what you're saying?

18 A. I do believe the point should be
19 brought up.

20 228 Q. My question is not whether you
21 think the point should be brought up. My question
22 is whether you believed that no lender will provide
23 funding unless there is clarity on the ability to
24 sell spectrum or the business?

25 A. I did believe that that type of

1 argument should be raised with the government.

2 229 Q. That's not my question. My
3 question is whether you believed that no lender
4 will provide funding unless there is clarity on the
5 ability to sell spectrum or the business.

6 A. No. It says clarity on the
7 collateral.

8 230 Q. Which is spectrum, which we
9 already agreed?

10 A. Yeah, but I also mentioned to you
11 that the collateral could be structured in
12 different ways. For example to include a Catalyst
13 warranty in which we will -- we could step up if
14 there was a shortcoming from the collateral
15 allowance that the government would provide.

16 231 Q. If you look at Mr. Glassman's
17 reply to you, he says:

18 "The government has told us
19 today via Bruce D."

20 Just pause there. Bruce D is Bruce
21 Drysdale?

22 A. That's correct.

23 232 Q. And he was sort of your government
24 consultant?

25 A. Correct.

1 233 Q. So Bruce D has told you that the
2 government will not give us in writing the right to
3 sell spectrum in five years; is that correct?

4 A. That's what it says. That's what
5 the email says.

6 234 Q. But are you aware that that is in
7 fact what happened?

8 A. What -- what in fact happened?

9 235 Q. That the government said no to the
10 right to transfer to an incumbent after five years?

11 A. No.

12 MR. WINTON: He says they will not --

13 THE DEPONENT: They will not give it in
14 writing.

15 BY MR. MILNE-SMITH:

16 236 Q. Okay. Well, Mr. Glassman says
17 that that takes option 1 off the table. So
18 Mr. Glassman's position, as I understand it then,
19 is that absent government permission in writing to
20 sell the spectrum in five years, Catalyst was not
21 willing to pursue option 1 from the March 27
22 presentation; is that right?

23 A. He says his response is that such
24 takes option 1 off the table.

25 237 Q. Yes. And would only be willing to

1 build a wholesale leasing business, which was
2 option 2, correct?

3 A. That's the position he is writing
4 in the email.

5 238 Q. Okay. And I take it Mr. Glassman
6 is the principal of Catalyst, correct? He's the
7 most senior person?

8 A. Yes, all of the investment
9 professionals are principals.

10 239 Q. Yes.

11 A. He is the managing partner.

12 240 Q. Right. And an investment of this
13 magnitude that we are discussing concerning Wind
14 would not be made without Mr. Glassman's consent?

15 A. Correct, neither my consent.

16 241 Q. Okay.

17 A. And what the email also notes is
18 that we are going to Ottawa early next week, which
19 again centres this to being a critical point for
20 Catalyst that indeed requires the managing
21 principal to go and continue those negotiations.

22 242 Q. Yes, I understand. Could you
23 now --

24 A. Managing partner, my apologies.

25 243 Q. That's fine. Could you now turn

1 please to CCG9525. So this attaches at 9527 a
2 draft share purchase agreement.

3 A. Can you please go back? Sorry.

4 244 Q. So the email at the top of the
5 chain is Ben Babcock to various people at Catalyst
6 and Morgan Stanley attaching the form of share
7 purchase agreement?

8 A. Correct.

9 245 Q. And then if you flip over to the
10 share purchase agreement at 9527 --

11 A. Yes.

12 246 Q. -- my understanding is that this
13 is sort of the draft form of agreement that
14 VimpelCom has provided to interested purchasers.
15 This is their first draft; is that right?

16 A. I do not know if it is the first
17 draft but is a draft.

18 247 Q. If you could advise me,
19 Mr. Winton, if I have that wrong? I'm pretty sure
20 we're on common ground here.

21 MR. WINTON: I think maybe what we can
22 agree is that it's the first draft sent by
23 VimpelCom to Catalyst.

24 MR. MILNE-SMITH: Yes.

25 MR. WINTON: If that's what you mean by

1 first draft, then I think we can agree to that.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 249 Q. 6.3, yes. You'll see 6.3 is
13 regulatory and third party approvals, and then if
14 you flip over to the next page, I'm interested in
15 paragraph (d), as in delta. Do you see that
16 clause, Mr. de Alba?

17 A. Yes.

18 250 Q. If I were to refer to this as a
19 "hell or high water" clause, is that a phrase
20 you're familiar with in your business dealings?

21 A. I do not know what you mean.

22 251 Q. Okay. Let's talk about the
23 content of it. If you read this provision, first
24 of all it says that:

25 "The purchaser is committing to

1 any and all undertakings,
2 divestitures, licenses or hold
3 separate and similar arrangements
4 with respect to its assets or the
5 assets of the Globalive entities,
6 and committing to any undertakings
7 or other arrangements relating to
8 conduct of its business or the
9 business of the Globalive entities
10 as a condition to obtaining any and
11 all approvals or clearances from any
12 governmental authority or person
13 necessary to contemplate the
14 transactions contemplated hereby."

15 So it's an obligation on the purchaser
16 essentially to take all necessary steps to obtain
17 governmental approval, correct?

18 A. I'm reading it.

19 252 Q. Yes.

20 A. (Witness reads document).

21 MR. WINTON: I don't think that's quite
22 right, the way you put it, Mr. Milne-Smith. I
23 think it's a commitment to undertake the steps
24 required to obtain government approval, but I think
25 what that means is that if the government says

1 we'll give you approval but you need to divest
2 yourself of a certain asset as a condition of that
3 approval, then it's a commitment to divest that
4 asset.

5 MR. MILNE-SMITH: Yes.

6 MR. WINTON: It's not a do whatever is
7 within your power to actually obtain government
8 approval. Do you see the difference in that
9 dynamic?

10 MR. MILNE-SMITH: I'm fine with that.

11 [REDACTED]

12 [REDACTED]

13 253

14 Q. And then the second part -- so
15 there's two sentences in this very long provision,
16 or three sentences I guess. We've talked about the
17 first sentence. The second sentence, as I
18 understand it, prohibits the purchaser from
19 knowingly taking or causing to be taken any action
20 that might prevent or delay obtaining government
21 approval. Is that a fair reading?

22 A. Without the express written
23 consent of the seller.

24 254

25 Q. Correct.

A. Can you repeat the question?

25 255

Q. So without the express written

1 consent of the seller, the second sentence
 2 prohibits the purchaser from knowingly taking or
 3 causing to be taken any action that might prevent
 4 or delay obtaining government approval?

5 MR. WINTON: That's what it says.

6 THE DEPONENT: Correct.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 261 Q. But there was no condition that

14 the deal couldn't close unless Catalyst obtained

15 any regulatory concessions, correct?

16 A. Not on this draft.

17 262 Q. And, in fact, not on any draft?

18 A. I would have to review all the

19 drafts.

20 263 Q. I have, and I didn't see, unless I

21 misread it, I didn't see anything that looked like

22 a condition that the deal couldn't close unless

23 Catalyst obtained certain regulatory concessions

24 from the government. If I've missed that and you

25 can point that to me somewhere in one of the drafts

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9

270

Q. Sure. Is it fair to say that

10

Catalyst's strategy or position before the

11

government hadn't materially changed from March

12

27th to May 12th?

13

A. Just give me one second.

14

271

Q. Sure.

15

A. (Witness reads document). Can you

16

please repeat the question again?

17

MR. DIPUCCHIO: He's asked whether the

18

Catalyst strategy or position before the government

19

had or hadn't materially changed from March 27th to

20

May 12th?

21

THE DEPONENT: No, it hadn't.

22

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 285 Q. My understanding, Mr. de Alba, and

16 Mr. Lockie has already given this evidence by

17 affidavit and it's certainly consistent with my

18 review of the record, but I want to have your

19 evidence on this, my understanding is that Catalyst

20 had no interest in co-investing with Globalive as

21 it pursued Wind. Do you disagree with that

22 statement?

23 A. There were multiple discussions

24 directly with Mr. Lacavera.

25 286 Q. But what was the result of those

1 discussions? My understanding is --

2 A. Could you refer -- your first
3 question is different than your second question.
4 Can you please ask them both?

5 287 Q. You said that there were multiple
6 discussions. Am I correct that the result of any
7 such discussions was that Catalyst had no interest
8 in pursuing investment with Mr. Lacavera or
9 Globalive?

10 A. Well, we ultimately were not able
11 to complete the transaction. That did not mean
12 that we will have not pursued either a co-invest
13 and again an allocation of equity to members of the
14 management team.

15 288 Q. Okay. The deal that was on the
16 table in August, just to jump ahead in time here,
17 did not contemplate any investment for Globalive or
18 Mr. Lacavera?

19 A. Catalyst was prepared to do it on
20 a stand-alone basis.

21 289 Q. Right.

22 A. But that did not mean that we
23 would foreclose Mr. Lacavera's potential
24 participation, and certainly Simon, as head of
25 regulatory, it was expected for him to have a

1 future role at the company as regulatory items were
2 critical to the deal and were critical for the
3 business going forward.

4 290 Q. Mr. de Alba, am I correct that in
5 July 2014 Mr. Glassman wouldn't even confirm to
6 Mr. Lacavera whether Catalyst was pursuing Wind?

7 A. That does not seem accurate to me,
8 right?

9 291 Q. Can you turn up, please, CCG25806.
10 Do you have that? So if you go to the second page,
11 there is an email from Anthony Lacavera dated July
12 21 written to you and Mr. de Alba -- sorry, to you
13 and Mr. Glassman, and it says:

14 "I understand from VimpelCom
15 that we are close to a deal. Let me
16 know if your intention is to include
17 my own or my equity group or not."

18 And he has a parenthetical where he
19 explains his equity group.

20 MR. DIPUCCHIO: Sorry, we're trying to
21 find where you are.

22 MR. MILNE-SMITH: Do you have the email
23 I'm referring to?

24 MR. DIPUCCHIO: Give me the date again.

25 MR. MILNE-SMITH: July 21 at 11:07 p.m.

1 MR. DIPUCCHIO: Just a second. We're
2 looking at the wrong email.

3 MR. MILNE-SMITH: CCG25806.

4 MR. DIPUCCHIO: Sorry, your question,
5 as I understood it, was that Mr. Glassman wasn't
6 even prepared to confirm that Catalyst was pursuing
7 Wind?

8 MR. MILNE-SMITH: I'm going to get
9 there.

10 MR. DIPUCCHIO: Okay. So your question
11 in relation to this email is what?

12 BY MR. MILNE-SMITH:

13 292 Q. So, first of all, you see this
14 email, "I understand from VimpelCom that we are
15 close to a deal"?

16 MR. DIPUCCHIO: Right.

17 BY MR. MILNE-SMITH:

18 293 Q. Okay. And Mr. Lacavera says he
19 would like to contribute 15 million himself, "not
20 in any way linked to my broader group's potential
21 participation." So you received that email, Mr.
22 de Alba, correct?

23 A. Yes, correct.

24 294 Q. Then if you go to the first page
25 of that document, it's the response from

1 Mr. Glassman on which you were copied; do you see
2 that?

3 A. I see the email.

4 295 Q. And you see that Mr. Glassman
5 wouldn't even confirm or deny whether Catalyst was
6 pursuing Wind?

7 A. It is not -- what you're saying is
8 not accurate. Mr. Glassman had made public
9 statements before about Catalyst's interest in
10 Wind. Mr. Lacavera, Bryce and Simon were part of
11 the due diligence process, the company's due
12 diligence process, they were part of the
13 negotiations and they were, as it is clearly stated
14 here, aware that there were negotiations ongoing
15 around that time, there were also meetings that
16 took place with Mr. Lacavera.

17 296 Q. Mr. Glassman -- I'm going to read
18 this to you:

19 "Hey Tony, as you can imagine,
20 your email below puts us in a
21 theoretically difficult position.
22 If we were in direct discussion with
23 VimpelCom, we would most likely be
24 subject to a confidentiality
25 agreement that would prevent us from

1 disclosing such and for sure the
2 status of such without their
3 consent."

4 Let's just pause there. Mr. Glassman
5 won't even concede that Catalyst is in direct
6 discussions with VimpelCom, wouldn't you agree?

7 A. He is saying that the framing of
8 the email from Mr. Lacavera could be -- and the
9 requested response could put Catalyst in a bad
10 position if Catalyst is subject to confidentiality
11 agreements that prevent us from having that
12 dialogue.

13 297 Q. That's not my question. My
14 question is Mr. Glassman, by using the word "if,"
15 all capitals, Mr. Glassman is not even conceding
16 that Catalyst is in direct discussions with
17 VimpelCom; wouldn't you agree?

18 A. No.

19 298 Q. Okay. Next sentence:

20 "If we are not involved with
21 VimpelCom in such disclosing, said
22 lack of involvement could in theory
23 hurt our position with other
24 stakeholders in Mobilicity.

25 Therefore whether such is factually

1 correct can neither be confirmed nor
2 denied."

3 Do you accept that Mr. Glassman will
4 not even confirm or deny whether it is in --
5 whether Catalyst is in discussions with VimpelCom?

6 A. As he is -- his concern is about
7 the phrasing of the question from Mr. Lacavera.
8 Mr. Lacavera is asking a direct question about
9 Catalyst's position towards the deal, and
10 Mr. Glassman is saying your email below puts us in
11 a theoretically difficult position. Mr. Glassman
12 does not want to mistakenly and inadvertently
13 breach a confidentiality agreement.

14 299 Q. I take it that Catalyst did not
15 pursue including Mr. Lacavera's equity group in its
16 potential investment with VimpelCom and Wind?

17 MR. DIPUCCHIO: Haven't you asked that
18 already? We've covered that.

19 [REDACTED]
20 [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

1

[REDACTED]

█

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

6

317

Q. I am actually asking a much

7

simpler question. Did they always cooperate with

8

your requests? Did they give you what you were

9

asking for?

10

A. Enough to confirm our prior work.

11

318

Q. You never had a problem with them

12

where they just wouldn't get back to you and they

13

ignored your requests?

14

A. Usually requests are not filled

15

out fully and the timeframe was tight. However,

16

the financial approach to the deal from the

17

Catalyst side was based on the value of the

18

spectrum. Their behaviour did not alter that

19

analysis.

20

█

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█

[REDACTED]

[REDACTED]

1 A. No, I don't recall.

2 327 Q. He'd already received an offer
3 from West Face by this time; you understand that
4 now?

5 A. I don't think I was aware at the
6 time.

7 328 Q. Not at the time but I'm saying now
8 you know that he had already received an offer from
9 West Face by this time?

10 A. Yes.

11 329 Q. And I take it there's no evidence
12 or you have no information that anyone at Catalyst
13 discussed this revised draft or any of these
14 revisions with Mr. Moyses?

15 A. I don't recall.

16 330 Q. Okay. I'd like to go a little bit
17 further. I would like to confirm that there is no
18 evidence coming from Catalyst that anyone at
19 Catalyst discussed any of the revisions set forth
20 in this draft with Mr. Moyses?

21 U/T MR. DIPUCCHIO: We'll let you know.

22 [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

22 335 Q. You will agree with me paragraph

23 (d) as it had existed was deleted in its entirety

24 and what's been added in instead is a limitation on

25 VimpelCom's ability to receive Catalyst's

1 confidential information?

2 A. Correct.

3 336 Q. And the reason that you deleted
4 paragraph (d) is because it imposed limits on
5 Catalyst's ability to pursue government
6 concessions, regulatory change?

7 A. It also says unless the purchaser
8 is satisfied that the confidential nature of such
9 information can be preserved.

10 337 Q. Sorry, I'm not talking about the
11 addition, I'm talking about the deletion, I should
12 have been more clear. The reason that you deleted
13 paragraph (d), I'm not asking about what you added
14 in, the reason you deleted paragraph (d) is because
15 it imposed limits on Catalyst's ability to pursue
16 regulatory concessions?

17 A. It could have been that. It could
18 have been that we were looking for clarity about
19 what were the undertakings that Catalyst was going
20 to have to take.

21 338 Q. The fact of the matter is you
22 wanted the ability to pursue regulatory
23 concessions, right? You had done it, what's the
24 date of this, this is the 23rd, less than two weeks
25 earlier, representatives of Catalyst had been in

1 Ottawa pursuing regulatory concessions, right?

2 A. Correct.

3 339 Q. And you didn't want to be limited
4 in your ability to do so?

5 A. Well, there could be a natural
6 limitation which is part of the negotiation with
7 VimpelCom, so this was a response to VimpelCom on
8 what was at that point in time the regulatory --
9 you know, being the regulatory framework, the final
10 pending point on the deal.

11 340 Q. And you wanted to be able to
12 pursue the right -- you wanted to be able to pursue
13 regulatory concessions and paragraph (d) limited
14 your ability to do so, so you deleted it, correct?

15 A. The language deleted, as noted,
16 goes to the obligations that Catalyst was -- as it
17 says, the obligations of the purchaser shall
18 include committing to any and all undertakings,
19 divestitures, licenses or hold separate and similar
20 arrangements with respect to its assets or the
21 assets of the Globalive entities.

22 I don't recall why counsel precisely
23 crossed that paragraph, but what we are saying is
24 that we are prepared to provide the information as
25 long as the information can be kept confidential.

1

[REDACTED]

2

347

Q. Okay. No, I'm just going to move

3

on.

4

"In any event, the deal is not

5

closing at the end of the month. We

6

cannot fund the transaction without

7

the right government approvals which

8

will take time."

9

So the right government approvals there

10

are the ones that you sought on March 27th and on

11

May 12th, correct?

12

A. They could also be government

13

approvals related just to the pure transfer of the

14

spectrum and change of control.

15

348

Q. Okay. You can be referring to

16

both there?

17

A. Yeah.

18

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 360 Q. Okay. And at what point did you
2 cut off Mr. Moyse's access to any further Catalyst
3 information? Was it on May 26th?

4 A. I'm not aware of what was cut off.

5 361 Q. Well, he stops to be included on
6 emails to the deal team, for example, we see him no
7 longer being copied on any emails. Can I assume
8 that you did that promptly after receiving notice
9 he was going to someone you considered to be a
10 competitor on May 26th?

11 A. Yes.

12 362 Q. So from May 26th onward, Mr. Moyse
13 would not have had access to any further Catalyst
14 confidential information?

15 MR. DIPUCCHIO: Well, that -- there may
16 be a question on that, counsel, just because of
17 certain conversations he had with --

18 MR. MILNE-SMITH: Mr. Creighton?

19 MR. DIPUCCHIO: Yes.

20 THE DEPONENT: And what also happened,
21 it seems that Mr. Moyse took with him loads and
22 loads of information.

23 BY MR. MILNE-SMITH:

24 363 Q. No, I understand, we've got his
25 Affidavit of Documents and we know what's been

1 found in the various forensic searches. My point
 2 is all of that would have been from May 26th or
 3 earlier?

4 A. I do not know if he had still
 5 access to his old emails. I do not know if he
 6 still had access to our servers where the
 7 information was still available.

8 364 Q. Did you not take steps to cut off
 9 his access to your servers as of May 26th?

10 A. As I mentioned, I did not do that
 11 personally. I don't know what measures other
 12 members of the team might have taken.

13 365 Q. Could you make inquiries and let
 14 me know?

15 U/T MR. DIPUCCHIO: Yes.

16 BY MR. MILNE-SMITH:

17 366 Q. I would like to know what, whether
 18 through Mr. Creighton's emails or otherwise, or any
 19 other communications, I would like to know what
 20 evidence you have of confidential Catalyst
 21 information passing to Mr. Moyses after May 26th?

22 U/T MR. DIPUCCHIO: Okay, we'll let you
 23 know that.

24 [REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 377 Q. So the question your counsel is
9 willing to have you answer is that as of the date
10 Brandon left, Catalyst's position on the SPA is
11 that it did not accept any restrictions on its
12 right to pursue government concessions, correct?

13 A. That was a key deal point at that
14 point in time.

15 378 Q. Right.

16 A. And we were prepared to continue
17 negotiating that point throughout.

18 379 Q. And Brandon would have no way of
19 knowing how those negotiations would play out?

20 A. He did. He was aware about -- by
21 having, you know, put together the two
22 presentations for the government and hearing from
23 the partners about our willingness or willingness
24 to live with that regulatory environment, he would
25 have a good sense of when and if we will have

1 prepared to stand firm on that point, or waive it.

2 380 Q. And the sense that you would get
3 from those presentations is that Catalyst was going
4 to stand firm on those, correct?

5 A. No. That's --

6 381 Q. The presentations --

7 A. That's the presentations but
8 that's only one aspect. You don't talk to your
9 team through your presentations to the government.
10 You talk to your team through the evolution of the
11 deal. That's why he has been included on the
12 drafting and all of the communications which
13 include back and forth on the points with the
14 government.

15 So the communications show that indeed,
16 if that point had been that absolute, we would have
17 probably walked away from the deal sooner. But in
18 this case there were negotiations, there was always
19 room and scope to be willing to live with that
20 point.

21 382 Q. So Mr. --

22 A. Or with certain framework from the
23 government.

24 383 Q. Mr. de Alba, your sworn evidence
25 is that Mr. Moyse was privy to internal Catalyst

1 discussions about its willingness to walk from any
2 government concessions?

3 A. Yes.

4 384 Q. Okay. And are there any internal
5 Catalyst documents that reflect that?

6 A. There will have been calls with
7 counsel, there will have been calls and meetings
8 with counsel and the investment bankers, and there
9 would have been the discussions amongst the team
10 about how to work within that regulatory
11 environment of which he was the last person that
12 touched the first presentation and was involved in
13 the second presentation.

14 385 Q. But it never would have shown up
15 in a document because I haven't seen any evidence
16 of this in a document. If you can point me to it,
17 I would love to see it.

18 MR. DIPUCCHIO: Well, we can probably
19 have a discussion about characterizations of the
20 documents that have been produced, but your point
21 being has everything been produced relevant to that
22 question?

23 MR. MILNE-SMITH: Yes.

24 MR. DIPUCCHIO: I think the answer to
25 that is yes. If there is anything else we come

1 across, we'll obviously give it to you.

2 BY MR. MILNE-SMITH:

3 386 Q. In terms of the March 27th
4 presentation, my understanding is the extent of
5 Mr. Moyse's involvement is he received handwritten
6 notes from you which he then just typed up into
7 PowerPoint form; is that right?

8 A. I don't recall.

9 [REDACTED]

1

[REDACTED]

25

414

Q. Right. My simple point is

1 Mr. Moyses had no idea what the bid/ask on the
2 outside date would be because nobody had even
3 proposed one as of the last version he saw?

4 A. He could have been in a Catalyst
5 call with our counsel in which that point would
6 have been discussed and directions given to
7 counsel, for example, check how long will it take
8 for approval to take place in Ottawa.

9 415 Q. Could have been, but you can't sit
10 here today swearing he was part of such a
11 discussion?

12 Let me help you. Mr. Moyses was in Asia
13 from May 16 until May 25. Do you recall that? He
14 was on a 10-day vacation in Asia?

15 A. Yeah, I understand he was on
16 vacation.

17 416 Q. Yes. And he didn't participate in
18 any calls during that vacation?

19 A. I don't recall. He might have.

20 417 Q. You're not aware of him
21 participating in any calls?

22 A. I would need to check the records.

23 418 Q. Okay. If someone is going to
24 produce or someone is going to testify that he
25 participated in any of those calls, I would like to

1

[REDACTED]

2

[REDACTED]

[REDACTED]

[REDACTED]

3

[REDACTED]

4

[REDACTED]

[REDACTED]

[REDACTED]

5

[REDACTED]

[REDACTED]

6

424

Q. You see in small Roman numeral

7

(i), Roman numeral 1, it says, it essentially

8

prohibits the purchaser, being Catalyst, from

9

developing any plans relating to the sale of the

10

business or of its assets that are required to be

11

disclosed to a governmental authority in connection

12

with Industry Canada or Competition Act approval.

13

Do you see that?

14

A. Yes.

15

425

Q. So this is a restriction on

16

Catalyst that it had not accepted in the last draft

17

seen by Mr. Moyse, correct?

18

A. Could you repeat it? These are?

19

426

Q. This is a restriction on Catalyst

20

concerning the ability to develop plans relating to

21

the sale of the business or its assets that

22

Catalyst had not accepted in the last draft seen by

23

Mr. Moyse, correct?

24

A. Correct.

25

427

Q. And again, the same as we asked

1 these questions with respect to the outside date,
2 Mr. Moyse wouldn't have participated in any
3 discussions from May 16 to his departure on May
4 26th relating to this question?

5 A. That I cannot tell.

6 428 Q. You'll tell me if you have any
7 evidence of him participating in phone calls from
8 Asia on this point?

9 A. Mr. Moyse had full access to the
10 files, Mr. Moyse had full access to the emails in
11 which he was certainly copied to, Mr. Moyse will
12 have been invited to the calls.

13 429 Q. I haven't seen any emails in which
14 this issue, that Catalyst was willing to make this
15 concession, in which it was raised during the
16 period Mr. Moyse was at Catalyst. You're talking
17 hypothetically he would have had access to, but I'm
18 looking for concrete information, you understand,
19 concrete information that he would have had some
20 insight into Catalyst's willingness to make this
21 concession. Can you produce any such evidence for
22 me?

23 U/T MR. DIPUCCHIO: If you're telling me
24 there is nothing in writing, then there is nothing
25 in writing. Whether he was on a call or something

1 to that effect, counsel, we'll let you know, as I
 2 said, that he participated in, to the extent we
 3 can, whether he participated in any calls during
 4 that period of time.

5 BY MR. MILNE-SMITH:

6 430 Q. And the same thing, to the extent
 7 there is some evidence of any calls before his
 8 departure for Asia between March 6th -- May 6th and
 9 May 15th, I would like to know any evidence to
 10 support the existence of such a call in which
 11 Mr. Moyses participated?

12 U/T MR. DIPUCCHIO: We'll see what we can
 13 dig up.

14 [REDACTED]

15 431 Q. Okay. Could you go to CCG0025737.
 16 You will see this email chain is on June 15, at
 17 least it starts on June 15 with an email from you
 18 to Mr. Glassman at 8:29 p.m. on page 2?

19 A. Yes, I see the email.

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 434 Q. If you go over to page 1 of this,
10 if you go to page 1 you'll see Mr. Glassman writes
11 to you at 8:42 p.m.?

12 A. Um-hmm.

13 435 Q. And at the bottom of his email
14 there, he refers to Quebecor? Is that because
15 Catalyst understood them to be another potential
16 bidder?

17 A. Correct.

18 436 Q. It's not unusual in auction
19 situations like this for one potential party to
20 have intelligence on who other potential bidders
21 might be, correct?

22 A. Yeah.

23 437 Q. There's nothing improper about you
24 having found out Quebecor was an interested bidder,
25 right?

1 A. Probably you read it in the press.

2 438 Q. Right. There's public speculation
3 about who is involved in these things?

4 A. Speculation.

5 439 Q. I mean, there has been public
6 speculation about Catalyst's involvement, correct?

7 A. I believe so, yeah.

8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 443 Q. Were you also aware that
 2 Tennenbaum Capital Partners were a potentially
 3 interested party?

4 A. I think at that point in time
 5 there was speculation.

6 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

13 446 Q. Could you go to CCG0024192. This
 14 is -- if you go to page 3 of this email chain,
 15 you'll see on July 8th you wrote an email which
 16 appears to be to John Levin and Ben Babcock. Do
 17 you see that?

18 A. Would you please confirm the time?

19 447 Q. 5:39 p.m. Do you see that email?

20 A. Yeah.

21 448 Q. So just to be clear, John Levin
 22 was the senior lawyer at Fasken Martineau working
 23 on the deal for Catalyst?

24 A. Correct.

25 449 Q. And Ben is obviously Ben Babcock

1 at Morgan Stanley?

2 A. Correct.

3 450 Q. You say FYI met with them today in
4 Amsterdam. I assume the "them" is representatives
5 of VimpelCom?

6 A. That's correct.

7 451 Q. Where you were attending meetings
8 apparently about something else, I assume not
9 related to this case because it's redacted?

10 A. Correct.

11 452 Q. "They want us back as they are
12 getting no traction with the
13 Tennenbaum/Blackstone," it says "Oak
14 3," I assume that is Oakhill and
15 then "West Face consortium."

16 When you say "they want us back," where
17 had you gone?

18 A. There must have been an impasse in
19 the negotiations.

20 453 Q. Okay. So as of July 8th you
21 weren't involved in active negotiations?

22 A. Well, I was involved so far that I
23 was meeting with them, right?

24 454 Q. Right. But there had been an
25 impasse and they were asking for you to come back

1 to the table, is all I'm saying, so you must have
2 been away from the table for some period?

3 A. Yeah.

4 455 Q. Okay. And there is a whole list
5 of names there, Tennenbaum, Blackstone, Oakhill,
6 West Face. VimpelCom informed you those were some
7 of the other interested parties?

8 A. I do not know if that was from the
9 speculation.

10 456 Q. So you're not -- that might have
11 been something that you were aware of independently
12 of VimpelCom?

13 A. Well --

14 MR. VERMEERSCH: Counsel, I just point
15 out for the sake of the record you're quoting West
16 Face and on the document it does say West Face
17 question mark.

18 BY MR. MILNE-SMITH:

19 457 Q. Yes.

20 A. So there is a question mark.

21 458 Q. So you were speculating?

22 A. Yeah. Then I continue to say
23 "allegedly."

24 459 Q. And so the information you had
25 from VimpelCom -- now, when it says they are

1 getting no traction with those various parties, was
2 that information you got from VimpelCom or was that
3 your own inference that they were getting no
4 traction with other potential buyers?

5 A. Well, my understanding would have
6 been if there is a re-acceleration of the process,
7 it must have been that there was an impasse with
8 the other side.

9 460 Q. Okay. And of course Mr. Moyse had
10 been at -- you understand that Mr. Moyse had been
11 at West Face for over two weeks now, correct? You
12 know he started there on the 23rd of June?

13 MR. DIPUCCHIO: Yeah, I think that's
14 been acknowledged.

15 BY MR. MILNE-SMITH:

16 461 Q. So two weeks into Mr. Moyse's
17 three-and-a-half-week tenure at West Face, your
18 best understanding is that a consortium that
19 potentially included West Face was getting no
20 traction?

21 A. Or at least to get, you know, no
22 traction, they need to get us back, yeah.

23 462 Q. And obviously since Brandon's
24 departure, no one to your knowledge, no one at
25 Catalyst told him anything about the deal or

1 Catalyst strategies or the course of Catalyst
2 negotiations?

3 MR. DIPUCCHIO: That I think we'll have
4 to qualify a little bit with the discussions that
5 were happening between Moyse and Creighton.

6 MR. MILNE-SMITH: My understanding is
7 those discussions don't touch on Wind at all,
8 certainly not in this time period, but if you want
9 to --

10 U/T MR. DIPUCCHIO: We'll get you
11 information on that, counsel. I just don't want to
12 foreclose.

13 BY MR. MILNE-SMITH:

14 463 Q. Sitting here today, Mr. de Alba,
15 obviously you weren't aware of any such
16 communication with Mr. Moyse?

17 A. Correct.

18 464 Q. And you're confident obviously you
19 didn't talk to Mr. Moyse?

20 A. No.

21 465 Q. You're confident Mr. Glassman
22 didn't talk to Mr. Moyse?

23 A. I don't think so.

24 466 Q. To your knowledge no one at Morgan
25 Stanley or Fasken Martineau spoke to Mr. Moyse?

1 A. I am not aware.

2 467 Q. To your knowledge Zach Michaud did
3 not speak to Mr. Moyses?

4 A. I do not know.

5 468 Q. Once Mr. Moyses left, who were the
6 analysts most principally involved in the
7 transaction from Catalyst?

8 A. I think it was Lorne Creighton.

9 469 Q. Yes. Anyone else?

10 A. I don't recall.

11 470 Q. And I understand that you've now
12 obtained from Mr. Creighton all of his
13 communications with Mr. Moyses during the relevant
14 time period?

15 MR. DIPUCCHIO: I'll let Mr. Vermeersch
16 answer that because he's been responsible for it.

17 MR. VERMEERSCH: We've obtained all of
18 the emails that we -- yes, all the email
19 communication between the two and disclosed,
20 subject to what Brandon disclosed, everything that
21 is relevant.

22 MR. MILNE-SMITH: And all SMS
23 communications?

24 MR. VERMEERSCH: We have not obtained
25 SMS communications from Mr. Creighton. Those are

1 produced by --

2 MR. MILNE-SMITH: Oh, okay. So you're
3 confident you have SMS communications between the
4 two?

5 MR. VERMEERSCH: We're confident that
6 we have seen them as produced by Mr. Moyse.

7 BY MR. MILNE-SMITH:

8 471 Q. Okay. I understand that you spent
9 some time with Mr. Creighton, that he came to the
10 offices and was questioned about any relevant
11 information he might have about this case?

12 MR. VERMEERSCH: That's correct.

13 BY MR. MILNE-SMITH:

14 472 Q. And did Mr. Creighton disclose any
15 oral communications to Mr. Moyse of confidential
16 Catalyst information about Wind?

17 MR. DIPUCCHIO: Do we have that right
18 now?

19 MR. VERMEERSCH: We don't have that
20 right now.

21 MR. DIPUCCHIO: So we're going to, to
22 the extent it comes into our possession, we're
23 going to give it to you.

24 U/T In other words, if we have further
25 discussions with him and that comes to light we're

1 going to pass that along to you, obviously.

2 BY MR. MILNE-SMITH:

3 473 Q. But to date, when questioned about
4 the matter, he didn't -- he didn't confess to any
5 disclosure of confidential information to Brandon?

6 MR. VERMEERSCH: Outside of Brandon's
7 -- outside of the time Brandon was employed by
8 Catalyst?

9 MR. MILNE-SMITH: Of course.

10 MR. VERMEERSCH: Not to my recollection
11 sitting here, outside of the end of the time period
12 at which Brandon was an employee of Catalyst.

13 MR. MILNE-SMITH: Of course.

14 MR. VERMEERSCH: Right.

15 MR. MILNE-SMITH: Of course they are
16 exchanging confidential information while they are
17 both employees. My point is after Brandon left
18 Catalyst, we've got the emails now, we've got the
19 SMS. The only other form of communication could be
20 meetings or phone calls.

21 MR. VERMEERSCH: Right.

22 BY MR. MILNE-SMITH:

23 474 Q. And Mr. Creighton hasn't disclosed
24 any oral communications at which he disclosed
25 Catalyst confidential information relating to Wind?

1 MR. VERMEERSCH: That's correct.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 475 Q. So, Mr. de Alba, we were talking
9 before the break about the intelligence you had on
10 a consortium involving Tennenbaum, Oakhill, West
11 Face, and so forth. I take it your understanding,
12 your expectation would be that those parties would
13 have entered into an NDA the same way that Catalyst
14 had, correct? That would have been your ordinary
15 expectation?

16 A. Correct.

17 476 Q. And that the fact of their
18 involvement would have been covered by that NDA?

19 A. From that point on, yeah.

20 477 Q. Right. So the fact that you were
21 receiving this information, whatever the source
22 might have been, in breach of an NDA didn't give
23 you any trouble in the circumstances?

24 A. What information?

25 478 Q. That they were involved in

1 negotiations?

2 A. As I mentioned, that was from
3 speculation related to the press and, as you know,
4 there is a question mark about the consortium.

5 479 Q. Right. And somebody must have
6 leaked somehow, so there must have been some kind
7 of breach of the NDA, correct?

8 MR. DIPUCCHIO: That's a pretty big
9 assumption, isn't it, counsel?

10 MR. MILNE-SMITH: Okay.

11 MR. DIPUCCHIO: I mean, how do we know?

12 BY MR. MILNE-SMITH:

13 480 Q. So the same way, if West Face
14 finds out that Catalyst was involved, there is
15 really no way to find out, there is really no way
16 to know who the leak was? It could have been
17 someone at Catalyst, it could have been someone at
18 VimpelCom, we have no way to know?

19 A. It could be speculation.

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 488 Q. So, in other words,

16 notwithstanding this exclusivity agreement,

17 Mr. Lacavera and his companies were free to pursue

18 whatever other deal they wanted to?

19 MR. DIPUCCHIO: Well, I don't know

20 about Mr. Lacavera. Let's be clear.

21 MR. MILNE-SMITH: Mr. Lacavera's

22 companies.

23 MR. DIPUCCHIO: AAL Telecom and its

24 subsidiaries, right.

25 BY MR. MILNE-SMITH:

1

2 503

Q. Do you have any evidence that VimpelCom or any of its affiliates as defined in the agreement breached the exclusivity agreement?

MR. DIPUCCHIO: Well, okay, help me out with this. You guys made a big deal about an inducing claim being completely separate from what we're dealing with here, so why is that relevant?

MR. MILNE-SMITH: If you're not pursuing it --

MR. DIPUCCHIO: Well, I'm not saying I'm not pursuing it. I'm just trying to figure out why it's relevant to this proceeding.

MR. MILNE-SMITH: Because I'm still not clear if you're pursuing it in this proceeding.

MR. DIPUCCHIO: But that's a different question. You can write to me on that.

BY MR. MILNE-SMITH:

19 504 Q. Are you pursuing an inducing breach claim in this proceeding?

MR. DIPUCCHIO: I don't think we have to answer that today, counsel. In this proceeding?

MR. MILNE-SMITH: In this proceeding, the one that's going to trial.

MR. DIPUCCHIO: No, obviously the

1 pleadings aren't for inducing.

2 BY MR. MILNE-SMITH:

3 505 Q. Are you pursuing a claim in this
4 proceeding that AAL Telecom Holdings Incorporated,
5 any of its subsidiaries or any of its three
6 principals that I will identify - Mr. Scheschuk,
7 Mr. Lacavera or Mr. Lockie - are you pursuing a
8 claim that any of those parties have breached any
9 kind of legal duty or obligation to Catalyst in
10 respect of their discussions with West Face?

11 MR. DIPUCCHIO: As part of this claim?

12 MR. MILNE-SMITH: Yes.

13 U/T MR. DIPUCCHIO: Let me consider that
14 question and I'll get back to you on that, okay? I
15 think the answer to that is no, obviously, but let
16 me just consider that, okay?

17 [REDACTED]
18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1

█

█

4 521

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

Q. Right, okay. So when the spectrum auction was announced, the set-aside spectrum auction was announced, another option that presented, instead of merging with Mobilicity or buying Mobilicity out of the CCAA process or buying the spectrum, you could simply acquire this spectrum through the set-aside auction, right?

A. It is not apples to apples, right? Spectrums are not equal. The coverage territories are not equal.

14 522 Q. But it presented another option?

15 A. Correct.

16 523 Q. And in fact, as I recall, we can turn it up if we have to, but my recollection is that you told Zach Michaud that your base case for Wind should change from buying Mobilicity or its spectrum to simply acquiring spectrum in the set-aside auction for 62.5 million?

22 A. It could change on a stand-alone approach.

24 524 Q. Right. Your base case went from having to spend 200 million on spectrum for

1 Mobilicity spending 62.5 million from the set-aside
2 auction?

3 A. Could be.

4 525 Q. Okay. And obviously the fact that
5 this set-aside spectrum auction would be announced
6 in July couldn't have been known to Mr. Moyse when
7 he left Catalyst in May?

8 A. I don't recall the communications
9 that the government had provided so far to that
10 point.

11 526 Q. You're not aware of any evidence
12 that Mr. Moyse would have been able to see two
13 months into the future and know what the government
14 would do with respect to a set-aside auction?

15 A. No.

16 527 Q. And obviously Mr. Moyse would have
17 no idea how Catalyst would react to that
18 announcement?

19 A. No, he would have. As you pursue
20 an integration strategy for the fourth carrier, and
21 there is spectrum being set aside that can be
22 achieved at a cheap price, it's just natural that
23 you will consider that's one of the options that we
24 were discussing.

25 528 Q. Well, Mr. de Alba, I asked you if

1 your base case went from spending 200 million on
2 Mobilicity to spending 62.5 million on the
3 set-aside auction and your answer is "Could be."

4 But you're telling me that Brandon
5 Moyse -- so we're sitting here two years later,
6 you're telling me that Brandon Moyse in May would
7 have known exactly what Catalyst's response would
8 be to an event happening two months in the future?

9 A. Your question has -- is confusing
10 because nobody could have had certainty at what
11 price the new auction will take place.

12 529 Q. Of course.

13 A. But what Moyse will have realized,
14 and it has been a common strategy, is that we
15 consolidate companies around their acquisitions.
16 So in this case, as noted, the fourth carrier
17 strategy consider Mobilicity and Wind. We also
18 read review as Mobilicity was evolving, we also
19 considered and negotiated the stand-alone Wind, and
20 with a stand-alone Wind you had stand-alone
21 necessities that on the analysis of Wind will have
22 shown the shortcomings that you pointed out,
23 especially on LTE.

24 530 Q. Mr. de Alba, you've said that
25 spectrum was only one of the issues facing Wind,

1 correct?

2 A. Correct.

3 531 Q. And that merging with Mobilicity
4 had a number of different aspects to it other than
5 spectrum?

6 A. Correct.

7 532 Q. You've also told me that nobody
8 could know in advance what the set-aside auction
9 reserve price would be?

10 A. If it had not been published,
11 yeah.

12 533 Q. In fact, you couldn't even know if
13 there would be a set-aside spectrum auction?

14 A. I believe there would have been
15 indication from the government that there would be
16 more spectrum coming.

17 534 Q. But you didn't know what the terms
18 would be, when it would be, how much would be set
19 aside, what the price would be, you didn't know any
20 of those details in advance?

21 A. We could have known what was in
22 the public domain. I don't recall at this time
23 what was in the public domain.

24 535 Q. If you want to produce to me any
25 evidence in the public domain as to what the

1 content of the set-aside spectrum auction would be
2 as of May 26th, 2014, I'd like to see it. I don't
3 think there's anything.

4 MR. DIPUCCHIO: I don't know how we're
5 going to do that counsel, frankly.

6 MR. MILNE-SMITH: I don't think there
7 is anything, but if there is anything that Mr. de
8 Alba is referring to, I'd like to see it.

9 U/T MR. DIPUCCHIO: If we can find anything
10 to that effect in our files, yeah, of course we'll
11 produce it.

12 BY MR. MILNE-SMITH:

13 536 Q. So my very simple question for you
14 then, Mr. de Alba, is Mr. Moyses had no way of
15 knowing what Catalyst's reaction and how Catalyst's
16 plans would evolve in response to this announcement
17 of the set-aside auction?

18 A. He would have known that a natural
19 approach from Catalyst would be to continue to
20 consolidate spectrum as that would be a continuity,
21 as noted before, of the discussion between Wind and
22 Mobilicity, and then a stand-alone Wind that needed
23 to overcome certain spectrum shortcomings.

24 537 Q. So he could understand that
25 general idea but he couldn't know any of the

1 details?

2 A. Yes.

3 538 Q. I mean, any -- any intelligent
4 observer of the market would know that you'd want
5 to continue to consolidate spectrum, right?

6 A. Yes, and as noted before, for
7 Catalyst the main value driver was the cost at
8 which we could acquire the Wind spectrum.

9 539 Q. Right. And Catalyst had made no
10 secret of its desire to merge Wind and Mobilicity,
11 correct?

12 A. What do you mean, made no secret?

13 540 Q. You had disclosed it publicly?

14 A. I think there was an article that
15 talked about it but I don't recall.

16 541 Q. You recall an article in which
17 Mr. Glassman was quoted as saying that Catalyst
18 wanted to merge Mobilicity and Wind, correct?

19 MR. VERMEERSCH: I don't believe that
20 that's the quote from Mr. Glassman in that article.

21 MR. DIPUCCHIO: Do you have the
22 article?

23 MR. MILNE-SMITH: There's a few of
24 them. Okay. WFC78062.

25 MR. DIPUCCHIO: 7062?

1 BY MR. MILNE-SMITH:

2 542 Q. 78062. These are a couple of
3 newspaper articles. If you go to the second page,
4 it's a Financial Post article.

5 MR. DIPUCCHIO: They are just coming
6 up, counsel. Okay, second page.

7 BY MR. MILNE-SMITH:

8 543 Q. It's a June 27, 2013 article from
9 the Financial Post. The bottom paragraph says:

10 "Mr. Glassman would not comment
11 on the nature of his firm's
12 involvement with Verizon or Wind,
13 however he told the Financial Post,
14 'Catalyst is not interested in
15 Mobilicity on a stand-alone basis.
16 Never were, never will be'."

17 And then it goes on, he is quoted
18 further on page 3 saying:

19 "Mobilicity on its own is a
20 flea on an elephant's butt of
21 wireless telecom in Canada. The
22 only way to build a fourth wireless
23 provider in Canada is through Wind
24 because of its subscriber base and
25 spectrum."

1 Then if you go to the first page,
2 paragraph 1, 2, 3, 4, 5 -- paragraph 6. Now, this
3 isn't quoting Mr. Glassman, I'll be clear about
4 that, but this is a newspaper article reporting
5 that Catalyst Capital Group Inc. wants Mobilicity
6 to merge with Wind Mobile.

7 So based on those various provisions,
8 would you agree with me that it was -- there was
9 widespread public discussion of Catalyst's interest
10 in merging Mobilicity and Wind?

11 A. Correct.

12 544 Q. Okay. And so any intelligent
13 observer of the market would know that you'd want
14 to continue to consolidate spectrum with respect to
15 the AWS3 set-aside auction?

16 A. Correct.

17 545 Q. Sorry, we've just got to go back
18 to that document.

19 A. Can I just answer something? I
20 don't think that -- I think what these articles
21 point out is the combination of Wind and
22 Mobilicity.

23 546 Q. Yes.

24 A. I'm not sure that what you're
25 qualifying as any intelligent observer would then

1 further understand that that would imply the
 2 continued aggregation of spectrum. What I can tell
 3 you is that members of the Catalyst team will
 4 understand that, as that would have been part of
 5 the business plan Catalyst would develop in the
 6 consideration of the market. I'm not sure if that
 7 translates into the market understanding that it
 8 would also imply further acquisitions of spectrum.

9 547 Q. So you don't think, your position
 10 is that an intelligent observer of the market
 11 wouldn't understand that a set-aside auction gave
 12 Catalyst another option to acquire spectrum aside
 13 from Mobilicity? That's your position?

14 A. Well, in a specialized observer
 15 mind, but I cannot interpret what other people
 16 would understand from that.

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 551 Q. Am I correct that at no point

15 before August 18 did Catalyst receive any comfort

16 from the government that it would permit you to

17 transfer spectrum unrestricted after five years?

18 A. Up to -- throughout our

19 discussions related to Wind, there was always an

20 open dialogue with the government related to their

21 approval, understanding that that was indeed the

22 final pending point on the negotiations.

23 But it does not mean that Catalyst will

24 not have been willing to still proceed with the

25 transaction.

1 552 Q. Okay. So Catalyst was willing to
2 proceed with the transaction without any regulatory
3 concessions?

4 A. We could have.

5 553 Q. I'm not asking hypotheticals.
6 This is real-life situations that occurred in
7 August of 2014. I want to know if your position is
8 that Catalyst was willing to proceed with the
9 acquisition of Wind Mobile without any government
10 concessions?

11 A. We were in -- that was a critical
12 point that we had established from the get-go. We
13 had satisfied the economic variables and that was
14 the final point. We were not able to get to a
15 conclusion or to be able to finalize that decision.

16 554 Q. So Catalyst never made a decision
17 on whether or not you would proceed with the
18 transaction without obtaining regulatory
19 concessions?

20 A. We were not able to complete it as
21 another proposal came.

22 555 Q. No, sorry, I'm asking my question
23 poorly, obviously. My question isn't whether or
24 not you obtained concessions or whether or not you
25 were able to pursue them. My question is as of

1 your exclusivity period up to August 18th, had
2 Catalyst made its own decision internally on
3 whether you would be willing to pursue and close a
4 transaction without first obtaining the sorts of
5 regulatory concessions outlined in your
6 presentations to the government of March 27 and May
7 12?

8 A. Those concessions were critical
9 and we conducted the negotiations all the way,
10 trying to get from the government an economic
11 framework that would make sense. However, we were
12 not able to complete the transaction.

13 556 Q. Again, you're not answering my
14 question, Mr. de Alba. My question isn't whether
15 you were able to conclude a transaction. My
16 question is whether you were able to make a
17 decision on the point about whether or not you
18 would proceed if the concessions were not obtained?

19 A. We did -- we did not get the final
20 word from the government as to their position on
21 those concessions.

22 557 Q. Let me try this a different way
23 because it must be my fault because I'm still not
24 getting an answer to my question.

25 If the government had refused to grant

1 you the regulatory concessions, so this is part one
2 of a hypothetical; part two of the hypothetical is
3 you were able to reach an SPA on terms acceptable
4 to you in terms of the negotiations with VimpelCom,
5 and we've got a final draft so we know how close
6 that was.

7 So those are my two hypothetical
8 conditions. If those two hypothetical conditions
9 were satisfied, would you have closed a deal to
10 acquire Wind without obtaining any government
11 concessions?

12 A. It would have been brought to a
13 discussion amongst the team members.

14 558 Q. Yes?

15 A. And I would have recommended that
16 we proceed with the transaction.

17 559 Q. But it would have had to be a
18 discussion?

19 A. Correct.

20 560 Q. And of course, Brandon Moyse, four
21 months earlier, couldn't have had any idea how that
22 discussion would play out?

23 A. He did have an idea how strong the
24 points were for us.

25 561 Q. Mr. de Alba, you can't tell me

1 today what the result would have been; how could
2 Mr. de Alba four months in advance have done so?

3 MR. DIPUCCHIO: Moyse.

4 BY MR. MILNE-SMITH:

5 562 Q. Moyse, I'm sorry.

6 A. He knew that we were going to push
7 those points all the way to the end of the
8 negotiation.

9 563 Q. Yes, but he didn't know what would
10 have happened had you not obtained those
11 concessions?

12 A. But he did know that if somebody
13 did not require those concessions, they would be in
14 a competitive advantage to us.

15 564 Q. He didn't know what would have
16 happened had you not obtained those concessions?

17 A. He knew that we were going to push
18 for those concessions.

19 565 Q. He didn't know what would have
20 happened had you not obtained them? You didn't
21 know. You don't know sitting here today?

22 A. You're speculating about what
23 concessions we could have obtained.

24 566 Q. The ones set out in the March 27
25 and May 12 -- I'm not speculating. I said

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 591 Q. The next document I'd like to look

13 at is CCG0024418. Do you have that email?

14 MR. WINTON: It's loading. Yes, it's

15 up.

16 [REDACTED]

17 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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594 Q. And on the first page Ben Babcock says "Defer to Gabriel but we are done or it will never end," and you say "Agreed."

Can you take it that as of August 1st, Catalyst, subject to some minor provisions like materiality, thresholds for contracts and retail leases as set out in this, Catalyst viewed the deal as being -- all the material deal points in the SPA as being essentially decided?

A. With VimpelCom, yes.

595 Q. With VimpelCom, yes. Then if we want to look at a draft of what the SPA looked like on that day, you can go to 0026616, is the covering email.

1 MR. VERMEERSCH: We have it.

2 BY MR. MILNE-SMITH:

3 596 Q. So there is an email from
4 Mr. Saratovsky who was, I think, the in-house
5 counsel at VimpelCom with responsibility for this
6 deal; is that right?

7 A. He was in-house counsel and also
8 the main negotiator.

9 597 Q. Right.

10 A. On the other side.

11 598 Q. So he says that the attached draft
12 of the share purchase agreement VimpelCom considers
13 substantially completed subject only to settling
14 some of the details in the schedules. And then the
15 draft is attached at 26625.

16 A. Okay.

17 599 Q. So if we then go to some of the
18 provisions we have looked at before, on page 12 is
19 the definition of outside date?

20 MR. WINTON: It's just still loading.

21 MR. MILNE-SMITH: Ah.

22 MR. WINTON: Okay, page 12?

23 MR. MILNE-SMITH: Yes.

24 MR. WINTON: Okay.

25 BY MR. MILNE-SMITH:

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[REDACTED]

14

I assume VimpelCom had never, given their obsession with government approvals and the way they'd been burned in the past, VimpelCom had never given you any impression that they would permit you to seek an approval for another transaction?

15

16

17

18

19

20

A. That's not accurate. We even had communications with the government about the concession that we were pursuing as well as, you know, the follow-up steps that might be required for completion.

21

22

23

24

25

626 Q. Of course you had. That's for

1 629 Q. So as I interpret that sentence
 2 starting "For greater certainty," Catalyst, once it
 3 signs the agreement, would not even be allowed to
 4 make any plans to sell the business or its assets
 5 to an incumbent or to discuss any such plans with a
 6 governmental authority?

7 MR. WINTON: During the interim period.

8 BY MR. MILNE-SMITH:

9 630 Q. During the interim period, right?

10 A. Correct.

11 631 Q. Okay. So had you signed this
 12 agreement, you would not have been allowed to go
 13 and seek concessions from the government until
 14 after closing about the ability to sell spectrum to
 15 an incumbent?

16 A. Correct.

17 [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
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 [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
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4 634

Q. And Wind Mobile at that time was not seeking the ability to sell its spectrum to incumbents?

7

A. They were seeking other concessions and I believe they were also consistent with some of the items Catalyst would request.

10 635

Q. Yes, but they were not seeking the right to sell spectrum to incumbents?

12

A. Not to incumbents.

13 636

Q. They were seeking things like tower sharing, roaming agreements, those sorts of things?

16

A. Yes.

17 637

Q. They weren't seeking the right to sell the spectrum to an incumbent?

19

A. Correct.

20 638

Q. Obviously they're seeking to sell the spectrum to other people because they're trying to sell it to you?

23

A. They might have pursued another incumbent, I don't know.

25 639

Q. But the right to sell spectrum to

1 incumbents wasn't covered by 6.3(e)?

2 A. Right.

3 640 Q. Next document --

4 MR. WINTON: I think, just to qualify
5 that, it could have been if that --

6 MR. MILNE-SMITH: Well, hang on,
7 counsel.

8 MR. WINTON: No, wait. The point is
9 you are asking him to agree to something he may or
10 may not know, all right? Where is it where you say
11 there is the document that shows that Globalive,
12 GWMC, wasn't seeking to sell to incumbents?

13 THE DEPONENT: I believe they tried at
14 one point as well.

15 MR. WINTON: So if you have that, fine,
16 if it's there, it's fine.

17 BY MR. MILNE-SMITH:

18 641 Q. CCG12078. This is Wind Mobile
19 Industry Canada active files and it lists
20 everything they have ongoing with Industry Canada,
21 and then starting at page 5 everything ongoing with
22 the CRTC. And it talks about roaming rates and
23 tower sharing and a variety of other things, the
24 spectrum option we already covered. There is no
25 reference in here to seeking the right to transfer

1 spectrum to an incumbent.

2 I put it to you that there is nowhere
3 in any document in this case that Wind Mobile was
4 pursuing the right to sell spectrum to incumbents
5 such that it would be captured by 6.3(e), and if
6 you have evidence to the contrary, I'd like to see
7 it. Fair enough?

8 MR. WINTON: I think the best we can
9 leave it at is if they were seeking it, then it
10 would be covered by that, but I'll take your point,
11 we don't have a document that shows they were.

12 MR. MILNE-SMITH: Or any evidence. In
13 fact, we have Mr. de Alba's evidence that he did
14 not believe they were. He is not aware of it.

15 THE DEPONENT: No, what I said was --

16 MR. MILNE-SMITH: Well, the record says
17 what it says.

18 MR. WINTON: The record says what it
19 says. I think the point is I don't think Mr. de
20 Alba is the witness, I think it's either someone
21 from Wind or someone from the government who would
22 know exactly what's the full scope and I don't
23 think we should take it from any one particular
24 document that that's all of it.

25 I'm just pointing out there is an open

1 possibility that it's covered by --

2 MR. MILNE-SMITH: If you plan to call
3 such evidence at trial, I would like to know about
4 it in advance.

5 BY MR. MILNE-SMITH:

6 642 Q. And you didn't have an
7 understanding at that time on August 1st that that
8 was an open file, that was an open matter that Wind
9 was actively pursuing such that it would be covered
10 by 6.3(e)?

11 A. Correct.

12 643 Q. So 25843. First of all, I'd like
13 to apologize, just before lunch I had forgotten
14 about this document because I thought that the one
15 we looked at before lunch was the last
16 communication with government, but I think this one
17 is it now.

18 So if you go to page 2 of the document
19 you'll see an email from Mr. Drysdale again on
20 August the 3rd?

21 A. From what time?

22 644 Q. 9:15 a.m.

23 A. Yes.

24 645 Q. So he says he was in Ottawa late
25 last week, met with James Nicholson, had coffee

1 with the senior PCO, Privy Council Office, I assume
2 we agree, official, had conversations with both.

3 Looking at his bullet points
4 summarizing the meeting, he says:

5 "Both Industry Canada and
6 PCO/PMO are adamant that the current
7 federal policy will not change."

8 I take it we can agree that PCO/PMO
9 means this went right up to the Prime Minister's
10 Office?

11 A. According to Mr. Drysdale.

12 646 Q. And you have no reason to doubt
13 Mr. Drysdale?

14 A. No.

15 647 Q. The next bullet point says that:

16 "The government would not be
17 opposed to Catalyst buying Wind, but
18 Ottawa would not provide concessions
19 Catalyst outlined in its May
20 presentation for building out a
21 fourth carrier nor would Ottawa
22 allow Catalyst or anyone else to
23 become a reseller."

24 Again, as of August 3 that was
25 Catalyst's understanding of the government

1 position?

2 A. As presented by Mr. Drysdale.

3 648 Q. Right. And that position didn't
4 change as of August 18th?

5 A. I would need to check to see if
6 there were any other communications with government
7 during that period of time.

8 649 Q. Okay. You can let me know by way
9 of undertaking. Is that okay, counsel?

10 U/T MR. WINTON: Yes.

11 BY MR. MILNE-SMITH:

12 650 Q. The third bullet point says that
13 if -- Mr. Drysdale recounts Mr. Nicholson saying
14 that if Catalyst were to sign a sale/purchase
15 agreement with Wind, it should do so with a clear
16 understanding it would have to build out a fourth
17 carrier without concessions and without ability to
18 sell to an incumbent after five years.

19 So again, that was the understanding of
20 Catalyst from August 3rd through August 18th?

21 A. As per Mr. Drysdale.

22 651 Q. Yes. And you have nothing to the
23 contrary?

24 A. I need to check to see if there
25 was other dialogue ongoing with the office.

1 652 Q. Okay. And finally the fourth
2 bullet point, just look at the last sentence:

3 "Nicholson reports that
4 Minister Moore and PM Harper are
5 entrenched and there will be no
6 flip-flop."

7 So again, that's something that
8 Mr. Drysdale was told and that you were therefore
9 advised?

10 A. Correct.

11 653 Q. So Mr. Glassman's response starts
12 on page 1 and it carries over to page 2, and his
13 view is that "It's all positioning."

14 Do I take it then Catalyst's view is
15 that notwithstanding the clearly-expressed position
16 of the government, you didn't necessarily believe
17 the government would actually carry through if put
18 to the test?

19 A. Put to the test, what do you mean
20 put to the test?

21 654 Q. Meaning your plan was to sign the
22 SPA and even though the government said they
23 wouldn't give you concessions, you were going to
24 try and get concessions before the deal closed?

25 A. We were going to try.

1 655 Q. Right. And you were going to try
2 to get concessions on things like ability to
3 transfer spectrum to an incumbent?

4 A. No, only within the context of
5 whatever we had discussed in parallel with
6 VimpelCom, right? You need to look at the dynamics
7 of the deal on how the importance of the
8 concessions from the previous presentations in the
9 context of the concessions that Wind itself was
10 requesting.

11 656 Q. Right.

12 A. And then put that together with
13 the dynamics of the data between us and the
14 government.

15 657 Q. So your view is that -- sorry,
16 your evidence is that Catalyst did not intend to
17 seek any concessions about transfer of spectrum in
18 the interim period between signing an SPA and
19 closing?

20 A. That's what we saw before, that's
21 what we were agreeing with VimpelCom.

22 658 Q. Okay. So if you go then over to
23 page 2, this continues Mr. Glassman's email and he
24 says:

25 "Bruce,

1 Do they understand that without
2 making the spectrum transferrable at
3 sometime in the future, they have
4 literally made it impossible for
5 anyone to get financing/debt since
6 without eventual transferability,
7 there is no collateral value against
8 which lenders will lend and
9 therefore a fourth carrier cannot
10 and will not make anyone reasonable
11 minimum rate of return."

12 So I'm a little bit confused here,
13 Mr. de Alba. Mr. Glassman is saying unless the
14 spectrum is transferrable you can't get financing
15 and you can't make a minimum rate of return. But
16 you're also saying that Catalyst wasn't going to
17 seek any concessions on spectrum transfer. So was
18 Catalyst prepared to go into a transaction without
19 any ability to make a reasonable rate of return?

20 A. The positioning that Mr. Glassman
21 is taking with the government advisor, in which the
22 advisor is acting as an intermediary negotiator,
23 right, is not the same as our analysis on the
24 ultimate rate of return that the Catalyst team had
25 developed.

1 659 Q. Hang on, let me make sure we
2 understand here.

3 A. Sure.

4 660 Q. Bruce Drysdale is your agent?

5 A. Government agent.

6 661 Q. Agent for government relations?

7 A. Correct.

8 662 Q. He works for you?

9 A. Um-hmm.

10 663 Q. He doesn't work for government?

11 A. Correct.

12 664 Q. So he owes no loyalty or
13 obligations to the government, he only owes his
14 loyalty to you?

15 A. Correct.

16 665 Q. But you're saying that
17 Mr. Glassman wasn't telling him Catalyst's true
18 position, he was just telling Mr. Drysdale
19 Catalyst's negotiating position with government?

20 A. Absolutely.

21 666 Q. So Mr. Glassman misled
22 Mr. Drysdale about what the ultimate position was?

23 A. No. What do you mean misled?

24 667 Q. Well, he told him something about
25 the ability to make a rate of return and the

1 MR. VERMEERSCH: We have it.

2 BY MR. MILNE-SMITH:

3 692 Q. So there is an email from
4 Mr. Gauthier to John Levin on August the 8th and he
5 said -- and I appreciate you weren't copied on this
6 email though it's then forwarded to you later, but
7 it says:

8 "As you may be aware, Felix
9 called Gabriel to let him know that
10 regrettably internal approvals are
11 taking longer than expected to
12 everyone's frustration and offered
13 to extend exclusivity."

14 Did you have that call with
15 Mr. Saratovsky?

16 A. I believe so.

17 693 Q. And he told you that internal
18 approvals were taking longer than expected?

19 A. I believe so.

20 694 Q. And your understanding is that
21 Mr. Saratovsky was at all times working in good
22 faith trying to get a deal done up to the 18th?

23 MR. WINTON: You're asking him his --
24 no, that's an inappropriate question.

25 BY MR. MILNE-SMITH:

1 695 Q. I'm asking if you ever had any
2 reason to think that Mr. Saratovsky was not working
3 in good faith to try to get a deal done with
4 Catalyst?

5 MR. WINTON: Whether he had or whether
6 he now has? Because those are two very different
7 questions.

8 BY MR. MILNE-SMITH:

9 696 Q. Let's start with whether had at
10 the time?

11 A. It was indeed troubling that there
12 were inconsistencies on what he was presenting as
13 what was going to happen and ultimately how things
14 happening, so I was concerned.

15 697 Q. My point is, were you concerned
16 about Mr. Saratovsky's personal conduct or about
17 what was happening at the board level?

18 A. About him.

19 698 Q. Okay. You were concerned about
20 Mr. Saratovsky's conduct?

21 A. Yes.

22 699 Q. Did you trust him?

23 A. I was negotiating but I did not
24 trust.

25 700 Q. Did not trust him?

1 A. Correct.

2 701 Q. Did you believe he was being
3 untruthful to you?

4 A. Yes.

5 702 Q. What did you think he was being
6 untruthful about?

7 A. He was looking at other options.

8 703 Q. Okay. So do you think he was
9 actually negotiating with other options or just
10 looking at them?

11 A. I thought there was an
12 exclusivity --

13 704 Q. Yes.

14 A. -- and that he was respecting it,
15 which I learned that was not the case.

16 705 Q. Okay. So you don't think
17 Mr. Saratovsky respected exclusivity?

18 A. I think exclusivity was not
19 respected by Mr. Saratovsky and by West Face and by
20 the consortium.

21 706 Q. Well, West Face wasn't bound by
22 exclusivity, they weren't a party to it, right?

23 A. Well, they were sending proposals,
24 inducing a party to walk away from a well-advanced
25 agreement, giving them hope that there was another

1 alternative than just closing with Catalyst.

2 707 Q. And we've got an undertaking for
3 you to advise whether Catalyst has ever made an
4 offer to a party that was a party to an exclusivity
5 agreement. Do you recall you're going to advise me
6 about that?

7 A. Yes.

8 708 Q. So you also believe that
9 Mr. Saratovsky and the VimpelCom board were acting
10 in breach of their exclusivity obligations?

11 A. Can you repeat the question?

12 709 Q. You believe that Mr. Saratovsky
13 and the VimpelCom board breached their exclusivity
14 obligations to Catalyst?

15 A. I do believe that.

16 710 Q. Okay. When did you form that
17 belief?

18 A. After, I need to remember
19 precisely, but after we lost the exclusivity --

20 711 Q. Yes.

21 A. -- I learned from Mr. Gauthier
22 that the approach that had been pursued by the West
23 Face consortium and by VimpelCom was to continue to
24 receive proposals in order to have a potential
25 alternative. And he invited and noted that the

1 exclusivity did not have a notification clause if
2 other proposals would have been received, and he
3 further, you know, mentioned that that's, you know,
4 something that had been happening.

5 712 Q. And this you found out back in
6 August 2014 after your exclusivity expired?

7 A. I don't remember precisely when.

8 713 Q. But in that August/September
9 timeframe?

10 A. I don't remember precisely when.

11 714 Q. It wasn't, like, this year, it was
12 back at the time the events in question were
13 happening?

14 A. Yeah, but I don't remember if --
15 yes.

16 [REDACTED]

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4 719

Q. So then if we go to an email that same day at 24640, this is later that morning. Actually, it's around the same time that morning.

MR. VERMEERSCH: We have it.

BY MR. MILNE-SMITH:

9 720

Q. Go to page 4 of that email chain. You'll see right at the bottom there is an email from Mr. Glassman and it's unclear who it's to but from the surrounding emails I think it seems pretty clear he's writing to John Levin and to you. Do you see that?

MR. VERMEERSCH: This is at 8:12 p.m.?

MR. MILNE-SMITH: Yes.

MR. VERMEERSCH: Yes, we have it.

THE DEPONENT: Yes.

BY MR. MILNE-SMITH:

20 721

Q. Mr. Glassman says:

"I am done with this situation. Either it's announced immediately and it's fully binding subject to regulatory approval (has always been the deal) or Catalyst is out right

1 now."

2 Was that Mr. Glassman's position or was
3 that a negotiating position?

4 A. Negotiating position.

5 722 Q. So even though he was expressing
6 it just to you and Mr. Levin, this wasn't in fact
7 his true position, it was just his position for
8 negotiations?

9 A. Correct.

10 723 Q. Why would he not tell you his true
11 position?

12 A. Because he -- as part of his
13 style, he likes to push.

14 724 Q. Ah, okay. So he's pushing you?

15 A. Correct.

16 725 Q. Okay. And then if you go to page
17 1, so this email chain has been going back and
18 forth for an hour or two now and he says at the
19 very top email in the chain, he says:

20 "It's their problem to solve.

21 I will not allow us to own their
22 process issues. I have my own
23 problems related to this timing, not
24 the least of which is a call with
25 Harvard today and, to complicate it,

1 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

10 742 Q. Next one is CCG24774.
11 MR. VERMEERSCH: We have it.
12 BY MR. MILNE-SMITH:
13 743 Q. The email chain starts on page 2.
14 MR. VERMEERSCH: Yes.
15 BY MR. MILNE-SMITH:
16 744 Q. And Mr. Saratovsky on August 15th
17 at 8:20 a.m. sends an email?
18 A. What time again, please?
19 745 Q. 8:20.
20 A. 8:20, okay.
21 746 Q. He says:
22 "My instructions are that the
23 position the chairman articulated to
24 Ben has not changed. We need to
25 have a way to manage the regulatory

1 risk and are open to other ideas on
2 how this may be achieved."

3 And then John Levin forwards that email
4 to you and Ben and Ben replies. It's Ben's reply
5 that I'm interested in. Sorry, before we do that,
6 do you know what the chairman had articulated to
7 Ben? Did Mr. Babcock advise you of what had been
8 said?

9 A. I don't recall.

10 747 Q. Okay. So Mr. Babcock's email
11 says:

12 "The problem is the chairman is
13 solving for not trusting the
14 government no matter how low anyone
15 tells him the risk is, and he wants
16 to either be paid a break fee if we
17 are so confident we will get it, or
18 have the ability to keep his options
19 open while our deal is pursued with
20 the government."

21 Do you see that?

22 A. Yes.

23 748 Q. And so I take it from this that
24 VimpelCom had asked you for a break fee?

25 A. I take from this two things. The

1 comment of the break fee.

2 749 Q. Yes.

3 A. And a request to keep options
4 open, which smells to me, or sounds to me like the
5 ability to pursue another transaction.

6 750 Q. Okay. My simple question is,
7 you'd agree with me that Catalyst -- sorry, that
8 VimpelCom asked Catalyst to agree to a break fee as
9 a term of the SPA?

10 A. As a term of the SPA?

11 MR. WINTON: Well, the email from
12 Mr. Babcock says "or."

13 THE DEPONENT: Right.

14 MR. MILNE-SMITH: Yes.

15 MR. WINTON: So it suggests that --

16 BY MR. MILNE-SMITH:

17 751 Q. A break fee is one of the things
18 that VimpelCom asked you for as a concession on
19 this issue?

20 A. Correct.

21 752 Q. Okay. So if we go back, I don't
22 know if you have any of the earlier materials in
23 this case, Mr. Winton, but if you'll recall during
24 the cross-examination of Mr. Riley, I put a
25 question to him?

1 MR. WINTON: Which date?

2 MR. MILNE-SMITH: The one that I did.

3 MR. WINTON: That can only be one date.

4 I have the transcript here.

5 MR. MILNE-SMITH: May 13.

6 MR. WINTON: Yes.

7 MR. MILNE-SMITH: I'm actually looking
8 at the answers to undertaking number 15, so I'll
9 give you the page number and the question number.
10 So it's page 127 of the transcript.

11 MR. WINTON: Yes.

12 MR. MILNE-SMITH: Questions 554 to 556.

13 MR. WINTON: Yes.

14 MR. MILNE-SMITH: And the question was,
15 it's been recorded in your answers to undertaking
16 as being: To advise whether VimpelCom ever asked
17 for a break fee.

18 MR. WINTON: Yes.

19 MR. MILNE-SMITH: And the answer that
20 we got back was: "The parties never negotiated a
21 break fee."

22 BY MR. MILNE-SMITH:

23 753 Q. Were you aware of that, Mr. de

24 Alba?

25 A. Aware of what, sorry?

1 754 Q. Were you consulted in providing
2 this -- answering this undertaking that was given
3 on the cross-examination of Mr. Riley? Were you
4 consulted?

5 A. No.

6 755 Q. So I take it that the answer to
7 the question whether VimpelCom ever asked for a
8 break fee was in fact yes, Mr. Winton?

9 MR. WINTON: Yes.

10 BY MR. MILNE-SMITH:

11 756 Q. Okay. So when the answer that was
12 given to us is the parties never negotiated a break
13 fee, you chose not to answer the question that was
14 asked and instead to answer a different question?

15 MR. WINTON: I'll take issue with the
16 word "chose," but the answer is responsive to a
17 different question, yes.

18 BY MR. MILNE-SMITH:

19 757 Q. So the answer to my question was
20 yes?

21 MR. WINTON: That's what it appears
22 like from this record, yes.

23 BY MR. MILNE-SMITH:

24 758 Q. Who was consulted in providing
25 this answer to undertaking? Mr. de Alba said he

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 767

Q. Are you aware of any

25

communications by VimpelCom to West Face or any

1 member of its consortium during the exclusivity
2 period?

3 A. I am not aware that indeed
4 proposals were sent by West Face.

5 768 Q. That's not my question. My
6 question is by VimpelCom to West Face.

7 A. The fact that West Face continued
8 to send proposals means to me that there has been a
9 dialogue.

10 769 Q. But you're just drawing an
11 inference there; you have no direct knowledge?

12 A. Correct.

13 [REDACTED]

1

[REDACTED]

█

█

█

[REDACTED]

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[REDACTED]

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[REDACTED]

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22 773

Q. VimpelCom never came to you and

23

asked you -- sorry, let me take a step back.

24

I take it you're aware now of what the

25

West Face consortium offer looked like because it's

1

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

4

782

Q. CCG24800. If you go to page 4.

5

MR. VERMEERSCH: We have it.

6

BY MR. MILNE-SMITH:

7

783

Q. So at the top of page 4, and, I

8

mean, you can look over at page 3 just to see, but

9

it's an email from Mr. Saratovsky to Ben Babcock on

10

August 15 at 4:14 p.m., and Mr. Saratovsky says:

11

"Ben, I'm blindingly aware of

12

the trust issue. The chairman

13

undercut his deal team so I have a

14

bigger trust issue to deal with

15

internally. I'm asking you as

16

someone I trust whether two plus one

17

is worth a shot."

18

When he says he undercut his deal team,

19

do you believe Mr. Saratovsky was lying when he

20

said that?

21

A. Yes.

22

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 858 Q. I take it that an investment was
 18 never -- an investment that you three wanted to
 19 pursue was never passed on because Mr. Moyse said I
 20 think it's a bad idea? You can't give me an
 21 example of that occurring?

22 A. Not from Mr. Moyse but from other
 23 analysts.

24 859 Q. How about Mr. Creighton?

25 A. Not from Mr. Creighton.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 868 Q. So where the Catalyst server was

16 down or where there was a problem with accessing

17 the system, it might be appropriate for a Catalyst

18 professional to use their personal email account?

19 A. Yeah. Could be.

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1
█
█
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11
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[REDACTED]

875

Q. Of course. My only point is that in circumstances where there is uncertainty about the servers, it's perfectly reasonable for you to use your personal account in order to make sure you keep up to date with things?

A. Not to make sure that you keep up to date with things; it is under unique circumstances, it's not a practice.

876

Q. Where there is a problem with the server?

A. If there had been a problem with the server, yes.

[REDACTED]

The Catalyst Capital Group Inc.

Canada Wireless Presentation

Overview

- **The decision and action timelines have tightened following Mobilicity's March 21, 2014, court ruling**
 - Mobilicity has obtained Court approval to complete the sales process by April 30, 2014
 - Vimpelcom has written down its investment in WIND Canada from \$1.2 billion to \$0
 - Catalyst is in advanced discussion with Vimpelcom to gain control of WIND Canada but the process is tight on time

- **Mobilicity and its creditors (other than Catalyst) support the Court using its statutory power to approve a transfer of spectrum without regard to Government policy**
 - Litigation will be open and will create confrontation between the Mobilicity Estate, the Court Approved Monitor, an Ontario Court and the industry incumbents against the Federal Government

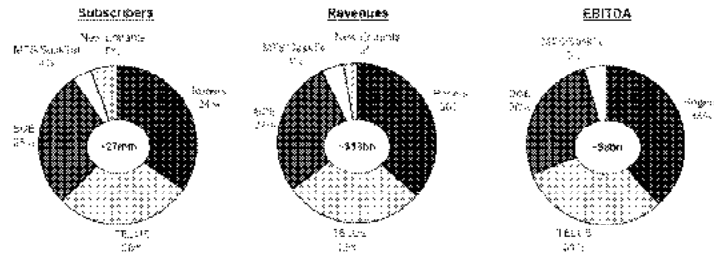
- **Catalyst has been and will continue to be fully supportive of the Government's policy**
 - Prepared to put large amounts of capital at risk
 - Only Canadian player that can put all the pieces together: capital, spectrum and operational expertise
 - A framework that allows a new player to compete fairly with the incumbents is required — options are:
 - Wireless retail business
 - Wireless wholesale business

- **Lack of action by the Government will leave it with poor or no choices**

The Government is Focused on the Canadian Consumer ⁵⁵⁵¹

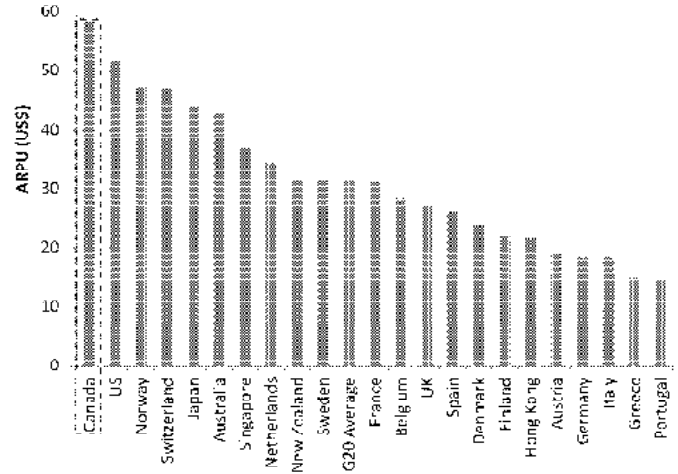
Dominant Oligopoly Market Dynamic

- The incumbents have a dominant position in the market



High Cost and Poor Service Selection

- Pricing and service selection in the Canadian wireless market is below G20



Source: Merrill Lynch Global Wireless Index.

Canadian Wireless Incumbents

Overview

	2013 Financial Data (in C\$ millions) ⁽¹⁾			Operational Data ⁽¹⁾	
	Total	Wireless Sales	Total EBITDA	Wireless Subs (000s)	Other Subs (000s) ⁽²⁾
Telus	11,404	5,177	4,018	7,807	5,489
Bell	20,400	5,849	8,089	7,925	13,221
Rogers	12,700	7,270	4,993	9,503	5,241
Total	44,510	19,296	17,100	25,235	23,951

WIND Canada and Mobility Estimates

WIND Canada	250	250	(100)	549	-
Mobility	80	80	(30)	190	-

(1) As reported based on Q4 2013 filings

(2) Other services comprises Internet, TV and Wireless

Government policy quotes and comments as it pursues its policies and seeks to establish the right market dynamics

- "It will be in the best interests of wireless companies to adopt innovative practices to ensure their customers are satisfied and to attract new ones"
- "Canadians know instinctively that more choice and more competition will be good for them and good for their families"

Current Government Policy and Goals

5552

- Promote the creation of a 4th carrier:
 - Spectrum allocation away from the incumbents
 - Initiation of discussion on regulating roaming rates, contracts and tower sharing
 - Arbitration process to enforce policy mandates
 - Media awareness campaign showing the shortfalls faced by the Canadian consumer

- Focus on the Canadian consumer:
 - Create a strong, profitable 4th player that can compete with the incumbents
 - Improve pricing and selection for consumers
 - Introduce innovation back into an oligopolistic market
 - Wireless Code of Conduct:
 - Ability to cancel contracts after two years with no cancellation fees
 - Cap on extra domestic and international data charges
 - Ability to unlock cellphones after 90 days, or immediately if device paid for in full
 - Return cellphones within 15 days if unhappy with service
 - Easy-to-read and easy-to-understand contracts

Current Environment / Landscape

5553

Unfortunately, despite the Government's policies, the incumbents have improved their position at the expense of the Consumer. This incumbent strengthening is consistent with developed pure-play / no-bundle wireless industry market trends (please see Appendix "Cellcos must merge to survive price wars"):

- Spectrum concentration in incumbents' hands despite Government policy
- Incumbents have utilized multiple operational tactics and legal loopholes to limit competition from new entrants (i.e. multiple-brand strategy, retention incentives at time of disconnect, multi-product discount)
- Arbitration process is long, expensive and arduous
- Roaming contracts are not uniform, are not economic and deter competition
- Winners of the 700 Mhz Spectrum auction were the incumbents, and without a 4th carrier the Consumer will pay the price. Ultimately, the incumbents will never pay for the auction's cost
- Limited traction with establishing a strong 4th carrier in every major market
 - WIND Canada's financial backer, Vimpelcom, has written off its investment in Canada
 - Mobilicity continues to languish in CCAA and is forcing a Court solution (likely to be inconsistent with the Government's policy)
 - Quebecor, controlled by a separatist, is not an appropriate Canadian national champion
 - In addition, Quebecor has not yet recouped its wireless investment in Quebec

Economics of Creating the 4th Wireless Network 5554

- Combination of Mobilicity and WIND Canada to create a strong, profitable and competitive national 4th wireless carrier
- Help promote a business strategy that enables competition and consumer pricing in line with Government policy goals

Economic Implications / Requirements

- WIND Canada purchase price: \$500 million
- Mobilicity purchase price: \$270 million
- Estimated funding of a combined entity's operating losses in the next 2 years: \$200 million
- **Total Initial Investment: \$970 million**
- LTE network build: \$250 million - \$500 million
- Future spectrum purchases: \$250 million - \$500 million
- **Required Investment: \$1.5 billion - \$2 billion**

Mobilicity and WIND Canada: Combined Pro-Forma

(in C\$ 000s unless otherwise noted)

	Mobilicity ⁽¹⁾	WIND ⁽²⁾	Total	Mobilicity	WIND
Spectrum Value (Cost)	243,159	537,825	780,984	31.1%	68.9%
Network Value (Cost)	97,418	277,873	375,291	26.0%	74.0%
Total Subscribers	190,000	649,000	839,000	22.6%	77.4%

Notes:

(1) Mobilicity subscriber data information from Monitor's Report on February 20, 2014. Network value and spectrum value as of June 30, 2013.

(2) WIND's Canadian spectrum value and network value as of 9/30/12; subscribers from Q4 2013 results announcement on March 6, 2014. Network value represents the reported net value of cell sites and core sites.

Strategic Options: Option 1

5555

Option 1 — Combination of WIND Canada / Mobilicity to create a 4th National Carrier focused on the retail market:

- Negotiations with Vimpelcom are well advanced but no deal can be completed without establishing a viable regulatory and economic framework

- Meets Government policy: delivers to the Consumer while eliminating incumbent dominance

- Requires:
 - Guaranteed regulated wholesale cost and roaming contracts
 - Cost-plus approach – towers and roaming
 - Caps on roaming fees
 - Potential to partner/exchange/rent spectrum from and to incumbents ("subordinate licensing") to fill spectrum requirements to operate competitive LTE network
 - The ability to operate as a retail-only business using incumbents' networks outside license areas to accelerate subscriber growth and move to breakeven quicker
 - Ability to exit the investment with no restrictions in 5 years
 - Catalyst will make an undertaking that before selling to an incumbent, it will pursue an IPO or another strategic sale prior to the end of the 5 year period

Strategic Options: Option 2

5556

Option 2 — Combination of WIND Canada / Mobilicity to create a 4th National Carrier focused on the wholesale market:

- Can be used to force competition amongst existing players

- Meets Government policy: delivers to the Consumer via better product offerings and pricing

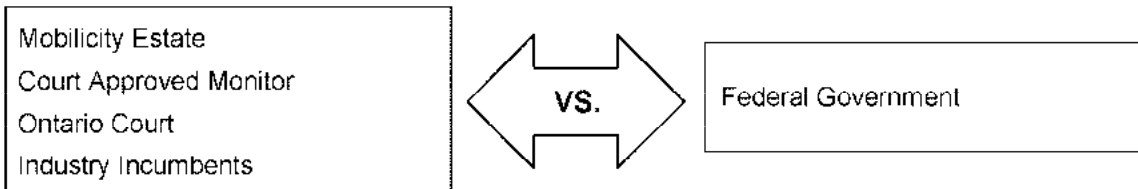
- Requires:
 - Potential to partner/exchange/rent spectrum from and to incumbents (“subordinate licensing”) to fill spectrum requirements for nationwide communications
 - Ability to exit the investment with no restrictions in 5 years
 - Catalyst will make an undertaking that before selling to an incumbent, it will pursue an IPO or another strategic sale prior to the end of the 5 year period

Strategic Options: Option 3

5557

Option 3 — CCAA Mobilicity Court process sale to Telus without (or with) Government support:

- Without a viable regulatory and economic framework provided by the Government for an alternative transaction (Option 1 or Option 2), Mobilicity's creditors will push for a Telus transaction
- If the Government does not support Mobilicity's sale to Telus, litigation will be used to force a sale
- Litigation will be public and will create confrontation:



- Catalyst will lose control of the situation while still making money on its investment
- Vimpelcom deal will be off the table — reluctantly the Government will be facing a long and inconvenient “front page” battle that will be characterized as a policy failure and Catalyst will have to support the Mobilicity Estate
- Catalyst will continue to support the Government's policy as long as our contractual rights are respected

Appendix

Industry Participant Perceptions

5559

- *"We do not believe the spectrum auction will necessarily change the market positioning and strength of each of the wireless incumbents in the short to medium term."*
 - Desjardins Capital Markets, Feb. 20, 2014

- *"The federal Government's attempt to bring about additional competition in Canadian wireless dates back to the AWS spectrum auction conducted in 2008. ... Fast forward nearly five years, and these players have failed to make much of an impact on the market with a combined market share today of ~5%. As consumer demand moved increasingly towards smartphones and data usage, these wireless carriers had insufficient spectrum depth to compete in this growing opportunity."*
 - CIBC Equity Research, June 26, 2013

- *"Industry Minister Christian Paradis is apparently committed to ensuring a viable fourth wireless player in every region in Canada. We don't like his chances."*
 - BMO Capital Markets, June 20, 2013

- *"We do not necessarily see new entrants as being in a position to take advantage of [the new Canadian National Wireless Code]."*
 - Desjardins Capital Markets, June 4, 2013

- *"What measures can Industry Canada take from here? ... the only major near-term lever is spectrum transferability."*
 - Macquarie Capital, April 3, 2013

Cellcos must merge to survive price wars

Softbank chief argues scale is essential as he chases Sprint/TMo merger, Bouygues makes big concessions to try to win SFR

CAROLINE GABRIEL

Published: 11 March, 2014

As mobile markets saturate, the cellcos' survival increasingly depends on being able to adapt their business models and cost bases rapidly for a price war. Yes, there will be premium services and new devices to offer, but the mainstream activities are on an accelerating downward curve in terms of ARPU and ARPA (average revenue per account). That curve is being drawn by regulators in developed markets encouraging more competition, helping to reset already optimistic consumer expectations about cost per gigabyte. The result will be consolidation, as we see in Europe and North America, and the suffering operators are calling on regulators to shed their traditional fears about reduction in the number of providers, and instead help those that remain to be viable.

These arguments are being trotted out on both sides of the Atlantic - by Masayoshi Son, CEO of Softbank, the majority owner of Sprint, who is keen to buy T-Mobile USA; by Telefonica as it seeks to merge its O2 units in Ireland and Germany with other smaller cellcos (3 Ireland and E-Plus respectively); by Bouygues Telecom in France, which is bidding to acquire SFR, in order to be able to survive the price war sparked by the entry of Free Mobile. Late last week, the CEOs of nine major European telcos supported calls by the GSM Association that the European Commission relax its M&A rules in the sector, as part of a list of changes which the trade body believes would make the region's mobile business more competitive and sustainable.

There is a cross-Atlantic pattern here - a fourth placed celco (Iliad's Free Mobile unit in France, an enlarged and reinvigorated T-Mobile in the US) - launches a price war, driving more established rivals to seek greater scale to survive the new market conditions. So France's third MNO, Bouygues Telecom, wants to buy Vivendi's SFR, the second celco in the country, to create a united front against Free. If it succeeds - and it is offering substantial concessions to do so - it would be a more conventional and defensive merger than other potential exits for Vivendi, such as selling to Altice/Numericable, which has also put in a bid, or even to Vodafone. Both those potential deals would fit with the new trend for European operators to fight against the mobile price war by increasing their ARPA through a quad play, combining cellular and wireline assets. Vodafone is buying cableco assets around its

territories while Numericable would be seeking full control of a wireless offering rather than relying just on MVNO deals or Wi-Fi, like some cable providers.

Such patterns add weight to the MNOs' claims that the attitudes of antitrust regulators on both sides of the pond, with a fear of letting the number of competitors fall too low, are outdated, because they do not take into account all the new sources of mobile and quad play choice for consumers, including disruptive MVNOs like the US's Wi-Fi led Republic Wireless, wireless offerings from wireline providers, and the activities of over-the-top firms in creating their own network-driven brands, like Amazon Kindle.

SoftBank's Son is not one to mince his words on such issues, and his firm understands the benefits of acquisition to bolster the position of a challenger MNO, having originally been built around Vodafone's former Japanese arm, and then acquiring Willcom and eMobile to improve its spectrum holdings and scale. Son wants to do the same for Sprint, and plans to lobby lawmakers in Washington this week, arguing that a larger cellco would be better able to invest in high speed, high quality data networks, and so to improve competition against the big two and offer lower prices.

According to Bloomberg sources, Son does not plan to argue specifically for a T-Mobile merger, but his conversations will be seen as laying the groundwork for a future bid. In particular, he is expected to focus on home broadband, where many consumers have only two choices - or even just one. A sufficiently fast and robust wireless network could be used to compete with the wireline providers and so reduce prices, he is expected to argue, promising a "massive price war".

In an interview on US television with PBS's Charlie Rose, he said he was ready to postpone profits for Sprint in order to gain market share and scale, essential to compete effectively against AT&T and Verizon. Son told Rose that AT&T and Verizon collect most of the US mobile industry's cashflow and do not face "real competition". He said: "We need a certain scale, but once we have enough scale to have a level fight ... then it's a three-heavyweight fight. If I can have a real fight, I go in for a massive price war, a technology war."

His TMO prey has already unleashed new tariffs which undercut the big operators and have particularly hit AT&T, which is taking a bigger role in the prepaid market than it has in the past, with the acquisition of Leap.

Over in France, Bouygues is hoping to appease competition authorities by offering to sell its network and spectrum to Iliad/Free in return for merging its mobile unit with SFR. Both its offer and that of Altice value SFR at about €14.5bn, but without divestments, Bouygues would be likely to face far more intense regulatory scrutiny, which might deter Vivendi.

Bouygues announced that, at the weekend, it had entered discussions with Iliad about selling its infrastructure and spectrum to Free for €1.8bn (\$2.5bn), with the sale contingent on the SFR merger going ahead. Free has some of its own 3G spectrum and network, but relies heavily on an MVNO deal with Orange for coverage, and has no 4G airwaves. Iliad would finance the purchase with existing resources and debt, without the need to raise capital, it said.

Although the plan would still reduce the number of celcos in France, it would arguably make Free more sustainable while adding new customers and scale to SFR/Bouygues. And French lawmakers are painfully aware of the downside of encouraging new competition, since Orange and the other established MNOs have had to make significant job cuts, and pulled back on some network investments, as a result of the new challenge from Free.

"Politicians in France simply can't make a choice other than Bouygues for SFR after they spent all this time criticizing fiscal exile, saying there's too much competition in French telcos and worrying about jobs," Iliad founder Xavier Niel said at a press briefing in Paris. "The Bouygues scenario checks all the items on that list."

However, a combined Bouygues/SFR would still have almost 50% of France's subscribers, even if Bouygues would be handing Free the tools to redress that balance somewhat. The regulators will need to be very convinced that the Iliad unit would, indeed, be empowered to increase its share rapidly from the current 12%, otherwise there would be an effective duopoly of the new entity, with about 49%, and Orange with 39%.

Should Vivendi choose the rival bid from Altice, the owner of cableco Numericable, Iliad could be open to making an outright offer for Bouygues, sources indicate.

Niel said Iliad has a target of winning 25% of the French mobile market, more than doubling the 12% it held at the end of 2013, though he did not offer a deadline to achieve that figure. Free Mobile is boosting the company's results, thanks to its low cost base and clever leveraging of its broadband operation's presence in consumer homes, and its extensive network of Wi-Fi 'homespots'. The firm's 2013 group profit was up 42% year-on-year to €265m on sales up 19% to €3.75bn. The growth was mainly attributed to mobile expansion - this business generated revenues of €1.26bn in the year, up 49.5% on 2012, while growth in landline revenues was far more subdued at 7.6%. The Free mobile base saw 2.835m net adds last year, topping 8m in total.

As the market stabilizes growth will clearly slow, and so might profit increase, but that pattern could be improved over time if Free, via a Bouygues deal, could avoid paying infrastructure fees to Orange, which cost it between €500m and €700m a year.

Although not directly participating, market leader Orange has welcomed the moves towards consolidation in its home country, which could address current "market destabilization", it believes.

Message

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: 5/6/2014 3:32:15 PM
To: francois.turgeon@ubs.com
Subject: Re: WC Business plan & MP

That is right, also will be sending you the list of typical due diligence questions.

> On May 6, 2014, at 3:30 PM, "francois.turgeon@ubs.com" <francois.turgeon@ubs.com> wrote:

>
> In terms of due diligence, I assume that you would like a management presentation and then would complete you due diligence via access to data room? If I am right, please send me list of parties that would attend session on your side and list of people that would need data room access

>
> Thanks

> -----Original Message-----

> From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
> Sent: Tuesday, May 06, 2014 3:28 PM
> To: Turgeon, Francois-CCS+
> Cc: Turgeon, Francois-CCS+
> Subject: Re: WC Business plan & MP

> Thank you. Agree to the concepts below. Due diligence can start on Friday or Monday, please tell me when Wind team will be ready.

>> On May 6, 2014, at 3:18 PM, "francois.turgeon@ubs.com" <francois.turgeon@ubs.com> wrote:

>> Gabriel,
>> Please find attached Wind Canada's latest management presentation and business plan.
>> As discussed this morning, can you get back to me with a confirmation (email or letter) that you are prepared to explore the acquisition of the whole of Wind Canada under the following conditions:

- >>
- >> - Cash transaction of \$300 million on an enterprise value basis
 - >> - Prepared to sign SPA by May 30th at the latest
 - >> - Can you also provide due diligence request and timeline to complete your review

>> Looking forward to hear back from you and assist you in this process

>> Regards,

>> Francois

>> Francois Turgeon
>> Managing Director
>> UBS Investment Bank
>> 1800 McGill College Avenue
>> Montreal, Quebec

>> Tel +514-985-8163
>> Mob +514-865-8163
>> francois.turgeon@ubs.com

>> _____
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>> summary vF.xlsm> <Legal Disclaimer.txt>

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Message

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: 5/6/2014 7:27:27 PM
To: Babcock, Ben [Ben.Babcock@morganstanley.com]
CC: King, Edward S [Edward.S.King@morganstanley.com]
Subject: Re: Wind

That was a long 1 hour flight... Pls call me at 917.312.6701

> On May 6, 2014, at 3:48 PM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

>
> Thanks. Will do.

>
> Ben Babcock
> Managing Director
> Morgan Stanley
> c. +1 647-825-8460 or +44 789 4417866
> o. +1 416 943-8464 or +44 20 7425 0021

> ----- Original Message -----
> From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
> Sent: Tuesday, May 06, 2014 03:49 PM
> To: Babcock, Ben (IBD)
> Cc: King, Edward S (IBD)
> Subject: Re: Wind

> Ok pls call 917 312 6701. Will be in your NY office tomorrow

>> On May 6, 2014, at 3:44 PM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

>> Will call u when I land (1 hour or so)

>> Ben
>> Ben Babcock
>> Managing Director
>> Morgan Stanley
>> c. +1 647-825-8460 or +44 789 4417866
>> o. +1 416 943-8464 or +44 20 7425 0021

>> ----- Original Message -----
>> From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
>> Sent: Tuesday, May 06, 2014 03:34 PM
>> To: Babcock, Ben (IBD); King, Edward S (IBD)
>> Subject: Wind

>> Ben and Ed:

>> Would like to engage MS on the acquisition of Wind Canada. As you might be aware, and as per our discussions process is moving fast and due diligence can start this week. Please provide engagement letter and propose the team that will work on the mandate. Let's go!!!!

>> Best regards,

>> Gabriel

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>>
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Message

From: Babcock, Ben [Ben.Babcock@morganstanley.com]
Sent: 5/12/2014 11:06:09 PM
To: De Alba, Gabriel [gdealba@catcapital.com]; Michaud, Zach [zmichaud@catcapital.com]; Yao, George [George.Y.Yao@morganstanley.com]; McGuire, Dylan [Dylan.McGuire@morganstanley.com]
CC: Jon Levin (jlevin@fasken.com) [jlevin@fasken.com]
Subject: FW:
Attachments: Form of SPA.DOCX; disclaim.txt

Don't know if u have this? Apparently still some tax structuring been done but this is what they have in mind.

From: Turgeon, Francois (francois.turgeon@ubs.com)
Sent: Monday, May 12, 2014 7:00 PM
To: Babcock, Ben (IBD)
Subject: RE:

Here it is

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: Monday, May 12, 2014 5:07 PM
To: Turgeon, Francois-CCS+
Subject:

Can u give me a call pls regarding this issue of providing the underlying operating model – fairly critical given the tight timelines

Ben Babcock, Managing Director

Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
Toronto, ON M5J 2T3
Phone: +1 416 943-8464
Mobile: +1 647 825-8460 or +44 78944-17866
Ben.Babcock@morganstanley.com

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PRIVATE & CONFIDENTIAL
SUBJECT TO ONGOING LEGAL AND TAX REVIEW

SHARE PURCHASE AGREEMENT

[PURCHASER]

- and -

[GLOBALIVE INVESTMENT HOLDINGS CORP.]

For the purchase of all of the outstanding
shares in the capital of
Globalive Wireless Management Corp.

May ■, 2014

[Drafting note - Proposed structure of the transaction (including approach to vendor loans and shareholder loans) and the appropriate vendor and target is subject to review by the applicable tax and corporate teams.]

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SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT, is made and entered into as of this [●] day of May, 2014, between [PURCHASER], a company organized and existing under the laws of the [●] (the "**Purchaser**"), and GLOBALIVE INVESTMENT HOLDINGS CORP., a company organized and existing under the laws of the Province of Ontario (the "**Seller**").

RECITALS:

WHEREAS the Seller owns all of the issued and outstanding shares (the "**Purchased Shares**") of Globalive Wireless Management Corp. ("**GWMC**"),

AND WHEREAS GWMC is engaged in providing voice, text and data services to the Canadian wireless telecom market (the "**Business**");

AND WHEREAS the Seller wishes to sell, and the Purchaser wishes to purchase from the Seller, all of the Purchased Shares, in accordance with the provisions of this Agreement (the "**Transaction**");

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

For the purposes of this Agreement, the following terms shall have the respective meanings specified below and grammatical variations of such terms shall have corresponding meanings:

"**Accountants**" has the meaning specified in Section 2.5(b);

"**Advance Ruling Certificate**" means an advance ruling certificate issued by the Commissioner of Competition pursuant to section 102 of the Competition Act;

"**Affiliate**" has the meaning attributed to such term in the *Business Corporations Act* (Ontario);

"**Agreement**" means this share purchase agreement and all schedules attached to this share purchase agreement;

"**Balance Sheet Dispute**" has the meaning specified in Section 2.5(b);

"**Base Purchase Price**" has the meaning specified in Section 2.2;

"**Business**" has the meaning specified in the recitals to this Agreement;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario on which commercial banks in Toronto, Ontario are open for business;

"**Claim**" means a claim for indemnification by the Purchaser or the Seller pursuant to Section 9.1 or 9.2, respectively;

"**Closing**" means completion of the Transaction pursuant to this Agreement at the Closing Time;

"**Closing Date**" means the second Business Day following the satisfaction or waiver of all conditions described in Sections 7.1, 7.2 and 7.3 (other than those conditions which, by their nature, are to be satisfied on the Closing Date) or such other date as the Parties hereto may agree upon in writing;

"**Closing Date Payment**" has the meaning specified in Section 2.3;

"**Closing Date Working Capital**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Final Closing Date Balance Sheet;

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date, or such other time as may be agreed upon in writing by the Parties;

"**Commissioner**" means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act and includes any person designated by the Commissioner to act on her behalf;

"**Competition Act**" means the *Competition Act* (Canada), as amended, and includes the regulations promulgated thereunder;

"**Competition Act Approval**" means that:

- (i) the Commissioner has issued an Advance Ruling Certificate in respect of the Transaction;
- (ii) the requirement for the notice required under section 114 of the Competition Act with respect to the Transaction has been waived by the Commissioner pursuant to subsection 113(c) of the Competition Act, and the Commissioner has notified the Parties that the Commissioner does not, at that time, intend to make an application before the Competition Tribunal under Part VIII of the Competition Act in respect of the Transaction; or
- (iii) (a) the applicable waiting period under subsection 123(1) of the Competition Act has expired or been waived pursuant to subsection 123(2) of the Competition Act, and (b) the Commissioner has notified the Parties that the Commissioner does not, at that time, intend to make an application under Part VIII of the Competition Act in respect of the Transaction;

"Confidential Information" means all confidential and proprietary information concerning the Globalive Entities, the Seller, their respective employees, customers, capital, operations and suppliers and the Business regardless of the form of such information (including information in the form of written or electronic information or information transmitted orally, visually or by any other means), including all reports, evaluations, forecasts, compilations, records, interpretations, notes, analyses and documents, concepts or data, trade secrets or client/subscriber contact lists;

"Contracts" means contracts, licences, leases, agreements, or other written commitments;

"Current Assets" means the aggregate of GWMC and WIND Distribution's cash, accounts receivable, prepaid expenses, inventory, prepaid income taxes and current income taxes receivable (if any), excluding receivables from related parties and Persons not acting at arm's length (all as defined in the Tax Act) of or to GWMC or WIND Distribution, determined in accordance with IFRS applied on a basis consistent with past practice;

"Current Liabilities" means the aggregate of GWMC and WIND Distribution's current liabilities, which includes accounts payable and accrued liabilities, obligations relating to property and equipment, obligations under financial leases due to related parties for the delivery of goods and services, determined in accordance with IFRS applied on a basis consistent with past practice. For the avoidance of doubt, Current Liabilities shall exclude bank overdrafts, bank lines of credit drawn and bank indebtedness;

"Data Room" means the virtual Data Room entitled "Khamseen";

"Direct Claim" means a Claim which originates pursuant to this Agreement between the Parties;

"Estimated Closing Date Balance Sheet" has the meaning specified in Section 2.4;

"Final Closing Date Balance Sheet" has the meaning specified in Section 2.5(a);

"GAAP" means the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable on a consolidated basis to private enterprises as at the date on which a calculation is made or an action is taken in accordance with generally accepted accounting principles, as those principles may be amended, varied or replaced by the International Financial Reporting Standards (IFRS) then in effect and generally accepted in Canada and adopted or required to be adopted by GWMC;

"Globalive Entities" means, together, GWMC and WIND Distribution;

"Governmental Authority" means any national, provincial, federal, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, court, agency, ministry or other similar governmental or quasi governmental body of competent jurisdiction exercising executive, legislative, judicial, regulatory or administrative authority within its jurisdiction;

"GTH" means Global Telecom Holding S.A.E. (a successor of Orascom Telecom Holding S.A.E.), a company incorporated pursuant to the laws of Egypt;

"**GTH (B.C.)**" means GTH Global Telecom Finance (B.C.) Limited, the successor to Orascom Telecom Finance (B.C.) Limited;

"**GTH Holdco**" means GTH Global Telecom Holding (Canada) Limited;

"**GTH Loan Agreement**" means the non-revolving term loan dated March 23, 2008 between GTH (B.C.), as assignee of GTH pursuant to an assignment agreement dated as of December 20, 2012, as lender and GWMC as borrower, as amended and restated on February 17, 2009, and as amended further by Amendment No. 1 dated December 15, 2009, Amendment Agreement dated December 15, 2009, Amendment Agreement No. 3 dated November 10, 2010, Amendment Agreement No. 4 dated October 31, 2011, Amendment Agreement No. 6 dated December 3, 2012, and Amendment Agreement No. 7 dated December 20, 2012, in the principal amount of \$805,101,781.63 plus accrued interest of \$125,677,462.33 as at May 1, 2013;

"**GTH Canada Loan Agreement**" means the non-revolving term loan dated July 31, 2008 between GTH (B.C.) as lender, as assignee of GTH (which was, in turn, the lender as assignee of GTH Holdco) and GWMC as borrower as amended and restated from time to time, in the principal amount of \$442,403,000 plus accrued interest of **\$256,831,611.93** as of May 1, 2013;

"**GWMC Financial Statements**" means the audited consolidated statement of financial position of GWMC for the year ending December 31, 2013 and the accompanying consolidated statements of comprehensive loss, retained earnings and changes in financial position, including the notes thereto, for the relevant period;

"**IFRS**" means International Financial Reporting Standards, which are issued by the International Financial Accounting Standards Board, as adopted in Canada;

"**Industry Canada**" means the federal Department of Industry and any successor agency thereto and includes the Minister of Industry;

"**Interim Period**" means the period from the date of this Agreement to the Closing;

"**Industry Canada Approval**" means the receipt of all approvals required from Industry Canada pursuant to the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*, for the consummation of the Transactions at the Closing;

"**Investment Canada Act**" means the *Investment Canada Act*, as amended, and includes the regulations promulgated thereunder;

"**knowledge of GWMC**" means the actual knowledge of the Chairman, the Chief Operating Officer and the Chief Financial Officer of GWMC (presently being, Anthony Lacavera, Pietro Cordova and Brice Scheschuk) and without personal liability for any such knowledge;

"**Laws**" means all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"Liens" means mortgages, liens, pledges, security interests, charges, claims, hypothecs, leasehold interests, tenancies, restrictions, privileges, easements, servitudes, pre-emptive rights or rights of first refusal, ownership or title retention agreements, restrictive covenants with respect to real property or conditional sale agreements, or any other encumbrance of any nature or any arrangement or condition which, in substance, secures payment or performance of an obligation;

"Loss" means any direct loss, injury, liability, damage, cost, expense (including reasonable legal expenses) or deficiency of any kind or nature, but excluding punitive damages and loss of profits, suffered or incurred by a Party indemnified pursuant to Article 9, in connection with any Claim made by it hereunder, including in respect of any proceeding, assessment, judgment, settlement or compromise relating thereto;

"Material Adverse Change" or **"Material Adverse Effect"** means any event, change or effect that has had a materially adverse effect on the Business, assets, liabilities, operations or condition (financial or otherwise) of GWMC and WIND Distribution, taken as a whole; provided, however, that in no event shall any of the following be taken into account in determining whether there has been a Material Adverse Change or Material Adverse Effect: (i) any change in general economic conditions in Canada or globally or any change in Canadian or global financial, banking or currency exchange markets, (ii) any event, change or effect resulting in any action required to be taken pursuant to the provisions of this Agreement, (iii) any event, change or effect resulting from a change in the industry in which the Globalive Entities operate, (iv) any adverse effect resulting from any change in applicable Law or in accounting requirements or principles required under GAAP, (v) any failure to meet internal revenue or earnings projections, budgets or forecasts, (vi) any event, change or effect resulting from any acts of terrorism, war or natural disaster, or (viii) any event, change or effect resulting from or relating to the announcement, negotiation, execution or performance of this Agreement or the transactions contemplated hereby; provided, however, that any such event, change or effect does not primarily relate only to GWMC and WIND Distribution, taken as a whole;

"NDA" has the meaning specified in Section 10.4;

"Network Assets" means all of GWMC's related network infrastructure and other related assets in respect of the Business, including information technologies and leased network infrastructure;

"Notifying Party" has the meaning specified in Section 6.10(a);

"Orders" means orders, decisions, injunctions, judgments, administrative complains, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by and Governmental Authority or arbitrator;

"Parties" means collectively, the Purchaser and the Seller and **"Party"** means any one of them;

"Permitted Liens" means:

- (i) Liens for Taxes, rates, assessments, duties, levies or other charges payable to any Governmental Authority not yet due and payable or for which installments have been paid based on reasonable estimates pending final

assessments, or if due, the validity of which is being contested in good faith if GWMC or WIND Distribution shall have made on its books adequate provision therefor;

- (ii) statutory Liens of landlords or rights reserved in any lease for rent, which is not yet due and payable, or for compliance after the Closing Date with the terms of such leases;
- (iii) any and all statutory Liens, charges, adverse claims, prior claims, security interests, deemed trusts or other Liens of any nature whatsoever claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any applicable legislation, statute or regulation;
- (iv) any undetermined or inchoate Lien arising by statute for claims arising in the ordinary course of business, which have not at the time been filed pursuant to Laws and any Lien arising by statute which although filed, relates to obligations not overdue or to obligations the validity of which is under contest if GWMC or WIND Distribution shall have made on its books adequate provision therefor;
- (v) a deposit made in the ordinary course of business to secure worker's compensation or unemployment insurance, when required by Law, and warehousemen's, carriers' and other similar liens arising in the ordinary course of business;
- (vi) security given in the ordinary course of business to a public utility or any municipality or other Governmental Authority when required by such utility or municipality or other Governmental Authority in connection with the operations of GWMC or WIND Distribution;
- (vii) mechanic's, workmen's, materialmen's and repairmen's liens for claims arising in the ordinary course of business; and
- (viii) those Liens described in Schedule I.1(A);

"**Person**" or "**person**" means any individual, partnership, firm, corporation, limited liability company, unlimited company, association, trust, unincorporated organization, Governmental Authority or other legal or business entity;

"**Pre-Closing Reorganization**" has the meaning specified in Section 6.6;

"**Proceeding**" means any court, administrative, regulatory or similar proceeding (whether civil, criminal, quasi criminal, investigative or informal), arbitration or other dispute settlement procedure, investigation or inquiry by any governmental, administrative, regulatory or similar body;

"**Purchase Price**" has the meaning specified in Section 2.2;

"**Purchased Shares**" has the meaning specified in the recitals to this Agreement;

"**Purchaser**" has the meaning specified in the recitals to this Agreement;

"**Response Period**" has the meaning specified in Section 6.1(c);

"**Seller**" has the meaning specified in the recitals to this Agreement;

"**Seller Tax Period**" means and includes any and all periods ending before the Closing Date and, in addition, the portion of any period that includes, but does not end on or before, the Closing Date that consists of a partial period deemed to end before the Closing Date; provided that in the case of any Seller Tax Period that does not end before the Closing Date, for purposes hereof the books and records of the Globalive Entities shall be deemed to have been closed at and as of the beginning of the Closing Date;

"**Settlement Date**" has the meaning set out in Section 2.6(a);

"**Spectrum Licenses**" means the spectrum licenses for advanced wireless held by and registered in the name of GWMC as set out and described in Schedule 4.9;

"**Tax**" or "**Taxes**" means all federal, state, provincial, local, foreign and other taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, gains, inventory, capital stock, license, withholding, payroll, employment, unemployment, workers' compensation, social security, excise, goods and services, harmonized sales, severance, stamp, occupation, real or personal property, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any Tax Authority and shall include any transferee liability in respect of Taxes;

"**Tax Act**" means the *Income Tax Act* (Canada) as may be amended from time to time;

"**Tax Authority**" means any Governmental Authority having jurisdiction over the assessment, collection or imposition of Taxes, including the Canada Revenue Agency;

"**Tax Return**" means any return, report, declaration, designation, election, notice, filing, form, claim for refund, information return or other document (including any related or supporting schedule, statement or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any Laws, regulations or administrative requirements relating to any Tax (including any amendment thereof);

"**Transaction**" has the meaning specified in the recitals to this Agreement;

"**Transaction Documents**" means this Agreement, ■ and all documents ancillary thereto;

"**Vendor Loan Facilities**" means the financing arrangements between GWMC and its principal vendors as set out in the agreements dated August 18, 2009 (Electro Banque), December 22, 2009 (Nokia Siemens Networks Finance BV as assigned to the "TCP Lenders" and "ING Capital LLC" (each as described in the various assignment documentation)) and March 9, 2010 (Industrial and Commercial Bank of China (Macau) Limited), as each of the foregoing may be respectively amended or assigned from time to time;¹

"**VimpelCom Loan Agreements**" means, collectively, the GTH Loan Agreement, the GTH Canada Loan Agreement and the VimpelCom Parent Loan Agreement;²

"**VimpelCom Parent Loan Agreement**" means the non-revolving term loan dated December 3, 2012 between VimpelCom Amsterdam B.V. as lender and GWMC as borrower, in the principal amount of \$■ plus accrued interest of \$■ as at May 1, 2013;

"**WIND Distribution**" means WIND Mobile Distribution Corp., a wholly-owned subsidiary of GWMC; and

"**Working Capital Target**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Estimated Closing Date Balance Sheet.

1.2 Schedules

- (a) The following Schedules are attached to and form part of this Agreement:

Schedule	Description
Schedule 1.1(A)	— Permitted Liens
Schedule 3.2(b)	— Form of Resignation and Release
Schedule 3.2(c)	— Form of Seller's Closing Certificate
Schedule 3.2(d)	— Form of GWMC 's Closing Certificate
Schedule 3.2(e)	— Seller's Required Consents
Schedule 3.3(d)(A)	— Form of Release of the Seller by GWMC
Schedule 3.3(d)(B)	— Form of Release of the GWMC Directors by GWMC
Schedule 4.5	— Capital Structure of the Globalive Entities
Schedule 4.6(a)	— Compliance with Other Instruments
Schedule 4.6(b)	— Filings with Governmental Authorities
Schedule 4.7	— GWMC Financial Statements
Schedule 4.8	— Taxes
Schedule 4.9	— Spectrum Licenses

¹ Approach to Vendor Loan Facilities to be discussed.

² Approach to VimpelCom Loan Agreements to be discussed.

Schedule	Description
Schedule 5.3(b)	— Filings, Consents and Approvals of Governmental Authorities and Other Persons to be Obtained by the Purchaser
Schedule 5.10	Partnership Arrangements
Schedule 6.6	— Pre-Closing Reorganization
Schedule 7.1	Form of the Seller's Closing Conditions Certificate
Schedule 7.2(a)	— Form of Purchaser Closing Conditions Certificate

- (b) When any provision of Article 4 states that a document or thing has been delivered to the Purchaser, the Parties intend for the availability of that document or thing via the electronic Data Room established for the Purchaser's review, to constitute delivery thereof.

1.3 Interpretation

In this Agreement:

- (a) Accounting Terms. Unless otherwise specified, whenever reference is made in this Agreement to a calculation to be made or an action to be taken in accordance with GAAP, such calculation shall be made or action taken in accordance with GAAP, as applicable, as at the time such calculation is required to be made or action is to be taken, consistently applied.
- (b) Headings, Table of Contents and Schedules. The division of this Agreement into Articles, Sections, Subsections, Paragraphs and Clauses and the inclusion of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless otherwise specified to the contrary, all references to Articles and Sections are references to Articles and Sections of this Agreement and all references to Schedules are references to Schedules to this Agreement. All Schedules hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.
- (c) Gender and Number. Except where the context requires otherwise, words in this Agreement importing the singular include the plural and vice versa and words importing gender include all genders.
- (d) Including. Where the word "including" or "includes" is used in this Agreement, it means including or includes "without limitation".
- (e) No Strict Construction. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party proposing any such language.

- (f) Statutory References. A reference in this Agreement to a statute includes all rules and regulations made pursuant to such statute and, unless expressly provided otherwise, the provisions of any statute, rule or regulation which amends, supplements or supersedes any such statute, rule or regulation in force as of the date of this Agreement and, in the case of the Tax Act, all proposed amendments publicly announced by the Minister of Finance (Canada) on or before the date of this Agreement.
- (g) Currency. Unless otherwise specified, any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- (h) Time. Time is of the essence of this Agreement and of every part of this Agreement, and no extension or variation of this Agreement shall operate as a waiver of this provision.
- (i) Time Periods. Except where expressly provided otherwise herein, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the following Business Day if the last day of the period is not a Business Day.

2. PURCHASE AND SALE OF PURCHASED SHARES

2.1 Purchase and Sale

Subject to the provisions of this Agreement, the Seller shall sell, transfer, assign, convey, and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all of the Purchased Shares, free and clear of all Liens other than Permitted Liens. All amounts paid pursuant to this Agreement shall be paid by wire transfer in immediately available funds to the recipient of such payment.

2.2 Purchase Price

The amount payable by the Purchaser for the Purchased Shares (the "**Purchase Price**") shall be S[■] (the "**Base Purchase Price**") *plus* the amount, if any, by which the amount of the Closing Date Working Capital is greater than the amount of the Working Capital Target, or *less* the amount, if any, by which the amount of the Working Capital Target is greater than the amount of the Closing Date Working Capital, as the case may be.

2.3 Closing Date Payment

The Purchaser and the Seller agree that, at the Closing, the Purchaser shall pay to the Seller an amount (the "**Closing Date Payment**") equal to the Base Purchase Price.

2.4 Estimated Closing Date Balance Sheet

- (a) Not less than five Business Days before the Closing Date, the Seller shall cause a consolidated balance sheet of GWMC and WIND Distribution as at the Closing Date to be prepared and delivered to the Purchaser, which balance sheet shall be prepared in accordance with IFRS applied on a consistent basis and which reflects an estimate by the Seller and GWMC of the consolidated financial position of GWMC as at the Closing Date (the "**Estimated Closing Date Balance Sheet**").
- (b) Not less than two Business Days before the Closing Date, the Seller shall deliver to the Purchaser a calculation of the Working Capital Target based upon the Estimated Closing Date Balance Sheet.

2.5 Final Closing Date Balance Sheet

- (a) Not later than 30 days after the Closing Date, the Purchaser shall cause a consolidated balance sheet of GWMC and WIND Distribution as at the Closing Date to be prepared and delivered to the Seller, which balance sheet shall be prepared in accordance with IFRS applied on a consistent basis, together with a calculation of Closing Date Working Capital based on such balance sheet (the "**Final Closing Date Balance Sheet**"). The Purchaser shall provide the Seller with reasonable access to GWMC's financial records and working papers to assist in its review of the Final Closing Date Balance Sheet.
- (b) If the Seller notifies the Purchaser that it agrees with the Final Closing Date Balance Sheet within 15 days after receipt thereof or fails to deliver notice to the Purchaser of its disagreement therewith within such 15-day period, the Final Closing Date Balance Sheet shall be conclusive and binding upon the Purchaser, and the Seller shall be deemed to have agreed thereto, in the first case, on the date the Purchaser receives the notice and, in the second case, on such 15th day. If the Seller notifies the Purchaser of its disagreement with the Final Closing Date Balance Sheet within such 15-day period, then the Purchaser and the Seller shall attempt, in good faith, to resolve their differences within 15 days after the Purchaser's receipt of the Seller's notice of disagreement. Any disagreement over the Final Closing Date Balance Sheet (a "**Balance Sheet Dispute**") not resolved by the Purchaser and the Seller within such 15-day period shall be submitted to ■ or such other nationally recognized accounting firm as the Purchaser and the Seller may agree (the "**Accountants**"). The Accountants shall act as experts, not as arbitrators, and the determination of the Accountants shall, in the absence of manifest error, be final and binding on the Purchaser and the Seller. The fees and disbursements of the Accountants, including the legal expenses of the Purchaser and the Seller, shall be in the discretion of the Accountants, which determination shall be final and binding upon the Purchaser and the Seller.

2.6 Adjustment of Purchase Price

- (a) On the second Business Day following the date on which the Purchaser and the Seller agree to the Final Closing Date Balance Sheet (or are deemed to have agreed to the Final Closing Date Balance Sheet, or on the second Business Day following the date on which a determination of Balance Sheet Dispute is made pursuant to Section 2.5, whichever is later (the "**Settlement Date**"), the Purchase Price shall be determined using the Final Closing Balance Sheet.
- (b) If the Purchase Price, as determined in accordance with this Section 2.6, is greater than the Closing Date Payment, the Purchaser shall not later than the fifth Business Day following the Settlement Date pay by wire transfer in immediately available funds to or to the order of the Purchaser an amount equal to the difference.
- (c) If the Purchase Price, as adjusted in accordance with this Section 2.6, is less than the Closing Date Payment, the Seller shall not later than the fifth Business Day following the Settlement Date pay by wire transfer in immediately available funds to or to the order of the Seller an amount equal to the difference.

3. CLOSING

3.1 Closing

The Closing shall be held at the offices of Bennett Jones LLP located at Suite 3400, 1 First Canadian Place, Toronto, Ontario, M5X 1A4, Canada or such other place as the Parties agree, at the Closing Time on the Closing Date.

3.2 Items To Be Delivered by the Seller at Closing

At the Closing, the Seller shall deliver to the Purchaser the following:

- (a) share certificates representing the Purchased Shares duly endorsed in blank for transfer or accompanied by duly signed powers of attorney for transfer in blank;
- (b) resignations from such directors of the Globalive Entities and releases from such directors of the Globalive Entities as may be requested by the Purchaser in favour of the Globalive Entities effective as of the Closing Time, in the form as set out in Schedule 3.2(b);
- (c) a certificate in the form as set out in Schedule 3.2(c) executed by a duly authorized officer of the Seller, dated the Closing Date, as to (i) the articles and by-laws of the Seller, (ii) the incumbency of the Seller's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of the Seller, authorizing execution, delivery and performance of the Transaction Documents, as applicable, by the Seller passed in connection herewith and the transactions contemplated by the Transaction Documents;

- (d) a certificate in the form as set out in Schedule 3.2(d) executed by a duly authorized officer of GWMC, dated the Closing Date, as to (i) the articles and by-laws of GWMC, (ii) the incumbency of GWMC's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of GWMC authorizing the transfer of the Purchased Shares by the Seller to the Purchaser as contemplated hereby and the execution, delivery and performance of the Transaction Documents, as applicable, by GWMC passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (e) evidence of the obtaining of the approvals, consents and releases set forth on Schedule 3.2(e); and
- (f) a certificate of the Seller in the form as set out in Schedule 7.1 executed by a duly authorized officer of such Seller, dated as of the Closing Date, certifying, without personal liability, as to the Seller's compliance with the conditions set forth in Sections 7.1(a) and 7.1(b).

For greater certainty, in the event that a required consent, waiver or notice is disclosed on Schedule 4.6(a) or Schedule 4.6(b), and the Purchaser does not require that such consent be obtained prior to the Closing pursuant to Schedule 3.2(c), or if any consent, waiver or notice is not required to be disclosed on Schedule 4.6(a) or Schedule 4.6(b), no Party shall have any liability to the Purchaser hereunder for the failure to obtain such consent, waiver or notice.

3.3 Items To Be Delivered by the Purchaser

At the Closing, the Purchaser shall deliver the following to the Seller:

- (a) the Purchase Price by wire of immediately available funds;
- (b) a certificate executed by a duly authorized officer of the Purchaser, dated the Closing Date, as to (i) the Purchaser's articles and by-laws, (ii) the incumbency of the Purchaser's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of the Purchaser authorizing the execution, delivery and performance of the Transaction Documents, as applicable, by the Purchaser passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (c) evidence of the corporate or other existence of the Purchaser as of the Closing Date, or such other date as agreed by the Seller, from the appropriate Governmental Authorities of the jurisdiction of the Purchaser's formation;
- (d) a release from the Purchaser, executed by the Purchaser's elected director(s) or appointed officer(s), in favour of the Seller and each of the directors of the Globalive Entities in office immediately prior to the Closing in the forms set out in Schedule 3.3(d)(A) and Schedule 3.3(d)(B);

- (e) evidence of the obtaining of the approvals, consents and releases set forth on Schedule 5.3(b); and
- (f) a certificate in the form set out in Schedule 7.2(a) executed by a duly authorized officer of the Purchaser, dated as of the Closing Date, certifying, without personal liability, as to compliance by the Purchaser with the conditions set forth in Sections 7.2(a) and 7.2(b).

4. REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), the Seller hereby represents and warrants to the Purchaser as follows and acknowledges that each of the following representations and warranties have been relied upon by the Purchaser in connection with its execution and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof:

4.1 Organization and Good Standing

The Seller is duly formed, in existence and in good standing under the laws of the Province of Ontario.

4.2 Ownership of Purchased Shares

The Seller is the owner of record and the beneficial owner of the Purchased Shares and will have good and valid title to such Purchased Shares, free and clear of any Liens other than Permitted Liens as of the Closing Date.

4.3 Authority and Binding Effect

The Seller has the power and authority to enter into the Transaction Documents, to perform its obligations under the Transaction Documents, as applicable, and, subject to satisfaction of the conditions precedent set forth in Section 7.2, to consummate the transactions to be consummated by it thereunder, including the power and authority to execute and deliver each Transaction Document to which it is a party and any other certificate, document, agreement or other instrument to be executed and delivered by it in connection with the Transaction and to perform its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents by the Seller and the performance by the Seller of its obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by the Seller have been validly authorized by all necessary formal action by the Seller. Each Transaction Document to which the Seller is a party has been, and each Transaction Document to which the Seller is a party as of the Closing Date will be, duly executed and delivered by the Seller and constitutes or will constitute upon delivery, a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject to the usual exceptions as to

bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

4.4 Litigation and Government Claims

With the exception of Taxes, which are the subject of the representations and warranties in Section 4.8, and except as disclosed in the Data Room, there is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or, to the knowledge of the Seller, any governmental investigation or inquiry pending against, relating to or affecting the Seller to the extent related to any of the Globalive Entities, the Transaction Documents or any of the transactions contemplated thereby that would reasonably be expected to result in a Material Adverse Effect.

4.5 Authorized and Issued Capital

- (a) Schedule 4.5 sets out the authorized and issued capital of each of the Globalive Entities as of the date of this Agreement. As of the Closing Date, all of the issued and outstanding shares in the capital of each of the Globalive Entities (i) will be authorized, validly issued and fully paid, (ii) will be held of record as set forth on Schedule 4.5, and will be free and clear of all Liens and (iii) were not issued in violation of the preemptive rights of any Person, or any agreement or Law.
- (b) Except as set forth in Schedule 4.5, as of the Closing Time, (i) no shares of any of the Globalive Entities will be reserved for issuance; (ii) there will be no shareholders agreements, pooling agreements, voting trusts or other agreements with respect to the voting of the shares, or any of them, of any of the Globalive Entities other than the amended and restated shareholders' agreement dated December 15, 2009 among the shareholders of the Seller; (iii) there will be no outstanding options, warrants, rights, calls, conversion rights, rights of exchange or other commitments, contingent or otherwise, relating to the shares of any of the Globalive Entities; (iv) there will be no outstanding agreements of any of the Globalive Entities or the Seller, permitting the Seller or any other Person to purchase, redeem or otherwise acquire any outstanding shares of any of the Globalive Entities or securities or obligations of any kind convertible into any shares of any of the Globalive Entities; (v) there will be no dividends that have accrued or been declared but are unpaid on the shares of any of the Globalive Entities; and (vi) there will be no outstanding or authorized share appreciation, phantom stock, stock option plans or similar rights with respect to any of the Globalive Entities. None of the Globalive Entities is a reporting issuer (as such term is defined in the *Securities Act* (Ontario)) and there is no published market for the Purchased Shares.

4.6 Consents; Compliance with Other Instruments

- (a) Except as set forth in Schedule 4.6(a), none of the execution, delivery and performance by the Seller of any Transaction Document to which it is a party, the consummation by the Seller of the transactions contemplated thereby, nor the

fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), results in the loss of any contractual benefit under, permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under, or requires the consent or approval of any Person under (i) any provision of any of the Globalive Entities articles, by-laws, or constating documents, or (ii) any Laws applicable to the Globalive Entities (to the extent such breach or violation of such Law would have a Material Adverse Effect).

- (b) Except as set forth in Schedule 4.6(b), none of the Globalive Entities are required to submit any notice, declaration, report or other filing or registration with, or obtain any exemption, waiver, consent, approval, authorization, licence, permit or franchise from, any Governmental Authority in connection with the execution and delivery of any of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would have a Material Adverse Effect.

4.7 Financial Statements and Records of GWMC

A true and complete copy of the GWMC Financial Statements (including the respective notes thereto) is attached hereto as Schedule 4.7.

4.8 Taxes

Except as disclosed in Schedule 4.8,

- (a) All Tax Returns required by applicable Law to be filed by the Globalive Entities have been timely filed and all such Tax Returns are true, complete and correct, except as would not have a Material Adverse Effect.
- (b) No audit or other Proceeding by any Tax Authority is pending or, to the knowledge of GWMC, threatened with respect to any Taxes due from or with respect to the Globalive Entities, and, to the knowledge of the Seller, no Tax Authority has given written notice of any intention to assert any deficiency or claim for additional Taxes against the Globalive Entities. There are no matters under discussion, audit or appeal with any Governmental Authority relating to Taxes.
- (c) No Tax Authority of a jurisdiction in which GWMC or WIND Distribution does not file Tax Returns has made any written claim that such entity is or may be subject to taxation by such jurisdiction. To the knowledge of GWMC, there is no basis for a claim that GWMC or WIND Distribution is subject to Tax in a jurisdiction in which it does not file Tax Returns.
- (d) There are no outstanding agreements, waivers, objections or arrangements extending the statutory period of limitations applicable to any claim for Taxes due by GWMC or WIND Distribution for any taxable period, nor has any such

agreement, waiver, objection or arrangement been requested. To the knowledge of the Seller, none of GWMC or WIND Distribution is bound by any tax sharing, allocation or indemnification or similar agreement.

- (e) To the knowledge of the Seller, there are no Liens for Taxes upon any property or assets of GWMC or WIND Distribution, except for Permitted Liens.

4.9 Spectrum Licenses

- (a) The Spectrum Licenses are in good standing in all respects and the Spectrum Licenses are accurately and completely described in Schedule 4.9. GWMC has good and marketable title to the Spectrum Licenses, free and clear of any and all Liens, other than Permitted Liens. GWMC has the exclusive right to use and dispose of the Spectrum Licenses.
- (b) No Person other than the Purchaser has any written or oral agreement or option or any right or privilege, whether by law, pre-emptive or contractual, capable of becoming a Contract or option for the purchase or acquisition, directly or indirectly, of any of the Spectrum Licenses or any rights therein. There are no agreements which in any way limit or restrict the transfer to the Purchaser of the Spectrum Licenses.
- (c) GWMC has complied with the Industry Canada terms and conditions of license attaching to the Spectrum Licenses and have not received any notice or other communication (whether oral or written) from Industry Canada or any other Governmental Authority regarding any actual or alleged failure to so comply with any of the terms and conditions of license attaching to the Spectrum Licenses, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect.
- (d) No Order is outstanding against GWMC relating to or involving the Spectrum Licenses that will, or would reasonably be expected to materially impair or otherwise materially and adversely affect the Purchaser's interest in and right to control, use and operate the Network Assets.

4.10 Completeness of Information

Neither the Seller nor any Person on behalf of the Seller makes any representation or warranty, express or implied, of any kind, including without limitation any representation or warranty as to the accuracy or completeness of any information regarding the Seller or the Globalive Entities furnished or made available to the Purchaser and its representatives, in each case except as expressly set forth in Article 4 (as qualified by any applicable Schedule attached to this Agreement).

5. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained

in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), the Purchaser hereby represents and warrants to the Seller as follows and acknowledges that each of the following representations and warranties have been relied upon by the Seller in connection with its execution and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof and as of the Closing Date:

5.1 Organization and Good Standing

The Purchaser is duly incorporated, amalgamated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, amalgamation or organization, as the case may be.

5.2 Authority and Binding Effect

The execution and delivery of the Transaction Documents by the Purchaser and the performance by the Purchaser of their obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by the Purchaser have been duly and validly authorized by all necessary corporate action on the part of the Purchaser. Each Transaction Document executed by the Purchaser, as of the date hereof, has been, and each Transaction Document executed as of the Closing Date, will be, duly executed and delivered by the Purchaser and constitutes or will constitute upon delivery, the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, subject to the usual exceptions as to bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

5.3 Consents; Compliance with Other Instruments

- (a) None of the execution, delivery and performance by the Purchaser of the Transaction Documents, the consummation by the Purchaser of the transactions contemplated thereby, nor the fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under (i) any provision of any of the Purchaser's articles, by-laws, constating documents or other organizational documents, as applicable, (ii) to the extent that any such violation, breach, default or conflict would reasonably be expected to materially affect the transactions contemplated under the Transaction Documents, any instrument, contract, agreement, note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, loan or lease agreement to which the Purchaser or any of the Purchaser's assets or properties, are bound or subject, or (iii) any applicable Laws.

- (b) Except as set forth in Schedule 5.3(b):
- (i) the Purchaser is not required to submit any notice, declaration, report or other filing or registration with any Governmental Authority in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents; and
 - (ii) no exemption, waiver, consent, approval, authorization, licence, permit or franchise is required to be obtained from any Governmental Authority or any other Person by the Purchaser in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby, the absence of which would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents.

5.4 Business Advisors, Brokers and Finders

Neither the Purchaser nor any of their respective officers, directors, employees, agents, Affiliates or shareholders of the Purchaser has engaged any Person to act or render services as a business advisor, broker, finder, investment banker or in any similar capacity in connection with the transactions contemplated by the Transaction Documents, and no Person has, as a result of any agreement or action by the Purchaser or any of its Affiliates, any right or valid claim for any commission, fee or other compensation as a business advisor, broker, finder, investment banker or in any similar capacity in connection with the transactions contemplated by the Transaction Documents that would result in any liability to the Seller.

5.5 Litigation and Government Claims

There is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or governmental investigation or inquiry pending against, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby. There is no such Proceeding, investigation or inquiry threatened, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby, in each case which might be commenced with a reasonable likelihood of success.

5.6 Independent Investigation

The Purchaser has conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial and other condition and prospects of the Globalive Entities, which investigation, review and analysis was done by the Purchaser and its Affiliates and representatives. The Purchaser acknowledges that it and its representatives have been provided adequate access to the personnel and records of the Globalive Entities for such purpose. In entering into this Agreement, the Purchaser acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of any of the Seller or the Globalive Entities or any of their

respective Affiliates or representatives (except the specific representations and warranties of the Seller set forth in Article 4).

5.7 Funds

The Purchaser has on the date hereof, and shall have at the Closing, sufficient available funds to pay the Purchase Price and all other necessary fees, expenses and other amounts in connection with the consummation of the transactions contemplated by this Agreement.

5.8 No Breach

The Purchaser has no knowledge of (i) any facts or circumstances which would constitute a breach by the Globalive Entities or the Seller of any of their representations and warranties herein or (ii) a Material Adverse Effect.

5.9 Investment Canada Act

The Purchaser is not a non-Canadian within the meaning of the Investment Canada Act.³

5.10 Partnership Arrangements

Except as set forth in Schedule 5.10, no Person is acting jointly or in concert with the Purchaser in connection with the acquisition of the Purchased Shares pursuant to this Agreement.⁴

6. COVENANTS

6.1 Conduct of Business Prior to Closing

- (a) Subject to Section 6.1(b), during the Interim Period, the Seller shall cause GWMC to do the following:
 - (i) use commercially reasonable efforts to preserve intact the Business and the material properties and physical assets of GWMC and WIND Distribution used in the operation of the Business; and
 - (ii) maintain the books, records and accounts of GWMC and WIND Distribution in the ordinary course of business on a basis consistent with past practice.
- (b) Except as permitted or required by this Agreement or as required by applicable Law or in the ordinary course of business or as required by the Pre-Closing Reorganization (as defined herein), the Seller shall not cause the Globalive Entities to, during the Interim Period, do any of the following without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed (provided, however, that notwithstanding anything to contrary contained in this Agreement, no consent shall be required from the

³ Representations, warranties and covenants to be revised throughout to the extent that the Purchaser will not be a Canadian resident.

⁴ Seller requires this representation for regulatory purposes.

Purchaser for the Seller to take an action to cure a representation or warranty and/or enable compliance with any covenant in this Agreement provided that such action would not be materially adverse to the Business or the Purchaser):

- (i) amend the articles of incorporation, by-laws or other equivalent organizational documents, or otherwise alter the corporate structure, as applicable, through merger, liquidation, reorganization, restructuring or otherwise, of any of the Globalive Entities;
 - (ii) declare or pay any dividends (including stock dividends), or make any other payments or distributions upon any of the capital stock of any of the Globalive Entities;
 - (iii) issue, sell, transfer, pledge, dispose of or encumber any shares of capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of capital stock, or any other ownership interest of any of the Globalive Entities;
 - (iv) sell, transfer or dispose of any material assets other than in the ordinary course of business;
 - (v) make any change to its accounting policies or procedures;
 - (vi) waive, release, grant, transfer, exercise, modify or amend, in whole or in part, the Spectrum Licenses;
 - (vii) except as required to address any matters set forth in Schedule 4.8, change any method of Tax accounting, make any new, or change any existing Tax election or settle or compromise any Tax liability, enter into any closing agreement with respect to any Tax or surrender any right to claim a Tax refund; or
 - (viii) waive, assign or release any rights or claims with respect to litigation involving the Globalive Entities.
- (c) Where the Seller seeks to obtain the consent of the Purchaser with respect to any action which if taken without consent would result in a breach of Section 6.1(b), the Seller shall provide written notice to the Purchaser requesting such consent and setting forth in reasonable detail the particulars of the action being contemplated. The Purchaser shall have five Business Days (the "**Response Period**") in which to communicate the granting or withholding of such consent. Any failure by the Purchaser to respond within the Response Period shall be deemed to constitute the granting of the requested consent.
- (d) During the period from the date of this Agreement to the Closing, the Purchaser and its Affiliates shall not contact any third party on behalf of any of the Globalive Entities or the Seller or purportedly on behalf of any of the Globalive Entities or the Seller without the prior written consent of the Seller (provided that

the Seller shall provide a response to any request from the Purchaser for such consent within a reasonable period of time).

6.2 Actions to Satisfy Closing Conditions

Subject to the other provisions of this Agreement, each of the Seller and the Purchaser agrees to use commercially reasonable efforts to take all such actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with any conditions set forth in Article 7 which are for the benefit of the other or mutually beneficial.

6.3 Regulatory and Third Party Approvals

- (a) The Purchaser shall, as promptly as practicable (i) give all notices to, make all filings and applications with, obtain all consents and approvals of and take any action in respect of, any Persons and Governmental Authorities that are required of the Purchaser to consummate the transactions contemplated by this Agreement; and (ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. The Purchaser shall provide prompt notification to the Seller when any such consent, approval, action, filing or notice referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise the Seller of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing to the Seller and its outside counsel) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.
- (b) The Purchaser shall cooperate and assist the Seller in giving any notices to third parties and obtaining consents from third parties as are required to consummate the Transaction as set forth in Schedule 3.2(e), provided that the Seller shall not have any obligation to expend any monies in connection with the obtaining of such third party consents or oblige the Seller to give any guarantee or other consideration of any nature in connection therewith.
- (c) Without limiting the generality of the foregoing, the Purchaser shall consult and cooperate with the Seller in connection with all notices, filings, applications, analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of the Purchaser in connection with obtaining all consents and approvals from any Governmental Authorities necessary to consummate the transactions contemplated hereby. The Purchaser will not make any notification, filing, application or other submission in relation to the transactions contemplated hereby without first providing the Seller with a copy of such notification, filing, application or other submission in draft form (subject to reasonable redactions or limiting the sharing of such draft, or parts thereof, to an outside-counsel-only basis where appropriate) and giving the Seller a reasonable opportunity to consider its content before it is filed with the relevant Governmental Authority, and the Purchaser shall consider and take account of all

reasonable comments timely made in this respect. The Purchaser shall promptly notify the Seller of any substantive communications from or with any Governmental Authority with respect to the transactions contemplated by this Agreement and will use its reasonable best efforts to ensure, to the extent permitted by Law, that the Seller, or its outside counsel where appropriate, are involved in any substantive communications or invited to attend meetings with, or other appearances before, any Governmental Authority with respect to the transactions contemplated by this Agreement.

- (d) Subject to Section 6.4, the obligations of the Purchaser under this Section 6.3 shall include committing to any and all undertakings, divestitures, licenses or hold separate or similar arrangements with respect to its assets or the assets of the Globalive Entities and committing to any undertakings or other arrangements relating to conduct of its business or the business of the Globalive Entities as a condition to obtaining any and all approvals or clearances from any Governmental Authority or Person necessary to consummate the transactions contemplated hereby, including taking any and all actions necessary in order to ensure the receipt of the necessary consents, approvals, clearances or forbearances, or the termination, waiver or expiration of the necessary waiting periods, under applicable Law. In addition, subject to Section 6.4, the Purchaser shall not knowingly take or cause to be taken any action which would be expected to prevent or delay the obtaining of any consent or approval required hereunder, including entering into any timing or other agreements with any Governmental Authority without the express written consent of the Seller, for the consummation of the transactions contemplated hereby. No action taken under this Section 6.3 shall entitle the Purchaser to any reduction to the Purchase Price.

6.4 Competition Matters

- (a) The Purchaser and the Seller shall promptly, but in no event later than that date which is five Business Days after the date of signing of this Agreement by all Parties hereto, or as soon thereafter as is reasonably practicable, submit the notice required under section 114 of the Competition Act with respect to the transactions contemplated by this Agreement and the Purchaser shall promptly, but in no event later than that date which is five Business Days after the date of signing of this Agreement by all Parties hereto, or as soon as reasonably practicable, submit an application for an Advance Ruling Certificate to the Commissioner. The Parties shall coordinate and cooperate in exchanging such information and assistance as may be reasonably requested by each other in order to prepare the notice required under section 114 of the Competition Act, the application for an Advance Ruling Certificate and as otherwise may be necessary in order to obtain the Competition Act Approval. The Parties shall promptly notify each other of any material communication from the Commissioner or her staff and supply as promptly as practicable to the Commissioner or her staff any additional information and documentary material that may be requested or required. Each Party shall permit the other Parties or their external counsel, as appropriate, to review in advance any proposed written communication to the Commissioner or her staff and shall

discuss with the other Parties any material verbal communication to the Commissioner or her staff. None of the Parties shall participate in any meeting with the Commissioner or her staff in relation to the transactions contemplated by this Agreement unless it consults with the other Parties in advance and, to the extent permitted by Law, provides the other Party the opportunity to attend and participate thereat.

- (b) The Purchaser shall use its best efforts to secure the necessary approval and consent of the Commissioner to successfully consummate the transactions contemplated by this Agreement as soon as practicable.

6.5 Industry Canada Approval Matters

The Purchaser shall use its best efforts to obtain the Industry Canada Approval. The Seller shall co-operate with the Purchaser and render all necessary assistance required by the Purchaser in connection with any application, notification or filing of the Purchaser to or with Industry Canada.

6.6 Pre-Closing Reorganization

[The Seller shall cause the pre-closing reorganization steps set out in Schedule 6.6 (the "Pre-Closing Reorganization") to be completed prior to the Closing. The Purchaser agrees to use its best efforts to assist the Seller in completing the Pre-Closing Reorganization. The Seller's representations and warranties in Article 4 and the covenants of the Seller in Article 6 shall be read as modified to the extent necessary to give effect to the Pre-Closing Reorganization.⁵]

6.7 Confidentiality

The Purchaser acknowledges that it has had access to Confidential Information, the disclosure of which would be detrimental to the interests of the Seller and the Globalive Entities. Accordingly, the Purchaser covenants and agrees, prior to the Closing or if this Agreement is terminated for any reason, to keep, and cause its Affiliates to keep, the Confidential Information in strict confidence and not disclose any of such Confidential Information to any Person or use or attempt to use such Confidential Information. Notwithstanding the foregoing, the Purchaser will not have liability for any information that is required to be disclosed pursuant to applicable Law or pursuant to any regulatory or judicial authority having jurisdiction over the Seller or the Globalive Entities, provided that the Purchaser first gives prior written notice to the Seller of such disclosure and the Purchaser requests in writing confidentiality in respect of such disclosure.

6.8 No Solicitation

The Purchaser agrees and acknowledges that, if this Agreement is terminated, for a period of two years, it shall not, and shall not cause its Affiliates to, directly or indirectly, induce or solicit,

⁵ Pre-Closing Reorganization steps are to be determined once the appropriate transaction structure has been determined from a tax and corporate perspective.

attempt to induce or solicit or assist any third party in inducing or soliciting any employee or consultant of any of the Globalive Entities or the Seller, to leave such Person or to accept employment or engagement elsewhere. Notwithstanding the foregoing, the Purchaser shall be permitted to recruit through the posting of a general advertisement or through an employment agency, provided that the Purchaser shall not encourage or advise such agency to approach any specific employee or consultant of the Globalive Entities and the Seller.

6.9 Notice of Certain Events

- (a) From the date hereof until the Closing, each Party hereto (the "**Notifying Party**") shall promptly notify the other in writing of:
 - (i) any fact, circumstance, event or action the existence, occurrence or taking of which would prevent the Notifying Party from delivering the certificates contemplated by Sections 7.1 or 7.2, respectively;
 - (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction; and
 - (iii) any notice or other communication from any Governmental Authority that threatens to enjoin the consummation of the Transaction.
- (b) The receipt by a Party of information pursuant to this Section 6.9 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Notifying Party in this Agreement.

6.10 Tax and Financial Matters

- (a) The Purchaser shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Globalive Entities after the Closing Date. The Seller shall be given the opportunity to review, comment upon and suggest changes or corrections to, any Tax Returns required to be filed by the Globalive Entities after the Closing Date which include any Seller Tax Period and any amendments to such Tax Returns or any Tax Returns filed by any of the Globalive Entities prior to the Closing (and the work papers of the Globalive Entities and its and their accountants used in the preparation thereof), in each case, prior to the filing thereof (but in no event less than thirty days prior to such filing). The Purchaser shall, and shall cause the Globalive Entities to, fully cooperate with and assist the Seller (including allowing access by the Seller and its representatives to the books and records (written and electronic) of the Globalive Entities and allowing the Seller (and its representatives) to make copies thereof) in connection with the review by the Seller of any such Tax Returns or amendments, and the Seller (and its representatives) shall not be charged with any cost or expense for the assistance rendered by the Purchaser, the Globalive Entities in connection therewith.

- (b) The Purchaser and the Seller shall for all Canadian and foreign Tax purposes report the purchase and sale hereunder and the transactions contemplated herein in accordance with their form as set out herein (and none of them shall make any available Tax elections inconsistent therewith).
- (c) For any period ending on or before the Closing Date (including, without limitation, for the period from the prior quarter-end or year-end through and as of the Closing Date), the Purchaser agrees to provide and cause each of the Globalive Entities to provide all financial and other information and documentation (including, without limitation, balance sheet, income statement, variance analysis, reporting package, detailed supporting schedules of accounts, tax provision for financial reporting purposes, fluctuation analysis, detailed trial balance up-load files, ultimates, etc.), which each of the Globalive Entities has provided to the Seller in the ordinary course of business for each quarter-end, and do and cause each of the Globalive Entities to do any and all acts related to the foregoing, including but not limited to:
 - (i) provide any detailed data reporting, including through all electronic systems, in a manner consistent with past practice and past time frames;
 - (ii) provide support and responses to the Seller's questions, as reasonably required, in respect of such information and documentation for quarterly or year-end periods prior to the Closing Date and for the period from the last quarterly or year-end period through and as of the Closing Date, in a manner consistent with past practice and past time frames; and
 - (iii) provide any required assistance to the Seller for financial reporting purposes, including without limitation, the projections of financial performance of each of the Globalive Entities.

6.11 Cooperation

Each of the Parties hereto shall, at all times after the Closing Date and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting Party, other than in respect of the cost or expense of preparing, drafting or negotiating any agreement, document or instrument reasonably necessary for the consummation of the Transaction at the Closing, for which each Party shall be solely responsible for its own costs and expenses in relation thereto, all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement, including such other instruments of sale, transfer, conveyance, assignment, confirmation, certificates and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign the Purchased Shares and to effectuate the transactions contemplated herein.

6.12 Officers' and Directors' Insurance and Indemnification

The Purchaser shall, or shall cause each of the Globalive Entities to purchase, for the period from the Closing Date until six years after the Closing Date, as an extension to the current insurance policy of each the Globalive Entities, prepaid non-cancellable run off directors' and officers'

liability insurance providing coverage for the present and former directors and officers of each of the Globalive Entities with respect to any claims arising from facts or events that occurred on or prior to the Closing (including in connection with this Agreement or the transactions contemplated hereby) on terms comparable to those contained in the current insurance policy of each of the Globalive Entities.

7. CONDITIONS PRECEDENT TO THE PERFORMANCE BY THE PURCHASER AND THE SELLERS OF THEIR OBLIGATIONS UNDER THIS AGREEMENT

7.1 Purchaser's Conditions

The obligation of the Purchaser to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, the following conditions precedent (each of which is hereby acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) Seller's Representations and Warranties Certificate. The Seller shall have delivered a certificate, in the form as set out in Schedule 7.1, confirming that the representations and warranties of the Seller set forth in Article 4 of this Agreement (i) if qualified in any respect as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, and (ii) if not qualified as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, except to the extent that the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date and that all representations and warranties of the Seller are modified as necessary to account for the Pre-Closing Reorganization).
- (b) Seller's Covenants Certificate. The Seller shall have delivered a certificate, in the form as set out in Schedule 7.1, confirming that the Seller has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date, except where the failure to so perform would not, in the aggregate, be material.
- (c) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction shall be in effect.
- (d) Deliveries. The Seller shall have made or stand willing to make all the deliveries to the Purchaser described in Section 3.2.

7.2 Seller's Conditions

The obligations of the Seller to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, each of the following conditions precedent (each of

which is hereby acknowledged to be inserted for the exclusive benefit of the Seller and may be waived by the Seller in whole or in part):

- (a) Purchaser's Representations and Warranties Certificate. The Purchaser shall have delivered a certificate, in the form as set out in Schedule 7.2(a), confirming that the representations and warranties of the Purchaser set forth in Article 5 of this Agreement (i) if qualified in any respect as to materiality, shall be true and correct, and (ii) if not qualified as to materiality, shall be true and correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date).
- (b) Purchaser's Covenants Certificate. The Purchaser shall have delivered a certificate, in the form as set out in Schedule 7.2(a), confirming that the Purchaser has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date (except to the extent any breach of any covenant has been cured prior to the Closing), except where the failure to so perform would not, in the aggregate, be material.
- (c) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction shall be in effect.
- (d) Deliveries. The Purchaser shall have made or stand willing to make all of the deliveries to the Seller described in Section 3.3.

7.3 General Conditions

The obligation of the Parties to complete the Transaction is subject to the following conditions, which are for the benefit of all of the Parties:

- (a) Competition Act Approval. Without limiting the Purchaser's obligations herein, including in Section 6.4, the Purchaser having obtained Competition Act Approval.
- (b) Industry Canada Approval. Without limiting the Purchaser's obligations herein, including in Section 6.5, the Purchaser having obtained Industry Canada Approval.

8. TERMINATION

8.1 Termination

This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of the Purchaser and each of the Seller;

- (b) by the Purchaser by written notice to the Seller if any of the conditions set forth in Sections 7.1 and 7.3 shall not have been fulfilled by ■, unless such failure shall be due to the failure of the Purchaser to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (c) by the Seller by written notice to the Purchaser if any of the conditions set forth in Sections 7.2 and 7.3 shall not have been fulfilled by ■, unless such failure shall be due to the failure of the Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (d) by the Purchaser or by the Seller in the event that any injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling is issued by a Governmental Authority, in each case that is final and non-appealable, or any statute, rule, regulation or executive order is promulgated or enacted by a Governmental Authority restraining, enjoining, prohibiting, or otherwise making illegal the consummation of the Transaction.

8.2 Effect of Termination

In the event of termination of this Agreement in accordance with this Agreement prior to the Closing, this Agreement shall forthwith become void and there shall be no liability on the part of any Party hereto, provided that nothing herein shall relieve any Party hereto from liability for a breach of any obligation contained in Sections 6.2, 6.4(a), 6.4(b) or Article 7 and in each case only to the extent such breach caused or contributed to the failure of the Closing.

9. INDEMNIFICATION

9.1 Indemnification by the Seller

The Seller shall indemnify and save the Purchaser harmless for and from any Loss of the Purchaser as a result of any breach of representation, warranty or covenant on the part of the Seller contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement.

9.2 Indemnification by the Purchaser

The Purchaser shall indemnify and save the Seller harmless for and from any Loss of the Seller as a result of any breach of representation, warranty or covenant or agreement on the part of the Purchaser contained in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement.

9.3 Knowledge of Claim

No Party shall be liable under this Article 9 for any Loss resulting from or relating to any inaccuracy in or breach of any representation or warranty in this Agreement if the Party seeking

indemnification for such Loss had knowledge of such Loss or the ability to make a Claim with respect to such Loss prior to the Closing.

9.4 Notice of Claim

If the Purchaser or the Seller wishes to make a Claim, such Party shall promptly, and in any event within 15 days of the matter coming to the Party's attention, give notice to the other of the Claim. Notice of any Claim shall specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim, and any provisions of the Agreement, or of any Laws, relied upon; and
- (b) the amount of the Claim or, if an amount is not then determinable, an approximate and reasonable estimate of the potential amount of the Claim.

9.5 Procedure for Indemnification by the Seller

Following receipt of notice of a Direct Claim, the Seller shall have 30 days to make such investigation of the Direct Claim as the Seller considers necessary or desirable. For the purpose of such investigation, the Purchaser shall make available to the Seller and its representatives the information relied upon by the Purchaser to substantiate the Direct Claim. If the Purchaser and the Seller agree at or prior to the expiration of such 30 day period (or any extension thereof agreed upon by the Purchaser and the Seller) as to the validity and amount of the Direct Claim, the Seller shall immediately pay to the Purchaser the full agreed upon amount of the Direct Claim. If the Purchaser and the Seller do not agree within such period (or any mutually agreed upon extension thereof), the Seller and the Purchaser agree that the Purchaser shall be entitled to bring an action in a court of law to recover the full amount of the Direct Claim and any costs incidental to the action.

9.6 Procedure for Indemnification by the Purchaser

Following receipt of notice of a Claim, the Purchaser shall have 30 days to make such investigation of the Claim as the Purchaser considers necessary or desirable. For the purpose of such investigation, the Seller shall make available to the Purchaser and its representatives the information relied upon by the Seller to substantiate the Claim. If the Seller and the Purchaser agree at or prior to the expiration of such 30 day period (or any extension thereof agreed upon by the Seller and the Purchaser) as to the validity and amount of the Claim, the Purchaser shall immediately pay to the Seller the full agreed upon amount of the Claim. If the Seller and the Purchaser do not agree within such period (or any mutually agreed upon extension thereof), the Parties agree that the Seller shall be entitled to bring an action in a court of law to recover the full amount of the Claim and any costs incidental to the action.

9.7 Additional Rules and Procedures

The obligation of the Seller to indemnify the Purchaser, and the Purchaser to indemnify the Seller, pursuant to this Article 9 shall also be subject to the following:

- (a) notice of any Claim arising as a result of a breach of a representation or warranty referred to in Articles 4 or 5 shall be given not later than the date on which, pursuant to Section 10.1, such representation or warranty terminates;
- (b) the Seller's obligation to indemnify the Purchaser in accordance with Section 9.1, and the Purchaser's obligation to indemnify the Seller in accordance with Section 9.2, shall only apply to the extent that Claims in respect of which the relevant Party is required to indemnify exceed, in the aggregate, \$[10,000,000] (provided that each individual Claim forming part of such aggregate amount shall be no less than \$[1,000,000]), in which event such amount shall be deducted from any amount found to be payable hereunder;
- (c) the aggregate liability of the Seller for its indemnification obligations pursuant to Section 9.1 shall be limited to the amount of [10]% of the Purchase Price, except that, in cases where a Claim arises out of a breach of a representation and warranty of the Seller contained in Sections 4.1 (Organization and Good Standing), 4.2 (Ownership of Purchased Shares), 4.3 (Authority and Binding Effect), 4.5 (Authorized and Issued Capital) and 4.6 (Consents; Compliance with Other Instruments), the aggregate liability of the Seller for its indemnification obligations pursuant to Section 9.1 shall be limited to the amount of the Purchase Price; and
- (d) the aggregate liability of the Purchaser for their collective indemnification obligations pursuant to Section 9.2 shall be limited to the amount of the Purchase Price.

9.8 Indemnification Claim

Article 9 sets out the sole and exclusive manner by which the Purchaser may seek monetary compensation from the Seller, or by the Seller may seek monetary compensation from the Purchaser, for indemnification Claims pursuant to this Agreement.

10. MISCELLANEOUS

10.1 Survival of Representations, Warranties and Covenants

- (a) The representations and warranties of the Seller contained in this Agreement and in any Contract, instrument, certificate or other document executed or delivered pursuant to this Agreement shall continue in full force and effect until the date that is six months following the Closing Date, except that the representations and warranties of the Seller contained in Sections 4.1 (Organization and Good Standing), 4.2 (Ownership of Purchased Shares), 4.3 (Authority and Binding Effect), 4.5 (Authorized and Issued Capital), 4.6 (Consents; Compliance with Other Instruments) and 4.8 (Taxes) shall continue in full force and effect until the date that is 24 months following the Closing Date.
- (b) The representations and warranties of the Purchaser contained in this Agreement and in any Contract, instrument, certificate or other document executed or

delivered pursuant to this Agreement shall survive the Closing Date and shall survive and continue in full force and effect for the longest period permitted under applicable Law.

- (c) Notwithstanding Section 10.1(a) and 10.1(b), the Parties hereto agree that a Party may bring a cause of action against any other Party for fraud (whether arising out of a breach of any of the representations and warranties set forth herein or otherwise). This Section 10.1 shall not limit any covenant or agreement of the Parties which by its terms contemplates performance after the Closing or the bringing of any cause of action claiming, based upon or arising out of a breach thereof.
- (d) The Parties hereby waive, effective upon the expiration of the survival period for the representations and warranties contained in this Agreement, to the fullest extent permitted by applicable Law, any and all rights, claims and causes of action (including rights of contribution, if any, and claims for rescission) known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against any other Parties hereto or any of their respective Affiliates, directors, managers, officers, employees, agents, attorneys, consultants, advisors or other representatives or any member of the board of directors of the Seller arising under or based upon any Law for any breach of the representations and warranties contained in this Agreement.

10.2 Publicity

Each of the Purchaser, the Seller and their respective Affiliates shall not be entitled to disclose, reveal, divulge, or make known to any Person, the fact that the Transaction exists or the terms of any Transaction Document, including any description of the Transaction or any press release, without the prior written consent of the other Party, except (i) by way of a public filing or as required by applicable Law, and such disclosure shall only be to the extent necessary and such determination shall be made in good faith and based on the advice from the disclosing Party's legal counsel; (ii) in the ordinary course of business to its professional advisors, lenders, shareholders or other representatives who have a need to know such information; or (iii) to the extent necessary to obtain any consent, waiver or approval or to file any notice contemplated by this Agreement.

10.3 Expenses

Each of the Purchaser and the Seller shall pay their own expenses incurred in connection with this Agreement and the Transaction (including legal, accounting, investment banking and financial advisory fees and expenses).

10.4 Entire Agreement

This Agreement and the Transaction Documents contain the complete agreement among the Parties with respect to the transactions contemplated thereby and supersede all prior agreements and understandings, oral or written, among the Parties with respect to such transactions, other than the confidentiality agreement dated ■ between ■ and the Purchaser (the "NDA"), which

shall survive the execution and delivery of this Agreement in accordance with its terms. The Parties hereto have not made any representation or warranty except as expressly set forth in this Agreement or in any document, certificate or Schedule delivered pursuant hereto.

10.5 Copies; Counterparts; and Facsimiles

This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile or by Portable Document Format ("PDF") and each such original, facsimile copy, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

10.6 Notices

All notices, demands, requests or other communications that may be or are required to be given, served or sent by any Party to any other Party pursuant to this Agreement shall be deemed to have been duly given and made if in writing and delivered to the Party, either (a) if served by personal delivery upon the Party for whom it is intended, (b) if delivered by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by a reputable overnight courier service, or (c) if sent by facsimile transmission or e-mail; provided that each such facsimile transmission or e-mail is promptly confirmed by facsimile or e-mail confirmation thereof and followed with a hard copy by first class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to the Purchaser:

- -
 -
 -
- Attention: ■
- Fax: ■
- E-mail: ■

With a copy to:

-
- Attention: ■
- Fax: ■
- E-mail: ■

(b) If to the Seller:

- Globalive Investment Holdings Corp.
- -
- Attention: ■

Fax: ■
E-mail: ■

With a copy to (which shall not constitute notice):

Bennett Jones I.L.P.
Suite 3400, 1 First Canadian Place
Toronto, Ontario M5X 1A4

Attention: Mark Rasile and Christian Gauthier
Fax: 416-863-1716
E-mail: rasilem@bennettjones.com and
gauthierc@bennettjones.com

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication that is mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes on the date of personal delivery, the date of facsimile or e-mail confirmation, or after mailing in accordance with the foregoing or delivering overnight by nationally recognized courier service that guarantees overnight delivery, on the date delivered, or at such time as delivery is refused by the addressee upon presentation.

10.7 Disclaimer of Other Representations: Projections.

The Purchaser acknowledges and agrees that (a) except for the representations and warranties made by the Seller expressly set forth in Article 4 none of the Seller or any of its Affiliates or representatives has made, and shall not be construed as having made, to the Purchaser or any of its respective Affiliates or representatives, any representation or warranty of any kind, express or implied, at law or in equity, in respect of the Seller, the Globalive Entities or the Purchased Shares, including with respect to (i) merchantability or fitness for any particular purpose, (ii) the operation of the Globalive Entities by the Purchaser after the Closing, or (iii) the probable success or profitability of the Globalive Entities after the Closing and (b) none of the Globalive Entities, the Seller or any of their respective Affiliates or representatives shall have or be subject to any liability to the Purchaser or to any other Person resulting from the distribution to Purchaser or its Affiliates or representatives of, or the Purchaser's use of:

- (i) any projections, financial models, estimates, forecasts or budgets contained in the Data Room, or any projections, financial models, estimates, forecasts or budgets relating to the Business, the Globalive Entities otherwise heretofore or hereafter delivered to, presented to (including, for greater certainty, in any management presentation) or made available to the Purchaser or its representatives or Affiliates; and
- (ii) any other information, statement or documents heretofore or hereafter delivered to, presented to (including, for greater certainty, in any management presentation) or made available to the Purchaser or its

representatives or Affiliates, whether orally or in writing (including in the Data Room, functional "break-out" discussions, responses to questions submitted on behalf of the Purchaser or otherwise), with respect to the Seller, the Globalive Entities, the Purchased Shares or the Business, operations or affairs of the Globalive Entities, except to the extent and as expressly covered by a representation and warranty contained in Article 4.

Without limiting the foregoing, with respect to any projections, financial models, estimates, forecasts or budgets relating to the Business of the Globalive Entities, the Purchaser acknowledges and agrees that (i) there are uncertainties inherent in attempting to make any projections, financial models, estimates, forecasts or budgets, (ii) it is familiar with such uncertainties, (iii) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections, financial models, estimates, forecasts or budgets so furnished to it, (iv) planned efficiencies or business opportunities may not materialize for a number of reasons, and (v) the Purchaser shall have no claim against the Globalive Entities, the Seller or any of their Affiliates, representatives, shareholders or partners with respect thereto. Any such other representation or warranty is hereby expressly disclaimed.

10.8 Assignment; Successors and Assigns

This Agreement may not be assigned by any Party hereto without the written consent of the other Parties. Any purported assignment or transfer by a Party of any of its rights and/or obligations under this Agreement, other than pursuant to and in accordance with this Section shall be void *ab initio*. Subject to the foregoing, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns.

10.9 Amendment

This Agreement may be amended, modified or supplemented only by a written instrument executed by the Parties.

10.10 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be enforceable.

10.11 Enforcement of Agreement

The Parties agree that irreparable damage to the Seller for which monetary damages, even if available, would not be an adequate remedy would occur in the event that any of the provisions of this Agreement (including the failure by any Party to take such actions as are required of it hereunder to consummate the transactions contemplated by this Agreement) was not performed

in accordance with its specified terms or was otherwise breached. It is accordingly agreed that the Seller shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which the Seller are entitled at Law or in equity, and any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable is hereby waived.

10.12 Governing Law

This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein, without giving effect to the conflict of Laws principles thereof.

10.13 Choice of Forum and Consent to Jurisdiction

Any action arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, shall be brought only in a federal or provincial court having jurisdiction and venue in Ontario, Canada, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of such courts and agrees that venue in Ontario is proper. Each of the Parties hereby irrevocably waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any legal action or Proceeding, any defense or any claim that it is not personally subject to the jurisdiction of the above-named Ontario courts for any reason, including claims that such Party may be immune from the above-described legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise), or that such Proceeding is brought in an inconvenient or otherwise improper forum or that this Agreement or any of the other aforementioned documents, instruments or agreements, or the subject matter hereof or thereof, may not be enforced in or by such courts, or that the same are governed by the Laws of a jurisdiction other than Ontario. Each of the Parties hereby specifically agrees that it shall not bring any actions, suits or Proceedings arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, in the courts of any jurisdiction other than the above-named courts of Ontario, that any such action brought by any Party shall be dismissed upon the basis of the agreements, terms and provisions set forth in this Section 10.13, and that any order or judgment obtained in any such action from a court other than the courts of Ontario shall be void *ab initio* provided that, notwithstanding the foregoing provisions of this Section 10.13, any Party may bring and enforce an action seeking injunctive or other equitable relief in any court of competent jurisdiction.

[Signatures contained on the next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

[PURCHASER]

By:

Name:

Title:

**GLOBALIVE INVESTMENT HOLDINGS
CORP.**

By: _____

Name:

Title:

SCHEDULE 1.1(A)

PERMITTED LIENS

SCHEDULE 3.2(B)

FORM OF RESIGNATION AND RELEASE

SCHEDULE 3.2(C)

FORM OF SELLER'S CLOSING CERTIFICATE

SCHEDULE 3.2(D)

FORM OF GWMC 'S CLOSING CERTIFICATE

SCHEDULE 3.2(E)

SELLER'S REQUIRED CONSENTS

SCHEDULE 3.3(D)(A)

FORM OF RELEASE OF THE SELLER BY GWMC

SCHEDULE 3.3(D)(B)

FORM OF RELEASE OF GWMC DIRECTORS BY GWMC

SCHEDULE 4.5

CAPITAL STRUCTURE OF THE GLOBALIVE ENTITIES

SCHEDULE 4.6(A)

COMPLIANCE WITH OTHER INSTRUMENTS

SCHEDULE 4.6(B)

FILINGS WITH GOVERNMENTAL AUTHORITIES

SCHEDULE 4.7

GWMC FINANCIAL STATEMENTS

SCHEDULE 4.8

TAXES

SCHEDULE 4.9
SPECTRUM LICENSES

Spectrum License Number	Effective Date	Expiry Date	Service Area	Megahertz
5079769	3/13/2009	3/12/2019	Southern Ontario	20
5079770	3/13/2009	3/12/2019	Yukon, North West Territories & Nunavut	20
5079771	3/13/2009	3/12/2019	New Brunswick	10
5079772	3/13/2009	3/12/2019	Northern Ontario	5
5079773	3/13/2009	3/12/2019	Alberta	10
5079774	3/13/2009	3/12/2019	British Columbia	10
5079775	3/13/2009	3/12/2019	Yukon, Northwest Territories & Nunavut	10
5079776	3/13/2009	3/12/2019	Newfoundland & Labrador	10
5079777	3/13/2009	3/12/2019	Prince Edward Island	10
5079778	3/13/2009	3/12/2019	Mainland Nova Scotia	10
5079779	3/13/2009	3/12/2019	Cape Breton	10
5079780	3/13/2009	3/12/2019	Ottawa/Outaouais	10
5079781	3/13/2009	3/12/2019	Pembroke	10
5079782	3/13/2009	3/12/2019	Cornwall	10
5079783	3/13/2009	3/12/2019	Brockville	10
5079784	3/13/2009	3/12/2019	Kingston	10
5079785	3/13/2009	3/12/2019	Belleville	10
5079786	3/13/2009	3/12/2019	Cobourg	10
5079787	3/13/2009	3/12/2019	Peterborough	10
5079788	3/13/2009	3/12/2019	Winnipeg	10
5079789	3/13/2009	3/12/2019	Brandon	10
5079790	3/13/2009	3/12/2019	Yukon, North West Territories & Nunavut	10
5079791	3/13/2009	3/12/2019	Regina	10
5079792	3/13/2009	3/12/2019	Moose Jaw	10

Spectrum License Number	Effective Date	Expiry Date	Service Area	Megahertz
5079793	3/13/2009	3/12/2019	Saskatoon	10
5079794	3/13/2009	3/12/2019	Newfoundland & Labrador	10
5079795	3/13/2009	3/12/2019	Northern Quebec	10
5079796	3/13/2009	3/12/2019	Yukon, Northwest Territories & Nunavut	10
5079797	3/13/2009	3/12/2019	Northern Quebec	5
5079798	3/13/2009	3/12/2019	Northern Ontario	5

SCHEDULE 5.3(B)

**FILINGS, CONSENTS AND APPROVALS OF GOVERNMENTAL AUTHORITIES
AND OTHER PERSONS TO BE OBTAINED BY THE PURCHASER**

**SCHEDULE 5.10
PARTNERSHIP ARRANGEMENTS**

**SCHEDULE 6.6
PRE-CLOSING REORGANIZATION**

SCHEDULE 7.1

FORM OF THE SELLER'S CLOSING CONDITIONS CERTIFICATE

SCHEDULE 7.2(A)

FORM OF PURCHASER CLOSING CONDITIONS CERTIFICATE

Message

From: Glassman, Newton [nglassman@catcapital.com]
Sent: 7/22/2014 11:01:49 AM
To: Anthony Lacavera [AnthonyLacavera@Globalive.com]; De Alba, Gabriel [gdealba@catcapital.com]
CC: Riley, Jim [jriley@catcapital.com]; Moshe Ronen [moshe@verdiroc.com]
Subject: Re: Confidential Updated Numbers

Hey, tony. As u can imagine, your email below puts us in a theoretically difficult position. IF we were in direct discussions w vimpelcom, we would most likely be subject to a confidentiality agreement that would prevent us from disclosing such and for sure the status of such wout their consent. If we r not involved w vimpelcom in such disclosing said lack of involvement could in theory hurt our position w other stakeholders in mobility. Therefore whether such is factually correct can neither be confirmed or denied.

The above being said, I can tell u the following in a theoretical way: if catalyst were in discussions or close to a deal as u allege below, 2 things r obvious:

1) we have always said and remain committed to the view that we would look to see if u could be involved SO LONG AS 2 conditions r met, namely that the terms of said involvement r economically reasonable and acceptable to catalyst AND that prior to such u personally IN NO WAY harmed or interfered w our getting an optimal deal done. That would include controlling any/all public statements etc that could hurt either a theoretical deal w vimpelcom or future discussions w the govt (whether such harm is/was intended or not);

2) anyone looking to do a 'build-out' will need enormous financial support and therefore ---in theory if catalyst were involved--it would absolutely and positively look to potentially include other like-minded investors. However, catalyst again would obviously only be positively inclined to include those that did not harm the process or catalyst's ability to optimally conclude a transaction in as timely a manner as possible.

Again, both the above r self-evident and would be true in ANY deal and obviously therefore neither confirms nor denies what u allege below.

Gabriel is the pt person on all catalyst telecom issues (including mobility) and will therefore confirm what i write above and when/if appropriate expand thereon--including reviewing any possible confi's that may or may not apply and/or discuss the situation w any counter-parties that may or may not have an interest in a situation and/or legal rights related thereto.

Hope all is well.

N.,

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Anthony Lacavera

Sent: Monday, July 21, 2014 11:07 PM

To: Glassman, Newton; De Alba, Gabriel

Subject: Re: Confidential Updated Numbers

Hi Newton, Gabriel,

I understand from Vimpelcom that we are close to a deal. Let me know if your intention is to include my own or my equity group or not (Michael and the other major investors which total 100m from 3 family offices are all standing by to confirm their firm intent with logical caveats - mainly that the first lien is sorted out and there is sufficient working capital to give the company ample runway to a new vendor facility and an LTE spectrum financing). I would like to contribute 15m myself, not in any way linked to my broader group's potential participation although they each can add value in different ways that I will outline.

Let me know if I/we are able to participate in your syndicate and on what terms.

Best regards,

Anthony

----- Original message -----

From: "Glassman, Newton"

Date: 07-20-2014 12:14 PM (GMT-05:00)

To: Anthony Lacavera, "De Alba, Gabriel"

Subject: Re: Confidential Updated Numbers

Hey, Anthony. Do u know if Michael is or come up to muskoka?

Newton Glassman

Managing Partner

Catalyst Capital Group Inc.,

TD Bank Centre

77 King St., W. Suite 4320

Toronto Ontario Canada

M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Anthony Lacavera
Sent: Sunday, July 20, 2014 10:00 AM
To: De Alba, Gabriel
Cc: Glassman, Newton
Subject: Confidential Updated Numbers

Hi Gabriel,

I have attached the updated numbers as discussed, please consider strictly confidential and not for circulation anywhere.

We have an assumption of a cost for spectrum of \$150m for AWS-3 or another spectrum solution from one of the other sources. We are of course going to be pushing for installment payments / payment terms with the government for AWS-3

Let me know when works to discuss, and when I may introduce you to Michael Serruya at this juncture if you would like to confirm the equity syndicate is real before going down this road given all of the starts and stops in the past.

Best regards

Tony

DISCLAIMER: This e-mail (including any attachments) may be confidential and is intended only for the use of the addressee(s). If you are not an addressee, please inform the sender immediately and destroy this e-mail. Do not copy, use or disclose this e-mail. E-mail transmission cannot be guaranteed to be secure or error free, and the sender does not accept liability for any errors or omissions in the contents of this message which may arise as a result of e-mail transmission.

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This e-mail (including any attachments) may be confidential and is intended only for the use of the addressee(s). If you are not an addressee, please inform the sender immediately and destroy this e-mail. Do not copy, use or disclose this e-mail. E-mail transmission cannot be guaranteed to be secure or error free, and the sender does not accept liability for any errors or omissions in the contents of this message which may arise as a result of e-mail transmission.

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This e-mail (including any attachments) may be confidential and is intended only for the use of the addressee(s). If you are not an addressee, please inform the sender immediately and destroy this e-mail. Do not copy, use or disclose this e-mail. E-mail transmission cannot be guaranteed to be secure or error free, and the sender does not accept liability for any errors or omissions in the contents of this message which may arise as a result of e-mail transmission.

Message

From: Daniel Batista [dbatista@fasken.com]
Sent: 5/23/2014 2:03:11 AM
To: Michaud, Zach [zmichaud@catcapital.com]; De Alba, Gabriel [gdealba@catcapital.com]
CC: Yao, George [George.Y.Yao@morganstanley.com]; Moyse, Brandon [BMoyse@catcapital.com]; Creighton, Lorne [LCreighton@catcapital.com]; Babcock, Ben [Ben.Babcock@morganstanley.com]; Braun, Benjamin [Benjamin.Braun@morganstanley.com]; Jon Levin [jlevin@fasken.com]; Katz, Edward [Edward.Katz@MorganStanley.com]; Bai, Aoyu [Aoyu.Bai@morganstanley.com]; Shaw, Victor [Victor.Shaw@morganstanley.com]; Jessica Catton [jcatton@fasken.com]; Jennifer Mitchell [jmitchell@fasken.com]; Jesse Bertollo [jbertollo@fasken.com]; McGuire, Dylan [Dylan.McGuire@morganstanley.com]; Stephen Acker [sacker@fasken.com]; Yael Wexler [ywexler@fasken.com]
Subject: RE: Project Turbine - SPA
Attachments: DM_TOR-#7236425-v1-Share_Purchase_Agreement.docx; WSComparison__#10373960v5_WSLegal_ - Form of SPA - 7236425v1.pdf
Importance: High

Hi Gabriel and Zach,

Attached is a revised draft of the SPA, in clean and in blackline against the draft we received Tuesday, reflecting our proposed revisions. It will continue to be scrubbed overnight but is in suitable condition for your review prior to circulating to the other side.

I have confirmed with Jon that he is available (as am I) mid-morning tomorrow (within what I understand to be Gabriel's window of availability) in order to meet to discuss the attached revisions (there are a number of proposed (in some cases, alternative) revisions to which we wish to draw your attention in order to solicit your feedback). We're happy to host at our offices or attend at yours. Please confirm the time that works best for you.

Best,

Dan

—
Daniel Batista | Partner

T +1 416 868 3423 | F. +1 416 364 7813

dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista
Sent: May-22-14 1:17 AM
To: 'Michaud, Zach'
Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler
Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached are:

1. An updated version of the working draft of our table summarizing termination provisions in the material agreements, in clean and in blackline against the draft circulated last Friday night.
2. An updated version of the working draft of our table summarizing change of control provisions in the material agreements, in clean and in blackline against the draft circulated last Saturday night.

Best,

Dan

Daniel Batista | Partner

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dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista
Sent: May-20-14 9:05 PM
To: 'Michaud, Zach'
Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyses, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler
Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached is a memo providing an overview of certain related-party agreements between the target and its shareholders. Two of the agreements, in particular, provide for significant termination payments --\$25 million to AAL Holdings (controlled by Lacovera) and \$100 million to Orascom -- if terminated following a change of control. We will presumably want to have these agreements dealt with to our satisfaction prior to closing. Let us know if you have any questions.

Best,

Dan

Daniel Batista | Partner

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dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista
Sent: May-18-14 9:54 PM
To: 'Michaud, Zach'

Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached is a memo reporting on our review of the target's CRTC registrations and related matters.

Best,

Dan

Daniel Batista | Partner

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dbatista@fasken.com | www.fasken.com

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333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista

Sent: May-17-14 7:06 PM

To: 'Michaud, Zach'

Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached is an updated version of the working draft of our table summarizing termination provisions in the material agreements, in clean and in blackline against the draft circulated on Thursday night. A new column, summarizing any exclusivity arrangements provided for in the agreements, has been added.

Best,

Dan

Daniel Batista | Partner

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Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista
Sent: May-16-14 7:53 PM
To: 'Michaud, Zach'
Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler
Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached are:

1. An updated version of the working draft of our table summarizing change of control provisions in the material agreements, in clean and in blackline against the draft circulated on Wednesday night.

2. A memo providing a report on IP due diligence.

Best,

Dan

Daniel Batista | Partner

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dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Daniel Batista

Sent: May-15-14 10:07 PM

To: 'Michaud, Zach'

Cc: De Alba, Gabriel; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached are:

1. Our working draft of a table summarizing termination provisions in the material agreements.
2. A memo providing an overview of the spectrum licenses.

I note that our initial IP review has found that WIND Telecomunicazioni SPA is the holder of WIND's trade-marks in Canada, not GWMC. The data room does not include any agreements for the use or assignment of the trade-marks by WIND Telecomunicazioni SPA to GWMC. We have requested them in the follow up due diligence request list that was sent over today.

So far, we have been unable to determine how WIND Telecomunicazioni SPA fits into the overall organizational structure of the GWMC and affiliates, as none of the documents and organizational charts provided in the data room list WIND Telecomunicazioni SPA. We may wish to get clarification on this point at tomorrow's meeting.

Best,

Dan

—
Daniel Batista | Partner

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333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



From: Michaud, Zach [<mailto:zmichaud@catcapital.com>]

Sent: May-15-14 8:18 PM

To: Daniel Batista; McGuire, Dylan; Stephen Acker; Yael Wexler

Cc: De Alba, Gabriel; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

Subject: Re: Project Turbine - Updated Diligence List

Hi Dan, we should have someone from tax either at the meeting or on the phone.

Thanks,

Zach

From: Daniel Batista

Sent: Thursday, May 15, 2014 3:56 PM

To: McGuire, Dylan; Stephen Acker; Yael Wexler

Cc: De Alba, Gabriel; Michaud, Zach; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

Subject: Re: Project Turbine - Updated Diligence List

Hi Dylan,

I might change the third bullet to read "Overview of transaction structure and status of SPA". I gather we're expecting a new version of the SPA reflecting the newly proposed structure by tomorrow.

Stephen/Yael, is there anything on the regulatory side that you think need to be on the agenda for to tomorrow's session?

Zach, let us know whether you want one of our tax partners to be available, given that a discussion of the tax impact of the proposed structure is on the agenda.

Best,

Dan

Daniel Batista

+1 416 868 3423

On May 15, 2014, at 3:38 PM, "McGuire, Dylan" <Dylan.McGuire@morganstanley.com> wrote:

All,

Please see a draft agenda for tomorrow's session. Please advise of any comments or additions to the agenda items or proposed timing.

Best,

Dylan

Dylan McGuire

Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
Toronto, ON M5J 2T3
Phone: +1 416 943-8445
Fax: +1 416 943-8673
Dylan.McGuire@morganstanley.com

Be carbon conscious. Please consider our environment before printing this email.

From: Daniel Batista [<mailto:dbatista@fasken.com>]

Sent: Thursday, May 15, 2014 6:34 AM

To: De Alba, Gabriel

Cc: Michaud, Zach (zmichaud@catcapital.com); Yao, George (IBD); McGuire, Dylan (IBD); Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); Braun, Benjamin (IBD); Jon Levin; Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); Jessica Catton; Jennifer Mitchell; Jesse Bertollo

Subject: Re: Project Turbine - Updated Diligence List

Will do. We searched yesterday but were unable to find the spectrum memo.

Daniel Batista

+1 416 868 3423

On May 15, 2014, at 6:26 AM, "De Alba, Gabriel" <gdealba@catcapital.com> wrote:

We should highlight the deficiencies with an update of requests status in order to buy more time. Also did they post the Spectrum memo??

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Michaud, Zach

Sent: Wednesday, May 14, 2014 9:44 PM

To: Daniel Batista

Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

Subject: Re: Project Turbine - Updated Diligence List

Hi Dan,

Yes, it is very stale. Please send your supplementary list to MS who will forward it to UBS. We will need to get comfortable with contingency issues and our issues need to be on record with them.

Thanks,

Zach

From: Daniel Batista

Sent: Wednesday, May 14, 2014 8:41 PM

To: Michaud, Zach

Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

Attached are:

1. A high level overview of the target's capital structure.
2. A working draft of a table summarizing change of control provisions in the target's material agreements. It thus far includes any such provisions in the supply agreements and the loan agreements and will be supplemented as we make our way through other material agreements.

We expect to deliver the initial draft of a similar table summarizing termination provisions in the supply agreements as early as tomorrow. As with the attached table, it will be subject to ongoing updates as we work our way through other material agreements.

We are maintaining a running list of further documentary requests to address deficiencies in the data room information. The list is already growing long given that the data room (or at any rate the portion we're reviewing) appears to be somewhat stale. I gathered from this morning's meeting that they're struggling to respond to informational requests already made, so we should consider if now is the time to be making further requests. Saying that, some of the requests might be seen as more urgent than others, and worthy of making sooner rather than later, if you've been making ongoing requests for additional information (among the deficiencies, for example, is that the posted spectrum licenses are stale, the latest renewals not having been posted).

Best,

Dan

Daniel Batista | Partner

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dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

<image001.gif>

<image002.gif>

From: Daniel Batista

Sent: May-13-14 9:53 PM

To: Michaud, Zach

Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton

Subject: Re: Project Turbine - Updated Diligence List

Hi Zach,

We expect to provide you with a high level overview of the capital structure, including equity and debt structure, tomorrow. It will doubtless not answer all of your questions but will provide the lay of the land.

Summaries of the loan documents, which will provide further detail, will take several days to complete since there are 230 documents, between Vendor Loans and Shareholder Loans, in the data room.

Summaries of the supply agreements are expected to be completed tomorrow given that they are significantly fewer in number (35 or so documents).

We can, if you wish, provide summaries on a piece-meal basis, as and when they are completed. Regardless, we will be preparing various reports and charts based upon the summaries. A first draft of a chart highlighting change of control provisions in the material agreements should be available by end day tomorrow. It will obviously be subject to supplementation as we work our way through summarizing the agreements.

Best,

Dan

Daniel Batista

+1 416 868 3423

On May 13, 2014, at 8:40 PM, "Michaud, Zach" <zmichaud@catcapital.com> wrote:

Hi Dan.

Can you provide an update.

Thanks,

Zach

From: Daniel Batista

Sent: Monday, May 12, 2014 7:38 PM

To: Michaud, Zach; Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin

Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor

Subject: RE: Project Turbine - Updated Diligence List

Hi Zach,

We just crossed emails. We have a small team that has begun a review of such matters, among others. We'll make this the top priority.

Best,

Dan

Daniel Batista | Partner

T. +1 416 368 3423 | F. +1 416 364 7813
dbatista@fasken.com | www.fasken.com

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
<image002.gif>

<image001.gif>

From: Michaud, Zach [<mailto:zmichaud@catcapital.com>]

Sent: May-12-14 7:36 PM

To: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Daniel Batista; Jon Levin

Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor

Subject: RE: Project Turbine - Updated Diligence List

Dan,

Can you please start looking through all the docs related the internal capital structure and the vendor agreements so we can understand any opportunities and risks.

Thanks,

Zach

From: Yao, George [<mailto:George.Y.Yao@morganstanley.com>]

Sent: May-11-14 11:50 PM

To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; 'dbatista@fasken.com'; 'jlevin@fasken.com'

Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor

Subject: RE: Project Turbine - Updated Diligence List

Thanks Zach.

We have reached out to UBS and sent the updated list through. UBS will forward the list onto the Globalive team tonight.

Regards,

George Yao, Vice President

Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
Toronto, ON M5J 2T3
Phone: +1 416 943-8422
Fax: +1 416 943-8643
George.Y.Yao@morganstanley.com

From: Michaud, Zach (zmichaud@catcapital.com)

Sent: Sunday, May 11, 2014 11:27 PM

To: Yao, George (IBD); McGuire, Dylan (IBD); De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); Braun, Benjamin (IBD); 'dbatista@fasken.com'; 'jlevin@fasken.com'

Cc: Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)

Subject: Re: Project Turbine - Updated Diligence List

Yes, confirmed, open only version.

From: Yao, George

Sent: Sunday, May 11, 2014 11:23 PM

To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; 'dbatista@fasken.com'; 'jlevin@fasken.com'

Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor

Subject: Re: Project Turbine - Updated Diligence List

Zach,

Sounds good. We will send shortly. Just to confirm, we will be sending across the "open only" version. Thanks.

Regards,

George Yao, Vice President
Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700
Toronto, ON M5J 2T3
Phone: +1 416 943-8422
Fax: +1 416 943-8643
George.Y.Yao@morganstanley.com

From: Michaud, Zach (zmichaud@catcapital.com)

Sent: Sunday, May 11, 2014 10:53 PM

To: Yao, George (IBD); McGuire, Dylan (IBD); De Alba, Gabriel <gdealba@catcapital.com>; Moyse, Brandon <BMoyse@catcapital.com>; Creighton, Lorne <LCreighton@catcapital.com>; Babcock, Ben (IBD); Braun, Benjamin (IBD); 'dbatista@fasken.com' <dbatista@fasken.com>; 'jlevin@fasken.com' <jlevin@fasken.com>

Cc: Katz, Edward (IBD); McGuire, Dylan (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)

Subject: RE: Project Turbine - Updated Diligence List

Thanks George.

A few changes:

1. J13 is a duplicate to J2
2. J25 should be Letter of Credit vs. Line of Credit
3. Remove H4
4. Add to H2 a sub-bullet Distribution Network (Retail Managers, Associates, Dealer RM, etc.)

Once those have been changed, please send the revised clean version to UBS/Globalive as an initial diligence request list.

Thanks,

Zach

From: Yao, George [<mailto:George.Y.Yao@morganstanley.com>]
Sent: May-11-14 9:42 PM
To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; 'dbatista@fasken.com'; 'jlevin@fasken.com'
Cc: Katz, Edward; McGuire, Dylan; Bai, Aoyu; Shaw, Victor
Subject: RE: Project Turbine - Updated Diligence List

Zach,

As requested, please find attached the revised clean preliminary due diligence list containing all of the questions (Complete) and associated comments below.

1. Updated Financials for 2014 YTD (April) – **Added as C.2**
2. Updated Subscribers Information YTD by region (April) – **Reopened C.4.a**
3. Updated Working Capital Information YTD (April) – **Added as C.3**
 - a. Receivables Aging and Quality of Receivables – **Removed C.4.s as it is a duplicate question for aging**
 - b. Payables Aging
 - c. Inventory list and type of phones
 - d. YTD Quarterly trend analysis
4. Update customer segment profiles and distribution (CAN.7.3.1.s) - **Added as B.9**
5. All customer research and strategy work - **Added as B.10**
6. Phone plan economics and modeling - **Added as G.16**
7. LOC used for what and what is needed going forward - **Added as J.25**
8. Updated YTD numbers on prepaid customer breakdown and dormancy rates – **Added as C.5**

9. Updated YTD revenue and ARPU monthly breakdowns (CAN.5.2.B.1) - **Added as C.6**
10. Updated YTD network coverage maps and tower list **Reopened and modified E.6 (Info found in CAN.5.2.B.9.3)**
11. Updated SG&A breakdown (including payroll) – incl. support Office, retail stores and dealer expenses – **Added as C.7**
12. Excel model that links to the operating model already sent entitled ‘‘ BP (Q1 2014) – AWS Only’’ - **Added as J.26 to track; request for the file was sent to UBS separately yesterday**

We have also attached a second clean version (Open Only) which only includes open or partially filled requests, i.e., all completed line items have been removed and the list renumbered sequentially for UBS/Globalive’s benefit.

Please let us know of any questions. Thanks.

Regards,

George Yao, Vice President

Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
Toronto, ON M5J 2T3
Phone: +1 416 943-8422
Fax: +1 416 943-8643
George.Y.Yao@morganstanley.com

From: Michaud, Zach (zmichaud@catcapital.com)

Sent: Sunday, May 11, 2014 6:58 PM

To: McGuire, Dylan (IBD); De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); dbatista@fasken.com; jlevin@fasken.com

Cc: Yao, George (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)

Subject: RE: Project Turbine - Updated Diligence List

Dylan,

Please see below for initial additions to the diligence list.

1. Updated Financials for 2014 YTD (April)
2. Updated Subscribers Information YTD by region (April)
3. Updated Working Capital Information YTD (April)
 - a. Receivables Aging and Quality of Receivables
 - b. Payables Aging
 - c. Inventory list and type of phones
 - d. YTD Quarterly trend analysis
4. Update customer segment profiles and distribution (CAN.7.3.1.x)
5. All customer research and strategy work
6. Phone plan economics and modeling
7. LOC used for what and what is needed going forward
8. Updated YTD numbers on prepaid customer breakdown and dormancy rates
9. Updated YTD revenue and ARPU monthly breakdowns (CAN.5.2.B.1)
10. Updated YTD network coverage maps and tower list
11. Updated SG&A breakdown (including payroll) – incl. support Office, retail stores and dealer expenses
12. Excel model that links to the operating model already sent entitled “BP (Q1 2014) – AWS Only”

Can you add these to our master list and then send back to us a clean version we can send off to UBS (i.e. all of your complete cells and the status or comment columns hidden). I'd like to get this initial list to them by tonight so they can start populating the data in Egypt tmw am Egyptian time.

Give me a call with any questions.

Thanks,

Zach

From: McGuire, Dylan [<mailto:Dylan.McGuire@morganstanley.com>]
Sent: May-11-14 1:06 PM
To: De Alba, Gabriel; Michaud, Zach; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; 'dbatista@fasken.com'; 'jlevin@fasken.com'
Cc: Yao, George; Bai, Aoyu; Shaw, Victor
Subject: Project Turbine - Updated Diligence List

All,

Please see attached our updated preliminary diligence request list after a first pass through of the data room, the management presentation and the company provided model. We have also included comments from legal as to keep all requests centralized. As we work through and develop the model we will continue to refine and add to this list of questions. Please advise of any comments.

Best,

Dylan

Dylan McGuire

Morgan Stanley Canada Limited | Investment Banking Division
181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
Toronto, ON M5J 2T3
Phone: +1 416 943-8445
Fax: +1 416 943-8673
Dylan.McGuire@morganstanley.com

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<Project Turbine - Diligence Meeting Agenda - 05152014.pdf>

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Message

From: Jon Levin [jlevin@fasken.com]
Sent: 5/23/2014 2:21:28 PM
To: Babcock, Ben [Ben.Babcock@morganstanley.com]
CC: De Alba, Gabriel [gdealba@catcapital.com]; Daniel Batista [dbatista@fasken.com]; Michaud, Zach [zmichaud@catcapital.com]; Yao, George [George.Y.Yao@morganstanley.com]; Moyses, Brandon [BMoyse@catcapital.com]; Creighton, Lorne [LCreighton@catcapital.com]; Braun, Benjamin [Benjamin.Braun@morganstanley.com]; Katz, Edward [Edward.Katz@MorganStanley.com]; Bai, Aoyu [Aoyu.Bai@morganstanley.com]; Shaw, Victor [Victor.Shaw@morganstanley.com]; Jessica Catton [jcatton@fasken.com]; Jennifer Mitchell [jmitchell@fasken.com]; Jesse Bertollo [jbertollo@fasken.com]; McGuire, Dylan [Dylan.McGuire@morganstanley.com]; Stephen Acker [sacker@fasken.com]; Yael Wexler [ywexler@fasken.com]
Subject: Re: Project Turbine - SPA

Agreed

Jon Levin
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 865 4401
Fax: 416 364 7813
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Toronto ON M5H 2T6
Canada

On May 23, 2014, at 10:14 AM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

This is why in my mark up comments: I would prefer to tread softly and look like we have not made up our mind on the approach - keeping options open. Makes it easier to shift gears credibly and garner feedback.

Ben Babcock
Managing Director
Morgan Stanley
c. +1 647-825-8460 or +44 789 4417866
o. +1 416 943-8464 or +44 20 7425 0021

From: Jon Levin [mailto:jlevin@fasken.com]
Sent: Friday, May 23, 2014 03:05 PM
To: Babcock, Ben (IBD)
Cc: gdealba@catcapital.com <gdealba@catcapital.com>; Daniel Batista <dbatista@fasken.com>; Michaud, Zach (zmichaud@catcapital.com); Yao, George (IBD); BMoyse@catcapital.com <BMoyse@catcapital.com>; LCreighton@catcapital.com <LCreighton@catcapital.com>; Braun, Benjamin (IBD); Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); Jessica Catton <jcatton@fasken.com>; Jennifer Mitchell <jmitchell@fasken.com>; Jesse Bertollo

<jbertollo@fasken.com>; McGuire, Dylan (IBD); Stephen Acker <sacker@fasken.com>; Yael Wexler <ywexler@fasken.com>

Subject: Re: Project Turbine - SPA

My concern is that Quebecor may now be able to beat us with a lower price on the basis that they will live without a financing condition.

Jon Levin
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 865 4401
Fax: 416 364 7813
www.fasken.com

333 Bay Street, suite 2400
Bay Adelaide Centre, Box 20
Toronto ON M5H 2T6
Canada

On May 23, 2014, at 10:03 AM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

Understand the competitive issue Jon. If Quebecor wants to do this on a timely basis, they have an easier path in many respects. The challenge is making the transaction financially appropriate for Catalyst.

Ben Babcock
Managing Director
Morgan Stanley
c. +1 647-825-8460 or +44 789 4417566
o. +1 416 943-8464 or +44 20 7425 0021

From: Jon Levin [<mailto:jlevin@fasken.com>]

Sent: Friday, May 23, 2014 02:12 PM

To: De Alba, Gabriel <gdealba@catcapital.com>; Babcock, Ben (IBD); Daniel Batista <dbatista@fasken.com>

Cc: Michaud, Zach (<zmichaud@catcapital.com>); Yao, George (IBD); Moyse, Brandon <BMoyse@catcapital.com>; Creighton, Lorne <LCreighton@catcapital.com>; Braun, Benjamin (IBD); Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); Jessica Catton <jcatton@fasken.com>; Jennifer Mitchell <jmitchell@fasken.com>; Jesse Bertollo <jbertollo@fasken.com>; McGuire, Dylan (IBD); Stephen Acker <sacker@fasken.com>; Yael Wexler <ywexler@fasken.com>

Subject: RE: Project Turbine - SPA

An extension to closing is not the issue. An extension post-closing is where I see things being very difficult and why I suspect that Quebecor may become a much more desirable alternative.

From: De Alba, Gabriel [<mailto:gdealba@catcapital.com>]

Sent: May-23-14 9:10 AM

To: Jon Levin; Babcock, Ben; Daniel Batista

Cc: Michaud, Zach; Yao, George; Moyse, Brandon; Creighton, Lorne; Braun, Benjamin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler

Subject: Re: Project Turbine - SPA

But the problem is the extra \$150mm in the context of all the new spectrum and capex related needs which as we found out in due diligence is much bigger than expected. In any event the deal is not closing at the end of the month, we cannot fund the transaction without the right gvmnt approvals which will take time. There is no way the escape the need of an extension of this lenders until closing...as they will not wait until all approvals are in place.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin

Sent: Friday, May 23, 2014 9:05 AM

To: Babcock, Ben; De Alba, Gabriel; Daniel Batista

Cc: Michaud, Zach; Yao, George; Moyse, Brandon; Creighton, Lorne; Braun, Benjamin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - SPA

Consideration should be given to what we might propose to do in order to strengthen Globalive balance sheet to induce existing lenders or replacement lenders to come to the table. My sense is lenders who see \$100MM+ flowing to Vimpelcom and who would rather not be at the table will be very tough to negotiate with if it comes to seeking an extension unless their borrower is converted into a significantly better credit risk.

From: Babcock, Ben [<mailto:Ben.Babcock@morganstanley.com>]

Sent: May-23-14 8:59 AM

To: Jon Levin; 'gdealba@catcapital.com'; Daniel Batista

Cc: zmichaud@catcapital.com; Yao, George; 'BMoyse@catcapital.com'; 'LCreighton@catcapital.com'; Braun, Benjamin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - SPA

I agree Jon which is why i would prefer we keep optionality on it without looking like we are swinging one way or the other and let them react a bit. fact is u may need them to roll in some part to make the numbers work here. there is very little overlap at a VIP level on these counterparties so they will not be too sensitive. without signalling we are thinking about it, we may have to look like we are retrading a lot at the end on this point and i would rather not when the topic of a roll over was on the table (even by them) from first meeting so it is not new. issue is how hard a pre closing condition we have on it.

-----Original Message-----

From: Jon Levin [jlevin@fasken.com]

Sent: Friday, May 23, 2014 01:50 PM GMT Standard Time

To: Babcock, Ben (IBD); 'gdealba@catcapital.com'; Daniel Batista

Cc: Michaud, Zach (zmichaud@catcapital.com); Yao, George (IBD); 'BMoyse@catcapital.com';

LCreighton@catcapital.com'; Braun, Benjamin (IBD); Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor

(IBD); Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan (IBD); Stephen Acker; Yael Wexler

Subject: RE: Project Turbine - SPA

I think the Vendor reaction to any requirement that the Vendor Loan Facilities must continue will be very negative since such a provision will be seen by the Vendor to empower the relevant Lenders who will have little incentive to cooperate unless they can procure attractive long term continuing substantial supply contracts. My understanding is at least some of the Vendor Loans are no longer provided by suppliers however. There is a strong risk that the Vendor will be much more motivated to deal with Quebecor if we are too strong on the point that Vendor Loans must continue.

From: Babcock, Ben [<mailto:Ben.Babcock@morganstanley.com>]

Sent: May-23-14 8:45 AM

To: 'gdealba@catcapital.com'; Daniel Batista

Cc: zmichaud@catcapital.com; Yao, George; 'BMoyse@catcapital.com'; 'LCreighton@catcapital.com'; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler

Subject: Re: Project Turbine - SPA

Comments (references are to BL version):

P3: def of current assets and current liabilities. I would recommend making them schedule rp and non arms length exclusions esp in a carve out transaction like this

P8: if they a broader def of permitted liens, they should schedule them

P11/12: perhaps I missed it but where is the Brand agreement with Wind T spa to use Wind brand in Canada? Same for roaming agreement with VIP group?

S2.2: shouldn't Base PP be less assumed Vendor Loan Facilities outstanding on closing date (eg if paid by VIP no reduction, if we assume them then it reduces). Consider how this works with proposed escrow.

S2.3. I would re word the NTD and not say our strong preference in order to keep more optionality around this topic and not totally tip our hand I would say "Subject to final DD, Vendor is continuing to consider making arrangements with the lenders under the Vendor Loan Facilities to maintain the facilities in place, in which case an escrow will not be required."

S2.4. See comments above on NTD wording

S3.2: do we want any executives with Wind contracts to stay on for any period of time and is the a closing CP?

S3.2(h) See comments above on NTD wording and I think it is release or arrangements satisfactory on VLF. Let them to come back to us on this as it will open the discussion.

3.2(j) without penalty or any payment not disclosed in a schedule - I don't want them catching us up on this.

4.5(c) consider need to re word based on my comments above. I think it is ok but pls re check. May be worth the idea of a schedule of anything. will force them to optimise disclosure.

4.12. See my earlier comments as may make sense to force them to disclose details of any affiliate or non arms length item so we know it.

7.1(f) I think we take out NTD and leave it clear we are considering both still.

Ben Babcock
Managing Director
Morgan Stanley
c. +1 647-825-8460 or +44 789 4417866
o. +1 416 943-8464 or +44 20 7425 0021

From: De Alba, Gabriel [<mailto:gdealba@catcapital.com>]
Sent: Friday, May 23, 2014 01:01 PM
To: Babcock, Ben (IBD); 'dbatista@fasken.com' <dbatista@fasken.com>
Cc: Michaud, Zach (zmichaud@catcapital.com); Yao, George (IBD); Moyse, Brandon <BMoyse@catcapital.com>; Creighton, Lorne <LCreighton@catcapital.com>; Braun, Benjamin (IBD); 'jlevin@fasken.com' <jlevin@fasken.com>; Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); 'jcatton@fasken.com' <jcatton@fasken.com>; 'jmitchell@fasken.com' <jmitchell@fasken.com>; 'jbertollo@fasken.com' <jbertollo@fasken.com>; McGuire, Dylan (IBD); 'sacker@fasken.com' <sacker@fasken.com>; 'ywexler@fasken.com' <ywexler@fasken.com>
Subject: Re: Project Turbine - SPA

Thanks Ben!

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Babcock, Ben
Sent: Friday, May 23, 2014 6:41 AM
To: De Alba, Gabriel; 'dbatista@fasken.com'
Cc: Michaud, Zach; Yao, George; Moyse, Brandon; Creighton, Lorne; Braun, Benjamin; 'jlevin@fasken.com'; Katz, Edward; Bai, Aoyu; Shaw, Victor; 'jcatton@fasken.com'; 'jmitchell@fasken.com'; 'jbertollo@fasken.com'; McGuire, Dylan; 'sacker@fasken.com'; 'ywexler@fasken.com'
Subject: Re: Project Turbine - SPA

Yep. Before I take off u will have them

Ben Babcock
Managing Director
Morgan Stanley
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o. +1 416 943-8464 or +44 20 7425 0021

----- Original Message -----

From: De Alba, Gabriel [<mailto:gdealba@catcapital.com>]
Sent: Friday, May 23, 2014 11:06 AM
To: Daniel Batista <dbatista@fasken.com>
Cc: Michaud, Zach (zmichaud@catcapital.com); Yao, George (IBD); Moyse, Brandon <BMoyse@catcapital.com>; Creighton, Lorne <LCreighton@catcapital.com>; Babcock, Ben (IBD); Braun, Benjamin (IBD); Jon Levin <jlevin@fasken.com>; Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); Jessica Catton <jcatton@fasken.com>; Jennifer Mitchell <jmitchell@fasken.com>; Jesse Bertollo <jbertollo@fasken.com>; McGuire, Dylan (IBD); Stephen Acker <sacker@fasken.com>; Yael Wexler <ywexler@fasken.com>
Subject: Re: Project Turbine - SPA

Thanks Dan. Can the team meet at 10am to review. Ben please provide us your thoughts.

Gabriel

> On May 22, 2014, at 10:05 PM, "Daniel Batista" <dbatista@fasken.com> wrote:

>

> Hi Gabriel and Zach,

>

> Attached is a revised draft of the SPA, in clean and in blackline against the draft we received Tuesday, reflecting our proposed revisions. It will continue to be scrubbed overnight but is in suitable condition for your review prior to circulating to the other side.

>

> I have confirmed with Jon that he is available (as am I) mid-morning tomorrow (within what I understand to be Gabriel's window of availability) in order to meet to discuss the attached revisions (there are a number of proposed (in some cases, alternative) revisions to which we wish to draw your attention in order to solicit your feedback). We're happy to host at our offices or attend at yours. Please confirm the time that works best for you.

>

> Best,

>

> Dan

>

> --

> Daniel Batista | Partner

> T. +1 416 868 3423 | F. +1 416 364 7813

>

> dbatista@fasken.com<<mailto:dbatista@fasken.com>> | www.fasken.com<<http://www.fasken.com/>>

> Fasken Martineau DuMoulin LLP

> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

>

> [<cid:image001.gif@01CF7609.9B475400>]<<http://www.fasken.com/>>

>

> [<cid:image002.gif@01CF7609.9B475400>]

>

>

> From: Daniel Batista

> Sent: May-22-14 1:17 AM

> To: 'Michaud, Zach'

> Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

> Subject: RE: Project Turbine - Updated Diligence List

>

> Hi Zach,

>

> Attached are:

>

> 1. An updated version of the working draft of our table summarizing termination provisions in the material agreements, in clean and in blackline against the draft circulated last Friday night.

>

> 2. An updated version of the working draft of our table summarizing change of control provisions in the material agreements, in clean and in blackline against the draft circulated last Saturday night.

>

> Best,

>

> Dan

> --

> Daniel Batista | Partner

> T. +1 416 868 3423 | F. +1 416 364 7813

>

> dbatista@fasken.com<mailto:dbatista@fasken.com> | www.fasken.com<http://www.fasken.com/>

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> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

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>

> [\[cid:image002.gif@01CF7609.9B475400\]](http://www.fasken.com/)

>

>

> From: Daniel Batista

> Sent: May-20-14 9:05 PM

> To: 'Michaud, Zach'

> Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyses, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

> Subject: RE: Project Turbine - Updated Diligence List

>

> Hi Zach,

>

> Attached is a memo providing an overview of certain related-party agreements between the target and its shareholders. Two of the agreements, in particular, provide for significant termination payments --\$25 million to AAL Holdings (controlled by Lacovera) and \$100 million to Orascom -- if terminated following a change of control. We will presumably want to have these agreements dealt with to our satisfaction prior to closing. Let us know if you have any questions.

>

> Best,

>

> Dan

>

> --

> Daniel Batista | Partner

> T. +1 416 868 3423 | F. +1 416 364 7813

>

> dbatista@fasken.com<<mailto:dbatista@fasken.com>> | www.fasken.com<<http://www.fasken.com/>>

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> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

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> [<cid:image002.gif@01CF7609.9B475400>]

>

>

> From: Daniel Batista

> Sent: May-18-14 9:54 PM

> To: 'Michaud, Zach'

> Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

> Subject: RE: Project Turbine - Updated Diligence List

>

> Hi Zach,

>

> Attached is a memo reporting on our review of the target's CRTC registrations and related matters.

>

> Best,

>

> Dan

>

> --

> Daniel Batista | Partner

> T. +1 416 868 3423 | F. +1 416 364 7813

>

> dbatista@fasken.com<<mailto:dbatista@fasken.com>> | www.fasken.com<<http://www.fasken.com/>>

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> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6

>

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> [<cid:image002.gif@01CF7609.9B475400>]

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>

> From: Daniel Batista

> Sent: May-17-14 7:06 PM

> To: 'Michaud, Zach'

> Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

> Subject: RE: Project Turbine - Updated Diligence List

>

> Hi Zach,

>

> Attached is an updated version of the working draft of our table summarizing termination provisions in the material agreements, in clean and in blackline against the draft circulated on Thursday night. A new column, summarizing any exclusivity arrangements provided for in the agreements, has been added.

>

> Best,

>

> Dan

>

>

> --

> Daniel Batista | Partner

> T. +1 416 868 3423 | F. +1 416 364 7813

>

> dbatista@fasken.com<mailto:dbatista@fasken.com> | www.fasken.com<http://www.fasken.com/>

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> [\[cid:image002.gif@01CF7609.9B475400\]](http://www.fasken.com)

>

>

> From: Daniel Batista

> Sent: May-16-14 7:53 PM

> To: 'Michaud, Zach'

> Cc: 'De Alba, Gabriel'; 'Yao, George'; 'Moyse, Brandon'; 'Creighton, Lorne'; 'Babcock, Ben'; 'Braun, Benjamin'; Jon Levin; 'Katz, Edward'; 'Bai, Aoyu'; 'Shaw, Victor'; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; 'McGuire, Dylan'; Stephen Acker; Yael Wexler

> Subject: RE: Project Turbine - Updated Diligence List

>

> Hi Zach,

>

> Attached are:

>

> 1. An updated version of the working draft of our table summarizing change of control provisions in the material agreements, in clean and in blackline against the draft circulated on Wednesday night.

>

> 2. A memo providing a report on IP due diligence.

>

> Best,

>

> Dan

>

> --

> Daniel Batista | Partner
> T. +1 416 868 3423 | F. +1 416 364 7813
>
> dbatista@fasken.com<mailto:dbatista@fasken.com> | www.fasken.com<http://www.fasken.com/>
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> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
>
> [\[cid:image001.gif@01CF7609.9B475400\]](http://www.fasken.com)<http://www.fasken.com/>
>
> [\[cid:image002.gif@01CF7609.9B475400\]](http://www.fasken.com)
>
>
> From: Daniel Batista
> Sent: May-15-14 10:07 PM
> To: 'Michaud, Zach'
> Cc: De Alba, Gabriel; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo; McGuire, Dylan; Stephen Acker; Yael Wexler
> Subject: RE: Project Turbine - Updated Diligence List
>
> Hi Zach,
>
> Attached are:
>
> 1. Our working draft of a table summarizing termination provisions in the material agreements.
> 2. A memo providing an overview of the spectrum licenses.
>
> I note that our initial IP review has found that WIND Telecomunicazioni SPA is the holder of WIND's trade-marks in Canada, not GWMC. The data room does not include any agreements for the use or assignment of the trade-marks by WIND Telecomunicazioni SPA to GWMC. We have requested them in the follow up due diligence request list that was sent over today.
> So far, we have been unable to determine how WIND Telecomunicazioni SPA fits into the overall organizational structure of the GWMC and affiliates, as none of the documents and organizational charts provided in the data room list WIND Telecomunicazioni SPA. We may wish to get clarification on this point at tomorrow's meeting.
>
> Best,
>
> Dan
>
> --
> Daniel Batista | Partner
> T. +1 416 868 3423 | F. +1 416 364 7813
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> dbatista@fasken.com<mailto:dbatista@fasken.com> | www.fasken.com<http://www.fasken.com/>
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> [cid:image002.gif@01CF7609.9B475400]
>
>
> From: Michaud, Zach [<mailto:zmichaud@catcapital.com>]
> Sent: May-15-14 8:18 PM
> To: Daniel Batista; McGuire, Dylan; Stephen Acker; Yael Wexler
> Cc: De Alba, Gabriel; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo
> Subject: Re: Project Turbine - Updated Diligence List
>
> Hi Dan, we should have someone from tax either at the meeting or on the phone.
>
> Thanks,
>
> Zach
>
> From: Daniel Batista
> Sent: Thursday, May 15, 2014 3:56 PM
> To: McGuire, Dylan; Stephen Acker; Yael Wexler
> Cc: De Alba, Gabriel; Michaud, Zach; Yao, George; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo
> Subject: Re: Project Turbine - Updated Diligence List
>
>
> Hi Dylan,
>
> I might change the third bullet to read "Overview of transaction structure and status of SPA". I gather we're expecting a new version of the SPA reflecting the newly proposed structure by tomorrow.
>
> Stephen/Yael, is there anything on the regulatory side that you think need to be on the agenda for to tomorrow's session?
>
> Zach, let us know whether you want one of our tax partners to be available, given that a discussion of the tax impact of the proposed structure is on the agenda.
>
> Best,
>
> Dan
>
>
>
>
> Daniel Batista

> +1 416 868 3423

>

> On May 15, 2014, at 3:38 PM, "McGuire, Dylan"

<Dylan.McGuire@morganstanley.com<<mailto:Dylan.McGuire@morganstanley.com>>> wrote:

> All,

>

> Please see a draft agenda for tomorrow's session. Please advise of any comments or additions to the agenda items or proposed timing.

>

> Best,

> Dylan

>

> Dylan McGuire

> Morgan Stanley Canada Limited | Investment Banking Division

> 181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37

> Toronto, ON M5J 2T3

> Phone: +1 416 943-8445

> Fax: +1 416 943-8673

> Dylan.McGuire@morganstanley.com<<mailto:Dylan.McGuire@morganstanley.com>>

>

>

> Be carbon conscious. Please consider our environment before printing this email.

>

> From: Daniel Batista [<mailto:dbatista@fasken.com>]

> Sent: Thursday, May 15, 2014 6:34 AM

> To: De Alba, Gabriel

> Cc: Michaud, Zach (zmichaud@catcapital.com<<mailto:zmichaud@catcapital.com>>); Yao, George (IBD); McGuire, Dylan (IBD); Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); Braun, Benjamin (IBD); Jon Levin; Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD); Jessica Catton; Jennifer Mitchell; Jesse Bertollo

> Subject: Re: Project Turbine - Updated Diligence List

>

> Will do. We searched yesterday but were unable to find the spectrum memo.

>

> Daniel Batista

> +1 416 868 3423

>

> On May 15, 2014, at 6:26 AM, "De Alba, Gabriel" <gdealba@catcapital.com<<mailto:gdealba@catcapital.com>>> wrote:

> We should highlight the deficiencies with an update of requests status in order to buy more time. Also did they post the Spectrum memo??

>

> Sent from my BlackBerry 10 smartphone on the Rogers network.

> From: Michaud, Zach

> Sent: Wednesday, May 14, 2014 9:44 PM

> To: Daniel Batista

> Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

> Subject: Re: Project Turbine - Updated Diligence List

>

>

> Hi Dan,

>

> Yes, it is very stale. Please send your supplementary list to MS who will forward it to UBS. We will need to get comfortable with contingency issues and our issues need to be on record with them.

>

> Thanks,

>

> Zach

>

> From: Daniel Batista

> Sent: Wednesday, May 14, 2014 8:41 PM

> To: Michaud, Zach

> Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton; Jennifer Mitchell; Jesse Bertollo

> Subject: RE: Project Turbine - Updated Diligence List

>

>

> Hi Zach,

>

> Attached are:

>

> 1. A high level overview of the target's capital structure.

>

> 2. A working draft of a table summarizing change of control provisions in the target's material agreements. It thus far includes any such provisions in the supply agreements and the loan agreements and will be supplemented as we make our way through other material agreements.

>

> We expect to deliver the initial draft of a similar table summarizing termination provisions in the supply agreements as early as tomorrow. As with the attached table, it will be subject to ongoing updates as we work our way through other material agreements.

>

> We are maintaining a running list of further documentary requests to address deficiencies in the data room information. The list is already growing long given that the data room (or at any rate the portion we're reviewing) appears to be somewhat stale. I gathered from this morning's meeting that they're struggling to respond to informational requests already made, so we should consider if now is the time to be making further requests. Saying that, some of the requests might be seen as more urgent than others, and worthy of making sooner rather than later, if you've been making ongoing requests for additional information (among the deficiencies, for example, is that the posted spectrum licenses are stale, the latest renewals not having been posted).

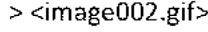
>

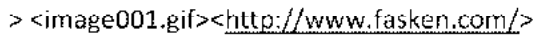
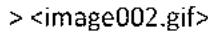
> Best,

>

> Dan

> --

> Daniel Batista | Partner
> T. +1 416 868 3423 | F. +1 416 364 7813
>
> dbatista@fasken.com<<mailto:dbatista@fasken.com>> | www.fasken.com<<http://www.fasken.com/>>
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> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
>
>  <<http://www.fasken.com/>>
>
> 
>
>
> From: Daniel Batista
> Sent: May-13-14 9:53 PM
> To: Michaud, Zach
> Cc: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin; Katz, Edward; Bai, Aoyu; Shaw, Victor; Jessica Catton
> Subject: Re: Project Turbine - Updated Diligence List
>
> Hi Zach,
>
> We expect to provide you with a high level overview of the capital structure, including equity and debt structure, tomorrow. It will doubtless not answer all of your questions but will provide the lay of the land.
>
> Summaries of the loan documents, which will provide further detail, will take several days to complete since there are 230 documents, between Vendor Loans and Shareholder Loans, in the data room.
>
> Summaries of the supply agreements are expected to be completed tomorrow given that they are significantly fewer in number (35 or so documents).
>
> We can, if you wish, provide summaries on a piece-meal basis, as and when they are completed. Regardless, we will be preparing various reports and charts based upon the summaries. A first draft of a chart highlighting change of control provisions in the material agreements should be available by end day tomorrow. It will obviously be subject to supplementation as we work our way through summarizing the agreements.
>
>
>
> Best,
>
> Dan
>
> Daniel Batista
> +1 416 868 3423
>
> On May 13, 2014, at 8:40 PM, "Michaud, Zach" <zmichaud@catcapital.com<<mailto:zmichaud@catcapital.com>>>>
> wrote:

> Hi Dan,
>
> Can you provide an update.
>
> Thanks,
>
> Zach
>
> From: Daniel Batista
> Sent: Monday, May 12, 2014 7:38 PM
> To: Michaud, Zach; Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Jon Levin
> Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor
> Subject: RE: Project Turbine - Updated Diligence List
>
>
> Hi Zach,
>
> We just crossed emails. We have a small team that has begun a review of such matters, among others. We'll make this the top priority.
>
> Best,
>
> Dan
>
> --
> Daniel Batista | Partner
> T. +1 416 868 3423 | F. +1 416 364 7813
>
> dbatista@fasken.com<<mailto:dbatista@fasken.com>> | www.fasken.com<<http://www.fasken.com/>>
> Fasken Martineau DuMoulin LLP
> 333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
>
>  <<http://www.fasken.com/>>
>
> 
>
>
> From: Michaud, Zach [<mailto:zmichaud@catcapital.com>]
> Sent: May-12-14 7:36 PM
> To: Yao, George; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; Daniel Batista; Jon Levin
> Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor
> Subject: RE: Project Turbine - Updated Diligence List
>
> Dan,

>
> Can you please start looking through all the docs related the internal capital structure and the vendor agreements so we can understand any opportunities and risks.
>
> Thanks,
>
> Zach
>
>
> From: Yao, George [<mailto:George.Y.Yao@morganstanley.com>]
> Sent: May-11-14 11:50 PM
> To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; 'dbatista@fasken.com<<mailto:dbatista@fasken.com>>'; 'jlevin@fasken.com<<mailto:jlevin@fasken.com>>'
> Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor
> Subject: RE: Project Turbine - Updated Diligence List
>
> Thanks Zach.
>
> We have reached out to UBS and sent the updated list through. UBS will forward the list onto the Globalive team tonight.
>
> Regards,
>
> George Yao, Vice President
> Morgan Stanley Canada Limited | Investment Banking Division
> 181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
> Toronto, ON M5J 2T3
> Phone: +1 416 943-8422
> Fax: +1 416 943-8643
> George.Y.Yao@morganstanley.com<<mailto:George.Y.Yao@morganstanley.com>>
>
> From: Michaud, Zach (zmichaud@catcapital.com<<mailto:zmichaud@catcapital.com>>)
> Sent: Sunday, May 11, 2014 11:27 PM
> To: Yao, George (IBD); McGuire, Dylan (IBD); De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); Braun, Benjamin (IBD); 'dbatista@fasken.com<<mailto:dbatista@fasken.com>>'; 'jlevin@fasken.com<<mailto:jlevin@fasken.com>>'
> Cc: Katz, Edward (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)
> Subject: Re: Project Turbine - Updated Diligence List
>
> Yes, confirmed, open only version.
>
>
>
> From: Yao, George
> Sent: Sunday, May 11, 2014 11:23 PM
> To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun,

Benjamin; 'dbatista@fasken.com<<mailto:dbatista@fasken.com>>'; 'jlevin@fasken.com<<mailto:jlevin@fasken.com>>'

> Cc: Katz, Edward; Bai, Aoyu; Shaw, Victor

> Subject: Re: Project Turbine - Updated Diligence List

>

>

>

> Zach,

>

> Sounds good. We will send shortly. Just to confirm, we will be sending across the "open only" version. Thanks.

>

> Regards,

>

>

>

> George Yao, Vice President

> Morgan Stanley Canada Limited | Investment Banking Division

> 181 Bay St. Suite 3700

> Toronto, ON M5J 2T3

> Phone: +1 416 943-8422

> Fax: +1 416 943-8643

> George.Y.Yao@morganstanley.com<<mailto:George.Y.Yao@morganstanley.com>>

>

> From: Michaud, Zach (zmichaud@catcapital.com<<mailto:zmichaud@catcapital.com>>)

> Sent: Sunday, May 11, 2014 10:53 PM

> To: Yao, George (IBD); McGuire, Dylan (IBD); De Alba, Gabriel

<gdealba@catcapital.com<<mailto:gdealba@catcapital.com>>>; Moyse, Brandon

<BMoyse@catcapital.com<<mailto:BMoyse@catcapital.com>>>; Creighton, Lorne

<LCreighton@catcapital.com<<mailto:LCreighton@catcapital.com>>>; Babcock, Ben (IBD); Braun, Benjamin (IBD);

'dbatista@fasken.com<<mailto:dbatista@fasken.com>>' <dbatista@fasken.com<<mailto:dbatista@fasken.com>>>;

'jlevin@fasken.com<<mailto:jlevin@fasken.com>>' <jlevin@fasken.com<<mailto:jlevin@fasken.com>>>

> Cc: Katz, Edward (IBD); McGuire, Dylan (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)

> Subject: RE: Project Turbine - Updated Diligence List

>

> Thanks George.

>

> A few changes:

>

>

> 1. J13 is a duplicate to J2

>

> 2. J25 should be Letter of Credit vs. Line of Credit

>

> 3. Remove H4

>

> 4. Add to H2 a sub-bullet Distribution Network (Retail Managers, Associates, Dealer RM, etc.)

>

> Once those have been changed, please send the revised clean version to UBS/Globalive as an initial diligence request list.

>

> Thanks,

>

> Zach

>

> From: Yao, George [<mailto:George.Y.Yao@morganstanley.com>]

> Sent: May-11-14 9:42 PM

> To: Michaud, Zach; McGuire, Dylan; De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; Braun, Benjamin; 'dbatista@fasken.com<<mailto:dbatista@fasken.com>>'; 'jlevin@fasken.com<<mailto:jlevin@fasken.com>>'

> Cc: Katz, Edward; McGuire, Dylan; Bai, Aoyu; Shaw, Victor

> Subject: RE: Project Turbine - Updated Diligence List

>

> Zach,

>

> As requested, please find attached the revised clean preliminary due diligence list containing all of the questions (Complete) and associated comments below.

>

>

> 1. Updated Financials for 2014 YTD (April) – Added as C.2

>

> 2. Updated Subscribers Information YTD by region (April) – Reopened C.4.a

>

> 3. Updated Working Capital Information YTD (April) – Added as C.3

>

> a. Receivables Aging and Quality of Receivables – Removed C.4.s as it is a duplicate question for aging

>

> b. Payables Aging

>

> c. Inventory list and type of phones

>

> d. YTD Quarterly trend analysis

>

> 4. Update customer segment profiles and distribution (CAN.7.3.1.x) - Added as B.9

>

> 5. All customer research and strategy work - Added as B.10

>

> 6. Phone plan economics and modeling - Added as G.16

>

> 7. LOC used for what and what is needed going forward - Added as J.25

>

> 8. Updated YTD numbers on prepaid customer breakdown and dormancy rates - Added as C.5

>

> 9. Updated YTD revenue and ARPU monthly breakdowns (CAN.5.2.B.1) - Added as C.6

>

- > 10. Updated YTD network coverage maps and tower list – Reopened and modified E.6 (Info found in CAN.5.2.B.9.3)
- >
- > 11. Updated SG&A breakdown (including payroll) – incl. support Office, retail stores and dealer expenses – Added as C.7
- >
- > 12. Excel model that links to the operating model already sent entitled `` BP (Q1 2014) – AWS Only`` - Added as J.26 to track; request for the file was sent to UBS separately yesterday
- >
- > We have also attached a second clean version (Open Only) which only includes open or partially filled requests, i.e., all completed line items have been removed and the list renumbered sequentially for UBS/Globalive’s benefit.
- >
- > Please let us know of any questions. Thanks.
- >
- > Regards,
- >
- > George Yao, Vice President
- > Morgan Stanley Canada Limited | Investment Banking Division
- > 181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
- > Toronto, ON M5J 2T3
- > Phone: +1 416 943-8422
- > Fax: +1 416 943-8643
- > George.Y.Yao@morganstanley.com<<mailto:George.Y.Yao@morganstanley.com>>
- >
- > From: Michaud, Zach (zmichaud@catcapital.com<<mailto:zmichaud@catcapital.com>>)
- > Sent: Sunday, May 11, 2014 6:58 PM
- > To: McGuire, Dylan (IBD); De Alba, Gabriel; Moyse, Brandon; Creighton, Lorne; Babcock, Ben (IBD); dbatista@fasken.com<<mailto:dbatista@fasken.com>>; jlevin@fasken.com<<mailto:jlevin@fasken.com>>'
- > Cc: Yao, George (IBD); Bai, Aoyu (IBD); Shaw, Victor (IBD)
- > Subject: RE: Project Turbine - Updated Diligence List
- >
- > Dylan,
- >
- > Please see below for initial additions to the diligence list.
- >
- >
- > 1. Updated Financials for 2014 YTD (April)
- >
- > 2. Updated Subscribers Information YTD by region (April)
- >
- > 3. Updated Working Capital Information YTD (April)
- >
- > a. Receivables Aging and Quality of Receivables
- >
- > b. Payables Aging
- >
- > c. Inventory list and type of phones

>
> d. YTD Quarterly trend analysis
>
> 4. Update customer segment profiles and distribution (CAN.7.3.1.x)
>
> 5. All customer research and strategy work
>
> 6. Phone plan economics and modeling
>
> 7. LOC used for what and what is needed going forward
>
> 8. Updated YTD numbers on prepaid customer breakdown and dormancy rates
>
> 9. Updated YTD revenue and ARPU monthly breakdowns (CAN.5.2.B.1)
>
> 10. Updated YTD network coverage maps and tower list
>
> 11. Updated SG&A breakdown (including payroll) – incl. support Office, retail stores and dealer expenses
>
> 12. Excel model that links to the operating model already sent entitled “BP (Q1 2014) – AWS Only”
>
> Can you add these to our master list and then send back to us a clean version we can send off to UBS (i.e. all of your complete cells and the status or comment columns hidden). I'd like to get this initial list to them by tonight so they can start populating the data in Egypt tmw am Egyptian time.
>
> Give me a call with any questions.
>
> Thanks,
>
> Zach
>
>
>
>
>
> From: McGuire, Dylan [<mailto:Dylan.McGuire@morganstanley.com>]
> Sent: May-11-14 1:06 PM
> To: De Alba, Gabriel; Michaud, Zach; Moyse, Brandon; Creighton, Lorne; Babcock, Ben; dbatista@fasken.com<<mailto:dbatista@fasken.com>>; jlevin@fasken.com<<mailto:jlevin@fasken.com>>
> Cc: Yao, George; Bai, Aoyu; Shaw, Victor
> Subject: Project Turbine - Updated Diligence List
>
> All,
>
> Please see attached our updated preliminary diligence request list after a first pass through of the data room, the management presentation and the company provided model. We have also included comments from legal as to keep all requests centralized. As we work through and develop the model we will continue to refine and add to this list of

questions. Please advise of any comments.

- >
- > Best,
- > Dylan
- >
- >
- > Dylan McGuire
- > Morgan Stanley Canada Limited | Investment Banking Division
- > 181 Bay St. Suite 3700 | P.O. Box 776 | Floor 37
- > Toronto, ON M5J 2T3
- > Phone: +1 416 943-8445
- > Fax: +1 416 943-8673
- > Dylan.McGuire@morganstanley.com<mailto:Dylan.McGuire@morganstanley.com>

> Be carbon conscious. Please consider our environment before printing this email.

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> <Project Turbine - Diligence Meeting Agenda - 05152014.pdf>

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> <image001.gif>

> <image002.gif>

> <DM_TOR-#7236425-v1-Share_Purchase_Agreement.docx>

> <WSComparison__#10373960v5_WSLegal_ - Form of SPA - 7236425v1.pdf>

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Message

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: 6/15/2014 8:52:30 PM
To: Glassman, Newton [nglassman@catcapital.com]
Subject: Re: Vimpelcom SPA Call

.)

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Glassman, Newton
Sent: Sunday, June 15, 2014 8:42 PM
To: De Alba, Gabriel
Subject: Re: Vimpelcom SPA Call

A very good idea/approach. Even then though need some kind of acceleration clause if deal does not close on time or for any reason and by anyone AND need reps and warranties that essentially do not allow them to make any business decisions w/out our prior consent (in essence we r running the business as of signing).

The very good upside of your idea is that they will have to get consents/tell everyone, including the senior debt. Therefore our position w both the govt and mobility AND QUBECOR goes up exponentially as of the senior debt going into place.

Nice tactical and strategic touch, gabriel.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: De Alba, Gabriel
Sent: Sunday, June 15, 2014 8:37 PM
To: Glassman, Newton
Subject: Re: Vimpelcom SPA Call

Obviously not, unless we do it in the form of senior secured debt and such gets discounted from the EV.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Glassman, Newton
Sent: Sunday, June 15, 2014 8:33 PM
To: De Alba, Gabriel
Subject: Re: Vimpelcom SPA Call

We can't / won't fund from signing to closing. Too many things in their control and beyond ours.

I am home if u want to talk; otherwise enjoy the kids.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: De Alba, Gabriel
Sent: Sunday, June 15, 2014 8:29 PM
To: Glassman, Newton
Subject: Vimpelcom SPA Call

Hi Newt:

Had the call with Vimpelcom, I continue to believe we are the most advanced. We are getting close to agree on all main commercial points. Pending points are regulatory and working capital amount (including funding of the business from signing to closing).

Best regards,

Gabriel

Sent from my BlackBerry 10 smartphone on the Rogers network.

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Message

From: Jon Levin [jlevin@fasken.com]
Sent: 7/9/2014 8:57:58 AM
To: Babcock, Ben [Ben.Babcock@morganstanley.com]; De Alba, Gabriel [gdealba@catcapital.com]
Subject: RE: Working Capital & CF forecast

I suggested some revisions to Gabriel and will loop back with him to see if he has had a chance to consider same

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: July-09-14 8:10 AM
To: De Alba, Gabriel; Jon Levin
Subject: RE: Working Capital & CF forecast

Got it now – strange never arrived.

Can we go Jon to process our indemnity and engagement letter now that we are back in motion – I think

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: Wednesday, July 09, 2014 7:26 AM
To: Babcock, Ben (IBD); 'Jon Levin'
Subject: Re: Working Capital & CF forecast

Sent it to you yesterday, resending

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Babcock, Ben
Sent: Wednesday, July 9, 2014 6:39 AM
To: De Alba, Gabriel; 'Jon Levin'
Subject: RE: Working Capital & CF forecast

still need to get working capital spreadsheets please

-----Original Message-----

From: De Alba, Gabriel [gdcalba@catcapital.com]
Sent: Wednesday, July 09, 2014 11:32 AM GMT Standard Time
To: Jon Levin
Cc: Babcock, Ben (IBD)
Subject: Re: Working Capital & CF forecast

They claim "business" is doing better. Ben is analyzing the working capital needs. Let's see..

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin
Sent: Tuesday, July 8, 2014 6:34 PM
To: De Alba, Gabriel
Cc: Ben Babcock
Subject: Re: Working Capital & CF forecast

Buenas noticias. ¿Es la necesidad de Wind de prestar más dinero a causa de condiciones normales o a causa de un deterioro?

Jon Levin

Fasken Martineau DuMoulin LLP

Barristers & Solicitors

Patent & Trade-mark Agents

Tel: 416 865 4401

Fax: 416 364 7813

www.fasken.com

333 Bay Street, suite 2400

Bay Adelaide Centre, Box 20

Toronto ON M5H 2T6

Canada

On Jul 8, 2014, at 5:39 PM, "De Alba, Gabriel" <gdealba@catcapital.com> wrote:

Hi Jon and Ben:

FYI, met with them today in Amsterdam where I was attending Redacted meetings. They want us back as they are getting no traction with the Tennenbaum, Blackstone, Oak Three, Westface? Consortium. Allegedly Quebecor is showing interest but are behind in the process.

Took the morale upper hand on the retrade and told them actually all documents are on their side. Told them we might take a one last look at the deal but wanted to see commercial progress from their end. As per below, they did send the working capital but I just reminded them to send the other agreements.

Best regards.

Gabriel

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: De Alba, Gabriel <gdealba@catcapital.com>

Sent: Tuesday, July 8, 2014 5:24 PM

To: Rashid, Kashan

Cc: Hasan, Faaiz; Saratovsky, Felix; francois.turgeon@ubs.com; Ben Babcock

Subject: Re: Working Capital & CF forecast

Please send the pending agreements. We have a single chance to see if a deal can get done. If the terms we get are not commercial and consistent with our prior discussion, before the re-trade version came out, there is no point on wasting any time.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Rashid, Kashan

Sent: Tuesday, July 8, 2014 10:57 AM

To: De Alba, Gabriel

Cc: Hasan, Faaiz; Saratovsky, Felix; francois.turgeon@ubs.com

Subject: Working Capital & CF forecast

Gabriel

We had a good and frank discussion today and we are keen to work with you to aim to sign by 21st July

Following our discussion today please see attached the monthly working capital sheets along with a monthly cash flow. These forecasts were produced at the end of June and there has been no material change since

I think the best way forward would be to have a call/meeting with your team to take them through these numbers. We are available at our side so please let us know what would work for you. I have also included a brief explanation on the forecasts below

Assumptions:

1. The business would continue to operate as it has been for the last several months, i.e. keep the lights on.
2. Network capital spend was for “must do” major repairs only.
3. Back to School and Christmas campaigns were not taken into consideration
4. New funding between June to Dec 2014 would not exceed CDN \$16M - \$17M.

CF Terminology:

The following explains what the cash flow lines contain.

Cash In From Business	- cash received from daily operations
Cash in New Funding	- cash required to continue operations to year end
AP Others	- miscellaneous payments to vendors
Rent	- monthly lease payments for cell sites, core sites, wind stores and administrative buildings
Payroll	- salaries for all Wind staff (salaries are paid every other week)
Commission/TAB our subscriber base	- Commission and device reimbursement to the dealer channel for new subscribers added to our subscriber base
Carriers	- monthly fees paid to various roaming partners
Marketing & Adv.	- Marketing fees paid to key advertising companies along with miscellaneous marketing costs for stores/dealers/boards etc
Capex	- capital expenditures for emergency major repairs, ordinary maintenance and very limited upgrades (congestion in specific sites, acquisition of sites when they come available in order not to lose them, etc.)
Handsets	- payments for devices required to continue with steady state mode of gross adds

Summary:

When you take a look at the files you will notice that for certain lines some months increase or decrease more than others. The following explains these larger than normal increases or decreases.

Cash In From Business - Months such as July, Oct and Dec recognize larger amounts of cash in as a result of more collection days within that reporting period utilized for this exercise when compared to other periods

AP Others - July AP is larger than other months due to a \$3M network major repair payment

Rent - The months of June and July have always been larger than other months as these two months contain a larger than normal proportion of annual lease renewals for cell and core sites

Payroll - July and Dec payroll is significantly higher than other months as it contains three pay periods versus two in other months

Commissions - Even though this exercise does not contain any special campaigns, August and September gross adds will naturally increase a little due to all the activity in the market for the traditional selling season. As a result, commission payments will increase a little in September and October

Marketing - \$1M of the \$3M in October belongs to September disbursements. The \$1M was captured in the month of October due to the September cut-off period for this exercise (Sept 24th). The \$1M was scheduled as a late payment in September and is committed.

Capex - Approximately \$750K of October's \$3M belongs to September and was reported in October due to September cut-off date used for this exercise (Sept 24th)

Handsets - After depleting inventory levels in September and October to conserve cash, handset spend increases a little in November to ensure the correct handsets are in inventory so that we can meet status quo levels of

gross adds during the Christmas season. Please note that, like in the back to school period, sales during the Christmas season will naturally increase even in the absence of a specific advertising/marketing effort from Wind Canada.

Regards,

Kashan Rashid
Director M&A

<image001.jpg>

E kashan.rashid@vimpelcom.com

W www.vimpelcom.com

T +31 (0)20 79 75 509 **M** +31 (0)61 92 92 021 **F** +31 (0)20 79 77 201

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Mobilicity bondholder looking to get in on action if Verizon comes to Canada

Theresa Tedesco and Christine Dobby | June 27, 2013 | Last Updated: Jun 27 6:30 PM ET

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Sources told the *Financial Post* that Toronto-based Catalyst has been in discussions with Verizon Communications Inc. as the second-largest wireless provider in the U.S. prepares to enter the Canadian market. AP Photo/John Manchillo

Catalyst Capital Group eyes rumoured Verizon-Wind Mobile deal

Catalyst Capital Group Inc. isn't interested in buying Mobilicity, but the successful private equity firm is trying to parlay its senior debt position in the struggling wireless newcomer into a role with U.S. giant Verizon Communications Inc.'s plan to enter the Canadian market with an acquisition of rival Wind Mobile.

Sources told the *Financial Post* that Toronto-based Catalyst has been in discussions with Verizon Communications Inc. as the second-largest wireless provider in the U.S. prepares to enter the Canadian market. The discussions, described by an insider as "still in the introductory and early stages," are in conjunction with Verizon's talks with Wind Mobile's owners to acquire the wireless startup for as much as \$700-million. Catalyst is said to "be involved in the process for Wind," although an outright bid by the private equity firm on its own is unlikely.

Catalyst owns more than 30% of the senior secured credit of Wind's rival Mobilicity. Verizon has also floated the possibility of acquiring the financially crippled entrant, although the talks were "exploratory" and no offer has been tabled. Catalyst's blocking position in the operating company of the Vaughan, Ont.-based carrier (the holding company is known as Data & Audio-Visual Enterprises Holdings Inc.) is estimated to be worth \$60-million. That means no transactions involving Mobilicity can likely be completed without Catalyst's co-operation.

Newton Glassman, co-founder and managing partner of Catalyst, would not comment on the nature of his firm's involvement with Verizon or Wind. However, he told the *Financial Post* that Catalyst "is not interested in Mobilicity on a standalone basis. Never were; never will be."

Verizon could be 'game-changer' that upends Canadian market

A move by Verizon Communications Inc. into Canada's mobile telecom market could be a "game-changer" that sends the Big Three mobile providers reeling, say industry insiders. Continue reading

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Why? "Mobilicity on its own is a flea on an elephant's butt of wireless telecom in Canada. The only way to build a fourth wireless provider in Canada is through Wind because of the subscriber base and spectrum."

Related

- Rogers and Telus downgraded on Verizon threat
- Canada's teleo stocks to suffer further on Verizon-Wind Mobile deal
- Verizon bids for Wind Mobile, in talks with Mobilicity: sources

Wind has more than 600,000 subscribers and spent \$442-million on cellular spectrum licences in the 2008 auction for the public airwaves. Mobilicity's spectrum licences came to \$243 million and it has about 250,000 subscribers.

The reclusive Mr. Glassman is currently embroiled in a legal battle with Mobilicity over the terms of a recent \$75-million in second-lien financing. The lawsuit launched by Catalyst in an Ontario court in February continues despite the flurry of activity in the wireless sector and is pivotal to Mr. Glassman's ultimate plans to be part of creating a major fourth wireless carrier in Canada.

"All we require and demand is that the actual indenture for the first-lien debt be honoured," Mr. Glassman said in an interview.

For its part, the company says the private equity firm brought the action in an attempt to gain leverage over Mobilicity following disappointment after talks with Catalyst on fresh financing fell through and the carrier negotiated different terms with other backers.

Mobilicity on its own is a flea on an elephant's butt of wireless telecom in Canada

"[Catalyst is] a bitter bidder in the context of the second lien financing," Marc Kestenberg, a lawyer representing Mobilicity argued in court in March.

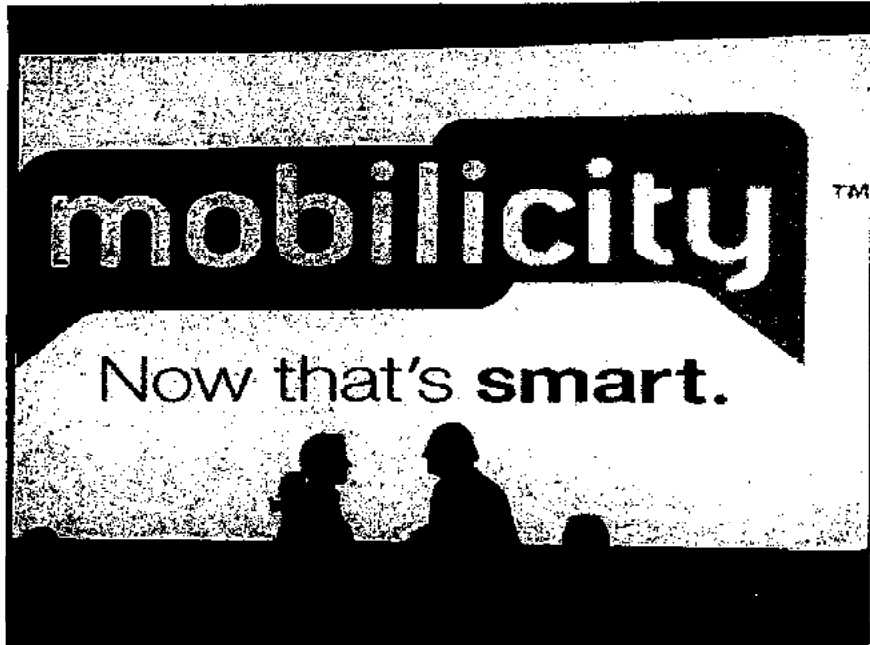
Even so, Mr. Glassman reiterated his firm's support for the small carrier, which is currently carrying \$508-million in debt. "We will not stand in the way of any transaction for Mobilicity so long as our legal rights are respected as written in the indenture," he said. "Anybody trying to take property that belongs to us will have a vigorous fight on their hands."

That is the message Catalyst has likely brought to Verizon.

Meanwhile, industry sources familiar with events say they expect the federal government to seek concessions from Verizon, which has almost 100 million U.S. subscribers, such as trying to include a Canadian partner in its acquisitions.

At the same time, Verizon will try to squeeze Ottawa for its own conditions, such as relaxing the foreign ownership rules and allowing the company to sell spectrum, although it could face the same challenges in selling as the current new entrants who have been blocked from selling to the incumbents as an easy out.

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Mobilicity's spectrum licences came to \$743-million and it has about 250,000 subscribers. Darren Colebrook/National Post

Either way, acquiring Wind would be a low-cost way to enter the country even though sources say \$700-million is too high for the company on its own.

The small carrier is likely a so-called Trojan horse for a future acquisition attempt by the U.S. giant for one of the large carriers – Telus Corp., Rogers Communications Inc. and Bell Mobility. Telus, the smallest of the incumbents and the only pure-play telecom player out of the three, is considered the likely candidate, and Verizon once held 20% of the company.

Barring a change in the foreign ownership rules to permit acquisitions of Canadian companies that account for more than 10% of the telecommunications market, Verizon would also have the opportunity to bid aggressively on spectrum in the upcoming government auction and build a fourth-generation LTE network.

The auction rules limit the incumbent players to one premium block out of four and allow new entrants, which would include Verizon, to bid on two blocks per geographic area.

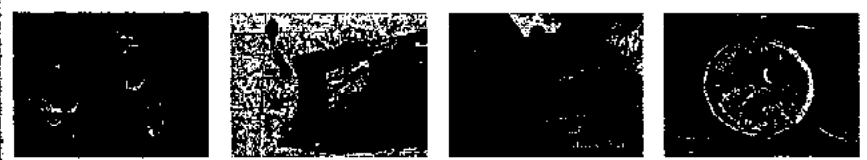
The share prices of all three major Canadian incumbents were battered on the possibility that Verizon would be entering the Canadian market. If that continues, it would make buying a major player much cheaper.

"Paradis will look brilliant because the government will be seen as a friend of consumers," said an industry source who asked not to be named. However, Ottawa is aware that the arrival of Verizon could "damage" the large players. As a result, many industry players predict that if Verizon gets the green light to buy Wind, Mr. Paradis can be expected to bless Rogers' deals to purchase unused spectrum from Shaw Communications Inc. and Quebecor Inc.-owned Videotron.



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Bid deadline for Canada's Mobilicity delayed by a week

Mon, Dec 9 2013

By Alastair Sharp

TORONTO (Reuters) - The court-appointed monitor for struggling Canadian wireless startup Mobilicity has extended the deadline for suitors to bid for the company by a week to December 16, a regulatory filing shows.

Bidders for the Toronto-based startup, which filed for court protection from its creditors earlier this year, now have until noon next Monday to submit their offers in the court-supervised auction, according to a document posted on the website of monitor Ernst & Young Inc.

Ernst & Young said it extended the deadline following requests from several bidders.

Mobilicity, formally known as Data & Audio Visual Enterprises, offers lower-cost unlimited talk and text plans to fewer than 200,000 customers, mainly in several of Canada's biggest cities. It previously agreed to sell itself to Telus Corp, one of Canada's dominant wireless providers.

But the federal government twice blocked the sale of Mobilicity to Telus on the grounds it would create an undue concentration of wireless spectrum ownership.

The largest of Mobilicity's creditors, private equity firm Catalyst Capital Group Inc, wants the startup to merge with Wind Mobile, the biggest of the new players in the Canadian mobile market, and would consider putting resources behind such a move, a Catalyst spokesman said on Monday.

Catalyst said it is not interested in owning Mobilicity per se.

Wind, the brand name of Globalive Wireless Management Corp, has entered the court process and is assessing Mobilicity's value, Chief Executive Anthony Lacavera said last week. Globalive is controlled by Lacavera, with backing from Europe's Vimpelcom Inc.

Lacavera did not disclose how much his company might be willing to bid for Mobilicity, but it is seen as unlikely to offer as much as Telus, which bid C\$380 million (\$357 million) in its first offer.

Globalive, however, is considered more likely to receive a green light from Ottawa, which is eager to see small players compete with the Big Three providers that dominate the market.

Telus, BCE Inc and Rogers Communications Inc control a combined 90 percent of the Canadian wireless market, and hold roughly 85 percent of the spectrum used to send mobile voice and data.

Mobilicity's spectrum, the airwaves mobile operators use to transmit voice and data services, is seen as its most attractive asset.

Mobilicity paid C\$243 million for those airwaves in a 2008 auction in which the government set aside some spectrum for new entrants.

Another of the new entrants in that 2008 auction, Public Mobile, has already been acquired by Telus.

(\$1=\$1.065 Canadian)

(Editing by Jeffrey Hodgson,; Peter Galloway and Andre Grenon)

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Message

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: 8/1/2014 7:51:46 PM
To: Babcock, Ben [Ben.Babcock@morganstanley.com]; 'Jon Levin' [jlevin@fasken.com]
Subject: Re: Felix

FYI, with their modern way to do deals I just saw that he sent me a text saying he was trying to reach me.. are we done with all points?

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: De Alba, Gabriel
Sent: Friday, August 1, 2014 7:41 PM
To: Babcock, Ben; 'Jon Levin'
Subject: Re: Felix

Did not hear from Felix yet. Any update from your end.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: De Alba, Gabriel
Sent: Friday, August 1, 2014 6:34 PM
To: Babcock, Ben; 'Jon Levin'
Subject: Re: Felix

Agreed

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Babcock, Ben
Sent: Friday, August 1, 2014 6:33 PM
To: 'Jon Levin'; De Alba, Gabriel
Subject: RE: Felix

defer to gabriel but we are done or it will never end

-----Original Message-----

From: Jon Levin [jlevin@fasken.com]
Sent: Friday, August 01, 2014 11:30 PM GMT Standard Time
To: Babcock, Ben (IBD); 'De Alba, Gabriel (gdealba@catcapital.com)'
Subject: RE: Felix

They are now (I mean right now) proposing that materiality for contracts and retail leases would be set at \$300,000 (there would be no threshold re the office leases). We had wanted lower numbers. Pietro feels even these amounts are too low.

Chris says he sees no issue re extending the exclusivity but needs to talk to Felix.

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: August-01-14 6:25 PM
To: Jon Levin; 'De Alba, Gabriel (gdealba@catcapital.com)'
Subject: RE: Felix

did they agree to the exclusivity extension?

-----Original Message-----

From: Jon Levin [jlevin@fasken.com]
Sent: Friday, August 01, 2014 11:20 PM GMT Standard Time
To: De Alba, Gabriel (gdealba@catcapital.com); Babcock, Ben (IBD)
Subject: Felix

Felix is supposed to be calling Gabriel now to say that they believe everything is settled.

Jon Levin

T +1 416 865 4401 | F +1 416 364 7813
jlevin@fasken.com | www.fasken.com

333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6



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Message

From: De Alba, Gabriel [gdealba@catcapital.com]
Sent: 8/1/2014 11:13:03 PM
To: Levin_Jonathan [jlevin@fasken.com]; Ben Babcock [Ben.Babcock@morganstanley.com]; Daniel Batista [dbatista@fasken.com]
Subject: Fwd: Project Turbine - Settled SPA and TLA
Attachments: 1F9C892E-069B-4F50-8AA8-73F84890B13D.png; ATT00001..htm; Revised TLA (BI).docx; ATT00002..htm; WSComparison_DM_TOR-#7354808-v2-Wind_TM_Agreement-Revised TLA (BJ).pdf; ATT00003..htm; WSComparison_#10373960v24_WSLegal_ - Share Purchase Agreement - Catalyst (Bennett Comments - August 1, 2014)-#10373960v25_WSLegal_ - Share Purchase Agreement - Catalyst (Ben.pdf; ATT00004..htm; Share Purchase Agreement - Catalyst (Bennett Comments - August 1, 2014).DOCX; ATT00005..htm

Please review and let's discuss tomorrow am.

Begin forwarded message:

From: "Saratovsky, Felix" <Felix.Saratovsky@vimpelcom.com>
To: "De Alba, Gabriel" <gdealba@catcapital.com>
Cc: "jlevin@fasken.com" <jlevin@fasken.com>, "Christian Gauthier" <GauthierC@bennettjones.com>, "Hasan, Faaiz" <Faaiz.Hasan@vimpelcom.com>
Subject: Project Turbine - Settled SPA and TLA
Gabriel,

As discussed, attached are drafts of the Share Purchase Agreement and Trademark License Agreement (with blacklines against the last versions provided by your counsel) that we consider substantially completed, subject only to settling some of the details in the schedules (and any corresponding necessary changes to representations and warranties). We will continue to work with Faskens to complete the schedules as soon as possible.

As previously discussed, we also need to finalize the support agreement with AAL (Tony Lacavera) and expect to reach a final agreement with AAL in the next couple of days.

We also confirm that, under the exclusivity agreement dated July 23, 2014, as amended on July 30, 2014, this constitutes written confirmation by VimpelCom that the attached Share Purchase Agreement and Trademark Licence Agreement are substantially settled. Under the exclusivity agreement, once you confirm the same by reply email, the exclusivity period will be extended automatically by 5 Toronto business days.

We will work expeditiously to obtain board approvals of VimpelCom and will let you know as soon as it is obtained.

Please confirm your agreement by reply agreement that Catalyst also agrees that the Share Purchase Agreement and Trademark License Agreement are substantially settled (subject to settlement of schedules).

Best regards,
Felix

Felix Saratovsky
Deputy General Counsel

[cid:45702494-F068-47D2-9DDF-62A2DFEA2E37]

E felix.saratovsky@vimpelcom.com<<mailto:felix.saratovsky@vimpelcom.com>>

T +31 (0)20 797 7216 M +31 (0)6 3175 3657 F +31 (0)20 797 7201

VimpelCom Ltd. Claude Debussylaan 88, 1082 MD Amsterdam, The Netherlands

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Draft: July 31, August 1, 2014

PRIVATE & CONFIDENTIAL

SHARE PURCHASE AGREEMENT

[PURCHASER]

- and -

**CATALYST FUND LIMITED PARTNERSHIP III and CATALYST FUND LIMITED
PARTNERSHIP IV**

- and -

GLOBALIVE INVESTMENT HOLDINGS CORP.

- and -

GLOBAL TELECOM HOLDING S.A.E.

**For the purchase of all of the outstanding
shares in the capital of
Globalive Wireless Management Corp.**

August [■], 2014

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SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT, is made and entered into as of this [●] day of August, 2014, among <@> (the "**Purchaser**"), Catalyst Fund Limited Partnership III ("**CF III**"), by its general partner, Catalyst Fund General Partner III Inc., a company organized and existing under the laws of the Province of Ontario, Catalyst Fund Limited Partnership IV ("**CF IV**"), by its general partner, Catalyst Fund General Partner IV Inc., a company organized and existing under the laws of the Province of Ontario, GLOBALIVE INVESTMENT HOLDINGS CORP., a company organized and existing under the laws of the Province of Ontario (the "**Seller**"), and GLOBAL TELECOM HOLDING S.A.E., a company organized and existing under the laws of Egypt ("**GTH**").

RECITALS:

WHEREAS GTH is the indirect owner of 65.08% of all of the issued and outstanding shares of the Seller;

AND WHEREAS the Seller owns 1,004 common shares (the "**Purchased Shares**") of Globalive Wireless Management Corp. ("**GWMC**"), being all of the issued and outstanding shares of GWMC;

AND WHEREAS GWMC is engaged in providing voice, text and data services to the Canadian wireless telecom market (the "**Business**");

AND WHEREAS the Seller wishes to sell, and the Purchaser wishes to purchase from the Seller, all of the Purchased Shares, in accordance with the provisions of this Agreement (the "**Transaction**").

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

For the purposes of this Agreement, the following terms shall have the respective meanings specified below and grammatical variations of such terms shall have corresponding meanings:

"**Accountants**" has the meaning specified in Section 2.6(b);

"**Advance Ruling Certificate**" means an advance ruling certificate issued by the Commissioner of Competition pursuant to section 102 of the Competition Act;

"**Affiliate**" has the meaning attributed to such term in the *Business Corporations Act* (Ontario); provided, however, that the only subsidiaries of the Seller that shall be considered an "Affiliate" of the Seller or any of its "Affiliates" are the Globalive Entities;

"**Agreement**" means this share purchase agreement and all schedules attached to this share purchase agreement;

"**Associate**" has the meaning attributed to such term in the *Business Corporations Act* (Ontario);

"**Balance Sheet Dispute**" has the meaning specified in Section 2.6(b);

"**Base Purchase Price**" has the meaning specified in Section 2.2;

"**Business**" has the meaning specified in the recitals to this Agreement;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

"**Cash Target**" means the sum of \$5,000,000;

"**Claim**" means a claim for indemnification by the Purchaser or the Seller pursuant to Section 9.1 or 9.2, respectively;

"**Claimant**" means a Purchaser Claimant or a Seller Claimant, as applicable, insofar as such Person is entitled to indemnification under this Agreement;

"**Closing**" means completion of the Transaction pursuant to this Agreement at the Closing Time;

"**Closing Date**" means the seventh Business Day following the satisfaction or waiver of all conditions described in Sections 7.1, 7.2 and 7.3 (other than those conditions which, by their nature, are to be satisfied on the Closing Date) or such other date as the Purchaser and the Seller may agree upon in writing;

"**Closing Date Cash**" means the amount of cash, credit balances, deposit certificates and marketable securities reflected in the Current Assets excluding therefrom all Restricted Cash, the foregoing to be based upon the Final Closing Date Balance Sheet, the same to be determined in accordance with IFRS applied on a basis consistent with past practice;

"**Closing Date Payment**" has the meaning specified in Section 2.3;

"**Closing Date Working Capital**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Final Closing Date Balance Sheet;

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date, or such other time as may be agreed upon in writing by the Purchaser and the Seller;

"**Commissioner**" means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act and includes any person designated by the Commissioner to act on his behalf;

"**Competition Act**" means the *Competition Act* (Canada), as amended, and includes the regulations promulgated thereunder;

"**Competition Act Approval**" means that:

- (i) the Commissioner has issued an Advance Ruling Certificate in respect of the Transaction;
- (ii) the requirement for the notice required under section 114 of the Competition Act with respect to the Transaction has been waived by the Commissioner pursuant to subsection 113(c) of the Competition Act, and the Commissioner has notified the Purchaser and the Seller that the Commissioner does not, at that time, intend to make an application before the Competition Tribunal under Part VIII of the Competition Act in respect of the Transaction; or
- (iii) (a) the applicable waiting period under subsection 123(1) of the Competition Act has expired or been waived pursuant to subsection 123(2) of the Competition Act, and (b) the Commissioner has notified the Purchaser and the Seller that the Commissioner does not, at that time, intend to make an application under Part VIII of the Competition Act in respect of the Transaction;

"**Confidential Information**" means all confidential and proprietary information concerning the Globalive Entities, the Seller, the Purchaser, their respective employees, customers, capital, operations and suppliers and the Business regardless of the form of such information (including information in the form of written or electronic information or information transmitted orally, visually or by any other means), including all reports, evaluations, forecasts, compilations, records, interpretations, notes, analyses and documents, concepts or data, trade secrets or client/subscriber contact lists;

"**Contracts**" means any contract, licence, franchise, lease, agreement, arrangement, commitment, understanding or other right or obligation to which a Party or any of its subsidiaries is a party or by which such Party or any of its subsidiaries is bound or affected or to which any of their respective properties or asserts is subject;

"**CRTC**" means the Canadian Radio-television and Telecommunications Commission;

"**Current Assets**" means the aggregate of GWMC and WIND Distribution's current assets, which include cash, accounts receivable, prepaid expenses, inventory, prepaid income taxes and current income taxes receivable (if any) and other current assets determined in accordance with IFRS applied on a basis consistent with past practice and in the manner set out in Schedule I.1(A); provided that Current Assets shall exclude the amount of Closing Date Cash;

"**Current Liabilities**" means the aggregate of GWMC and WIND Distribution's current liabilities, which include accounts payable and accrued liabilities, obligations relating to property and equipment of the Business, or other current liabilities determined in accordance with IFRS applied on a basis consistent with past practice and in the manner set out in Schedule I.1(A); provided that

Current Liabilities shall exclude the amounts owing pursuant to the Vendor Loan Facilities and the VimpelCom Loan Agreements as well as all related party liabilities of the Globalive Entities that are being released and discharged as provided in Section 3.2(c);

"**Data Room**" means the virtual data room entitled "Khamseen" established by GWMC and made available to the Purchaser and its advisors, as the same is constituted as of 5:00 p.m. (Toronto time) on the date that is two Business Days prior to the date hereof together with the Radio Licences;

"**Direct Claim**" means any Claim asserted by a Claimant pursuant to the provisions of Article 9 that is not a Third Party Claim;

"**Enforcement Rights**" means any and all rights, benefits, title, interests, remedies, including without limitation rights of priority, right to file, defend, prosecute, bring causes of action, make claims, settle, receive damages, maintain, renew, assign, license and enforce, and rights to indemnities, warranties, royalties, profits, income and proceeds;

"**Escrow Agent**" means Bennett Jones LLP;

"**Escrow Agreement**" means the agreement entered into among the Purchaser, the Seller, GWMC and the Escrow Agent prior to the Closing Time with respect to the Escrowed Funds, ~~in the form attached hereto as Schedule 1.1(C)~~ which shall be consistent with the terms of this Agreement and in a form satisfactory to the Parties, acting reasonably;

"**Escrowed Funds**" means the VL Escrowed Funds and the WC Escrowed Funds;

"**Estimated Closing Date Balance Sheet**" has the meaning specified in Section 2.5;

"**Estimated Closing Date Working Capital**" means an amount equal to the aggregate value of all Current Assets minus the aggregate value of all Current Liabilities as at the Closing Date calculated based on the Estimated Closing Date Balance Sheet;

"**Final Closing Date Balance Sheet**" has the meaning specified in Section 2.6(a);

"**Globalive Communications Loan Agreement**" means the loan agreement dated as of April 14, 2008, between GWMC and Globalive Communications Corp., providing for an unsecured non-revolving term loan, as amended from time to time;

"**Globalive Entities**" means, together, GWMC, WIND Distribution and New DebtCo;

"**Governmental Authority**" means any national, provincial, territorial, federal, county, municipal or local government, foreign or domestic, or the government of any political subdivision of any of the foregoing, or any entity, authority, court, agency, ministry or other similar governmental or quasi governmental body of competent jurisdiction exercising executive, legislative, judicial, regulatory or administrative authority within its jurisdiction;

"**GTH**" has the meaning specified in the recitals to this Agreement;

"**GTH (B.C.)**" means GTH Global Telecom Finance (B.C.) Limited, the successor to Orascom Telecom Finance (B.C.) Limited;

"**GTH Holdco**" means GTH Global Telecom Holding (Canada) Limited;

"**GTH Canada Loan Agreement**" means the non-revolving term loan dated July 31, 2008 between GTH (B.C.) as lender, as assignee of GTH (which was, in turn, the lender as assignee of GTH Holdco) and GWMC as borrower as amended and restated from time to time, in the principal amount of \$442,403,000 plus accrued interest of \$256,831,611.93 as of May 1, 2013;

"**GTH Loan Agreement**" means the non-revolving term loan dated March 23, 2008 between GTH (B.C.), as assignee of GTH pursuant to an assignment agreement dated as of December 20, 2012, as lender and GWMC as borrower, as amended and restated on February 17, 2009, and as amended further by Amendment No. 1 dated December 15, 2009, Amendment Agreement dated December 15, 2009, Amendment Agreement No. 3 dated November 10, 2010, Amendment Agreement No. 4 dated October 31, 2011, Amendment Agreement No. 6 dated December 3, 2012, and Amendment Agreement No. 7 dated December 20, 2012, in the principal amount of \$805,101,781.63 plus accrued interest of \$125,677,462.33 as at May 1, 2013;

"**GWMC**" has the meaning specified in the recitals to this Agreement;

"**GWMC's Factual Matters Certificate**" means a certificate of the Seller in the form set out in Schedule 1.1(I) executed by the Chief Operating Officer, the Chief Financial Officer and the Chief Technology Officer of GWMC (presently being, Pietro Cordova, Brice Scheschuk and Tamer Morsy, respectively) certifying, without personal liability, those factual matters set out in Schedule 1.1(I), a executed copy of which dated the date hereof has been delivered to the Purchaser on or before execution and delivery of this Agreement;

"**GWMC Financial Statements**" means the audited consolidated statement of financial position of GWMC for the year ending December 31, 2013 and the accompanying consolidated statements of comprehensive loss, retained earnings and changes in financial position, including the notes thereto, for the relevant period together with the unaudited consolidated interim statement of financial position for the period ended March 31, 2014 and the accompanying consolidated statements of comprehensive loss, retained earnings and changes in financial position, including the notes thereto;

"**IFRS**" means International Financial Reporting Standards, which are issued by the International Financial Accounting Standards Board, as adopted in Canada;

"**Incumbent**" means Bell Mobility Inc., Rogers Communications Partnership, and TELUS Communications Company, and their respective affiliates, as that term is defined in the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*;

"**Indemnifier**" means the Purchaser or the Seller Indemnifier, as applicable, insofar as such Party is obligated to provide indemnification under this Agreement;

"**Industry Canada**" means the federal Department of Industry and any successor agency thereto and includes the Minister of Industry;

"**Industry Canada Approval**" means the receipt of all approvals required from Industry Canada pursuant to the *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum and Client Procedures Circulars-2-1-23 - Licensing Procedure for Spectrum Licences for Terrestrial Services*, as amended from time to time, for the consummation of the Transactions at the Closing, which for greater certainty applies to all Advanced Wireless Services Spectrum Licences held by GWMC;

"**Intellectual Property**" means any and all rights, title and interest, anywhere in the world, in and to:

- (i) any inventions, all applications therefor and all patents which may be issued out of such applications and any reissues, divisions, continuations, continuations-in-part, renewals and extensions;
- (ii) any trade names, trademarks, proposed trademarks, certification marks, distinguishing marks and guises, logos, insignias, slogans, whether or not registered or registrable, and the trade-mark registrations and applications therefor, together with all the goodwill related to any of the foregoing, and any domain names and registrations therefor;
- (iii) any copyright whether or not registered or registrable, moral rights, copyright registrations and applications therefor, including translations, derivatives, and modifications of any of the foregoing;
- (iv) any industrial designs whether or not registered or registrable, industrial design registrations and applications therefor, and any reissues, divisions, continuations, continuations-in-part and renewals;
- (vi) any other industrial or intellectual property rights, whether or not registered or registrable, including without limitation any reissues, divisions, continuations, continuations-in-part, renewals, translations, derivatives, modifications and extensions of any of the foregoing;
- (vii) Enforcement Rights in or with respect to any of the foregoing, and
- (viii) rights, covenants, licenses, sub-licenses, franchises, leases, pledges, benefits, trusts or escrows granted to or by the applicable Person in respect of any of the foregoing;

"**Interim Period**" means the period from the date of this Agreement to the Closing;

"**Investment Canada Act**" means the *Investment Canada Act*, as amended, and includes the regulations promulgated thereunder;

"**knowledge of the Seller**" means the actual knowledge, after making reasonable inquiry, of the Chairman, the Chief Operating Officer, the Chief Financial Officer, the Chief Technology Officer,

the Vice-President and the General Counsel and the Chief Regulatory Officer of GWMC (presently being, Anthony Lacavera, Pietro Cordova, Brice Scheschuk, Tamer Morsy, Nora Brooks and Simon Lockie, respectively), and without personal liability for any such knowledge;

"**Laws**" means all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"**Leased Properties**" means the lands and premises covered by the Leases;

"**Leases**" means collectively, all offers to lease, agreements to lease, leases, subleases, renewals of leases and other rights or licences to possess or occupy space within the Leased Properties now or hereafter, in each case as amended, renewed or otherwise varied to the date hereof, to which any Globalive Entity or its predecessors in title is a party, whether as lessor or lessee, all of which are set out in Schedule 1.1(E);

"**Liens**" means mortgages, liens, pledges, security interests, deemed trusts (statutory or otherwise) charges, claims, hypothecs, leasehold interests, tenancies, restrictions, privileges, easements, servitudes, pre-emptive rights or rights of first refusal, ownership or title retention agreements, restrictive covenants with respect to real property or conditional sale agreements, or any other encumbrance of any nature or any arrangement or condition which, in substance, secures payment or performance of an obligation;

"**Loss**" means any loss, injury, liability, damage, cost, expense (including reasonable legal expenses) or deficiency of any kind or nature, but excluding punitive damages and loss of profits, suffered or incurred by a Party indemnified pursuant to Article 9, in connection with any Claim made by it hereunder, including in respect of any proceeding, assessment, judgment, settlement or compromise relating thereto;

"**Material Adverse Change**" or "**Material Adverse Effect**" means any event, change or effect that individually or in the aggregate with other events, changes or effects, is material and adverse to the Business, assets, liabilities, capital, Spectrum and Radio Licences, operations or condition (financial or otherwise) of GWMC and WIND Distribution, taken as a whole; provided, however, that in no event shall any of the following be taken into account in determining whether there has been a Material Adverse Change or Material Adverse Effect: (i) any change in general economic conditions in Canada or globally or any change in Canadian or global financial, banking or currency exchange markets, (ii) any event, change or effect resulting from any action required to be taken pursuant to the provisions of this Agreement, (iii) any event, change or effect resulting from a change in the industry in which the Globalive Entities operate, (iv) any adverse effect resulting from any change in applicable Law or in accounting requirements or principles required under IFRS, (v) any failure to meet internal revenue or earnings projections, budgets or forecasts, (vi) any event, change or effect resulting from any acts of terrorism, war or natural disaster, or (viii) any event, change or effect resulting from or relating to the announcement or performance of this Agreement or the transactions contemplated hereby; provided, however, any such event, change or effect described in the foregoing clauses (i), (iii) and (iv) shall not be disregarded if any such change, circumstance, event or effect impacts the Globalive Entities, taken as a whole, in a

disproportionate adverse manner relative to other businesses operating in the industry in which the Globalive Entities operate;

"**NDA**" has the meaning specified in Section 10.4;

"**Network Assets**" means all of GWMC's related network infrastructure and other related assets in respect of the Business, including information technologies and leased network infrastructure;

"**New DebtCo**" means the entity to be formed by GTH Global Telecom Finance (B.C.) Limited pursuant to the Pre-Closing Reorganization, all of the shares of which will be held by GWMC as at the Closing Time;

"**Notifying Party**" has the meaning specified in Section 6.10(a);

"**Orders**" means orders, decisions, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator;

"**Outside Date**" means November 30, 2014, *provided*, however, that if Closing has not occurred on or before such date solely because the Competition Act Approval and/or the Industry Canada Approval have not been received or obtained by such date and not due to any default on the part of the Purchaser, the Outside Date shall automatically be extended for a one-month period;

"**Owned Intellectual Property**" means: (i) all applied for and registered Intellectual Property owned by the Seller or the Globalive Entities; and (ii) all Intellectual Property owned by the Seller or the Globalive Entities that is not applied for or registered and that is material to the operation or conduct of the Business, a complete list of which is set out in Schedule 1.1(F);

"**Parties**" means collectively, the Purchaser, CF III, CF IV, the Seller and GTH and "**Party**" means any one of them;

"**Permitted Liens**" means:

- (i) Liens for Taxes, rates, assessments, duties, levies or other charges payable to any Governmental Authority not yet due and payable or for which installments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested in good faith if GWMC or WIND Distribution shall have made on its books adequate provision therefor;
- (ii) statutory Liens of landlords or rights reserved in any lease for rent, which is not yet due and payable, or for compliance after the Closing Date with the terms of such leases;
- (iii) any and all statutory Liens, charges, adverse claims, prior claims, security interests, deemed trusts or other Liens of any nature whatsoever claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any applicable legislation, statute or regulation;

- (iv) any undetermined or inchoate Lien arising by statute for claims arising in the ordinary course of business, which have not at the time been filed pursuant to Laws and any Lien arising by statute which although filed, relates to obligations not overdue or to obligations the validity of which is under contest if GWMC or WIND Distribution shall have made on its books adequate provision therefor;
- (v) a deposit made in the ordinary course of business to secure worker's compensation or unemployment insurance, when required by Law, and warehousemen's, carriers' and other similar liens arising in the ordinary course of business; and
- (vi) security given in the ordinary course of business to a public utility or any municipality or other Governmental Authority when required by such utility or municipality or other Governmental Authority in connection with the operations of GWMC or WIND Distribution;
- (vii) mechanic's, workmen's, materialmen's and repairmen's liens for claims arising in the ordinary course of business; and
- (viii) the Liens listed in Schedule 1.1(H).

"Person" or **"person"** means any individual, partnership, firm, corporation, limited liability company, unlimited company, association, trust, unincorporated organization, Governmental Authority or other legal or business entity;

"Pre-Closing Reorganization" has the meaning specified in Section 6.6;

"Proceeding" means any: (i) court, administrative, regulatory or similar proceedings (whether civil, criminal, quasi criminal, investigative or informal); (ii) arbitration, other dispute settlement procedure; or (iii) investigation or inquiry by any Governmental Authority;

"Purchase Price" has the meaning specified in Section 2.2;

"Purchased Shares" has the meaning specified in the recitals to this Agreement;

"Purchaser" has the meaning specified in the recitals to this Agreement;

"Purchaser Claimants" has the meaning specified in Section 6.10(a);

"Radio Licences" means the Industry Canada radio authorizations, apart from those defined herein as "Spectrum Licences", held by and registered in the name of GWMC, a true and complete list of which as of April 1, 2014 is set out and described in Schedule 4.10 and any replacements or substitutions therefor;

"Regulatory Concessions" has the meaning specified in Section 6.3(d);

"Response Period for Conferring" has the meaning specified in Section 6.1(c);

"Response Period for Consent" has the meaning specified in Section 6.1(d);

"**Restricted Cash**" means the amount of cash, credit balances, deposit certificates and marketable securities of a Globalive Entity that directly or indirectly is subject to a Lien or right of offset in order to support letters of credit or guarantee, purchase orders, obligations of a Globalive Entity and the like, the foregoing to be based upon the Final Closing Date Balance Sheet, the same to be determined in accordance with IFRS applied on a basis consistent with past practice;

"**Seller**" has the meaning specified in the recitals to this Agreement;

"**Seller Claimants**" has the meaning specified in Section 9.2;

"**Seller Indemnifier**" has the meaning specified in Section 6.10(a);

"**Seller Proceeds**" means the portion of the Purchase Price that is received by the Seller and shall be equal to the amount of the Purchase Price less the amount of the VL Escrowed Funds;

"**Seller Tax Period**" means and includes any and all fiscal periods ending before the Closing Date and, in addition, in respect of any fiscal period that includes, but does not end on or before, the Closing Date, that portion of such fiscal period up to and including the Closing Date;

"**Settlement Date**" has the meaning set out in Section 2.7(a);

"**Software**" means computer programs, operating systems, applications, interfaces, applets, software scripts, macros, firmware, middleware, development tools, and other codes, instructions or sets of instructions for computer hardware or software, including without limitation SQL and other query languages, hypertext markup language ("html"), wireless markup language, xml and other computer markup languages, in object, source code or other code format;

"**source code**" means Software programming code (including flash .swf source code, server source code and JAVA source code) expressed in human readable language, including maintenance documentation, procedures, flow charts, schematic diagrams and annotations which comprise the pre-coding detail design specification, and all material necessary to allow a reasonably skilled programmer or analyst to build, maintain and enhance the Software;

"**Spectrum Licences**" means the spectrum licences held by and registered in the name of GWMC set out and described in Schedule 4.10;

"**Tax**" or "**Taxes**" means all federal, state, provincial, territorial, local, foreign and other taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, gains, inventory, capital stock, licence, withholding, payroll, employment, unemployment, workers' compensation, social security, excise, goods and services, harmonized sales, severance, stamp, occupation, real or personal property, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, and installments thereof, imposed by any Tax Authority whether disputed or not and shall include any transferee liability in respect of Taxes;

"**Tax Act**" means the *Income Tax Act* (Canada) as may be amended from time to time;

"**Tax Authority**" means any Governmental Authority having jurisdiction over the assessment, collection or imposition of Taxes, including the Canada Revenue Agency;

"**Tax Return**" means any return, report, declaration, designation, election, notice, filing, form, claim for refund, information return or other document (including any related or supporting schedule, statement or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any Laws, regulations or administrative requirements relating to any Tax (including any amendment thereof);

"**Technology**" means any and all Software, data, databases, compilations files, hardware, websites, domain names, website content, user interfaces, algorithms, architecture, structure, display screens, layouts, development tools, instructions, templates, molds, tooling, systems, servers, switches, routers, printers, peripheral equipment, cabling, networks, telecommunications, circuits, mask works, chips, flowcharts, spreadsheets, formulae, equipment, drawings and manuals, programmers notes, processes, methods, know how, show how, trade secrets, analysis, designs, lab journals, notebooks, blue prints, schematics, research and development, reports, technical and functional information, specifications, manufacturing and engineering information, and other technology related to or used in the Business;

"**Third Party Claim**" means any Claim asserted by a Claimant pursuant to the provisions of Article 9 for Loss incurred or suffered in connection with Proceedings initiated or commenced by any Person who is not a Party;

"**Trademark Licence Agreement**" means the trademark licence agreement entered into among GWMC and Wind Telecomunicazioni, SPA, granting a licence to GWMC to the WIND Marks, in the form attached hereto as Schedule 1.1(D);

"**Transaction**" has the meaning specified in the recitals to this Agreement;

"**Transaction Documents**" means this Agreement, the Escrow Agreement, the Trademark Licence Agreement and all documents contemplated thereby or ancillary thereto or necessary for the consummation of the Transaction;

"**Vendor Loan Facilities**" means the financing arrangements between GWMC and its principal vendors set out in the agreements dated August 18, 2009 (Electro Banque), December 22, 2009 (Nokia Siemens Networks Finance BV as assigned to the "TCP Lenders" and "ING Capital LLC" (each as described in the various assignment documentation)) and March 9, 2010 (Industrial and Commercial Bank of China (Macau) Limited), as each of the foregoing may be respectively amended or assigned from time to time;

"**VimpelCom Loan Agreements**" means, collectively, the GTH Loan Agreement, the GTH Canada Loan Agreement and the VimpelCom Parent Loan Agreement;

"**VimpelCom Parent Loan Agreement**" means the non-revolving term loan dated December 3, 2012 between VimpelCom Amsterdam B.V. as lender and GWMC as borrower, in the principal amount of \$[■]169,000,000 plus accrued interest of \$[■]18,167,847 as at ~~May 1, 2013~~ July 31, 2014;

"VL Escrowed Funds" has the meaning specified in Section 2.3(a);

"WC Escrowed Funds" has the meaning specified in Section 2.3(b);

"WIND Distribution" means WIND Mobile Distribution Corp., a wholly-owned subsidiary of GWMC organized and existing under the laws of the Province of Ontario;

"WIND Marks" means the marks listed in Schedule 1.1(G); and

"Working Capital Forecast" has the meaning specified in Section 4.14;

"Working Capital Target" means a negative amount equal to ~~(\$8,000,000);~~ 10,000,000.

1.2 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule	Description
Schedule 1.1(A)	— Form of Working Capital Current Assets and Current Liabilities
Schedule 1.1(B)	— <i>[Intentionally deleted]</i>
Schedule 1.1(C)	Form of Escrow Agreement <i>[Intentionally deleted]</i>
Schedule 1.1(D)	— Form of Trademark Licence Agreement
Schedule 1.1(E)	— Leased Properties and Leases
Schedule 1.1(F)	— Owned Intellectual Property and Technology
Schedule 1.1(G)	— WIND Marks
Schedule 1.1(H)	— Permitted Liens
Schedule 1.1(I)	Form of GWMC's Factual Matters Certificate
Schedule 3.2(d)	Form of Seller's Closing Certificate
Schedule 3.2(f)	— Form of GWMC's Closing Certificate
Schedule 3.2(g)	— Form of WIND Distribution's Closing Certificate
Schedule 3.2(i)	— Seller's Required Consents
Schedule 3.2(o)	— Form of Legal Opinion
Schedule 3.3(b)	— Form of Purchaser's Closing Certificate
Schedule 3.3(d)	— Form of Release of Directors by the Purchaser and GWMC
Schedule 4.4	Litigation and Government Claims
Schedule 4.5	Capital Structure of the Globalive Entities
Schedule 4.6(a)	Compliance with Other Instruments
Schedule 4.6(b)	— Filings, Consents and Approvals of Governmental Authorities and Other Persons to be Obtained by

Schedule	Description
	the Seller
Schedule 4.6(b)(ii)	— GWMC Financial Statements
Schedule 4.8	— Related Party Liabilities or Obligations
Schedule 4.9	— Taxes
Schedule 4.10	— Spectrum Licences and Radio Licences
Schedule 4.12	— Sufficiency of Assets
Schedule 4.13	— Related Party Agreements
Schedule 4.14	— Working Capital Forecast of the Globalive Entities dated July 30, 2014
Schedule 5.3(b)	— Filings, Consents and Approvals of Governmental Authorities and Other Persons to be Obtained by the Purchaser
Schedule 5.10	— Partnership Arrangements
Schedule 6.1(a)(ii)	Financial Forecast of the Globalive Entities dated July 30, 2014
Schedule 6.6	— Pre-Closing Reorganization
Schedule 6.9(b)	— No Solicitation
Schedule 7.1(a)	— Form of Seller's Closing Conditions Certificate
Schedule 7.2(a)	— Form of Purchaser's Closing Conditions Certificate

1.3 Interpretation

In this Agreement:

- (a) Accounting Terms. Unless otherwise specified, whenever reference is made in this Agreement to a calculation to be made or an action to be taken in accordance with IFRS, such calculation shall be made or action taken in accordance with IFRS, as applicable, as at the time such calculation is required to be made or action is to be taken, consistently applied.
- (b) Headings, Table of Contents and Schedules. The division of this Agreement into Articles, Sections, Subsections, Paragraphs and Clauses and the inclusion of headings and a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless otherwise specified to the contrary, all references to Articles and Sections are references to Articles and Sections of this Agreement and all references to Schedules are references to Schedules to this Agreement. All Schedules hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.

- (c) Gender and Number. Except where the context requires otherwise, words in this Agreement importing the singular include the plural and vice versa and words importing gender include all genders.
- (d) Including. Where the word "including" or "includes" is used in this Agreement, it means including or includes "without limitation".
- (e) No Strict Construction. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party proposing any such language.
- (f) Statutory References. A reference in this Agreement to a statute includes all rules and regulations made pursuant to such statute and, unless expressly provided otherwise, the provisions of any statute, rule or regulation which amends, supplements or supersedes any such statute, rule or regulation in force as of the date of this Agreement.
- (g) Currency. Unless otherwise specified, any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- (h) Time. Time is of the essence of this Agreement and of every part of this Agreement, and no extension or variation of this Agreement shall operate as a waiver of this provision.
- (i) Time Periods. Except where expressly provided otherwise herein, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the following Business Day if the last day of the period is not a Business Day.

2. PURCHASE AND SALE OF PURCHASED SHARES

2.1 Purchase and Sale

Subject to the provisions of this Agreement, the Seller shall sell, transfer, assign, convey, and deliver to the Purchaser, and the Purchaser shall purchase and acquire from the Seller, all of the Purchased Shares, free and clear of all Liens. All amounts paid pursuant to this Agreement shall be paid by wire transfer in immediately available funds to the recipient of such payment.

2.2 Purchase Price

The amount payable by the Purchaser for the Purchased Shares (the "**Purchase Price**") shall be \$300,000,000 (the "**Base Purchase Price**");

- (a) *plus* the amount, if any, by which the amount of the Closing Date Working Capital is greater than the amount of the Working Capital Target, or *less* the amount, if any,

by which the amount of the Working Capital Target is greater than the amount of the Closing Date Working Capital, as the case may be; and in addition

- (b) *plus* the amount, if any, by which the amount of the Closing Date Cash is greater than the amount of the Cash Target, or *less* the amount, if any, by which the amount of the Cash Target is greater than the amount of the Closing Date Cash, as the case may be;

2.3 Escrowed Funds

- (a) No later than two Business Days prior to the Closing Date, the Seller shall deliver a certificate and irrevocable direction to the Purchaser certifying the outstanding balance, including any penalties and all accrued interest, payable as at the Closing Date to each of the lenders under the Vendor Loan Facilities (the aggregate of all such amounts being the "**VL Escrowed Funds**") and irrevocably directing the Purchaser to deposit the VL Escrowed Funds with the Escrow Agent at the Closing in accordance with Section 2.4.
- (b) The Seller hereby irrevocably directs the Purchaser to deposit the amount of ~~\$10,000,000~~ \$10,000,000 (the "**WC Escrowed Funds**") with the Escrow Agent at the Closing in accordance with Section 2.4.

2.4 Closing Date Payment

The Purchaser and the Seller agree that, at the Closing, the Purchaser shall pay (together, the "**Closing Date Payment**"):

- (a) to the Seller an amount equal to: (i) the Base Purchase Price; (ii) *plus* the amount, if any, by which the amount of the Estimated Closing Date Working Capital is greater than the amount of the Working Capital Target, or *less* the amount, if any, by which the amount of the Working Capital Target is greater than the amount of the Estimated Closing Date Working Capital, as the case may be; (iii) *less* the amount of the Escrowed Funds; and
- (b) to the Escrow Agent an amount equal to the Escrowed Funds, which funds shall be held and applied in accordance with the Escrow Agreement.

2.5 Estimated Closing Date Balance Sheet

- (a) Not later than two or earlier than ten Business Days before the Closing Date, the Seller shall cause to be delivered to the Purchaser an estimated consolidated balance sheet of the Globalive Entities as at the Closing Date, which estimated balance sheet shall be prepared in accordance with IFRS applied on a consistent basis (the "**Estimated Closing Date Balance Sheet**"), together with a calculation of the Estimated Closing Date Working Capital using the information provided in the Estimated Closing Date Balance Sheet and based upon the form set out in Schedule 1.1(A).

- (b) The Seller shall provide the Purchaser with reasonable access to the financial records and working papers of the Globalive Entities to assist in its review of the Estimated Closing Date Balance Sheet for purposes of allowing the Purchaser to comment thereon, recognizing that whether or not the Purchaser's comments are appropriate will be determined by the Seller, acting reasonably and in good faith.

2.6 Final Closing Date Balance Sheet

- (a) Not later than 30 days after the Closing Date, the Purchaser shall cause a consolidated balance sheet of the Globalive Entities as at the Closing Date to be prepared and delivered to the Seller and GTH, which balance sheet shall be prepared in accordance with IFRS applied on a consistent basis, together with a calculation of Closing Date Working Capital based on such balance sheet and in the form set out in Schedule 1.1(A) (the "**Final Closing Date Balance Sheet**"). The Purchaser shall provide the Seller and GTH with reasonable access to the financial records and working papers of the Globalive Entities to assist in its review of the Final Closing Date Balance Sheet.
- (b) If GTH notifies the Purchaser that it agrees with the Final Closing Date Balance Sheet within 15 days after receipt thereof or fails to deliver notice to the Purchaser of its disagreement therewith within such 15-day period, the Final Closing Date Balance Sheet shall be conclusive and binding upon the Purchaser, and the Seller and GTH shall be deemed to have agreed thereto, in the first case, on the date the Purchaser receives the notice and, in the second case, on such 15th day. If GTH notifies the Purchaser of its disagreement with the Final Closing Date Balance Sheet within such 15-day period, then the Purchaser and GTH shall attempt, in good faith, to resolve their differences within 15 days after the Purchaser's receipt of GTH's notice of disagreement. Any disagreement over the Final Closing Date Balance Sheet (a "**Balance Sheet Dispute**") not resolved by the Purchaser and GTH within such 15-day period shall be submitted to an internationally recognized accounting firm that is not conflicted as the Purchaser and GTH may agree (the "**Accountants**"). The Accountants shall act as experts, not as arbitrators, and the determination of the Accountants shall, in the absence of manifest error, be final and binding on the Purchaser, the Seller and GTH. The fees and disbursements of the Accountants shall be borne equally between GTH and the Seller on the one hand and the Purchaser on the other hand.

2.7 Adjustment of Purchase Price

- (a) On the second Business Day following the date on which the Purchaser and GTH agree to the Final Closing Date Balance Sheet (or are deemed to have agreed to the Final Closing Date Balance Sheet following a determination of a Balance Sheet Dispute pursuant to Section 2.6), whichever is later (the "**Settlement Date**"), the Purchase Price shall be determined using the Final Closing Balance Sheet.
- (b) If the Purchase Price, as determined in accordance with this Section 2.7, is equal to the Closing Date Payment, the Purchaser and the Seller shall cause the Escrow

Agent, not later than the fifth Business Day following the Settlement Date, to release the WC Escrowed Funds to the Seller.

- (c) If the Purchase Price, as determined in accordance with this Section 2.7, is greater than the Closing Date Payment: (i) the Purchaser and the Seller shall cause the Escrow Agent, not later than the fifth Business Day following the Settlement Date, to release the WC Escrowed Funds to the Seller; and (ii) the Purchaser shall pay to or to the order of the Seller an amount equal to the difference between the Purchase Price and the Closing Date Payment.
- (d) If the Purchase Price, as adjusted in accordance with this Section 2.7, is less than the Closing Date Payment and the difference is equal to the WC Escrowed Funds, not later than the fifth Business Day following the Settlement Date the Escrow Agent shall release the WC Escrowed Funds to the Purchaser.
- (e) If the Purchase Price, as adjusted in accordance with this Section 2.7, is less than the Closing Date Payment and the difference is greater than the WC Escrowed Funds: (i) the Purchaser and the Seller shall cause the Escrow Agent, not later than the fifth Business Day following the Settlement Date, to release the WC Escrowed Funds to the Purchaser; and (ii) the Seller shall pay to or to the order of the Purchaser an amount equal to the difference between the Purchase Price and the Closing Date Settlement.
- (f) If the Purchase Price, as adjusted in accordance with this Section 2.7, is less than the Closing Date Payment and the difference is less than the WC Escrowed Funds, the Purchaser and the Seller shall cause the Escrow Agent, not later than the fifth Business Day following the Settlement Date, to: (i) release such portion of the WC Escrowed Funds as is equal to the difference between Purchase Price and the Closing Date Payment to the Purchaser; and (ii) release the balance of the WC Escrowed Funds to the Seller.
- (g) The Parties agree that, in the event of a Balance Sheet Dispute pursuant to Section 2.7(b), the Escrow Agent shall release all Escrowed Funds to the Seller other than the amount of Escrowed Funds that are subject to the Balance Sheet Dispute that may be payable to the Purchaser following the Balance Sheet Dispute as soon as practicable following the 15 day review contemplated in Section 2.7(b).

3. CLOSING

3.1 Closing

The Closing shall be held at the offices of Bennett Jones LLP located at Suite 3400, 1 First Canadian Place, Toronto, Ontario M5X 1A4, Canada or such other place as the Purchaser and the Seller agree, at the Closing Time on the Closing Date.

3.2 Items To Be Delivered by the Seller at Closing

At the Closing, the Seller shall deliver to the Purchaser the following:

- (a) (i) share certificates representing the Purchased Shares duly endorsed in blank for transfer or accompanied by duly signed powers of attorney for transfer in blank or, at the option of the Purchaser, cancelled share certificates representing the Purchased Shares registered in the name of the Seller and a new share certificate representing the Purchased Shares registered in the name of the Purchaser and (ii) evidence satisfactory to the Purchaser, acting reasonably, that the Purchaser has been registered as the holder of the Purchased Shares, effective as of the Closing Date, on the register maintained by or on behalf of GWMC in respect of its outstanding common shares;
- (b) evidence satisfactory to the Purchaser acting reasonably demonstrating that the Globalive Entities have no continuing obligations to Wind Telecomunicazioni, SPA, the Seller, GTH, GTH (B.C.), GTH Holdco, GTH Global Telecom Finance (B.C.) Limited and VimpelCom Amsterdam B.V. or any of their respective Affiliates or Associates in relation to employment, severance, services contracts or like arrangements involving any individuals who are or have been directors, officers, employees or service providers of any Globalive Entity;
- (c) a release from each of Wind Telecomunicazioni, SPA, the Seller, GTH, GTH (B.C.), GTH Holdco, GTH Global Telecom Finance (B.C.) Limited and VimpelCom Amsterdam B.V. on its own behalf and on behalf of each its Affiliates (excluding direct and indirect shareholders of VimpelCom Amsterdam B.V.) and Associates (excluding direct and indirect shareholders of VimpelCom Amsterdam B.V.) in favour of each of the Globalive Entities effective as of the Closing Time, in form satisfactory to the Purchaser, acting reasonably and other evidence satisfactory to the Purchaser acting reasonably demonstrating that all related party liabilities of the Globalive Entities have been released and discharged excluding related party liabilities incurred in the ordinary course of business on a basis consistent with past practice in respect of roaming and long distance charges, charges for land lines and conference call charges;
- (d) against receipt of a (i) a mutual release from the Purchaser and the Globalive Entities in favour of GIHC, AAL Telecom Holdings Incorporated and Associates of AAL Telecom Holdings Incorporated, a (ii) a mutual release from GIHC and AAL Telecom Holdings Incorporated on their own behalf and on behalf of Associates of AAL Telecom Holdings Incorporated in favour of the Purchaser and the Globalive Entities;
- (e) a certificate in the form set out in Schedule 3.2(d) executed by a duly authorized senior executive officer of the Seller, dated the Closing Date, as to (i) the articles and by-laws of the Seller, (ii) the incumbency of the Seller's officers executing the Transaction Documents, as applicable, (iii) the resolutions of the board of directors of the Seller, authorizing execution, delivery and performance of the Transaction

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Documents, as applicable, by the Seller passed in connection herewith and the transactions contemplated by the Transaction Documents, and (iv) the resolutions of the shareholders of the Seller, authorizing execution, delivery and performance of the Transaction Documents, as applicable, by the Seller passed in connection herewith and the transactions contemplated by the Transaction Documents;

- (f) a certificate in the form set out in Schedule 3.2(f) executed by a duly authorized senior executive officer of GWMC, dated the Closing Date, as to (i) the articles and by-laws of GWMC, (ii) the incumbency of GWMC's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of GWMC authorizing the transfer of the Purchased Shares by the Seller to the Purchaser as contemplated hereby and the execution, delivery and performance of the Transaction Documents, as applicable, by GWMC passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (g) a certificate in the form set out in Schedule 3.2(g) executed by a duly authorized senior executive officer of WIND Distribution, dated the Closing Date, as to (i) the articles and by-laws of WIND Distribution, and (ii) the incumbency of WIND Distribution's officers executing the Transaction Documents, as applicable;
- (h) evidence of the corporate or other existence of each of the Seller and the Globalive Entities, as of the Closing Date, or such other date as agreed by the Purchaser, from the appropriate Governmental Authorities of the jurisdiction of the entity's formation;
- (i) evidence of the obtaining of the approvals, consents and releases and providing notices (including those consents and notices required pursuant to the Contracts and Leases in connection with a change of control) set forth on Schedule 3.2(i), which evidence shall be to the satisfaction of the Purchaser, acting reasonably;
- (j) evidence, satisfactory to the Purchaser, acting reasonably, of the release and discharge of all Liens granted to the lender under the Globalive Communications Loan Agreement as well as the full release and discharge of all obligations of GWMC and any Affiliate of GWMC under or in connection with the Globalive Communications Loan Agreement and any letters of credit issued thereunder;
- (k) evidence, satisfactory to the Purchaser, acting reasonably, of the release and discharge of all Liens granted to the lender under any advances from shareholders of the Seller or their Affiliates during the Interim Period as well as the full release and discharge of all obligations of GWMC and any Affiliate of GWMC under or in connection with such advances;
- (l) evidence, satisfactory to the Purchaser, acting reasonably, of the release and discharge of all Liens granted to the security trustee for and on behalf of each of the lenders and the security trustee under the Vendor Loan Facilities as well as the full release and discharge of all obligations of GWMC and any Affiliate of GWMC

under or in connection with the Vendor Loan Facilities and any letters of credit issued thereunder;

- (m) payout letters from each of the lenders and the security trustee under the Vendor Loan Facilities providing for the release and discharge of all liens granted to the security trustee for and on behalf of such lenders in connection with the Vendor Loan Facilities as well as the full release and discharge of all other obligations of GWMC and any Affiliate of GWMC under or in connection with the Vendor Loan Facilities;
- (n) evidence, satisfactory to the Purchaser, acting reasonably, that any letters of credit supporting the Business issued by a Canadian chartered bank are fully cash collateralized;
- (o) an opinion of counsel to the Seller and the Globalive Entities dated the Closing Date, substantially in the form of Schedule 3.2(o) and an opinion of counsel to GTH in form satisfactory to the Purchaser, acting reasonably. In giving such opinions, counsel to the Sellers, the Globalive Entities and GTH may rely on certificates of senior officers of the Seller, the Globalive Entities and GTH as to factual matters, so long as such certificates are satisfactory to the Purchaser, acting reasonably, and so long as they attach those certificates to the opinion;
- (p) evidence of termination, without payment of any termination fee or other penalty (including any termination fee or other penalty expressly provided therein), of: (i) the telecommunications management and strategic consulting agreement between GWMC and AAL Telecom Holdings Incorporated dated April 1, 2009, as amended; (ii) the technical services agreement GWMC and GTH Global Telecom Finance (B.C.) Limited dated April 1, 2009, as amended; and (iii) the telecommunications consulting services agreement between GWMC and Mojo Consulting Corp. dated August 4, 2008, as amended, which evidence shall be to the satisfaction of the Purchaser, acting reasonably;
- (q) original or true copies of the Industry Canada virtual licences for all current Spectrum Licences and Radio Licences;
- (r) a true copy of the original Basic International Telecommunications Services licence issued by CRTC and held by GWMC;
- (s) a GWMC's Factual Matters Certificate, dated as of the Closing Date, as varied for any failure or failures of the representations and warranties contained therein to be true and correct as of the Closing Date, provided that such failure or failures of the unvaried representation and warranties to be so true and correct do not, individually or in the aggregate, result in a Material Adverse Change or Material Adverse Effect;
- (t) a certificate of the Seller in the form set out in Schedule 7.1(a) executed by two duly authorized senior executive officers of the Seller, dated as of the Closing Date,

certifying, without personal liability, as to the Seller's compliance with the conditions set forth in Sections 7.1(a) and 7.1(b);

- (u) an executed copy of the Escrow Agreement; and
- (v) evidence satisfactory to the Purchaser acting reasonably demonstrating the by-laws of GWMC have been amended at or prior to the Closing Time to remove any references to the GWMC amended and restated shareholders' agreement among the Seller, Mojo Investments Corp., AAL Holdings Corporation and GTH dated December 15, 2009.

For greater certainty, if any consent, waiver or notice is not required to be disclosed on Schedule 4.6(a) or Schedule 4.6(b), no Party shall have any liability to the Purchaser hereunder for the failure to obtain such consent, waiver or notice.

3.3 Items To Be Delivered by the Purchaser

At the Closing, the Purchaser shall deliver the following to the Seller:

- (a) the Closing Date Payment by wire of immediately available funds to the Persons entitled thereto as set out in Section 2.4;
- (b) a certificate in the form set out in Schedule 3.3(b) executed by a duly authorized senior executive officer of the Purchaser, dated the Closing Date, as to (i) the Purchaser's articles and by-laws, (ii) the incumbency of the Purchaser's officers executing the Transaction Documents, as applicable, and (iii) the resolutions of the board of directors of the Purchaser authorizing the execution, delivery and performance of the Transaction Documents, as applicable, by the Purchaser passed in connection herewith and the transactions contemplated by the Transaction Documents;
- (c) evidence of the corporate or other existence of the Purchaser as of the Closing Date, or such other date as agreed by the Seller, from the appropriate Governmental Authorities of the jurisdiction of the Purchaser's formation;
- (d) against receipt of a (i) mutual release ~~(i)~~ from GIHC and AAL Telecom Holdings Incorporated on their own behalf and on behalf of Associates of AAL Telecom Holdings Incorporated in favour of the Purchaser and the Globalive Entities, ~~and~~ (ii) a mutual release from the Purchaser and the Globalive Entities in favour of GIHC, AAL Telecom Holdings Incorporated and Associates of AAL Telecom Holdings Incorporated, effective as of the Closing Time, in the form set out in Schedule 3.2(b);
- (e) releases from the Purchaser and the Globalive Entities, executed by the Purchaser's elected director(s) or appointed officer(s), in favour of each of the directors and officers of each of the Globalive Entities in office immediately prior to the Closing in the form set out in Schedule 3.3(d), in each case against receipt of a resignation (as director and officer but not as an employee) and a release in favour of the

Purchaser and the Globalive Entities, each such resignation and release to be in form and substance acceptable to the Purchaser acting reasonably;

- (f) evidence of the obtaining of the approvals, consents and releases set forth on Schedule 5.3(b);
- (g) a certificate in the form set out in Schedule 7.2(a) executed by two duly authorized senior executive officers of the Purchaser, dated as of the Closing Date, certifying, without personal liability, as to compliance by the Purchaser with the conditions set forth in Sections 7.2(a) and 7.2(b); and
- (h) an executed copy of the Escrow Agreement.

4. REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), each of the Seller and GTH hereby represent and warrant to the Purchaser as follows and acknowledge that each of the following representations and warranties have been relied upon by the Purchaser in connection with its execution and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof:

4.1 Organization and Good Standing

Each of the Seller, GTH and the Globalive Entities is duly formed, in existence and in good standing under the laws of the jurisdiction of its formation. No proceedings have been taken or authorized by any of the Seller, GTH or any Globalive Entity or, to the Sellers' knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of any Globalive Entity. Each Globalive Entity has all necessary power and authority to own or lease its assets and to carry on the Business as at present carried on.

4.2 Ownership of Purchased Shares

- (a) The Seller is the owner of record and the beneficial owner of the Purchased Shares and as at Closing will have good and valid title to such Purchased Shares, free and clear of any Liens, including any restrictions on the Purchased Shares or obligations on GWMC set out in the restated shareholders' agreement among the Seller, Mojo Investments Corp., AAL Holdings Corporation and GTH dated December 15, 2009.
- (b) GWMC is the owner of record and the beneficial owner of all of the common shares of WIND Distribution and, as at the Closing Date, will be the owner of record and the beneficial owner of all of the outstanding shares of New DebtCo. In each case, GWMC will have good and valid title to such shares, free and clear of any Liens other than Permitted Liens as of the Closing Date. Other than the ownership of the

common shares of WIND Distribution, GWMC does not own and, with the exception of the New DebtCo shares to be acquired by GWMC pursuant to the Pre-Closing Reorganization, as at the Closing Date GWMC, will not own any shares in or securities of any other body corporate.

4.3 Authority and Binding Effect

~~Each~~As of the Closing Date, each of the Seller and GTH has the power and authority to enter into the Transaction Documents to which it is a party, to perform its obligations under such Transaction Documents to consummate the transactions to be consummated by it thereunder, including the power and authority to execute and deliver each Transaction Document to which it is a party and any other certificate, document, agreement or other instrument to be executed and delivered by it in connection with the Transaction and to perform its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents by each of the Seller and GTH and, as of the Closing Date, the performance by each of the Seller and GTH of its obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by each of the Seller and GTH ~~have been~~will be validly authorized by all necessary formal action by each of the Seller and GTH, other than the Pre-Closing Reorganization, which will have been validly authorized by all necessary formal action by each of the Seller and GTH as at the Closing Time. Each Transaction Document to which each of the Seller and GTH is a party ~~has been~~, and each Transaction Document to which each of the Seller and GTH is a party as of the Closing Date will be, duly executed and delivered by each of the Seller and GTH and constitutes or will constitute upon delivery, a legal, valid and binding obligation of the each of the Seller or GTH, as applicable, enforceable against it in accordance with its terms, subject to the usual exceptions as to bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

4.4 Litigation and Government Claims

With the exception of Taxes, which are the subject of the representations and warranties in Section 4.9, and except as disclosed in Schedule 4.4, there is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or any governmental investigation or inquiry pending or, to the knowledge of the Seller, threatened in writing against, relating to or affecting the Seller to the extent related to any of the Globalive Entities, the Business, the Transaction Documents or any of the transactions contemplated thereby that would reasonably be expected to result in a Material Adverse Effect and none of the Globalive Entities is subject to any outstanding Order that has or would reasonably be expected to have the effect of prohibiting, restricting, or impairing any business practice of any of them, any acquisition or disposition of property by any of them, or the conduct of the Business by any of them as currently conducted, which would reasonably be expected to have a Material Adverse Effect.

4.5 Capitalization

- (a) Schedule 4.5 sets out the authorized and issued capital of each of the Globalive Entities as of the date of this Agreement. As of the Closing Time, all of the issued and outstanding shares in the capital of each of the Globalive Entities (i) will be authorized, validly issued, fully paid and non-assessable, (ii) will be held of record

as set forth on Schedule 4.5, and will be free and clear of all Liens excluding, as regards the Globalive Entities other than GWMC, Permitted Liens, and (iii) were not issued in violation of the preemptive rights of any Person, or any agreement or Law.

- (b) Except as set forth in Schedule 4.5, as of the Closing Time, (i) no shares of any of the Globalive Entities will be reserved for issuance; (ii) there will be no shareholders agreements, pooling agreements, voting trusts or other agreements with respect to the voting of the shares, or any of them, of any of the Globalive Entities; (iii) there will be no outstanding options, warrants, rights, calls, conversion rights, rights of exchange or other commitments, contingent or otherwise, relating to the shares of any of the Globalive Entities; (iv) there will be no outstanding agreements of any of the Globalive Entities or the Seller, permitting the Seller or any other Person to purchase, redeem or otherwise acquire any outstanding shares of any of the Globalive Entities or securities or obligations of any kind convertible into any shares of any of the Globalive Entities; (v) there will be no dividends that have accrued or been declared but are unpaid on the shares of any of the Globalive Entities; and (vi) there will be no outstanding or authorized share appreciation, phantom stock, stock option plans or similar rights with respect to any of the Globalive Entities. None of the Globalive Entities is a reporting issuer (as such term is defined in the *Securities Act* (Ontario)) and there is no published market for the Purchased Shares.
- (c) Except for the indebtedness for borrowed money that will be acquired by New DebtCo pursuant to the Pre-Closing Reorganization, as set out in the GWMC Financial Statements, amounts payable pursuant to the Vendor Loan Facilities, further advances from shareholders of the Seller or their Affiliates and other than accounts payable owing by way of trade credit where such accounts payable have arisen in the ordinary course of business as a result of goods or services being supplied on normal arm's length terms and where such amounts have not been outstanding for more than 30 days, as of the Closing Date, GWMC shall have no indebtedness for and shall not have guaranteed, or secured by a security interest upon any assets or property owned by the Globalive Entities, any indebtedness of any Person other than the Globalive Entities.

4.6 Consents; Compliance with Other Instruments

- (a) Except as set forth in Schedule 4.6(a), none of the execution, delivery and performance by the Seller of any Transaction Document to which it is a party, the consummation by the Seller of the transactions contemplated thereby, nor the fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), results in the loss of any contractual benefit under, permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under, or requires the consent or approval of any Person under: (i) any provision of any of the Seller's or each of the Globalive Entities' articles, by-laws, constituting

documents or other organizational documents, as applicable; (ii) to the extent that any such violation, breach, default or conflict would reasonably be expected to materially affect the transactions contemplated under the Transaction Documents, any instrument, Contract, agreement, note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, loan or lease agreement to which the Seller or the Globalive Entities or any of the Seller's or the Globalive Entities' assets or properties, are bound or subject; or (iii) subject to obtaining the Competition Act Approval and the Industry Canada Approval, any Laws applicable to the Globalive Entities in a material respect.

- (b) Except as set forth in Schedule 4.6(b):
 - (i) none of the Seller or the Globalive Entities is required to submit any notice, declaration, report or other filing or registration with any Governmental Authority in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents; and
 - (ii) other than with respect to the Vendor Loan Facilities, no exemption, waiver, consent, approval, authorization, licence, permit or franchise is required to be obtained from any Governmental Authority or any other Person by the Seller or any Globalive Entity in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby, the absence of which would reasonably be expected to materially affect the transaction contemplated by the Transaction Documents.

4.7 Financial Statements and Records of GWMC

- (a) A true and complete copy of the GWMC Financial Statements (including the respective notes thereto) is attached hereto as Schedule 4.7. The GWMC Financial Statements: (i) have been prepared in accordance with IFRS, applied on a basis consistent with that of the preceding periods; (ii) other than as disclosed in the financial statements of GWMC for the interim period ended March 31, 2014, fairly present, in all material respects, the consolidated assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial condition of the Globalive Entities and the results of the operations of the Globalive Entities, as at the dates thereof and for the periods covered thereby; (iii) other than as disclosed in the financial statements of GWMC for the interim period ended March 31, 2014, reflect all proper accruals as at the dates thereof and for the periods covered thereby of all amounts which, though not payable until a time after the end of the relevant period, are attributable to activities undertaken during or prior to that period; and (iv) other than as disclosed in the financial statements of GWMC for the interim period ended March 31, 2014, contain or reflect adequate reserves for all liabilities and obligations of the Globalive Entities of any nature, whether absolute,

contingent or otherwise, matured or unmatured, as at the date thereof. Other than defaults with respect to the Vendor Loan Facilities, the VimpelCom Loan Agreements and the Globalive Communications Loan or as disclosed in the financial statements of GWMC for the interim period ended March 31, 2014, there has been no change in the Business since the date of the GWMC Financial Statements that constitutes a Material Adverse Change.

- (b) The Globalive Entities have no liabilities (whether accrued, absolute, contingent or otherwise, matured or unmatured) of any kind except: (i) liabilities disclosed or provided for in the GWMC Financial Statements; (ii) liabilities incurred in the ordinary course of business since March 31, 2014, which are consistent with past practice; and (iii) liabilities incurred prior to Closing for additional advances from shareholders of the Seller or their Affiliates, other than those liabilities which in the aggregate, will not have result in a Material Adverse Effect. In no event does any such liability violate any provision of any Transaction Document.

4.8 Related Party Liabilities and Obligations

As of the Closing Time, except for obligations arising from and after the Closing Date which are expressly set forth and described in the Trademark Licence Agreement or in Schedule 4.8, no Globalive Entity shall have any liability or obligation to Wind Telecomunicazioni, SPA, the Seller, GTH, GTH (B.C.), GTH Holdco, GTH Global Telecom Finance (B.C.) Limited or VimpelCom Amsterdam BV or any of their respective Affiliates or Associates.

4.9 Taxes

Except as disclosed in Schedule 4.9,

- (a) All Tax Returns required by applicable Law to be filed by the Globalive Entities have been timely filed and all such Tax Returns are true, complete and correct in all material respects.
- (b) No audit or other Proceeding by any Tax Authority is pending or threatened with respect to any Taxes due from or with respect to the Globalive Entities, and no Tax Authority has given written notice of any intention to assert any deficiency or claim for additional Taxes against the Globalive Entities. There are no matters under discussion, audit or appeal with any Governmental Authority relating to Taxes.
- (c) No Tax Authority of a jurisdiction in which a Globalive Entity does not file Tax Returns has made any written claim that such entity is or may be subject to taxation by such jurisdiction. To the knowledge of the Seller, there is no basis for a claim that a Globalive Entity is subject to Tax in a jurisdiction in which it does not file Tax Returns.
- (d) There are no outstanding agreements, waivers, objections or arrangements extending the statutory period of limitations applicable to any claim for Taxes due by a Globalive Entity for any taxable period, nor has any such agreement, waiver,

objection or arrangement been requested. No Globalive Entity is bound by any tax sharing, allocation or indemnification or similar agreement.

- (e) There are no Liens for Taxes upon any property (including Leased Properties) or assets of a Globalive Entity, except for Permitted Liens.
- (f) Each of the Globalive Entities has duly and timely paid all Taxes, including all installments on account of Taxes for the current year, that are due and payable by it whether or not assessed by the appropriate Tax Authority.
- (g) Each Globalive Entity has withheld from each payment made, or deemed to have been made, to any of its present or former employees, officers and directors, and to all persons who are non-residents of Canada for the purposes of the Tax Act all amounts required by Law and will continue to do so until the Closing Time and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. Each Globalive Entity has remitted all Canada Pension Plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it or required to be collected by it in respect of its employees and has or will have remitted such amounts to the proper Governmental Authority within the time required by Law. Each Globalive Entity has charged, collected and remitted on a timely basis all Taxes as required by Law on any sale, supply or delivery whatsoever, made by it.
- (h) None of the Globalive Entities is subject to a liability for Taxes of any other person, including without limitation, liability arising under section 160 of the Tax Act or liability arising under any agreement under section 191.3 of the Tax Act.
- (i) None of the Seller, GTH or any Globalive Entity has any reason to believe that transactions or arrangements between a Globalive Entity and any Person with whom the Globalive Entity was not dealing at arm's length within the meaning of the Act involving the acquisition, delivery, disposition or provision of property or services or the right to use property or services, took place for consideration that is other than the fair market value for such property, services or right or that such transactions or arrangements were not made on arm's length terms and conditions.
- (j) The Seller is not a "non-resident" of Canada, within the meaning of the Tax Act.

4.10 Spectrum Licences and Radio Licences

- (a) The Spectrum Licences and Radio Licences are in good standing in all respects. The Spectrum Licences and Radio Licences (as of April 1, 2014) are accurately and completely described in Schedule 4.10. GWMC holds the Spectrum Licences and Radio Licences, free and clear of any and all Liens. Except as described in Schedule 4.10, GWMC has the exclusive right to use the frequencies as authorized in the Spectrum Licences and Radio Licences, and to transfer the Spectrum Licences, subject to Industry Canada Approval, and Radio Licences.

- (b) No Person other than the Purchaser has any written or oral agreement or option or any right or privilege, whether by law, pre-emptive or contractual, capable of becoming a Contract or option for the acquisition, directly or indirectly, of any of the Spectrum Licences or Radio Licences or any rights therein. There are no agreements which in any way limit or restrict the transfer (whether pursuant to Industry Canada Approval or otherwise) to the Purchaser of the Spectrum Licences or the Radio Licences.
- (c) GWMC has complied in all material respects with the Industry Canada terms and conditions of licence attaching to the Spectrum Licences and Radio Licences and Industry Canada Regulations and policies applicable thereto has not received any notice or other communication (whether oral or written) from Industry Canada or any other Governmental Authority regarding any actual or alleged failure to so comply with any of the terms and conditions of licence attaching to the Spectrum Licences or Radio Licences or to Industry Canada Regulations and policies applicable thereto.
- (d) No Order is outstanding against GWMC relating to or involving the Spectrum Licences or Radio Licences that will, or would reasonably be expected to materially impair or otherwise materially and adversely affect the Purchaser's interest in and right to control, use and operate the Network Assets.

4.11 CRTC Registrations and Licences

- (a) Any Basic International Telecommunications Licence held by GWMC is in good standing in all material respects and GWMC has complied with the terms and conditions attaching to the Basic International Telecommunications Licence and CRTC Regulations and policies applicable thereto in all material respects.
- (b) GWMC's registrations with the CRTC as a Competitive Local Exchange Carrier and Wireless Carrier are in good standing and GWMC has complied in all material respects with all the obligations of a Competitive Local Exchange Carrier and Wireless Carrier and CRTC Regulations and policies applicable thereto.

4.12 Sufficiency of Assets

Except as disclosed in Schedule 4.12, the consolidated assets of the Globalive Entities, including the Spectrum Licences, the Radio Licences, the Owned Intellectual Property, the WIND Marks, the Technology and the Confidential Information, constitute all of the material assets, tangible and intangible, of any kind whatsoever, necessary to operate the Business in substantially the same manner as it is being operated as of the date hereof by the Seller. Except as disclosed in Schedule 4.12 the Globalive Entities are not reliant upon any material assets or material services provided by or shared with current Affiliates of the Globalive Entities for the operation of the Business following the Closing Time in the same manner as currently operated as at the date hereof, except to the extent that such Affiliates will remain an Affiliate of the Globalive Entities following the Closing Time.

4.13 Related Party Agreements

Except as disclosed on Schedule 4.13, the Globalive Entities are not a party to any Contract with, or involving the making of any payment or transfer of assets to: (i) any stockholder, officer, member, partner or director of the Globalive Entities; (ii) any spouse, parent or child (including by adoption) of any of the individuals listed in clause (i); or (iii) any Affiliate of any of the Globalive Entities or any of the foregoing. Except set out in Schedule 4.13, all Contracts with respect to the Business have been entered into on an arm's length basis (within the meaning of the Tax Act). Any amounts due and payable by a Globalive Entity to any Affiliate in relation to such Contracts are recorded on the Books and Records at their fair market value.

4.14 Data Room

The information, books, records, reports, files or other documents relating to the Seller or the Globalive Entities and the Business contained in the Data Room were complete except to the extent any omission or omissions therefrom do not individually or in the aggregate pertain to any matter or thing that would if disclosed constitute a Material Adverse Change. All such information, books, records, reports, files or other documents were materially accurate as at their respective dates as stated therein, or, if any such information, books, records, reports, files or other documents are undated, as of the date of delivery of same to the Data Room, except to the extent amended or superseded by information, books, records, reports, files or other documents subsequently delivered to the Data Room or except to the extent any inaccuracy or inaccuracies pertain to any matter or thing that would if disclosed constitute a Material Adverse Change. A true copy of the contents of the Data Room as of 5:00 p.m. (Toronto time) on the date that is two Business Days prior to the date hereof has been provided to the Purchaser. Notwithstanding the foregoing, the Seller does not represent and warrant with respect to any projections, financials models, estimates, forecasts or budgets contained in the Data Room or any projections, financial models, estimates, forecasts or budgets relating to the Business, the Globalive Entities, or otherwise heretofore or hereafter delivered to, presented to (including, for greater certainty, in any management presentation) or made available to the Purchaser or its representatives or Affiliates.

4.15 Working Capital Forecast

The working capital forecast of the Globalive Entities dated July 30, 2014 and attached as Schedule 4.15(a)(ii) (the "Working Capital Forecast") was prepared based on the assumptions that the Business is operated in the ordinary course and consistent with past practice.

5. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as set forth in the Schedules (with specific reference to the Section of this Agreement to which the information stated in such Schedule relates; provided that, the information contained in any Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent it is reasonably apparent from the face of such Schedule that such information is applicable to such other Section of this Agreement), the Purchaser hereby represents and warrants to the Seller and GTH as follows and acknowledges that each of the following representations and warranties have been relied upon by each of the Seller and GTH in connection with its execution

and delivery of this Agreement and the consummation of the Transaction, and unless otherwise specified, are made as of the date hereof and as of the Closing Date:

5.1 Organization and Good Standing

The Purchaser is duly formed, in existence and in good standing under the laws of [●]. CF III and CF IV and each of their general partners are duly formed, in existence and in good standing under the laws of [●].

5.2 Authority and Binding Effect

The execution and delivery of the Transaction Documents by the Purchaser and the general partners of CF III and CF IV, on behalf of CF III and CF IV, and the performance by each of the Purchaser, CF III and CF IV of its obligations thereunder and the consummation of the transactions contemplated thereunder to be consummated by the Purchaser, CF III and CF IV have been duly and validly authorized by all necessary corporate action on the part of the Purchaser, CF III, CF IV and each of their general partners. Each Transaction Document executed by the Purchaser, CF III, CF IV and their general partners, as of the date hereof, has been, and each Transaction Document executed as of the Closing Date, will be, duly executed and delivered by the Purchaser, CF III, CF IV and the general partners and constitutes or will constitute upon delivery, the legal, valid and binding obligation of the Purchaser, CF III, CF IV and each of their general partners, enforceable against the Purchaser, CF III, CF IV and each of their general partners in accordance with their respective terms, subject to the usual exceptions as to bankruptcy, winding-up, insolvency, arrangement, reorganization or other laws of general application affecting creditors' rights and the availability of equitable remedies.

5.3 Consents; Compliance with Other Instruments

- (a) None of the execution, delivery and performance by any of the Purchaser, CF III, CF IV and each of their general partners of any Transaction Document to which it is a party, the consummation by the ~~Purchaser~~ such persons of the transactions contemplated thereby, nor the fulfillment of and compliance with the terms and conditions thereof violates, breaches, is in conflict with, or constitutes a breach or default under (or an event that with notice, lapse of time or both would result in any such breach or default), results in the loss of any contractual benefit under, permits the termination, modification or cancellation of or the acceleration or maturity of any obligation under, or requires the consent or approval of any Person under: (i) any provision of any of the Purchaser's, CF III's or CF IV's articles, by-laws, constating documents or other organizational documents, as applicable; (ii) to the extent that any such violation, breach, default or conflict would reasonably be expected to materially affect the transactions contemplated under the Transaction Documents, any instrument, contract, agreement, note, bond, indenture, mortgage, deed of trust, evidence of indebtedness, loan or lease agreement to which the Purchaser, CF III or CF IV or any of the Purchaser's, CF III's and CF IV's assets or properties, are bound or subject; or (iii) subject to obtaining the Competition Act Approval and the Industry Canada Approval, any Laws applicable to the Purchaser.

- (b) Except as set forth in Schedule 5.3(b):
- (i) the Purchaser is not required to submit any notice, declaration, report or other filing or registration with any Governmental Authority in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby where the failure to make such submission would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents; and
 - (ii) no exemption, waiver, consent, approval, authorization, licence, permit or franchise is required to be obtained from any Governmental Authority or any other Person by the Purchaser in connection with the execution and delivery of the Transaction Documents or the consummation of the transactions contemplated thereby, the absence of which would reasonably be expected to materially affect the transactions contemplated by the Transaction Documents.
- (c) No material approval, Order, consent of or filing with any Governmental Authority is known to the Purchaser to be required other than Competition Act Approval and Investment Canada Act Clearance, Industry Canada Approval and the regulatory approvals referred to on Schedule 5.3(b) on the part of the Purchaser or any of its Affiliates in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement.

5.4 Business Advisors, Brokers and Finders

No Person has, as a result of any agreement or action by the Purchaser or any of its present Affiliates, any right or valid claim for any commission, fee or other compensation as a business advisor, broker, finder, investment banker or in any similar capacity in connection with the transactions contemplated by the Transaction Documents that purports by its terms to result in any liability to the Seller for such compensation.

5.5 Litigation and Government Claims

Other than investigations or inquiries made by Governmental Authorities with respect to the Competition Act Approval and the Industry Canada Approval, there is no claim, suit, action or litigation, or administrative, arbitration or other Proceeding or governmental investigation or inquiry pending against, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby. Other than investigations or inquiries made by Governmental Authorities with respect to the Competition Act Approval and the Industry Canada Approval, there is no such Proceeding, investigation or inquiry threatened, relating to or affecting the Purchaser to the extent related to the Transaction Documents or the transactions contemplated thereby, in each case which might be commenced with a reasonable likelihood of success.

5.6 Independent Investigation

The Purchaser has conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial and other condition and prospects of the Globalive Entities, which investigation, review and analysis was done by the Purchaser and its Affiliates and representatives. The Purchaser acknowledges that it and its representatives have been provided adequate access to the personnel and records of the Globalive Entities for such purpose. In entering into this Agreement, the Purchaser acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of any of the Seller or the Globalive Entities or any of their respective Affiliates (except the specific representations and warranties of the Seller set forth in Article 4).

5.7 Funds

The Purchaser shall have at the Closing, sufficient available funds to pay the Purchase Price and all other necessary fees, expenses and other amounts in connection with the consummation of the transactions contemplated by this Agreement. CF III and CF IV have sufficient funds available to it to satisfy all of the Purchaser's financial obligations pursuant to this Agreement.

5.8 No Breach

The Purchaser has no actual knowledge of (i) any facts or circumstances which would constitute a breach by the Globalive Entities or the Seller of any of their representations and warranties herein or (ii) a Material Adverse Effect.

5.9 Investment Canada Act

- (a) The Purchaser is not a non-Canadian within the meaning of the Investment Canada Act provided that the Minister under the Investment Canada Act does not exercise his discretion under subsections 26(2.11) or 26(2.31) to determine that the Purchaser is not a Canadian-controlled entity.
- (b) To the knowledge of the Purchaser, there are no facts or circumstances that could give rise to the Minister exercising his discretion under subsections 26(2.11) or 26(2.31) to determine that the Purchaser is not a Canadian-controlled entity.

5.10 Partnership Arrangements

Except as set forth in Schedule 5.10, no Person is acting jointly or in concert with the Purchaser in connection with the acquisition of the Purchased Shares pursuant to this Agreement.

5.11 No Plans

The Purchaser does not have any studies, analyses, reports or plans that were prepared or received by an officer, director, or individual who serves in a similar capacity of the Purchaser, for the purpose of evaluating or analyzing the sale or transfer of the Business, or any of its assets, by the Purchaser to an Incumbent.

6. COVENANTS

6.1 Conduct of Business Prior to Closing

- (a) During the Interim Period, the Seller shall, and shall cause the Globalive Entities to, do the following:
- (i) use commercially reasonable efforts to preserve intact the Business and the material properties and physical assets of the Globalive Entities used in the operation of the Business, as operated on the date hereof;
 - (ii) protect and carry on the Business in the ordinary course on a basis consistent with past practice and on a basis consistent with the assumptions ~~reflected in the financial forecasts of the Globalive Entities dated July 30, 2014~~ attached as Schedule 6.1(a)(ii) including in respect of current assets, current liabilities and cash flow;
 - (iii) except to the extent the failure to do so will not individually or in the aggregate have a Material Adverse Effect or result in a Material Adverse Change, protect the Business, including its income, goodwill and reputation; not terminate the services of the employees of the Business (including any employees seconded to a Globalive Entity); and maintain good business relationships with its customers, suppliers and distributors;
 - (iv) except to the extent the failure to do so will not individually or in the aggregate have a Material Adverse Effect or result in a Material Adverse Change, subject to compliance with applicable Law, confer with the Purchaser prior to implementing any material decision in respect of the Business and operational decisions of a material nature;
 - (v) continue in force and in good standing all policies of insurance maintained by the Globalive Entities and shall present all claims under such policies in a due and timely manner;
 - (vi) maintain the books, records and accounts of the Globalive Entities in the ordinary course of business on a basis consistent with past practice; ~~and~~
 - (vii) comply in all material respects with all Laws affecting the Globalive Entities and the operations of the Business; and
 - (viii) confer with the Purchaser prior to taking any action that would be materially inconsistent with the assumptions contemplated in the Working Capital Forecast.
- (b) Except as permitted or required by this Agreement or as required by applicable Law or in the ordinary course of business or as required by the Pre-Closing Reorganization (as defined herein), the Seller shall not, and shall not cause the Globalive Entities to, during the Interim Period, do any of the following without the

prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed (provided, however, that notwithstanding anything to contrary contained in this Agreement, no consent shall be required from the Purchaser for the Seller to take an action to cure a representation or warranty and/or enable compliance with any covenant in this Agreement provided that such action would otherwise be in compliance with the terms of this Agreement and would not be materially adverse to the Business or the Purchaser):

- (i) amend the articles of incorporation, by-laws or other equivalent organizational documents, or otherwise alter the corporate structure, as applicable, through merger, liquidation, reorganization, restructuring or otherwise, of any of the Globalive Entities;
- (ii) declare or pay any dividends (including stock dividends), or make any other payments or distributions (including in respect of interest or fees) upon any of the capital stock of any of the Globalive Entities or upon or in respect of any related party liabilities of any of the Globalive Entities or in respect of any of the Vendor Loan Facilities, it being agreed that all such related party liabilities will be released to the extent contemplated by Section 3.2(c);
- (iii) issue, sell, transfer, pledge, dispose of or encumber any shares of capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of capital stock, or any other ownership interest of any of the Seller or the Globalive Entities;
- (iv) take, or omit to take, any action or enter into any transaction which, if taken, omitted or entered into, as the case may be, before the date of this Agreement, could cause any representation or warranty of the Seller in this Agreement to be incorrect or constitute a breach of any covenant or agreement of the Seller contained herein;
- (v) sell, transfer or dispose of any material assets other than in the ordinary course of business;
- (vi) make any change to its accounting policies or procedures;
- (vii) make any changes in management personnel;
- (viii) waive, release, grant, transfer, exercise, modify or amend, in whole or in part, the Spectrum Licences, Radio Licences or any Leases;
- (ix) enter into any new Contract that may involve total annual expenditures exceeding ~~\$~~\$300,000 or waive, release, grant, transfer, exercise, modify or amend, in whole or in part, any material Contract which is not terminable without penalty on notice of not more than 90 days or exercise or fail to exercise any rights of renewal or other rights contained in any material Contract;

- (x) except as required to address any matters set forth in Schedule 4.9, change any method of Tax accounting, make any new, or change any existing Tax election or settle or compromise any Tax liability, enter into any closing agreement with respect to any Tax or surrender any right to claim a Tax refund,
 - (xi) waive, assign or release any rights or claims with respect to litigation involving the Globalive Entities; or
 - (xii) agree, resolve or commit to do any of the foregoing.
- (c) Where the Seller is required to confer with the Purchaser with respect to any action which if taken without conferring would result in a breach of Section 6.1(a), the Seller shall provide written notice to the Purchaser stating that it is conferring with the Purchaser and setting forth in reasonable detail the particulars of the action being contemplated. The Purchaser shall have two clear Business Days ("**Response Period for Conferring**") in which to confer with, and communicate a response to, the Seller in respect of such action. Any failure by the Purchaser to respond within the Response Period for Conferring shall be deemed to satisfy the Seller's requirement to confer with the Purchaser.
- (d) Where the Seller seeks to obtain the consent of the Purchaser with respect to any action which if taken without consent would result in a breach of Section 6.1(b), the Seller shall provide written notice to the Purchaser requesting such consent and setting forth in reasonable detail the particulars of the action being contemplated. The Purchaser shall not unreasonably withhold any requested consent and the Purchaser shall have five clear Business Days (the "**Response Period for Consent**") in which to communicate the granting or withholding of such consent. Any failure by the Purchaser to respond within the Response Period for Consent shall be deemed to constitute the granting of the requested consent.
- (e) During the period from the date of this Agreement to the Closing, the Purchaser and its Affiliates shall not contact any third party on behalf of any of the Globalive Entities or the Seller or purportedly on behalf of any of the Globalive Entities or the Seller without the prior written consent of the Seller (provided that the Seller shall provide a response to any request from the Purchaser for such consent within a reasonable period of time).

6.2 Actions to Satisfy Closing Conditions

Subject to the other provisions of this Agreement, each of the Parties agrees to take all such actions as are within its power or control, including directing its Affiliates and Associates to take actions, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power or control, so as to ensure compliance with any conditions set forth in Article 7 which are for the benefit of another Party or are mutually beneficial.

6.3 Regulatory and Third Party Notifications and Approvals

- (a) The Purchaser shall promptly, but in no event later than the date that is ten Business Days after the signing of this Agreement by all Parties hereto, or as soon thereafter as is reasonably practicable: (i) give all notices to, make all filings and applications with, obtain all consents and approvals of and take any action in respect of, any Persons and Governmental Authorities that are required of the Purchaser to consummate the transactions contemplated by this Agreement; and (ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. The Purchaser shall provide prompt notification to the Seller when any such consent, approval, action, filing or notice referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise the Seller of any communications (and, subject to Section 6.3(d), provide copies of any such communications that are in writing to the Seller and its outside counsel) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement. The Seller shall cooperate and assist the Purchaser to the extent necessary in giving any notices to, filings and applications, and obtaining consents and approvals to any Governmental Authorities that the Purchaser shall make to consummate the Transaction.
- (b) The Purchaser shall cooperate and assist the Seller in giving any notices to third parties and obtaining consents from third parties as are required to consummate the Transaction as set forth in Schedule 3.2(i), provided that the Seller shall not have any obligation to expend any monies in connection with the obtaining of such third party consents or oblige the Seller to give any guarantee or other consideration of any nature in connection therewith.
- (c) Without limiting the generality of the foregoing, the Purchaser shall consult and cooperate with the Seller in connection with all notices, filings, applications, analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of the Purchaser in connection with obtaining all consents and approvals from any Governmental Authorities necessary to consummate the transactions contemplated hereby. Subject to Section 6.3(d), the Purchaser will not make any notification, filing, application or other submission in relation to the transactions contemplated hereby without first providing the Seller with a copy of such notification, filing, application or other submission in draft form and giving the Seller a reasonable opportunity to consider its content before it is filed with the relevant Governmental Authority, and the Purchaser shall consider and take account of all reasonable comments timely made in this respect. Subject to Section 6.3(d), the Purchaser shall promptly notify the Seller of any substantive communications from or with any Governmental Authority with respect to the transactions contemplated by this Agreement and will use its reasonable best efforts to ensure, to the extent permitted by Law, that the Seller, or its outside counsel where appropriate, are involved in any substantive communications or invited to attend meetings with, or other appearances before, any Governmental Authority with respect to the transactions contemplated by this Agreement.

- (d) Subject to Section 6.4, the Purchaser shall not knowingly take or cause to be taken any action which would be expected to prevent or delay the obtaining of any consent or approval required hereunder, including (a) without the written consent of the Seller, not to be unreasonably withheld, seeking an approval from any Governmental Authority for a transaction other than the transactions contemplated hereby; or (b) without the written consent of the Seller, entering into any timing or other agreements with any Governmental Authority for the consummation of the transactions contemplated hereby. For greater certainty, for the duration of the Interim Period, the Purchaser shall not: (i) develop, evaluate or analyze any studies, analyses, reports or plans relating to the sale of the Business, or any of its assets, by the Purchaser to an Incumbent; or (ii) discuss with any Governmental Authority the sale or transfer of the Business, or any of its assets, by the Purchaser to an Incumbent; provided that nothing in clause (i) or (ii) shall preclude the Purchaser from doing any act or thing requested by any Governmental Authority or necessary or desirable in connection with or for purposes of obtaining either such approval. Notwithstanding anything in this Agreement, the Purchaser is not obligated to provide Seller with commercially or competitively sensitive information in relation to the Purchaser, unless the Purchaser is satisfied that the confidential nature of such information can be preserved through redaction or the sharing of such information only to the Seller's outside counsel.
- (e) During the Interim Period, the Purchaser shall not, without the consent of the Seller, take any action with respect to seeking or pursuing concessions from any Governmental Authority which would be expected to prevent or delay the obtaining of any consent or approval required hereunder. The Seller hereby agrees that the Purchaser shall be entitled to continue to pursue the regulatory concessions from Industry Canada that GWMC is presently seeking on the date hereof (the "**Regulatory Concessions**") to the extent that its actions will not prevent or delay the obtaining of any consent or approval required hereunder. For greater certainty, the Purchaser may, with the prior written consent of GTH, not to be unreasonably withheld, take any action with respect to seeking or pursuing concessions from any Governmental Authority so long as such action would not be expected to prevent or delay the obtaining of any consent or approval required hereunder. The Seller agrees that it shall, and shall cause GWMC to, cooperate and use reasonable efforts to assist the Purchaser in pursuing the Regulatory Concessions during the Interim Period.
- (f) Nothing in this Agreement shall preclude the Purchaser from approaching and engaging Persons to co-invest with the Purchaser in the Business so long as such co-investment would not be expected to prevent or delay the obtaining of any consent or approval required hereunder and would not result in the Purchaser's representation and warranty in Section 5.9 of this Agreement being untrue.

6.4 Competition Matters

- (a) The Seller and the Purchaser shall promptly, but in no event later than that date which is ten Business Days after the date of signing of this Agreement by all Parties

hereto, or as soon thereafter as is reasonably practicable, make, or cause to be made, all filings and submissions, and submit all documentation and information that is required or desirable to obtain the Competition Act Approval. Subject to Section 6.3(d), the Parties shall coordinate and cooperate in exchanging such information and assistance as may be reasonably requested by each other in order to prepare such filings and submissions and as otherwise may be necessary in order to obtain the Competition Act Approval. The Parties shall promptly notify each other of any material communication from the Commissioner or his staff and supply as promptly as practicable to the Commissioner or his staff any additional information and documentary material that may be requested or required. Subject to Section 6.3(d), each of the Seller and the Purchaser shall permit the other Party or their external counsel, as appropriate, to review in advance any proposed written communication to the Commissioner or his staff and shall discuss with the other Party any material verbal communication to the Commissioner or his staff. None of the Parties shall participate in any meeting with the Commissioner or his staff in relation to the transactions contemplated by this Agreement unless it consults with the Seller and the Purchaser in advance and, subject to Section 6.3(d) and to the extent permitted by Law, provides the Seller and the Purchaser or its outside counsel the opportunity to attend and participate thereat.

- (b) The Seller and the Purchaser shall use their best efforts to obtain the Competition Act Approval as soon as practicable.

6.5 Industry Canada Notification and Approval Matters

The Purchaser shall use its best efforts to obtain the Industry Canada Approval, and make any required notifications to Industry Canada. The Seller shall co-operate with the Purchaser and render all necessary assistance required by the Purchaser in connection with any application, notification or filing of the Purchaser to or with Industry Canada.

6.6 Pre-Closing Reorganization

The Seller and GTH shall cause the pre-closing reorganization steps set out in Schedule 6.6 (the "**Pre-Closing Reorganization**") to be completed prior to the Closing in accordance with all applicable Law. The Purchaser agrees to use its commercially reasonable efforts to assist the Seller in completing the Pre-Closing Reorganization. The Seller's representations and warranties in Article 4 and the covenants of the Seller in Article 6 shall be read as modified to the extent necessary to permit and give effect to the Pre-Closing Reorganization.

6.7 Access to Information

From the date hereof until the earlier of the Closing Time and the termination of this Agreement, subject to compliance with applicable Law, the Seller and the Globalive Entities shall, and shall cause their respective subsidiaries and their respective officers, directors, employees, independent auditors, accounting advisers and agents to, afford to the Purchaser and to the officers, employees, agents and representatives of the Purchaser such access (including direct access to the Technology) as the Purchaser may reasonably require at reasonable times for the sole purpose of

facilitating integration business planning, to their officers, employees, agents, properties, books, records and Contracts, and shall furnish the Purchaser with all data and information as Purchaser may reasonably request in connection with such purpose. The Parties acknowledge and agree that information furnished pursuant to this Section 6.7 shall be subject to the provisions of Section 6.8.

6.8 Confidentiality

The terms of the NDA are hereby incorporated herein by reference and shall continue to be in full force and effect and each of the Parties agrees and acknowledges that the Purchaser shall be bound by the terms of the NDA on the same terms as The Catalyst Capital Group Inc.

6.9 No Solicitation

- (a) The Purchaser agrees and acknowledges that, if this Agreement is terminated, for a period of two years, it shall not, and shall not cause its Affiliates to, directly or indirectly, induce or solicit, attempt to induce or solicit or assist any third party in inducing or soliciting any employee or consultant of any of the Globalive Entities or the Seller, to leave such Person or to accept employment or engagement elsewhere. Notwithstanding the foregoing, the Purchaser shall be permitted to recruit through the posting of a general advertisement or through an employment agency, provided that the Purchaser shall not encourage or advise such agency to approach or target any specific employee or consultant of the Globalive Entities and the Seller.
- (b) Except as set out in Schedule 6.9(b), the Seller agrees and acknowledges that, from the date hereof for a period of two years from the Closing Date or the termination of this Agreement, it shall not, and shall not cause its Affiliates to, directly or indirectly, induce or solicit, attempt to induce or solicit or assist any third party in inducing or soliciting any employee or consultant of any of the Purchaser or its Affiliates, to leave such Person or to accept employment or engagement elsewhere. Notwithstanding the foregoing, the Seller shall be permitted to recruit through the posting of a general advertisement or through an employment agency, provided that the Seller shall not encourage or advise such agency to approach or target any specific employee or consultant of the Purchaser or its Affiliates.

6.10 Notice of Certain Events

- (a) From the date hereof until the Closing, each Party hereto (the "**Notifying Party**") shall promptly notify the others in writing of:
 - (i) any fact, circumstance, event or action the existence, occurrence or taking of which would prevent the Notifying Party from delivering the certificates contemplated by Sections 7.1 or 7.2, respectively;
 - (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction; and

- (iii) any notice or other communication from any Governmental Authority that threatens to enjoin the consummation of the Transaction.
- (b) The receipt by a Party of information pursuant to this Section 6.9 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Notifying Party in this Agreement.

6.11 Tax and Financial Matters

- (a) The Purchaser shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Globalive Entities after the Closing Date. The Seller and GTH shall be given the opportunity to review, comment upon and suggest changes or corrections to, any Tax Returns required to be filed by the Globalive Entities after the Closing Date which include any Seller Tax Period and any amendments to such Tax Returns or any Tax Returns filed by any of the Globalive Entities prior to the Closing (and the work papers of the Globalive Entities and its and their accountants used in the preparation thereof), in each case, prior to the filing thereof (but in no event less than thirty days prior to such filing). The Purchaser shall, and shall cause the Globalive Entities to, fully cooperate with and assist the Seller and GTH (including allowing access by the Seller and GTH and their representatives to the books and records (written and electronic) of the Globalive Entities and allowing the Seller and GTH (and their representatives) to make copies thereof) in connection with the review by the Seller and GTH of any such Tax Returns or amendments, and the Seller and GTH (and their representatives) shall not be charged by the Purchaser with any cost or expense for the assistance rendered by the Purchaser or the Globalive Entities in connection therewith.
- (b) The Purchaser and the Seller shall for all Canadian and foreign Tax purposes report the purchase and sale hereunder and the transactions contemplated herein in accordance with their form set out herein (and none of them shall make any available Tax elections inconsistent therewith).
- (c) For any period ending on or before the Closing Date (including, without limitation, for the period from the prior quarter-end or year-end through and as of the Closing Date), the Purchaser agrees to provide and cause each of the Globalive Entities to provide all financial and other information and documentation (including, without limitation, balance sheet, income statement, variance analysis, reporting package, detailed supporting schedules of accounts, tax provision for financial reporting purposes, fluctuation analysis, detailed trial balance up-load files, ultimates, etc.), which each of the Globalive Entities has provided to the Seller and GTH in the ordinary course of business for each quarter-end, and do and cause each of the Globalive Entities to do any and all acts related to the foregoing, including but not limited to:
 - (i) provide any detailed data reporting, including through all electronic systems, in a manner consistent with past practice and past time frames;

- (ii) provide support and responses to the Seller's and GTH's questions, as reasonably required, in respect of such information and documentation for quarterly or year-end periods prior to the Closing Date and for the period from the last quarterly or year-end period through and as of the Closing Date, in a manner consistent with past practice and past time frames; and
 - (iii) provide any required assistance to the Seller and GTH for financial reporting purposes, including without limitation, the projections of financial performance of each of the Globalive Entities.
- (d) The Seller is responsible for paying all Taxes of the Globalive Entities for the Seller Tax Period to the extent such Taxes are not reflected in the books, records or accounts of the Globalive Entities; provided, however, that the Seller shall not be responsible for paying any Taxes of the Globalive Entities or the Purchaser resulting from the Pre-Closing Reorganization.
- (e) CF III and CF IV shall ~~ensure that~~ **each cause** the Purchaser has the requisite financial resources to honour its obligations ~~under~~ **to pay and perform, on a timely basis, all liabilities and obligations of any kind of or owing by the Purchaser at any time to any of the Seller or GTH under or in connection with the Transaction Documents on a timely basis, and the parties acknowledge that the failure of either CF III or CF IV to cause the Purchaser to do so shall create an immediate and independent cause of action in favour of the Seller or GTH as against CF III and/or CF IV.**

6.12 Cooperation

- (a) Each of the Parties hereto shall, or shall cause their respective Affiliates to, at all times after the Closing Date and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting Party (other than in respect of the cost or expense of preparing, drafting or negotiating any Transaction Document at the Closing, for which each Party shall be solely responsible for its own costs and expenses in accordance with Section 10.3), all further acts, documents and things as may be required or necessary for the purposes of giving effect to the Transaction Documents, including such other instruments of sale, transfer, conveyance, assignment, confirmation, certificates and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign the Purchased Shares and to effectuate the transactions contemplated herein.
- (b) The Seller agrees that it shall use its commercially reasonable efforts to facilitate discussions between the Purchaser and the employees of the Globalive Entities (including employees seconded to a Globalive Entity) following the date hereof until the Closing Date with respect to the on-going employment of the employees by the Globalive Entities following Closing; provided, however, that the Seller shall not be obligated to make any termination, severance, retention or similar payments to the employees or to indemnify the Purchaser for any such amounts

(and such amounts shall not be included in the determination of the Closing Date Working Capital) if such payments become an obligation of the Seller or the Globalive Entities solely as a result of the actions of the Purchaser prior to or during the Interim Period.

- (c) The Seller agrees to use its commercially reasonable efforts to assist the Purchaser in discussing potential refinancing alternatives with the vendors pursuant to the Vendor Loan Facilities and to make all information requested by the Purchaser, acting reasonably, available to the Purchaser to facilitate its discussions with third parties regarding potential post-Closing replacement financing for the Vendor Loan Facilities provided that any such third party enters into a confidentiality agreement with the Purchaser and the Seller in a form satisfactory to the Seller, acting reasonably.
- (d) GTH shall publicly announce the Transaction contemplated hereby promptly following the execution of this Agreement by the Parties, the text and timing of such announcement to be approved by the Seller in advance, acting reasonably. No Party shall: (i) issue any press release or otherwise make public announcements with respect to the Transaction or this Agreement without the consent of the other Parties (which consent shall not be unreasonably withheld or delayed); or (ii) except as expressly provided herein, make any filing with any Governmental Authority with respect thereto without prior consultation with the other Parties; provided, however, that (a) the foregoing shall be subject to each Party's overriding obligation to make any disclosure or filing required under applicable Laws and stock exchange rules, and (b) the Seller shall be permitted to provide a copy of this Agreement to the lenders under the Vendor Loan Facilities, provided that, in respect of any such lender which has made a proposal to acquire the Business within the 12 months preceding the date hereof, the Seller shall be permitted to provide a copy solely to the counsel of such lender, provided, further, that such counsel has provided a written undertaking to the Purchaser that it will not copy or distribute this Agreement or disclose the commercial terms hereof to any Person and such legal counsel shall be provided a copy of this Agreement for the sole purpose of confirming the accuracy of the description of the Transaction in any public announcement; and provided further that in all instances the Party making such disclosure shall use all reasonable endeavours to give prior oral or written notice to the other Parties and reasonable opportunity to review or comment on the disclosure or filing, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure or filing.

6.13 Court Ordered Arrangement

Notwithstanding anything else contained herein, the Seller shall be entitled to protect the Business against any action taken by the lenders under the Vendor Loan Facilities, including by obtaining any stay or other protective measure from a court against any action by a lender under the Vendor Loan Facilities to enforce security thereunder and, after conferring with the consent of the Purchaser, the Seller may effect the Transaction by means of a court ordered plan of arrangement.

The Purchaser agrees, to the extent necessary to fulfill its obligations under this Agreement, to be a consenting and cooperating party in any court approved arrangement proceeding.

6.14 Officers' and Directors' Insurance and Indemnification

The Purchaser shall, or shall cause each of the Globalive Entities to either: (i) continue in force and in good standing, for the period from the Closing Date until six years after the Closing Date, all policies of directors' and officers' liability insurance maintained by the Globalive Entities as at the date hereof; or, in the event the insurance referenced in (i) is not held in the name of a Globalive Entity or the Purchaser chooses, in its sole discretion to cancel to such insurance, (ii) purchase, for the period from the Closing Date until six years after the Closing Date, prepaid non-cancellable run off directors' and officers' liability insurance providing coverage for the present and former directors and officers of each of the Globalive Entities with respect to any claims arising from facts or events that occurred on or prior to the Closing (including in connection with this Agreement or the transactions contemplated hereby) on terms comparable to those contained in the current insurance policy of each of the Globalive Entities.

6.15 Use of Globalive Name

As soon as reasonably practicable, and in any event no later than 90 days following the Closing Date, the Purchaser shall and shall cause the Globalive Entities to abandon and renounce, all common law and statutory rights, if any, attached to the Globalive trade-name or any other name containing "Globalive". For greater certainty, the Purchaser and the Seller agree that they will not attempt, nor permit any of their Affiliates to attempt, to enforce any right (whether past, present or future) with respect to the Globalive trade-name, or any variation thereof, including any trade-name or trade-mark in existence now or in the future, against any party without the consent of GTH, which consent may be unreasonably withheld. Further, the Purchaser agrees that it shall cause the Seller to take all necessary corporate steps to complete the change of the Seller's name to a name that does not include "Globalive" promptly following Closing and in event within 90 days following the Closing Date.

7. CONDITIONS PRECEDENT TO THE PERFORMANCE BY THE PURCHASER AND THE SELLER OF THEIR OBLIGATIONS UNDER THIS AGREEMENT

7.1 Purchaser's Conditions

The obligation of the Purchaser to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, the following conditions precedent (each of which is hereby acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by the Purchaser in whole or in part):

- (a) Seller's Representations and Warranties Certificate. The Seller shall have delivered a certificate, in the form set out in Schedule 7.1(a), confirming that the representations and warranties of the Seller set forth in Article 4 of this Agreement (i) if qualified in any respect as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, and (ii) if not qualified as to materiality or Material Adverse Effect or Material Adverse Change, are true and

correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date).

- (b) Seller's Covenants Certificate. The Seller shall have delivered a certificate, in the form set out in Schedule 7.1(a), confirming that the Seller has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date in all material respects.
- (c) Material Adverse Effect. Since the date of this Agreement, there shall have not been any event, occurrence, development or state of circumstances that, individually or in the aggregate, has had a Material Adverse Effect or Material Adverse Change on the Business.
- (d) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority shall have been made, or proceeding commenced, which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction.
- (e) Trademark License Agreement. GWMC and Wind Telecomunicazioni, SPA, shall have executed and delivered the Trademark License Agreement.
- (f) Deliveries. The Seller shall have made all the deliveries to the Purchaser described in Section 3.2.
- ~~(g) Injection of Cash. The Seller shall have advanced not less than \$~~10~~ million in cash to GWMC for use by it as working capital.~~

7.2 Seller's Conditions

The obligations of the Seller to complete the Transaction shall be subject to the satisfaction of, or compliance with, at or before the Closing, each of the following conditions precedent (each of which is hereby acknowledged to be inserted for the exclusive benefit of the Seller and may be waived by the Seller in whole or in part):

- (a) Purchaser's Representations and Warranties Certificate. The Purchaser shall have delivered a certificate, in the form set out in Schedule 7.2(a), confirming that the representations and warranties of the Purchaser set forth in Article 5 of this Agreement (i) if qualified in any respect as to materiality, are true and correct, and (ii) if not qualified as to materiality, are true and correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date).

- (b) Purchaser's Covenants Certificate. The Purchaser shall have delivered a certificate, in the form set out in Schedule 7.2(a), confirming that the Purchaser has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date in all material respects.
- (c) No Injunction. No preliminary or permanent injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling issued by a Governmental Authority shall have been made, or proceeding commenced, which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the Transaction.
- (d) Deliveries. The Purchaser shall have made all of the deliveries to the Seller described in Section 3.3.

7.3 General Conditions

The obligation of the Purchaser and the Seller to complete the Transaction is subject to the following conditions, which are for the benefit of the Purchaser and the Seller:

- (a) Competition Act Approval. Without limiting the Purchaser's obligations herein, including in Section 6.4, the Purchaser having obtained Competition Act Approval, which approval shall not be subject to any terms or conditions that would in the opinion of the Purchaser acting reasonably, have a material impact on the Transaction, and subject to no other material conditions unacceptable to the Purchaser acting reasonably.
- (b) Industry Canada Approval. Without limiting the Purchaser's obligations herein, including in Section 6.5, the Purchaser having obtained Industry Canada Approval on substantially similar conditions and in substantially similar form, in the opinion of the Purchaser acting reasonably, as currently applied to the Spectrum Licences and subject to no other material conditions unacceptable to the Purchaser acting reasonably.
- (c) Pre-Closing Reorganization. All of the Pre-Closing Reorganization steps set out in Schedule 6.6 shall have been completed prior to the Closing.

8. TERMINATION

8.1 Termination

This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of each of the Parties;
- (b) by the Purchaser by written notice to the Seller if any of the conditions set forth in Sections 7.1 and 7.3 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of the Purchaser to perform or comply with any of

the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

- (c) by the Seller by written notice to the Purchaser if any of the conditions set forth in Sections 7.2 and 7.3 shall not have been fulfilled by the Outside Date, unless such failure shall be due to the failure of the Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (d) by the Purchaser or by the Seller in the event that any injunction (initiated pursuant to an action commenced by a third party) or other order, decree, or ruling is issued by a Governmental Authority, in each case that is final and non-appealable, or any statute, rule, regulation or executive order is promulgated or enacted by a Governmental Authority restraining, enjoining, prohibiting, or otherwise making illegal the consummation of the Transaction.

8.2 Effect of Termination

In the event of termination of this Agreement in accordance with this Agreement prior to the Closing, this Agreement shall forthwith become void and there shall be no liability on the part of any Party hereto, except as otherwise expressly contemplated hereby, and provided that the provisions of Sections 6.7 (Confidentiality), 8.2 (Effect of Termination), 9 (Indemnification), 10.3 (Expenses), 10.4 (Entire Agreement), 10.9 (Severability), 10.10 (Enforcement of Agreement) and 10.11 (Governing Law) shall survive any termination hereof, provided further that neither the termination of this Agreement nor anything contained in this Section 8.2 shall relieve any Party hereto from any liability for a breach of any obligation contained in this Agreement prior to such termination.

9. INDEMNIFICATION

9.1 Indemnification by the Seller

GTH (the "**Seller Indemnifier**") will indemnify and save harmless the Purchaser, its Affiliates and their respective directors and officers (collectively, the "**Purchaser Claimants**") from and against any Loss directly or indirectly suffered by any of the Purchaser Claimants resulting from any breach of representation, warranty or covenant made or given by any of the Seller or GTH in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement. Any indemnification under this Section 9.1 for Losses arising from, related to, or in respect of Taxes shall (i) be limited to Losses arising from, related to, or in respect of Losses arising from a breach of Section 4.9 or Section 6.11(d), and (ii) not extend to Taxes payable as a result of the Pre-Closing Reorganization.

9.2 Indemnification by the Purchaser

The Purchaser shall indemnify and save the Seller, GTH, their Affiliates and their respective directors and officers (collectively, the "**Seller Claimants**") from and against any Loss directly or indirectly suffered by any of the Seller Claimants resulting from any breach of representation,

warranty or covenant made or given by the Purchaser in this Agreement or in any certificate or document delivered pursuant to or contemplated by this Agreement.

9.3 Knowledge of Claim

No Party shall be liable under this Article 9 for any Loss resulting from or relating to any inaccuracy in or breach of any representation or warranty in this Agreement if the Party seeking indemnification for such Loss had actual knowledge of such Loss and the ability to make a Claim with respect to such Loss prior to Closing.

9.4 Notice of Claims

A Claimant shall promptly, and in any event within (i) thirty (30) days of receiving written notice of the commencement of Proceedings that give rise, or may give rise, to a Third Party Claim or (ii) sixty (60) days of becoming aware of a Direct Claim, give notice to the relevant Indemnifier(s) of such Claim. Notice of any Claim shall specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Claim, and any provisions of the Agreement, or of any Laws, relied upon; and
- (b) the amount of the Claim or, if an amount is not then determinable, an approximate and reasonable estimate (which shall be without prejudice to such Claimant's rights) of the Loss that has been or may be sustained by the Claimant in respect thereof;

provided that a failure to give notice of a Claim within the time periods set forth in this Section 9.4 shall not reduce such a Claimant's rights hereunder, except to the extent of any actual prejudice suffered by an Indemnifier as a result of such failure.

9.5 Defence of Third Party Claims

Provided that GTH (in the event a Purchaser Claimant has made a Claim) or the Purchaser (in the event that the Seller Claimants have made a Claim) has unconditionally acknowledged in writing its obligation to indemnify the Claimant with respect to all Loss incurred or which may be incurred by a Claimant in respect of any Third Party Claim, the Indemnifier shall have the right, by giving notice to that effect to the Claimant not later than thirty (30) days after receipt of notice from the Claimant of such Third Party Claim, to elect to assume the defence of the Third Party Claim at the Indemnifier's own expense and by the Indemnifier's own counsel; *provided* that the Indemnifier shall not be entitled to assume the defence of any Third Party Claim: (i) alleging any criminal or quasi-criminal wrongdoing (including fraud), (ii) which impugns the reputation of a Claimant or (iii) where the Person commencing Proceedings giving rise to the Third Party Claim is a Governmental Authority. Prior to settling or compromising any Third Party Claim in respect of which an Indemnifier has the right to assume the defence, the Indemnifier shall obtain the consent of the Claimant regarding such settlement or compromise, which consent shall not be unreasonably withheld or delayed by the Claimant.

The Claimant shall be entitled to participate in (but not control) the defence of any Third Party Claim the defence of which has been assumed by an Indemnifier and in so doing the Claimant may retain its own counsel provided that the expenses of such counsel shall be paid by the Indemnifier only if the Indemnifier has consented to the retention of such counsel at its expense or if the named parties to any Third Party Claim include the Indemnifier and the Claimant and the representation of both by the same counsel would be inappropriate due to the actual or potential differing interests between them.

With respect to any Third Party Claim in respect of which a Claimant has given notice to an Indemnifier pursuant to this Section 9.4 and in respect of which the Indemnifier has not elected to assume the defence, the Indemnifier may participate in (but not control) such defence assisted by counsel of its own choosing at the Indemnifier's sole cost and expense and, prior to settling or compromising any such Third Party Claim, the Claimant shall obtain the consent of the Indemnifier regarding such settlement or compromise, which consent shall not be unreasonably withheld or delayed by the Indemnifier.

9.6 Assistance for Third Party Claims

Each Indemnifier and each Claimant will use all reasonable efforts to make available to the Party which is undertaking and controlling the defence of any Third Party Claim pursuant to the provisions of Section 9.5 (the "**Defending Party**").

- (a) those of its employees whose assistance, testimony or presence is necessary to assist the Defending Party in evaluating and in defending such Third Party Claim; and
- (b) all documents, records and other materials in the possession of such Indemnifier or Claimant reasonably required by the Defending Party for its use in defending such Third Party Claim;
- (c) and shall otherwise co-operate with the Defending Party.

The Indemnifier shall be responsible for all reasonable out-of-pocket expenses associated with making such documents, records and materials available and for all reasonable out-of-pocket expenses of any employees made available to the Defending Party hereunder.

9.7 Direct Claims

An Indemnifier shall have 30 days following receipt of notice of a Direct Claim to make such investigation of the Claim as the Indemnifier considers necessary or desirable. For the purpose of such investigation, the Claimant shall make available to the Indemnifier and its representatives the information relied upon by the Claimant to substantiate the Claim.

If the Indemnifier and the Claimant agree at or prior to the expiration of the 30-day period referred to above in this Section 9.8 (or any extension thereof agreed upon by the Indemnifier as to the validity and amount of such Direct Claim, the Indemnifier shall immediately pay to the Claimant the full agreed upon amount of such Direct Claim. If the Indemnifier and the Claimant do not agree within such period (or any mutually agreed upon extension thereof) as to the validity and

amount of any Direct Claim, the Claimant shall be free to pursue such legal or equitable remedies as may be available to the Claimant.

9.8 Additional Rules and Procedures

The obligation of the Seller Indemnifier to indemnify the Purchaser Claimants, and the Purchaser to indemnify the Seller Claimants, pursuant to this Article 9 shall also be subject to the following:

- (a) notice of any Claim arising as a result of a breach of a representation or warranty referred to in Articles 4 or 5 shall be given not later than the date, if any, on which, pursuant to Section 10.1, such representation or warranty terminates;
- (b) the obligation of the Seller Indemnifier to indemnify the Purchaser Claimants in accordance with Section 9.1, and the Purchaser's obligation to indemnify the Seller Claimants in accordance with Section 9.2, shall only apply to the extent that Loss suffered or incurred by the Claimant in respect of which the relevant Indemnifier is required to indemnify exceeds, in the aggregate, \$10,000,000, in which event in which event all such Loss, including such \$10,000,000 amount, may be recovered;
- (c) the aggregate liability of the Seller for its indemnification obligations pursuant to Section 9.1 shall be limited to the amount of the Seller Proceeds;
- (d) the only Claim that the Purchaser shall be entitled to make with respect to Taxes is pursuant to Section 9.1 and, to avoid duplication, such Claim with respect to Taxes cannot be made to the extent such Taxes were reflected in the calculation of Current Liabilities on the Final Closing Date Balance Sheet;
- (e) the aggregate liability of the Purchaser for its indemnification obligations pursuant to Section 9.2 shall be limited to the amount of the Seller Proceeds.

9.9 Seller's Representative

- (a) The Seller hereby appoints GTH to act as its representative with full power and authority to take all actions under this Agreement on behalf of the Seller with respect to the matters set out in this Section 9.8. The Seller constitutes and appoints GTH as its true and lawful attorney and agent, with full power of substitution, in the name of the Seller to execute and deliver any documents, certificates, transfer or assignment forms, or any other instruments required to be executed or delivered by them pursuant to this Agreement. Such appointment, being coupled with an interest, shall be irrevocable by the Seller and will not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Seller.
- (b) GTH shall take any and all actions, on behalf of the Seller, which it believes are necessary or appropriate under this Agreement, including giving and receiving any notice or instruction permitted or required under this Agreement, defending all applicable Claims pursuant to Article 9, consenting to, compromising or settling all applicable Claims pursuant to Article 9, conducting negotiations with the Purchaser

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and its agents regarding any Claims, dealing with the Purchaser under this Agreement with respect to all matters arising under this Agreement, including making any Claims it determines to be appropriately made by the Seller, taking any and all other actions specified in or contemplated by this Agreement, and engaging counsel, accountants or other representatives in connection with the foregoing matters. Without limiting the generality of the foregoing and notwithstanding anything else in this Agreement to the contrary, GTH will have full power and authority to consent to any amendment of this Agreement on behalf of the Seller in its capacity as representative of the Seller. Without limiting the power and authority of GTH under this Section 9.8, GTH shall have full power and authority, on behalf of the Seller, to interpret the representations, warranties, covenants and agreements set forth in this Agreement and the other documents and instruments delivered in connection with the Transaction contemplated hereby. For certainty, the power and authority conferred upon GTH pursuant to this Section 9.8 shall in no way impose a binding interpretation upon the Purchaser or its Affiliates.

- (c) The Seller hereby authorizes GTH to:
- (i) receive all notices or documents given or to be given to the Seller pursuant hereto or in connection herewith and to receive and accept service of legal process in connection with any suit or proceeding arising under this Agreement;
 - (ii) engage counsel, and such accountants and other advisors and incur such other expenses in connection with this and the transactions contemplated hereby as GTH may in his sole discretion deem appropriate, with such fees or expenses being for the account of the Seller;
 - (iii) do all things contemplated by Article 9;
 - (iv) after the Closing Date, take such action as GTH may in its sole discretion deem appropriate;
 - (v) waive any inaccuracies in the representations or warranties of the Purchaser contained in this Agreement or in any document delivered by the Purchaser pursuant hereto; and
 - (vi) take all such action as may be necessary to carry out any of the transactions contemplated by this Agreement, including agreeing with the Purchaser as to (i) the proper interpretation of the Transaction Documents, (ii) the defense and /or settlement of any claims for which indemnification is sought pursuant to Article 9 and (iii) any waiver of any obligation of the Purchaser, all of which shall be binding upon the Seller.
- (d) To the extent that GTH incurs any costs or expenses in the course of the performance of its duties as the representative of the Seller under this Agreement (including any amounts paid by GTH under this Agreement), the Purchaser shall

have no liability with respect to same but GTH shall be entitled to be reimbursed for those expenses from the Seller.

9.10 Indemnification Claim

Article 9 sets out the sole and exclusive manner by which the Purchaser may seek monetary compensation from the Seller and GTH, or by which the Seller or GTH may seek monetary compensation from the Purchaser, for Claims pursuant to this Agreement.

9.11 Indemnification Payments

All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

10. MISCELLANEOUS

10.1 Survival of Representations, Warranties and Covenants

- (a) The representations and warranties of the Seller and GTH contained in this Agreement and in any Contract, instrument, certificate or other document executed or delivered by the Seller and GTH pursuant to this Agreement (other than any representations and warranties in GWMC's Factual Matters Certificates which shall not survive closing and for which the Seller makes no representation and warranty and shall have no liability) shall continue in full force and effect until the date that is eighteen months following the Closing Date, except that: (i) the representations and warranties of the Seller contained in Sections 4.2 (Ownership of Purchased Shares), 4.3 (Authority and Binding Effect), 4.5 (Capitalization) and 4.8 (Related Party Liabilities and Obligations) shall continue in full force and effect for a period of forty-eight months following the Closing Date, (ii) the representations and warranties of the Seller contained in Sections 4.1 (Organization and Good Standing) and 4.6 (Consents; Compliance with Other Instruments) shall continue in full force and effect for a period of thirty-six months following the Closing Date; and (iii) the representations and warranties of the Seller contained in Section 4.9 (Taxes) shall survive until 60 days following the expiration of the applicable period during which an assessment, determination, reassessment, demand or similar document (giving effect to any waiver, mitigation or extension thereof) may be made by a Governmental Authority under applicable Tax Law in respect of the matters covered by Section 4.9.
- (b) The representations and warranties of the Purchaser contained in this Agreement and in any Contract, instrument, certificate or other document executed or delivered by the Purchaser pursuant to this Agreement shall continue in full force and effect until the date that is twenty-four months following the Closing Date.
- (c) Notwithstanding Section 10.1(a) and 10.1(b), the Parties hereto agree that a Party may bring a cause of action against any other Party for fraud (whether arising out of a breach of any of the representations and warranties set forth herein or otherwise). This Section 10.1 shall not limit any covenant or agreement of the Parties which by

its terms contemplates performance after the Closing or the bringing of any cause of action claiming, based upon or arising out of a breach thereof.

10.2 Payments

All amounts paid pursuant to this Agreement shall be paid by wire transfer in immediately available funds to the recipient of such payment.

10.3 Expenses

Each of the Parties shall pay their own costs and expenses incurred in connection with the Transaction Documents and the Transaction (including legal, accounting, investment banking and financial advisory fees and expenses).

10.4 Entire Agreement

This Agreement and the Transaction Documents contain the complete agreement among the Parties with respect to the transactions contemplated thereby and supersede all prior agreements and understandings, oral or written, among the Parties with respect to such transactions, other than the confidentiality agreement dated March 21, 2014 among VimpelCom Ltd., Global Telecom Holding S.A.E. and The Catalyst Capital Group Inc. ("NDA"), which shall survive the execution and delivery of this Agreement in accordance with its terms. The Parties hereto have not made any representation or warranty except as expressly set forth in this Agreement or in any document, certificate or Schedule delivered pursuant hereto.

10.5 Copies; Counterparts; and Facsimiles

This Agreement may be executed in any number of counterparts, and may be delivered originally, by facsimile or by Portable Document Format ("**PDF**") and each such original, facsimile copy, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

10.6 Notices

All notices, demands, requests or other communications that may be or are required to be given, served or sent by any Party to any other Party pursuant to this Agreement shall be deemed to have been duly given and made if in writing and delivered to the Party, either (a) if served by personal delivery upon the Party for whom it is intended, (b) if delivered by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by a reputable overnight courier service, or (c) if sent by facsimile transmission or e-mail, provided that receipt of each such facsimile transmission or e-mail is promptly confirmed by facsimile or e-mail confirmation thereof, addressed as follows:

- (a) If to the Purchaser, CF III or CF IV:

The Catalyst Capital Group Inc.
Royal Trust Tower, TD Bank Centre

77 King Street West
Suite 4320, P.O. Box 212
Toronto, Ontario M5K 1J3

Attention: Gabriel de Alba
Fax: 416.945.3060
E-mail: gdealba@catcapital.com

With a copy to (which shall not constitute notice):

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Toronto, Ontario M5H 2T6

Attention: Jon Levin and Dan Batista
Fax: 416.364.7813
E-mail: jlevin@fasken.com
dbatista@fasken.com

(b) If to the Seller:

Globalive Investment Holdings
Corp. 207 Queens Quay West
Toronto, Ontario M5J 1A7

Attention: Nora Brooks, Chief Legal Officer
Fax: [■]
E-mail: nbrooks@windmobile.ca

With a copy to (which shall not constitute notice):

Global Telecom Holding S.A.E
2005A Nile City Towers, South Tower
Corniche El Nile, Ramlet Beaulac
1221, Cairo, Egypt

Attention: David Dobbie
Fax: [■]
E-mail: ddobbie@gtelecom.com and
Felix.saratovsky@vimpelcom.com

With a copy to (which shall not constitute notice):

Bennett Jones I.L.P
Suite 3400, 1 First Canadian Place
Toronto, Ontario M5X 1A4

Attention: Mark Rasile and Christian Gauthier
Fax: +1416-863-1716
E-mail: rasilem@bennettjones.com
gauthierc@bennettjones.com

(c) If to GTH:

Global Telecom Holding S.A.E.
2005A Nile City Towers – South Tower
Cornishe El Nile Ramlet Beaulac
Cairo, Egypt 11221

Attention: David Dobbie, C.I.O and General Counsel
Fax: [■]
E-mail: ddobbie@gtelecom.com and
Felix.saratovsky@vimpelcom.com

With a copy to (which shall not constitute notice):

Bennett Jones LLP
Suite 3400, 1 First Canadian Place
Toronto, Ontario M5X 1A4

Attention: Mark Rasile and Christian Gauthier
Fax: +1 416-863-1716
E-mail: rasilem@bennettjones.com
gauthierc@bennettjones.com

Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication that is mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes on the date of personal delivery, the date of confirmation of receipt by facsimile as aforesaid, the date of confirmation of receipt by email as aforesaid or after mailing in accordance with the foregoing or delivering overnight by nationally recognized courier service that guarantees overnight delivery, on the date delivered, or at such time as delivery is refused by the addressee upon presentation.

10.7 Assignment; Successors and Assigns

The Purchaser may, without the consent of the other Parties, assign this Agreement and its rights and benefits hereunder to an Affiliate of it on condition that the Purchaser remains liable to observe and perform all of its covenants and obligations hereunder. Subject to the foregoing, this Agreement may not be assigned by any Party hereto without the written consent of the other Parties. Any purported assignment or transfer by a Party of any of its rights and/or obligations under this Agreement, other than pursuant to and in accordance with this Section shall be void *ab*

initio. Subject to the foregoing, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns.

10.8 Amendment

This Agreement may be amended, modified or supplemented only by a written instrument executed by the Parties.

10.9 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be enforceable.

10.10 Enforcement of Agreement

The Parties agree that irreparable damage to the Seller for which monetary damages, even if available, would not be an adequate remedy would occur in the event that any of the provisions of this Agreement (including the failure by any Party to take such actions as are required of it hereunder to consummate the transactions contemplated by this Agreement) was not performed in accordance with its specified terms or was otherwise breached. It is accordingly agreed that the Seller shall be entitled to an injunction or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which the Seller are entitled at Law or in equity, and any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable is hereby waived.

10.11 Governing Law

This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein, without giving effect to the conflict of Laws principles thereof.

10.12 Choice of Forum and Consent to Jurisdiction

Any action arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, shall be brought only in a federal or provincial court having jurisdiction and venue in Ontario, Canada, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of such courts and agrees that venue in Ontario is proper. Each of the Parties hereby irrevocably waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any legal action or Proceeding, any defense or any claim that it is not personally subject to the jurisdiction of the above-named Ontario courts for any

reason, including claims that such Party may be immune from the above-described legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise), or that such Proceeding is brought in an inconvenient or otherwise improper forum or that this Agreement or any of the other aforementioned documents, instruments or agreements, or the subject matter hereof or thereof, may not be enforced in or by such courts, or that the same are governed by the Laws of a jurisdiction other than Ontario. Each of the Parties hereby specifically agrees that it shall not bring any actions, suits or Proceedings arising out of or under this Agreement, any other document, instrument or agreement contemplated herein or delivered pursuant hereto, or the transactions contemplated by this Agreement or any of such other documents, instruments or agreements, in the courts of any jurisdiction other than the above-named courts of Ontario, that any such action brought by any Party shall be dismissed upon the basis of the agreements, terms and provisions set forth in this Section 10.12, and that any order or judgment obtained in any such action from a court other than the courts of Ontario shall be void *ab initio* provided that, notwithstanding the foregoing provisions of this Section 10.12, any Party may bring and enforce an action seeking injunctive or other equitable relief in any court of competent jurisdiction.

[Signatures contained on the next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

<@>

By: _____
Name:
Title:

**CATALYST FUND LIMITED
PARTNERSHIP III**, by its general partner,
Catalyst Fund General Partner III Inc.

By: _____
Name:
Title:

**CATALYST FUND LIMITED
PARTNERSHIP IV**, by its general partner,
Catalyst Fund General Partner IV Inc.

By: _____
Name:
Title:

GLOBAL TELECOM HOLDING S.A.E.

By: _____
Name:
Title:

**GLOBALIVE HOLDINGS INVESTMENT
CORP.**

By: _____
Name:
Title:

SCHEDULE 1.1(A)

FORM OF WORKING CAPITAL CURRENT ASSETS AND CURRENT LIABILITIES

SCHEDULE 1.1(B)

[Intentionally Deleted]

SCHEDULE 1.1(C)

~~FORM OF ESCROW AGREEMENT~~

[Intentionally Deleted]

SCHEDULE 1.1(D)

FORM OF TRADEMARK LICENCE AGREEMENT

**SCHEDULE 1.1(E)
PROPERTIES AND LEASES**

SCHEDULE 1.1(F)

OWNED INTELLECTUAL PROPERTY AND TECHNOLOGY

SCHEDULE 1.1(G)

WIND MARKS

SCHEDULE 1.1(I)

FORM OF GWMC'S FACTUAL MATTERS CERTIFICATE

GLOBALIVE WIRELESS MANAGEMENT CORP.
(the "Corporation")

OFFICERS' CERTIFICATE

TO: [The Purchaser]
AND TO: BENNETT JONES LLP
AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to a share purchase agreement dated August [•], 2014 among the Purchaser, Global Telecom Holdings S.A.E., Globalive Investment Holdings Corp. and others (the "Agreement").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, Pietro Cordova, Brice Scheschuk and Tamer Morsy, being the duly appointed Chief Operating Officer, the Chief Financial Officer and the Chief Technology Officer of the Corporation, hereby certify for and on behalf of the Corporation, and without personal liability and not in their personal capacity, that the factual matters set forth on Appendix "A" are true and correct as at the date hereof (except for representations and warranties made as of a specified date, the accuracy of which shall be determined as of that specified date).

DATED the _____ day of _____, 2014.

GLOBALIVE WIRELESS MANAGEMENT
CORP.

[•]
[•]

[•]
[•]

[•]
[•]

APPENDIX "A"

For the purposes of this Certificate, the following terms shall have the respective meanings specified below and grammatical variations of such terms shall have corresponding meanings. All other capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement:

"Books and Records" means all books of account, GWMC Financial Statements and any interim period financial statements, personnel records of the employees, sales and purchase records, cost and pricing information, customer and supplier lists and files, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections and all other documents, files, correspondence in each case in possession of the Globalive Entities and relating to the Business;

"Contaminant" means any pollutants, dangerous substances, liquid wastes, hazardous wastes, hazardous materials, hazardous substances or contaminants;

"Environmental Activity" means any past, present or future activity, event or circumstance in respect of a Contaminant, including the storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation thereof, or the release, escape, leaching, dispersal or migration thereof into the natural environment, including the movement through or in the air, soil, surface water or groundwater;

"Environmental Laws" means any and all applicable international, federal, provincial, state, municipal, national or local laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, or any Environmental Activity;

"Personal Information" means information about an identifiable individual as more particularly defined in Privacy Law;

"Privacy Law" means the *Personal Information Protection and Electronic Documents Act* (Canada) and any similar provincial legislation governing the protection of personal information that is applicable to the Globalive Entities and/or the Business;

"Privacy Policy" means practices, policies and procedures of the Globalive Entities in respect of Personal Information;

1. Regulatory Compliance and Governmental Licences

- (c) To the knowledge of the Seller, the Seller and the Globalive Entities have operated and are currently operating in compliance with all applicable Laws, including all applicable rules, regulations, guidelines and policies of any Governmental Authority having jurisdiction over the Seller or the Globalive Entities, other than where such non-compliance would not result in a Material Adverse Effect.

- (d) To the knowledge of the Seller, the Globalive Entities possess such permits, certificates, licences, approvals, registrations, qualifications, consents and other authorizations (collectively, "**Governmental Licences**") issued by the appropriate Governmental Authorities necessary to conduct the business now operated by it that are material to the conduct of the Business (as such Business is currently conducted); (ii) each of the Globalive Entities is in material compliance with the terms and conditions of all such Governmental Licences; (iii) all of such Governmental Licences are in good standing, valid and in full force and effect; (iv) none of the Globalive Entities has received any notice of proceedings relating to the revocation, suspension, termination or modification of any such Governmental Licences, and there are no facts or circumstances, including without limitation facts or circumstances relating to the revocation, suspension, modification or termination of any Governmental Licences held by others, known to the Seller, that is reasonably likely to lead to the revocation, suspension, modification or termination of any such Governmental Licences if the subject of an unfavourable decision, ruling or finding, except where such revocation, suspension, modification or termination is not in respect of a material Governmental Licence or where such revocation, suspension, modification or termination would not, individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect; (v) none of the Globalive Entities is in default with respect to filings to be effected or conditions to be fulfilled in order to maintain such Governmental Licences in good standing; (vi) none of such Governmental Licences contains any term, provision, condition or limitation which would reasonably be expected to affect or restrict in any material respect the operations or the Business as now carried on; and (vii) none of the Globalive Entities has reason to believe that any party granting any such Governmental Licences is considering limiting, suspending, modifying, withdrawing or revoking the same, except where such limitation, suspension, modification, withdrawal or revocation would not be a Material Adverse Effect.

2. Contracts

Except as disclosed in Exhibit A to this Certificate or with respect to the Vendor Loan Facilities, the VimpelCom Loan Agreements and the Globalive Communications Loan Agreement, none of the Globalive Entities or, to the knowledge of the Seller, any of the other parties thereto, is in default or breach of, nor have the Globalive Entities received notice of default or breach of, or termination under, any Contract or Contracts, the performance of which involves consideration payable to or by the Globalive Entities in the aggregate in excess of \$100,000 in the 12 month period following the date hereof, and, to the knowledge of the Seller, there exists no state of facts which after notice or lapse of time or both that would constitute default or breach of such Contract.

3. Books and Records

GWMC has disclosed the existence of and made available to the Purchaser all material Books and Records. The Books and Records fairly and correctly set out and disclose in all material respects the financial position of the Globalive Entities and the Business in accordance with good business practice and all financial transactions relating to the Globalive Entities and the Business have been

fairly recorded in such Books and Records. No material information, records or systems pertaining to the operation or administration of Globalive Entities and the Business are in the possession of, recorded, stored, maintained by or otherwise dependent on any Person other than the Globalive Entities.

4. Privacy Matters

The Globalive Entities carry on and have carried on the Business in material compliance with the Privacy Policy and Privacy Law wherever such Personal Information may be situated. To the knowledge of the Seller, there are no facts or circumstances that could give rise to breach or alleged breach of, or non-compliance with, any Privacy Law.

5. Intellectual Property and Technology

- (e) Schedule 1.1(F) contains an accurate and complete list of all Owned Intellectual Property.
- (f) The Globalive Entities are the sole and exclusive owner of, and have good and marketable title to, all Owned Intellectual Property, free and clear of all Liens other than Permitted Liens.
- (g) The Globalive Entities are the owner of, or have the right to use, and have good and marketable title to, all Technology, free and clear of all Liens other than Permitted Liens.
- (h)
 - (i) To the knowledge of the Seller, the Owned Intellectual Property is valid and in full force and effect. All applications, registrations, filings, renewals and payments necessary to preserve the rights of the Globalive Entities in and to the Owned Intellectual Property have been duly filed, made, prosecuted, maintained and are in good standing;
 - (ii) To the knowledge of the Seller, all moral rights as defined under the *Copyright Act* (Canada) or any other applicable legislation or by operation of law in any applicable jurisdiction have been waived in writing in favour of the Globalive Entities and their respective successors or assignees with respect to the Owned Intellectual Property.
 - (iii) To the knowledge of the Seller, there is no pending, or threatened, litigation or proceeding in which the Owned Intellectual Property is alleged to be invalid or not properly in the name of the Globalive Entities.
- (i) Except as set out in Schedule 1.1(F), to the knowledge of the Seller, there is no pending, nor is there any threatened, litigation or proceeding which alleges that the exercise or use of the Technology or the Intellectual Property material to the operation of the Business would or does infringe the Technology or Intellectual Property of a third party.

- (j) Schedule 1.1(F) lists all material licence agreements to which the Globalive Entities are a party or by which the Globalive Entities are bound (whether as licensor, licensee or otherwise) with respect to the Technology or the Intellectual Property exercised, used or otherwise related to the Business. Except as provided in Schedule 1.1(F), to the knowledge of the Seller, there are no Orders, covenants not to sue, permits, grants, franchises, licences, agreements or arrangements relating to any of the Technology or the Intellectual Property exercised, used in or related to the Business, which bind, obligate or otherwise restrict the Globalive Entities.
- (k) To the knowledge of the Seller, no Technology exercised in, used in, material to or otherwise related to the Business contains any "back door", "drop dead device", "time bomb", "timer", "clock", "counter", "time lock", "file injector", "boot sector injector", "Trojan horse", "virus", or "worm" (as such terms are commonly understood in the software industry) or any other program code, instruction or set of instructions designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming, interfering or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system, Software, network, data file or operations, or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file, in each case, without the user's consent.
- (l) Each Globalive Entity has implemented measures at least as stringent as industry standard measures to protect all Technology and Intellectual Property exercised, used in or related to the Business from unauthorized intrusion, access and modification, and to adequately archive and back-up such Intellectual Property and Technology for back-up and disaster recovery purposes.
- (m) To the knowledge of the Seller, the execution of the Agreement and the consummation of the Transaction contemplated thereby will in no way affect the use of the Technology by the Globalive Entities.

6. Leased Properties

- (n) The Globalive Entities have no right, title or interest in any real property except for the Globalive Entities' leasehold interests in the Leased Property.
- (o) Schedule 1.1(E) sets forth a true and complete list of the Leases hereafter referred to in this Section 6(b) under which the Globalive Entities are a party or are bound, as lessee, sublessee, licensee or sublicensee. The names of the other parties to the Leases, the description of the Leased Property, the term, rent and other amounts payable under the Leases and all renewal options available under: (i) the Leases related to retail space with annual base rents in excess of ~~\$200,000~~ \$300,000; and (ii) all Leases related to office space, are accurately described in Schedule 1.1(E). Schedule 1.1(E) contains a list specifying the 10 tower leases in each of Calgary, Ottawa, Toronto and Vancouver with the highest rental fees payable. True, complete and correct copies of the Leases disclosed in Schedule 1.1(E) pursuant to

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the foregoing sentence have been provided to the Purchaser prior to the date of this Agreement.

- (p) Other than the Leases, none of the Globalive Entities are a party to or is bound, as lessee, sublessee, licence or sublicense, by any lease, sublease, licence or other instrument relating to real property. The Globalive Entities are exclusively entitled to all rights and benefits as lessee or sublessee under the Leases, and, other than disclosed in Schedule 1.1(E), the Globalive Entities have not sublet, assigned, licensed or otherwise conveyed any rights in the Leased Property or in the Leases to any other Person.
- (q) Each of the Leases is in full force and effect, unamended. Each of the Leases is valid and enforceable in accordance with its terms.
- (r) Each of the Leases covers the entire estate it purports to cover and entitles the Globalive Entities to the use, occupancy and possession of the real property specified in the Leases for the purposes such property is currently used.
- (s) All material rental and other payments and other obligations required to be paid and performed by the Globalive Entities pursuant to the Leases have been duly paid and performed. The Globalive Entities are not in default of any of their material obligations under any of the Leases. None of the landlords or other parties to the Leases is in material default of any of their obligations under their respective Leases. No material waiver, indulgence or postponement of the Globalive Entities's obligations under any of the Leases has been granted by the respective landlord thereunder. The Globalive Entities have not waived, nor omitted to take any action in respect of, any of its respective material rights under any of the Leases. There exists no event of default under any of the material Leases on the part of any of the Globalive Entities or event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under any of the material Leases. None of the terms and conditions of any of the Leases will be affected by, nor will any of the Leases be in default as a result of, the completion of the Transaction, and all consents of landlords or other parties to the Leases required in order to complete the Transaction have been obtained, or will have obtained by the Closing Time, and are, or once obtained will be, in full force and effect.
- (t) The use by the Globalive Entities of the Leased Properties is not in breach of any Laws, including any building, zoning or other statutes or any official plan, or any covenants, restrictions, rights or easements, affecting such Leased Property.
- (u) No part of any of the Leased Properties has been re-zoned, condemned, taken or expropriated by any Governmental Authority, nor, to the knowledge of the Seller, has any pending by-law, notice, plan, study, or proceeding in respect thereof been given, commenced or threatened which, if implemented, would adversely affect the ability to carry on the Business upon the Leased Properties in which such Business is currently carried on.

- (v) To the knowledge of the Seller, each of the Leased Properties is fully serviced by utilities having adequate capacities for the normal operations of the Business, and has adequate rights of access to and from public streets or highways for the normal operations of the Business and there is no fact or circumstance which could result in the termination or restriction of such access.
- (w) To the knowledge of the Seller, there is no defect or condition affecting any of the Leased Properties (or the soil or subsoil thereof) or any adjoining property which would impair the current use of such Leased Properties, all of the Leased Properties and the buildings located thereon are free of any structural defect and the heating, ventilating, plumbing, drainage, electrical and air conditioning systems and all other systems used in any of the Leased Properties are in good working order, fully operational and free of any defect, except for normal wear and tear.

7. Environmental Matters

- (x) The Globalive Entities and the assets and operations thereof comply with all applicable Environmental Laws in all material respects;
- (y) The Globalive Entities have not received any notice of any, and to the knowledge of the Seller there are no, material claim, judicial or administrative proceeding, pending or threatened against, or which may affect, the Globalive Entities or any of the assets or operations thereof, relating to, or alleging any violation of any Environmental Laws, to the knowledge of the Seller, there are no facts which could give rise to any such claim or judicial or administrative proceeding and none of the Globalive Entities, or any of the assets or operations thereof, is the subject of any investigation, evaluation, audit or review by any governmental authority to determine whether any violation of any Environmental Laws has occurred or is occurring or whether any remedial action is needed in connection with a release of any Contaminant into the environment, except for compliance investigations conducted in the normal course by any governmental authority;
- (z) The Globalive Entities do not store any hazardous or toxic waste or substance on their properties and have not disposed of any hazardous or toxic waste, in each case in a manner contrary to any Environmental Laws, and there are no Contaminants on any of the premises, in each case other than in compliance with Environmental Laws; and
- (aa) To the knowledge of the Seller, the Globalive Entities are not subject to any contingent or other liability relating to the restoration or rehabilitation of land, water or any other part of the environment or non-compliance with Environmental Law.

8. Expropriation

No part of the property or assets of the Globalive Entities has been taken, condemned or expropriated by any Governmental Authority nor has any written notice or proceeding in respect

thereof been given or commenced nor, to the knowledge of the Seller, is there any intent or proposal to give such notice or commence any such proceedings.

9. Employment Matters

- (bb) Each Globalive Entity is in compliance with all labour and employment legislation applicable to the Globalive Entities and their respective employees, including all employment standards, human rights, labour relations, occupational health and safety, pay equity, employment equity, employee privacy and workers' compensation or workplace safety and insurance legislation and there are no outstanding claims, complaints, investigations, prosecutions or orders under such legislation, except where such non-compliance would not constitute or would not reasonably be expected to constitute a Material Adverse Effect.
- (cc) Exhibit B to this Certificate sets forth a complete list of all employees of the Globalive Entities with annual base salary over \$150,000 (including any employees seconded to a Globalive Entity), together with their titles, service dates and material terms of employment. No such employee is on long-term disability leave, extended absence or workers' compensation leave. All current assessments under applicable workers' compensation legislation have been paid or accrued by the Globalive Entities, as applicable, and the Globalive Entities are not subject to any special or penalty assessment under workers' compensation legislation which has not been paid.
- (dd) All amounts due or accruing due for all salary, wages, bonuses, commissions, pension benefits or other employee benefits or compensation are reflected in the Books and Records, in accordance with the Globalive Entities' accounting practices and applicable Law.
- (ee) Other than as set out in Exhibit B to this Certificate, no employee of the Globalive Entities is party to a change of control, severance, termination, golden parachute or similar agreement and would receive payments under such agreement as a result of the Closing of the Transaction.
- (ff) There is no commitment or agreement to increase wages or to modify the terms and conditions of employment of any employee other than as set out in the relevant employment contracts.
- (gg) There are no collective agreements, either directly or by operation of law, between the Globalive Entities with any trade union or association which may qualify as a trade union. There are no outstanding or, to the knowledge of the Seller, threatened labour tribunal proceedings of any kind, including unfair labour practice proceedings or any proceedings which could result in certification of a trade union as bargaining agent for any employees of the Globalive Entities not already covered by a collective agreement. To the knowledge of the Seller, there are no threatened or apparent union organizing activities involving employees of the

Globalive Entities nor are the Globalive Entities currently negotiating any collective agreements.

10. Employee Benefits

- (hh) The Globalive Entities have complied, in all material respects, with the terms of all agreements, health, welfare, supplemental unemployment benefit, bonus, incentive, profit sharing, deferred compensation, stock purchase, stock compensation, stock option, disability, pension or retirement plans and other employee compensation or benefit plans, policies, arrangements, practices or undertakings, whether oral or written, formal or informal, funded or unfunded, insured or uninsured which are maintained by or binding upon the Globalive Entities or in respect of which the Globalive Entities have any actual or potential liability (collectively, the "**Globalive Benefit Plans**") and with all applicable Laws.
- (ii) Current and complete copies of all written Globalive Benefit Plans as amended to date or, where oral, written summaries of the terms thereof, and all material booklets and communications concerning the Globalive Benefit Plans which have been provided to persons entitled to benefits under the Globalive Benefit Plans have been delivered or made available to the Purchaser together with copies of all material documents relating to the Globalive Benefit Plans.
- (jj) Each Globalive Benefit Plan is and has been established, registered (if required), qualified, invested and administered, in all material respects, in compliance with the terms of such Globalive Benefit Plans (including the terms of any documents in respect of such Globalive Benefit Plan), all applicable Laws.
- (kk) All obligations of the Globalive Entities regarding the Globalive Benefit Plans have been satisfied in all material respects. All employer and employee payments, contributions and premiums required to be remitted, paid to or in respect of each Globalive Benefit plan have been paid or remitted in a timely fashion in accordance with its terms and all applicable Laws.
- (ll) Each Globalive Benefit Plan is insured or funded in compliance with the terms of such Globalive Benefit Plan, all applicable Laws and is in good standing with such Governmental Authorities as may be applicable and, as of the date hereof, no currently outstanding notice of under-funding, non-compliance, failure to be in good standing or otherwise has been received by the Globalive Entities from any such Governmental Authorities.
- (mm) To the knowledge of the Seller, (i) no Globalive Benefit Plan is subject to any pending investigation, examination or other proceeding, action or claim initiated by any Governmental Authority, or by any other party (other than routine claims for benefits), and (ii) there exists no state of facts which after notice or lapse of time or both would reasonably be expected to give rise to any such investigation,

examination or other proceeding, action or claim or to affect the registration or qualification of any Globalive Benefit Plan required to be registered or qualified.

- (nn) The Globalive Entities have no formal plan and have made no promise or commitment, whether legally binding or not, to create any additional Globalive Benefit Plan or to improve or change the benefits provided under any Globalive Benefit Plan.
- (oo) Except as disclosed in Exhibit D, there is no entity other than the Globalive Entities participating in any Globalive Benefit Plan.
- (pp) Except as disclosed in Exhibit B to this Certificate, none of the Globalive Benefit Plans provide benefits beyond retirement or other termination of service to employees or former employees or to the beneficiaries or dependants of such employees.
- (qq) All data necessary to administer each Globalive Benefit Plan is in the possession of the Globalive Entities or their respective agents and is in a form which is sufficient for the proper administration of the Globalive Benefit Plan in accordance with its terms and all applicable Laws and such data is complete and correct.

11. No Material Adverse Change

Since December 31, 2013, other than with respect to the Vendor Loan Facilities and the VimpelCom Loan Agreements and except as permitted by the Agreement or as disclosed in the financial statements and notes thereto of GWMC for the period ended March 31, 2014, (i) the Globalive Entities have carried on the Business and conducted their operations and affairs only in the ordinary course consistent with past practice and have not incurred any debt, obligation or liability out of the ordinary course of Business or of an unusual or extraordinary nature and the Globalive Entities have used their best efforts to preserve the Business and their assets; and (ii) there have been no Material Adverse Changes (actual, contemplated or threatened) in the condition (financial or otherwise), earnings, position, value, operation, properties, or business results of operation of the Globalive Entities.

12. Insurance

The Globalive Entities have caused the Business to be insured by reputable insurers against liability, loss and damage, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets, and such insurance coverage has continued in full force and effect to, and including, the Closing Date. All such policies of insurance are in full force and effect and the Globalive Entities are not in default, whether as to the payment of premium or otherwise, under the terms of any such policy. Exhibit C to this Certificate sets forth a list of the policy number and the amount and nature of insurance coverage under each of the insurance policies covering or relating to the Business.

13. Anti-Corruption and Anti-Money Laundering

- (a)** ~~(ff)~~ Neither of the Globalive Entities, nor to the knowledge of the Seller any of their respective directors, officers, employees or agents, has made any bribe, payoff, influence payment, kickback or unlawful contribution or other payment to any official of, or candidate for, any federal, state, provincial or foreign office, or failed to disclose fully any contribution, in violation of any applicable Law, or made any payment to any foreign, Canadian or provincial or state governmental officer or official or other person charged with similar public or quasi-public duties, violated or is in violation of any provision of the *Corruption of Foreign Public Officials Act* (Canada) or any similar law, regulation or statute in any applicable jurisdictions.
- (b)** (ss) The operations of each of the Globalive Entities are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any Governmental Authority involving any of the Globalive Entities with respect to Money Laundering Laws is, to the knowledge of the Seller, pending or threatened.

SCHEDULE 3.2(D)

FORM OF SELLER'S CLOSING CERTIFICATE

**GLOBALIVE INVESTMENT HOLDINGS CORP.
(the "Corporation")**

OFFICERS' CERTIFICATE

TO: **[PURCHASER]**
AND TO: BENNETT JONES LLP
AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 3.2(d) of a share purchase agreement dated August [•], 2014 between [Purchaser], Global Telecom Holding S.A.E. and the Corporation (the "Agreement").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•], being the duly appointed [•] of the Corporation, hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that:

1. a true and complete copy of the articles of the Corporation are attached to this Certificate as Appendix "A", such articles are in full force and effect on the date hereof in accordance with their terms and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
2. a true and complete copy of the by-laws of the Corporation are attached to this Certificate as Appendix "B", such by-laws are in full force and effect on the date hereof and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
3. a true and complete copy of the ~~resolutions~~ minutes of the board of directors ~~meeting of the shareholders~~ of the Corporation authorizing, among other things, the execution, delivery and performance of the Transaction Documents, as applicable, by the Corporation passed in connection with the Agreement and the transactions contemplated by the Transaction Documents, ~~including for greater certainty the Pre-Closing Reorganization~~, are attached to this Certificate as Appendix "C", and ~~such resolutions are the only resolutions of the board of directors of the Corporation pertaining to the subject matter thereof and are in full force and effect, unamended, on the date hereof;~~
4. a true and complete copy of the resolutions of the shareholders of the Corporation authorizing, among other things, the execution, delivery and performance of the Transaction Documents, as applicable, by the Corporation passed in connection with the

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~~Agreement and the transactions contemplated by the Transaction Documents, are attached to this Certificate as Appendix "D", and such resolutions are the only resolutions of the shareholders of the Corporation pertaining to the subject matter thereof and are in full force and effect, unamended, on the date hereof; and~~

4. each person listed on Appendix "ED" attached to this Certificate is as of the date hereof a duly elected or appointed officer and/or director of the Corporation, such person holds the position indicated opposite his/her name, and the specimen or facsimile signature appearing opposite to the name of that person is the true signature of such person.

DATED the _____ day of _____, 2014.

**GLOBALIVE INVESTMENT HOLDINGS
CORP.**

[•]
[•]

The undersigned [•] hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that he is the duly appointed [•] of the Corporation, and further certifies that [•] is the duly appointed [•] of the Corporation and that the above signature is his genuine signature.

DATED the _____ day of _____, 2014.

**GLOBALIVE INVESTMENT HOLDINGS
CORP.**

[•]
[•]

APPENDIX "A"
ARTICLES

See attached.

APPENDIX "B"
BY-LAWS

See attached.

APPENDIX "C"
BOARDSHAREHOLDER RESOLUTIONS

See attached.

APPENDIX "D"
SHAREHOLDER RESOLUTIONS

~~See attached.~~

APPENDIX "E"
INCUMBENCY

NAME

TITLE

SIGNATURE

[•]

[•]

[•]

[•]

SCHEDULE 3.2(F)

FORM OF GWMC'S CLOSING CERTIFICATE

**GLOBALIVE WIRELESS MANAGEMENT CORP.
(the "Corporation")**

OFFICERS' CERTIFICATE

TO: **[PURCHASER]**
AND TO: BENNETT JONES LLP
AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 3.2(f) of a share purchase agreement dated August [•], 2014 between [Purchaser], Globalive Investment Holdings Corp., and Global Telecom Holding S.A.E. (the "Agreement").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•], being the duly appointed [•] of the Corporation, hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that:

1. a true and complete copy of the articles of the Corporation are attached to this Certificate as Appendix "A", such articles are in full force and effect on the date hereof in accordance with their terms and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
2. a true and complete copy of the by-laws of the Corporation are attached to this Certificate as Appendix "B", such by-laws are in full force and effect on the date hereof and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
3. a true and complete copy of the resolutions of the board of directors of the Corporation authorizing, among other things, the transfer of the Purchased Shares by the Seller to the Purchaser as contemplated by the Agreement and the execution, delivery and performance of the Transaction Documents, as applicable, by the Corporation passed in connection with the Agreement and the transactions contemplated by the Transaction Documents are attached to this Certificate as Appendix "C", and such resolutions are the only resolutions of the board of directors of the Corporation pertaining to the subject matter thereof and are in full force and effect, unamended, on the date hereof; and

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4. each person listed on Appendix "D" attached to this Certificate is as of the date hereof a duly elected or appointed officer and/or director of the Corporation, such person holds the position indicated opposite his/her name, and the specimen or facsimile signature appearing opposite to the name of that person is the true signature of such person.

DATED the _____ day of _____, 2014.

**GLOBALIVE WIRELESS MANAGEMENT
CORP.**

[•]
[•]

The undersigned [•] hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that he is the duly appointed [•] of the Corporation, and further certifies that [•] is the duly appointed [•] of the Corporation and that the above signature is his genuine signature.

DATED the _____ day of _____, 2014.

**GLOBALIVE WIRELESS MANAGEMENT
CORP.**

[•]
[•]

**APPENDIX "A"
ARTICLES**

See attached.

APPENDIX "B"
BY-LAWS

See attached.

**APPENDIX "C"
RESOLUTIONS**

See attached.

APPENDIX "D"
INCUMBENCY

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
[•]	[•]	_____
[•]	[•]	_____

SCHEDULE 3.2(G)

FORM OF WIND DISTRIBUTION'S CLOSING CERTIFICATE

WIND MOBILE DISTRIBUTION CORP.
(the "Corporation")

OFFICERS' CERTIFICATE

TO: **[PURCHASER]**
AND TO: BENNETT JONES LLP
AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 3.2(g) of a share purchase agreement dated May [•], 2014 between [Purchaser], Globalive Investment Holdings Corp., and Global Telecom Holding S.A.E. (the "Agreement").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•], being the duly appointed [•] of the Corporation, hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that:

1. a true and complete copy of the articles of the Corporation are attached to this Certificate as Appendix "A", such articles are in full force and effect on the date hereof in accordance with their terms and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
2. a true and complete copy of the by-laws of the Corporation are attached to this Certificate as Appendix "B", such by-laws are in full force and effect on the date hereof and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them; and
3. each person listed on Appendix "C" attached to this Certificate is as of the date hereof a duly elected or appointed officer and/or director of the Corporation, such person holds the position indicated opposite his/her name, and the specimen or facsimile signature appearing opposite to the name of that person is the true signature of such person.

DATED the _____ day of _____, 2014.

WIND MOBILE DISTRIBUTION CORP.

[•]
[•]

The undersigned [•] hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that he is the duly appointed [•] of the Corporation, and further certifies that [•] is the duly appointed [•] of the Corporation and that the above signature is his genuine signature.

DATED the _____ day of _____, 2014.

WIND MOBILE DISTRIBUTION CORP.

[•]
[•]

**APPENDIX "A"
ARTICLES**

See attached.

APPENDIX "B"
BY-LAWS

See attached.

APPENDIX "C"
INCUMBENCY

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
[•]	[•]	_____
[•]	[•]	_____

SCHEDULE 3.2(I)

SELLER'S REQUIRED CONSENTS

**SCHEDULE 3.2(O)
FORM OF LEGAL OPINION**

SCHEDULE 3.3(B)

FORM OF PURCHASER'S CLOSING CERTIFICATE

[PURCHASER]
(the "Corporation")

OFFICERS' CERTIFICATE

TO: GLOBALIVE INVESTMENT HOLDINGS CORP.

AND TO: BENNETT JONES LLP

AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 3.3(b) of a share purchase agreement dated August [•], 2014 between the Corporation, Global Telecom Holding S.A.E. and Globalive Investment Holdings Corp. (the "**Agreement**").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•], being the duly appointed [•] of the Corporation, hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that:

1. a true and complete copy of the articles of the Corporation are attached to this Certificate as Appendix "A", such articles are in full force and effect on the date hereof in accordance with their terms and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
2. a true and complete copy of the by-laws of the Corporation are attached to this Certificate as Appendix "B", such by-laws are in full force and effect on the date hereof and no action has been taken by the Corporation or its shareholders or directors to amend, supplement or repeal them;
3. a true and complete copy of the resolutions of the board of directors of the Corporation authorizing, among other things, the execution, delivery and performance of the Transaction Documents, as applicable, by the Corporation passed in connection with the Agreement and the transactions contemplated by the Transaction Documents are attached to this Certificate as Appendix "C", and such resolutions are the only resolutions of the board of directors of the Corporation pertaining to the subject matter thereof and are in full force and effect, unamended, on the date hereof; and
4. each person listed on Appendix "D" attached to this Certificate is as of the date hereof a duly elected or appointed officer and/or director of the Corporation, such person holds the position

indicated opposite his/her name, and the specimen or facsimile signature appearing opposite to the name of that person is the true signature of such person.

DATED the _____ day of _____, 2014.

[PURCHASER]

[•]
[•]

The undersigned [•] hereby certifies for and on behalf of the Corporation, and without personal liability and not in his personal capacity, that he is the duly appointed [•] of the Corporation, and further certifies that [•] is the duly appointed [•] of the Corporation and that the above signature is his genuine signature.

DATED the _____ day of _____, 2014.

[PURCHASER]

[•]
[•]

APPENDIX "A"
ARTICLES

See attached.

APPENDIX "B"
BY-LAWS

See attached.

**APPENDIX "C"
RESOLUTIONS**

See attached.

APPENDIX "D"
INCUMBENCY

NAME

TITLE

SIGNATURE

[•]

[•]

[•]

[•]

SCHEDULE 3.3(D)

FORM OF RELEASE OF DIRECTORS BY THE PURCHASER AND GWMC

SCHEDULE 4.4

LITIGATION AND GOVERNMENT CLAIMS

SCHEDULE 4.5

CAPITAL STRUCTURE OF THE GLOBALIVE ENTITIES

SCHEDULE 4.6(A)

COMPLIANCE WITH OTHER INSTRUMENTS

SCHEDULE 4.6(B)

**FILINGS, CONSENTS AND APPROVALS OF GOVERNMENTAL AUTHORITIES AND
OTHER PERSONS TO BE OBTAINED BY THE SELLER**

SCHEDULE 4.6(B)(II)

GWMC FINANCIAL STATEMENTS

SCHEDULE 4.8

RELATED PARTY OBLIGATIONS AND LIABILITIES

SCHEDULE 4.9

TAXES

SCHEDULE 4.10

SPECTRUM LICENCES AND RADIO LICENCES

SCHEDULE 4.12

SUFFICIENCY OF ASSETS

SCHEDULE 4.13

RELATED PARTY AGREEMENTS

SCHEDULE 5.3(B)

**FILINGS, CONSENTS AND APPROVALS OF GOVERNMENTAL AUTHORITIES
AND OTHER PERSONS TO BE OBTAINED BY THE PURCHASER**

Competition Act Approval

Industry Canada Approval

SCHEDULE 5.10

PARTNERSHIP AGREEMENTS

SCHEDULE 6.6

PRE-CLOSING REORGANIZATION

SCHEDULE 6.9(B)

NO SOLICITATION

SCHEDULE 7.1(A)

FORM OF THE SELLER'S CLOSING CONDITIONS CERTIFICATE

GLOBALIVE INVESTMENT HOLDINGS CORP.
(the "Corporation")OFFICERS' CERTIFICATE

TO: **[PURCHASER]**

AND TO: BENNETT JONES LLP

AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 7.1 of a share purchase agreement dated August [•], 2014 between **[Purchaser]**, Global Telecom Holding S.A.E. and the Corporation (the "**Agreement**").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•] and [•], being the duly appointed [•] and [•] of the Corporation, hereby certify for and on behalf of the Corporation, and without personal liability and not in their personal capacity, that:

1. the representations and warranties of the Corporation set forth in Article 4 of the Agreement (i) if qualified in any respect as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct, and (ii) if not qualified as to materiality or Material Adverse Effect or Material Adverse Change, are true and correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date); and
2. the Corporation has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date in all material respects.

DATED the _____ day of _____, 2014.

**GLOBALIVE INVESTMENT HOLDINGS
CORP.**

[•]
[•]

[•]
[•]

SCHEDULE 7.2(A)

FORM OF PURCHASER CLOSING CONDITIONS CERTIFICATE

[PURCHASER]
(the "Corporation")

OFFICERS' CERTIFICATE

TO: GLOBALIVE INVESTMENT HOLDINGS CORP.

AND TO: BENNETT JONES LLP

AND TO: FASKEN MARTINEAU DUMOULIN LLP

This certificate is delivered pursuant to Section 7.2 of a share purchase agreement dated August [•], 2014 between the Corporation, Global Telecom Holding S.A.E. and Globalive Investment Holdings Corp. (the "**Agreement**").

Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings attributed thereto in the Agreement.

The undersigned, [•] and [•], being the duly appointed [•] and [•] of the Corporation, hereby certify for and on behalf of the Corporation, and without personal liability and not in their personal capacity, that:

1. the representations and warranties of the Corporation set forth in Article 5 of the Agreement (i) if qualified in any respect as to materiality, are true and correct, and (ii) if not qualified as to materiality, are true and correct in all material respects, as of the Closing Date, as though made on the Closing Date (provided that, to the extent any such representation or warranty expressly relates to an earlier date, the accuracy of such representation and warranty shall be determined as of such earlier date); and

2. the Corporation has duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date in all material respects.

DATED the _____ day of _____, 2014.

[PURCHASER]

[•]

[•]

[•]

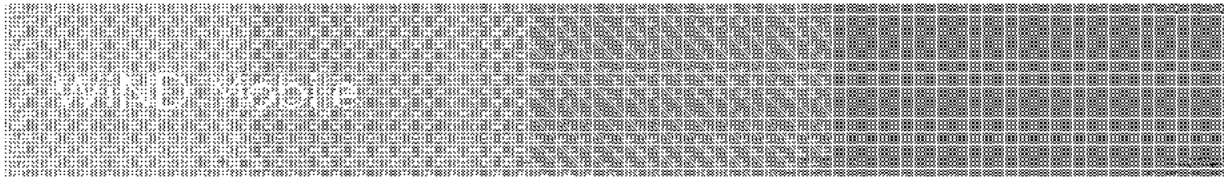
[•]

Document comparison by Workshare Professional on 01 August 2014 7:20:04 PM

Input:	
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Description	#10373960v24<WSLegal> - Share Purchase Agreement - Catalyst (Bennett Comments - August 1, 2014)
Document 2 ID	interwovenSite://bjdocs/WSLegal/10373960/25
Description	#10373960v25<WSLegal> - Share Purchase Agreement - Catalyst (Bennett Comments - August 1, 2014)
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	131
Deletions	116
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	251



Industry Canada Active Files

1. Policy Framework Consultation for an AWS-3 Spectrum Auction

Based on press materials and public statements by the Minister of Industry on July 7, 2014, WIND is expecting the imminent release of an AWS-3 policy consultation document. The overall auction is expected to have the following attributes:

- The Government will set aside one 30 MHz block of AWS-3 spectrum for operating new entrants in each region of the country. Wireless carriers with less than 10 percent national and 20 percent provincial/territorial wireless subscriber market share will be eligible to bid on the set-aside in licence areas where they are providing services to Canadians;
- The AWS auction will take place before the 2500 MHz auction, which is scheduled to start in April 2015;
- There will be strict provisions on the transfer of AWS-3 spectrum so that Canadian consumers benefit from increased competition in wireless services; and
- There will be a simpler, shorter auction process that will provide operating new entrants with a visible path to high-quality spectrum.

The Government has also indicated that the AWS-3 policy framework consultation will deal with a number of issues including the following which were called out in the government announcement:

- Whether licences for AWS-3 should include deployment requirements in both the short term (for example, five years after the licences are issued) and the long term (ten years after); and
- Whether a simplified and accelerated auction process, using a sealed-bid format, would be the best approach to encourage participation.

Issues of specific concern to WIND include:

- (a) The minimum bid amount;
- (b) Licence payment terms (i.e. the ability to pay for the licences over time) in light of anticipated delays in the radio and handset eco-systems which will support this spectrum block;
- (c) The definition of "operating new entrants" eligible to bid;
- (d) Whether it is possible to partition the 2-06 license block "Eastern Ontario & Outaouais" along provincial boundaries.

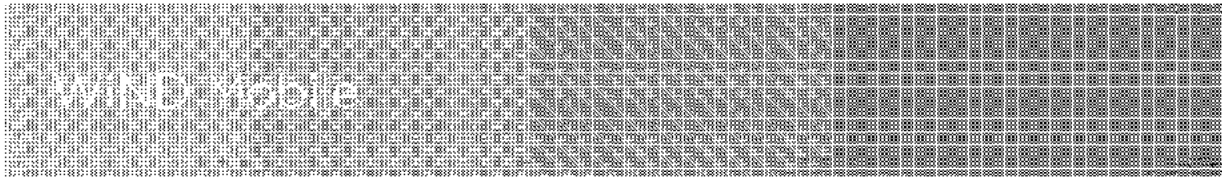
2. Auction of Spectrum Licences for Broadband Radio Service ("BRS") in the Band 2500-2690 MHz

The rules for BRS spectrum auction have been established as set out in the *Licensing Framework for Broadband Radio Service (BRS) — 2500 MHz Band* which can be found at the following link: <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf10726.html>

Bell Mobility ("Bell") and Rogers Communications Partnership ("Rogers") will be unable to bid in many areas of the country due to their existing spectrum holdings in this band and a band specific spectrum cap limit of 40 MHz. This will leave three 10 + 10 MHz blocks available for other bidders in these areas including TELUS Communications Company ("TELUS"). Under the rules, TELUS can acquire two of the three blocks leaving new entrants with one 10 + 10 MHz block.

Areas where there will only be three paired spectrum blocks available and where Bell and Rogers cannot bid are shown below.

Region B											
Frequency blocks available for auction (indicated by "X")											
Tier No.	Region	Name	Paired spectrum (10+10 MHz)						Unpaired spectrum (25 MHz)		
			A/A'	B/B'	C/C'	D/D'	E/E'	F/F'	G/G'	H	I
3-08	B	Bas du fleuve / Gaspésie					X	X	X		
3-09	B	Québec					X	X	X		
3-12	B	Trois-Rivières					X	X	X		
3-13	B	Montréal					X	X	X		
3-15	B	Ottawa / Outaouais					X	X	X		
3-25	B	Toronto					X	X	X		
3-26	B	Barrie					X	X	X		
3-27	B	Guelph / Kitchener					X	X	X		
3-29	B	Niagara-St. Catharines					X	X	X		



Region B

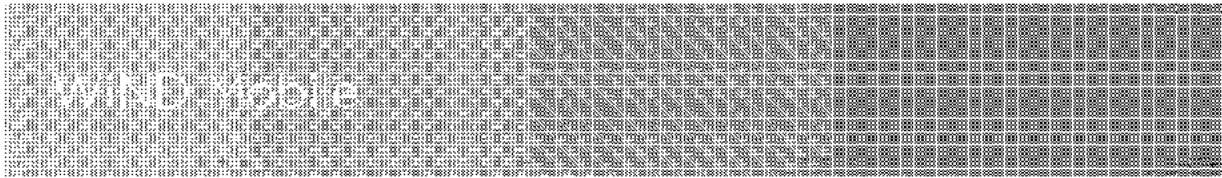
**Frequency blocks available for auction
(indicated by "X")**

Tier No.	Region	Name	Paired spectrum (10+10 MHz)							Unpaired spectrum (25 MHz)	
			A/A'	B/B'	C/C'	D/D'	E/E'	F/F'	G/G'	H	I
3-30	B	London / Woodstock / St. Thomas					X	X	X		
3-41	B	Regina					X	X	X		
3-42	B	Moose Jaw					X	X	X		
3-43	B	Saskatoon					X	X	X		
3-51	B	Okanagan / Columbia					X	X	X		
3-52	B	Vancouver					X	X	X		
3-53	B	Victoria					X	X	X		

In other areas (e.g., Calgary, Edmonton) there will be five spectrum blocks available for bidding but Bell and Rogers will not be fully constrained from participating – new entrants will still have a chance to acquire one 10 + 10 MHz block after Bell, Rogers and TELUS have acquired the maximum allowable amount of spectrum under the cap in these regions as well.

Remaining key dates are set out below:

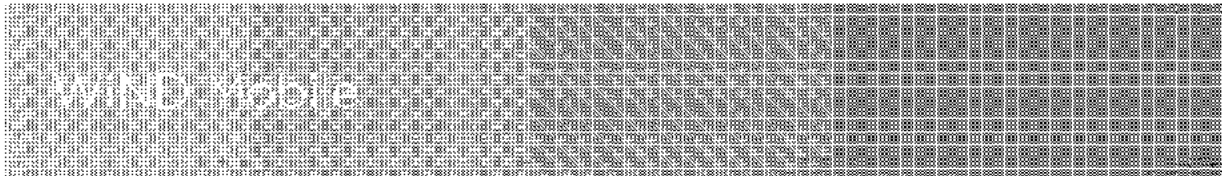
Events	Time Frames
Publication of responses to clarification questions	August 18, 2014
Deadline for receipt of applications to participate in the auction and 5% of the pre-auction financial deposits	By 12:00 noon on November 27, 2014
Publication of the list of applicants, beneficial ownership and associated entities information	Within four business days following the application deadline
Publication of the list of provisionally qualified bidders	January 21, 2015



Events	Time Frames
Deadline for receipt of the remaining 95% of pre-auction financial deposits	By 12:00 noon on January 28, 2015
Publication of final list of qualified bidders	February 11, 2015
Mail-out packages sent to qualified bidders	February 11-17, 2015
Information session for qualified bidders	February 26, 2015
Qualified bidders are given access to a stand-alone winner and price determination tool	February 26, 2015
Mock auctions for qualified bidders (up to three separate sessions)	Start March 3, 2015
Auction start – opening of bidding	April 14, 2015
Cessation of bidding	Unknown
Announcement and publication of provisional licence winners	Within five days following cessation of bidding
Submission of ownership and control documentation (where applicable)	10 business days following the publication of provisional licence winners
Initial payment (20% of total final payment)	10 business days following the publication of provisional licence winners
Final payment (80% of total final payment)	30 business days following the publication of provisional licence winners

3. Consultation on a New Licensing Framework and Licence Renewal Process for the 24, 28 and 38 GHz Bands

New wireless networks have caused an increase in demand for wireless backhaul spectrum. The point-to-point spectrum bands in this proceeding (24, 28 and 38 GHz) are needed by WIND for its network expansion, but these are not the only bands that WIND uses for its radio backhaul needs.



WIND has provided public comments supporting Industry Canada's proposals to not renew the exclusive area spectrum licences previously auctioned in these bands where the licensee has not met the conditions of licence (including roll-out conditions). We are supported by Bell and are in direct opposition to Mobilexchange Spectrum Inc. (Mike Kedar). Other parties have varying positions that differ by licence type.

WIND has also indicated that it supports Industry Canada's proposal to convert First Come First Serve ("FCFS") spectrum licenses (of which WIND has 10 such FCFS 38 GHz licences on three year terms) to one year term licences upon expiration and to require that future radio links be licensed on a point to point basis. A net benefit review by WIND's network group indicates that we would likely be better off with link based radio licenses as opposed to 38 GHz spectrum licences and in any event, such an approach would free up more radio back-haul options.

WIND has also asked Industry Canada to revisit the way it calculates radio licence fees as part of the conversion process from spectrum licences to radio licences.

Final reply comments are due August 7, 2014.

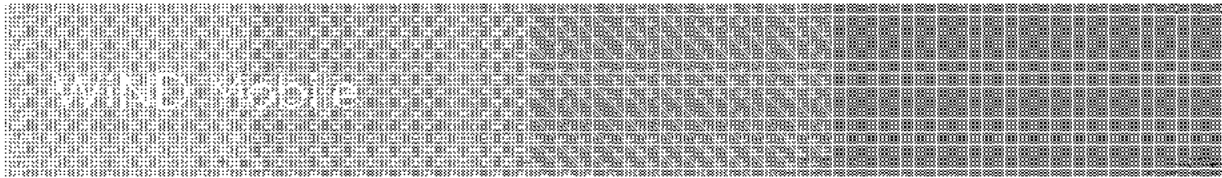
Canadian Radio-television and Telecommunications Commission (the "Commission") Active Files

4. Telecom Notice of Consultation CRTC 2013-68, Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference, 12 December 2013

Following a fact-finding exercise to assess the impact of wholesale mobile wireless roaming arrangements on the competitiveness of the Canadian wireless industry, the Commission initiated a proceeding to consider whether or not, as a question of fact, there is a situation of unjust discrimination or undue preference with respect to domestic roaming arrangements in Canada.

Final reply comments were filed in February 2014 and a further set of Commission questions was issued and completed in early March 2014. Based on the Commission's own statement that it expects to publish a decision on the issues raised in this notice within four months of the close of record, a decision is now overdue and expected shortly.

In this proceeding, WIND argued that the rates it was paying for domestic roaming were unjustly discriminatory based on (1) the rates that the incumbents



were charging US carriers for roaming; and (2) the average retail rates charged by the incumbents to their own retail customers.

WIND also argued that domestic roaming caps were the appropriate remedy and that such costs should be based on an incremental cost plus reasonable mark-up approach (like essential facilities), or based on average retail prices less an adjustment for costs not incurred when providing roaming such as hand-set subsidies, retail stores, advertising, individual customer billing and support etc.

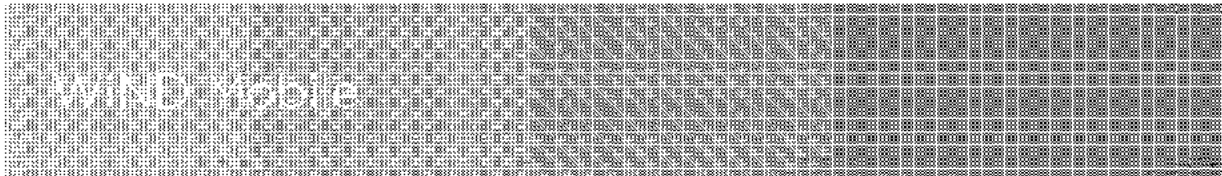
While a remedy in this proceeding may be somewhat moot because of recent amendments to the *Telecommunications Act* (the "**Act**") which cap domestic roaming rates, as well as the TNC 2014-76 proceeding discussed below, which is examining increasing (or re-instating) the Commission's rate setting powers for mobile wireless services provided at the wholesale level.

However, a declaration of unjust discrimination would provide a significant moral and public victory for new entrants. We continue to push for a ruling notwithstanding the ongoing other proceedings.

5. Telecom Notice of Consultation CRTC 2014-76 ("TNC 2014-76"), *Review of wholesale mobile wireless services*, 20 February 2014

The Commission has initiated a proceeding to determine whether the wholesale mobile wireless services market is sufficiently competitive and, if not, what regulatory measures are required. It will hold a public hearing, beginning on 29 September 2014. Among other things, the Commission has specifically asked for comments on the following:

- (a) Whether the market for wholesale roaming services is sufficiently competitive. Where one considers that the market is not sufficiently competitive, interveners were asked to identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act, and
- (b) Whether the market for wholesale tower and site sharing services is sufficiently competitive. Where one considers that the market is not sufficiently competitive, interveners were asked to identify, with supporting rationale, the regulatory measures, if any, that should be put in place either through the Commission's existing powers or through the reassertion of the Commission's jurisdiction to apply other provisions of the Act.



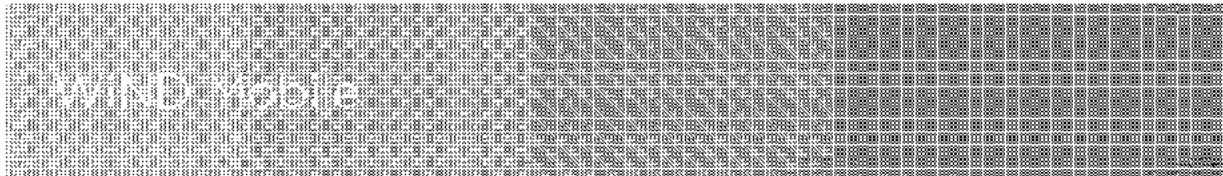
To date, there has been one round of evidence and several rounds of interrogatories in this proceeding.

WIND has taken the following positions:

- The Canadian wholesale wireless services market is dominated by an oligopoly, which provides insufficient competition in the wholesale wireless services markets across Canada to stem abuses of the incumbent wireless service providers which in turn negatively impacts the downstream retail markets for retail mobile services in Canada;
- There is a need for intervention in the wholesale wireless services markets including re-instatement of the Commission's jurisdiction to apply other provisions of the Act including section 25 of the Act in respect of tariffs for roaming and tower sharing. These services are essential inputs required by new entrants in order to provide downstream retail wireless services; and
- The Act and related Commission decisions must be seen to be complementary to other legislation, such as the *Radiocommunication Act* and the conditions of licence imposed thereunder including Client Procedures Circular CPC-2-0-17, *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as amended from time to time (the "**Conditions of Licence**").

Specifically, for roaming WIND has taken the following positions in respect of domestic roaming:

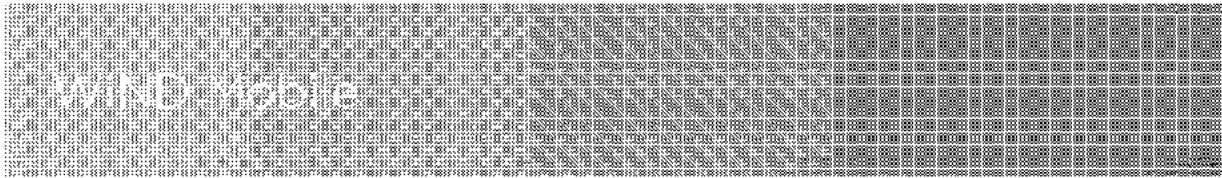
- The interim roaming rate caps in the Act (at average retail rates) are greatly in excess of what is reasonable given that the cost of providing wholesale roaming services are substantially less than the provision of similar services at the retail services. For example, wholesale services do not require the recovery of handset subsidies, they do not require retail stores and a website for customer fulfilment, they do not require the provision of individual customer bills and separate collections on a per customer basis, they do not require a marketing budget and other sales related expense, and they do not require first level customer facing support when there are customer issues. Thus WIND is continuing to push for incremental cost plus or average retail minus pricing;



- Additional aspects of roaming must be regulated because certain roaming rates are not covered by Act and some incumbents are taking the position that it is okay to gouge WIND and its customers for these services. For example, WIND has received offers for non-Canadian long distance call terminations when WIND's customers are roaming at rates more than 100 times the wholesale cost of such wholesale terminations. Therefore, WIND requires the right to terminate the non-domestic portion of calls made by WIND's customers when they are roaming (referred to as "call hand-back") through the implementation of call hand-back mechanisms;
- Direct interconnection arrangements for the exchange of traffic generated by WIND's roamers is required to reduce the cost of roaming (rather than being forced to use more expensive roaming hubs);
- Soft hand-off of calls between wireless networks when WIND's customers transition from WIND's wireless footprint to that of an Incumbent roaming partner is required; and
- The removal of restrictions in roaming agreements that prevent WIND from offering services to Mobile Virtual Network Operators ("MVNO's") that wish to offer mobile services to their customers on the WIND network and incidentally roam on the Incumbents' networks is required.

WIND has taken the following positions in respect of tower and site sharing:

- WIND requires access to tower sharing at reasonable rates, in order to continue to expand its network footprint. Tower sharing is particularly important in non-core urban areas where there is a lack of suitable elevation rooftops. This is because most municipalities will not allow the construction of new towers if there is space on existing towers; and
- WIND requires certain protections to ensure that the Incumbents do not make deals with building owners (e.g., shopping malls, sports stadiums and other places where large amounts of people pass through such that WIND is precluded from placement of its equipment in the same buildings for the provision of services to its customers. While the Conditions of License explicitly prohibit exclusive site licenses, the Incumbents have found ways to work around these prohibitions by incenting landlords to move exclusively to indoor shared antennae systems without the participation of WIND, or to otherwise convince certain major landlords not to allow WIND similar indoor access.



Additionally, WIND has not endorsed proposals for an expanded mandated wireless resale regime sought by the likes of CNOC, Orange and others – our position is that it is better to give facilities based competition a chance before instituting a more interventionist mandatory resale regime.

A decision in this proceeding is not expected until late 2014 or early 2015. Such a decision, if favourable in its outcome, will require a follow-up rate setting proceeding.

6. Review of domestic roaming rates mandated by the interim roaming caps mandated by section 27.1 of the Act

All of the incumbents have performed their own calculations of the interim domestic roaming rate caps required by the Act. They are now charging (or proposing to charge these rates) until the Commission establishes an alternative approach.

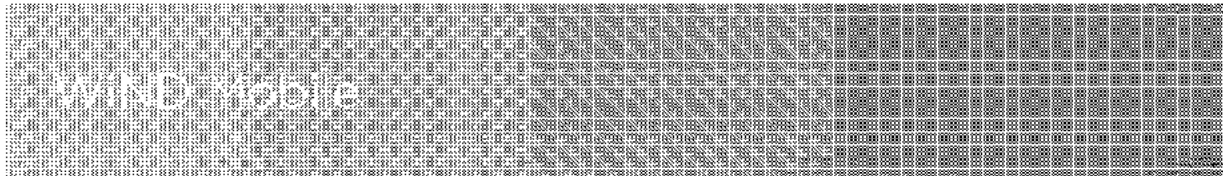
During contract negotiations for domestic roaming with Bell, Rogers and TELUS, little insight was provided on how the rates were calculated. Given the variability in the calculated average retail prices, and the fact that in-market retail prices are very similar across the board (among the incumbents), it is not surprising that there is likely manipulation of the calculations to push up roaming prices.

The Commission staff has indicated that it is going to initiate a proceeding to review compliance with the Act's current requirements for domestic roaming rates. WIND has a Part 1 application ready to the Commission if such a proceeding is not initiated shortly. In the mean-time, WIND has asked for public disclosure of the capped roaming rates in response to a Commission interrogatory directed at the incumbents as part of TNC 2014-76 – this will allow consumer groups to understand how high roaming rates will remain if further action is not taken by the Commission. Quebecor took a different tact and asked for disclosure of the methodology disclosed in the interrogatory responses – however the descriptions are extremely brief and not likely to be helpful.

7. Miscellaneous Commission Matters

The following is a list of miscellaneous regulatory matters that WIND is involved in:

- (a) A customer complaint concerning WIND's Data Fair Usage Policy and related disclosure to the customer. This is the fourth such complaint forwarded to WIND by the Commission. The previous three complaints were resolved with



no further action by WIND (i.e., a determination of compliance with the rules by WIND); and

- (b) A Commission review of paper billing charges. There will be an industry persuasion session with the Commission at the end of August to convince carriers (including WIND) to reduce paper bill fees and create broader exemptions.

Message

From: Glassman, Newton [nglassman@catcapital.com]
Sent: 8/3/2014 10:34:30 AM
To: Bruce Drysdale [Bruce@dfhpublicaffairs.com]
CC: De Alba, Gabriel [gdealba@catcapital.com]; Riley, Jim [jriley@catcapital.com]
Subject: Re: Ottawa Insights

Just sitting down for b/fast. Sorry. Will be done in 10min and then shortly thereafter getting on a bike for an hour. R u up north?

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030
Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Bruce Drysdale
Sent: Sunday, August 3, 2014 10:29 AM
To: Glassman, Newton
Subject: Re: Ottawa Insights

Got your message and buzzed u back. Will call again later with more colour.

Sent from my iPhone

On Aug 3, 2014, at 9:58 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:

Thanks bruce. My view on reading this is that it's all positioning and they themselves r not sure what they will do until someone is before them w a specific list of demands. 'mitigating strategies' is code for they have no real 'plan b' since they don't yet know what they will be facing. To disprove my theory, someone would have to tell me details of their 'mitigating stratgies' so that we could evaluate such against our requests.

It also tells me they know this is a complete 'cluster-fuck' right now and that they really don't know how it's going to end. Interesting that their opening position would be an outright refusal on any/all we suggested to them in our last deck. Finally, if they truly have made the below position clear to quebecor they have literally hurt quebecor's likelihood of doing a 4th carrier alone and improved our/anyone who controls wind (mobility is basically irrelevant now since the new aws-3 spectrum is so cheap, mobility's spectrum value has been decimated SO LONG as acquired by someone w an existing presence in ontario etc given the aws-3 rules). If I am to take them @ their word re: quebecor, it would make sense and fit well w quebecor's comments about not making this a priority for their capital, needing/talking w potential partners, etc.

Bruce, do they understand that wout making the spectrum transferable at some time in the future they have literally made it impossible for anyone to get financing/debt (since wout eventual transferability there is no collateral value against which lenders will lend) and therefore a 4th carrier can not and will not make anyone reasonable minimum rate of return? Notwithstanding their words to u, this last pt needs to be drummed home to them THIS WKEND given the timing of what is going on.

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Bruce Drysdale
Sent: Sunday, August 3, 2014 9:15 AM
To: Glassman, Newton; De Alba, Gabriel
Cc: Riley, Jim
Subject: Ottawa Insights

Newton/Gabriel,

I was in Ottawa late last week and met with James Nicholson in Minister Moore's office for 45 minutes. I also had coffee with a senior PCO official. I was able to have frank conversations with both, while also pushing the Catalyst position.

Below please see some of the feedback and insights from Nicholson and PCO. We will want to factor these into your negotiations/discussions with Wind.

- Both Industry Canada and PCO/PMO are adamant that the current federal policy will not change.
- Nicholson clarified the federal position saying Minister Moore and IC officials would not be opposed to Catalyst buying Wind but Ottawa would not provide concessions Catalyst outlined in its May presentation for building out a fourth carrier nor would Ottawa allow Catalyst or anyone else to become a re-seller.
- Nicholson said that if Catalyst signs an Sale and Purchase Agreement with Wind it should do so with a clear understanding it would have to build out a fourth carrier without concessions and without ability to sell to an incumbent after 5 years.
- Nicholson and PCO both told me that Quebecor (both prior to PKP running for office as a separatist and since) has lobbied hard in Ottawa at all levels for concessions to build out a fourth carrier and have been told Ottawa will not be providing them with any concessions (beyond what regulatory changes are being rolled out by the CRTC in coming months). Nicholson said Minister Moore and PM Harper are entrenched and there will be no flip flop.

- Nicholson said that if nobody steps forward to build out a fourth carrier as a straight-up proposition (no concessions, no ability to sell to incumbents after 5 years, etc.) then the Harper government has 'mitigating strategies' in place to deal with that scenario.

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Message

From: Glassman, Newton [nglassman@catcapital.com]
Sent: 8/11/2014 10:33:17 AM
To: Jon Levin [jlevin@fasken.com]
CC: De Alba, Gabriel [gdealba@catcapital.com]
Subject: Re: Good morning

It's their problem to solve. I will not allow us to 'own' their process issue(s). I have my own problems related to this timing, not the least of which is a call w harvard today and a complicated AP mtng tomorrow. I have to have this in the public domain TODAY.

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030
Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin
Sent: Monday, August 11, 2014 9:04 AM
To: Glassman, Newton
Cc: De Alba, Gabriel
Subject: Re: Good morning

You are very close. They are giving every sign of moving ahead. They tell is the timing relates to their ability to convene a board meeting. We are in August when people in Europe especially are on holidays. The deal issues you allude to re Tennenbaum are not issues. If you believe they will honour the exclusivity, then they are captive to us for a week. I am quite sure today or even early this week is impossible.

Jon Levin
Fasken Martineau DuMoulin LLP
Barristers & Solicitors
Patent & Trade-mark Agents

Tel: 416 865 4401
Fax: 416 364 7813
www.fasken.com

333 Bay Street, suite 2400
Bay Adelaide Centre, Box 20
Toronto ON M5H 2T6

Canada

On Aug 11, 2014, at 8:54 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:

Clearly not just 'momentary'--by definition--since I had to jump in and try to understand what was said by the other side. Worse, VERY clear to me that it was either an attempt at delay (or evidence of cold feet/change of heart by them) OR incompetent counsel on their side. ALL bad from my perspective and MY job is to identify the worst scenario and then mitigate/eliminate risk related to such. That is EXACTLY what I am doing and am now demanding this deal be publicly disclosed/press released TODAY if they want it to continue/remain alive. That's no longer negotiable for me. I DONT TRUST THEM and their behavior makes even less sense in the larger scheme of what is going on btwn the big personalities (harper/frydman-putin) on a much bigger stage.

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin

Sent: Monday, August 11, 2014 8:39 AM

To: Glassman, Newton

Cc: De Alba, Gabriel

Subject: Re: Good morning

It was momentary. As soon as it was identified as an issue, Gabriel and I dispelled it.

Jon Levin
Fasken Martineau DuMoulin LLP
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Patent & Trade-mark Agents

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Canada

On Aug 11, 2014, at 8:32 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:

I was told yesterday that in fact it was 'the issue'---the reality is that our side should not have ever even allowed it to be more than a momentary process discussion. Now we r in the position where it has been used to introduce unnecessary and uncontrollable external deal risk. THATS NOT GOOD and it's definitely not the way catalyst runs deals.

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Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin

Sent: Monday, August 11, 2014 8:28 AM

To: Glassman, Newton

Cc: De Alba, Gabriel

Subject: Re: Good morning

I don't think the Tennenbaum situation is being used by them in the way you say. We gave them a solution to it so that is not likely an issue.

Jon Levin

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On Aug 11, 2014, at 8:25 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:

That's now their problem. I am furious--both at them and at our own team. To allege that somehow there is no way to gain control of the collateral unless 'tennenbaum voluntarily sells' is both legally/factually wrong but ridiculous. To allow the other side to use such to buy a delay is naive and amateurish. They r allowed to TRY any tactic they desire but it's

OUR job to decide which ones r legitimate/acceptable and which r not. This situation is not the first one they have tried on us--and they re-traded the last time we were close to the finish line.

It's their job to manage their own bd/get whatever approvals they need. Its our team's job to manage ME--and I am fed up/done.

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Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin
Sent: Monday, August 11, 2014 8:19 AM
To: Glassman, Newton
Cc: De Alba, Gabriel
Subject: Re: Good morning

Let's see what we can organize. They need board approval and do not have it.

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On Aug 11, 2014, at 8:12 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:
And they will have that risk @ any time in the future w any other potential buyer.

I am done w this situation. Either it's announced immediately and is fully binding subject to regulatory approval (has always been the deal) or catalyst is out. Right now.

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Managing Partner
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M5K 1J3

Office: (416)945-3030
Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Jon Levin
Sent: Monday, August 11, 2014 8:08 AM
To: Glassman, Newton
Cc: De Alba, Gabriel
Subject: Re: Good morning

Gabriel has a call with VimpelCom at 9:30. They have signed the extension. They say their concern is timing of government approval and the regulatory process.

Jon Levin
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On Aug 11, 2014, at 7:55 AM, "Glassman, Newton" <nglassman@catcapital.com> wrote:
Where r we this am?

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
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Sent from my BlackBerry 10 smartphone on the Rogers network.

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Message

From: Babcock, Ben [Ben.Babcock@morganstanley.com]
Sent: 8/15/2014 8:32:00 AM
To: Jon Levin [jlevin@fasken.com]; De Alba, Gabriel [gdealba@catcapital.com]
Subject: RE: Hi

Lets discuss at 11. The problem is the Chairman is solving for not trusting the govt no matter how low anyone tells him the risk is and he wants to either be paid a break fee if we are so confident we will get it or have the ability to keep his options open while our deal is pursued with the gov't. No one is going to give him the kind of certainty or protection he is seeking and none one is a better regulatory risk than we are and Felix knows this.

From: Jon Levin [mailto:jlevin@fasken.com]
Sent: Friday, August 15, 2014 8:23 AM
To: Gabriel De Alba; Babcock, Ben (IBD)
Subject: Fwd: Hi

Jon Levin

Fasken Martineau DuMoulin LLP

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Canada

Begin forwarded message:

From: "Saratovsky, Felix" <Felix.Saratovsky@vimpelcom.com>
Date: August 15, 2014 at 8:20:40 AM EDT
To: Jon Levin <jlevin@fasken.com>
Subject: Re: Hi

My instructions are that the position the chairman articulated to Ben has not changed. We need to have a way to manage the regulatory risk and are open to other ideas on how this may be achieved.

Sent from my iPhone

On Aug 15, 2014, at 12:23 PM, "Jon Levin" <jlevin@fasken.com> wrote:

will be speaking with Gabriel at 11 am (eastern time) this morning. Is there anything you wish me to say to him?

Jon Levin

Fasken Martineau DuMoulin LLP

Barristers & Solicitors

Patent & Trade Mark Agents

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Message

From: Jon Levin [jlevin@fasken.com]
Sent: 8/15/2014 6:44:27 PM
To: Babcock, Ben [Ben.Babcock@morganstanley.com]; De Alba, Gabriel [gdealba@catcapital.com]
Subject: RE: Re:

Assuming he is now asleep, tomorrow should be good enough. If we were to accept two plus one, I wonder if we would get a covenant that would say they would act reasonably in considering any further extension necessary due to government delay.

-----Original Message-----

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: August-15-14 6:41 PM
To: 'gdealba@catcapital.com'; Jon Levin
Subject: Re:

Should we go back to Felix with this or sleep on it?

Ben Babcock
Managing Director
Morgan Stanley
c. +1 647-825-8460 or +44 789 4417866
o. +1 416 943-8464 or +44 20 7425 0021

----- Original Message -----

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: Friday, August 15, 2014 06:23 PM
To: Babcock, Ben (IBD); 'jlevin@fasken.com' <jlevin@fasken.com>
Subject: Re:

That is correct, otherwise they will just be slow filing stuff..

Sent from my BlackBerry 10 smartphone on the Rogers network.

Original Message
From: Babcock, Ben
Sent: Friday, August 15, 2014 6:21 PM
To: De Alba, Gabriel; 'jlevin@fasken.com'
Subject: Re:

To even think about 2 + 1. When the clock starts is very relevant. Shouldn't be signing but when submission made.

Ben Babcock
Managing Director
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o. +1 416 943-8464 or +44 20 7425 0021

----- Original Message -----

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: Friday, August 15, 2014 06:15 PM
To: Jon Levin <jlevin@fasken.com>; Babcock, Ben (IBD)
Subject: Re:

I like reminding them that this is a \$100mm impact for 2014...on the other hand they might have to fund at least \$15mm as required under the loan agreement plus keep on funding losses.

I really do not want to be in a position of all or nothing after 2 months having "extension" risk.

The process requires 12 weeks, August is coming to an end and is a very low productivity period at the government..also they also need to file docs as they are the license/ spectrum holder...

Sent from my BlackBerry 10 smartphone on the Rogers network.

Original Message
From: Jon Levin
Sent: Friday, August 15, 2014 6:02 PM
To: De Alba, Gabriel; 'Babcock, Ben'
Subject: RE: Fw:

I think \$100MM is a pretty significant lever. Thus, if we accept the 2 months plus one deal, they will have great pressure to extend in any event since the impact on earnings is significant if they can get a 2014 deal and we will be their only chance to do that. If we hold out for something longer, the practical reality is that we are still likely their best shot at the \$100MM so they should blink. Perhaps Ben should push back by asking if they have considered the income statement benefit to keeping us at the table. It is unlikely that Videotron could close faster and likely they would be slower than we, possibly even so slow as to be a 2015 event.

-----Original Message-----

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: August-15-14 6:00 PM
To: 'Babcock, Ben'; Jon Levin
Subject: RE: Fw:

Even \$100mm is not an insignificant number when suffering all other write-downs/ losses

Gabriel de Alba
Managing Director and Partner
The Catalyst Capital Group Inc.
Ph: 416.945.3020
Cell: 416.276.1377
Cell US: 917.312.6701
Fax: 416.945.3060
gdealba@catcapital.com

-----Original Message-----

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: August-15-14 5:57 PM
To: De Alba, Gabriel; 'jlevin@fasken.com'
Subject: Re: Fw:

Dumb moment. U are right. About 100. I was thinking asset value.

Ben Babcock
Managing Director
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----- Original Message -----

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: Friday, August 15, 2014 05:55 PM
To: Babcock, Ben (IBD); 'jlevin@fasken.com' <jlevin@fasken.com>
Subject: RE: Fw:

How 4300mm if the company has \$170mm debt, \$10mm to Lacavera, \$10mm advisors and other...

Gabriel de Alba
Managing Director and Partner
The Catalyst Capital Group Inc.
Ph: 416.945.3020
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Cell us: 917.312.6701
Fax: 416.945.3060
gdealba@catcapital.com

-----Original Message-----

From: Babcock, Ben [mailto:Ben.Babcock@morganstanley.com]
Sent: August-15-14 5:54 PM
To: De Alba, Gabriel; 'jlevin@fasken.com'
Subject: Re: Fw:

I think a c300 gain ... They have a lot of write downs coming on Russia and Uzbekistan

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----- Original Message -----

From: De Alba, Gabriel [mailto:gdealba@catcapital.com]
Sent: Friday, August 15, 2014 05:41 PM
To: 'Jon Levin' <jlevin@fasken.com>; Babcock, Ben (IBD)
Subject: RE: Fw:

I would think a \$100mm+ gain as they have the investment written down to ZIPO..interesting angle to explore Jon.)

Gabriel de Alba
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The Catalyst Capital Group Inc.
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Cell: 416.276.1377
Cell US: 917.312.6701
Fax: 416.945.3060
gdealba@catcapital.com

-----Original Message-----

From: Jon Levin [mailto:jlevin@fasken.com]
Sent: August-15-14 5:39 PM
To: Babcock, Ben
Cc: De Alba, Gabriel
Subject: Re: Fw:

What are the income statement implications to VimpelCom if we buy by year end?

Jon Levin
Fasken Martineau DuMoulin LLP
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On Aug 15, 2014, at 5:16 PM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

See below.

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Managing Director
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----- Original Message -----

From: Babcock, Ben (IBD)
Sent: Friday, August 15, 2014 05:14 PM
To: 'felix.saratovsky@vimpelcom.com' <felix.saratovsky@vimpelcom.com>
Subject: Re:

I will ask but I do not have high expectations and struggle to recommend it in the circumstances.

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----- Original Message -----

From: Saratovsky, Felix [mailto:Felix.Saratovsky@vimpelcom.com]
Sent: Friday, August 15, 2014 04:14 PM
To: Babcock, Ben (IBD)

Subject: Re:

Ben, I'm blindingly aware of the trust issue. The chairman undercut his deal team so I have a bigger trust issue to deal with internally. I am asking you as someone I trust whether 2+1 is worth a shot. If not then I won't even raise it with Alexey. I wouldn't even suggest it if I thought that this was an unrealistic timeframe and I have been intimately involved in the regulatory system so I have a decent basis for thinking so.

Sent from my iPhone

> On Aug 15, 2014, at 10:07 PM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

> I think u are missing how unrealistic this is becoming and how hard it is to build trust the way this has played out where the Chairman is micro managing what was negotiated in good faith.

> I can ask but sincerely doubt that is acceptable. No serious buyer would accept this.

> Ben Babcock
> Managing Director
> Morgan Stanley
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> o. +1 416 943-8464 or +44 20 7425 0021

> ----- Original Message -----

> From: Saratovsky, Felix [mailto:Felix.Saratovsky@vimpelcom.com]
> Sent: Friday, August 15, 2014 03:58 PM
> To: Babcock, Ben (IBD)
> Subject: Re:

> The spectrum transfer framework says that govt will work to review transfers in 12 weeks. We have had direct strong statements from both the political branch and bureaucratic branch they they will work to review faster and review on a priority basis. The pace of review and outcome will in large part depend on the quality of the info C provides. VIP has no influence on the process. So Alexey is concerned that C can change its mind and indirectly influence the process. I don't believe that this will happen any more than anyone on C's side should believe that we will shop the deal while we are under an SPA. So maybe we can convince our principals to a 2 month period plus one month extension to coincide with the 12 week review standard. I can give another shot at convincing Alexey that this makes sense but it's futile to try for more at this stage.

> Sent from my iPhone

>> On Aug 15, 2014, at 9:29 PM, "Babcock, Ben" <Ben.Babcock@morganstanley.com> wrote:

>> 2 months is really non sensical. Nobody in their right mind would do this. On top of many things, it undermines credibility of everyone in trying to get a deal done. Our proposal gives u protection if govt is sending signals it won't approve. Given what has gone on it is hard to have confidence in commercially rationale behaviour at the end of 2 months on top of everything else.

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>> Managing Director
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>> 7425 0021

>> -----
>> -----
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**UNDERTAKINGS, UNDER ADVISEMENTS, AND REFUSALS
(Examination for Discovery of Gabriel de Alba held May 11, 2016)**

(Revised – June 2, 2016)



No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
5.	U/T	23	To advise who was on Catalyst's core deal team for Mobilicity as of the end of 2013.	The team that was responsible for the Mobilicity file as at the end of 2013 was Newton Glassman, Gabriel de Alba, James Riley, Zach Michaud and Andrew Yeh.

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
14.	U/T	71-72	To advise if any drafts of the share purchase agreement being negotiated between Catalyst and VimpelCom contained a condition that the deal could not close unless Catalyst obtained certain regulatory concessions from the government.	The drafts of the share purchase agreement exchanged by Catalyst and VimpelCom contained certain regulatory conditions. None were expressly predicated on Catalyst obtaining regulatory concessions.
15.	U/A	83	To produce the notebooks of all members of the Catalyst investment team relating to WIND.	Catalyst's investment team has reviewed all notebooks and notes and cannot locate any existing notebooks or notes concerning WIND.

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
18.	U/T	88	To confirm that CCG0011325, the black line version of the draft share purchase agreement being negotiated between Catalyst and VimpelCom, is the last draft of the share purchase agreement that Mr. Moyse saw.	The share purchase agreement (CCG0011363) attached to CCG0011362 is the last draft of the agreement that was sent to Mr. Moyse.
19.	U/T	89	To confirm that there is no evidence that anyone at Catalyst discussed any of the revisions set forth in CCG0011325 with Mr. Moyse.	There is no evidence that anyone at Catalyst discussed the revisions in CCG0011325 with Moyse.

5858.5

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
21.	U/T	98	To advise what measures Catalyst took to cut off Mr. Moyse's access to Catalyst's servers.	On May 26, 2014, Catalyst contacted its IT provider and asked that Mr. Moyse's permissions to access Catalyst's servers be revoked. Immediately thereafter Catalyst contacted Marty Musters to perform an investigation of Mr. Moyse's work computer.
22.	U/T	98	To advise what evidence Catalyst has of confidential Catalyst information passing to Mr. Moyse after May 26, 2014.	Catalyst does not have evidence at this time of confidential Catalyst information passing to Mr. Moyse after May 26, 2014. Catalyst cannot identify any documents in the present productions as evidence that Moyse received Catalyst's confidential information after May 26, 2014.

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
28.	U/T	113-114, 116-117	To the extent that Catalyst is going to allege that Mr. Moyse was on or participated in any calls between May 16 and May 25, 2014 while he was on vacation in South East Asia, to advise on what evidentiary basis such an allegation will be made.	Catalyst does not allege that Mr. Moyse participated in any Catalyst calls concerning WIND between May 16 and May 25, 2014.

5858.7

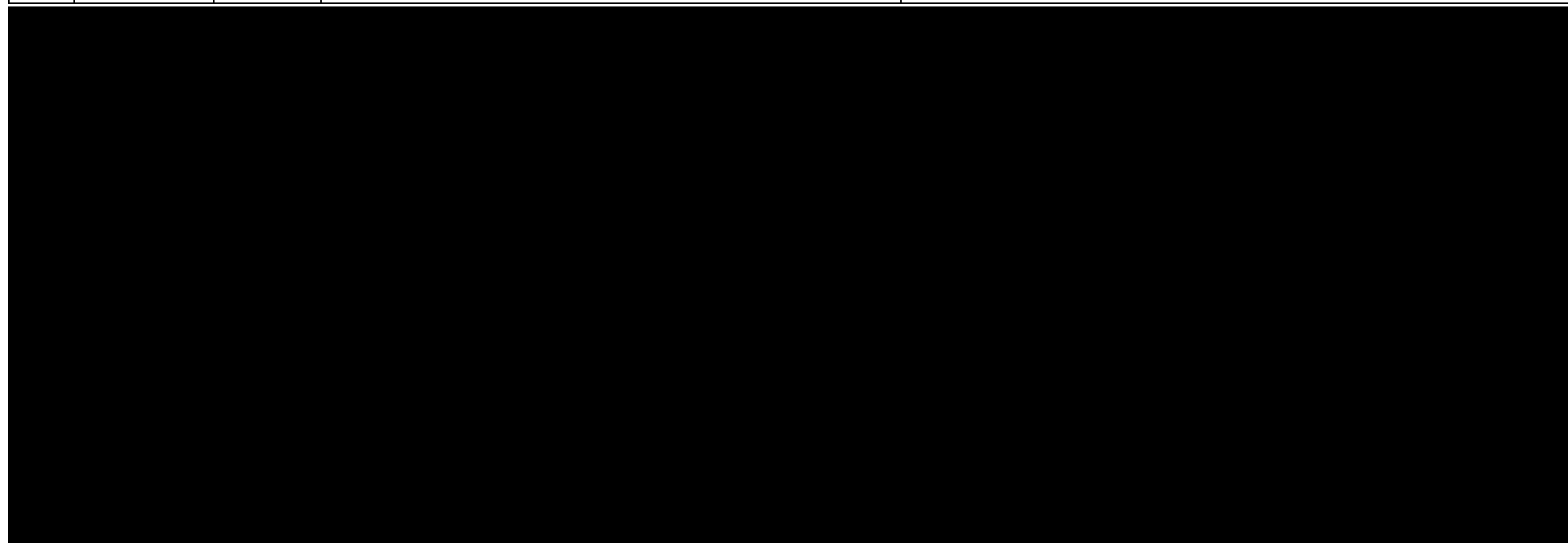
No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
32.	U/T	123-124	To advise whether, since Mr. Moyse's departure, anyone at Catalyst told him anything about the WIND deal, Catalyst's strategies, or the course of Catalyst's negotiations with VimpelCom.	Catalyst is not aware of anyone at Catalyst communicating to Moyse anything about the WIND deal since his departure.

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
34.	U/T	136	To confirm that Catalyst is not pursuing a claim in this proceeding that AAL Telecom Holdings Incorporated, any of its subsidiaries or any of its three principals (Mr. Scheschuk, Mr. Lacavera or Mr. Lockie) have breached any kind of legal duty or obligation to Catalyst in respect of their discussions with West Face.	Confirmed.
36.	U/T	156	To advise if Catalyst asked for any regulatory concessions from the government, other than those outlined in its March 27, 2014 and May 12, 2014 presentations to the government.	No. The presentations outline the concessions sought by Catalyst from the federal government.
38.	U/T	165-166	In reference to CCG0026625, to confirm that this version of the share purchase agreement being negotiated between Catalyst and VimpelCom contained the final draft of clause 6.3(d) and that there were no further negotiations on this topic from August 1, 2014 forward.	Confirmed.

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
47.	U/A	202-204	To advise who at Catalyst was consulted in answering the undertaking "To advise whether VimpelCom ever asked for a break fee" given at the cross-examination of Mr. Riley on May 13, 2015.	Mr. Riley asked Zach Michaud however Mr. Riley recalls that he asked Mr. Michaud whether there was a break fee in the transaction (not whether VimpelCom asked for a break fee) and Mr. Michaud advised that there was not. Additionally, Mr. Riley answered the undertaking to the best of his recollection and did not recall that VimpelCom asked for a break fee. At the time that VimpelCom proposed the break fee, Mr. de Alba was principally negotiating for Catalyst.
48.	U/A	208-209	To the extent that Catalyst intends to lead evidence at trial concerning a breach of exclusivity by VimpelCom, to advise what this evidence will be, including identifying which communications between West Face and VimpelCom Catalyst alleges were in breach of exclusivity.	Catalyst does not intend to lead evidence concerning a breach of the exclusivity agreement between Catalyst and VimpelCom in this proceeding.

5858.10

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
50.	R/F	213	To advise whether Catalyst undertook further efforts after exclusivity expired to acquire WIND.	Catalyst is answering this question pursuant to Rule 34.12 and maintains its objection on the ground that the question is irrelevant. Yes.
51.	R/F	213	To advise whether Catalyst had any communications with VimpelCom between August 25 and September 16, 2014.	Catalyst is answering this question pursuant to Rule 34.12 and maintains its objection on the ground that the question is irrelevant. Yes.



THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF
PROCEEDING COMMENCED AT
TORONTO**

**MOTION RECORD OF THE DEFENDANT/MOVING
PARTY WEST FACE CAPITAL INC.
(VOLUME 14 OF 19)**

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