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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

MOTION RECORD OF THE DEFENDANT/MOVING PARTY WEST FACE CAPITAL INC. (VOLUME 15 OF 19)

December 7, 2016

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF

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

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This is Exhibit "42" 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.

From: Andrew Winton <awinton@counsel-toronto.com>
Sent: June 1, 2016 12:09 PM
To: Milne-Smith, Matthew
Cc: Rocco DiPucchio
Subject: Catalyst v VimpelCom et al. - issued claim and jury notice [IWOV-CLIENT.FID60375]
Attachments: Statement of Claim (issued) CV-16-553800.pdf; Jury Notice - June 1 16.pdf

Matt,

Attached please find a copy of a statement of claim issued yesterday. Please let us know if you can accept service of this claim and if so, on behalf of which defendants.

Please also find attached a jury notice that we will be filing for this action.

Regards,

Andrew

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5860

Court File No. CV-16-553800

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

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,

5861

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

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

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

Date May 31, 2016 Issued by _____ Local Registrar

Address of court office: 393 University Avenue
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AND TO: **Globalive Capital Inc.**
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AND TO: **UBS Securities Canada Inc.**
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AND TO: **Novus Wireless Communications Inc.**
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AND TO: **West Face Capital Inc.**
2 Bloor Street East, Suite 3000
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AND TO: **Mid-Bowline Group Corp.**
900, 630 – 3rd Avenue SW
Calgary, AB T2P 4L4

CLAIM

1. The Plaintiff claims:

(a) against the Defendant VimpelCom Ltd. and UBS Securities Canada Inc., on a joint and several basis, damages in the amount of $750,000,000 for breach of contract;

(b) against the Defendants Globalive Capital Inc., Tennenbaum Capital Partners LLC, 64NM Holdings GP LLC, 64 NM Holdings LP, LG Capital Investors LLC, Serruya Private Equity Inc., Novus Wireless Communications Inc., West Face Capital Inc. and Mid-Bowline Group Corp., on a joint and several basis:

(i) damages in the amount of $750,000,000 for misuse of confidential information, conspiracy, and inducing breach of contract; and

(ii) Punitive damages in the amount of $1,000,000;

(c) against all of the Defendants on a joint and several basis:

(i) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(ii) The costs of this action, plus the applicable taxes; and

(iii) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. ("Catalyst")

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

The Defendants

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

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

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

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

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

8. Serruya Private Equity Inc. ("Serruya") is a private equity investment fund headquartered in Markham, Ontario.

9. Novus Wireless Communications Inc. ("Novus") is a telecommunications provider based in Vancouver, British Columbia.

10. West Face Capital Inc. ("West Face") is a Toronto-based private equity corporation with assets under management of approximately $2.5 billion.

11. Mid-Bowline Group Corp. ("Mid-Bowline") is an entity incorporated by the members of the Consortium (defined below) for the purpose of purchasing Vimpelcom's interest in Wind.

Wind Mobile's Inception

12. Wind was founded in 2008. It acquired Advanced Wireless Services spectrum licences during an auction open to small entrants in Canada's telecommunications industry held by the Government of Canada.

13. Wind was initially jointly owned by Globalive and Orascom Telecom Holdings ("Orascom") through a holding company called Globalive Investment Holdings Corp. ("GIHC"). Globalive indirectly held 67% of Wind's voting shares and 34% of its total equity. Orascom indirectly held 100% of Wind's non-voting shares, 32% of its voting shares and 65% of its total equity. The remaining 1% of Wind's voting shares and total equity was held by a former Orascom employee.

14. In 2011, VimpelCom acquired the majority shareholder of Orascom, and, as a result, acquired Orascom's interest in GIHC and Wind.

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

VimpelCom Intends to Exit Wind

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

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

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

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

20. In December 2013, Catalyst negotiated in earnest potential terms for a deal with VimpelCom to acquire its interest in Wind. On January 2, 2014, Catalyst delivered a letter of intent to VimpelCom whereby it offered to purchase Globalive Wireless Management Corp. for C$550,000,000, all-cash on closing. VimpelCom did not accept Catalyst's offer.

Globalive Seeks a Financier

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

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

VimpelCom Writes Down its Investment in Wind

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

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

Catalyst Executes Confidentiality Agreement and Continues Negotiations with VimpelCom

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

26. On March 23, 2014, Catalyst executed a confidentiality agreement with VimpelCom and Global Telecom Holding S.A.E (the "Confidentiality Agreement"). The Confidentiality

Agreement was intended in part, to protect the confidentiality of information exchanged during the diligence process. It also mandated complete confidentiality over the sale process:

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

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

Wind Defaults on Vendor Debt and Catalyst Negotiations Continue

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

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

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

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

Other Suitors Pursue Transaction with VimpelCom

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

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

34. After Wind defaulted on its vendor debt on May 1, 2014, including the debt owed to Tennenbaum, VimpelCom informed Tennenbaum that it was selling its stake in Wind. Tennenbaum met with Wind's management in early May 2014 and started negotiating a proposal to acquire Wind. Tennenbaum's negotiations continued through May and June 2014.

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

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

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

Catalyst Enters Into Exclusivity With VimpelCom

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

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

> (a) VimpelCom and Catalyst shall and shall cause their respective Affiliates to deal exclusively with each other in connection with the Transaction and VimpelCom shall use its reasonable efforts to ensure that GWMC and its subsidiaries deal exclusively with Catalyst and its respective Affiliates in connection with the Transaction;
>
> (b) VimpelCom shall not, shall ensure that its Affiliates will not, and shall use its reasonable efforts to ensure that GWMC and its subsidiaries do not, directly or indirectly, through any of its or their respective Representatives, solicit or encourage offers from, participate in any negotiations or discussions with, enter into any agreements with, or furnish any information to, any person regarding any alternative transaction to the Transaction (including but not limited to an acquisition, merger, arrangement, amalgamation, other business combination, joint venture or equity or other financing) involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets (an "Alternative Transaction");
>
> (c) VimpelCom shall, shall cause its Affiliates and its and their respective Representatives to and shall use its reasonable efforts to ensure that GWMC and its subsidiaries, (A) discontinue or cause to be discontinued any existing activity of the nature described in Section 2(a), including but not limited to precluding access to any due diligence data room (except for access provided to Catalyst and its Representatives) and (B) enforce and not release any third party from, or otherwise waive, any standstill covenants or obligations owed by any such third party to VimpelCom and/or its

> Affiliates and/or GWMC or its subsidiaries under any confidentiality agreement entered into with respect to a potential Transaction involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets; and
>
> (d) VimpelCom and Catalyst would undertake to negotiate with each other in good faith during the exclusivity period and would not take any steps to undermine the purpose and intent of the Exclusivity Agreement.

40. The Exclusivity Agreement also required the parties to keep the existence and terms of the Exclusivity Agreement confidential.

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

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

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

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

Other Bidders for the Consortium

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

Catalyst Extends the Exclusivity Agreement

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

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

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

The Consortium Forms a Conspiracy

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

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

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

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

53. In or about August 2014, the members of the Consortium, Globalive and Lacavera entered into a conspiracy the predominant purpose of which was to induce VimpelCom to breach the Exclusivity Agreement, to cause VimpelCom to cease negotiating with Catalyst in good faith and to thereby cause harm to Catalyst (the "Conspiracy").

54. The following parties met in in or about August 2016 to discuss how to induce VimpelCom to breach the Exclusivity Agreement, as particularized below:

(a) Michael Leitner ("Leitner"), as the principal of Tennenbaum;

(b) Lawrence Guffy ("Guffy") and Hamish Burt, ("Burt") as principals of LG Capital Investors LLC ("LG") and the manager of the managing member of 64NM GP;

(c) Greg Boland ("Boland"), Anthony Griffin ("Griffin"), Tom Dea ("Dea") and Peter Fraser ("Fraser"), as principals of West Face;

(d) Michael Serruya ("M. Serruya"), Aaron Serruya ("A. Serruya"), and Simon Serruya ("S. Serruya"), as principals of Serruya;

(e) Terence Hui ("Hui"), as principal of Novus; and

(f) Lacavera, as the principal of Globalive (together, the "Conspirators").

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

56. Together, the Conspirators prepared terms of an offer to VimpelCom that were designed to induce VimpelCom to breach the Exclusivity Agreement and to cause VimpelCom to negotiate with Catalyst in bad faith during the terms of the Exclusivity Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Misuse of Catalyst's Confidential Information by the Consortium

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

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

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

76. Between April 2014 and August 18, 2014, Lacavera repeatedly communicated Confidential Information to the Consortium, either jointly or to individual members of the

Consortium, to assist the Conspirators in their efforts to prevent Catalyst from successfully purchasing Wind.

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

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

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

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

The Consortium Induces VimpelCom to Breach the Exclusivity Agreement

81. On August 6, 2014, acting in furtherance of the Conspiracy, Leitner sent a proposal to VimpelCom and UBS entitled "Superior Proposal to purchase WIND Canada" (the "Proposal"). The Proposal included the following terms:

(a) Binding commitments to purchase VimpelCom's equity and debt interests for a cash amount that approximates the net amounts distributed to VimpelCom based on the "reserve price";

(b) The proposal would not require regulatory approval and requires no engagement with regulatory authorities;

(c) The proposal would close quickly; and

(d) The Consortium would purchase Wind's Vendor Loans at par and refinance them.

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

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

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

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

85. Following receipt of the Proposal, VimpelCom ceased negotiating with Catalyst in good faith. Instead, it used its negotiations with Catalyst as a stalking horse to improve the terms of the Proposal.

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

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

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

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

Exclusivity With Catalyst Ends

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

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

Harm to Catalyst

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

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

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

Catalyst Discovers the Conspiracy in January 2015

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

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

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

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

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

Damage to Catalyst

100. As a result of the Consortium's inducement of breach of contract and VimpelCom's breach of the Exclusivity Agreement, Catalyst has suffered damages, which are crystallized in the form of the profits realized by the Conspirators from the sale of Wind to Shaw, which Catalyst estimates to be $750 million.

Punitive Damages

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

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

Service *Ex Juris*

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

104. Pursuant to the terms of the Exclusivity Agreement, VimpelCom attorned to the jurisdiction of the courts of the Province of Ontario.

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

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

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Lawyers for the Plaintiff

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and-

VIMPELCOM LTD. et al.
Defendant

CV-16-5638800
5883
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

Court File No. CV-16-553800

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

JURY NOTICE

THE PLAINTIFF REQUIRES that this action be tried by a jury.

June 1, 2016

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
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Lawyers for the Plaintiff

TO: **VimpelCom Ltd.**
c/o Robic
Centre CDP Capital
1001 Square-Victoria, Bloc E-8e Etage
Montreal, QC H2Z 2B7

AND TO: **Globalive Capital Inc.**
48 Yonge Street, Suite #1000
Toronto, ON M5E 1G6

AND TO: **UBS Securities Canada Inc.**
161 Bay Street, Suite #4100
Toronto, ON M5J 2S1

AND TO: **Tennenbaum Capital Partners LLC**
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE
19801
U.S.A.

AND TO: **64NM Holdings GP LLC**
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE
19801
U.S.A.

AND TO: **64NM Holdings GP LLC**
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE
19801
U.S.A.

AND TO: **LG Capital Investors LLC**
152 West 57th Street, Suite 4700
New York, New York
10019
U.S.A.

AND TO: **Serruya Private Equity Inc.**
210 Shields Court
Markham, ON L3R 8V2

AND TO: **Novus Wireless Communications Inc.**
300 – 112 East 3rd Avenue
Vancouver, BC V5T 1C8

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

AND TO: **Mid-Bowline Group Corp.**
900, 630 – 3rd Avenue SW
Calgary, AB T2P 4L4

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and-

VIMPELCOM LTD et al.
Defendants

Court File No. CV-16-553800

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

JURY NOTICE

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Lawyers for the Plaintiff

This is Exhibit "43" 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.

THE GLOBE AND MAIL

June 1, 2016

Catalyst suing former owners, bankers of Wind Mobile

By Andrew Willis and Christine Dobby

Private equity fund alleges its exclusive rights to buy Wind were breached during the sale of the company in 2014

Private equity fund Catalyst Capital Group Inc. is suing the former owners and bankers of Wind Mobile Corp. for $750-million, alleging that leaks of confidential data and breach of an exclusivity agreement cost Catalyst a lucrative opportunity to buy the mobile phone company in 2014.

In an Ontario Superior Court of Justice filing on Tuesday in Toronto, the firm alleged that it recently learned Wind's former owners, VimpelCom Ltd. and Globalive Capital Inc., Wind's investment bank, UBS Securities Canada Inc., and a consortium of eight private equity funds and investors, including West Face Capital Inc., conspired against Catalyst.

The lawsuit, which has not been heard in court, states that during the spring and summer of 2014, when Wind was up for sale after defaulting on debts, Catalyst negotiated exclusive rights to buy the company. Multiple bidders were circling Wind at the time, and Catalyst alleges that confidential information on its bid was leaked to a rival consortium of private equity funds that included West Face.

This consortium ultimately acquired Wind in September, 2014, in partnership with former Wind chief executive officer Anthony Lacavera. The new owners paid about $135-million for control of Wind and assumed its debts. The consortium of private equity funds subsequently struck a deal to sell Wind to Shaw Communications Inc. for $1.6-billion in December. The deal closed in early March. Catalyst alleges the private equity funds earned $750-million on the transaction, "thereby crystallizing Catalyst's damages."

Catalyst claimed it only learned of leaks and breach of exclusivity agreements in recent court filings made by Shaw and Wind's former owners in order to close the transaction.

In response to the lawsuit, West Face CEO Greg Boland said: "West Face conducted itself properly and lawfully at all times, and is strongly of the view that Catalyst's latest claim is devoid of merit. West Face intends to defend the claim vigorously." UBS Securities Canada, which was hired by VimpelCom to find a purchaser for the Amsterdam-based company's interests in Wind Mobile, declined comment.

The lawsuit takes direct aim at Mr. Lacavera, Wind's former CEO, who Catalyst states would have been terminated if its offer was successful. The lawsuit states: "Lacavera repeatedly communicated confidential information to the consortium ... to assist the conspirators in their efforts to prevent Catalyst from successfully purchasing Wind."

Mr. Lacavera could not be reached for comment. He stepped down as Wind's CEO in late 2014, but remained the company's chairman until March, 2015. Representatives for VimpelCom and Globalive, which is an investment firm owned by Mr. Lacavera and his partners, also could not be reached for comment.

The lawsuit is the latest in a series of legal battles between Catalyst and two central players in the Wind transaction, West Face and Shaw.

The Globe and Mail, Inc.

This is Exhibit "44" 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.

From: Trunzo, Nadia on behalf of Milne-Smith, Matthew
Sent: June 1, 2016 5:24 PM
To: 'awinton@counsel-toronto.com'
Cc: 'rdipucchio@counsel-toronto.com'; 'bvermeersch@counsel-toronto.com'; Thomson, Kent; Carlson, Andrew; Campbell, Christie; 'robert.centa@paliareroland.com'; 'kris.borg-olivier@paliareroland.com'; 'denise.cooney@paliareroland.com'
Subject: West Face Capital - Response to Statement of Claim
Attachments: A Winton - Response to Statement of Claim.pdf

Please find attached our correspondence with respect to the matter in caption.

Thank you.

DAVIES

155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

June 1, 2016

Mathew Milne-Smith
T 416.863.5595
mmilne-smith@dwpv.com

File No. 250486

BY EMAIL

WITH PREJUDICE

Mr. Andrew Winton
Lax O'Sullivan Lisus Gottlieb LLP
145 King Street West, Suite 2750
Toronto, ON M5H 1J8
Canada

Dear Mr. Winton:

We accept service of your client's new Statement of Claim, which you delivered by email this afternoon, on behalf of the defendant West Face Capital Inc. We do not act for any of the other defendants.

Please be advised that West Face considers this Claim to be an abuse of process, for at least two reasons. First, it represents litigation by installment. As found by Justice Newbould in paragraph 56 of his Reasons for Judgment in the Plan of Arrangement proceedings dated January 26, 2016, "Catalyst was aware on March 13, 2015 of the facts that Mr. Riley now asserts he wants to use in this intended inducing breach of contract action". Moreover, on examination for discovery Mr. de Alba admitted that he was informed by Mr. Gauthier, counsel to VimpelCom, that the consortium of which West Face was a member had made a proposal to VimpelCom during the period of Catalyst's exclusivity, and that he was aware of this fact "at the time the events in question were happening". As such, there is no reason that the claims first asserted today should not have been asserted at the time that Catalyst amended its claim to add allegations about the WIND transaction on October 29, 2014, given that the evidence that will be relevant to Catalyst's claim in its new proceeding overlaps substantially with the evidence will be led in the trial that starts on Monday.

Second, Catalyst's new claim appears to violate the deemed undertaking rule set out in Rule 30.1 of the Rules of Civil Procedure and the underlying common law implied undertaking rule. At various points the Claim refers to facts of which Catalyst could only have become aware through the discovery process in this case. As West Face has yet to deliver its trial affidavits and the vast majority of communications with Anthony Lacavera were disclosed by way of documentary or

oral discovery, and not attachments to affidavits in prior motions, those communications are subject to the deemed and implied undertakings and may not be relied on by Catalyst for any collateral purpose, including the new claim that you have delivered today.

Please be advised that we intend to bring this new claim to Justice Newbould's attention in advance of our 9:30 appointment on Friday. Our present intention, following the conclusion of the trial in the Moyse action, is to bring motions to (a) transfer this matter to the Commercial List before Justice Newbould; (b) to the extent necessary, strike the jury notice you intend to serve; and (c) strike or dismiss the Statement of Claim as an abuse of process with costs on a full indemnity basis, and seek a finding of contempt for breach of the deemed and implied undertakings. We reserve the right to solicit Justice Newbould's availability regarding these motions on Friday.

Yours very truly,

Matthew Milne-Smith

MMS/ma

cc Rocco Di Pucchio, Brad Vermeesch
Kent Thomson, Andrew Carlson, Christie Campbell
Robert Centa, Kris Borg-Olivier, Denise Cooney

This is Exhibit "45" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

Meora Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 19, 2018.

From: Brad Vermeersch <bvermeersch@counsel-toronto.com>
Sent: June 2, 2016 4:51 PM
To: Carlson, Andrew; Milne-Smith, Matthew; Thomson, Kent
Cc: Rocco DiPucchio; Andrew Winton; Denise.Cooney@paliareroland.com; Robert.Centa@paliareroland.com; Kris.Borg-Olivier@paliareroland.com
Subject: Catalyst v VimpelCom
Attachments: 6862762_1 (2).pdf; ATT00001.txt

Counsel,
Please see attached correspondence from Mr. DiPucchio.

Rocco DiPucchio
Direct 416 598-2268 rdipucchio@counsel-toronto.com
File No. 13689

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Lax O'Sullivan Lisus Gottlieb

June 2, 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 VimpelCom et al.
Court File No. CV-16-553800

Thank you for your letter dated June 1, 2016.

It is disingenuous to allege that the Statement of Claim, issued on May 31, 2016, is in any way an abuse of process.

This is not litigation by installment. During the hearing in January 2016, West Face argued that the inducing breach claim should not form any part of the trial that is to commence on Monday (the "Moyse Action"). In paragraph 61 of Justice Newbould's Endorsement of January 26, 2016 he states "[t]he trial of the issue I have ordered is not to consider any such claim". Catalyst was not permitted to amend its statement of claim to add any allegations that are in the Claim. As such, Catalyst commenced an action, within the relevant limitation period, to enforce its legal rights. Based on Justice Newbould's January 26 Endorsement, it is irrelevant that evidence in the Moyse Action will overlap with possible evidence in the Claim.

Further, the Mid-Bowline Plan of Arrangement was specifically amended on consent, such that it carved out this particular Claim, which you were well aware of having been advised that our client would be bringing the Claim.

Catalyst has not violated the deemed undertaking rule set out in Rule 30.1 of the *Rules of Civil Procedure.* Catalyst discovered the specific facts outlined in the Statement of Claim after reviewing the affidavits publicly-filed in support of the Plan of Arrangement, including the following:

- Affidavit of Anthony Griffin, sworn January 8, 2016;

- Affidavit of Simon Lockie, sworn January 8, 2016;
- Affidavit of Hamish Burt, sworn January 7, 2016; and
- Affidavit of Michael Leitner, sworn January 7, 2016.

The Claim is entirely drafted on the basis of the evidence in the affidavits listed above. The allegation in your correspondence that the Claim relies on communications in West Face's productions regarding Anthony Lacavera is incorrect. It is evident from these above-noted affidavits that the Consortium was in near constant contact with Lacavera.

As indicated in Mr. Winton's email earlier this week, no one at Catalyst has viewed the documents produced by West Face on a counsel's eyes only basis. Nor has any document produced or discovery testimony in the Moyse Action been used to draft the Claim. Rather, Catalyst instructed us to prepare the Claim only after receiving the affidavits listed above.

There is no basis for the Claim to be transferred to the Commercial List.

There is no basis to strike the jury notice.

There is no basis to strike or dismiss the Claim.

The Claim has not yet been served on all defendants. Several are not based in Canada and will take some time to serve. We see no reason to raise this with Justice Newbould during tomorrow's attendance to distract in any way from the Moyse Action.

Yours truly,

Rocco DiPucchio

c.c Kent Thomson and Andrew Carlson (Davies)
Robert A. Centa, Kris Borg-Olivier, Denis Cooney (Paliare Roland)
Andrew Winton and Brad Vermeersch (LOLG)

This is Exhibit "46" 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-16-11272-00CL

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

AFFIDAVIT OF NEWTON GLASSMAN
(Sworn May 27, 2016)

I, NEWTON GLASSMAN, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Managing Partner of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out 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 have reviewed the affidavit of Gabriel de Alba, sworn May 27, 2016, and the affidavits of James Riley, sworn July 14, June 26, July 28, 2014, May 1 and February 18, 2015, in this proceeding and adopt their evidence.

Involvement in the Wind Transaction

3. In late 2013 and 2014, Catalyst was involved in negotiations with VimpelCom Ltd ("VimpelCom") to purchase WIND Mobile Canada ("Wind").

4. I was involved in Catalyst's negotiations with VimpelCom but de Alba was Catalyst's lead negotiator on the deal and directed Catalyst's deal team and our advisors. I was primarily responsible for Catalyst's negotiations with Industry Canada ("IC") and the federal government concerning critical regulatory issues that I had decided needed to be resolved before Catalyst purchased Wind.

5. De Alba kept me informed of his communications with others involved in this opportunity on a regular basis through in-person discussions, telephone calls, and email. I, in turn, kept de Alba and the deal team informed of the progress of our discussions with the relevant regulatory and government bodies. These communications usually occurred weekly with the deal team and nearly every day with de Alba.

Catalyst's Involvement in Telecommunications and Spectrum

6. Catalyst had long had an interest in the telecommunications industry. For example, we considered an investment in Wind as early as 2008.

7. In 2011, pursuant to a First Lien Indenture, Catalyst acquired a legally and structurally senior position in Data & Audio Visual Enterprises Wireless Inc., which was better known as Mobilicity, a small wireless carrier that was formed in 2008 after IC set aside spectrum licenses for new entrants in the telecommunications industry. Spectrum is the radio frequency used to transmit wireless signals. The federal government licensed access to these frequencies and distributed the licenses through an auction process.

8. In January and February of 2014, IC initiated a new auction to sell portions of the 700-megahertz spectrum. This spectrum can travel long distances thereby reducing the need for cellular towers and base stations and reducing operating costs for carriers. Catalyst prepared a

bid for this auction and subsequently withdrew due to certain conditions imposed during the auction process intended to, among other things, potentially diminish rights associated with the 2008 licenses, and therefore increase the corresponding risks flowing from the conditions associated with the 700-megahertz auction. Internally, numerous discussions occurred between Catalyst's investment professionals, many led by me and most included Brandon Moyse, concerning the strategic, game-theory-related and pragmatic reasons for Catalyst's withdrawal from the 700 megahertz auction.

9. Spectrum is the critical asset for a wireless carrier. New entrants such as Mobilicity and Wind received preferential treatment in the distribution of spectrum as part of IC's explicitly stated goal of promoting additional competition, preferably via the introduction of a "fourth carrier" in all wireless markets. However, in 2012 or 2013, IC unilaterally and retroactively attempted to impose severe and explicit restrictions on the 2008 licenses held by new entrants; these included new restrictions on their ability to transfer the spectrum licenses to third parties generally, and to the incumbent three players specifically. For example, IC forbade the new entrants from selling spectrum to the incumbent carriers indefinitely notwithstanding the original terms under the 2008 auction rules specifically allowed such sales after an initial five year period (which expired in 2013). The federal government's goal, to be implemented via this unilateral and retroactive change, was to increase competition in the wireless market by facing the new entrants to remain independent of the incumbents regardless of the impact on the new entrants' viability or finance-ability resulting from these unilateral and retroactive changes.

10. In my many discussions with representatives of IC and the federal government, I explained why I believed that an independent fourth wireless carrier would not be viable in Canada without changes to the regulatory environment including changing or reversing the

unilateral and retroactive conditions imposed upon the 2008 licenses. Alternatively, we disclosed our view that a fourth wireless carrier as a wholesaler would be the only financially viable alternative. It was well known internally and discussed extensively internally that it was Catalyst's opinion an independent fourth wireless carrier could not survive without changes to the existing regulatory structure. Moyse was intimately aware of, and involved in, our internal analyses as he attended the Monday morning meetings, prepared internal analysis concerning the industry, was involved in discussions with our legal counsel and government relations consultants, who provided both formal and informal analyses, and he prepared or helped prepare analyses concerning the competitive environment facing the new entrants generally and Wind specifically. Moyse assisted in preparing, among other things, the presentations to government stake holders arguing for changes to the regulatory regime and some of the weekly updates for the Catalyst team and Monday meetings.

11. Without these changes, the fourth carrier would only be able to compete in the short term with the incumbents on price and, given their size, the incumbents would quickly squeeze a fourth carrier out of the market with a price war and then attempt to acquire its spectrum at a discount. Each of the incumbents had one or more "discount" brands that shared spectrum with their higher-margin brands (for example, Rogers used its "Fido" brand to compete with the new entrants on price). Meanwhile, incumbents' scale gave them a distinct advantage in terms of both quality and product offerings (in particular, the ability to bundle). In the regulatory environment that existed in 2014, the new entrants, like Wind, were therefore not equipped to survive any kind of competitive war with the incumbents.

12. Without the specific regulatory support identified by Catalyst, I believed that a fourth wireless carrier that focused on the wholesale market would be the most feasible, and likely

successful. The theory was that this carrier would acquire spectrum and make it available to the incumbents through a competitive bidding process. The goal of a wholesaling carrier would be to force competition between the incumbents for spectrum in key markets and, in turn, provide consumers with improved product offerings and pricing.

13. Alternatively, IC and the federal government would eventually be drawn into litigation over the retroactive and unilateral changes to historical spectrum licenses that prevented 2008 spectrum from being sold by new entrants to incumbents. Catalyst strongly believed that specific parties willing to pursue this litigation against the federal government would be successful. Catalyst itself could and would not pursue this litigation directly because of its involvement in other regulated businesses. The likelihood of successful litigation against the federal government in respect of the unilateral and retroactive conditions imposed by the federal government on historical spectrum was discussed regularly and repeatedly within Catalyst, including with Moyse, and with the input of our investment professionals, including Moyse, and our outside advisors.

Negotiations with IC in March of 2014

14. In order to build the fourth wireless carrier (a "wholesaler" if Catalyst's desired regulatory changes were not made; a "retailer" otherwise), Catalyst's plan was to merge the spectrum assets of Mobilicity and Wind. Both carriers had assets the other needed in order to survive: Mobilicity had access to spectrum that Wind needed, and Wind had the stronger brand presence and more subscribers. At the same time, Catalyst needed comfort from IC about a potential exit strategy from its investment in the fourth wireless carrier in the event a retail network did not work due to inflexibility or unwillingness to provide the regulatory support as outlined in the presentations prepared by Catalyst. Moyse was intimately aware of and involved

in all analyses and conclusions as to how Catalyst would mitigate risk and/or profit regardless of which route was taken by IC and the federal government.

15. In March of 2014, Telus fought and lost to the federal government over its efforts to purchase the holding company of Mobilicity. Mobilicity was stranded without a logical buyer so long as a buyer pursued the parent company. Moyse knew that if Catalyst were to try to build the fourth wireless carrier, as a matter of firm policy we needed increased certainty about how we could monetize the investment Catalyst had made in Mobilicity's operating company within five years or less.

16. After several meetings in Ottawa, Catalyst scheduled a meeting with IC, the Prime Minister's Office ("PMO") and the Privy Council Office ("PCO"), and other interested parties in the federal government for March 27, 2014. Internally, we prepared a PowerPoint presentation outlining our analysis, findings, and strategy for a fourth wireless carrier. Moyse was responsible for creating the presentation slides based on extensive internal prior discussions (including industry dynamics and deal strategy), notes given to him by me, Riley and De Alba. Moyse was privy to all of our deal priorities, internal conclusions, formal and informal discussions with our advisors, and the advances we had made with the regulators on these issues leading up to the March 27 meeting. He was also aware of the critical nature of the regulatory clarifications requested as part of Catalyst's wireless telecom plan as well as the alternative legal strategy that Catalyst itself would not pursue directly but would likely benefit from when initiated by others.

17. The content of the presentation to IC and our negotiating positions to IC were very sensitive and highly confidential – as were IC and the federal government's responses and likely areas of flexibility on these matters. IC and the federal government knew that Catalyst was in

other regulated businesses. Catalyst explicitly told IC and the federal government that it could not and would not direct the litigation against the government over the conditions imposed on the historical spectrum licenses, but that it believed that a party would be successful against them. Catalyst informed IC and the federal government that if the right stakeholders initiated such action, Catalyst would have no legitimate choice but to support such due to our fiduciary duty to our investors – and expected such action to ultimately win. IC counsel, in particular, ultimately agreed with this conclusion. Moyse became aware of all of these strategically and legally critical facts.

March 27 PowerPoint Presentation Contains Catalyst's Confidential Regulatory Strategy

18. Attached as Exhibit 1 is the presentation that was delivered to IC on March 27. Moyse led the preparation of the March 27 PowerPoint presentation. Through discussions with the partners in the lead-up to the March 27 presentation, as well as the discussion regarding the industry and deal strategy during meetings at Catalyst, Moyse was aware critical analyses concerning the industry, potential competing bidders for Wind, the government's litigation risk as well as the negotiating positions that Catalyst intended to take with IC and the federal government.

19. On March 27, I attended meetings in Ottawa with IC, the PCO and the PMO with Riley and Bruce Drysdale (our government relations consultant).

20. It was communicated to IC that Catalyst was willing to be supportive of IC's stated policy, put large amounts of capital at risk and pull together all of the necessary pieces to build the fourth carrier. However, before Catalyst would take on this risk, IC had to help via changes to the regulatory framework before the "fourth carrier" could increase consumer choice/reduce pricing or compete with the incumbents or support a wholesale operator. IC had to demonstrate a

willingness to adhere to the original terms of the spectrum licences granted to Mobilicity and Wind. I made it clear – and internal IC counsel essentially confirmed – that we believed these conditions would likely be reinstated in any event, either ultimately through litigation or the government's own decision.

21. Page 5 of the March 27 presentation illustrated Catalyst's concern for the current regulatory environment. I explained during the meetings that the current policies had left spectrum in the hands of the incumbents without an opportunity for a small player to compete. Additionally, the prospects of Mobilicity and Wind in the existing regulatory environment were not good. In Catalyst's view, both would have difficulty obtaining conventional arms-length financing as a result of the federal government's recent regulatory actions. We told IC that we were concerned that VimpelCom was backing out of its investment in Wind, and Mobilicity would languish indefinitely in CCAA without a buyer. All of this was, in our opinion and those of conventional telecom analysts, due to the uncertainty created by the then-recent retroactive regulatory changes.

22. We explained to IC that the anticipated cost of building the fourth carrier would be high. Merging Wind and Mobilicity (which IC and the federal government had signalled as their by far preferred outcome) would cost initially approximately $770 million. Catalyst anticipated a $200 million operating loss for the new merged carrier over the first two years. Catalyst was also aware that the new carrier could expect to spend between $500 million to $1 billion to build the necessary infrastructure to compete with the incumbents. The expected investment in the fourth carrier would therefore total between $1.5 and $2 billion over time.

23. Catalyst outlined three possible scenarios faced by the government regarding their "fourth carrier" strategy. The first was a combination of Wind and Mobilicity that focused on the retail market. The second was a combination of Wind and Mobilicity that rented its spectrum to incumbents as a wholesaler via a competitive bidding process. The third was to support a sale of Mobilicity to an incumbent, with litigation with the federal government to force the sale as part of the strategy. This would put the federal government at risk for increased damages if they initially scuttled a proposed deal with an incumbent and likely result in a "free option" to the upside at the government's expense.

24. The first two scenarios required different concessions from IC and the government of Canada.

25. To make a retail carrier ("Option 1") viable, IC had to offer the following:

(a) Regulations to guarantee wholesale and roaming costs, including a "cost-plus" approach to tower sharing costs[1] and a cap on roaming fees;

(b) The freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage for subscribers;

(c) The freedom to use the incumbents' networks outside of the license areas to expand the fourth carrier's coverage area; and

(d) The ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent).

[1] Tower sharing refers to payments to the owner of a cell phone tower (typically an incumbent) to access the tower.

26. In order to make a wholesale carrier ("Option 2") viable IC had to offer the following:

(a) The freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage nationwide communications; and

(b) The ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent). This was a critical issue since it would re-instate the ability to access arms-length financing while eliminating the risk of litigation against the federal government.

27. The third scenario, which would see no merger of Wind and Mobilicity and, instead, litigation regarding the sale of one or more new entrants to an incumbent (like the sale of Mobilicity to Telus and eventually litigation related thereto), required no concessions from IC. It also carried the lowest financial risk and the highest potential return for a bidder (such as West Face for Wind) but was simply not open to Catalyst.

28. Moyse was intimately aware of all of paragraphs 25-26, but specifically knew, and was involved in the specific analysis and conclusions found in paragraph 27 due to his involvement in the file.

29. All of the concessions sought from IC were important. However, Catalyst's request to sell the fourth wireless carrier without restriction after five years was crucial given the retroactive and unilateral changes to the historical licenses and the impact on the economics of option 1 and 2 and the finance-ability of either. Without this comfort, there was a substantial risk that whoever purchased Wind would have to pursue option 3, potentially as part of a CCAA

filing. Although option 3 was clearly the best financial option for a potential bidder, such was the worst for both Catalyst and the federal government. Moyse understood this dynamic extremely well.

30. During the March 27 meeting, IC, the PCO and the PMO delivered an "unofficial" message that it was considering Catalyst's approach and softening toward the regulatory concessions Catalyst sought.

31. After the March 27 meeting, I informed the Catalyst team working on telecom files generally, and Mobilicity and Wind specifically – including Moyse – that I believed that based on IC's and the federal government's unofficial message, the discussion in the meetings, and the risks that they faced regarding the retroactive and unilateral treatment of historical licenses and their now explicit acknowledgment of such, IC was softening to our position and would eventually give us the concessions that we sought – but would seek to manage such no matter what.

Negotiations with VimpelCom in May of 2014

32. On May 6, 2014, de Alba informed me and the rest of Catalyst's deal team that VimpelCom had delivered acceptable terms to them for Catalyst's purchase of Wind. Importantly, the $300 million in cash required by VimpelCom was far less than the value of Wind's spectrum assets under any of options 1-3 and it was known, including by Moyse, to be acceptable to Catalyst.

33. The entire Catalyst team, including Moyse, knew that I was adamant that any share purchase agreement with VimpelCom regarding Wind had to include a condition of government approval. This was particularly important given Catalyst's confidential knowledge regarding the

softening posture of IC, the PCO, and PMO and their concerns about the retroactive and unilateral treatment of the 2008 spectrum licenses. The entire Catalyst team, including Moyse, knew it was Catalyst's strategy to deliver to IC and the federal government their "dream deal" of merging Mobilicity and Wind, but to put them in a position of having no choice but to provide the regulatory approvals requested by Catalyst for option 1 or 2 or, suffer the potential fallout of having had someone deliver to them their publicly touted "fourth carrier" but having killed such on arrival unreasonably. It also had the advantage for the government of avoiding the feared litigation under option 3 regarding the unilateral and retroactive changes to the 2008 licenses. It was paramount in this strategy that Catalyst fulfill its commitments to the federal government while also controlling its regulatory risk. As a result, VimpelCom had to bear the risk that IC would not approve a transaction which, in turn, would in theory force the government to accede to Catalyst's regulatory requests. In my May 6 email response, attached as Exhibit 2, I made this point clear to the Catalyst team, including Moyse. I adopted this position because of the nature of our confidential and proprietary information regarding IC's, the PCO's, and the PMO's concerns and attitudes.

34. On May 7, 2014, Drysdale informed me that IC would not provide us with an agreement in writing that we could sell spectrum licenses in Wind or Mobilicity in five years. Catalyst's team, including Moyse, knew that the partners and I believed this to be a negotiation posture. We believed and told the team, including Moyse, that at minimum a fourth carrier would be focused on wholesaling, as described in "Option 2" in our March 27 presentation, that such was the fall back position given our bidding strategy with VimpelCom and the federal government. Furthermore, given the conversations with IC and the federal government, it was clear the collateral value of historical spectrum not only covered our current and proposed investment if

the bidding strategy worked, but would actually likely improve in time as the federal government (voluntarily or otherwise via litigation) relaxed it retroactive and unilateral posture regarding the 2008 licences. I told our deal team, including Moyse, that either our bidding strategy would succeed in getting the regulatory relief requested, or the likely success of the contemplated litigation against the federal government would ultimately support the collateral value of the 2008 spectrum. Knowledge of this analysis and approach would prove invaluable to any other potential bidder since it in essence would massively mitigate, if not entirely eliminate, their financial risk in bidding, or anyone with 2008 spectrum, should they agree with such analysis given the added benefit of IC and the federal government's "body language".

Meeting with IC on May 12, 2014

35. Riley, Drysdale and I returned to Ottawa on May 12, 2014 to discuss the regulatory landscape. Moyse helped prepare and likely led the final process regarding another presentation to be used at these meetings. Amongst other things, he incorporated the analysis of Catalyst's partners into this presentation. The presentation was also crafted to open the door for me to further discuss Catalyst's analysis of the risks and consequences associated with the retroactive and unilateral regulator conditions imposed on the historical spectrum licenses. A copy of the presentation is attached as Exhibit 3.

36. At the May 12 meetings, we explained that since the March 27 meetings, the commercial landscape had changed for the worse due to reactions to the federal government's retroactively and unilaterally imposed regulatory conditions. Catalyst made it clear that under the circumstances the most viable model was a wholesale fourth carrier that would lease spectrum to the incumbents. Our analysis of Wind had revealed the significant cost of operating it while simultaneously expanding its infrastructure. Importantly, Wind had confirmed our fears that it

did not have the technological ability to continue operating after 2018 in its current state (*ie*. lack of LTE spectrum). Wind therefore needed additional spectrum as soon as possible and significantly more capital in order to have a chance to compete as a retail operator. However, they had no certainty as to how additional LTE spectrum would be auctioned or even if they would or could win such an auction. This was a particularly significant risk for anyone if Wind was not merged with Mobilicity. Moyse and the team were intimately aware of these facts. Furthermore, Catalyst was absolutely clear that the recent retroactive and unilateral actions taken regarding historical licenses had made it virtually impossible to finance a proper build-out through arms-length means like the public or private credit markets. I suggested that parties would more likely consider financing option 3 litigation and therefore they should not assume such would disappear as a very real risk if a new entrant experienced cash flow issues. Moyse was aware and could present all of such to anyone interested in understanding the situation but wanted to avoid the expense and time of doing such analysis on their own.

37. Catalyst repeated its explanation that it required the ability to enter into subordinate licences with the incumbents to exchange and distribute spectrum to fill gaps in the network and facilitate nationwide communication if option 2 was to be pursued and it was the government's confirmed desire to truly have a fourth national carrier.

38. Officially IC remained concerned regarding approval of a wholesaler option. It also refused to officially agree to a five-year exit strategy for whoever purchased Wind. At the time, I believed that IC was taking a hard negotiating position to attempt to force a fourth carrier into the retail market but especially to force the Mobilicity/Wind merger that they had explicitly stated as their most desired outcome was as few regulatory concessions as possible until faced with a definitive and "live" deal. Catalyst was therefore taking positions that were intended to

ensure an investment in the fourth carrier made financial sense, received the regulatory support outlined as needed for option 1 and preventing the government from not supporting a future possible Wind/Mobilicity merger. It was clearly as intended to ensure no last minute surprises "spooked" IC and/or the federal government and provided them with sufficient time to prepare for what we saw as inevitable. All of such analyses, strategies and intended tactics were well known to the entire team, and especially Moyse.

39. As with the March 27 meeting, we immediately returned to Catalyst and I informed the deal team, including Moyse, that IC's and the federal government's position regarding our requested regulatory concessions continued to soften and the regulators would eventually bend on their hardline stance that no concessions would be granted to Catalyst. I made it clear that based on the attendees at the meetings and the questions asked, it was a virtual certainty that the government's view was that either a party would litigate with the federal government regarding their retroactive actions or they would eventually have to make the regulatory concessions requested. However, it was also disclosed to the team that it was my view that the federal government wrongly believed it could (or at least would try to) "bluff" Catalyst because of our explicit position that we would avoid direct litigation with the government given our involvement in other regulated businesses. I disclosed to the team that ultimately the government was in a "no-win" position – either concede on regulations (and get what they wanted politically) or face embarrassing and protracted litigation. Moyse and the team were perfectly aware of this.

Deal With VimpelCom Substantially Settled on August 3, 2014

40. I understood from de Alba that Catalyst had essentially concluded negotiations with VimpelCom at the end of July of 2014, but minor issues with third parties remained. I knew some concerns remained relating to third party vendor debt but I understood that these were

being addressed by the parties and would not prevent the parties from agreeing to terms – nor did any of these parties have any real alternatives at that time to a Catalyst deal.

41. On August 3, 2014, I received an email from Drysdale regarding further discussions with IC, attached as Exhibit 4. I informed Drysdale that Catalyst was very close to a deal and wanted to check IC's "temperature". Drysdale reported back that IC was allegedly adamant the regulatory framework would not change and that there would be no concessions. As I disclosed to Drysdale, this was, in my opinion, a desperate attempt by IC and the federal government to avoid Catalyst demanding concessions as a condition to a deal as such would prove potentially troublesome to them. This would also be the first time IC and the federal government were presented with a real and viable potential fourth carrier option. Drysdale reported an interesting comment from IC; namely, that when confronted with the scenario where no one agrees to build the fourth carrier, IC and the federal government claimed to have "mitigating strategies" to address the situation. This strategy was understood by me and other as really meaning they had no current alternative to our proposed approach. I specifically stated that there inability to provide specifics thereof was very telling.

42. This alerted me to the fact that IC and the federal government did not have a back-up plan and had in fact listened very carefully to Catalyst's proposal. It was clear that IC and the government were approaching this negotiation from either a position of desperation and reduced credibility or a mis-perceived position of strength. IC may not have understood that investors would be very cautious and doubtful, especially in light of the recent unilateral and retroactive regulatory actions taken regarding historical spectrum and the effect thereof, that no one would believe that they could earn a reasonable rate of return without certainty of an exit strategy or regulatory changes or otherwise IC and the federal government simply lacked credibility on this

issue of a "mitigating strategy". I was confident that, in time, IC would have no choice but to agree to the concessions Catalyst needed in order for its investment to succeed as either option 1 or option 2 or alternatively, Catalyst and other would passively participated and benefit from option 3. In fact, their message to Drysale traced their "unofficial" messaging in our meetings which I had communicated back to the deal team, including Moyse, after the March and May 2014 meetings.

VimpelCom Fails to Approve Deal with Catalyst

43. On August 11, 2014, I asked the Catalyst team for an update regarding the status with VimpelCom. We had substantially settled the share purchase agreement but VimpelCom's Board of Directors had not approved the transaction. This was concerning because in my experience, a board of directors will not typically try to alter key points on a deal after management spent months negotiating terms. In fact, my experience is that management negotiates terms with a potential purchaser with its board's on-going knowledge and support.

44. I was informed by Jon Levin and de Alba that VimpelCom had a concern about allocation of risk regarding "regulatory approval". This was difficult to believe. Importantly, Catalyst had been adamant from day one that it would not waive the regulatory approval condition. I intended to hold fast to the condition for reasons discussed at length over the life of the file with the entire deal team, including Moyse, and this condition was strategically critical to our overall plan. Given the recent discussions and all of the work to date, we strongly believed that the government have no choice but to cooperate. I was frustrated by VimpelCom's delay and insisted that we needed to push VimpelCom to complete the deal immediately. Attached as Exhibit 5 is my August 11 correspondence with the Catalyst team.

45. Despite VimpelCom's sudden concerns about regulatory risk, during the late evening on August 11, 2014, I understand from de Alba that Catalyst and VimpelCom had a call with IC during which the parties told IC that the "deal was done".

46. I am told by de Alba that Catalyst and VimpelCom had agreed on a timetable for regulatory approvals weeks earlier. However, suddenly by August 15, 2014 VimpelCom insisted on a new term that provided for a $5-20 million break fee if regulatory approval was not granted within 60 days, which everyone knew was highly unusual and, on its own, unreasonable. Ultimately, Catalyst could not close the deal with VimpelCom because of VimpelCom's insistence on this new term.

Moyse and West Face

47. On June 20, 2014, I suggested to de Alba that he contact Greg Boland and ask West Face to respect the six month non-competition clause in Moyse's employment agreement.

48. I understand from de Alba that de Alba called Boland to have this discussion, at which time Boland told de Alba to "go fuck yourself".

49. This was surprising because there was no apparent or obvious reason for West Face to act so aggressively about hiring an analyst from a competitor.

50. I swear this affidavit in support of Catalyst's action against Moyse and West Face and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 27th, 2016

Commissioner for Taking Affidavits, etc.

BRAD VERMEERSCH

Bradley W.T. Vermeersch
Barrister & Solicitor

NEWTON GLASSMAN

This is Exhibit "47" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

Nicole Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 19, 2018.

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

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

AFFIDAVIT OF GABRIEL DE ALBA
(Sworn May 27, 2016)

I, GABRIEL DE ALBA, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Managing Director and Partner of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out 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. While employed at Catalyst, the defendant Brandon Moyse ("Moyse") reported directly to me.

3. I was Catalyst's lead partner on the deal team that negotiated with VimpelCom Ltd. ("VimpelCom") in 2014 to purchase WIND Mobile Canada ("Wind"). I kept Catalyst's managing partner, Newton Glassman, informed of the progress of the negotiations with VimpelCom through in-person discussions, telephone calls and email. Glassman led Catalyst's

negotiations with Industry Canada ("IC") and the federal government concerning critical regulatory issues.

Catalyst's Investment Team and Culture

4. Catalyst uses a very flat, entrepreneurial staffing model. Catalyst currently employs eight investment professionals, who are given a lot of training, autonomy and responsibility as compared to their peers in the industry. In the period spanning March-June 2014, Catalyst only employed two investment analysts. One of those analysts was Moyse, who had a undergraduate math degree from University of Pennsylvania and previous experience as an analyst in debt capital markets at RBC Capital Markets and Credit Suisse.

5. At Catalyst, investments are reviewed by a "deal team", which typically consists of a partner, a vice-president and an analyst. Analysts at Catalyst participate in every part of a deal and are intimately aware of Catalyst's strategies and negotiations. Analysts perform a variety of key tasks throughout the life of a deal including, but not limited to, preparing the terms of the deal, assisting in shaping our bidding strategies, attending meetings with management, attending internal meetings relating to strategic discussions, game-theory analysis and regulatory matters, coordinating and participating in diligence, preparing investment memoranda with our investment theses, preparing presentations to third parties, performing valuation and return analysis and making presentations on the status of the deal during our weekly briefing meetings. Analysts are expected to contribute during internal meetings, and to be able to present the status of a deal during these meetings as well as provide feedback regarding Catalyst's strategies.

6. After a deal is complete, the deal team continues to monitor and manage the investment. This included executing turnaround strategies to improve the acquired company's operations and financial performance as well as exploring opportunities for exiting the investment.

7. As part of Catalyst's flat, team-oriented structure, it is important to our firm's culture that we communicate constantly about the state of the market, share our priorities as a firm and discuss Catalyst's strategic plans and opportunities. It is mission critical that all members of the investment team, including analysts, are fully briefed on Catalyst's investment goals, priorities and strategies.

8. Another important aspect of our firm's culture is the co-investment program. All Catalyst investment professionals are required to co-invest in Catalyst deals. This further enhances the care, knowledge and focus of our investment professionals in all of our investments as they have their own money at risk. Additionally, it ensures that the interests of our investment professionals align with the interests of our limited partners.

9. A critical aspect of our firm's culture is maintaining strict confidentiality over potential investments and our pipeline of deals. This is necessary because the investment professionals at Catalyst are fully aware of all aspects of Catalyst's strategic decision-making and do not operate in silos. As such, all investment professionals, including analysts like Moyse, know critical information about our firm that our rivals want to know. We stress the importance of confidentiality to protect the interests of Catalyst to ensure we can maintain the culture of openness with our investment professionals.

10. Catalyst encourages all of its investment professionals to share ideas about potential investments and comment on our position strategies with respect to current or pending investments. Our analysts are instructed to monitor and comment on particular industries based on the present investments and the proprietary opportunity set developed by Catalyst.

11. These briefings occur formally at our Monday morning meetings, which each professional is required to attend, and informally throughout the work week. Our analysts and associates work in close quarters and are encouraged to discuss the matters they are working on outside of formal meetings. This way, everyone knows what everyone else is working on and is able to help out if needed.

Catalyst's Investments in the Telecommunications Industry

12. Catalyst has long had an active interest and deep experience in the telecommunication industry. In the past, we have had positions in the hundreds of millions in companies in the telecommunications space including AT&T Canada, Call-Net, and Cable Satisfaction. These investments have always been profitable.

13. Pursuant to a First Lien Indenture dated April 20, 2011, Catalyst owned over $60 million of first lien debt issued by Data & Audio Visual Enterprises Wireless Inc., a wholly owned subsidiary of Data & Audio Visual Enterprises Holdings Inc. (together, "Mobilicity").

14. On September 29, 2013, Mobilicity filed an application for an Initial Order under the *Companies Creditors Arrangement Act* ("CCAA") in order to restructure its business and complete a sale of its business and assets.

15. Catalyst's investment in Mobilicity was made with a view to consolidating the wireless telecommunications sector. Internally, we had developed a goal of building the "fourth wireless carrier" in Canada's telecommunications sector. However, in 2012 or 2013, IC unilaterally and retroactively attempted to impose severe and explicit restrictions on the 2008 spectrum licenses held by new entrants, including a restriction on the ability to transfer the spectrum licenses to third parties, specifically the incumbent three wireless players. Catalyst's internal opinion was that a fourth wireless carrier could not survive without changes to the existing regulatory structure. The issue of how to build the fourth wireless carrier and our regulatory concerns relating thereto was the subject of numerous discussions at Catalyst, including with Moyse.

16. Catalyst's plan for building a fourth wireless carrier was to merge the spectrum assets of Mobilicity and Wind. Each had assets the other needed to be successful. Joined together, the two companies had the potential to form the fourth wireless carrier the federal government so desperately wanted.

Wind Formed in 2008 after Spectrum Auction

17. Wind was formed in 2008 in response to the Government of Canada's announcement that it would conduct an auction for Advanced Wireless Services spectrum licences for parties with less than 10% of the Canadian wireless market. Wind acquired $442.5 million of set-aside spectrum in the 2008 auction. Mobilicity acquired approximately $240 million of set-aside spectrum in the 2008 auction. Other wireless carriers acquired licences as well.

18. Soon after the auction, Wind and Mobilicity launched their services in Ontario, Alberta and British Columbia with the goal of challenging the incumbent wireless carriers (Rogers, Telus and Bell).

19. Wind was wholly owned by Globalive Investment Holdings Corp. ("GIHC"). Globalive Capital Inc. ("Globalive") held a majority of the voting shares in GIHC and, indirectly, Wind. Initially, Orascom, a foreign-owned corporation, owned the non-voting shares in GIHC and a minority of the voting shares. Orascom provided significant debt financing to Wind to support its capital expenditures required to launch a wireless network.

20. In October 2009, the Canadian Radio-television and Telecommunications Commission ("CRTC") decided that Orascom's debt holdings gave it control over Wind and violated the prohibition on non-Canadian control of wireless carriers.

Catalyst Explores Possible Purchase of Wind

21. In 2009, following the CRTC's ruling on Wind's foreign ownership issue, Globalive approached Catalyst to consider a possible investment in Wind.

22. At that time, Catalyst was not interested in investing in Wind under the discussed terms.

23. In December 2009, the issue became academic after the federal government overruled the CRTC and approved Wind's ownership structure.

24. In 2012, after VimpelCom acquired Orascom, Globalive approached Catalyst about supporting a purchase of Vimpelcom's interest in Wind. Globalive proposed terms which involved an investment in Wind and financing for Globalive. As VimpelCom was uncertain how it would deal with its investment, no agreement could be reached.

25. In early 2013, Vimpelcom and its investment advisors, UBS Investment Bank ("UBS"), started exploring strategic alternatives which included selling VimpelCom's stake in Wind. Vimpelcom approached me to discuss a potential exit strategy for its position in Wind.

26. After some negotiation, on January 2, 2014, I provided Vimpelcom with an executed letter of intent that discussed the proposed terms of a transaction. Attached as Exhibit 1 is the letter of intent that I sent to Vimpelcom.

27. On January 4, 2014, Carsten Revsbech ("Revsbech"), VimpelCom's Director of Business Control and Mergers & Acquisitions, wrote to me and explained that the internal advice he received was that while VimpelCom and Catalyst were both involved in the 700-megahertz spectrum auction, VimpelCom could not discuss a possible transaction with Catalyst. Attached as Exhibit 2 is the email from Revsbech to me explaining VimpelCom's position.

28. On January 13, 2014, IC announced that Wind would not participate in the 700-megahertz spectrum auction. According to media reports, VimpelCom refused to fund Wind's purchase of the 700-megahertz spectrum due to the federal government's foreign investment rules that prevented VimpelCom from taking control of Wind. A copy of the Globe and Mail article reporting IC's announcement is attached as Exhibit 3.

29. VimpelCom's decision not to back Wind in the 700-megahertz spectrum auction was significant to Catalyst. It became apparent to Catalyst that, as more time passed, we could likely capitalize on VimpelCom's increasing disenchantment with its investment in Wind to purchase Wind on better terms than those we proposed in the January 2 Letter of Intent.

Negotiations Between VimpelCom and Catalyst Continue in Spring 2014

30. By conference call held on February 4, 2014, I met with James Baglanis of UBS, VimpelCom's investment bankers. We discussed the terms that VimpelCom would propose for a purchase of Wind. During this call, Baglanis and I discussed Catalyst's plan for building a fourth

wireless carrier. I explained to Baglanis that Catalyst was considering the acquisition of Wind and potentially a merger with Mobilicity. Attached as Exhibit 4 is my calendar entry for this call.

31. On February 21, 2014, I had a long telephone discussion with Francois Turgeon of UBS, during which he expressed a desire on behalf of VimpelCom to sit down and negotiate a deal regarding a possible merger between Wind and Mobilicity. VimpelCom displayed a strong interest in Catalyst's plan to acquire control of Mobilicity and merge it with Wind. However, VimpelCom was not willing to contribute cash to this transaction, only assets. Attached as Exhibit 5 is a copy of the calendar entry reflecting this conference call. Attached as Exhibit 6 is a copy of my email reporting my discussions with Turgeon to Glassman, Riley, Jon Levin (legal counsel from Fasken Martineau) ("Levin"), Zach Michaud, a vice-president at Catalyst ("Michaud") and Andrew Yeh, an analyst at Catalyst ("Yeh"), internally at Catalyst.

VimpelCom Writes Down Investment in Wind

32. On March 6, 2014, VimpelCom announced that it had written off its investment in Wind as a result of challenges it was facing in the Canadian market. This had a serious effect on the negotiations with VimpelCom regarding the purchase of its interest in Wind. It became apparent to the Catalyst team that we could purchase Wind for a price at or less than the value of its spectrum assets. Attached as Exhibit 7 is the news article announcing VimpelCom's write down of its investment in Wind.

33. Immediately after the announcement, I engaged both VimpelCom and UBS for discussions relating to the acquisition of Wind, the effect of the write-down and potential terms of sale.

34. I informed the Catalyst team involved in telecom files, including Moyse, that negotiation with VimpelCom was progressing and that we needed to continue analyzing the financial position of a merger of Wind and Mobilicity.

35. On March 7, 2014, I met with Revsbech and Turgeon at Catalyst's Toronto offices. During this meeting, we further discussed the terms of a possible purchase of Wind and the deal terms that VimpelCom was proposing. Attached as Exhibit 8 is a copy of the calendar entry for this meeting.

36. On March 21, 2014, I hosted a conference call with Revsbech and Turgeon to update them regarding the terms and conditions that Catalyst would offer VimpelCom to acquire Wind. Attached as Exhibit 9 is a copy of the calendar entry for this meeting.

37. The March 21 conference call with VimpelCom and UBS was important because on the same day, the Ontario Superior Court agreed to give Mobilicity until April 30, 2014 to complete a sales process. If Catalyst were to form the fourth wireless carrier, we had to move quickly to complete the necessary transactions.

38. During the March 21 conference call, the parties discussed a confidentiality agreement that our respective legal advisors had been negotiating at that time. We agreed that before next steps were to take place, Catalyst would need to agree to the terms of confidentiality.

39. On March 22, 2014, I followed up on my March 21 conference call with Revsbech and Turgeon with an email attaching an executed copy of a confidentiality agreement (the "Confidentiality Agreement"). I also articulated the next steps for moving forward: VimpelCom would provide its business plan, Wind's enterprise value and VimpelCom's equity structure in

Wind. This information would allow the parties to negotiate a capital structure for the deal. Attached as Exhibit 10 is the email to Revsbech and Turgeon and the attached Confidentiality Agreement.

40. I communicated to our Catalyst deal team, including Moyse, that the Confidentiality Agreement had been reached and that negotiations were continuing. Internally, we discussed the regulatory environment given that our negotiations with VimpelCom were close to achieving terms. Specifically, during our Monday morning meetings and the meetings with our telecom team members, our analyses and conclusions as to how Catalyst would mitigate risk and profit based on the approaches taken by IC and the federal government to a proposed merger of Wind and Mobilicity.

Catalyst Executes a Confidentiality Agreement and Continues Negotiations

41. The parties to the Confidentiality Agreement included VimpelCom, Catalyst and Global Telecom Holding S.A.E., the corporation through which VimpelCom owned its interest in Wind.

42. The terms of the Confidentiality Agreement provided that the information obtained by Catalyst in relation to a potential transaction regarding VimpelCom's direct and indirect interest in GlHC and its subsidiaries would be kept confidential. Pursuant to the Confidentiality Agreement, Catalyst, as the Receiving Party, was obliged to take steps to protect VimpelCom's Confidential Information and not disclose it to any party beyond those expressly stated in the Agreement.

43. Additionally, the Confidentiality Agreement mandated that the existence and content of negotiations between Catalyst and VimpelCom were to remain confidential:

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

44. In April of 2014, my negotiations with UBS and VimpelCom continued. I followed up with Revsbech and Turgeon on April 7, 2014. Subsequently, I had discussions with UBS regarding different combination scenarios for a purchase of Wind, such as a merger of Wind and Mobilicity. Attached as Exhibit 11 is the relevant email chain between me, Revsbech and Turgeon.

Moyse Was A Key Member of Catalyst's Telecommunications Team

45. I understand from my counsel that Moyse claims to have had limited involvement on the Wind file. This is categorically not the case. As explained in detail below, beginning in March of 2014, Moyse was an integral member of Catalyst's telecommunications deal team. Moyse was intimately aware of, and involved in, our internal analyses concerning the telecommunications industry. For example:

(a) He attended the Monday morning meetings during which we comprehensively discussed our strategies and positions with VimpelCom, IC and the federal government;

(b) He prepared internal analyses concerning the industry;

(c) He participated in discussions with Catalyst's our legal counsel and government relations consultants, who provided both formal and informal analyses;

(d) He prepared or helped prepare analyses concerning the competitive environment facing the new entrants;

(e) He analyzed Wind and Mobilicity;

(f) He prepared or led the preparation of presentations to government stakeholders arguing for changes to the regulatory regime; and

(g) He delivered weekly updates for the Catalyst team.

46. Moyse was a keen and proactive member of the Catalyst's telecommunications team. As noted above, our analysts, including Moyse, are always part of the strategic dialogue concerning Catalyst's potential and current investments.

47. As early as January 13, 2014, for example, Moyse was notifying Zach Michaud, a vice-president, and Andrew Yeh, an analyst, of Wind's withdrawal from the 700-megahertz spectrum auction. Attached as Exhibit 12 is Moyse's email to Yeh and Michaud.

Moyse Analyzes A Possible Transaction for Wind in March of 2014

48. In early March 2014, while I was in discussions with UBS and VimpelCom, I asked the team, including Moyse, to prepare a pro forma financial statement to show the assets and subscribers for a combination of Mobilicity and Wind.

49. I understand from my review of the documents produced in this litigation that Michaud gave ownership of this task to Moyse. Moyse sent me his analysis on March 8, 2014, the day after my meeting with VimpelCom and UBS. As articulated in Moyse's email to me, the chart included the spectrum value, network value and total subscribers individually and combined for Wind and Mobilicity. I believe that Moyse obtained the Mobilicity data from the filings in the CCAA proceedings, and the data regarding Wind from its regulatory filings. A copy of Moyse's email to me with the pro-forma is attached as Exhibit 13. The various emails between Michaud and Moyse discussing and preparing the pro-forma are attached as Exhibits 14, 15, 16 and 17.

50. Moyse's pro-forma analysis was critical to our internal analysis of Wind's value. We were very interested in the value of Wind's spectrum, which we viewed as a critical asset and the main value driver in relation to the proposal to VimpelCom. We never deviated from this analysis.

51. We continued to analyze a potential purchase of Wind throughout March 2014. After my call with VimpelCom and UBS on March 21, I instructed Michaud and Moyse to perform critical tasks necessary to complete a transaction with VimpelCom. I knew at this time that if a transaction was to happen, VimpelCom would want to proceed very quickly. Wind was in danger of defaulting on significant vendor debt due on April 30, 2014. VimpelCom wanted to avoid a default and we were working with that goal in mind.

52. Michaud organized a call with Johanne Lemay on March 26, 2014, who Catalyst engaged to assist in understanding critical regulatory issues. Lemay is an expert in the telecommunications industry and consulted with Catalyst on previous occasions concerning its participation in the spectrum auctions.

53. In March of 2014, Catalyst asked Lemay to comment on the technical requirements for a fourth wireless carrier in Canada. In particular, Catalyst was concerned that VimpelCom's decision to withdraw from the 700-megahertz auction in January of 2014 impacted Wind's infrastructure going forward.

54. Lemay provided Catalyst with a presentation summarizing her conclusions on the technical requirements for a fourth carrier. On slide 4 of her presentation, Lemay explained that spectrum to support LTE[1] use would be required. At the time, LTE was an advanced telecommunications technology that permitted mobile users to stream high resolution video and download data at a very high rate. She also explained that lower roaming and tower sharing fees, both regulated by the Federal Government through the CRTC, would be a major benefit to a small telecommunications player.

55. Lemay also commented that "being able to operate as MVNOS outside of their built up areas would benefit new entrants". I understood this to be a reference to small players, such as Wind, being able to access the incumbents' spectrum and cell phone towers where the small player did not have any such infrastructure. The reference to MVNOS is an acronym which stands for "mobile virtual network operators". In Canada, some of the incumbents, including Bell, operate MVNOs (like Virgin Mobile) that do not have their own infrastructure at all but use the incumbents' infrastructure, operating a "virtual network".

56. A copy of Lemay's presentation is attached as Exhibit 18. The email transmitting the presentation to Moyse is attached as Exhibit 19.

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[1] LTE stands for Long-Term Evolution.

57. On March 26, 2014, Michaud asked Moyse to join a call with Lemay, to discuss her analysis of the regulatory and competitive environment in the telecommunications sector at that time.

Moyse Builds Slide Deck Containing Catalyst's Regulatory Strategy for Wind

58. On March 26, 2014, Moyse prepared a critical PowerPoint presentation that Catalyst used in a meeting with IC (Industry Canada) to set out Catalyst's plan and approach to a merger of Wind and Mobilicity.

59. Catalyst was concerned about the regulatory environment at the time and was starting a dialogue with the federal government about necessary changes. IC and the federal government had attempted to impose unilateral and retroactive restrictions on the 2008 licenses held by new entrants. However, Catalyst did not believe that a fourth wireless carrier would be viable without changes to the regulatory environment, including changing or reversing the unilateral and retroactive conditions imposed on the 2008 spectrum licenses. Importantly, Catalyst had performed extensive analysis concerning possible litigation against the federal government arising from its unilateral and retroactive conditions on the 2008 spectrum licenses. Catalyst's deal team, including Moyse, knew that the government faced a likely successful lawsuit over the 2008 spectrum licences, but given Catalyst's involvement in other regulated businesses, we could and would not direct any such litigation. Instead, Catalyst required certain concessions from IC and the federal government.

60. Catalyst scheduled meetings with IC and other interested parties in the Federal Government for March 27, 2014. These were critical meetings for Catalyst and the subject of much internal discussion. We had been negotiating with VimpelCom for many months regarding

Wind. The entire Catalyst team, including Moyse, knew that it was Catalyst's strategy to deliver to IC and the federal government their "dream deal" of merging Mobilicity and Wind. However, we had to position ourselves to pressure the government to support the deal with the necessary regulatory environment.

61. Moyse led the preparation of the PowerPoint presentation that Catalyst used in Ottawa. On March 26, 2014, Moyse prepared the presentation which incorporated the analysis of Catalyst's team, our discussions concerning the telecommunications industry, the government's litigation risk, and the negotiating positions that Catalyst intended to take with IC and the federal government.

62. The presentation went through several drafts and iterations. I recall that we looked over at least four drafts before settling on the final version that is attached as Exhibit 20. In addition to leading the preparation of the presentation, Moyse included further analysis regarding the telecommunications industry and critical research regarding the federal government's policies concerning competition in the telecommunications space.

63. The contents of the presentation to IC and the federal government and our negotiating positions with them were highly confidential. Catalyst went to extreme measures to ensure the contents of the presentation would not be leaded. For example, after the presentation was made to IC, Riley instructed all of the Catalyst team members that participated in preparing the presentation to destroy all copies of the presentation, including notes and drafts.

64. Moyse would have been fully aware of the content in the presentation to IC. There were several iterations of the presentation and multiple discussions to determine its content. The

strategies outlined in the presentation (and described in detail below) were discussed internally at Catalyst on a regular basis. The regulatory environment and changes sought from IC and the federal government were absolutely critical to Catalyst's strategy to purchase Wind.

PowerPoint Presentation for March 27 Contains Catalyst's Critical Regulatory Strategy and Valuation Parameters

65. The PowerPoint presentation describes the following:

(a) the urgency facing IC to make a decision about the regulatory environment if its policy of a fourth carrier is to be achieved; and

(b) the fact that the current regulatory policy still allowed the incumbents to improve their position through, *inter alia*, additional spectrum purchases, aggressive operational tactics and uneconomic roaming contracts; and

(c) Catalyst's analysis of the options available to improve the regulatory environment and the framework within which Catalyst and the federal government could negotiate these options.

66. The presentation set out Catalyst's analysis concerning the fourth wireless carrier. Catalyst was willing to deliver the federal government's dream deal of a Wind/Mobilicity merger, but IC had to make the necessary changes to the regulatory framework before the "fourth carrier" could achieve the federal government's objectives.

67. The presentation revealed the high anticipated cost of building the fourth carrier. Catalyst assumed at the time that a purchase of Wind and Mobilicity would require $770 million. Catalyst anticipated a $200 million operating loss for the newly merged carrier over the first two years.

Catalyst was also aware that the new carrier could expect to spend between $500 million to $1 billion to build the necessary infrastructure it needed to compete with the incumbents. Together, the expected investment in the fourth carrier would total between $1.5 and $2 billion.

68. Importantly, the presentation also set out the three scenarios faced by the government regarding the "fourth carrier strategy".

69. In order to build a fourth wireless carrier that could focus on the retail market, Catalyst needed the following:

(a) Regulations to guarantee wholesale and roaming costs, including a "cost-plus" approach to tower sharing costs[2] and a cap on roaming fees;

(b) Freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage for subscribers;

(c) Freedom to use the incumbents' networks outside of the license areas to expand the fourth carrier's coverage area; and

(d) Ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent).

70. A fourth wireless carrier focused on the wholesale market required IC to offer the following:

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[2] Tower sharing refers to payments to the owner of a cell phone tower (typically an incumbent) to access the tower.

(a) Freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage for nationwide communications; and

(b) Ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent). This was critical because it would allow access to arms-length financing and eliminate the risk of litigation against the federal government.

71. The third scenario involved no merger of Wind and Mobilicity, but rather litigation regarding the sale of one or more new entrants to an incumbent. This scenario carried the lowest financial risk and the highest potential return but was simply not an option for Catalyst.

72. I did not attend the presentation to IC on March 27, however, shortly after the meeting took place, Glassman and Riley briefed me, and later the entire deal team, including Moyse, on exactly what was discussed in Ottawa. Glassman and Riley informed us that they stressed to IC the need for concessions and the litigation risk facing the federal government. Moyse was far from being a passive "scribe", as he now inexplicably claims to be.

Negotiations with VimpelCom Culminate in a Proposal in early May of 2014

73. Throughout April 2014, I continued to negotiate with VimpelCom and UBS. We discussed the proposed enterprise value and possible capital structure that would be associated with a transaction for VimpelCom's interest in Wind.

74. On May 6, 2014, I met with Turgeon of UBS. During the meeting, I proposed the following terms for a potential transaction to acquire VimpelCom's interest in Wind:

(a) Cash transaction of $300 million on an enterprise value basis; and

(b) Sign a share purchase agreement by May 30, 2014;

75. Later that same day, UBS agreed to these terms. UBS requested that we provide it with our due diligence requests and a timeline to complete due diligence. UBS also provided Catalyst with a presentation prepared by management that outlined Wind's business plan.

76. I circulated UBS's confirmation to the Catalyst deal team that would be involved in the deal, namely Glassman, Riley, Michaud, Moyse and our counsel at Fasken Martineau, Jonathan Levin. Attached as Exhibit 21 is my email to the deal team informing them of UBS's proposal.

77. It was important to me, as it is in every deal, that Catalyst's deal team communicate about all developments and minimize information gaps. On May 10, I told Michaud to copy me on all communications. I also told him to copy Moyse and Lorne Creighton, another analyst at Catalyst, on all communications so that they would continue to be information and kept abreast of the inner workings of the deal process and our strategic thinking behind the Wind transaction. Attached as Exhibit 22 is my email to Michaud.

Catalyst Asserts Need for Condition of Governmental Approval

78. By email dated May 6, 2014, Glassman wrote that the deal would be a purchase of Wind for $300 million in total value and Catalyst would have the option of replacing the vendor loans or renegotiating them. Glassman confirmed to Catalyst's team, including Moyse, that the focus of the transaction was spectrum and diligence could be confined to spectrum ownership.

79. On May 7, 2016, I replied to Glassman's comments to reinforce the fact that Catalyst required clarity from IC about a potential exit from the investment. I suggested to the Catalyst

deal team, including Moyse and Bruce Drysdale, our government relations consultant, that we could use the Mobilicity situation to our advantage with IC as we wanted to deliver the government's desired outcome: a combined Wind and Mobilicity carrier. Catalyst intended, as part of its argument to IC and the federal government, that no lender would fund the fourth wireless carrier without clarity on how the collateral and the investment could be sold later.

80. That same day, Glassman responded and explained to the Catalyst team, including Moyse, that IC had informed Catalyst it would not give Catalyst the right to sell without restriction in five years as requested in our March 27 presentation.

81. Glassman stated that "option 1" was off the table. I understood this to mean that Catalyst's negotiating position would signal more urgency to IC, and it would be telling IC that it was directing its efforts towards building a wholesale carrier focused on renting spectrum to incumbents rather than a retail carrier. However, I expected that this "hard" position could soften in the future if the federal government showed willingness to compromise on its position. Attached as Exhibit 23 is a copy of the email chain from May 6-7, 2014.

82. The requirement that a deal with VimpelCom be conditional on IC approval was an issue that Glassman spoke about often and that we often discussed internally with the deal team, including Moyse. We were steadfast internally that Catalyst would not, and could not, waive the governmental approval condition.

Catalyst's Deal Team Proceeds Towards Completion of a Transaction with VimpelCom

83. In May 2014, Catalyst engaged Morgan Stanley as our financial advisors and Lightbridge Communications Corporation as our technical consultants.

84. On May 7, 2014, I asked Michaud, Moyse and Creighton to find Lemay's contact because I wanted her to be part of the diligence team. Attached as Exhibit 24 is the email to Michaud, Moyse and Creighton.

85. On May 9, 2014, Catalyst's deal team met with Wind's management for the first time since UBS's agreement with my proposal outlining the main transaction terms. As part of the deal team, Moyse attended this presentation.

Moyse Continues to Be Involved in Critical Aspects of the Wind Transaction

86. Between May 6 and May 16, when Moyse went on vacation, Moyse continued to be actively involved in the internal work necessary to complete the Wind transaction. Our work was compressed into a short time frame because, at the time, we anticipated a need to reach a final agreement with VimpelCom by the end of May.

87. On May 8, our deal team reviewed a list of diligence questions that Morgan Stanley prepared that we provided to Wind's management at our meeting the next day.

88. Michaud asked Moyse and Creighton to comment on Morgan Stanley's work. Attached as Exhibit 25 are the emails from Michaud to Moyse and Creighton concerning the analysis of Morgan Stanley's work. Attached as Exhibit 26 are responses from Moyse and Creighton bringing previously discussed strategic issues into Morgan Stanley's diligence lists.

89. Michaud responded on May 8 with further refinements to the diligence list. Attached as Exhibit 27 is Michaud's email response to my request for additions to the diligence list. Consistent with our prior discussions, Michaud's suggested additions were targeted toward confirming Wind's spectrum assets.

90. Initially, Moyse was the point person to coordinate our diligence efforts with Morgan Stanley's efforts. On May 9, 2014, before our meeting with Wind's management, Moyse asked Morgan Stanley to reconcile its diligence list with our own. Attached as Exhibit 28 is correspondence between Morgan Stanley and Moyse.

91. Between May 7 and 13, in addition to other analyses and critical deal tasks, Michaud, Moyse and Creighton continued to review and refine the due diligence lists. Attached as Exhibit 29 is correspondence of their discussions about the concepts in the lists of outstanding issues with management. Attached as Exhibit 30 is Catalyst's communications with Morgan Stanley concerning the outstanding issues with management.

92. Catalyst further conducted critical analysis of Wind during this time period. Faskens took the lead in confirming Wind's contractual terms of its capital structure. Catalyst needed to understand how to unwind Wind's complicated capital structure, if necessary. It also needed to understand the potential liabilities post-acquisition. Attached as Exhibit 31 is correspondence between Michaud and Faskens' team concerning the analysis.

93. In addition to refining and analyzing the diligence lists, I asked Michaud, Moyse and Creighton to complete an operating model and investment memorandum for Wind. Attached as Exhibit 32 is correspondence between Creighton, Michaud and Moyse discussing the operating model that they were building prior to our meeting with Wind's management.

94. Michaud, Moyse and Creighton worked with Morgan Stanley to build up the operating model and evaluate the model prepared by Wind's management. Our team discussed the points in the Wind management model that they believed were critical to understanding management's

projections. On May 13, Michaud, in an email copied to Moyse, explained that Catalyst needed to understand the revenue buildup by plan and region. Attached as Exhibit 33 is this correspondence.

Catalyst Attends Meeting with Wind's Management to Discuss Plans Upon Acquisition

95. On May 9, 2014, the Catalyst team, including Moyse, Morgan Stanley and Faskens met with Wind's management to discuss the company's business model and our potential plans upon acquisition.

96. Late in the afternoon on May 9, 2014, I asked Michaud, Moyse and Creighton to complete the memorandum with assistance from the notes from our meeting with Wind's management. Moyse and Creighton drafted the investment memorandum. Between May 9 – 11, Michaud, Moyse and Creighton worked on multiple drafts of the memorandum.

97. Attached as Exhibit 34 is the correspondence between Michaud, Creighton and Moyse turning drafts of the Wind investment memorandum.

98. Attached as Exhibit 35 is the correspondence between Moyse and Creighton discussing additional refinements to the investment memorandum and operating model between May 9 and 12, 2014.

99. I understand from Exhibit 36 that Creighton and Moyse provided Michaud with a fifth draft of the investment memorandum on May 15, the day before Moyse left on vacation.

100. The common practice at Catalyst is for the analyst on the deal team to take the lead in drafting the investment memorandum based on the information collected from a target company's management group, research conducted by the deal team and other analysis available

at Catalyst, with assistance and comments from other members of the team. For the Wind transaction, while Moyse was still with Catalyst, he and Creighton shared this responsibility.

Moyse Prepares Second Presentation with Catalyst's Regulatory Strategy for Wind

101. On May 12, 2014, Glassman, Riley, and Drysdale met for a second time with IC to discuss Catalyst's efforts to acquire VimpelCom's interest in Wind. Attached as Exhibit 37 is an email attaching a soft copy of the presentation they would make to IC. The email was sent to Glassman, Michaud, Riley, Levin, Moyse and Creighton.

102. Moyse was asked to revise the presentation that had been created for the March 27 presentation and to update it accordingly. Catalyst made it clear that under the circumstances at the time, the most viable model was a wholesale fourth carrier that would lease spectrum to the incumbents. Our analysis of Wind had revealed that without new spectrum to support LTE services, Wind would cease to be "relevant" by 2018. Moyse and the team were intimately aware of these facts.

103. This second presentation set out Catalyst's negotiating position with respect to the three scenarios outlined in the March 27 presentation.

104. Additionally, Catalyst expected that a fourth wireless carrier focussed on the wholesale market might require additional pre-approval from IC to permit third parties to license the new carrier's spectrum. Attached as Exhibit 38 is an email to Glassman in advance of the May 12 meeting with IC explaining the need for IC pre-approval for a wholesale business.

Negotiations with VimpelCom toward Share Purchase Agreement and Closing Documents

105. On May 14, 2014, after some discussions, UBS provided Catalyst with a memorandum outlining the transaction structure. UBS anticipated sending a draft share purchase agreement that would reflect this structure that week. I circulated this memorandum to the deal team, including Moyse. Attached as Exhibit 39 is the email to the deal team and the transaction structure memorandum.

106. On May 14, 2014, Moyse continued to participate in the Wind transaction. Attached as Exhibit 40 is an email from Moyse to me attaching a memorandum prepared by Wind's management concerning the available spectrum.

107. Moyse participated in a call on May 14, 2014 with Wind's management to discuss follow-up items from the first meeting on May 9. Attached as Exhibit 41 is the calendar entry for this call. Attached as Exhibit 42 is an email from Morgan Stanley providing an agenda for the May 14 call with Wind's management.

Moyse Learns that Catalyst is Slowing Down its Timeline with Wind

108. By May 15, Catalyst had not received certainty from IC regarding the exit strategy. We felt that we needed to continue discussions with IC and wanted to see how the regulatory environment would evolve. I explained to the team, including Moyse, that we could not likely do a deal by May 23, as originally planned. I repeated to the team that Catalyst still needed a condition of government approval in the share purchase agreement.

109. The team planned our strategy to continue discussions with VimpelCom but to slow down the process. Morgan Stanley recommended sending additional diligence questions, provide a mark-up of the share purchase agreement and emphasize our need for a technical expert.

Attached as Exhibit 43 is an email chain among the deal team, including Moyse, discussing strategies for slowing down the process with VimpelCom.

Moyse Leaves Catalyst On "Vacation"

110. On May 16, I understood that Moyse was leaving for a vacation. During the vacation, I understood that he would continue to have access to his work email and would continue to support our team as required. Moyse remained on all deal team emails and was expected to remain engaged with the deal so he could hit the ground running upon his return from his vacation.

Catalyst Slows Down Negotiations with VimpelCom – the Parties Exchange a Draft SPA

111. On May 16, 2014, our team met with Wind's management at the Globalive offices in Toronto to discuss the status of pending items and the closing mechanics of the transaction. Attached as Exhibit 44 is the agenda for the meeting.

112. On May 16, 2014, after the meeting with Wind's management, UBS provided a revised share purchase agreement and blackline. UBS commented that it expected a mark-up on or before May 23. Attached as Exhibit 45 is a copy of UBS's email, the share purchase agreement (the "SPA") and a blackline of the SPA.

Moyse Continues to be Involved in Wind While on Vacation

113. While Moyse was away on vacation, he continued to assist Michaud and Creighton. For example, on May 19, 2014, Michaud sent Morgan Stanley's model to Moyse and Creighton and asked for comments. Moyse reported back with comments about the model that showed a rather deep knowledge of the structure of the deal:

> In the "LBO" tab, aren't we buying this debt-free? I thought $300MM buys out all the vendor financing and the shareholder loans go away as well. But the current case is keeping them in place and subtracting those from EV to calculate equity returns. Unless I'm misunderstanding they should run a 2nd base case which better reflects how the transaction would actually be structured (maybe a 1a and 1b depending on if we roll vendor financing or not)

114. Attached as Exhibit 46 is the email correspondence regarding Morgan Stanley's model.

VimpelCom and Catalyst Exchange a Further Draft SPA

115. On May 22, 2014, the principals of the Catalyst team attended Globalive's offices in Toronto for further meetings to discuss the share purchase agreement. A copy of the agenda for the meeting is attached as Exhibit 47.

116. On May 23, 2014, the Catalyst team intended to send a draft of the SPA to VimpelCom. We had not yet received certainty from the IC regarding our May 12 presentation. We also had concerns about the regulatory approvals necessary to complete the transaction. In the correspondence, which Moyse was copied on, I explained that we would not complete the deal by the end of May without the correct government approvals. Attached as Exhibit 48 are the emails containing internal discussion about the terms of the SPA.

117. Late on May 23, 2014, a revised SPA was sent to VimpelCom reflecting the discussion earlier in the day. Attached as Exhibit 49 is the email providing the SPA in draft and blackline. This copy of the SPA was delivered to UBS by Morgan Stanley.

118. This is the last copy of the SPA that I understand that Moyse received.

Moyse Resigns from Catalyst

119. On May 24, while he was still on vacation, I received an email from Moyse notifying me that he intended to resign from Catalyst. Moyse gave no indication of who would be his new employer. Attached as Exhibit 50 is Moyse's resignation email.

120. I believe the reason Moyse did not disclose that West Face would be his new employer in his email on May 24, 2014 is because he knew that West Face was one of Catalyst's competitors, had invested in Mobilicity and would likely bidding for Wind as well.

121. The issue of which other parties could be bidding on Wind and pursuing investment in the Canadian wireless sector was discussed regularly during our Monday briefings as early as December 2013. Glassman and I would talk openly about who had the ability or interest to participate in a purchase of Wind. I thought it was likely that West Face was pursuing Wind. West Face was a rival and I knew it had an interest in Mobilicity's debt. I suggested during the Monday briefings in March of 2014 (and previously), while Moyse was present, that West Face was a likely bidder for Wind.

122. I spoke with Moyse when he returned to Catalyst's Toronto office on Monday, May 26, 2014. Only after I asked did Moyse tell me that he had accepted a job with West Face. This was immediately troubling to me. I had mentioned on prior occasions that I thought West Face might be pursuing Wind. Additionally, I knew West Face had an interest in Mobilicity. I informed Moyse that I thought West Face could be bidding on Wind and pursuing the fourth wireless carrier strategy. I reminded him about the non-competition and confidentiality clauses in his employment agreement.

123. I informed Riley that Moyse had resigned to work for West Face and expressed my concern about Moyse remaining at Catalyst's office for the duration of his 30-day notice period. In order to prevent Moyse from learning anything more about the deal, Riley arranged for Moyse to be put on "garden leave" and removed him from the Wind deal team.

124. On June 20, 2014, I called West Face's principal, Greg Boland, to discuss Moyse and my concern about Moyse's recent work on a telecommunications file at Catalyst. I asked that Boland respect the non-competition clause in Moyse's employment agreement or we would be forced to engage in litigation. Boland told me to "go fuck" myself.

Catalyst and VimpelCom Negotiate SPAs and Exclusivity Agreements

125. On May 27, 2014, UBS provided a revised version of the SPA. The Catalyst team commented on this revised SPA. Attached as Exhibit 51 is the SPA in draft and blackline, as well as a draft exclusivity agreement that Catalyst proposed back to UBS on May 31.

126. This draft of the SPA included additional language concerning the "Outside Date" – the last date by which Catalyst could obtain IC approval to complete the transaction. VimpelCom had proposed that the Outside Date be 18 weeks. Catalyst did not think it could obtain IC approval of this transaction within 18 weeks. This proposed Outside Date seemed unrealistic and as a result we proposed a date that automatically extended for one month periods until approval was received from IC.

127. UBS returned the draft SPA to Catalyst on June 8, 2014. The draft and blackline are attached as Exhibit 52. Again, VimpelCom took the position that an Outside Date of 18 weeks would be sufficient.

128. On June 14, 2014, Morgan Stanley sent a further revised draft of the SPA to UBS which adjusted the Outside Date to November 2014, and contained a mechanism for successive extensions. This draft of the SPA and blackline to the June 8 version is attached as Exhibit 53.

129. On June 15, 2014, UBS and the Catalyst team held a call to discuss the SPA.

130. VimpelCom's counsel, Bennett Jones LLP ("Bennett Jones"), provided a revised draft of the SPA on June 17, 2014. Attached as Exhibit 54 is the June 17 draft of the SPA and a blackline to the June 14 draft. The Outside Date in this draft is November 30, 2014 without any provision for extensions.

VimpelCom and Catalyst Narrow Final Points During June and July of 2014

131. Between June 17 and July 13, 2014, VimpelCom and Catalyst engaged in discussions concerning the Wind Trademark License Agreement and assessing the target working capital. Another draft of the SPA was not provided to Catalyst until July 13, 2014. Attached as Exhibit 55 is the draft SPA and blackline to the June 14 draft. VimpelCom reaffirmed that it was committed to an Outside Date of November 30, 2014.

132. On July 17, 2014, Morgan Stanley proposed an exclusivity agreement to VimpelCom on Catalyst's behalf. Morgan Stanley also provided a short list of the outstanding issues with the SPA. Catalyst believed that exclusivity was necessary to focus VimpelCom and complete a deal. A copy of Morgan Stanley's email to VimpelCom is attached as Exhibit 56.

VimpelCom and Catalyst Enter into Exclusivity Agreement

133. After some negotiation over the precise language, on July 23, 2014, Catalyst and VimpelCom executed an exclusivity agreement (the "Exclusivity Agreement"). Pursuant to the

Exclusivity Agreement, VimpelCom was required to exclusively negotiate with Catalyst until July 29. A copy of the executed Exclusivity Agreement is attached as Exhibit 57.

134. On July 25, 2014, Catalyst sent a revised SPA to VimpelCom. The revised SPA and blackline showing changes to VimpelCom's July 10 draft is attached as Exhibit 58. Catalyst proposed an Outside Date of November 30, 2014, but if IC approval was the only outstanding issue, the Outside Date would automatically extend for an additional month.

IC Remains Positive Regarding Purchase of Wind by Catalyst

135. On July 25, 2014, we learned from Drysdale, our government relations consultant, that IC had reacted positively to Catalyst's potential purchase of Wind. Drysdale informed us that IC would allow the transfer of spectrum, an issue we had asked for in the March 27 and May 12 regulatory presentations. However, he indicated that further concessions might not be granted. Drysdale also expressed concern that while IC might approve transfer of spectrum, it would not licence the fourth carrier to be a wholesaler.

136. Catalyst had always been concerned that IC federal government could delay approving our purchase of Wind past the Outside Date rather than outright denying approval. I discussed this concern with Glassman on July 25, 2014. However, as Catalyst had always thought, it could apply significant pressure on IC and the federal government once a deal with Wind was done and the government was presented with its long desired "fourth carrier". Critically, I felt that our creditability, especially with respect to our description of the government's litigation risk, would increase once they understood we had signed the deal and were as committed as we represented in our presentations on March 27 and May 12 to building that fourth carrier. A copy of the email chain is attached as Exhibit 59.

VimpelCom and Catalyst Extend Exclusivity Period - VimpelCom Confirms that Deal with Catalyst "Substantially Completed"

137. On July 27, 2014, VimpelCom provided a revised draft SPA. It was clear that the parties were getting closer on the outstanding issues. Attached as Exhibit 60 is a copy of the revised SPA and blackline.

138. Very early on July 29, 2014, Catalyst sent back a draft of the SPA with a blackline to the July 27 SPA. The July 29 version of the SPA is attached as Exhibit 61.

139. By July 30, 2014, it appeared that we were very close to a deal with VimpelCom. We started to plan for our approach to the regulatory approval process, as demonstrated in Exhibit 62. Catalyst was ready to move forward with the transaction.

140. On July 30, 2014, Catalyst and VimpelCom agreed to extend the Exclusivity Agreement in order to allow the parties time to finalize the SPA. The exclusivity period was extended to August 5, 2014. A copy of the executed amendment of the Exclusivity Agreement is attached as Exhibit 63.

141. On July 31, 2014, VimpelCom provided a revised draft of the SPA. This draft is attached as Exhibit 64. The Outside Date appeared to be resolved. It remained November 30, 2014, plus a one-month extension if IC approval was the sole issue outstanding.

142. Catalyst returned a draft of the SPA in the early evening on July 31, 2014. This draft is attached as Exhibit 65.

143. On August 1, 2014, VimpelCom confirmed that the deal was done. Felix Saratovsky, VimpelCom's deputy counsel, wrote to me attaching a copy of the SPA. He states:

> 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.

144. Saratovsky confirmed that the SPA was substantially settled and the exclusivity period would be extended for another five business days upon Catalyst's confirmation of the same. A copy of Saratovsky's email is attached as Exhibit 66.

145. On August 3, 2014, I confirmed to Saratovsky that the agreements, including the SPA, were basically settled, subject to the completion of schedules. The remaining issue, as we understood it, was for VimpelCom to obtain its Board of Director's approval of the deal.

146. It is my experience in deals at this stage of the negotiations of this magnitude that Board approval is a procedural formality; Boards do not typically undermine negotiators who are negotiating with authority and alter key deal points after management has spent months negotiating terms. Catalyst expected that VimpelCom had kept its Board informed of the sale process as it developed and that the Board was already familiar with the terms of the deal.

VimpelCom Claims to Experience "Difficulty" in Obtaining Board Approval

147. Between August 3 – 6, 2014, Catalyst believed it had a completed deal. It continued to operate on that assumption and started drafting language for a press release and finalizing a forbearance agreement relating to Wind's vendor debt.

148. On August 7, 2014, Saratovsky informed Catalyst that VimpelCom was still "organizing [its] boards but [it] should be ready to sign and announce on [August 11]". Attached as Exhibit 67 is Saratovsky's email.

149. On August 7, 2014, VimpelCom provided a draft of the SPA and related agreements that included the detailed schedules that Catalyst was expecting. A copy of this SPA is attached as Exhibit 68.

150. Although Saratovsky had indicated that VimpelCom would be ready to sign the SPA by August 11, he informed me on August 8 that the Board meeting did not happen and that the new target for signing was August 15. Attached as Exhibit 69 is my report of my call with Saratovsky to Catalyst's team.

151. On August 8, 2014, VimpelCom provided a second amendment to the Exclusivity Agreement to extend to August 18, 2014. Catalyst agreed to the extension. Attached as Exhibit 70 is the executed amendment.

VimpelCom Reopens Negotiations Concerning Regulatory Risk

152. By August 11, VimpelCom had still not agreed to announce the deal with Catalyst. We were concerned by this. Accordingly, Levin reached out to VimpelCom's counsel and explained that Catalyst was concerned it was being "played" by VimpelCom. Saratovsky replied that Catalyst was not being played. Rather, he stated that VimpelCom had a meeting of its Board's finance committee and they wanted to discuss two points relating to regulatory risk.

153. Despite Saratovsky's assurance, Catalyst continued to be concerned it was being used as a stalking horse for another bidder, when it thought the deal was done. More importantly,

VimpelCom's renewed interest in negotiating the regulatory conditions was both surprising and confusing. The parties had already agreed that VimpelCom would bear the risk of the deal failing if Catalyst did not receive the necessary regulatory approval from IC. This was an issue that had been heavily negotiated since May 6, 2014 and had been completely settled in the terms the parties agreed to on July 27, 2014.

154. Saratovsky emailed me early on August 11 to explain the concerns of the Board. He states:

> The Board members are concerned about the consequences of not getting government approval. After our experience with the government, they are concerned about the government's behavior and therefore wanted us to seek protection in case the government does not approve. They view the interim funding as the amount at risk so we need to discuss this point.

155. Attached as Exhibit 71 is Saratovsky's email to me on August 11.

156. On August 11, 2014, VimpelCom and I spoke with representatives of IC. During the call, we both confirmed that the deal was done.

VimpelCom Retreads on Regulatory Issues

157. By August 15, 2014, VimpelCom had adopted the position that it had to manage the regulatory risk in a more active manner. Specifically, the Chairman of VimpelCom's Board told Morgan Stanley that he wanted a $5-20 million break fee if Catalyst was so confident that it would receive regulatory approval.

158. On August 15, I worked with Saratovsky and Catalyst's advisors to craft a solution, but Saratovsky was fixated on proposing an Outside Date of two months, which was far shorter than

previously agreed. Attached as Exhibit 72 is the email chain with Saratovsky from August 15, 2014.

159. In effect, agreeing to a two-month period to obtain regulatory approval would be guaranteeing that the transaction would not happen, as we were certain that two months was insufficient time for the government to review and approve the transaction. This was the position that Morgan Stanley communicated to Saratovsky in Exhibit 73 of his August 15 email at 3:58 pm.

160. Catalyst felt that at this point, VimpelCom was trying to push us to bear all of the regulatory risk, contrary to points already settled by the parties weeks earlier. Catalyst was not willing to do this. Catalyst had always discussed internally that a condition of regulatory approval was necessary to do a deal with VimpelCom. This was known from the outset by the members of Catalyst's deal team, including Moyse.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 27th, 2016

Commissioner for Taking Affidavits, etc.

BRAD VERMEERSCH
Bradley W.T. Vermeersch
Barrister & Solicitor

GABRIEL DE ALBA

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

AFFIDAVIT OF GABRIEL DE ALBA
(SWORN MAY 27, 2016)

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Lawyers for the Plaintiff

5952

This is Exhibit "48" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

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

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

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

AFFIDAVIT OF ANTHONY GRIFFIN
(sworn June 4, 2016)

I, ANTHONY GRIFFIN, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am one of four Partners of the Defendant West Face Capital Inc. ("**West Face**"), a privately-held Toronto-based investment management firm. My Partners at West Face are Greg Boland, Peter Fraser, and Thomas Dea. In September 2014, certain funds managed by West Face participated in the acquisition of WIND Mobile Corp. ("**WIND**"), together with a group of investors that included Globalive Capital Inc. ("**Globalive**", formerly AAL Corp.), 64NM Holdings, LP ("**64NM**"), and Tennenbaum Capital Partners, LLC ("**Tennenbaum**", and together with West Face, Globalive, and 64NM, the "**Investors**").

2. I was the Partner at West Face who initially had primary responsibility over the WIND file from early November 2013 into July 2014, around which time my Partners

Messrs. Boland and Fraser became progressively more involved and took on greater roles as the matter progressed through late-July, August, and ultimately culminated in an agreement in September. That said, I continued to be involved throughout the deal. I was also involved in the subsequent sale of WIND by the Investors to a company controlled by Shaw Communications Inc. ("**Shaw**"). As such, I have personal knowledge of the matters set out in this Affidavit.

A. My Prior Evidence

3. I previously swore two Affidavits in this proceeding: the first on March 7, 2015 and the second on May 6, 2015. I was cross-examined on those Affidavits on May 8, 2015. That evidence was given in the context of a motion by the Plaintiff, The Catalyst Capital Group Inc. ("**Catalyst**"), for various forms of interlocutory relief against West Face and for an order jailing the Defendant Brandon Moyse for contempt.[1] Justice Glustein dismissed Catalyst's motion in its entirety on July 7, 2015.

4. I also swore an Affidavit on January 8, 2016 in a proceeding very closely related to this one. That evidence was given in support of an application for approval of a plan of arrangement by Mid-Bowline Group Corp. ("**Mid-Bowline**"). Mid-Bowline was the entity through which the Investors held their equity interests in WIND after they had acquired it in September 2014. The plan of arrangement was intended to transfer WIND

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1 Specifically, Catalyst's motion was for: (i) an interlocutory injunction restraining "[West Face], its officers, directors, employees, agents, or any persons acting under its direction or on its behalf" from "[p]articipating in the management and/or strategic direction of [WIND] and any affiliated or related corporations"; (ii) an interlocutory order authorizing an Independent Supervising Solicitor (an "**ISS**") to forensically image (copy), review, and analyze all of West Face's electronic devices, for the stated purpose of determining **whether** West Face had obtained and misused any confidential information belonging to Catalyst; and (iii) an order jailing Mr. Moyse, for contempt of a previous interim consent order.

to Shaw free and clear of Catalyst's claim for a constructive trust over the WIND shares held indirectly through Mid-Bowline by West Face. Catalyst initially opposed the plan of arrangement, but did not file any evidence in response to my January 8, 2016 Affidavit or any of the other Affidavits filed as part of Mid-Bowline's application record. Shortly after receiving a decision by Justice Newbould on January 26, 2016 directing a trial of the alleged constructive trust issue, Catalyst consented to an order approving the plan of arrangement on February 3, 2016. The transaction contemplated by the plan of arrangement later received the necessary regulatory approvals, and WIND was sold by the Investors to a company controlled by Shaw for approximately $1.6 billion.

5. This Affidavit consolidates and updates the relevant evidence I have given in this proceeding and the plan of arrangement proceeding, omits the evidence that has become irrelevant for the purposes of trial, and also sets out my evidence on matters that have become relevant since the swearing of my previous Affidavits.

6. Given the length of this Affidavit, I have provided a high level overview of my evidence in the following section.

B. Overview

7. In this action, Catalyst alleges that West Face misused Catalyst's confidential information about WIND disclosed to West Face by the Defendant Brandon Moyse. Mr. Moyse was a former junior employee of Catalyst who worked at West Face as the most junior member of West Face's investment team for a three and a half week period in June and July 2014.

8. This allegation is categorically false. West Face made diligent efforts to ensure that Mr. Moyse had no communications with anyone at West Face about WIND. Those efforts were effective, and West Face's participation in the acquisition of WIND had nothing to do with Mr. Moyse. Over the past two years of this proceeding, despite voluminous disclosure by West Face, Catalyst has not identified **any** confidential information in any way related to WIND that has been disclosed to West Face by Mr. Moyse.

9. In reality, West Face acquired WIND because we worked hard to understand the company, and were willing to assume a certain level of risk related to regulatory matters, the business model and the competitive environment. Ultimately, our faith was rewarded but the investment's success was far from assured when we made it. Not only Catalyst but other prominent private equity firms like Oak Hill, Blackstone and Birch Hill had declined to pursue the investment, not to mention various possible strategic investors.

10. West Face's interest in WIND as a potential investment dates back to at least November 2009, almost five years before Mr. Moyse joined West Face as a junior associate, and almost three full years before he was employed by Catalyst.

11. Before Mr. Moyse joined West Face on June 23, 2014, West Face had already engaged in extensive due diligence and exchanged multiple offers with VimpelCom Ltd. (WIND's principal security-holder, which controlled the sale process) and its financial advisor, UBS Investment Bank ("**UBS**"), to acquire WIND. West Face had formulated a strategy to acquire WIND either on its own or in concert with others, and had assembled

the majority of the critical deal components that ultimately allowed it to participate successfully in the acquisition of WIND:

(a) we had been in contact with Anthony Lacavera of Globalive and Michael Leitner of Tennenbaum, both of whom would ultimately join the successful syndicate of Investors that acquired WIND as described below;

(b) based on our assessment of WIND's assets, business outlook and regulatory environment, we had accepted VimpelCom's demand that any acquisition be based on an enterprise value in the range of $300 million for WIND; and

(c) we knew from our communications with VimpelCom's financial advisor UBS that VimpelCom wanted to sell its entire interest in WIND as quickly as possible, while minimizing risk of regulatory approval.

12. It was these three critical strategic components, and not anything Mr. Moyse may have known (and which he never passed to us) that were critical to the Investors' successful acquisition. Simply, we believed in the business and did not think further regulatory concessions were needed. Catalyst apparently did not share our beliefs. We took a risk Catalyst would not.

13. West Face's decision to hire Mr. Moyse had nothing to do with Mr. Moyse's involvement in or knowledge of Catalyst's plans, strategies, or negotiations for WIND or any other company. In fact, West Face had no knowledge that Mr. Moyse had played any part of Catalyst's WIND deal team until **after** Mr. Moyse had accepted a job offer from West Face and given notice of his resignation to Catalyst, at which point Catalyst raised concerns with West Face about Mr. Moyse's involvement on an active "telecom file". In response to Catalyst's stated concerns, and before Mr. Moyse had even begun

working at West Face, West Face implemented a confidentiality wall to ensure that Mr. Moyse did not disclose to West Face any Catalyst confidential information he may have possessed relating to WIND.

14. Mr. Moyse worked at West Face as a junior associate for three and a half weeks, from June 23, 2014 to July 16, 2014. During that time, to the best of my knowledge, no one breached the confidentiality wall that had been put into place before he arrived, and Mr. Moyse did not disclose to West Face any Catalyst confidential information relating to WIND. In fact, during the short period in which Mr. Moyse worked for West Face, West Face was pursuing the WIND transaction with another strategic partner that ultimately declined to participate. In other words, while Mr. Moyse was at West Face, we were pursuing what proved to be a dead end in which Mr. Moyse had no involvement.

15. On July 16, 2014, West Face and Mr. Moyse agreed to an interim consent order (the "**Interim Consent Order**") pursuant to which Mr. Moyse was immediately placed on indefinite leave from West Face. From that date on, Mr. Moyse never performed any more work for West Face, had no involvement in any investment analysis or decision making at West Face, and ultimately never returned to work at West Face as a result of this proceeding. He and West Face consensually terminated their employment relationship in August 2015.

16. One week after Mr. Moyse was placed on leave by West Face, VimpelCom granted Catalyst exclusive rights to negotiate a binding agreement to acquire WIND. However, Catalyst failed to reach a definitive agreement with VimpelCom to acquire

WIND during its exclusivity window, which (after various extensions) expired on August 18, 2014. VimpelCom had no negotiations with West Face during the exclusivity period, and to my knowledge West Face had nothing to do with Catalyst's failure to reach a definitive agreement during its period of exclusivity.

17. After Catalyst's exclusivity period expired on August 18, 2014, West Face and its co-Investors moved swiftly to seek to convince VimpelCom to engage in negotiations. Eventually, on August 27, VimpelCom agreed to enter exclusive negotiations with the Investors, and a deal was ultimately concluded on September 16, 2014.

C. About West Face

18. West Face is a Toronto-based investment management firm specializing in event-oriented investments where its ability to navigate complex investment processes is the most significant determinant of returns. West Face operates two principal investment funds: the Long Term Opportunities Fund, a hedge fund with a broad investment mandate; and the Alternative Credit Fund, a draw fund focussed on illiquid debt investments.

19. West Face is led by its President and Chief Executive Officer, Greg Boland, along with three other Partners: Peter Fraser, Thomas Dea, and me. The four Partners have, on average, over twenty years of experience in the financial industry and draw on a deep network of strong relationships to provide a unique pipeline of investment opportunities.

20. I joined West Face in 2006, shortly after it was founded. From 2003 to 2006, I was a Managing Director with Amaranth Advisors Canada, where I focused on

distressed debt, restructurings, private financings, and energy investments. Prior to Amaranth, I worked in the merchant banking group of CIBC World Markets and in RBC Dominion Securities' proprietary investment group. I hold a Bachelor of Commerce in finance from the University of British Columbia and am a Leslie Wong Fellow with the UBC Portfolio Management Foundation.

D. Background to the WIND Transaction

(i) WIND and the Regulatory Environment

21. WIND is a Canadian wireless telecommunications provider that was originally formed in 2008 pursuant to a joint venture between two parties: (1) AAL Corp. (now Globalive), which was the holding company of Mr. Lacavera and the owner of Globalive Communications Corporation, a Canadian telecommunications provider; and (2) Orascom Telecom Holding S.A.E., a large Egyptian multi-national telecommunications company. AAL and Orascom held their interests in WIND indirectly through a corporation called Globalive Investment Holdings Corp. ("**GIHC**").

22. Due to regulatory restrictions on foreign ownership of Canadian telecommunications operators that existed at the time, AAL held a majority (66.68%) of the voting interests in GIHC (compared to 32.02% for Orascom), even though Orascom held a majority (65.08%) of the total equity interests (as compared to 34.25% for AAL). In 2008, WIND paid $442 million for the rights to use a portion of wireless spectrum for a wireless telecommunications service in an auction held by Industry Canada. The spectrum WIND acquired licenses to use at that time was known as AWS-1 (AWS stands for "advanced wireless services").

23. The CRTC initially blocked WIND's launch on the basis that Orascom's involvement breached Canadian ownership requirements, and it took Federal Cabinet intervention to overrule the CRTC in this regard. In December 2009, WIND commenced operations, providing mobile data and voice services in the Greater Toronto and Hamilton Area in Ontario, and in Calgary, Alberta. WIND later expanded into Ottawa and parts of southern Ontario, as well as Edmonton, Alberta, and Vancouver, Abbotsford, and Whistler, British Columbia.

24. In 2011, VimpelCom acquired the majority shareholder of Orascom, giving VimpelCom a controlling interest in Orascom and, indirectly, Orascom's investment in WIND. VimpelCom is a publicly-traded international telecommunications and technology business with more than 200 million customers. While it has been formally headquartered in the Netherlands since 2010, its origins are Russian.

25. Notwithstanding 2012 legislative amendments that loosened certain restrictions on foreign control of smaller telecommunications service providers like WIND, foreign ownership of the wireless industry in Canada remained (and remains to this day) heavily regulated. Indeed, regulatory concerns had already prevented VimpelCom from carrying out a reorganization of WIND ownership in 2013 that would have bought out AAL and given VimpelCom total control of WIND (through Orascom). VimpelCom's attempt to buy out AAL was reported in the press – see, for example, the April 2013 article of *The Globe and Mail*, attached as Exhibit "**1**" to this Affidavit.[2] Given this history, I was well aware by late 2013 that VimpelCom was frustrated by the regulatory

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[2] WFC0109533.

hurdles it faced in Canada, and that this frustration drove its decision to divest its ownership of WIND.

26. Another important factor for WIND's capital structure was that, over the years, Orascom, and later VimpelCom, had made numerous substantial shareholder loans totalling approximately $1.5 billion to WIND to finance, among other things, the aforementioned $442 million acquisition of AWS-1 wireless spectrum in 2008, the build-out of WIND's network, and general operating needs. This debt allowed VimpelCom to control the sale process, notwithstanding that it had a minority voting interest in GIHC and WIND, because VimpelCom could seek to force an insolvency if it was not satisfied with the sale process (and in doing so wipe out Globalive's equity).

27. Given VimpelCom's first-hand experiences with the challenges in Canada of obtaining regulatory approval for changes in ownership in WIND, we at West Face understood (and were also repeatedly, explicitly, told by VimpelCom and its advisors) that minimizing or eliminating any such risk would be crucial to a successful bid for VimpelCom's interests in WIND.

(ii) West Face's Efforts to Acquire WIND Before Mr. Moyse was Offered a Job at West Face

28. West Face had a long-standing interest and expertise in the telecom sector. Among other things, West Face or predecessor companies had previously invested in U.S. and Canadian telecom companies including Lightsquared, Clear Wire, TerreStar Corp., Cleveland Unlimited, Broadview Communications, DBSD N.A. (successor to ICO Global), Cogeco, Microcell Communications, and Rogers Communications. West Face also held debt in Mobilicity, but had fully divested itself of this interest by the end of

February 2013. West Face has not traded in Mobilicity since that time. I believe that West Face was a natural source of financing or investment for a telecom company like WIND.

29. On November 4, 2013, I received a telephone call from Mr. Lacavera. I understand that Mr. Lacavera had received my name from Bruce MacDonald, a contact of Mr. Boland's at RBC. West Face's Vice-President, Yu-Jia Zhu, joined me on this call, and took notes. A copy of Mr. Zhu's notes is attached as Exhibit "**2**".[3] During this call, Mr. Lacavera advised us that VimpelCom was interested in selling its debt and equity interests in WIND and in arranging for the repayment of WIND's third party debt. Among other things, Mr. Lacavera also gave us some background information on the existing regulatory environment, and how the Canadian Government had been steadfast in its policy to promote a fourth wireless carrier to compete with the three incumbents (Rogers, Bell and Telus). He also explained that West Face would have to, in essence, "prove" to VimpelCom that it was a credible purchaser, because VimpelCom had become very apprehensive of both the Government and potential purchasers as a result of previous failures to exit the investment. In that regard, I note that it had been reported in the press that both US carrier Verizon and private equity firm Birch Hill had considered acquiring WIND earlier in 2013, but ultimately decided not to pursue a sale or participate in the 700 MHz spectrum auction. Copies of articles reporting these stories are attached as Exhibits "**3**",[4] "**4**",[5] and "**5**".[6]

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[3] WFC0108177.

[4] WFC0109538.

30. In any event, following this conversation and subsequent conversations with VimpelCom's financial advisor UBS, West Face delivered an expression of interest to VimpelCom and AAL. A copy of West Face's expression of interest letter dated November 8, 2013 is attached as Exhibit "**6**".[7] As set out in this letter, at the time, the contemplated enterprise value for the transaction was between $450 to $550 million.

31. Shortly thereafter, on December 7, 2013, West Face entered into a confidentiality agreement with VimpelCom and Orascom (by then known as Global Telecom Holdings S.A.E.) to obtain access to VimpelCom's virtual data room and conduct financial due diligence on WIND. A copy of this agreement is attached as Exhibit "**7**".[8] West Face gained access to the data room on December 10 and then participated in a management presentation from WIND on December 18.

32. Around the same time in December 2013, the Government of Canada proposed amendments to the *Telecommunications Act* that would put a cap on the roaming rates that could be charged by the incumbents to customers of smaller wireless carriers such as WIND. This was seen as an obvious positive development for WIND, and was reported in the media. A copy of a CBC news article dated December 18, 2013 covering this story is attached as Exhibit "**8**".[9]

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5 WFC0109540.

6 WFC0109542.

7 WFC0080889.

8 WFC0107228.

9 WFC0109981.

33. From January to March of 2014, West Face carried out its due diligence and financial modelling, prepared business forecasts, assessed capital requirements for the business, determined its wireless spectrum requirements, and analyzed potential debt or equity financing requirements. We did not have much contact with either Mr. Lacavera or VimpelCom during this period. Significantly, however, in mid-January, VimpelCom withdrew its financial support for WIND's bid in the 700 MHz spectrum auction that was then being conducted by Industry Canada. This publicly signalled that VimpelCom had no interest in further supporting WIND's business. A copy of a Financial Post article dated January 13, 2014 reporting on this event is attached as Exhibit "**9**".[10]

34. On April 14, 2014 (before I had ever met or spoken with Mr. Moyse), Mr. Lacavera reached out to me to resume our previous discussions about WIND. An email from Mr. Lacavera to this effect is attached as Exhibit "**10**".[11] There was some urgency to put a proposal together because WIND had approximately US$150 million in outstanding third-party debt that was coming due on April 30, 2014.

35. West Face worked hard and moved quickly to develop a proposal to submit to VimpelCom. Based on our discussions with Mr. Lacavera, West Face believed at that time that VimpelCom's main priority was to refinance this $150 million of vendor debt before the expiration of a 30-day forbearance period expiring at the end of May 2014. While we began considering a buyout of a portion of VimpelCom's equity, we did not

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10 WFC0109480.

11 WFC0061108.

understand this to be VimpelCom's priority, and for this reason discussed the prospect of buying the equity only at a later stage. Copies of various email exchanges between me and Mr. Lacavera reflecting our conversations in this regard are attached as Exhibits "**11**",[12] and "**12**",[13] and a copy of an email exchange I had with Mr. Boland regarding my discussions with Mr. Lacavera is attached as Exhibit "**13**".[14]

36. On April 21, we were provided with an updated investor presentation (a copy of which is attached as Exhibit "**14**"[15]) and retained corporate counsel (specifically, Pat Barry of Davies Ward Phillips & Vineberg LLP). On or around April 23, we submitted our first proposals for WIND. At that time, our bid proposed a combination of debt refinancing and equity investment that would allow VimpelCom to retain minority ownership of WIND. Copies of West Face's late April proposals are attached as Exhibits "**15**"[16] and "**16**".[17]

37. VimpelCom's advisors gave us their initial feedback on these proposals on or around April 25, 2014. Emails reflecting this feedback are attached as Exhibits "**17**"[18] and "**18**".[19] One question VimpelCom had asked was how quickly we could complete our due diligence. We could tell that speed of closing was a significant issue to

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12 WFC0059125.

13 WFC0051129.

14 WFC0060279.

15 WFC0060563 and attachment WFC0060565.

16 WFC0066640.

17 WFC0066644.

18 WFC0109155.

19 WFC0041076.

VimpelCom. For this reason, West Face stated that given all the work we had already done, we could halve the required due diligence period from 90 days to only 45 days.

38. However, on May 1, 2014, West Face was advised by Jonathan Herbst or Francois Turgeon of UBS that VimpelCom was interested only in an outright sale of VimpelCom's debt and equity interests in WIND. The next day, I sent an email to the West Face WIND deal team (the four West Face Partners and Mr. Zhu) and our internal and external legal counsel (Alex Singh of West Face and Pat Barry of Davies) informing them of this feedback. A copy of my May 2, 2014 email is attached as Exhibit "**19**".[20]

39. Thus, while we had initially understood that VimpelCom would consider a range of alternatives, including a continuing equity interest, from that point forward, it was clear that the three essential deal elements for a successful bid to acquire WIND were as follows:

(a) a deal that could close quickly, without material representations and warranties by the vendor;

(b) a purchase price targeting an enterprise value of $300 million; and

(c) a transaction structure that allowed for the full exit of VimpelCom that minimized any risk related to regulatory approval.

40. As an aside, I note that VimpelCom's $300 million asking price was common knowledge to the interested parties and, indeed, had even been referred to by the press

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[20] WFC0109163.

in the Summer of 2014. For example, see the July 31, 2014 article from the Globe and Mail attached as Exhibit "**20**".[21]

41. Thus, while West Face's initial April 2014 proposals were focussed more on buying WIND's debt than its equity, West Face knew that we had to work within the paradigm being established by VimpelCom as the seller. West Face understood the competitive nature of the sale process being run by VimpelCom, and was willing to adapt and evolve its strategies and proposed transaction structures in its attempts to win VimpelCom over.

42. On May 4, 2014, West Face sent VimpelCom a revised proposal to address VimpelCom's required deal terms. This proposal included a purchase of 100% of WIND's equity, based on the $300 million enterprise value that had been communicated to interested parties by VimpelCom and its agents. This offer was made to VimpelCom almost two weeks **before** West Face offered Mr. Moyse a job and almost two months **before** Mr. Moyse actually began working at West Face. A copy of West Face's May 4, 2014 proposal is attached as Exhibit "**21**".[22]

43. Mr. Lacavera's only comment on our May 4 proposal was that we should indicate to VimpelCom that West Face was Canadian owned and controlled and had no relationship with an incumbent, so as to make it clear that there would not be any significant issues regarding the time it would take West Face to gain regulatory approval for the transaction. I understand that Mr. Lacavera's reason for giving this advice was

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21 WFC0080891.

22 WFC0106772.

because of VimpelCom's apprehensiveness of the regulatory approval process and its desire for an extremely low-risk transaction. A copy of Mr. Lacavera's email to this effect is attached as Exhibit "**22**".[23]

44. For this reason, we put "Introduction and background on West Face / Addressing any questions VimpelCom has on the firm, our capital base, etc." as the first agenda item on our next meeting with VimpelCom's advisor, scheduled for May 7, 2014. A copy of an email to this effect is attached as Exhibit "**23**".[24]

45. VimpelCom did not accept West Face's May 4 offer for a variety of different reasons unrelated to price, but indicated that it was willing to negotiate further. To this end, West Face requested that its corporate counsel, Davies, also be given access to VimpelCom's virtual data room in order to conduct legal due diligence. Also around this May time period, West Face hired a number of consultants to advise West Face regarding WIND's business, including Peter Rhamey and George Horhota, two consultants in the Canadian wireless market, and Altman Vilandrie & Company ("**AV&Co**"), a well-known US consultancy firm specializing in the telecom, media and technology industry.[25] West Face ultimately paid these advisors hundreds of thousands of dollars for their expertise, industry specific advice, and with respect to AV&Co, technical diligence on WIND. A copy of AV&Co's report is attached as Exhibit "**25**".[26]

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23 WFC0052574.

24 WFC0053973.

25 While West Face did not execute its contract with AV&Co until May 21, 2014, AV&Co had already been given access to the data room on or around May 11, 2014. An email to this effect is attached as Exhibit "**24**" (WFC0052730).

26 WFC0085622.

46. Notably, at no time throughout the process did West Face intend to pursue any regulatory concessions from Industry Canada or any other regulatory body. We knew that any transaction involving WIND and a transfer of its spectrum licenses would require regulatory approval, but we did not see the need for any concessions in terms of future transferability of spectrum. From reviewing the Affidavits of Gabriel De Alba and Newton Glassman, sworn May 27, 2014, I understand Catalyst's theory to be that West Face altered its strategy to be more aggressive in assuming regulatory risk. However, based on our due diligence efforts and analysis of the company and the regulatory environment, we were confident Industry Canada would approve any sale to us, and we did not believe WIND required regulatory concessions to be profitable moving forward. Based on this analysis, we concluded that the regulatory considerations were manageable and ultimately not a material risk to West Face's investment thesis.

47. All that West Face wanted from Industry Canada was more certainty regarding when, how, and at what cost WIND would be able to acquire additional spectrum to upgrade its network from a 3G (third generation) wireless network to an LTE ("long term evolution" or fourth generation) network. Until the new LTE network was built and all customers had been transitioned, some customers would need to remain on 3G and use WIND's pre-existing AWS-1 spectrum. This issue was resolved on July 7, 2014, as described below, when the Government of Canada announced an auction for AWS-3 spectrum with significant set-asides for new entrants like WIND.

48. On May 21, 2014, West Face delivered a presentation to Industry Canada. A copy of this presentation is attached as Exhibit "**26**".[27] One purpose of this presentation was to give Industry Canada some information about West Face and why it would be a suitable owner of WIND (as stated above, any acquisition for control of WIND would be subject to regulatory approval). The presentation informed Industry Canada that from West Face's perspective, the key risk factor was the uncertainty regarding WIND's ability to acquire additional spectrum enabling it to build out an LTE network.

49. WIND's dire need for additional spectrum to transition to LTE had been disclosed to West Face by WIND from the outset of the negotiations in December 2013. More notably, it was, in any event, entirely public knowledge. For example, the January 13, 2014 Financial Post article that I previously attached as Exhibit "**9**" stated (in the context of WIND withdrawing from the 700 MHz auction):

> Mr. Lacavera said the fact that Wind will not secure additional airwaves in this year's auction will not affect its ability to operate its network or serve its customers **in the immediate term**.
>
> "Wind has emerged as the fourth carrier in Ontario, B.C. and Alberta, **but we still have need of additional spectrum for LTE**," he said in an emailed statement. "**Today's development leaves us with a spectrum shortfall we must still address**".
>
> Wind built a third-generation [3G] network on its existing spectrum, which is what is known as the AWS band of spectrum.
>
> In order to update to a more advanced LTE (long-term evolution or fourth-generation) network, it must either reallocate part of its existing spectrum and carefully migrate

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[27] WFC0106480.

> its customers to the faster network **or acquire more airwaves**.[28] (emphasis added)

50. As West Face indicated to Industry Canada on May 21, West Face was willing to accept a number of business and regulatory risks, including:

(a) WIND's ability to solidify its position in the Canadian market and achieve self-funding status;

(b) WIND's ability to improve the quality and reach of its network;

(c) navigating and responding to competitive actions by incumbents;

(d) assuming the financing risk associated with future funding needs including operating losses and network requirements; and

(e) assuming the risk that final rulings regarding wholesale roaming and tower sharing would not be as favourable to WIND as currently expected.[29]

51. However, as of May 21, 2014, there was no certainty as to how WIND was going to be able to acquire the necessary additional spectrum. As stated in the presentation, West Face could not assume prior to closing that WIND would obtain the spectrum necessary to migrate to LTE.

52. While West Face was alive to other regulatory issues affecting WIND such as wholesale roaming and tower sharing, it was expected in the industry that the Government and CRTC would implement changes that would be beneficial to WIND. See, for example, the Bank of America Merrill Lynch article published on July 6, 2014,

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28 WFC0109480.

29 A copy of the PowerPoint presentation used at this meeting, which outlines this acceptance of risk at p. 11, was attached above as Exhibit "**26**" (WFC0106480).

outlining its expectation on roaming rates, attached as Exhibit "**27**".[30] West Face was willing to assume the risk that these issues would be resolved in a manner favourable to WIND given the Government's commitment to encouraging the development of a fourth wireless courier in every region of Canada.

53. Thus, the only significant regulatory hurdle that West Face had yet to gain sufficient comfort on, and which would have been well-known to all bidders including Catalyst, was WIND's path to obtaining spectrum. This was not an issue specific to West Face or any other particular bidder. Rather, it was a fundamental going-forward issue that WIND faced as a business.

54. The significance of WIND's ability to acquire additional spectrum to support the build-out of the LTE network is perhaps best evidenced by West Face's June 3, 2014 proposal to VimpelCom. This bid proposed that West Face would: (1) provide $160 million in bridge financing to fund the repayment of WIND's existing third party vendor debt; (2) enter in a share purchase agreement for 100% of WIND for deferred contingent consideration of $100 million, payable to VimpelCom upon West Face obtaining sufficient spectrum within 12 months to support WIND's LTE rollout strategy; and (3) be responsible for funding the company's working capital. Because this proposal involved a change of control at WIND, it was necessarily contingent on regulatory approval. Indeed, any change of control of WIND would necessarily require regulatory approval from Industry Canada and the Competition Bureau, which is why VimpelCom's initial draft share purchase agreement (a copy of which is attached as

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30 WFC0107350.

Exhibit "**28**"[31]) provided for such approvals. However, West Fact attempted to allay any possible VimpelCom concerns regarding the risk of such approval not being obtained by noting in its proposal that West Face would use a "Canadian acquisition vehicle" and therefore "did not anticipate any significant regulatory issues in connections with our proposal". A copy of this June 3 proposal is attached as Exhibit "**29**".[32]

55. In spite of making a proposal to acquire WIND on our own on June 3, we were interested in finding other parties with which we could combine our efforts and reduce our total exposure. For example, in addition to our ongoing conversations with VimpelCom, we were aware that Tennenbaum was assembling a consortium because Tennenbaum's principal Michael Leitner had reached out to Mr. Boland. On June 4, I advised Mr. Lacavera that West Face was thinking of joining the Tennenbaum consortium. I also commented that to my knowledge, Tennenbaum and West Face were "the only real proposal[s] in front of" VimpelCom, because my perception was that "Catalyst seems to be a lot of air." A copy of this email is attached as Exhibit "**30**".[33] At this time we did not, however, join the Tennenbaum consortium nor did we exchange any information with them.

56. At this time, we suspected Catalyst might be involved because of their long-stated public desire to pursue a combination of WIND and Mobilicity, and their existing investment in Mobilicity's bonds. I said Catalyst "seems to be a lot of air" because at

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31 WFC0106564.

32 WFC0106765.

33 WFC0068142.

the time I was aware of no evidence indicating that Catalyst was a serious bidder for WIND at the time. I certainly knew nothing of Catalyst's strategy with respect to WIND.

57. In response to our June 3 offer, VimpelCom again made it clear that it was looking for a "clean exit". In that regard, Francois Turgeon of UBS emailed me on June 10, saying:

> Tony,
>
> The delayed settlement feature you proposed does not work for VimpelCom has the objective is still a clean exit at a $300 million EV [*sic*].
>
> My client is not prepared to have any portion of the proceeds contingent on a future event, in this case the acquisition of spectrum.
>
> I am happy to discuss if required
>
> Francois

58. A copy of this email is attached as Exhibit "**31**" to my Affidavit.[34] This was consistent with VimpelCom's messaging since at least May 1, 2014.

59. Faced with this consistent feedback, West Face was again willing to adapt, and began considering its alternatives. By June 12, 2014, West Face was considering two possible options for financing a transaction to acquire WIND:

(a) raising $100 million in debt through an investment bank, $100 million of senior equity contributed by West Face, and $100 million of subordinate equity from Mr. Lacavera and other investors with whom he had relationships; or

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[34] WFC0058252.

(b) joining a syndicate of investors led by Tennenbaum, which at that time also included two other prominent U.S. private equity firms – Blackstone and Oak Hill – which did not ultimately participate in the purchase of WIND (the "**Tennenbaum Syndicate**").

60. An email from me to Mr. Lacavera outlining these two "paths" is attached as Exhibit "**32**".[35]

61. While neither of these options ultimately resulted in a deal for WIND, the combination of relationships with Globalive and Tennenbaum, the strategies to meet the conditions for a successful acquisition imposed by VimpelCom, the outlines of the agreements developed, and the significant due diligence conducted by that date, including the engagement of third party consultants such as AV&Co, all proved critical in completing the transaction several months later. All of this was accomplished before Mr. Moyse even started working at West Face, and of course there was never any involvement by or information from him at any time.

62. After considering its options, West Face determined that it did not, at that time, want to become a fourth member of the Tennenbaum Syndicate and instead, on June 19, 2014, decided to make another proposal to VimpelCom for the acquisition of 100% of WIND's equity based on an enterprise value of $311 million. Again, because this proposal involved a change of control transaction, it was conditional on regulatory approval, and West Face included the same language as its previous proposal that it

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[35] WFC0050393.

did "not anticipate any significant regulatory issues in connection with our proposal". A copy of this proposal is attached as Exhibit "**33**".[36]

63. During the period of June 20 to 22, 2014, West Face's counsel prepared a share purchase agreement for delivery to VimpelCom's financial advisor, UBS, and a list of outstanding legal due diligence items following its initial review. I emailed the draft agreement and supplemental due diligence request list to Francois Turgeon of UBS on the morning of Monday, June 23, 2014. A copy of this email, and Mr. Turgeon's response, is attached as Exhibit "**34**".[37] Mr. Turgeon and I exchanged further emails where he expressed disappointment that West Face and its counsel had drafted their own share purchase agreement from scratch instead of using VimpelCom's counsel's draft. Mr. Turgeon again advised that VimpelCom was looking for a "clean exit on [an] 'as-is basis'". Copies of these emails are attached as Exhibits "**35**",[38] "**36**",[39] and "**37**".[40] This episode drove home for us VimpelCom's desire for a simple, "clean exit". As I will describe below, this philosophy – and not any non-existent information from Mr. Moyse – drove our winning strategy for WIND.

64. Shortly thereafter, on July 7, 2014, Industry Canada announced that a large, 30 MHz block of AWS-3 spectrum (of 50 MHz total) would be set aside and made available exclusively for new entrants like WIND. This ensured that WIND would have access to additional spectrum without having to bid against the incumbents Rogers, Telus and

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36 WFC0059316.

37 WFC0080895.

38 WFC0073246.

39 WFC0069341.

40 WFC0067814.

Bell. This announcement effectively provided West Face with sufficient certainty regarding the ability to acquire the additional spectrum WIND needed to roll-out LTE. In short, by July 7, 2014, the only regulatory concern that West Face had raised in its May 21 presentation to Industry Canada had been addressed. This was before Catalyst even entered into exclusive negotiations with VimpelCom, and, to state the obvious, had nothing to do with Mr. Moyse. A copy of a news release of the Government of Canada regarding this announcement is attached as Exhibit "**38**".[41]

65. A copy of a speech given by Minister Moore on July 7 in conjunction with this announcement is attached as Exhibit "**39**".[42]

E. Mr. Moyse's Hiring By West Face

66. In the meantime, Mr. Moyse had contacted West Face in March 2014 seeking employment in response to a West Face press release announcing the launch of its Alternative Credit Fund in January 2014. Mr. Moyse's hiring by West Face is described in detail in the Affidavit of Thomas Dea sworn June 3, 2016 (which I have reviewed in draft).

67. I did not play a significant role in Mr. Moyse's hiring, and primarily left the matter in Mr. Dea's hands. I therefore generally defer to his evidence regarding Mr. Moyse's hiring process. However, I can say that I met with Mr. Moyse when he attended at West Face's office on April 15, 2014 for his first round of interviews. We did not discuss WIND, or any other specific company or potential investment he had studied at Catalyst

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41 WFC0109450.

42 WFC0109454.

or any other previous employer, at all during that meeting. We discussed his resume, academic background, training he had received at his previous employers, and why he was interested in a job at West Face. Mr. Moyse told me he was dissatisfied with his lack of responsibility, limited deal flow, and overall career path at Catalyst and wanted to move into a role with greater responsibility and analysis.

F. West Face Implements a Confidentiality Wall in Response to Catalyst Complaints

68. As set out in Mr. Dea's Affidavit, in response to Catalyst's stated concerns about Mr. Moyse's involvement at Catalyst on a "telecom file", West Face implemented a confidentiality wall regarding WIND **before** Mr. Moyse started working at West Face. Pursuant to this confidentiality wall: (1) Mr. Moyse was forbidden from communicating with anyone at West Face about the ongoing WIND negotiations, and vice versa; and (2) West Face's IT group restricted access to the computer network for files regarding WIND.

69. To the best of my knowledge, neither Mr. Moyse nor anyone else at West Face breached the confidentiality wall. Our WIND deal team did not discuss the matter around Mr. Moyse on the trading floor and he was not privy to any of our communications.

G. No Disclosure by Mr. Moyse of WIND-Related Information

70. Mr. Dea did forward to me (and to my Partners and Mr. Zhu) Mr. Moyse's email of March 27, 2014 attaching four writing samples marked as "Confidential" and "For Internal Discussion Purposes Only". Reviewing a potential employee's writing samples was a standard hiring practice for recruiting junior investment professionals at West

Face. I believe I opened one of the attachments relating to a company called Homburg, but did not pay it much attention. I do not recall opening the other attachments. In any event, none of the attachments related to WIND.

71. I understand from counsel to West Face that Catalyst stopped treating the contents of Mr. Moyse's March 27, 2014 email as confidential over 16 months ago in January 2015, when it instructed its litigation counsel to unseal the Court File where a copy of the email and its attachments had been filed. Shortly thereafter, newspaper articles about this litigation quoting from Catalyst's very recent court filings that were critical of West Face appeared in the *Globe and Mail* and the *National Post*. Neither West Face nor its counsel advised the media of the unsealing of the court file, suggested the media consult the court file, or otherwise instigated this newspaper coverage of the litigation. I understand from my counsel that Catalyst refused to answer questions about whether it was the party who alerted the media to the unsealing of the Court File and Catalyst's recent motion. Copies of these articles are attached as Exhibit "**40**",[43] and the relevant excerpts from the transcript of James Riley's cross-examination held May 13, 2015, and answers to undertakings from this cross-examination, are attached as Exhibit "**41**".[44] In any event, West Face has not used or relied on any of the writing samples attached to the March 27, 2014 email, other than to evaluate Mr. Moyse's job application.

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[43] WFC0081343.

[44] WFC0111150 and UTS000783.

H. Mr. Moyse's Brief Period of Employment at West Face

72. As set out above, Mr. Moyse began working at West Face on June 23, 2014, and approximately three and a half weeks later, on July 16, he was put on indefinite leave pursuant to the Interim Consent Order. From that date on, Mr. Moyse never performed any more work for West Face, and ultimately never returned to work at West Face as a result of this proceeding. He and West Face consensually terminated their employment relationship in August 2015.

73. Much of Mr. Moyse's three and a half week period at West Face was spent in orientation and training in order to acclimatize him to the West Face working environment. Based on my recollection of Mr. Moyse's time at West Face and the work I asked him to do for me during this period, as well as on conversations with the other West Face Partners, I believe that during his brief time at West Face, Mr. Moyse's work was limited to performing some preliminary analyses on several potential investments that had nothing to do with WIND. In that regard, I set out my knowledge and information of the work Mr. Moyse performed while at West Face in Appendix "A" to my March 7, 2015 Affidavit. For ease of reference, a copy of that Appendix is attached as Exhibit "**42**" to this Affidavit.[45]

74. During his three and a half weeks at West Face, Mr. Moyse kept a physical notebook in which he took handwritten notes during meetings and phone calls. This notebook includes notes on a number of West Face projects or potential deals. I have reviewed a copy of Mr. Moyse's notebook and to the best of my knowledge, it contains

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[45] WFC0111146.

no confidential information belonging to Catalyst. Rather, it relates entirely to either public information, or information that was generated internally at West Face. Copies of the relevant pages from Mr. Moyse's notebook are attached as Exhibit "**43**".[46]

75. Catalyst has had the ability to "audit" the work Mr. Moyse did at West Face for over a year now. In March 2015, West Face delivered to Catalyst all non-privileged emails found on West Face's email server that were sent to or from (including by way of "cc" and "bcc") Mr. Moyse's West Face email address or his known personal email addresses. These emails were redacted only where necessary as a result of: (a) West Face's confidential information; and (b) personal confidential information belonging to Mr. Moyse such as banking passwords and other private information. At the same time, West Face also offered to produce to the Independent Supervising Solicitor a USB drive containing all documents created, modified or accessed by Mr. Moyse while at West Face (the "**Moyse-Accessed Documents**"). Catalyst ignored this offer. A copy of West Face's letter including this offer is attached as Exhibit "**44**".[47]

76. In January 2016, West Face again offered to produce the Moyse-Accessed Documents, this time on a counsels' eyes only basis. Again, Catalyst ignored this offer. A copy of West Face's letter including this offer is attached as Exhibit "**45**".[48]

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46 WFC0080915. West Face confidential information in the notebook has been redacted, none of which relates to WIND.

47 CCG0018715.

48 WFC0075855.

77. For the purposes of this trial, more important than the work Mr. Moyse did do while at West Face is the work he did not do. Mr. Moyse did not work on anything related to WIND (which was subject to a confidentiality wall as described above).

I. The Preservation of Mr. Moyse's Records

78. Catalyst ultimately commenced this action on June 25, 2014. As described above, three weeks later West Face agreed to the July 16 Interim Consent Order, under which Mr. Moyse was placed on indefinite leave. As of that date, Mr. Moyse was denied all access to West Face's facilities, his computer access was terminated, and his physical access cards were taken back from him. The hard drive from his computer has been preserved and not re-used for any other purpose. Based on my discussions with West Face personnel, from July 16 until long after the WIND acquisition was complete, no one at West Face had any communications with Mr. Moyse, other than in respect of human resources matters and in response to personal trading approvals sought by Mr. Moyse from West Face's compliance department. I also understand that non-material emails were sent to Mr. Moyse's West Face email address, to which Mr. Moyse no longer had access, as part of mass emails to West Face employees or subsets thereof (for example, emails regarding fire drills, compliance training, daily market updates sent by West Face summer intern Alex Goston, the office holiday party, etc.). Again, all of these emails were produced to Catalyst in March 2015.

79. As part of the Interim Consent Order, Mr. Moyse and West Face agreed to an order to preserve and maintain all relevant records in their possession, power or control. West Face preserved Mr. Moyse's computer and retained a forensic computer expert to image and retain all relevant records, as described in the Affidavit of Harold Burt-

Gerrans sworn March 9, 2015, and the Affidavit of Chap Chau sworn May 14, 2015. Searches of those records have found no evidence that Mr. Moyse had anything to do with WIND, or otherwise conveyed **any** confidential Catalyst information to West Face other than the March 27, 2014 email described above.

J. Mr. Moyse Played No Role in WIND Negotiations While at West Face

80. At the time that Mr. Moyse joined West Face, West Face was in fact beginning to explore a joint bid for WIND with a potential strategic partner. This party has requested that its identity not be disclosed. West Face pursued this option throughout the three and a half weeks that Mr. Moyse was working at West Face, without any input from or discussion with Mr. Moyse.

81. Negotiations with this company continued through to July 18, 2014, two days after Mr. Moyse stopped working for West Face. On that day, the company advised West Face that it was withdrawing from the transaction.

82. In summary, during the time Mr. Moyse was at West Face, we had pursued what turned out to be a dead end, and we were no closer to a WIND transaction than when he joined the firm. Even so, and as described above, Mr. Moyse had no involvement in this or any other aspect of the potential WIND transaction as pursued by West Face.

K. Catalyst Wins the Right to Negotiate Exclusively with VimpelCom

83. Given the withdrawal of West Face's potential strategic partner, West Face had to again act nimbly and re-adjust its strategy in order to stay in the race that was the competitive sale process for WIND.

84. For this reason, West Face revived its former discussions with the Tennenbaum Syndicate, as well as discussions with other potential partners. As described above, West Face's discussions with Tennenbaum had pre-dated Mr. Moyse's employment at West Face. Before discussions with Tennenbaum could advance however, on July 23, 2014 (a week after Mr. Moyse went on leave), West Face learned from Oak Hill that VimpelCom had granted another bidder (which I now understand to be Catalyst) an exclusive negotiating period to conclude a binding agreement for the acquisition of WIND. A copy of an email from Jonathan Friesel of Oak Hill to members of the Tennenbaum consortium at the time which referred to VimpelCom entering into exclusivity with an unnamed bidder is attached as Exhibit "**46**".[49]

85. This period of exclusivity was extended several times, ultimately to August 18, 2014. During the period of exclusivity, VimpelCom was forbidden to, and in fact did not, negotiate with West Face. While we continued to work on refining our proposal, we could not receive any feedback from VimpelCom or its advisors, nor could we receive any further information from WIND management as to whether our proposals would be satisfactory to VimpelCom. Other than the fact of Catalyst's exclusivity, we had no insight into the status of Catalyst's negotiations and no ability to influence the outcome of these negotiations.

86. Ultimately, and despite having the benefit of an exclusive negotiating period, Catalyst was not able to conclude a deal with VimpelCom. Catalyst's period of exclusivity expired on August 18, 2014.

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[49] WFC0048724.

L. Catalyst's Regulatory Strategy

87. I have read the Affidavits of Newton Glassman and Gabriel De Alba sworn May 27, 2016, and in particular their evidence about Catalyst's confidential regulatory strategy regarding WIND. As a preliminary matter, I can unequivocally say that during the events in question in 2014 and right up to the time that I read the Glassman and De Alba Affidavits, I had no awareness of Catalyst's confidential regulatory strategy regarding WIND. Mr. Moyse never informed West Face of anything about WIND, let alone Catalyst's confidential regulatory strategy regarding WIND.

88. Now that I understand for the first time Catalyst's regulatory strategy regarding WIND, I can confidently state that knowledge of Catalyst's strategy would not have affected West Face's strategy. By the time our consortium came together in late July and we had committed financing to acquire the entire company, we knew that we were in a competitive auction process. VimpelCom entering exclusivity with Catalyst only heightened the need to make the best bid possible. We were in a "Hail Mary" situation. We knew based on VimpelCom's expressed desires – and not based on anything Catalyst may have intended to do – that we needed to offer the greatest certainty of closing and the lowest risk to VimpelCom, whether regulatory, financial, or otherwise. That was what the Investors' bid did.

89. In short, we were structuring our efforts around VimpelCom's known preferences. Even if Mr. Moyse had conveyed Catalyst's strategy (as of May 24, 2016 – the day he resigned from Catalyst) to West Face, that information would have been completely irrelevant to us and our own negotiating strategy with VimpelCom.

90. **First**, I fundamentally disagree with Catalyst's premise that a fourth wireless carrier was not viable without major regulatory change. It was neither West Face's internal belief nor outward negotiating position towards the Government of Canada that "an independent fourth wireless carrier would not be viable in Canada without changes to the regulatory environment" or that a fourth carrier would "not survive without changes to the existing regulatory structure", as Mr. Glassman states in paragraph 10 of his May 27, 2016 Affidavit.

91. On the contrary, West Face believed that WIND's business was fundamentally viable (subject only to gaining additional certainty regarding WIND's ability to obtain additional spectrum to build-out an LTE network, as described above, which certainty was adequately provided for by the Government's July 7 announcement of the AWS-3 set-aside spectrum auction). Indeed, in our memorandum summarizing the proposed transaction to investors, we noted that "Wind appears to be at a favourable inflection point in a number of regards". A copy of this memorandum is attached as Exhibit "**47**".[50] West Face's belief in this regard was well-founded and based on, among other things:

(a) our own extensive and months-long internal due diligence and financial modelling process, led by me and Mr. Zhu;

(b) our extensive discussions with WIND management, including Messrs. Lacavera, Lockie, and Scheschuk, all three of whom had been deeply steeped in WIND's business for a number of years;

(c) the advice we received from our industry consultants, Peter Rhamey and George Horhota; and

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[50] WFC0108004.

(d) the findings made and conclusions reached by West Face's technical industry consultant, AV&Co.[51]

92. Through all of the above sources of information and advice, West Face gained a good understanding of WIND's branding, marketing, customer service, sales, distribution, key performance indicators, network infrastructure, operating and financial information, tax attributes, and, of course, its spectrum holdings and requirements and working capital needs.

93. West Face's belief in the basic viability of WIND was also necessarily shared by its co-Investors Globalive, Tennenbaum, and 64NM. I believe that none of these entities would have invested millions of dollars for their respective interests in WIND had they not believed it was a sound investment. While I believe this would be true of any rational investor, it is notable that the principals of Globalive (Messrs. Lacavera, Lockie and Scheschuk) were also, of course, members of WIND management, and had been deeply steeped in WIND's business for a number of years as I stated above.

94. Moreover, Tennenbaum was a leading investment management firm that specialized in the technology/media/telecom ("**TMT**") industry, and the leader of its WIND deal team, Mr. Leitner, was the senior partner of Tennenbaum's TMT practice and had extensive experience in the sector. Tennenbaum had previously been invested in WIND's vendor debt, and had conducted its own extensive due diligence and modelling regarding an equity investment, which it shared with West Face in late July

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[51] In fact, AV&Co had concluded that in a worst-case "break-up" scenario, WIND's assets were worth $200-$350 million. See Exhibit "**25**" WFC0085622 at pp. 2, 26. Notably, this valuation assigns no value to WIND's spectrum in operating markets on the assumption it could not be sold to an incumbent, contrary to Mr. Glassman's assumptions.

(after receiving permission from VimpelCom) when the Investor consortium was formed. In fact, Tennenbaum had even more optimistic views than West Face about what WIND's working capital needs were. Attached as Exhibit "**48**" is an email chain from July 22, 2014 in which Mr. Leitner states that he has obtained permission from VimpelCom for West Face to join the Tennenbaum consortium.[52] It was only after obtaining this permission that we started to share information and analyses together. For example, the next day, July 23, Mr. Leitner asked other members of his consortium to forward me their technical presentation, the last version of their share purchase agreement, and their updated financial model. A copy of this email is attached as Exhibit "**49**".[53]

95. Finally, Mr. Guffey, the principal of 64NM, was also a highly knowledgeable and sophisticated investor in the telecom sector. That all three of these parties were enthusiastic about injecting equity capital into the WIND business gave West Face extra comfort that WIND was a sound investment, although we were of course already confident in our own evaluations.

96. **Second**, West Face was much more optimistic than Mr. Glassman about our ability to profitably exit the investment without any regulatory changes.

97. Mr. Glassman repeatedly states his view that WIND was not a viable investment without fundamental regulatory concessions:

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[52] WFC0059172.

[53] WFC0056117.

(a) "...an independent fourth wireless carrier would not be viable in Canada without changes to the regulatory environment including changing or reversing the unilateral and retroactive conditions imposed upon the 2008 licenses" (para. 10);

(b) "...an independent fourth wireless carrier could not survive without changes to the existing regulatory structure" (para. 10);

(c) "Without the changes [sought by Catalyst], the fourth carrier would only be able to compete in the short term with the incumbents...." (para. 11);

(d) "In the regulatory environment that existed in 2014, the new entrants, like Wind, were therefore not equipped to survive any kind of competitive war with the incumbents" (para.11);

(e) "...the prospects of Mobilicity and Wind in the existing regulatory environment were not good" (para. 21); and

(f) "[WIND] would have difficulty obtaining conventional arms-length financing as a result of the federal government's recent regulatory actions" (para. 21).

98. Mr. Glassman clarifies in paragraph 29 of his Affidavit that the "crucial" concession sought by Catalyst from the Canadian Government was the ability to "exit the investment with no restrictions in five years". As I read his Affidavit, Mr. Glassman believed that an acquisition of WIND was only worth pursuing if Catalyst were allowed to sell WIND and/or its spectrum to an incumbent after five years, provided an initial public offering or other sale had not occurred.

99. West Face did not share Mr. Glassman's concerns. Indeed, in its May 21 presentation to Industry Canada,[54] West Face explicitly advised the Government that it was willing to **accept** a number of business risks, without any regulatory concessions whatsoever. As set out in this presentation, the risks West Face was willing to accept included:

(a) WIND's ability to solidify its position in the Canadian market and achieve self-funding status.

(b) WIND's ability to improve the quality and reach of its network.

(c) Navigating and responding to competitive actions by incumbents.

(d) Assuming the financing risk associated with future funding needs including operating losses and network requirements.

(e) Assuming the risk that final rulings regarding wholesale roaming and tower sharing are as favorable to Wind as currently expected.

100. West Face was willing to assume these risks because, for the reasons described above, we concluded that WIND was a fundamentally sound business, including in the context of the existing regulatory environment.

101. We had no need for a guarantee from the Government that West Face would be able to sell WIND and/or its spectrum to an incumbent in five years. West Face was content to operate the business, and confident that either by taking WIND public or selling to a strategic buyer, West Face could achieve a reasonable rate of return on any

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54 Exhibit "**26**" above (WFC0106480).

investment in WIND. Again, I believe West Face's confidence in this regard was reasonable and well-founded.

102. West Face's confidence in this regard has been confirmed by the recent sale by the Investors of WIND to Shaw – a strategic buyer, but not an incumbent – for $1.6 billion, less than two years after they had acquired WIND. Clearly, West Face and its co-Investors had no need for a guarantee from the Government that they would be able to sell WIND to an incumbent after five years. West Face never sought such a concession, nor was one ever required.

103. **Third**, putting aside the issue of selling spectrum to an incumbent, Catalyst's other regulatory concessions that Catalyst requested from Industry Canada were already being sought by WIND and/or had been publicly proposed by the Government and the relevant regulatory agencies. For example, both the CRTC and the Government had publicly announced changes to roaming costs, including a legislative cap on roaming. Thus, while it may have been "confidential" to Catalyst that it had requested these concessions from Industry Canada as a pre-condition to purchasing WIND, such asks were not unique to Catalyst.

104. Nevertheless, the fact that Catalyst had made these requests would still have been irrelevant to West Face's strategy. West Face did not demand such regulatory concessions from the Government **prior** to acquiring WIND, nor did we feel like any one such concession, nor all of them collectively, were necessary for WIND to succeed. As

set out in West Face's May 21, 2014 presentation to Industry Canada[55] delivered three days before Mr. Moyse gave notice to Catalyst of his departure, West Face did not ask Industry Canada for (nor even hint at) any of the regulatory concessions that Mr. Glassman outlines in paragraphs 25 to 26 of his Affidavit.

105. **Fourth**, at no point did West Face consider what Mr. Glassman describes in his Affidavit as "Option 2" – namely, seeking to operate WIND as a "wholesaler". I understand from Mr. Glassman's Affidavit that this option was not possible under the existing regulatory framework (which is why Catalyst sought concessions). Operating a "wholesale" spectrum business would not advance the Government's stated objective of fostering a fourth wireless carrier in the retail market, and I see no reason why the Government would have made regulatory concessions to allow it.

106. **Fifth**, West Face would never have based its strategy on the "litigation" that Mr. Glassman believed some unnamed party other than Catalyst would have pursued against the Federal Government over the regulatory restrictions that limited transferability of the 2008 spectrum licenses. I understand that Quadrangle Group LLC has commenced litigation of this nature but that it is not close to being resolved. We would never base our investment strategy on speculation concerning the outcome of future litigation by third parties. I have no knowledge of whether the Government is "embarrassed" by this litigation, as Mr. Glassman predicted, but do note that, apparently, they have not capitulated to the litigation nor conceded on the regulations, as Mr. Glassman suggests is the inevitable outcome of such a proceeding. In fact, the

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55 Exhibit "**26**" above (WFC0106480).

government brought a motion to strike the claim and then appealed a dismissal of that motion.

107. As such, I categorically disagree with Mr. Glassman's statement in paragraph 34 of his Affidavit that "knowledge of this analysis and approach would prove **invaluable** to any other potential bidder since it in essence would **massively mitigate**, if not entirely **eliminate**, their financial risk in bidding". In fact, we fundamentally disagreed with Mr. Glassman's analysis. Based on our own discussions with Industry Canada, including during the May 21 meeting with Industry Canada, described above, West Face believed that the Government was going to continue to promote a fourth wireless carrier by maintaining the existing restrictions on transfers of spectrum to incumbents. We never understood the Government's policy stance to be a "bluff".

108. I also note that Mr. Glassman's view that this type of litigation would be successful was **not** shared by Globalive. The April 21 investor presentation delivered to West Face by Globalive stated:

> Government has a firm and express commitment to the long-term success of an alternative to ROBELUS in every region; the recent ROBELUS public relations campaign and legal applications (challenging Government authority to have Conditions of License and restrict transfers) will not succeed and has only reinforced Government resolve.[56]

109. With no disrespect intended to Mr. Glassman, had Mr. Moyse informed me of Mr. Glassman's opinions, I would not have put any stock in them given that they were

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56 Exhibit "**14**" above (WFC0060563 and attachment WFC0060565 at p. 8)

directly contradictory to our own views, and the views of Simon Lockie, WIND's Chief Legal Officer.

110. In short, even if I had considered Mr. Glassman's "analysis and approach", I would not have considered it as meaningfully mitigating the financial risk in bidding for WIND, let alone "eliminating" it.

111. **Finally**, Catalyst's regulatory strategy necessarily involved exerting high-pressure negotiating tactics on the Federal Government. Mr. Glassman expressly states that Catalyst's strategy was to sign a share purchase agreement with VimpelCom for the acquisition of WIND, and then "put them [them being Industry Canada, the Privy Council Officer, and the Prime Minister's Officer] in a position of having no choice but to provide the regulatory approvals requested by Catalyst". I have reviewed the draft share purchase agreement between VimpelCom and Catalyst that Mr. De Alba identified as being final, and note that section 6.3(d) forbade Catalyst from seeking any regulatory concessions or even pursuing plans that might jeopardize regulatory approval. Based on Mr. Glassman's Affidavit it would appear that Catalyst did not intend to abide by this prohibition. West Face would not have ever negotiated an agreement with VimpelCom without any intention of closing the transaction unless the Government granted certain regulatory concessions. Nor do I believe that West Face would ever have resorted to pressuring the Government into having to reverse its longstanding policy of promoting a fourth wireless carrier.

112. In conclusion, Catalyst's confidential regulatory strategy vis-à-vis the Government and VimpelCom would have been completely irrelevant to West Face, even if Mr.

Moyse had conveyed it to us. Now that I understand what Catalyst's strategy was, I consider it to be a much riskier strategy insofar as it was contingent on (a) seeking regulatory concessions that the Government had repeatedly said would not be forthcoming; (b) relying on uncertain litigation brought by unnamed third parties; and (c) negotiating for regulatory concessions after signing but before closing the share purchase agreement in breach of section 6.3(d) of the Catalyst-VimpelCom share purchase agreement.

M. New Investor Syndicate Reaches Agreement to Acquire WIND

113. By early August 2014, we knew that our chances of acquiring WIND were low. VimpelCom had rejected our various requests to engage in exclusive negotiations with West Face, and had instead agreed to enter into exclusive negotiations with Catalyst on July 23. These exclusive negotiations were still ongoing in early August. We did not know anything about the transaction structure being negotiated between Catalyst and VimpelCom, nor did we know anything about Catalyst's regulatory strategies regarding WIND. We did, however, know that VimpelCom's regulatory risk tolerance was extremely low (having been told as much repeatedly by VimpelCom and its advisors).

114. At the same time, I knew based on my previous interactions with VimpelCom and its advisors that Tennenbaum, West Face, and 64NM (collectively, the "**New Investors**") were not perceived by VimpelCom as being a credible potential purchaser. I think this was for at least two reasons. First, each of the New Investors had made a number of proposals in the past that had not been acceptable to VimpelCom for various reasons. Second, a number of the New Investors' other potential syndicate members had initially expressed interest, only to drop out at a later date. These drop-outs

included the two former members of the Tennenbaum Syndicate – U.S. private equity firms Blackstone and Oak Hill – as well as the strategic party West Face had been working with for the duration of Mr. Moyse's brief period at West Face.

115. While our chances were low, no transaction had been announced, and we were not willing to give up on the potential acquisition of WIND given all of the time and money that we had each put into our efforts to acquire WIND by that date. Moreover, while we had each approached our due diligence and financial modelling in different ways and using different assumptions, each of the New Investors had independently reached the conclusion that WIND was a sound investment, particularly at the relatively low $300 million price. We therefore put our heads together to try and come up with a pragmatic, credible, and extremely low-risk proposal to VimpelCom that could close quickly in the event they were unable to reach an agreement with Catalyst.

116. In doing so, we knew from previous discussions that Globalive was interested in participating in a transaction that would allow it to have a continuing interest in WIND. The New Investors were open to Globalive's involvement (indeed, as set out above, West Face had been considering proposals involving Mr. Lacavera's equity participation since before Mr. Moyse had even arrived at West Face). The New Investors' willingness to involve and include Globalive was significant because, as noted above, it owned approximately two-thirds of the voting shares of GIHC, the sole shareholder of WIND.

117. Given the competitive landscape, Larry Guffey of 64NM and Michael Leitner of Tennenbaum proposed structuring the transaction in a manner that would initially leave

Globalive in place. By avoiding a change of control, the transaction with VimpelCom could be completed without the need for regulatory approvals at all, virtually eliminating all regulatory risk to VimpelCom. Instead, the New Investors would bear the risk of obtaining regulatory approval post-closing to transfer voting control of WIND from Globalive to all of the Investors in proportion to their economic interests in WIND.

118. We hoped that this two-stage approach would satisfy VimpelCom's desire to minimize regulatory risk. VimpelCom would be paid immediately upon signing the purchase agreement, rather than waiting until after regulatory approval had been obtained some number of months later. Again, these advantages were only possible with the participation of Globalive. West Face's relationships with Globalive and Mr. Lacavera went back to at least November 2009, and had been more recently rekindled through my conversation with Mr. Lacavera on November 4, 2013, and not from anything Mr. Moyse did or said.

119. The risks of this approach to the New Investors were that it would require us to negotiate an ownership structure with Globalive at a later date. Moreover, Globalive would have full voting control of WIND until regulatory approval for our equity reorganization was obtained, despite only contributing approximately 25% of the equity funding for the transaction. While the New Investors anticipated that Globalive would commit to support a post-closing reorganization that would give the New Investors their proportionate shares of the voting interests in WIND, the reorganization might require regulatory approval. If that approval was denied, the members of the New Investors would have been required to remain in a minority voting position – the very position that VimpelCom had found untenable and which led to its desire to exit WIND by the end of

2013. Despite these risks, the New Investors were prepared to bear the risk of seeking and obtaining regulatory approval to transfer voting control of WIND from Globalive Capital to the full Investors' consortium (including Globalive) post-closing.

120. On August 6, 2014, Mr. Leitner submitted this unsolicited offer for WIND on behalf of the New Investors. Mr. Leitner followed this with a more formal proposal the following day, August 7. A copy of the New Investors' August 7, 2014 proposal to VimpelCom is attached as Exhibit "**50**".[57] The email that Mr. Leitner had sent before delivering the formal proposal is attached as Exhibit "**51**".[58]

121. That same day, however, August 7, Globalive agreed to a support agreement with VimpelCom, which obliged Globalive to support VimpelCom in its exclusive negotiations with Catalyst. Mr. Lacavera advised the New Investors that Globalive had entered into the support agreement with VimpelCom and informed us that he was required to cease discussions with the New Investors. A copy of Mr. Lacavera's email to this effect is attached as Exhibit "**52**".[59]

122. VimpelCom did not respond to the New Investors' offer. Instead, on August 11, VimpelCom extended Catalyst's period of exclusivity to August 18, 2014. We had no further negotiations with Globalive or VimpelCom until we learned that exclusivity had expired on August 18, 2014.

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57 WFC0040932.

58 WFC0051622.

59 WFC0063562.

123. During Catalyst's exclusivity period, to the best of my knowledge the deal remained entirely in Catalyst's hands, and we believed that our chances of proceeding with the transaction were essentially nil. For example, on August 12, Mr. Leitner posited that the only reason the Catalyst deal had not yet been announced was "internal VimpelCom shuffling of papers and getting internal approvals [rather] than a positive sign". A copy of this email is attached as Exhibit "**53**".[60] Mr. Boland had a similar email exchange with Mr. Guffey on August 13, in which Mr. Guffey stated that it was "too bad we [the New Investors] weren't all better organized on this [WIND] deal", and Mr. Boland agreed and expressed frustration that we "got our act together way too late". A copy of this email chain is attached as Exhibit "**54**".[61]

124. Catalyst's exclusivity period expired on August 18, 2014, but they did not immediately enter into exclusivity with the Investors. We were not given the impression that they had terminated exclusivity with Catalyst in order to pursue our offer. On the contrary, it was apparent to us that VimpelCom was considering all of its options. We needed to convince VimpelCom that we were serious and credible bidders, and that they should enter into exclusivity with us as, opposed to pursuing other options such as insolvency or another purchaser. We also thought that it was possible that Catalyst was still pursuing the deal even after exclusivity had expired. VimpelCom would not initially grant us exclusivity, but on August 21, 2014, it agreed that it would not enter into another exclusivity arrangement with any party until August 25, 2014. West Face's

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60 WFC0056380.

61 WFC0061144.

understanding was that the New Investors needed to present an acceptable deal structure by that time if it wanted to be considered for exclusive negotiations.

125. On August 23, 2014, West Face's counsel delivered a revised proposal on behalf of the New Investors that addressed certain concerns raised by VimpelCom with the transaction structure in the New Investors' proposal from August 7, 2014. On August 25, 2014, West Face's counsel delivered to VimpelCom's counsel an executed conditional financing commitment letter on behalf of the New Investors, Globalive and two other investors who would be co-investing with Globalive.[62] On August 27, VimpelCom granted exclusive negotiating rights to the New Investors, and further negotiations continued.

126. In particular, VimpelCom remained concerned that, notwithstanding the proposed two-stage transaction, Industry Canada would take the position that approval was required for the first stage. To alleviate VimpelCom's concerns, the New Investors gave a representation that no regulatory approval was required to close the first phase of the transaction (whereby VimpelCom would be paid), and also agreed to indemnify VimpelCom in the event this representation was wrong. Ultimately a definitive purchase agreement was signed and the transaction closed on September 16, 2014. A copy of a press release announcing the deal is attached as Exhibit "**55**".[63]

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62 A copy of this letter is attached as Exhibit "**56**" (WFC0080932).

63 WFC0080940.

N. Conclusion

127. Mr. Moyse's hiring had nothing to do with WIND. He only worked at West Face for approximately three and a half weeks, from June 23 until July 16, 2014. During Mr. Moyse's brief period of employment, West Face was aware of the dispute between Catalyst, Mr. Moyse, and West Face, and took steps to ensure that Mr. Moyse did not have any involvement with WIND. The deal that West Face was pursuing during the time Mr. Moyse worked for West Face ultimately proved to be a dead end, and following Mr. Moyse's departure Catalyst had several weeks of exclusive negotiations with VimpelCom. West Face and the Investors acquired WIND because they made an acceptable offer to VimpelCom based on their own assessment of VimpelCom's needs, not because of anything that Mr. Moyse did.

SWORN before me at the City of Toronto in the Province of Ontario this 4th day of June, 2016.

Commissioner for Taking Affidavits, etc.

ANTHONY GRIFFIN

THE CATALYST CAPITAL GROUP INC. Plaintiff	and	BRANDON MOYSE et al. Defendants	**6003** Court File No. CV-16-11272-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ANTHONY GRIFFIN
(SWORN JUNE 4, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

This is Exhibit "49" 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 19, 2016.

Commercial List Court File No.: CV-16-11272-00CL

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

AFFIDAVIT OF THOMAS DEA
(Sworn June 3, 2016)

I, THOMAS DEA, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Partner of the Defendant, West Face Capital Inc., along with Greg Boland, Peter Fraser, and Anthony Griffin. I had primary responsibility for, and was most directly involved in, the hiring by West Face of the Defendant Brandon Moyse as a junior associate in Spring 2014. As such, I have personal knowledge of the matters set out in this Affidavit.

2. I previously swore an Affidavit in this proceeding on July 7, 2014, and was cross-examined on that Affidavit on July 31, 2014. That evidence was given in the context of a motion by the Plaintiff, The Catalyst Capital Group Inc., for, among other

things, an interim and interlocutory injunction preventing Mr. Moyse from working at West Face for the six-month duration of the non-competition covenant in his employment contract with Catalyst. After I gave that evidence, Catalyst amended its June 25, 2014 Statement of Claim (on October 9, 2014) to add allegations of misuse of confidential information by West Face concerning the WIND opportunity. This Affidavit consolidates and updates the relevant evidence I have given in this proceeding so far to date, and also sets out my evidence on matters that have become relevant since July 2014.

3. To provide a high-level summary of my evidence below:

(a) Mr. Moyse's hiring by West Face had absolutely nothing to do with Mr. Moyse's involvement in or knowledge of Catalyst's plans, strategies or negotiations for WIND or any other company. In fact, West Face had no reason to suspect that Mr. Moyse had been a part of Catalyst's WIND deal team until after Mr. Moyse had accepted a job offer from West Face and given notice of his resignation to Catalyst, at which point Catalyst's counsel told West Face's counsel that Catalyst was concerned about Mr. Moyse's involvement in an active "telecom file";

(b) in response to Catalyst's stated concerns, and before Mr. Moyse had even begun working at West Face, West Face took precautions to ensure that Mr. Moyse was "walled off" from West Face's WIND deal team; and

(c) these precautions were successful, in that Mr. Moyse never disclosed, and West Face never misused, any confidential information belonging to Catalyst concerning WIND.

About Me and West Face

4. I joined West Face in 2006. Prior to joining West Face, from 2003 to 2006, I worked with Mr. Boland in his capacity as a manager of a Canadian portfolio for Paloma Partners. I was previously a Managing Director at Onex Corporation (Canada's largest private equity firm) where I worked from 1995 to 2003. At Onex, I was involved in the execution and oversight of a number of investments in consumer goods, business services, energy infrastructure, and health care. I also worked in the merchant banking group of CIBC and the mid-market acquisition financing unit of GE Capital. I obtained a Bachelor of Arts from Yale University (in 1987) and an MBA from Harvard University Graduate School of Business (in 1993).

Mr. Moyse Reaches Out to Me Looking for a Job at West Face

5. I first met Mr. Moyse in or around 2012. West Face had commenced a recruitment drive for a number of analyst positions and Mr. Moyse had submitted an application. Although West Face did not hire Mr. Moyse during that round of recruitment, Mr. Moyse and I stayed in touch.

6. On September 25, 2012, Mr. Moyse emailed me to tell me that he had been offered a position at Catalyst. Although I congratulated Mr. Moyse at that time, I did tell him that Catalyst had a reputation in the marketplace as a difficult place to work.

7. With the exception of a single email which I received from Mr. Moyse in December 2013 about a transaction that he had recently worked on which had been published in the news, I did not hear from (or communicate at all with) Mr. Moyse again until March 2014.[1] I did not respond to Mr. Moyse's December 2013 email.

8. On March 14, 2014, Mr. Moyse sent me an email in which he told me that he had seen that West Face had launched a new fund a couple of months before (West Face had, in fact, launched its Alternative Credit Fund in January 2014, and this fact had been reported in the press). In his email, Mr. Moyse advised me that he had started exploring other job opportunities and expressed interest in working at West Face on this new venture. Each of the above referenced emails is a part of the email chain attached as Exhibit "**1**" to this Affidavit.[2]

9. As is clear from the face of Mr. Moyse's March 14 email, this communication was initiated by Mr. Moyse and not by West Face. West Face happened to need a junior analyst/associate at the time because a previous potential hire had chosen to pursue a different opportunity.

10. I was away from Toronto at the time I received Mr. Moyse's March 14 email, but agreed to speak with Mr. Moyse when I returned the following week. After a few back-and-forth emails trying to schedule a meeting, we ultimately met over a coffee

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[1] In preparing this Affidavit, my counsel noted a minor, inadvertent mistake in paragraph 39 of the Affidavit of Anthony Griffin sworn March 7, 2014. That paragraph states that I informed Mr. Griffin that "Mr. Moyse contacted West Face in January 2014 seeking employment in response to a West Face press release announcing the launch of its Alternative Credit Fund." That is not accurate. As set out in the body of this Affidavit and in my July 7, 2014 Affidavit, Mr. Moyse contacted me on March 14, 2014 seeking employment in response to West Face's launch of its Alternative Credit Fund in January 2014.

[2] WFC0031084.

on March 26, 2014. Based on my review of the relevant emails, I believe we met up around 1:45 p.m. (Again, these facts are reflected by the email chain attached as Exhibit "1" to this Affidavit). I believe we spoke for about 30 minutes.

11. At no point during this brief preliminary interview did we discuss the WIND opportunity. Rather, we discussed the financial industry generally and Mr. Moyse shared with me his goal of working in a role where his focus was on pursuing new investments rather than monitoring existing portfolio investments, which he told me was the focus of his position at Catalyst. I asked Mr. Moyse run-of-the-mill interview questions to get a sense of what kind of experience he had gained at Catalyst and at his other previous employers, RBC and Credit Suisse. The conversation was generic in nature and I do not recall Mr. Moyse mentioning *any* specific investment opportunities he had worked on, let alone WIND.

12. I asked Mr. Moyse to provide me with a copy of his resume, a deal sheet, and some writing samples to demonstrate his written communication skills. With respect to the writing samples, I did not specify the type of sample required, as I simply wanted to assess his writing proficiency. To the extent that the writing samples included any confidential information, I instructed him to redact the confidential information as necessary, and assumed that he would not breach any confidentiality obligations. My request for writing samples was consistent with West Face's standard hiring practices. In fact, in my experience, it is a standard practice at many firms.

13. I summarized Mr. Moyse as a candidate for the analyst position in an email to Messrs. Boland, Griffin, and Fraser later that afternoon, in an email attached as

Exhibit "**2**".[3] My email did not mention any specific deals on which Mr. Moyse was working or had worked on for Catalyst because I did not know and frankly did not care about that issue. Our focus was on his skill set, experience, and character. I advised the Partners that Mr. Moyse would send me his "updated c.v., deal sheet, sample internal output". This latter reference was to the writing samples, which as explained above I had instructed Mr. Moyse to redact as necessary.

14. The next day – March 27, 2014 – Mr. Moyse sent me an email (the "**March 27 Email**") attaching his resume, a deal sheet, and four investment memos as writing samples. These memos were marked "Confidential" and "For Internal Discussion Purposes Only". I circulated Mr. Moyse's March 27 Email to the other Partners and West Face's Vice-President, Yu-Jia Zhu, who had been involved in prior recruitments of analysts and associates. In hindsight, it was a mistake for me not to ensure that the emails did not contain confidential information before I did so. I simply did not pay much attention to the contents of the writing samples. I do not recall if I read them when I originally received the March 27 Email. When I did read them, I did not read them intently. Rather, I scanned them quickly but did not find them noteworthy. Three of the samples were analyses using publicly available information only. The fourth was a summary of a prior transaction that had been completed.

15. In any event, my intent in forwarding the March 27 Email to my colleagues was not to disseminate internal Catalyst documents, but to simply inform my colleagues about Mr. Moyse as a potential candidate for employment. I was simply forwarding the

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[3] WFC0079574.

"package" of information relevant to that candidate - the more important attachments to the March 27 Email being Mr. Moyse's resume and deal sheet. A copy of the email I sent forwarding the March 27 Email is attached as Exhibit "**3**" to this Affidavit.[4]

16. I disclosed the existence of the March 27 Email to Catalyst in my July 7, 2014 Affidavit, six business days after Catalyst commenced this proceeding. As I indicated in my July 7, 2014 Affidavit, the March 27 Email is the one and only instance of Mr. Moyse providing West Face with any confidential information of Catalyst (and it has nothing to do with WIND). To my knowledge, this statement is as true today as it was almost two years ago.

17. As is evident on their face, none of the four attachments to the March 27 Email has anything to do with WIND, and I understand that Catalyst has not claimed any loss or damage as a result of their disclosure to West Face by Mr. Moyse. I further understand that Catalyst stopped treating the March 27 Email as confidential over 16 months ago, when it instructed its counsel to unseal the Court File where a copy of the email and its attachment had been filed.

18. Moreover, West Face did not use or rely on any of the writing samples attached to the March 27 Email other than to evaluate Mr. Moyse's job application. In fact, as set out in more detail below, the writing samples did not even play a material role in West Face's decision to hire Mr. Moyse.

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[4] WFC0075126.

West Face Interviews Mr. Moyse and Checks His References

19. Following my meeting with Mr. Moyse over coffee on March 26, 2014, I arranged for him to attend at West Face's offices to meet with my colleagues. Mr. Moyse came to West Face's office for two rounds of interviews: the first on April 15 (when he met with Messrs. Griffin, Fraser, and Zhu), and the second on April 28 (when he met with Mr. Boland). I understand that in the course of this proceeding, West Face produced all documents relating to these interviews, including, among other documents:

(a) its emails with Mr. Moyse scheduling these interviews;

(b) its internal emails relating to these interviews;

(c) Mr. Zhu's notes of his interview of Mr. Moyse (the other Partners did not have any notes of their interviews of Mr. Moyse);

(d) electronic calendar invitations and appointments for these interviews; and

(e) Mr. Moyse's emails to the Partners following the interviews thanking them for their time and expressing his interest in working at West Face.

20. To the best of my knowledge, at no point during Mr. Moyse's hiring process did West Face have any inkling that Mr. Moyse was in any way involved in working on the WIND opportunity for Catalyst. Our continued interest in Mr. Moyse as a prospective analyst was based on his academic background in advanced mathematics, the skills he had developed as an analyst at his then-current and former employers, positive interviews at West Face, and his stated ambition and work ethic. On that note, in an email dated April 30, 2014 to my Partners, I referred to Mr. Moyse as "someone

mostly dedicated to grinding out possible debt deals". This reflected both our need to have someone support the Alternative Credit Fund, and Mr. Moyse's expressed interest in working on prospective deals. In other words, we were not interested in Mr. Moyse because of any information or knowledge he had concerning Catalyst's plans, strategies or negotiations for any specific Catalyst opportunity. A copy of my email dated April 30, 2014 is attached as Exhibit "**4**" to this Affidavit.[5]

21. In early to mid-May, I contacted some of Mr. Moyse's references. The references I contacted had only positive things to say about Mr. Moyse, including Andrew Yeh, another former junior employee of Catalyst who had very recently left Catalyst. Mr. Yeh confirmed the concerns I had expressed in 2012 to Mr. Moyse about the Catalyst work environment, but had only positive things to say about Mr. Moyse. Another important reference was from one of my personal friends in the financial industry, Thomas Mercein, Global Head of Debt Capital Markets at Credit Suisse. Mr. Moyse had worked as an analyst at Credit Suisse for almost two years prior to joining Catalyst in October 2012. Mr. Mercein described Mr. Moyse as follows:

> Great kid, very smart and hard working. He was the guy that did all my stuff when he was in my group. I was consistently impressed with his work.

22. A copy of my email exchange with Mr. Mercein in which he made these statements is attached as Exhibit "**5**" to this Affidavit.[6]

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[5] WFC0109161.
[6] WFC0109171.

23. Another reference of Mr. Moyse's from Credit Suisse described him as follows:

> Nothing negative at all to say about Brandon – quite the opposite. He was among the very best analysts we've had and was given the lead on several high profile internal projects with senior management focus.

24. A copy of this email is attached as Exhibit "**6**" to this Affidavit.[7]

25. I summarized the overall "gist" of what Mr. Moyse's references had to say about him in an email to my Partners on May 16, 2014, a copy of which is attached to this Affidavit as Exhibit "**7**".[8] As set out in therein, Mr. Moyse's references described him as: "very hard working", "driven", as someone able to "get in the weeds" and "take a position / develop a view", and who "had the capacity to develop into more than a processor".

26. In short, West Face had very good reasons for hiring Mr. Moyse. Those reasons had nothing to do with whatever his involvement may have been on the WIND deal at Catalyst as of May 16, 2014, which we were not aware of in any event. We therefore decided to make a job offer to Mr. Moyse.

West Face Offers Mr. Moyse a Job Without Any Knowledge of His Involvement in WIND

27. I understand from discussions with counsel that some of the evidence to date in this case suggests that West Face verbally offered Mr. Moyse a position as a junior associate at some point between May 16 and May 19, 2014 – while Mr. Moyse

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7 WFC0109186.
8 WFC0109181.

was on vacation in South-East Asia. I accept that it could have been me who spoke to Mr. Moyse on this occasion, but I have no specific recollection of doing so. I further understand that West Face produced emails and phone records regarding a telephone conversation I had with Mr. Moyse for approximately 16 minutes on May 23, 2014 (see, for example, Exhibits "**8**" and "**9**" to this Affidavit).[9] Again, I do not recall the specifics of this conversation, but can say with absolute certainty that this phone call (or the one on or around May 16, assuming that it occurred) had nothing to do with WIND, because Mr. Moyse and I never spoke about WIND.

28. West Face made Mr. Moyse a written offer of employment on May 22, 2014. I understand Mr. Moyse notified Catalyst that he was resigning on or around March 24, 2014. He accepted the terms of West Face's written employment offer on May 26, 2014 (the "**West Face Employment Agreement**"). As Mr. Moyse had previously advised that he was subject to a 30-day notice period under his employment agreement with Catalyst, Mr. Moyse's employment with West Face was scheduled to begin on June 23, 2014. A copy of the West Face Employment Agreement with Mr. Moyse is attached as Exhibit "**10**" to this Affidavit.[10]

29. Pursuant to section 1.05(d) of the West Face Employment Agreement, Mr. Moyse agreed that he would not use any property in the course of his employment with West Face that was the confidential or proprietary information of any other person, company, group or organization. To the best of my knowledge, he never breached that prohibition.

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9 WFC0031203 and WFC0109530.
10 WFC0075090.

30. Moreover, at or around the time that West Face first provided Mr. Moyse with a written offer of employment, I asked Alex Singh, West Face's General Counsel and Secretary at the time, to speak with Mr. Moyse and remind him that he was not under any circumstances to disclose or use any confidential or proprietary information belonging to Catalyst while at West Face. I believe my request to Mr. Singh followed from Mr. Griffin having raised with me his concern about Mr. Moyse's potential lack of judgment in sending the March 27 Email (a copy of an email from Mr. Griffin to me expressing this concern is attached as Exhibit "**11**" to this Affidavit).[11] At some point prior to the swearing of my July 7, 2014 Affidavit, I was advised by Mr. Singh (and believed) that he had conveyed my message to Mr. Moyse, and that Mr. Moyse had confirmed to Mr. Singh that he would not disclose or use any confidential or proprietary information belonging to Catalyst.

Catalyst Expresses Concerns Over West Face's Hiring of Mr. Moyse

31. On May 30, 2014, West Face received a letter from Catalyst's external counsel (Rocco DiPucchio of Lax O'Sullivan) expressing concerns over West Face's hiring of Mr. Moyse. In the flurry of correspondence between counsel that followed, both West Face's external employment counsel (Adrian Miedema of Dentons LLP) and Mr. Moyse's counsel at the time (Jeff Hopkins of Grosman, Grosman Gale LLP) gave assurances to Catalyst that Mr. Moyse would not share or divulge any of Catalyst's confidential information to West Face. According to Catalyst's counsel, these assurances were not enough.

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[11] WFC0109149.

32. In the context of swearing my July 7, 2014 Affidavit, I was advised by Mr. Miedema (and believed) that on June 18, 2014, Mr. Miedema participated in a conference call with Mr. DiPucchio and Mr. Hopkins during which Mr. DiPucchio advised that Catalyst was particularly concerned about a specific transaction for which Catalyst and West Face had each submitted bids. I understand Mr. DiPucchio identified this as a "telecom file".

33. I do not know how Catalyst could have known that West Face was in negotiations with VimpelCom for WIND at the time, let alone that we had already submitted a proposal. This information was confidential to West Face.

34. I also note that Mobilicity was in CCAA proceedings at the time, and that West Face had divested itself of its debt interest in Mobilicity a number of months earlier (Mobilicity was the only other possible "telecom file").

35. In any event, in response to Catalyst's stated concerns about a "telecom file", West Face took additional precautions to ensure that Mr. Moyse was "walled off" from West Face's WIND deal team.

36. First, on June 19, West Face implemented a confidentiality wall pursuant to which: (1) Mr. Moyse was forbidden from communicating with anyone at West Face about the ongoing WIND negotiations, and vice versa; and (2) West Face's IT group restricted access to West Face's WIND files so that Mr. Moyse could not access them. A copy of an email from West Face's Chief Compliance Officer, Supriya Kapoor, to Mr.

Moyse enclosing the confidentiality wall memo is attached as Exhibit "**12**".[12] A copy of an email from West Face's Head of Technology, Chap Chau, dated June 20, 2014, confirming that Mr. Moyse had been excluded from the computer directory containing the WIND-related documents is attached as Exhibit "**13**".[13]

37. As evidenced by Ms. Kapoor's email, the confidentiality wall memo was circulated to Mr. Moyse, everyone at West Face who was working on the WIND transaction (being the four Partners and Mr. Zhu), West Face analysts Peter Brimm, Aland Wang, Nandeep Bamrah, and Graeme McLellan, as well as Nora Nestor (our Tax Controller) and Mr. Chau.

38. In addition to implementing the confidentiality wall, I verbally informed the entire investment team at West Face that they were not to discuss anything about the WIND transaction with Mr. Moyse.

39. Finally, once Mr. Moyse began working at West Face on June 23, the West Face WIND deal team only met in private, behind closed doors, and away from the trading floor area where Mr. Moyse sat.

40. I understand that at some point in this proceeding, Catalyst took issue with the scope of West Face's confidentiality wall, insinuating that it should have also restricted West Face's WIND deal team members (namely, the four Partners and Mr. Zhu) from accessing any documents created by Mr. Moyse while at West Face. There was no need to restrict West Face's WIND deal team members from accessing any

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12 WFC0000049 and attachment WFC0000050.
13 WFC0000054.

documents created by Mr. Moyse because he was to have no involvement with WIND-related matters and would thus not be creating any WIND-related documents. Moreover, such a broad restriction would have prevented West Face's Partners and Mr. Zhu (the very people assigning Mr. Moyse his work) from accessing work done by Mr. Moyse on subjects entirely unrelated to WIND. Such a far-reaching confidentiality wall would have been entirely unnecessary and unworkable.

41. Moreover, during the course of this proceeding, West Face offered (twice) to produce all documents created, modified, or accessed by Mr. Moyse during his three and a half week period at West Face, so that Catalyst could verify for itself that Mr. Moyse had not worked on anything related to WIND. Copies of the letters from West Face's litigation counsel (Davies) making these offers are attached as Exhibits "**14**" and "**15**". Catalyst never responded to either of these offers.[14]

42. We took the prohibition on speaking to Mr. Moyse about WIND seriously. We felt we had a good understanding of the WIND opportunity, and had no need for Mr. Moyse's input. We also understood that Catalyst would carefully scrutinize every aspect of our efforts to acquire WIND should we be successful in doing so. Based on my conversations with the other Partners, I am confident that no one at West Face had any discussions with Mr. Moyse about WIND before, during, or after his three and a half week tenure at West Face.

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[14] CCG0018715 and WFC0075855.

Mr. Moyse's Work at West Face

43. During his brief three and a half week tenure at West Face, Mr. Moyse was the most junior member of West Face's investment team (other than a summer intern). He did not receive portfolio summaries, was not a member of West Face's investment committee, did not participate in senior management meetings, and did not have the authority to make any strategic decisions.

44. I have reviewed paragraphs 58 to 63 and Appendix "A" of the Affidavit of Anthony Griffin sworn March 7, 2015 containing Mr. Griffin's evidence of the work Mr. Moyse was engaged in during his brief period of employment at West Face. Those paragraphs are consistent with my own recollection. In particular, I agree that Mr. Moyse did not work on anything related to WIND (which was subject to the confidentiality wall described above).

Summary of West Face's Hiring of Mr. Moyse

45. In summary, Mr. Moyse's hiring by West Face had absolutely nothing to do with Mr. Moyse's involvement in or knowledge of Catalyst's plans, strategies or negotiations for WIND. Rather, we relied on his academic background in advanced mathematics, his generic and well-rounded experiences as an analyst at his then-current and former employers, positive interviews at West Face, his stated ambition and work ethic, and extremely strong references, including from a former employer of Mr. Moyse's who was a personal friend of mine.

A Note Regarding My Involvement in the WIND Negotiations

46. I was personally involved in exploring possible West Face investment in debt securities of WIND in 2009. At this time, West Face met with the principals of WIND and their investment bankers, Genuity Capital, entered into a non-disclosure agreement, received a management presentation, and presented a term sheet to WIND's ownership. Ultimately, West Face's offer was not acceptable. WIND solicited West Face's interest in alternative financing, but West Face was not interested and discussions went no further.

47. While I was personally involved in West Face's deliberations and negotiations regarding WIND in the first half of 2014, I was less directly involved in those negotiations than my fellow Partners and Mr. Zhu, and had less and less involvement as the matter progressed. A personal matter arose and from June through September, I was frequently away from the office and had little involvement in the WIND file. As I recall, Mr. Griffin was the Partner who initially had primary carriage over the WIND deal from early November 2013, and remained involved through to closing of the transaction. Both Messrs. Boland and Fraser also became progressively more involved and took on greater roles as the matter progressed through late-July, August, and ultimately culminated in an agreement in September. I therefore defer to the evidence of Mr. Griffin with respect to the WIND negotiations.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 3rd day of June, 2016

A Commissioner, etc.

THOMAS DEA

THE CATALYST CAPITAL GROUP INC. Plaintiff and BRANDON MOYSE ET AL Defendants

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

6022

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF THOMAS DEA
(SWORN JUNE 3, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

This is Exhibit "50" 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 19, 2018.

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

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

AFFIDAVIT OF HAMISH BURT
(sworn June 1, 2016)

I, HAMISH BURT, of the Town of Greenwich, in the State of Connecticut, Unites Stated of America, MAKE OATH AND SAY:

1. I am a member of 64NM Holdings GP, LLC, the general partner of 64NM Holdings, LP ("**64NM**"), a special-purpose investment vehicle created by LG Capital Investors LLC ("**LG Capital**") for the specific purpose of participating in the acquisition of WIND Mobile Corp. ("**WIND**"). Ultimately, 64NM participated in such an acquisition together with a group of investors (the "**Investors**") that included Tennenbaum Capital Partners LLC ("**Tennenbaum**"), Globalive Capital Inc., ("**Globalive**"), and the Defendant West Face Capital Inc. ("**West Face**"). I was involved in the Investors' negotiation for and purchase of the equity and debt of WIND formerly held by VimpelCom Ltd.

("**VimpelCom**") in September 2014. As such, I have personal knowledge of most of the matters set out in this Affidavit. Where I do not have personal knowledge I have set out the source of my information and believe it to be true.

2. I previously swore an Affidavit on January 7, 2016 in support of a plan of arrangement by which WIND was sold to Shaw Communications Inc. A copy of that Affidavit is attached (without exhibits) as Exhibit "**1**" to this Affidavit.[1]

Overview

3. I understand that the Plaintiff, The Catalyst Capital Group Inc. ("**Catalyst**"), was another bidder for WIND and that it was in negotiations with VimpelCom in the Summer of 2014. I am informed by Andrew Carlson, counsel to West Face, and believe that Catalyst alleges that West Face acquired its interest in WIND by misusing confidential information concerning Catalyst's regulatory strategy in its negotiations with VimpelCom.

4. I previously testified in my January 7, 2016 Affidavit that: (i) I did not know whether West Face ever possessed any of Catalyst's confidential information; (ii) 64NM was never privy to any information regarding Catalyst's regulatory strategy; and (iii) to the best of my knowledge, no such information was discussed among the Investors.

5. I have now had the opportunity to read the Affidavit of Newton Glassman sworn May 27, 2016. At no point before reading Mr. Glassman's Affidavit did I know what Catalyst's confidential regulatory strategy was. Now that I understand for the first time

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1 WFC0075271.

Catalyst's regulatory strategy regarding WIND, I can definitively re-affirm that 64NM was never privy to such a strategy. To the best of my knowledge, Catalyst's strategy to demand regulatory concessions from Industry Canada was never discussed among the Investors, whether as a strategy that we should or could pursue ourselves, as the strategy of Catalyst in particular, or as the possible strategy of a competing bidder in general.

6. For this reason, Catalyst's confidential regulatory strategy did not and could not have played any role in our negotiations with VimpelCom, nor our own assessment of the risk involved in pursuing the transaction structure that we put forward. As I previously testified, my understanding is that the successful transaction structure that the Investors ultimately proposed to VimpelCom was developed among the Investors in order to meet VimpelCom's well-known desire for a transaction that would proceed swiftly and with little to no regulatory risk to VimpelCom. This structure was not based on and had nothing to do with any Catalyst confidential information.

About 64NM and LG Capital

7. 64NM is a limited partnership formed under the laws of Delaware which indirectly held 7.72% of WIND, before its interest was transferred to Shaw in early 2016. 64NM's general partner is 64NM Holdings GP, LLC, whose managing member is The Lawrence H. Guffey 2012 Long-Term Trust. As set out above, 64NM is a special-purpose investment vehicle created by LG Capital for the specific purpose of participating in the acquisition of WIND. LG Capital is a single-family office established by Mr. Guffey in 2014.

8. Mr. Guffey has extensive experience in the telecommunications sector, including specifically wireless telecommunications. He is a member of the Board of Directors of T-Mobile USA, Inc. Prior to that, he was a Senior Managing Director of The Blackstone Group ("**Blackstone**"), a private equity firm, where he worked for 22 years, the last 10 of which as one of the firm's senior managing directors in Europe. Specifically with respect to telecommunications experience, Mr. Guffey was a member of the Supervisory Board at Deutsche Telekom; I also understand that he was a Director of TDC A/S, the Danish phone company; a Director of New Skies Satellites Holdings Ltd.; a Director of Axtel SA de CV; a Director of FiberNet L.L.C.; a Director of iPCS Inc.; a Director of PAETEC Holding Corp.; and a Director of Commnet Cellular Inc., among others.

9. I have worked with Mr. Guffey since May 2014 (formally since July 2014), and previously held the position of Partner at a UK private equity firm, Promethean Investments LLP, which I joined in 2007. I hold an MBA from Columbia Business School and have worked in finance since 2001.

10. 64NM's interest in investing in WIND stemmed from Mr. Guffey's long history of involvement in the telecommunications industry. Indeed, during his tenure at Blackstone, I understand that Mr. Guffey co-built the firm's media and telecommunications-related investment business, and led or co-led many of the firm's investments in that industry.

11. I am informed by Mr. Guffey that while working at Blackstone, he was aware of and interacted with VimpelCom and Orascom Telecom Holdings ("**Orascom**"). For

example, Mr. Guffey informs me that under his direction, Blackstone at one point considered buying Orascom's "WIND"-branded wireless business in Italy (WIND Telecomunicazioni S.p.A.), and investigated selling certain businesses to VimpelCom. I also understand that Mr. Guffey researched investing in the Canadian wireless market as early as 2009.

12. In short, prior to leading 64NM's investment in WIND, Mr. Guffey had extensive experience in the international telecommunications industry.

64NM Joins the Tennenbaum Investor Syndicate

13. In the spring of 2014, LG Capital learned that VimpelCom was interested in selling its debt and equity interests in WIND. VimpelCom's desire to sell was well-known in the telecommunications and finance industries.

14. At various times over the Summer of 2014, Mr. Guffey explored working with Blackstone, Globalive, Oak Hill Capital Partners ("**Oak Hill**"), and Tennenbaum. LG Capital was not committed to acting with any particular party or parties. We were willing to co-operate with any other potential bidders that, in our opinion, offered the best investment opportunity. For example, Tennenbaum was already familiar with WIND because it held a significant amount of WIND's vendor debt, while Globalive controlled the majority of WIND's voting shares.

15. Another potential investor that Mr. Guffey spoke with was West Face. West Face was familiar with WIND and the Canadian telecommunications industry, and offered a source of Canadian finance (which was potentially significant for regulatory purposes discussed in more detail below). There were various discussions among Mr. Guffey,

Globalive, Blackstone, Oak Hill, Tennenbaum, and West Face in June and July 2014, but we were not able to agree on a joint bid for WIND.

16. Tennenbaum, Blackstone, LG Capital and Oak Hill ultimately did make a number of proposals to VimpelCom in June and July 2014, and I believe drafts of a share purchase agreement were exchanged. To my knowledge, West Face was not involved in these proposals.

17. I believe our discussions with West Face were revived in late July.

18. Around the same time, however, Blackstone and Oak Hill's interests in pursuing WIND began to wane, and ultimately both firms declined to participate.

19. On or around July 23, we (LG Capital) learned from UBS, VimpelCom's financial advisor, that VimpelCom had entered into exclusive negotiations with another bidder (which we believed, and now know, to be Catalyst). I believe this exclusivity was ultimately extended to August 18, 2014. During this period of exclusivity, VimpelCom did not negotiate with us and we therefore knew nothing about VimpelCom's specific negotiations with Catalyst. We did, however, continue working with Tennenbaum and West Face on a proposal for WIND so that we could provide VimpelCom with an alternative if its negotiations with Catalyst did not bear fruit.

20. I am informed by Mr. Guffey and believe that in late July and early August he had a series of conversations with Globalive, Tennenbaum and West Face in which they discussed having the "**New Investors**" (Tennenbaum, 64NM, and West Face) acquire VimpelCom's interests in WIND without having to first seek regulatory approval from the

Canadian Government by leaving Globalive's interest in place, and simply stepping into the shoes of VimpelCom. This would allow a faster and more certain closing for VimpelCom than any structure that required transferring Globalive's interest in WIND.

21. By that point, we believed that ease and speed of closing would be extremely important to VimpelCom. We knew that Canadian ownership requirements imposed by the Canadian Federal Government had for years impeded VimpelCom's efforts to either acquire Globalive's voting shares, or sell VimpelCom's own interest. We therefore began working on a proposal for this new transaction structure that would leave Globalive in place as the majority owner of the voting shares of WIND, with 64NM, Tennenbaum, and West Face providing the majority of the financing to buy out VimpelCom's interests in WIND. The parties would close the transaction and VimpelCom would be paid immediately.

22. By leaving Globalive's voting shares in place, the Investors could acquire the debt and equity of VimpelCom before seeking regulatory approval, with minimal risk of the transaction being disapproved. Only after the sale by VimpelCom had closed would the Investors seek regulatory approval to reorganize the voting equity of WIND in proportion to each member's economic contribution. The Investors believed that this structure would be attractive to VimpelCom because it could exit its investment and be paid for its shares without any regulatory approval requirement. The Investors would then bear any risk of regulatory approval for either the acquisition of VimpelCom's interest, or the subsequent re-organization of voting rights among the Investors.

23. To summarize, there were two principal advantages to this approach. One was to meet VimpelCom's consistently expressed desire to minimize the risk of a transaction not obtaining regulatory approval. VimpelCom could be paid in full with a negligible risk of any need for regulatory approval.

24. A second related advantage was speed. VimpelCom would be paid in full for its interests in WIND immediately upon signing of the purchase agreement, rather than having to wait until after regulatory approval had been obtained.

25. I understood that these advantages were necessary to make the New Investors' proposal an attractive option for VimpelCom if it was not able to conclude a deal with Catalyst.

26. The New Investors made an offer using the structure described above on or about August 7, 2014. However, that same day Anthony Lacavera of Globalive informed us that Globalive had signed a support agreement with VimpelCom, and Globalive stopped participating with the New Investors. A copy of Mr. Lacavera's email to this effect is attached as Exhibit "**2**" to this Affidavit.[2] To the best of my knowledge, neither VimpelCom nor Globalive resumed negotiations with the New Investors until after Catalyst's exclusivity expired on August 18, 2014. At that point we revived our negotiations with VimpelCom, and we had to work hard to convince VimpelCom that we could raise the necessary funds and close the transaction as promised. I believe VimpelCom represented that it was seriously considering an insolvency process after negotiations with Catalyst failed, and it was only by the hard work of all of the Investors

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that we were able to convince VimpelCom to proceed with our transaction. Ultimately, the first stage of the transaction closed on September 16, 2014.

No Knowledge of Regulatory Concessions Sought by Catalyst

27. LG Capital had no knowledge of the details of Catalyst's offer or its negotiations with VimpelCom while Catalyst enjoyed exclusive negotiating rights with VimpelCom from July 23 to August 18, 2014, or at any time up until I read Mr. Glassman's Affidavit. We were aware that Catalyst was a potential bidder because it had been out in the market seeking financing with respect to the acquisition of WIND. We assumed, but did not know, whether any Catalyst bid would be conditional on obtaining regulatory approval, because VimpelCom's standard form of agreement included such a term. For all we knew, Catalyst might have proposed the exact same structure involving Globalive as the Investors did. We had no way to know, and did not know, anything about VimpelCom and Catalyst's negotiations during their period of exclusivity. We certainly did not know that Catalyst was seeking regulatory concessions from Industry Canada.

28. To this day I do not know whether West Face ever had any knowledge of Catalyst's confidential regulatory strategy. West Face never communicated any information to LG Capital regarding Catalyst's regulatory strategy, and to the best of my knowledge no such information was used by the Investors in developing the transaction structure that the Investors put forward to VimpelCom. On the contrary, my understanding is that Mr. Guffey's interest in pursuing this transaction structure arose from his belief that this was the best possible proposal that the New Investors could put forward to VimpelCom at the time.

SWORN before me at the City of New York in the State of New York this 1st day of June, 2016.

Commissioner for Taking Affidavits, etc. ANDREW CARLSON

HAMISH BURT

THE CATALYST CAPITAL GROUP INC.
Plaintiff and BRANDON MOYSE ET AL
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF HAMISH BURT
(SWORN JUNE 1st, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

6033

This is Exhibit "51" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

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

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

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

AFFIDAVIT OF MICHAEL LEITNER
(sworn June 1, 2016)

I, MICHAEL LEITNER, of Los Angeles, in the State of California, United States of America, MAKE OATH AND SAY:

1. I am a Managing Partner of Tennenbaum Capital Partners, LLC ("**Tennenbaum**"), an investment management firm. Certain funds managed by Tennenbaum participated in the acquisition of WIND Mobile Corp. ("**WIND**") together with a group of investors (the "**Investors**") that included Globalive Capital Inc. ("**Globalive**", formerly AAL Corp.), 64NM Holdings, LP ("**64NM**"), and the Defendant West Face Capital Inc. ("**West Face**"). I was directly involved in the Investors' negotiations for and purchase of the equity and debt of WIND formerly held by

VimpelCom Ltd. ("**VimpelCom**") in September 2014. As such, I have personal knowledge of most of the matters set out in this Affidavit. Where I do not have personal knowledge, I have stated the source of my information and believe it to be true.

2. I previously swore an Affidavit on January 7, 2016 in support of a plan of arrangement by which WIND was sold to Shaw. A copy of that Affidavit is attached (without exhibits) as Exhibit "**1**" to this Affidavit.[1]

Overview

3. I understand that the Plaintiff, The Catalyst Capital Group Inc. ("**Catalyst**"), was another bidder for WIND and that it too was in negotiations with VimpelCom in the Summer of 2014. I understand that Catalyst alleges that West Face acquired its interest in WIND by misusing confidential information concerning Catalyst's regulatory strategy in its negotiations with VimpelCom.

4. I previously testified in my January 7, 2016 Affidavit that: (i) I did *not* know whether West Face ever possessed any confidential information concerning Catalyst's regulatory strategy; (ii) I *did* know that West Face never communicated any such information to Tennenbaum; and (iii) that no such information was discussed among the Investors.

5. I have now had the opportunity to read the Affidavit of Newton Glassman sworn May 27, 2016. At no point prior to reading Mr. Glassman's Affidavit did I know what Catalyst's confidential regulatory strategy regarding WIND was. Now that I understand

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for the first time Catalyst's regulatory strategy regarding WIND, I can categorically re-affirm that West Face never communicated any such information to Tennenbaum; that Tennenbaum never learned such information from any other source (including the Defendant Brandon Moyse); and that no such information was discussed among the Investors.

6. To be absolutely clear, Catalyst's regulatory strategy was never discussed among the Investors, whether as a strategy that we should pursue ourselves, as an identified strategy of Catalyst, or as the possible strategy of another competing bidder in general. For this reason, it did not and could not have played any role in our negotiations with VimpelCom, nor in our own assessment of the risk involved in pursuing the transaction structure that we put forward to VimpelCom and which ultimately proved to be successful.

7. As set out in more detail below, the transaction structure that the Investors ultimately proposed to VimpelCom, and which proved successful, was one that Globalive had socialized in the past and was apparent to any potential bidder. Moreover, it had nothing to do with Catalyst's confidential plans to seek "regulatory concessions" from the Canadian Government as a condition to closing a transaction with VimpelCom. Rather, we chose to adopt this structure in order to address VimpelCom's known preference for a transaction that would maximize speed and certainty of closing.

Tennenbaum Capital Partners

8. Tennenbaum is a leading alternative investment management firm founded by Michael Tennenbaum. It launched its first institutional fund in 1999. Since then, the firm has invested in excess of $15.5 billion (US) in over 400 companies. Tennenbaum's investment vehicles include private funds, separate accounts, registered funds, and a publicly-traded business development company. Our investors include public and private pension funds, financial institutions, multi-national corporations, endowments and foundations, charitable organizations, and family offices.

9. Tennenbaum divides its investments into two broad investment strategies: "performing credit", and "special situations". Both types of Tennenbaum's investments are made primarily in North American middle-market companies. With respect to our "performing credit" strategy, we provide debt financing to meet the needs of middle-market companies in support of leveraged buy-outs, growth, acquisitions, and refinancings/recapitalizations, as well as expansion stage venture lending.

10. With respect to our "special situations" investments, we invest in companies undergoing operational, financial or industry change through both private lending activities (often referred to as rescue financing), structured equity investments and through secondary market purchases (which we refer to as both deep-value and distressed-for-control investing). We provide rescue financing to companies that do not have easy access to conventional capital sources and generally require capital to avoid a restructuring or insolvency. In our deep-value and distressed-for-control investing, we purchase debt in the secondary market at a discount to what we believe is its intrinsic value.

11. Tennenbaum's investment team is organized by industry so that we can source, monitor, analyze, and engage in transactions with relevant knowledge, with speed, as needed. We consider ourselves to be experts in a number of industries, including Technology/Media/Telecom (or "**TMT**"). Our TMT investments comprise a significant portion (approximately 30%) of Tennenbaum's total portfolio.

12. I am the senior partner leading Tennenbaum's TMT practice, largely as a result of my extensive experience in this sector. In that regard, prior to joining Tennenbaum in 2005, I served as Senior Vice President of Corporate Development for WilTel Communications, and before that as President and CEO of GlobeNet Communications (which I led through a successful turnaround and sale). I was also Vice President of Corporate Development of 360networks, and served as Senior Director of Corporate Development for Microsoft, where I managed corporate investments and acquisitions in the telecommunications, media, managed services, and business applications software sectors. Prior to Microsoft I was Vice President in the M&A group of Merrill Lynch. Specifically in the TMT sector, I currently serve on the board of directors of Integra Telecom, and recently just left the board of Primacom (Germany's fourth largest cable company) as a result of a recent sale.

Tennenbaum's Investment in WIND

13. Tennenbaum's investment in WIND dates back to May 2012, when Q Advisors introduced Tennenbaum to a debt investment opportunity in WIND. Q Advisors is a leading investment bank focused on the TMT industry (including in Canada, where Q Advisors have advised Public Mobile on a number of transactions, including its recent sale to Telus). At the time, Nokia-Siemens Networks was looking to sell its

approximately CAD$55 million (the debt was in euros at the time and subsequently converted) vendor debt commitment (CAD$46 million of which was drawn at the time) owed by WIND. Q Advisors informed us of this opportunity, and ultimately we partnered with Providence Equity Partners LLC ("**Providence**") to purchase Nokia-Siemens' vendor debt. Each of Tennenbaum and Providence took 50% of the committed and then outstanding Nokia-Siemens debt.

14. By March 2014, WIND had approximately $150 million (US) in outstanding third party vendor debt (not to mention significantly more debt owed to its parent company, VimpelCom). In addition to the debt acquired by Providence and Tennenbaum, this third party debt was also held by Huawei and Alcatel-Lucent. Tennenbaum continued to hold the approximately $25 million (US) in debt that we had acquired in May 2012. During 2013 and 2014, Tennenbaum and Providence repeatedly reached out to VimpelCom and WIND to provide additional debt and equity capital to fund the business on a go forward basis, including buying certain of VimpelCom's shareholder loans as part of a funding transaction.

15. The third party vendor debt (including that held by Tennenbaum) came due on April 30, 2014. In March and April 2014, WIND and VimpelCom reached out to the third party lenders, including Tennenbaum, to seek an extension and/or refinancing of these instruments. No such agreements were made prior to the debts' maturity on April 30. Thus, as of May 1, WIND was in default on its debts to the third party lenders, including Tennenbaum.

16. Shortly if not immediately thereafter (*i.e.*, in very early May 2014), VimpelCom advised Tennenbaum that VimpelCom had decided to sell its debt and equity interests in WIND and that it had retained UBS to manage the sale process. That VimpelCom sought an exit strategy was not particularly surprising to me given that: (1) VimpelCom had just allowed WIND to default on its third party debts; (2) VimpelCom had recently withdrawn its financial support for WIND's bid in Industry Canada's 700 MHz spectrum auction held in January/February 2014 (which I believe signalled to many observers, including me, that VimpelCom had no interest in further supporting WIND's business); and (3) while VimpelCom had inherited a majority equity / minority voting position in WIND (through its acquisition of Orascom), it had never been able to acquire voting control of WIND due to the Canadian regulatory environment.

17. From the outset of our discussions with VimpelCom, we knew that their priority was speed and certainty of closing, and we directed our efforts accordingly. VimpelCom had grown suspicious and mistrustful of the Canadian government, and minimizing regulatory risk was paramount. While the membership of our consortium and our precise approach evolved over time in response to the circumstances, we always knew that the best approach, which would be most likely to win VimpelCom's favour in a competitive auction process, would be the one that minimized regulatory risk to VimpelCom.

18. Upon being informed by VimpelCom that it was selling its interests in WIND in early May 2014, representatives of Tennenbaum, including me, in addition to our consultant Alek Krstajic (the ex-CEO of Public Mobile), travelled to Toronto to meet with WIND management where they delivered a management presentation and thorough

update on WIND's business. Following the management presentation, Tennenbaum immediately began working on a proposal to acquire WIND. Among other things, Tennenbaum signed a non-disclosure agreement with VimpelCom on May 12, 2014, and was granted access to the WIND data room on the same day. We began conducting due diligence right away, and continued to do so throughout May and June.

19. We also immediately began canvassing for other investors who would be interested in joining us in the purchase of WIND. We spoke to a number of potential equity partners, initially including Oak Hill, Blackstone, LG Capital (whose principal is Larry Guffey, the founder of our ultimate investing partner 64NM), and Globalive. Our consortium (led by Tennenbaum, Oak Hill and Blackstone) submitted an initial indication of interest on or around May 30 and we were allowed to proceed with continued diligence and access to management.

20. Tennenbaum, along with its other consortium members at the time, continued to conduct due diligence throughout June and July 2014, and began negotiating a purchase agreement with VimpelCom. In early June we had very preliminary discussions with West Face about providing principally debt capital and a smaller minority equity position in support of our group's bid, but by mid-June West Face was pursuing a different avenue. Our due diligence efforts at that stage were focussed on learning more about WIND's wireless network and how the company would be able to obtain access to additional spectrum over time to create a competitive network to the incumbents (Rogers, Bell and Telus). Based on my experience in the wireless industry, network capacity is a crucial indicator of success, and Tennenbaum was not willing to acquire equity in WIND until it had sufficient comfort that there was a path forward.

These concerns were largely addressed on July 7, 2014, when Industry Canada announced a set-aside auction of AWS-3 wireless spectrum for new entrants like WIND. Industry Canada's announcement in this regard is attached as Exhibit "**2**".[2]

21. In late July 2014, Blackstone and Oak Hill's interests in pursuing WIND were waning. We therefore resumed our discussions with West Face to partner alongside of Tennenbaum and LG Capital. In late July we exchanged our financial modelling information with West Face, and the two firms joined together in our efforts to acquire WIND. We additionally shared our third party network and technology diligence with West Face, and they shared their third party diligence on the Canadian wireless market. As an example, attached as Exhibit "**3**" is an email from myself to Tony Griffin and individuals at Oak Hill and Tennenbaum, asking that our technical presentations, latest share purchase agreement, and updated model be sent to West Face.[3] None of these discussions concerned Catalyst's negotiating position or its confidential regulatory strategy as described by Mr. Glassman.

22. On July 23, we were informed by UBS, VimpelCom's financial advisor, that VimpelCom had entered into exclusive negotiations with another party. We were fairly confident that this other party was Catalyst, given that Catalyst had been actively seeking financing in the market. To me, this signalled that VimpelCom and UBS felt that Catalyst had made a more advanced proposal that provided a clearer path to closing a deal at that time. I also knew from my discussions with VimpelCom and its

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advisors that they did not consider Tennenbaum to be a credible bidder for WIND at that time given the disclosure we made about Blackstone and Oak Hill and our failure to make a concrete proposal on acceptable terms.

23. Nevertheless, Tennenbaum was not ready to abandon the deal given the significant amount of time and effort we had already expended, and the fact that we were already a material stakeholder given our debt position. We continued working with West Face, Globalive (until August 7, when they signed a Support Agreement with VimpelCom as described below) and Mr. Guffey toward a stronger proposal for WIND. In our minds, the best way to do this given VimpelCom's expressed preferences for speed and certainty of closing was to structure the transaction to minimize regulatory risk of closing.

24. In or around the very end of July or the first days of August, the "**New Investors**" (Tennenbaum, 64NM, and West Face) engaged in discussions regarding a new, streamlined transaction structure whereby Globalive's equity would be left in place and the New Investors would simply step into the shoes of VimpelCom. To the best of my recollection, Mr. Guffey proposed this approach to me on a phone call in late July or early August. While the concept behind this transaction structure was not new to the New Investors, we had not previously seriously considered putting forward such an aggressive proposal.

25. By that point, however – and particularly given that VimpelCom was in exclusivity with another party – we believed that the window of opportunity to acquire WIND was very quickly closing, and that we needed to put forward the best possible proposal in the

hopes that VimpelCom would consider it as an alternative to insolvency if it was unable to reach an agreement with Catalyst.

26. The advantage of the New Investors' proposal was to meet VimpelCom's desire for a speedy transaction that carried little to no regulatory risk to VimpelCom. By leaving Globalive in place and avoiding a change of control, our proposal permitted VimpelCom's interests in WIND to be bought out upon signing of the purchase agreement, rather than having to wait several months until regulatory approval had been obtained. The existing financing commitments regarding the $150 million vendor debt that Tennenbaum and the Investors had already obtained were not altered by this new structure.

27. Further, we also felt that the simplicity of a securities purchase agreement limited the amount of documentation that needed to be negotiated and provided VimpelCom with the simplest and most straightforward agreement. Given that our firm was already a lender to WIND, we understood the rights of the various loans issued in the WIND capital structure and our group believed that if we successfully acquired the VimpelCom shareholder loans, we would have a path to full ownership under a CCAA or similar proceeding if necessary.

28. The New Investors very quickly put together a proposal with this transaction structure and, close to midnight on August 6, 2014, I, on behalf of the New Investors, submitted an unsolicited offer for WIND that was conditional only on the participation of

Globalive. A copy of this email is attached as Exhibit "**4**" to this Affidavit.[4] We submitted a more formal proposal the next day, August 7. Our proposal was entirely unsolicited, and was entirely "blind", in the sense that we had had no substantive communications with VimpelCom since it entered exclusivity on July 23, 2014. We knew nothing about the status or nature of the negotiations between Catalyst and VimpelCom, nor did we at any time during their period of exclusivity.

29. Unfortunately for us, that same day (August 7), Anthony Lacavera of Globalive informed us that Globalive had signed a support agreement with VimpelCom, pursuant to which it agreed to support a sale transaction acceptable to VimpelCom. A copy of Mr. Lacavera's email to this effect is attached as Exhibit "**5**" to this Affidavit.[5] Neither VimpelCom nor Globalive resumed or engaged in any negotiations with Tennenbaum or, to my knowledge, any of the New Investors from August 7 to August 18, 2014, and the New Investors made no further proposals to VimpelCom during this time period. It was only after exclusivity expired on August 18, 2014 that the New Investors joined with Globalive and resumed negotiations with VimpelCom.

No Knowledge of Catalyst's Regulatory Strategy

No one at Tennenbaum had any knowledge of the details of Catalyst's regulatory strategy concerning WIND, nor the details of its offer or its negotiations with VimpelCom during its period of exclusivity from July 23 to August 18. Neither VimpelCom nor Globalive told us anything about the negotiations with Catalyst, and we had no negotiations with either of them after August 7, 2014. Furthermore, West Face never

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communicated any information about Catalyst's strategies or negotiations to Tennenbaum, and no such information was used by the Investors in developing the transaction structure that the Investors put forward to VimpelCom. On the contrary, the successful transaction structure was proposed to the New Investors by Mr. Guffey.

SWORN before me in the City of New York, in the State of New York, this 1st day of June, 2016.

Commissioner for Taking Affidavits, etc.
ANDREW CARLSON

MICHAEL LEITNER

THE CATALYST CAPITAL GROUP INC.
Plaintiff and BRANDON MOYSE ET AL
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL LEITNER
(SWORN JUNE 1, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

This is Exhibit "52" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

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

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

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

AFFIDAVIT OF SIMON LOCKIE
(sworn June 6, 2016)

I, SIMON LOCKIE, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Legal Officer of Globalive Capital Inc. ("**Globalive**"), a privately-held Canadian diversified investment company founded in 1997 by Anthony Lacavera. I became CLO of Globalive in 2005. In my role at Globalive, I have been directly involved in the affairs of WIND Mobile Corp. ("**WIND**") since its founding in 2008, including (i) the acquisition of VimpelCom Ltd.'s ("**VimpelCom**") interests in WIND by a group of investors including Globalive, West Face Capital Inc. ("**West Face**"), Tennenbaum Capital Partners, LLC ("**Tennenbaum**"), and 64NM Holdings, LP ("**64NM**") (collectively, the "**Investors**") in September 2014; and (ii) the subsequent agreement to sell WIND to

Shaw Communications Inc. ("**Shaw**") in December 2015. As such, I have personal knowledge of most of the matters set out in this Affidavit. Where I do not have personal knowledge I have set out the source of my information and believe it to be true.

2. I have previously sworn an Affidavit dated January 8, 2016 in support of a plan of arrangement by which WIND was sold to Shaw. A copy of that Affidavit is attached (without exhibits) as Exhibit "**1**" to this Affidavit.[1]

Overview

3. I understand that Catalyst alleges that West Face obtained and misused confidential information about Catalyst's regulatory strategy to acquire WIND in order to craft a superior bid for WIND. Specifically, I understand that Catalyst alleges that this confidential information was that its strategy to buy WIND involved signing a share purchase agreement to acquire all of WIND, with no consequences to Catalyst if they failed to close, and then requiring certain regulatory concessions from the Government of Canada before (*i.e.*, as a condition to) closing the acquisition of WIND. I understand that these concessions included the right to sell WIND or WIND's wireless spectrum licenses to an incumbent wireless carrier (*i.e.*, Rogers, Bell or Telus) after five years. Until I reviewed Newton Glassman's Affidavit, sworn May 27, 2016, neither I, nor to the best of my knowledge anyone else at Globalive, had any knowledge of Catalyst's strategy as set forth in this paragraph. To the contrary, as set forth below, I believed Catalyst's bid for WIND to expressly preclude seeking regulatory concessions that could have the effect of delaying or impeding closing the acquisition of WIND by Catalyst, and

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that Catalyst (as a Canadian company with no spectrum holdings) would secure all required approvals in a timely and uncomplicated manner.

4. I cannot speak to whether West Face ever had any confidential Catalyst information. West Face certainly never conveyed any information about Catalyst's strategies or intentions for WIND to me nor (to my knowledge) to anyone else at Globalive. However, based on the facts as they unfolded, I do not believe that West Face could have used purportedly confidential information concerning Catalyst's strategy to defeat Catalyst's bid. To the best of my knowledge, information and belief, Catalyst never communicated any requirement for any regulatory concessions as a condition of closing to VimpelCom, and no such condition was included in any draft of the share purchase agreement between VimpelCom and Catalyst that I reviewed. It was my understanding based on past discussions with representatives of VimpelCom that VimpelCom would have refused to consider any bid for WIND that was conditional on regulatory concessions.

5. The Investors' successful offer for WIND, which included Globalive as a party and in fact depended on Globalive's participation as set forth in detail below, was not made to VimpelCom until after it terminated its discussions with Catalyst and after the expiry of an agreed upon exclusivity period (twice extended) with Catalyst. As set out in greater detail below, right up until the actual expiry of that extended exclusivity period, Globalive believed that the Catalyst bid for WIND would be successful and that it was the best available outcome for Globalive. Indeed, I, as CLO of WIND, and Brice Scheschuk (Globalive's CEO and the CFO of WIND at the time), actively sought to assist in closing the sale of WIND to Catalyst by preparing required regulatory filings,

completing disclosure schedules, and answering diligence enquiries. Globalive had earlier agreed to economic terms with VimpelCom regarding the proceeds from the Catalyst acquisition of WIND, and had agreed to support the Catalyst transaction (or, failing that, a sale of WIND in an insolvency process). Indeed, based on several conversations I had with Felix Saratovsky, Deputy General Counsel at VimpelCom, it was my understanding that during VimpelCom's agreed upon period of exclusivity with Catalyst, Catalyst's bid was the only WIND sale proposal considered by VimpelCom. I further understood based on the negotiations of the support agreement referred to below that VimpelCom's intention to the extent a sale to Catalyst did not materialize was to seek a sale of WIND while WIND was under bankruptcy protection.

Founding of WIND

6. WIND was founded in 2008 following the Government of Canada's announcement that it would conduct an auction for certain Advanced Wireless Services ("**AWS**") spectrum licences open only to parties holding less than 10% of the Canadian wireless market. WIND paid $442.5 million in 2008 to acquire so-called "set-aside" spectrum in this auction. Other new wireless companies (*e.g.*, Mobilicity, Eastlink and Videotron) also acquired set-aside spectrum at this time, while a fourth carrier called Public Mobile acquired non set-aside spectrum with very little by way of a compatible handset ecosystem. WIND and Mobilicity would ultimately launch with service in mostly urban regions of Ontario, Alberta, and British Columbia as challengers to the incumbent national wireless services (Rogers, Telus and Bell). Since that time, Public Mobile has been acquired by Telus and Mobilicity by Rogers, leaving WIND as the only significant challenger to the incumbents in Ontario, Alberta and British Columbia.

7. Globalive had broad experience in the Canadian telecommunications market from a number of earlier investments, including Canopco, a leader in telecom technology and operator services for the hospitality industry; OneConnect, a business telecommunications provider; and Yak Communications, a wireline telephone and Internet service provider. Globalive was interested in entering the Canadian wireless market. However, there were significant costs to launching a new wireless service. Globalive therefore wanted to find a source of additional financing. Globalive found such a source in Orascom Telecom Holdings ("**Orascom**"), which operated a number of successful wireless companies around the world.

8. In 2008, under the *Telecommunications Act*, the *Radiocommunications Act*, and Industry Canada rules, there were strict Canadian ownership requirements that any wireless company wishing to acquire spectrum licenses and operate in Canada had to satisfy. First, there were "bright-line" requirements, including that at least 80% of the voting shares of a wireless carrier, and two-thirds of a carrier's parent, must be owned by Canadians. Second, there was a more general restriction that a Canadian wireless operator must not otherwise be controlled by non-Canadians.

9. Orascom and Globalive therefore agreed to a structure that satisfied the Government's "bright-line" Canadian ownership requirements, and that Globalive and Orascom believed also satisfied the more general "non-Canadian control" prohibition. Under this structure, Globalive would indirectly hold 67% of the voting shares and 34% of the total equity in a holding company called Globalive Investment Holdings Corp. ("**GIHC**"), which would hold all of the shares of a newly-incorporated company called Globalive Wireless Management Corp. (which would subsequently be renamed WIND

Mobile Corp., and will be referred to as "**WIND**" in this Affidavit for simplicity), while Orascom would hold 100% of the non-voting shares and 32% of the voting shares, for 65% of the total equity in GIHC. Orascom also agreed to provide the capital required to build and launch a wireless network via debt financing to WIND. A former Orascom employee held 1% of the voting shares in GIHC in the form of non-participating equity.

10. Industry Canada conducted a careful review of WIND's ownership structure over a series of months. After requesting a number of concessions that were accepted by WIND, Industry Canada accepted WIND's ownership structure as compliant and approved issuance of its spectrum licenses.

11. Notwithstanding Industry Canada's approval, and the fact that the applicable restrictions in the *Telecommunications Act* were identical to those applied by Industry Canada, at Telus's urging the Canadian Radio-television and Telecommunications Commission ("**CRTC**") also decided to conduct a separate, public review of WIND's ownership and control. In October 2009, the CRTC issued a decision concluding that Orascom's debt holdings gave it sufficient control over WIND that WIND was not compliant with the "non-Canadian control" prohibition. Globalive therefore investigated numerous options to raise sufficient Canadian capital to launch and operate WIND without violating the CRTC's interpretation of the "non-Canadian control" restrictions.

12. Among other things, during this period, Globalive separately approached both Catalyst and West Face about the possibility of being a source of Canadian capital for WIND, and discussed WIND's capital structure and Globalive's role in it. Both Catalyst

and West Face were therefore at all relevant times familiar with WIND's ownership structure.

13. In December 2009, the federal Governor-in-Council issued a final decision that overruled the CRTC's decision, approved of WIND's ownership structure subject to certain adjustments, and determined that it satisfied all statutory requirements. WIND launched its wireless service shortly thereafter in December 2009.

VimpelCom Acquires Orascom's Interest in WIND

14. In 2011, VimpelCom, a NYSE-listed wireless company that operates out of the Netherlands, acquired the majority shareholder of Orascom. This transaction gave VimpelCom control of Orascom's stake in GIHC. No other changes to WIND's ownership structure occurred in connection with the VimpelCom transaction, and Globalive continued to hold over two-thirds of the voting shares of GIHC.

15. In June 2012, in order to encourage the growth of a fourth wireless carrier in each region of Canada, the Government amended the *Telecommunications Act* and the *Radiocommunications Act* to eliminate foreign ownership restrictions in those statutes for wireless companies holding less than 10% market share, such as WIND. VimpelCom approached Globalive and offered to buy us out. Globalive in turn expressed its desire to buy out VimpelCom. Globalive and VimpelCom therefore entered into negotiations to determine whether one could buy out the other's interest in WIND. During this period, Globalive again approached Catalyst, this time seeking financing with which to buy out VimpelCom. Globalive and Catalyst explored WIND's

ownership structure and debt with a view to Catalyst making an investment into WIND and financing Globalive.

16. Ultimately, the negotiations between Globalive and VimpelCom focussed solely on VimpelCom acquiring Globalive's interest, and the parties executed a share purchase agreement pursuant to which VimpelCom would indirectly acquire all of Globalive's interest in WIND. Notwithstanding the revisions to the *Telecommunications Act* and the *Radiocommunications Act*, VimpelCom was unable to secure the required approval for the proposed transaction pursuant to the *Investment Canada Act*, and VimpelCom and Globalive terminated their share purchase agreement.

VimpelCom Decides to Sell its Interests in WIND

17. In early 2013, following VimpelCom's inability to obtain regulatory approval to buy out Globalive, VimpelCom engaged UBS Securities to assist VimpelCom in its efforts to find a purchaser for its debt and equity interests in WIND, or for WIND in its entirety. VimpelCom conducted this process independently of Globalive, and told Globalive it would approach us when and if our support was required for a transaction acceptable to VimpelCom. I believe that numerous parties were invited to present offers for consideration by VimpelCom. Various parties expressed interest in a transaction to acquire WIND, including the U.S. wireless company Verizon. Verizon's interest in WIND became public, following which the private equity firm Birch Hill also explored making a bid. During 2013, Globalive again approached numerous potential sources of capital to acquire VimpelCom's interest in WIND, including Catalyst. These discussions with Catalyst ended in early 2013 due to both Catalyst and WIND being applicants to participate as bidders in the upcoming 700 MHz spectrum auction, and briefly resumed

in December 2013 after Catalyst withdrew as a bidder. However, it became clear to Globalive in early 2014 that to the extent Catalyst was going to pursue WIND, it intended to deal only with VimpelCom.

18. Ultimately, Verizon chose not to pursue WIND. At this point, in late 2013, VimpelCom had grown increasingly frustrated with its inability to either acquire voting control of WIND or to conclude a transaction to allow it to exit the investment. In addition to its voting and non-voting shares, VimpelCom held (both directly and through Orascom) over $1.5 billion in debt and interest owed by WIND, which WIND had no way of re-paying. WIND was also subject to approximately $150 million in third party vendor debt that was coming due on April 30, 2014. WIND's tenuous financial position at the time created a real risk that its creditors would call its debt, put WIND into insolvency, and allow its creditors to recover the proceeds from the sale of WIND's assets.

19. Based on conversations with VimpelCom representatives, I learned that VimpelCom determined that (i) it was willing to sell its interest in WIND based on an enterprise value of approximately $300 million, of which $150 million would satisfy the vendor finance debt and the remainder would go to VimpelCom and Globalive and (ii) failing such a transaction, VimpelCom or other creditors would seek to force WIND into insolvency and recover its debt in that manner. The sales process was therefore essentially a "race to the finish line", open to all comers. If a suitable buyer could not be found, then VimpelCom would seek to force WIND to file for insolvency protection so that the company or its assets could be auctioned off, with VimpelCom and other creditors paid out of the proceeds.

20. Given its willingness to exit its WIND investment at such a relatively low enterprise value, I understood from my various discussions with VimpelCom and its advisors during the relevant time that ability to close (including financial wherewithal and no impediment to timely regulatory approvals) was VimpelCom's primary concern in evaluating potential bidders. From my numerous conversations with Mr. Saratovsky of VimpelCom, I understood and believe that VimpelCom simply was not willing to tolerate any regulatory risk.

21. As evidence of VimpelCom's determination to minimize any risk of regulatory approval, in its standard form of share purchase agreement, a copy of which was produced in the litigation between Catalyst and West Face, and which is attached as Exhibit "**2**",[2] VimpelCom included what is colloquially called a "hell or high water" clause at section 6.3(d). The clause effectively prohibited any intended purchaser from taking any step (such as requesting regulatory concessions from Industry Canada, which was later expressly added to the draft agreement in its "substantially complete" form), that "would be expected to prevent or delay the obtaining of any consent or approval" required to close the transaction.

VimpelCom Grants Catalyst Exclusive Negotiating Rights

22. On or about July 23, 2014, Mr. Saratovsky advised me that VimpelCom had entered into an exclusivity agreement with Catalyst and VimpelCom then began negotiating with Globalive to secure Globalive's support for the proposed sale to Catalyst. From that date until the exclusivity period expired on August 18, 2014, neither

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[2] WFC0075344.

I, nor to the best of my knowledge, anyone else at Globalive, was aware of VimpelCom engaging in negotiations with any other party, and I was regularly told by Mr. Saratovsky that Catalyst was the only party that VimpelCom was in negotiations with and that VimpelCom was optimistic that an agreement with Catalyst would be reached.

23. Until August 7, 2014, Globalive had not yet committed to any deal with Catalyst. Over the course of 2014, I participated in conversations between Mr. Lacavera and potential co-investors, including but not limited to representatives of West Face, Tennenbaum and 64NM (together, West Face, Tennenbaum and 64NM are the "**New Investors**"). During those conversations Mr. Lacavera conveyed clearly and repeatedly that VimpelCom was very concerned about regulatory approvals. Mr. Lacavera further advised potential co-investors that it was possible to structure an acquisition of VimpelCom's interest in WIND with no regulatory approvals, so long as Globalive, which as described above already controlled WIND, was the acquirer, and provided that the capitalization of Globalive was done on terms that did not constitute a change of control of Globalive. Subsequent to the acquisition by Globalive of VimpelCom's interest in WIND, the parties could restructure subject to required regulatory approvals.

24. At 11:56 p.m. on August 6, 2014, Michael Leitner of Tennenbaum sent VimpelCom an unsolicited proposal on behalf of the New Investors for VimpelCom's (but not Globalive's) interests in WIND. A more formal offer letter and form of purchase agreement were delivered by the New Investors to VimpelCom on the evening of

August 7, 2014. A copy of Mr. Leitner's proposal, which he subsequently forwarded to Mr. Lacavera and Mr. Lacavera forwarded to me, is attached as Exhibit "**3**".[3]

25. Despite the unsolicited proposal from the New Investors, on August 7, 2014, VimpelCom entered into a Support Agreement with Globalive, having received assurances from Globalive that no agreement with the New Investors was in place and that Globalive was not part of the proposal from the New Investors. This Support Agreement gave Globalive an economic participation in the sale of WIND in exchange for Globalive's agreement to sell its interests in GIHC and WIND to Catalyst as part of any VimpelCom transaction with Catalyst. The Support Agreement also provided that Globalive would support VimpelCom in putting WIND into insolvency, since at that time, VimpelCom considered insolvency to be the next best alternative to a transaction with Catalyst.

26. From August 7 until the expiry of Catalyst's exclusive negotiating rights on August 18, Globalive honoured its obligation to support a potential deal with Catalyst. In fact, Globalive believed that the Catalyst transaction was the only realistic alternative to an insolvency process (which Globalive believed would be destructive to WIND's value) and so Globalive both actively assisted VimpelCom in seeking to advance negotiations with Catalyst and also expressed to Catalyst its desire to invest alongside Catalyst in its acquisition of WIND.

27. To the best of my knowledge, based on my discussions with Mr. Saratovsky described above, VimpelCom honoured their exclusivity agreement with Catalyst. As a

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[3] WFC0040932.

result of those same discussions I believe that VimpelCom did not provide any information, or offer any encouragement or support, to any other potentially interested party. In any event, it was my understanding as a result of the events described above that VimpelCom had no interest in pursuing any alternatives to Catalyst before the end of Catalyst's period of exclusivity, as extended. In fact, up until the expiry of the exclusivity period, to the best of my knowledge, based on my discussions with Mr. Saratovsky, VimpelCom remained confident that any outstanding issues with Catalyst would be resolved.

28. In that context, upon learning of the New Investors' proposal on August 7, Globalive confirmed to VimpelCom that Globalive was not associated with the New Investors or their proposal, and had no understanding of any kind with the New Investors. At VimpelCom's request, that same day Globalive conveyed to the New Investors that Globalive had signed a Support Agreement and was no longer in a position to have any discussions or consider any proposals from that group or any other group. Mr. Lacavera's email in that regard is attached as Exhibit "**4**".[4] From August 7 to August 18, 2014 (when VimpelCom's exclusivity agreement with Catalyst expired), Globalive focused its efforts instead on assisting VimpelCom to close a transaction with Catalyst. Globalive had insisted that the terms of the Support Agreement permitted Globalive to seek to participate in the Catalyst transaction. Globalive had reached out to Catalyst several times in 2014 expressing its desire to stay invested in WIND and to invest additional capital alongside Catalyst. However, prior to August 7, Mr. Glassman would not confirm that Catalyst was in discussions with VimpelCom, as is evident from

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[4] WFC0063562.

the email exchange attached as Exhibit "**5**".[5] After August 7, Catalyst made it clear that it was not interested in Globalive participating in the transaction to acquire WIND (but was open to a subsequent investment by Globalive).

29. Based on my conversations with Mr. Saratovsky of VimpelCom, VimpelCom's financial advisors at UBS Securities, and its counsel at Bennett Jones LLP, I believe that various members of the New Investors had made offers in the months prior to August 2014 involving a variety of different terms and co-investors. However, based on those same conversations, I believe that all such offers ultimately fell apart or were withdrawn, and that VimpelCom came to consider all proposals from the various New Investors to not be serious or credible offers. I believe based on my conversations with Mr. Saratovsky that VimpelCom did not believe that the New Investors would be able to close the deal as promised. Thus, I understood from Mr. Saratovsky that VimpelCom did not take the New Investors' new offer seriously, and Mr. Saratovsky told me that they gave the offer very little credibility. Instead, by my observation, VimpelCom remained very focused on consummating the sale to Catalyst. As will be described more fully below, it was only after Catalyst's exclusivity period expired on August 18 that Globalive attempted, ultimately successfully, to convince VimpelCom to consider the New Investors as a serious bidder.

30. I received various copies of an evolving draft share purchase agreement with Catalyst from VimpelCom's counsel at Bennett Jones LLP, including on August 3, 2014, who described it as a "substantially complete SPA that is going to be approved by

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[5] CCG0025823.

VimpelCom's board". A copy of this agreement and covering email is attached as Exhibit "**6**".[6] I understood that once a support agreement in respect of the transaction was reached between Globalive and VimpelCom, this draft agreement was to be provided to VimpelCom's supervisory committee for approval. Neither this draft share purchase agreement, nor any other drafts of which I am aware, included any requirement that Catalyst's acquisition of WIND be conditional on Industry Canada granting any regulatory concessions to a Catalyst-owned WIND.

31. Indeed, based on numerous discussions with representatives of VimpelCom in 2014, I do not believe VimpelCom would have even considered such a condition. On the contrary, the "substantially complete" draft agreement, like every other version of which I am aware, contained a detailed "hell or high water" clause which prohibited Catalyst from taking any actions, specifically including seeking regulatory concessions, that might delay or impede obtaining the regulatory approvals required to close the transaction. The draft agreement provided that Catalyst could continue to pursue regulatory concessions that WIND had already been pursuing so long as such pursuit could not "be expected to prevent or delay the obtaining of" any governmental or regulatory approval (see section 6.3(e)). At that time, neither I, nor to the best of my knowledge anyone else at Globalive, had any reason to believe that Catalyst was pursuing the regulatory strategy outlined in Mr. Glassman's Affidavit.

32. I understand from the evidence filed by Catalyst in its litigation with West Face that on August 11, 2014, Gabriel de Alba of Catalyst and representatives of VimpelCom

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[6] WFC0075410.

had a "courtesy call" with Industry Canada to advise it of the impending sale to Catalyst. It was my understanding based on discussions with Mr. Saratovsky and the fact that VimpelCom's counsel and WIND's management were actively preparing for closing that at this time, four days after the New Investors' unsolicited proposal, VimpelCom was still committed to exclusive negotiations with Catalyst.

33. I understood from Mr. Saratovsky that the VimpelCom supervisory board was to review and approve the proposed share purchase agreement with Catalyst on or about August 11. I subsequently understood from Mr. Saratovsky that the supervisory board had raised a concern with the draft share purchase agreement and had declined to approve it in its current form. Mr. Saratovsky subsequently informed me that VimpelCom's supervisory board was requiring a break fee to mitigate the risk that regulatory approval would not be received on a timely basis and that VimpelCom believed the issue would be resolved, and thus VimpelCom had agreed to extend exclusivity with Catalyst until August 18. I worked diligently with VimpelCom and its advisors to come up with possible solutions that would satisfy both the VimpelCom supervisory board and Catalyst, but was told that Catalyst would not agree to anything VimpelCom proposed. I was aware that VimpelCom's exclusivity agreement with Catalyst expired on August 18 and Mr. Saratovsky subsequently confirmed that it had not been extended.

34. At no time during the exclusivity period did Globalive or any of its representatives make any offer to VimpelCom for its interest in WIND. I understand from my various conversations with Mr. Saratovsky during the events in question that VimpelCom had no negotiations with any of the New Investors during Catalyst's exclusivity period. As

described above, as of August 18, it was my understanding from conversations with Mr. Saratovsky that VimpelCom did not consider the New Investors to be a credible or viable alternative to Catalyst. Moreover, based on my conversations with Mr. Saratovsky leading up to and shortly after the expiration of the Catalyst exclusivity, I understood that VimpelCom's intent was to put WIND into insolvency protection, providing certainty of outcome on a timely basis, in a process controlled by creditors (primarily VimpelCom).

35. Globalive took the possibility of insolvency very seriously, and had engaged in insolvency planning to protect Globalive's interests ever since it became clear that VimpelCom was not willing to provide additional funding to WIND in early 2014. More recently, VimpelCom made it clear to Globalive during VimpelCom's period of exclusivity with Catalyst that VimpelCom intended to force WIND into insolvency if a deal with Catalyst could not be reached. Indeed, over the course of early 2014, WIND, at VimpelCom's instruction, had counsel engage a monitor and prepare the required filings for CCAA protection. Upon expiry of the Catalyst exclusivity period on August 18, it was my understanding that VimpelCom was very seriously considering proceeding with a CCAA process, even as it considered whether to re-engage with the New Investors. As late as August 20, as VimpelCom was assessing its options in this regard, WIND's CEO Pietro Cordova advised VimpelCom that WIND would "run out of money in the second half of September". A copy of Mr. Cordova's email of August 20, 2014 is attached as Exhibit "**7**".[7] It was therefore essential that any transaction be consummated before late

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[7] WFC0075662.

September, as VimpelCom to my knowledge had no appetite to provide any further financing to WIND.

36. Insolvency was only avoided when Globalive joined with the New Investors, which did not occur until after August 18. In the ensuing days while negotiating with the New Investors I explained to Mr. Saratovsky that the New Investors, together with Globalive, were serious and well-financed, and that our proposed structure (as set out in greater detail below) would permit VimpelCom to conclude an exit from its WIND investment in a short period and without any regulatory approval. On this basis, Globalive convinced VimpelCom to consider the New Investors' offer for a short period following August 18 as an alternative to an insolvency process.

The Investors' Offer

37. Pursuant to the Investors' offer, a company called Mid-Bowline Group Corp. (then known as AAL Management Corp.), which was owned and controlled by Globalive and capitalized with non-voting equity from the other Investors, proposed to buy VimpelCom's debt and equity in GIHC and WIND through its wholly-owned subsidiary, Mid-Bowline Holdings Corp. (then known as AAL Acquisitions Corp.). At this first stage of the proposed transaction, no regulatory approval would be required because none of the New Investors would acquire or hold any direct or indirect voting interests in GIHC or WIND and the transaction accordingly did not involve any change of control of WIND. VimpelCom would be paid for its interest in WIND immediately upon executing an agreement, without any requirement of regulatory approval. At the second stage of the transaction, after VimpelCom had already been paid and following receipt of the requisite regulatory approvals, the Investors reorganized the shareholdings of Mid-

Bowline Group Corp. so that voting rights and total equity were held in proportion to each Investor's investment.

38. In summary, to the best of my knowledge, from the time that Catalyst obtained exclusive negotiating rights on July 23, 2014, right up to August 18, 2014, VimpelCom perceived Catalyst to be the only credible bidder. VimpelCom, together with Globalive, made extensive efforts to close a deal with Catalyst. To the best of my knowledge, based on my discussions with Mr. Saratovsky of VimpelCom and my active support of VimpelCom's negotiations pursuant to the Support Agreement, the proposed bid of the New Investors was not taken seriously before August 18, 2014, and did not play any role in VimpelCom's negotiations with Catalyst or assessment of the Catalyst offer. Indeed, VimpelCom extended Catalyst's period of exclusivity on August 11, five days after the New Investors made an unsolicited proposal to VimpelCom. I understood that VimpelCom preferred insolvency to the New Investors' bid until after exclusivity expired. Globalive then joined the Investors, and we convinced VimpelCom to consider the Investors' proposal as an alternative to insolvency with a very short time to close and no required regulatory approvals.

SWORN before me at the City of Toronto)
in the Province of Ontario)
this 6th day of June, 2016)
)

Steven Frankel

Commissioner for Taking Affidavits, etc.

Steven G. Frankel

Simon Lockie

THE CATALYST CAPITAL GROUP INC.
Plaintiff and BRANDON MOYSE ET AL
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF SIMON LOCKIE
(SWORN JUNE 6, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

This is Exhibit "53" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

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

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

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

AFFIDAVIT OF SUPRIYA KAPOOR
(sworn June 2, 2016)

I, Supriya Kapoor, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Compliance Officer of the Defendant West Face Capital Inc. ("**West Face**"). I was responsible for creating and implementing West Face's confidentiality wall with respect to WIND Mobile Corp. ("**WIND**") and the Defendant Brandon Moyse on June 19, 2014 (the "**Confidentiality Wall**"). As such, I have personal knowledge of the matters set out in this Affidavit.

2. I started working at West Face on June 2, 2014. One of my first tasks in my capacity as West Face's Chief Compliance Officer outside the ordinary course was

to set up the Confidentiality Wall. For this reason, I have a distinct recollection of the following events.

3. Without waiving privilege, I erected the Confidentiality Wall on June 19th after a discussion with Alexander Singh, West Face's General Counsel and Secretary. The Confidentiality Wall: (1) prohibited Mr. Moyse from discussing WIND with others at West Face, and vice-versa; and (2) ensured that Mr. Moyse was restricted from accessing West Face's WIND-related documents. I circulated that day a memo detailing the terms of the Confidentiality Wall by email to, among others, Mr. Moyse, the four Partners (Messrs. Boland, Fraser, Dea, and Griffin), Yu-Jia Zhu (our Vice-President), Nora Nestor (our Tax Controller), and Chap Chau (our Head of Technology), as well as to our front office analysts. A copy of this email, and the attached memo, is attached as Exhibit "1".[1]

4. Later that same day, I spoke to Mr. Moyse by phone to discuss the Confidentiality Wall. The call was brief, cordial, and to the point. During this call, I reviewed the contents of the Confidentiality Wall memo with Mr. Moyse and explicitly instructed him in abundantly clear terms that he was not to talk about WIND with anyone at West Face, to ask anyone at West Face about WIND, to disclose to anyone at West Face <u>any</u> information about WIND, or to attempt to access any of West Face's files regarding WIND. Mr. Moyse told me that he understood and would comply with these instructions, and with the terms of the Confidentiality Wall. There was no debate,

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[1] WFC0000049 and attachment WFC0000050.

and no resistance. My impression from the conversation was that Mr. Moyse understood and accepted the restrictions being placed on him.

5. The next day, West Face's Head of Technology, Chap Chau, confirmed to me that Mr. Moyse had been excluded from the computer directory containing the WIND-related documents. A copy of Mr. Chau's email to this effect is attached as Exhibit "**2**".[2]

6. All of the above occurred before Mr. Moyse commenced employment at West Face on June 23, 2014. My notes from June 25, two days after Mr. Moyse began work at West Face, clearly note that the Confidentiality Wall was already set up, as per the memo from the week before. These notes are attached as Exhibit "3".[3]

7. To my knowledge, Mr. Moyse abided fully with the Confidentiality Wall during the brief period that he was at West Face in June and July 2014, and thereafter.

SWORN before me at the City of Toronto in the Province of Ontario this 2nd day of June, 2016.

Commissioner for Taking Affidavits, etc.
Matthew Mike-Smith

SUPRIYA KAPOOR

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2 WFC0000054.

3 WFC0111141.

THE CATALYST CAPITAL GROUP INC.	and	**BRANDON MOYSE ET AL**
Plaintiff		Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT OF SUPRIYA KAPOOR
(SWORN JUNE 2, 2016)

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Lawyers for the Defendant,
West Face Capital Inc.

This is Exhibit "54" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

Maeve Antonia Fonseca, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires April 13, 2018.

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

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

AFFIDAVIT OF YUJIA ZHU
(sworn June 3, 2016)

I, YUJIA ZHU, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Vice President of the Defendant West Face Capital Inc. ("**West Face**"), a privately-held Toronto-based investment management firm. On the afternoon of Friday, June 3, 2016, I was informed by Philip Panet, general counsel to West Face, that Catalyst intends to rely on a note I took of my interview with Brandon Moyse on April 15, 2014, to suggest that Mr. Moyse and I discussed WIND Mobile Inc. ("**WIND**") during his interview. For the reasons set out below, I can state categorically that that suggestion is simply false.

2. I met with Mr. Moyse at the West Face offices on April 15, 2014 for approximately 15 to 20 minutes. No one else was present at our meeting, though I understood that Mr. Moyse also had interviews with West Face Partners Peter Fraser

and Tony Griffin that same day. My notes of my brief meeting with Mr. Moyse are attached as Exhibit "1"[1] to this Affidavit.

3. My notes of my interview of Mr. Moyse do not refer to WIND, and we had no discussion concerning WIND. As West Face was actively pursuing WIND at the time, I would never have referred to it myself, and I would remember if Mr. Moyse had done so. During the interview, I asked Mr. Moyse why he wanted to leave Catalyst after only two years, and my notes generally summarize his responses. Where my notes refer to "Live deals", I was simply recording that Mr. Moyse indicated during my interview that he was working on live deals at the time, in addition to existing Catalyst portfolio companies. Mr. Moyse did not specify what those live deals were, and I did not ask him to do so. Homburg and Advantage were the only two companies that Mr. Moyse had worked on at Catalyst that he referred to during our meeting. He did not disclose anything about those companies other than that he was involved in their acquisition and ongoing management.

4. The reference to "Tembec" in my notes is to a public company, Tembec Inc. I asked Mr. Moyse for his analysis of some public financial information about Tembec as a means to evaluate his analytical skills.

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[1] WFC0109978. I have redacted that portion of my notes that concerns my confidential work for West Face at the time. I typically maintain one notebook that includes everything I am working on, and my notes on my interview with Mr. Moyse are on the same page as my notes about a potential West Face investment.

5. To repeat, the topic of WIND never came up during our brief interview. Nor did Mr. Moyse discuss with me any confidential information of Catalyst concerning any other matter.

SWORN before me at the City of Toronto in the Province of Ontario this 3rd day of June, 2016.

Commissioner for Taking Affidavits, etc.

YUJIA ZHU

THE CATALYST CAPITAL GROUP INC.	and	BRANDON MOYSE et al.	Court File No. CV-16-11272-00CL
Plaintiff		Defendants	

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ANTHONY GRIFFIN
(SWORN JUNE 3, 2016)

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West Face Capital Inc.

6075

WFC011228514

This is Exhibit "55" referred to in the Affidavit of Andrew Carlson sworn December 7, 2016

Commissioner for Taking Affidavits (or as may be)

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

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

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

AFFIDAVIT OF BRANDON MOYSE
AFFIRMED JUNE 2, 2016

I, Brandon Moyse, of the City of Toronto, SOLEMNLY AFFIRM AS FOLLOWS:

1. I am a defendant in this action, and, as such, have knowledge of the matters set out in this affidavit. To the extent that my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.

2. I have previously given evidence in this proceeding through affidavits and cross-examinations. I repeat some of that evidence in this affidavit to consolidate and summarize my evidence before the court at this trial. I previously affirmed affidavits on the following dates, which I attach as exhibits to this affidavit: July 4, 2014 (**Exhibit**

"1")[1], July 7, 2014 (**Exhibit "2"**),[2] July 16, 2014 (**Exhibit "3"**)[3] October 10, 2014 (**Exhibit "4"**),[4] October 26, 2014 (**Exhibit "5"**),[5] and April 2, 2015 (**Exhibit "6"**)[6].

3. I was cross-examined twice on motions brought by Catalyst in this proceeding. I attach as an exhibit the transcript from my cross-examination on July 31, 2014 (**Exhibit "7"**)[7] and the answer to an undertaking arising out of that cross-examination (**Exhibit "8"**),[8] the transcript from my cross-examination on May 11, 2015 (**Exhibit "9"**)[9], the answers to undertakings arising out of that cross examination, (**Exhibit "10"**),[10] and a correction to those answers to undertakings (**Exhibit "11"**).[11]

4. I incorporate all my evidence contained in Exhibits 1-11 to this affidavit by reference.

5. Prior to affirming this affidavit, I reviewed the evidence filed to date in this proceeding by both The Catalyst Capital Group Inc. ("Catalyst") and West Face Capital Inc. ("West Face"), the discovery evidence of Catalyst's and West Face's representatives, as well as a significant number of the documents produced by both Catalyst and West Face through the discovery process. In this affidavit, I make specific reference to Catalyst's evidence in the affidavits of Newton Glassman, sworn May 27,

[1] BM001957
[2] BM000624
[3] BM000639
[4] BM001976
[5] WFC0077766
[6] BM001935
[7] WFC0077684
[8] BM001373
[9] TRAN000772
[10] UTS000008
[11] BM0005344

2016 (the "Glassman Affidavit"),[12] of Gabriel De Alba, sworn May 27, 2016 (the "De Alba Affidavit"),[13] and of James Riley, sworn February 18, 2015 (the "Riley Affidavit").[14]

6. I have also reviewed and make reference to the report of the Independent Supervising Solicitor ("ISS") appointed to review images of my electronic devices (the "ISS Report"). The ISS found no evidence that any confidential Catalyst information was ever provided to West Face. I attach the ISS Report, as amended, as **Exhibit "12"**,[15] and the Supplemental ISS Report as **Exhibit "13".**[16]

7. Catalyst alleges that I provided Catalyst's confidential information and strategy for the purchase of WIND Mobile Canada ("WIND") to West Face. I did not do so.

8. As I describe in greater detail below, Glassman, De Alba, and Riley's evidence exaggerates and misrepresents:

(a) my role on Catalyst's team for the purchase of WIND, and in particular my involvement in, and understanding of Catalyst's strategy for the purchase of WIND; and

(b) my communications with West Face when I was interviewing for a position and hired at that firm between March and June 2014.

[12] CCG0028711
[13] CCG0028710
[14] CCG0028716
[15] WFC0080681
[16] BM001875

9. Catalyst also alleges that I deleted evidence relevant to the matters at issue in this action with the intention of frustrating Catalyst's ability to pursue its case. I did not do so.

A. My background

10. I am currently 28 years of age. I was born and raised in Montreal, Quebec, and earned a Bachelor of Arts in Mathematics from the University of Pennsylvania. I currently live in Toronto with my fiancée.

11. Prior to working for Catalyst, I was employed at Credit Suisse in New York and RBC Capital Markets in Toronto as a junior banker on their respective Debt Capital Markets desks.

12. After I resigned from my employment at Catalyst in May 2014, I worked briefly at West Face for three weeks in June and July 2014. As a result of this litigation, I was off work at West Face from July 16, 2014, until I resigned on August 31, 2015. I had significant difficulties securing a new job, as this litigation is well known in the Toronto investment community and many of the firms I interviewed with expressed concerns that Catalyst would commence further litigation against them. I eventually secured a position in December 2015 as an investment analyst at Stornoway Portfolio Management Inc. in Toronto.

B. My position at Catalyst as an investment analyst

13. I commenced employment at Catalyst as an analyst on or around November 1, 2012, pursuant to a written employment agreement dated October 1, 2012 (the

"Employment Agreement"). The Employment Agreement is attached as **Exhibit "14"**[17] to this affidavit.

14. Analysts are the lowest level professionals at Catalyst. The hierarchy at Catalyst for the majority of the time that I was employed there was as follows: three partners, two vice presidents and a total of three associates and analysts. Between January 2014 and my resignation from Catalyst on May 24, 2014, the following individuals were investment professionals at Catalyst:

(a) partners: Newton Glassman, Gabriel De Alba and James Riley;

(b) vice president: Zach Michaud (the second vice president had resigned in late December 2013, and had not been replaced by the time of my departure);

(c) associates: Andrew Yeh, who resigned in or around February 2014; and

(d) analysts: Lorne Creighton and myself.

15. As an analyst at Catalyst, I performed financial and qualitative research both on potential investment opportunities, which were almost exclusively suggested by the partners, and companies already owned by Catalyst. A job description for the analyst position is attached as **Exhibit "15"**[18] to this affidavit. As part of my research of potential investment opportunities, I would normally review publicly available information, such as financial statements, and analyze the company's potential value to

[17] CCG0018684
[18] BM002035

Catalyst. From time to time, I would also review information provided to Catalyst pursuant to Non Disclosure Agreements ("NDAs"), and meet with management groups of various companies as part of my due diligence activities.

16. At the beginning of my employment with Catalyst I was more involved with researching potential investments. During the last six months of my employment, however, I was focused almost entirely on performing operating reviews of Catalyst-owned companies. In my last month at Catalyst, I became briefly involved with the WIND opportunity, but continued to focus on those other tasks.

17. While I was employed at Catalyst, all potential and actual investments were sourced by the partners. Contrary to Catalyst's evidence, in my experience, analysts were not actively encouraged to generate ideas for the firm and their thoughts and recommendations were routinely disregarded. Furthermore, as an analyst, I had no direct input into Catalyst's investment decisions or strategy, but was instead assigned specific research projects by the partners, and vice-president(s).

18. Given the junior nature of my position, I had very little knowledge of Catalyst's potential investments and its strategy for those investments. I regularly attended Catalyst's "Monday meetings" with the Catalyst investment team and other related individuals, including members of Catalyst's finance and accounting teams. The bulk of those meetings were spent discussing domestic and international economic issues. At most, but not all, Monday meetings, the team would discuss Catalyst's portfolio companies, and less often, would discuss deals which Catalyst was actively pursuing. Catalyst typically budgeted one and a half to two hours for the meetings, but frequently

the meetings did not run that long. There was no formal agenda. Print-outs of Catalyst's current deal pipeline were distributed. This document was rarely updated, however. When I first joined Catalyst, the meetings took place regularly on a weekly basis, but became less and less frequent by late 2013.

19. While these meetings did at times feature some discussion of Catalyst's investment strategies, it was clear that these were premised on higher-level partners-only discussions that were taking place, to which I was not privy. Catalyst's partners would frequently discuss conversations or correspondence in front of the analysts without providing any context to us. They would also frequently gather after the meetings to discuss matters behind closed doors. I saw nothing inappropriate about the partners having private conversations about deal strategy. My exclusion from those discussions did not affect my ability to complete the assignments given to me by the vice-president(s) and partners.

C. My involvement in Catalyst's telecommunications file prior to March 2014

20. I have carefully reviewed the allegations in the Glassman, De Alba and Riley Affidavits with respect to my involvement in Catalyst's work in the telecommunications sector, and on Catalyst's potential purchase of WIND specifically. I do not believe that they have fairly or accurately characterized my involvement in Catalyst's work in that sector or on that file.

21. I was only involved in the WIND file in an active and significant way for 10 days between May 6, 2014 and May 16, 2014, when Catalyst was invited to bid on the deal and I was involved in due diligence. Between January 2014 and May 6, 2014, I spent

most of my time working on two Catalyst portfolio companies: Advantage Rent-A-Car and Natural Market Restaurants Corp. This required a significant amount of travel throughout the United States, primarily in Florida and New York. I likely went on at least 15-20 business trips during this period, and spent approximately half my time outside the office.

22. I was assigned to the Catalyst telecommunications deal team in late February 2014 or March 2014 in anticipation of Yeh's departure from the firm. Before then, Yeh was the junior Catalyst team member assigned to the telecommunications team. On one or two occasions, when Yeh was away, I assisted him by preparing certain charts or tables on the Mobilicity file. This was the full extent of my involvement in the telecommunications team before the end of February 2014.

23. In response to two undertakings given on De Alba's examination for discovery, Catalyst speculates that I may have edited, or assisted in the preparation of a number of documents Yeh created with respect to negotiations between Catalyst and VimpelCom at the end of 2013. I reviewed the documents identified by Catalyst in the course of preparing this affidavit. I know that I did not edit or assist in the preparation of these documents. I am not sure whether or not I previously saw them.

24. De Alba suggests at paragraph 46 of his affidavit that I was a member of the telecommunications team as early as January 2014. As an example of my involvement, he relies on an email of a news article I sent to Michaud and Yeh with respect to WIND's withdrawal from the government spectrum auction at the time, which I attach as

Exhibit "16"[19] to this affidavit. I was not on the telecommunications team at the time, and had no knowledge of any discussions at Catalyst about WIND. I sent this article to Michaud and Yeh because I thought they may find it to be of interest, given their involvement in the Catalyst telecommunications team. I tried to stay current on financial news, and frequently would send articles I thought might be of interest to my colleagues.

25. Prior to being assigned to the telecommunications deal team in late February or early March, I was generally aware of the following with respect to Catalyst's interest in the telecommunications industry. I knew that Catalyst:

(a) had an investment in Mobilicity. I likely learned this from discussions with Catalyst and the Monday meetings. Mobilicity at the time was under *Companies Creditors' Arrangement Act* ("CCAA") protection, and I understood Catalyst's interest was in ensuring that any plan of arrangement would make Catalyst whole for its investment. Catalyst's involvement in that litigation was public knowledge and often the subject of media reports;

(b) was considering the possibility of building out a fourth wireless carrier in Canada, and this plan potentially involved WIND. This possibility was discussed in the media and was likely the subject of discussion at the Monday meetings from time to time, but I have no specific memory of these discussions. I do not have any memory of being aware of Catalyst's

[19] CCG0011410

internal opinion that a fourth wireless carrier could not survive without changes to the existing regulatory structure as described at paragraph 15 of the De Alba Affidavit or paragraph 10 of the Glassman Affidavit;

(c) planned to bid for wireless spectrum in a forthcoming Canadian spectrum auction (although Catalyst later withdrew). I do not recall if I first learned this from media coverage or internally within Catalyst. I certainly do not recall discussions on this topic which could be described as “strategic, game-theory-related and pragmatic”, as Glassman describes at paragraph 8 of his affidavit.

26. I also developed some basic knowledge about the Canadian regulatory environment of the telecommunications industry through my work at Catalyst, and by reading the business press, which frequently covered this topic. Catalyst expected its employees to pay attention to news that was relevant to Catalyst’s investments. I was aware that telecommunications issues were important to Catalyst, and it may be interested in merging Mobilicity and WIND, but I did not know any further particulars of Catalyst’s strategy or plans with respect to a fourth national carrier.

27. Contrary to the suggestion in paragraph 10 of the Glassman Affidavit, the only time I was involved in discussions with Catalyst’s legal counsel and government relations consultants about the telecommunications industry was during my work on WIND in May 2014. At that time, I was involved in group discussions with Fasken Martineau, Catalyst’s counsel on that transaction. My interactions with members of that firm did not involve Catalyst’s regulatory concerns or strategy. I was also copied on a

number of emails involving Bruce Drysdale, who I understand was Catalyst's government relations advisor.

28. I did not assist in preparing any of the weekly updates for the Catalyst team at its Monday meetings with respect to the telecommunications industry, as suggested at paragraph 10 of the Glassman Affidavit. In fact, I can only recall being called upon to discuss the investments on which I was working three or four times, and only briefly as a status update. None of these status updates related to the telecommunications industry or WIND.

D. My initial involvement as a member of Catalyst's telecommunications team March 2014 – May 6, 2014

29. I was assigned to Catalyst's telecommunications team in or around March 2014, around the time of Yeh's departure. Although I understood that I was being assigned to the telecommunications team in early March, I was busy on other files and was not assigned to any work on the telecommunications file.

30. On March 6, 2014, I sent an email to De Alba, Michaud and Yeh with respect to WIND. I attach a copy of this email as **Exhibit "17"**[20] to this affidavit. I sent this story of my own initiative to the individuals on the telecommunications deal team, as I thought they may find it helpful.

31. Before May 6, 2014 I was not, as stated in paragraph 45 of the De Alba Affidavit, "intimately aware of, and involved in, [Catalyst's] internal analyses concerning the telecommunications industry". Even after I became more heavily involved in the file in

[20] CCG0011509

May 2014, I was still not privy to the high-level strategic discussions described in the Glassman and De Alba Affidavits. Prior to this date, I understood that Catalyst's primary focus in the telecommunications industry was in its investment in Mobilicity. I was not aware that Catalyst was actively pursuing WIND until May 6, 2014, shortly before Catalyst was invited into the data room.

1. Knowledge gained through involvement in Monday morning meetings and other discussions

32. De Alba and Glassman allege that I had a sophisticated level of knowledge with respect to Catalyst's telecommunications strategy. I disagree with their characterizations. For instance, I do not recall the following being discussed at Monday meetings:

(a) any Monday meeting in March 2014 which involved discussions of Catalyst's "analyses and conclusions as to how Catalyst would mitigate risk and profit based on the approaches taken by [Industry Canada] and the federal government to a proposed merger of WIND and Mobilicity"; [21]

(b) that Catalyst had reached a confidentiality agreement with respect to the purchase of WIND around that time;[22]

(c) "comprehensive" discussions of Catalyst's strategies and positions with VimpelCom, Industry Canada and the federal government;[23] and

[21] As described at paragraph 40 of the De Alba Affidavit
[22] As described at paragraph 40 of the De Alba Affidavit

(d) as De Alba and Glassman describe that in Catalyst's view that:

(i) the federal government faced lawsuit over retroactive changes made to spectrum licenses it had issued in 2008; and

(ii) this litigation was likely to be successful; but,

(iii) that Catalyst would not pursue this litigation but would instead pursue certain concessions from the federal government and Industry Canada.

33. I first became aware of Catalyst's view with respect to possible litigation involving the federal government when reviewing the De Alba and Glassman Affidavits. To the extent Catalyst has performed extensive analysis in this respect, as described at paragraph 59 of the De Alba Affidavit, I was not involved in or aware of this analysis. I have not been able to locate any such analysis in the material produced in this litigation.

2. Analysis of a possible transaction for WIND, March 2014

34. On March 7, 2014, someone, likely Michaud, asked me to prepare a combined *pro-forma* of WIND and Mobilicity. I prepared the *pro-forma* sent to De Alba under Michaud's supervision. I attach the drafts, and my discussions with Michaud respect to its contents as **Exhibits "18",**[24] **"19",**[25] **"20",**[26] and **"21"**[27] to this affidavit.

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[23] As described at paragraph 45(a) of the De Alba Affidavit
[24] CCG0011520
[25] CCG0011521
[26] CCG0011526
[27] CCG0011535

35. I sent the final version to De Alba on March 8, 2014 attached as **Exhibit "22"**[28] to this affidavit. In that cover email I ask De Alba to let Michaud and me know if he had any questions, which to my recollection, he did not. I note De Alba's assertion at paragraphs 49 and 50 that this *pro-forma* analysis was critical to Catalyst's internal analysis of WIND's value. Given that this table merely collects data that were either known publicly, or at least known to Catalyst, and performs basic acts of addition and division on that date, I am surprised that Catalyst would view it as "critical". In my experience, Catalyst did not perform such basic analyses when it was pursuing an acquisition.

36. In the *pro-forma* I identified, for each of WIND and Mobilicity, the following information from the following sources:

(a) spectrum value, or the value of the wireless spectrum owned by each company:

(i) for Mobilicity, I found this information in Mobilicity's consolidated financial statements, dated December 31, 2012, which were in Mobilicity's September 29, 2013, application record for an initial order under the CCAA. Page 16 of the notes to the financial statements states that the payments Mobilicity made to Industry Canada for spectrum totalled $243,159,000. That is the value I

[28] CCG0011536

used for the value of Mobilicity's spectrum. I attach these financial statements as **Exhibit "23"**.[29]

(ii) for WIND, I likely sourced this information from an older internal WIND management document, or regulatory filings which Catalyst had on hand, but which I have not located in the productions.

(b) network value, or the cost of hard assets necessary to build a wireless network):

(i) for Mobilicity, I found this information in the unaudited interim consolidated financial statements for the three and six months ended June 30, 2013, which were in Mobilicity's initial application record. These value the company's property and equipment at $97,417,634. I attach these financial statements as **Exhibit "24"**.[30]

(ii) for WIND, I likely sourced this information from an older internal WIND management document which Catalyst had on hand;

(c) the total number of subscribers:

(i) for Mobilicity, I sourced this information from the Fourth Report of the Monitor in the Mobilicity CCAA proceedings. Michaud directed me to use this source. This information is contained at paragraph

[29] BM0005352
[30] BM0005353

9, footnote 2, of the Affidavit of William Aziz, which is Appendix A to this report. I attach this report as **Exhibit "25"**.[31]

(ii) for WIND, I sourced this information from VimpelCom's Q4 2014 and FY2013 results. Michaud directed me to use this source. Page 28 of that document lists the number of customers in Canada. I attach this document as **Exhibit "26"**.[32]

37. I then added each of these items for each of WIND and Mobilicity to generate a total, and calculated how much each company represented of the total.

38. I had no understanding of the purpose of the document. My analysis was extremely simplistic and unsophisticated. This task was unusual for the work I performed at Catalyst, as typically my analysis at Catalyst would be more rigorous and sophisticated. I was easily able to complete this task without any detailed knowledge of the telecommunications industry or Catalyst's strategic plans for Mobilicity or WIND.

3. Presentation to Industry Canada

39. In March and May 2014, I was involved in the creation of two PowerPoint presentations, which I understood Catalyst presented to Industry Canada representatives. The first presentation took place on or around March 27, 2014, and the second on or around May 12, 2014. The slide decks for both presentations were substantially similar, and I used the first presentation as the basis for the second. Glassman and De Alba dramatically overstate my involvement in each of these

[31] BM0005357
[32] BM0005354

presentations. I did not "lead" the preparation of either. My role in creating both was essentially administrative and did not require a detailed knowledge of the sector or Catalyst's strategy.

40. With respect to the March 27 meeting and slide deck, De Alba states at paragraph 60 that these meetings with Industry Canada were critical and the subject of much internal discussion at Catalyst. I first learned I would be required to assist in preparation for this meeting on March 26, 2014, the day before the meeting, when I was instructed to assist in the preparation of the presentation. I did not know any details of Catalyst's strategy prior to my work on the PowerPoint presentation, as suggested at paragraph 60 of the De Alba Affidavit. I attach a copy of my email to Glassman, De Alba and Riley enclosing the March 26 PowerPoint presentation as **Exhibits "27",**[33] and **"28",**[34] to this affidavit.

41. It is misleading to suggest, as stated at paragraph 18 of the Glassman Affidavit and paragraph 60 of the De Alba Affidavit, that I "led" the preparation of this PowerPoint. I generated the slides on a single day. De Alba, Riley, and Michaud worked in an office creating handwritten mockups of slides, which they provided to me. I then transposed the handwritten notes into PowerPoint format. I was not involved in any discussions or debates involving these three to determine the contents of the presentation. They did not ask for my input into the content of the slides and I did not provide any. Because the slides were required for a meeting in Ottawa the next day, the workplace was frantic.

[33] CCG0011564
[34] CCG0011565

42. I am not sure what De Alba is referring to at paragraph 40 when he says I included “further analysis regarding the telecommunications industry and critical research regarding the federal government’s policies concerning competition in the telecommunications space”. Other than layout and data input, I believe my only contribution to the content of the presentation was to create:

(a) the table at slide 3 setting out the financial and operational data for the Canadian wireless incumbents, and WIND Canada and Mobilicity; and

(b) the table at slide 6, which is the *pro-forma* I had prepared earlier that month.

43. With respect to the incumbents, I sourced this information from publicly available filings, and with respect to WIND and Mobilicity I would likely have sourced this from existing Catalyst work product. I do not recall researching the federal government’s policies. The remaining information in the presentation was either given to me on a mockup slide, or relayed verbally by Michaud and De Alba, and possibly Riley.

44. The slides may, as Glassman says at paragraph 16, have been based on extensive internal prior discussions with respect to deal priorities, but I was not involved in any such discussions and I did not draw on any knowledge I had about Catalyst’s interest in the telecommunications industry in creating them. The content was generated by Michaud, De Alba, and Riley. I was certainly not aware, as Glassman states at paragraph 18, of any Catalyst critical analyses concerning the industry, potential competing bidders for WIND, the government’s litigation risk, and the negotiating positions that Catalyst intended to take with the federal government.

45. I acknowledge, as Glassman states at paragraphs 16 and 17, that by transposing notes and creating this PowerPoint, I became privy to Catalyst's deal priorities and high level analysis, but I did not fully understand them because I lacked sufficient context. At the time in March when I prepared these slides, I had very little specific knowledge of or familiarity with Catalyst's interest in the telecommunications sector, other than what little I had learned at Monday meetings. Given the fact I had little context for the presentation, and the hurried manner in which it was created, I put very little thought into the items as I transposed them into the presentation, and was unable to retain much of the contents.

46. I could not say at the time, nor can I say even now, having reviewed the document as part of this litigation, how much of the information contained in the PowerPoint was fact, how much of it represented Catalyst's genuine views, and how much of it represented Catalyst's negotiating position with the government.

47. For example, on March 26 I was not aware of any formal discussions between Catalyst and VimpelCom, and would not have known whether or not the statement at slide 1 that "Catalyst is in advanced discussions with VimpelCom to gain control of WIND Canada" was true or was a bargaining position. I did not ask Michaud or anyone else at Catalyst about this statement, and only learned that Catalyst was in discussions to gain control of WIND on May 6, 2014.

48. Glassman and De Alba both overstate my understanding of the content of the PowerPoint presentation, and the extent to which I would have been able to distinguish Catalyst's positioning towards the government on the one hand, from its honest internal

views on the other. For example, paragraph 16 of the Glassman Affidavit says that I was aware of the critical nature of the regulatory clarifications in this presentation as well as Catalyst's alternative legal strategy. To the contrary, on March 26, 2014, I was not aware of the detailed analysis set out in paragraphs 20-28 of the Glassman Affidavit, nor was I involved in the specific analysis and conclusions found in paragraph 27 of the Glassman Affidavit.

49. Glassman states at paragraph 29 that I "understood [the] dynamic" with respect to the best of the three options set out in the presentation for Catalyst. I did not. I did not understand the options well enough to weigh and evaluate their respective merits to Catalyst, and did not have the necessary background on the file to arrive at such an understanding. I disagree with Glassman's characterization at paragraph 28 of the Glassman Affidavit that I was "intimately aware" of Catalyst's strategy.

50. By way of example, the presentation describes a number of "strategic options" at slides 7 and 8. "Option 1" is described as a "Combination of WIND Canada / Mobilicity to create a 4th National Carrier focused on retail market", and "Option 2" is described as a "Combination of WIND Canada / Mobilicity to create a 4th National Carrier focused on the wholesale market" on March 26, 2014. I was generally aware that both of these options were potential outcomes within the Canadian wireless industry. I cannot recall where I first learned about each of these options, but know I was aware of them both from public and newspaper reports, but also from discussions at Catalyst.

51. From these slides, I was aware that Catalyst was telling the government that it required the ability to exit its investment (i.e. sell it) with no restrictions in 5 years, and

that Catalyst would undertake that before selling to an incumbent (i.e. Bell, Telus or Rogers), to pursue an IPO or other strategic sale prior to the end of the 5-year period. I was also aware that there was a regulatory risk, as to whether the federal government would allow a new wireless entrant to transfer its spectrum, or be purchased by an incumbent. This was a fairly basic understanding available to anyone who read news reports of the Canadian telecommunications landscape. I did not have the detailed understanding described in the De Alba or Glassman Affidavits.

52. With respect to Catalyst's "Option 3", I was aware of the possibility of a court supervised sale of Mobilicity to Telus, but I was not aware of the potential for litigation with the federal government with respect to conditions imposed on the 2008 licenses, as described in the Glassman and De Alba Affidavits. I expressly deny Glassman's evidence at paragraph 28 that I specifically knew, and was involved in generating the specific analysis and conclusions found in Option 3 due to my involvement in the file. As of March 26, 2014, I had no such involvement or knowledge.

53. At my cross-examination on May 11, 2015, my evidence was that I recalled that this presentation related exclusively to Mobilicity. At that time, I had not seen either presentation or the one I was involved in some months later since I worked on them in 2014. Having now reviewed it as part of Catalyst's disclosure, I acknowledge my recollection of the March presentation was not correct.

54. After completing the presentation, Catalyst partners instructed me to destroy immediately all copies of the notes provided to me by De Alba, Riley and Michaud and

the electronic files. I did so. I understood and appreciated that this information was highly sensitive and confidential.

55. I did not attend the meetings in Ottawa with Industry Canada or the federal government, and never knew any particulars of the outcome or tone of those discussions until reviewing the Glassman and De Alba Affidavits.

4. Discussions with Catalyst consultant on regulatory and competitive environment

56. As further evidence of my "extensive involvement" in the Catalyst telecommunications team, De Alba cites my participation in a call with Johanne Lemay, who I understand from De Alba's affidavit was engaged by Catalyst to assist in understanding critical regulatory issues. This call took place on the morning of March 26, 2014 (the same day as I prepared the PowerPoint presentation for Industry Canada). I have no specific memory of reviewing the presentation which Lemay had provided shortly in advance of the call, which I attach as **Exhibit "29"**.[35] I also have no memory of participating in the call referenced in Michaud's covering email, attached as **Exhibit "30"**.[36] I have no memory of any further discussions with Michaud or anyone else at Catalyst about that call, and do not believe I ever met Lemay. This was the only time I was ever involved in a call with her.

[35] CCG0011561
[36] CCG0011563

57. Some weeks later, on May 7, 2014, De Alba asked Michaud, Creighton or me to send him Lemay's contact. I did not have it at the time, and Michaud eventually provided it to De Alba. I attach this email exchange as **Exhibit "31"**.[37]

5. Further work in March and April 2014

58. I believe that I did not do any work on Catalyst's telecommunications file, or learn anything further about the status of Catalyst's negotiations with WIND, between the day I worked on the presentation on March 26, 2014, and early May 2014. Following examinations for discovery, Catalyst produced a number of emails I was copied on in mid-April 2014 in which Glassman and Drysdale discuss a proposed transaction involving Mobilicity and Telus. I was not an active participant in these discussions.

59. I was not, as stated in the De Alba and Glassman Affidavits, kept intimately apprised of Catalyst's strategy. I was not involved in any analysis of a potential purchase of WIND, or any "critical tasks necessary to complete a transaction with VimpelCom", as described at paragraph 51 of the De Alba Affidavit.

60. As noted above, I was working on multiple other Catalyst projects during this time, and was spending approximately half my time out of the office.

E. My involvement in the WIND and telecommunications file May 6, 2014 – May 24, 2014

61. On May 6, 2014, I found out that Catalyst would be actively pursuing a transaction involving WIND.

[37] CCG0011614

62. Catalyst's team on the WIND deal consisted of De Alba, Michaud, Creighton, and me. Creighton was not originally on the team, but once Catalyst was invited to the data room, we needed more help, both from Creighton, and external advisors to assist with the work and diligence, including building the financial model for WIND. Catalyst's internal team focused on preparing the investment memorandum (which would set out Catalyst's investment thesis, and at the time of my departure, did not contain any regulatory strategy), and reviewing the external advisors' work. Creighton and I, the junior Catalyst employees, spent those first days learning about WIND, primarily by reviewing information made available by the company through a virtual dataroom.

63. Catalyst was initially working towards a May 23 deadline and the pace of work was frenetic. Though I do not recall precisely how my time was split between WIND and my other Catalyst duties after May 6, 2014, I still spent a significant amount of time on my ongoing responsibilities with respect to Catalyst's other portfolio companies.

64. My involvement on the WIND file was limited to a period of approximately three weeks from May 6 until May 24, 2014, when I resigned. For the last ten days of that three week period, starting May 16, 2014, I was on vacation in Southeast Asia and had almost no direct involvement on the file. My active work on the WIND file was, therefore, largely limited to the ten day period between May 6, 2014 and May 16, 2014, during which time I:

(a) attended two due diligence meetings with WIND management, Catalyst's internal team, and Catalyst's external advisors;

(b) assisted with crafting Catalyst's due diligence requests, which were based on information available in the WIND data room and otherwise publicly available;

(c) briefly worked on Catalyst's operating model, before the task was outsourced to Morgan Stanley; and

(d) helped Creighton on the initial draft of Catalyst's investment memorandum, which was still not complete at the time of my resignation.

65. As a member of Catalyst's team, I was regularly copied on numerous emails involving Catalyst's external advisors: Fasken Martineau (its legal advisors) and Morgan Stanley (its financial advisors). I reviewed these in the regular course of my duties, before I left for vacation. These emails dealt with various topics, including due diligence, the company's spectrum ownership, possible acquisition structures proposed by WIND, and later, draft share purchase agreements. I likely reviewed all the emails and documents that I received before I went on vacation.

66. I also received a number of emails from WIND, which attached correspondence and documents. I did not know at the time, nor do I know today whether these documents were provided only to Catalyst, or to others who may have been bidding on the WIND deal. Again, I likely reviewed all these documents before I went on vacation.

67. I reviewed these emails in the course of my duties, and by the time I left for vacation had developed some familiarity with Catalyst's diligence priorities and the business model Catalyst intended to pursue.

68. I was not, however, during this period, privy to any high level strategic discussions, as described in the De Alba and Glassman Affidavits. I was not, as stated at paragraph 77 of the De Alba Affidavit, “kept abreast of the inner workings of the deal process and [Catalyst’s] strategic thinking behind the WIND transaction”.

69. I had no particular understanding of Catalyst’s regulatory strategy, as the focus of my work from May 6 onwards was primarily business due diligence.

70. The only regulatory risks related to WIND of which I was aware from my involvement on the file, were:

(a) whether or not the federal government would allow a new wireless entrant to sell its spectrum and/or be purchased by an incumbent. I learned about this regulatory issue through the extensive media coverage it received in both the general and business news. I understood this was an issue for Catalyst; and

(b) the requirement for government approval of a sale. For instance, I was copied on an email early in the discussions from De Alba with respect to a draft share purchase agreement, which referred to Catalyst’s need to have conditions related to government approvals. I understood this to mean that the government had to approve the purchase or sale and that Catalyst wanted the transaction to be conditional on obtaining such approval. I was

not involved in any discussions about what De Alba's comment might otherwise have meant. I attach that email as **Exhibit "32"**.[38]

71. I did not analyze the subject of regulatory risk, or any other regulatory issues facing WIND, and if anyone at Catalyst did such an analysis before I left, I was not aware of it.

72. To my knowledge, Catalyst did not yet even have a working model of WIND or a complete investment memorandum when I resigned on May 24, 2014. Catalyst had not yet, to my knowledge, decided on the structure, price or regulatory risk mitigation, and given the status of Catalyst's diligence at the time, they could not have ascertained or resolved those issues.

1. I first become aware Catalyst pursuing the WIND deal, May 6, 2014

73. I first became aware that Catalyst would be actively pursuing a deal with WIND as a result of an email De Alba sent to me, and a number of others, on May 6, 2014, which I have attached as **Exhibit "33"**.[39] I have no memory of looking at the documents which were attached to the email, and did not have any real understanding of De Alba's comment in the email that "they are moving on the terms I proposed this a.m."

74. Over the course of that day and the following day, I was one of several recipients of further emails from Glassman and De Alba with respect to the deal, and the government's approach. I attach the balance of the exchange as **Exhibit "34"**.[40] In his email at 4:04 p.m., Glassman refers to a "need [for] condition of govt'al approval". I did

[38] CCG0011204
[39] CCG0009474
[40] CCG0009482

not know what exactly Glassman was referring to, since “government approval” could mean a number of things.

75. Despite Glassman’s comment in that email that due diligence could be confined primarily to spectrum ownership and opinions, the diligence I was ultimately involved in, described below, had nothing to do with these issues.

76. De Alba responded to Glassman the following day, at 2:35 p.m. From De Alba’s email, I understood that Catalyst’s strategy was to monetize its investment, and that Catalyst’s position with the government was that it required clarity on the ability to sell spectrum and/or monetize the investment. He speculated that the government was “probably watching Mobilicity and … unwilling to experience a similar mess.” From this I gathered that De Alba was proposing that Catalyst position the situation with Mobilicity (which was in creditor protection and whose future was uncertain), to its advantage as the government would want to avoid that outcome.

77. Glassman responded that evening, May 7, 2014, at 7:59 p.m. that the government had advised Catalyst that they were not willing to give Catalyst, in writing, the right to sell spectrum in five years. Glassman went on to say that this “takes ‘option 1’ off the table and [Catalyst] would only be willing to build a ‘wholesale/leasing business’ specifically w incumbents as the customers”. I became aware of Catalyst’s position, and the status of its discussions with the government through this email.

78. I did not understand from this email, as Glassman asserts at paragraphs 33 and 34 of his affidavit, that:

(a) Catalyst had knowledge that the federal government and Industry Canada's posture was "softening" and they were concerned about the retroactive treatment of the 2008 spectrum licenses;

(b) it was Catalyst's strategy to deliver to Industry Canada and the federal government a "dream deal" of merging Mobilicity and WIND;

(c) Catalyst intended to put the federal government in a position of having no choice but to provide the regulatory approvals requested by Catalyst for its options 1 or 2; or

(d) Catalyst believed the government's position that it would not provide Industry Canada with a written agreement to sell spectrum licenses in five years to be a negotiation posture.

2. May 12, 2014 presentation to Industry Canada

79. In mid-May, 2014, Catalyst's partners made a second presentation to Industry Canada. I attach a copy of my cover email distributing the finalized presentation and the presentation itself as **Exhibits "35"**[41] and **"36"**[42] to this affidavit. As with the presentation in March 2014, my role was largely administrative. I did not "lead" its creation.

80. I was instructed to re-create a modified version of the March slide deck. We were not starting from scratch, but I recall that we did not have an electronic copy of the slides. I had complied with Riley's instructions, and had not retained an electronic copy

[41] CCG0009516
[42] CCG0009517

or hard copy of the March 2014 presentation. Someone else provided me with a hard copy of the document. I do not recall who that person was.

81. De Alba, Michaud and Riley then marked up that hard copy of the March 24 presentation. They provided me their comments and changes, which I inputted into a new PowerPoint file. I recall that all three of these individuals were, as with the first presentation, providing me with handwritten changes and comments to input into the presentation. As with the first presentation, given the hurried manner in which it was created, and my largely administrative role, I put little thought or analysis into the PowerPoint, and whatever work I did, I was instructed to do by one of De Alba, Michaud or Riley.

82. When I was transcribing the information into the slides, I understood that the presentation was Catalyst's framing of the situation with VimpelCom to the federal government and Industry Canada. I did not know what was fact and what was merely a negotiating position, and I still lacked context to understand certain aspects of the presentation. For example, the fourth slide states that "the feasibility of creating a fourth wireless network has been reduced due to lack of direction." I do not recall there being issues around feasibility in creating a fourth carrier from Catalyst's perspective. I do not understand today what that statement means, and I do not believe I would have understood at the time.

83. The only information or charts in the PowerPoint that I recall creating are:

(a) the chart on the third slide, a bar diagram. I would likely have pulled the data to create this bar graph from the WIND data room; and

(b) the chart on the fourth page, which sets out "Mobilicity and WIND Canada: Combined Pro-Forma", based on the *pro-forma* I created in early March, described above.

84. I still, at this time, did not have sufficient context to understand Catalyst's analyses, strategies and intended tactics with respect to regulatory concessions as set out in paragraphs 36-38 of the Glassman Affidavit, let alone the ability to present Catalyst's strategy myself to someone else. In any event, I did not do so.

85. Contrary to the assertion at paragraph 39 of the Glassman Affidavit, I have no recollection of receiving any update from Glassman or any other Catalyst partner about what occurred at that meeting, let alone the immediate update on Industry Canada and the federal government's position regarding Catalyst's requested regulatory concessions, which Glassman describes.

3. Contributions to Catalyst's due diligence

86. I was actively involved in Catalyst's early due diligence commencing on May 7, 2014. Michaud forwarded Lorne and me an email from De Alba, requesting comments on the due diligence list prepared by Morgan Stanley. I attach the email as **Exhibit "37"**[43] and the diligence list itself at **Exhibit "38"**.[44] I reviewed the list quickly, and based on my experience reviewing such lists, identified a number of items which were typically included in such lists, and suggested to Michaud that these missing items be included. Creighton also made a number of suggestions. I attach our emails providing

[43] CCG0011118

[44] CCG0011121 The document is also included in my productions at BM0004652, as I saved the document on my computer at home for the purposes of reviewing and providing comments on it.

comments as **Exhibit "39",**[45] and the comments which Michaud passed on to De Alba and Jonathan Levin (of Fasken Martineau) as **Exhibit "40".**[46]

87. This exchange exemplifies how the work flowed on the WIND deal: De Alba would assign Michaud a particular task, and Michaud would then delegate it to Creighton or me. Despite the statement at paragraph 77 of the De Alba Affidavit that Creighton and I should be copied on all communications so we would be "kept abreast of the inner workings of the deal process and our strategic thinking behind the WIND transaction", I know now from having reviewed the productions that I was not involved in these discussions.

88. In the following days, Michaud, Creighton and I coordinated Catalyst's additions to the due diligence list and sent them these to Morgan Stanley. I attach an email I sent to Morgan Stanley as **Exhibit "41".**[47]

89. On Friday, May 9, 2014, I attended a meeting with Catalyst and its advisors, and WIND's management team. I believe that the meeting was held at the offices of Vimpelcom's financial advisors, UBS Investment Bank. I recall the meeting was attended by Michaud, Creighton, De Alba, likely a few people from Morgan Stanley and Faskens, and me.

90. I believe that I took handwritten notes at the meeting, and was instructed to provide these notes to Creighton, who consolidated the notes into what ultimately became the investment memorandum discussed below. I attach the document in which

[45] CCG0011618
[46] CCG0009483
[47] CCG0011123

Creighton consolidated the participants' notes from the meeting as **Exhibit "42".**[48] I do not believe I was involved in preparing this document, other than that my notes were incorporated into it. I accept that Creighton's consolidation of the notes would provide a fairly accurate summary of the meeting.

91. On May 14, 2014, I attended a second meeting involving Catalyst, Morgan Stanley, UBS and WIND management. I do not recall attending this meeting, but know that I did so from reviewing the productions in this action. From these documents, it appears that WIND had referred to a number of documents with respect to its spectrum which they could provide to Catalyst. I followed up with Morgan Stanley on this point. I do not recall there being any further follow-up from this email. I attach a copy of the email chain with respect to my request for the documents as **Exhibit "43".**[49]

4. Investment memorandum

92. Following the meeting on May 9 with WIND management, De Alba wrote to Michaud, Creighton and me requesting that we begin to put together an investment memo based on the Catalyst participants' notes. I attach a copy of De Alba's request as **Exhibit "44"**,[50] and the last draft of the memorandum to which I contributed before I resigned as **Exhibit "45"**.[51] An investment memo, in my experience at Catalyst, contained a summary of the business, its financial history, valuation, the competitive landscape, and follow-up or diligence items.

[48] CCG0011139
[49] CCG0010037
[50] CCG0011138
[51] CCG0010041

93. While I was involved in drafting the investment memo, Creighton took the lead on it. Given the nature of the document, it made the most sense for one person to take the lead, and for the other to assist him by completing discrete tasks. My contributions were focused on gathering and formatting information which was publicly available into a format which would be useful for the purposes of the memo, and discussing and providing Creighton with feedback. Our email exchange, on May 10, 2014, reflects how we divided the work: Creighton worked on putting the document into memo format, and I worked on charts and tables. I attach this exchange as **Exhibit "46"**.[52]

94. I may have contributed certain individual sentences or paragraphs which I cannot now identify, and some of the content may have been sourced from my notes from the initial May 9 meeting with WIND management. Specifically, upon reviewing this draft of the memo while preparing my affidavit, I believe I made the contributions set out below:

(a) I assisted Creighton conceptually with the "waterfall analysis" found on page 4, and discussed it with him. This analysis determines what different pieces of the capital structure may be worth. Creighton ultimately did the analysis himself;

(b) I created the chart on page 11 setting out WIND's historical financials and performance. I likely obtained this information from the WIND data room;

(c) I created the charts on pages 12, 13, 14 and 15. I likely sourced the information with respect to WIND from the WIND data room, and with respect to Bell, Telus and Rogers from publicly available information;

[52] CCG0028667

(d) I created the chart labelled "Financial Operational Summary" on page 18. I likely obtained this information from the WIND data room; and

(e) I created the charts on pages 19-22 using information from the WIND data room.

5. Early work on operating model

95. On May 8, 2014, Michaud directed Creighton and me to begin work on an operating model for WIND. The email from Michaud containing this assignment is attached at **Exhibit "47".**[53]

96. I recall that Creighton took the lead on preparing this model, and I provided input to him. We quickly found, however, that we were missing information which would be necessary to build a model, and began to work on a list of questions to obtain the necessary information, including basic questions to help us understand the business. I attach the email exchange among Michaud, Creighton and me setting out our questions, and Creighton's update on the status of the work as **Exhibit "48".**[54] We did not do any further work on the operating model, as Morgan Stanley eventually took responsibility for it.

97. After Morgan Stanley took over creating the operating model, I was likely involved in discussions between Morgan Stanley and WIND management's financial representatives with respect to it, but I have no specific memory of these discussions.

[53] CCG0011619
[54] CCG0011631

6. Catalyst work while on vacation

98. From May 16, 2014, to May 25, 2014, I was on vacation in Southeast Asia and had almost no direct involvement on the file. I was concerned that the WIND project might interfere with my vacation, but no one put any pressure on me, or even suggested that I consider rescheduling the vacation.

99. As described in greater detail below, I received a verbal offer from West Face on May 16, 2014, the first day of my vacation. I told Michaud that day by e-mail that I had an offer, and he put me in touch with one of his connections who had previously worked at West Face.

100. While I was away, I continued to be copied on emails, and reviewed the emails as they arrived to see if anyone had directed a specific task to me. To the extent an email did not assign me a particular task, or request a response, I did not read it or any attachments closely.

101. On May 19, 2014, Michaud asked Creighton and me to review and comment on a preliminary model for WIND prepared by Morgan Stanley. I attach a copy of Michaud's request as **Exhibit "49"**.[55] Because this message made a specific request of me, I reviewed the document and replied. I asked Michaud whether Catalyst was still contemplating buying WIND debt-free, as I thought that the $300 million purchase price would buy out all of the vendor financing, and shareholder loans would disappear as well. I believe that this was something which was discussed at the due diligence

[55] CCG0011275

meetings with WIND. The operating model attached to the email marked as Exhibit 49 appeared to me to be modelled on a different approach.

102. Otherwise, I had little involvement in the WIND file while on vacation. I exchanged a number of emails with Creighton on our personal email accounts and in one of those emails I asked him for an update on WIND. I was curious about what was going on with the transaction since I had not been following the emails closely, and did not know what discussions were taking place internally. Creighton responded telling me that at that point he had "no real idea what's going on or if we're actually going to do the deal." This reflected the reality that analysts on the WIND team were not directly involved in strategic or high-level discussions about the deal. I attach my exchange with Creighton as **Exhibit "50"**.[56]

103. On May 23, 2014, before I officially resigned, I exchanged further emails with Creighton on our personal accounts. At this point I had decided to give notice at Catalyst, despite the fact that I had not finalized my written offer with West Face. I asked Creighton if Catalyst had made a WIND bid. That day, May 23, had been the deadline for submitting bids, and I was curious about the status of Catalyst's deal. Creighton responded that he thought Catalyst had made a bid. I did not read the share purchase agreement which was circulated on my Catalyst email account. The document was lengthy, and given my intention to depart Catalyst, I was not interested in reading it. I attach my exchange with Creighton as **Exhibit "51"**.[57]

[56] BM0004979
[57] BM0004983

F. My knowledge of Catalyst's involvement in WIND following my resignation

104. On May 24, 2014, I sent an email to De Alba and gave Catalyst official notice of my resignation. It was the second-to-last day of my vacation. I deliberately chose to keep my resignation notice as short as possible. I intended to discuss my resignation in person with De Alba when I returned to the office two days later, and I wanted to be able to see De Alba's reaction to my resignation and departure for West Face. Seeing his reaction would allow me to respond appropriately to any concerns he may have, and hopefully maintain a good relationship with my soon to be former employer. I attach a copy of my resignation notice to De Alba as **Exhibit "52"**.[58]

105. I did not, as De Alba and Glassman imply, deliberately withhold the fact I was going to West Face in my May 24 email because I knew that West Face was also pursuing the WIND deal. I did not know this, so it had nothing to do with how I communicated my resignation to Catalyst. I do not recall De Alba stating at any Monday meeting, as he states at paragraph 121 of his affidavit, that West Face was a likely bidder for WIND.

106. On Monday May 26, 2014, I came to work and met with De Alba. De Alba advised me that Catalyst "may view" West Face as a competitor because it has in the past been involved in some deals in which Catalyst also had an interest. De Alba included WIND in this characterization. This was the first time I recall hearing any suggestion that West Face could be interested in WIND. I had no way of verifying the accuracy of De Alba's statements in this respect. I did not learn that West Face may also have been pursuing a WIND transaction until West Face set up a confidentiality

[58] CCG0018691

wall with respect to the transaction on June 19, 2014, and did not know that West Face had actually been pursuing a WIND transaction until I learned it had closed the deal in September 2014.

107. De Alba told me to stay home for the balance of my notice period (approximately 4 weeks). I did so, and did no Catalyst work during that period. To the best of my recollection, I did not attempt to log on to the Catalyst system during that period.

108. I first learned West Face had closed the WIND deal in September 2014 from Twitter. I was surprised by the news, and thought it was an incredible coincidence that the firm I had gone to, West Face, had bought a company that my former company, Catalyst, had been bidding on. At this point all I knew about West Face's interest in WIND was that they had put up a confidentiality wall with respect to WIND before I started work. I attach a number of the emails which I sent to friends and family at the time of the transaction, expressing my surprise, as Exhibits **"53"**,[59] **"54"**,[60] **"55"**,[61] **"56"**,[62] **"57"**,[63] and **"58"**.[64]

G. My communications with West Face

109. Catalyst alleges that I passed on Catalyst confidential information regarding WIND to West Face between March 26, 2014 and June 4, 2014. I did not do so.

[59] BM0004987
[60] BM0004988
[61] BM0004989
[62] CCG0028632
[63] BM0004990
[64] BM0004991

110. It alleges I was in "near constant" contact with West Face during this period by way of email and phone. This is an overstatement.

111. During this particular period, my communications with West Face representatives were limited to discussions with respect to my recruitment, the terms of my employment, and Catalyst's position that I was in breach of the Employment Agreement. At no time did I discuss my work at Catalyst in the telecommunications industry, or on WIND with anyone at West Face. At no time did I pass on Catalyst confidential information with respect to WIND, or Catalyst's telecommunications strategy.

112. In this section I set out all of my meetings and contacts with West Face representatives during this period.

113. By late 2013, I was unhappy with my work at Catalyst, and began to search for a new position. I began to look for a new position in earnest in March 2014. At that time, I contacted a number of potential employers, including West Face. West Face was my top choice throughout the process, but there were a number of delays in their recruitment process, and I was not sure they would offer me a position until I received a verbal offer in mid-May. I attach email exchanges with my girlfriend (now fiancée), in late March and April 2014, in which we discussed my job search as **Exhibits "59"**[65], **"60"**,[66] and **"61"**.[67]

114. I had previously been in touch with Thomas Dea at West Face when I was looking for a position in Toronto in 2012. We did not stay in regular contact. I sent him

[65] BM0004982
[66] BM0004968
[67] BM0004969

an email in December 2013 to which he never responded. I emailed him again in March 2013 when I began to look for a job earnest, to tell him I was looking at exploring other employment opportunities. After some back and forth, we arranged to meet for coffee on March 26, 2014. I attach a copy of our exchange scheduling the meeting, and a follow-up question arising from the meeting as **Exhibit "62"**.[68]

115. At our meeting on March 26, Dea and I discussed my background, my duties and the skills I had developed at Catalyst, why I was interested in West Face, and why I was think about leaving my current position. He told me about the type of work West Face did, and about their potential needs, though he was not sure whether or not West Face would be hiring anyone at my level. We did not discuss any of my specific work at Catalyst, and we did not discuss WIND or the telecommunications industry. After our meeting, at 9:31 p.m. that night, Dea sent me a question.

116. At our meeting on March 26, Dea had requested that I send him a number of research and writing samples to gauge my research and writing ability. He specifically asked that I not provide confidential information. On March 27, 2014, at 1:47 a.m., I replied to Dea's 9:31 p.m. message, and attached four company research pieces that I created at Catalyst, three of which contained compilations of public information, and some of which were marked as confidential, along with my resume. I did not answer Dea's question. I intended only to provide West Face with examples of my written work and my research abilities. Providing these documents to West Face was a mistake. I should not have done so.

[68] WFC0031090

117. Having realised that I should not have sent the confidential documents to West Face, I deleted that message from my email account. I recognize now that deleting the sent item was not the appropriate way of addressing my mistake. I attach a copy of the email and the attached memos contained in West Face's productions as **Exhibit "63".**[69]

118. A week or so after my meeting with Dea, on April 7, 2014, I sent Dea a follow-up email, and he later responded that West Face would like me to come into the office to meet some other people. I attach this email chain as **Exhibit "64"**,[70] and Dea's email to me a few days later asking me to coordinate a time to come into West Face's office as as **Exhibit "65"**.[71] I was very excited to be asked back in, and emailed my girlfriend about it on April 10, 2014. I attach that email as **Exhibit "66"**.[72] I originally thought I would be meeting with Greg Boland, the head of West Face, but I met him a few weeks later.

119. On April 15, 2014, I met with Peter Fraser, Tony Griffin and Yu-Jia Zhu in the West Face office. I met with each of them sequentially for a series of short interviews. My interviews with Fraser and Griffin were very similar to my interview with Dea in March: we discussed my interests and ambitions, the kind of work I had done at Catalyst in general terms without identifying any specific companies, why I was interested in West Face, and why I was thinking of leaving Catalyst. I recall that at my interview with Zhu, in addition to discussing these topics, he also provided me with a hypothetical work problem, and we discussed how I would begin to approach an

[69] WFC0108593, and its attachments WFC0108597, WFC0108649, WFC0108670, WFC0108694 and WFC0108730
[70] WFC0031096
[71] WFC0031098
[72] BM0004971

analysis of that problem. At no time did I discuss WIND or the telecommunications industry during these meetings.

120. On April 24, 2014, Dea asked me to come back into the office to meet with Boland. I attach the email from Dea requesting I schedule a time to meet with Boland as **Exhibit "67"**.[73] I met with Boland on April 28, 2014, and sent him a thank you email that evening, which I attach as **Exhibit "68"**.[74] My discussion with Boland was brief, and similar to my previous discussions with West Face representatives. We did not discuss WIND or the telecommunications file. In any event, at the time of my interviews with Boland, Fraser, Griffin and Zhu, I was not aware that Catalyst was actively pursuing WIND, or would soon be.

121. On May 2, 2014, I sent Dea a follow-up email advising him of my interview status with another firm, and a few days later he followed up asking for my compensation information. On May 9, 2014, Dea requested a number of additional references, which I provided. I attach that email chain as **Exhibit "69"**.[75] Even though I thought it was a good sign that West Face was asking for additional references, I was stressed that I still did not have a job offer, and frustrated with the slowness of West Face's process. I was also increasingly unhappy at Catalyst. I expressed my frustration to my girlfriend in emails around this time, which I attach as **Exhibits "70"**[76] and **"71".**[77]

[73] WFC0031131
[74] WFC0031144
[75] WFC0031155
[76] BM0004976
[77] BM0004974

122. On May 16, 2014, Dea sent me an email asking that I call him when I had a chance. I did so, and he verbally offered me a position with West Face. While I was thrilled to receive the offer, I did not want to accept Dea's verbal offer until I had a written offer which I could review with legal counsel. On May 22, 2014, I sent Dea a follow-up email asking him for a copy of a written offer. I attach our entire email chain from this period as **Exhibit "72"**.[78]

123. Later that day, May 22, 2014, Alexander Singh, West Face's General Counsel and Secretary, sent me a copy of West Face's written offer for my review. I attempted to set up calls with Singh and Dea to discuss the agreement and my position. I attach copies of these emails as **Exhibits** "**73"**[79] and **"74"**. [80]

124. As described above, on May 24, 2014, I resigned from Catalyst. I had decided at that point to leave Catalyst regardless of whether or not I had a signed agreement with West Face.

125. On May 26, 2014, West Face and I reached an agreement with respect to the terms of my employment agreement, and both parties executed the agreement. I attach Singh's cover email enclosing the fully executed agreement as **Exhibit "75"**,[81] and the agreement itself as **Exhibit "76"**.[82]

[78] WFC0031163
[79] WFC0031168
[80] WFC0109294
[81] WFC0032710
[82] WFC0075090

126. On May 26, 2014, after I resigned from Catalyst, I sent Singh an email reporting on my discussions with De Alba, and that Catalyst's counsel would be contacting him. I attach a copy of my reporting email as **Exhibit "77"**.[83]

127. Over the following weeks, before I began work, the only discussions I had with anyone at West Face were with respect to human resources issues, the WIND confidentiality wall, and issues related to this litigation.

128. On June 19, 2014, before I started at West Face, I received a copy of a memorandum from Supriya Kapoor, West Face's Chief Compliance Officer, advising me that a confidentiality wall had been established with respect to WIND under which I was not permitted to discuss any information I had regarding WIND with others at West Face, or to take any active steps regarding WIND. I attach a copy of this memorandum as **Exhibit "78"**[84] to my affidavit. I complied with the instructions in the memorandum.

129. In addition, Singh advised me that West Face was concerned about the Catalyst memos I had provided to Dea.

130. He also reminded me of my confidentiality obligations to Catalyst, and the importance of respecting those obligations.

131. I understand and respect the obligation to preserve the confidentiality of my former employer's information. West Face was absolutely clear with me about the importance of respecting and abiding by that confidentiality obligation.

[83] WFC0032731
[84] WFC0000050

132. I worked at West Face briefly, between June 23, 2014 and July 16, 2014. During this brief period working at West Face, I did not work on anything related to WIND. I did not discuss WIND with anyone at West Face.

133. As part of this litigation, West Face has produced its phone records recording incoming and outgoing calls to me. I attach this document as **Exhibit "79"**.[85] The following are my recollections of the calls recorded on this table:

(a) May 22, 2014: this was likely a call I received from Singh with respect to the terms of my employment agreement;

(b) May 23, 2014: this was a call I made to Dea, likely with respect to my compensation and title;

(c) June 9, 2014: I have no specific memory of receiving a call from West Face;

(d) June 16, 2014: I called Alison Campbell who is involved in human resources at West Face. We likely discussed human resources issues;

(e) June 19, 2014: I do not specifically recall calling Kapoor that day, or receiving a call from West Face, but this was the same day that the Catalyst confidentiality wall went up and our conversation was likely with respect to that topic;

[85] WFC0109530

(f) July 8, 2014: I have no specific memory of receiving a call from West Face that day;

(g) July 15, 2014: I have no specific memory of receiving a call from West Face that day;

(h) August 8, 2014: I believe this call related to human resources matters;

(i) August 15, 2014: I do not recall what I discussed on this call with Kapoor;

(j) November 25, 2014: I do not specifically recall this conversation but at the time I was placing a number of trades, and I believe this call was in relation to clearing those trades;

(k) February 10, 2015: I do not specifically recall this conversation with Kapoor, but it was likely in relation to records from my securities accounts; and

(l) September 2, 2015: this call to Phil Panet, West Face's General Counsel, related to my resignation from West Face.

H. Preservation of relevant documents

134. Following my resignation from Catalyst and the announcement of my intention to begin working for West Face, Catalyst commenced this action against me and West Face, seeking a variety of relief including injunctive relief. Catalyst expressed concern that, among other things, I would transfer confidential Catalyst information to my new employer.

135. In connection with Catalyst's initial motion for interim relief, I am aware that the parties attended Motion Scheduling Court on June 30, 2014. Although I was not in attendance on that date, and my counsel did not attend, I am aware that Andy Pushalik, West Face's counsel, entered into an undertaking on behalf of West Face and me. I attach a copy of the undertaking as **Exhibit "80"**.[86] That undertaking provided as follows:

> Defendants' counsel agree to preserve the status quo with respect to **relevant documents** in the defendants' power, possession or control. (emphasis added)

136. I was advised of that undertaking by my counsel, and I understood and complied with it. I preserved the status quo with respect to any relevant documents in my power, possession or control. After Catalyst commenced this litigation, I did not delete any relevant emails or documents from my computer.

137. On July 16, 2014, the parties consented to an order, which was signed by Mr. Justice Firestone (the "Firestone Order"). I attach a copy of the Firestone Order as **Exhibit "81".**[87] It included a number of terms with respect to each of the parties, including the following terms relevant to me:

> 1. THIS COURT ORDERS that pending a determination of an interlocutory injunction or until varied by further Order of this Court, the defendant Brandon Moyse ("Moyse"), or anyone acting on his behalf or at his direction, is enjoined from using, misusing or disclosing any and all confidential and/or proprietary information, including all records, materials, information, contracts, policies, and processes of [Catalyst] and all confidential information and/or proprietary third party information provided to Catalyst.
>
> 2. THIS COURT FURTHER ORDERS that until an interlocutory injunction is determined or until varied by further Order of this Court, Moyse is enjoined from engaging in activities competitive to Catalyst and shall fully comply with the restrictive covenants set forth in his Employment Agreement dated October 1, 2012.

[86] WFC0081951
[87] WFC0081954

> 3. THIS COURT FURTHER ORDERS that Catalyst shall pay Moyse his [West Face] salary throughout this period.
>
> 4. THIS COURT FURTHER ORDERS that Moyse and West Face, and its employees, directors and officers, shall preserve and maintain all records in their possession, power or control, 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 this action**, except as otherwise agreed to by Catalyst.
>
> 5. THIS COURT FURTHER ORDERS that Moyse shall turn over any personal computer and electronic devices owned by him or within his power or control (the "Devices") to his legal counsel, Grosman, Grosman and Gale LLP ("GGG") for the taking of a forensic image of the data stored on the Devices (the "Forensic Image"), to be conducted by a professional firm as agreed to between the parties.
>
> 6. THIS COURT FURTHER ORDERS that the costs of the Forensic Image shall be sent to and borne by Catalyst.
>
> 7. THIS COURT FURTHER ORDERS that the Forensic Image shall be held in trust by GGG pending the outcome of the interlocutory motion.
>
> 8. THIS COURT FURTHER ORDERS that prior to the return of the interlocutory motion, Moyse shall deliver a sworn affidavit of documents to Catalyst, including copies of Schedule "A" documents, setting out all documents in his power, possession or control, **that relate to his employment with Catalyst** (the "Documents"). Moyse shall also advise whether any of the Documents have been disclosed to third parties, including West Face, and the details of any such disclosure. (emphasis added.)

138. I understood the terms of the Firestone Order and complied with them in full.

139. Further to the Firestone Order, I agreed to deliver my personal electronic devices, including my computer, to my counsel on Monday July 21, 2014, which was 5 days after the order was issued. I understand that on July 17, 2014, counsel were discussing the terms of the forensic imaging, and that Monday July 21, 2014, was the earliest date on which the image could be made.

140. I understood that, pursuant to the Firestone Order, a forensic image would be created of my computer's hard drive for the purpose of determining what, if any, documents I had in my possession that related to Catalyst or to the issues raised in Catalyst's lawsuit. I had been aware for a number of days before the court appearance

on July 16, 2014, that it was possible that my personal computer would have to be turned over to be reviewed for documents relevant to this matter.

141. I was not concerned that my devices would be reviewed to identify relevant documents that related to Catalyst or to the issues raised in Catalyst's lawsuit: I had good, reasonable explanations for every Catalyst-related document that would be found on my computer, set out in my previous affidavits, and in any event intended to disclose all such documents in my affidavit of documents, as required under the Firestone Order.

142. I was, however, concerned that an image of my computer hard drive would capture not only the Catalyst documents in my possession, which I agreed were relevant to this proceeding and which I would preserve in any event, but also a raft of irrelevant personal information. In particular, I was troubled that Catalyst would have access to my personal Internet browsing history, which was not relevant to the matters in dispute in this litigation but would be embarrassing to have reviewed by others. I use the Internet on my personal computer for, among other things, recreational online gambling, online gaming, and adult entertainment websites. I was particularly concerned that my personal internet browser history would show that I had accessed adult entertainment websites.

143. I was also concerned that the irrelevant information on the images would somehow become part of the public record through this litigation. At that point it was not clear to me what would happen to the images, which would include this irrelevant personal information. The parties had not agreed to appoint an Independent Supervising Solicitor, nor had a Document Review Protocol been implemented to

prevent Catalyst from accessing such irrelevant information and to ensure that it did not end up in the public record.

144. I therefore decided that, prior to delivering my computer to counsel, I would attempt to delete my Internet browsing history from my computer. I did not and do not believe that there was anything improper about my doing so – neither the undertaking nor the Firestone Order required me to maintain my computer "as is" for the 5 days before I was to deliver the computer or to preserve clearly irrelevant files. The focus of both the undertaking and the Firestone Order was to maintain and preserve documents relevant to this action. If the undertaking or the Firestone Order had required me to maintain the computer "as is", I would not have used it at all prior to the image being taken.

145. Though I am comfortable using my computer and other devices on an everyday basis, I do not have a great deal of advanced knowledge about computers. However, I was aware that the mere act of deleting one's Internet browsing history through the browser program itself does not fully erase the record, and that a forensic review of a computer would likely capture some or all recently deleted material. I did some Internet searches on how to ensure a complete deletion of my Internet browsing history, and many websites said that cleaning the registry following the deletion of the Internet history would accomplish this.

146. I then did some further online research for "registry cleaning" products, and ultimately purchased two software products from a company called "Systweak". A print-

out of Systweak's home page (www.systweak.com) is attached as **Exhibit "82"**[88] to this affidavit. The website lists two of its "top products", called "RegCleanPro" and "Advanced System Optimizer". The website describes the "Advanced System Optimizer" product as an "all in one PC tuneup suite," and describes the "RegCleanPro" product as "Software to optimize the registry."

147. I decided to purchase "RegCleanPro" on July 12, 2014 for the purpose of deleting my Internet browser history, out of my concerns about my irrelevant Internet search history becoming part of a public record.

148. Four days later, on July 16, 2014, I purchased "Advanced System Optimizer" from the same company, "Systweak". My intention was to use this program to improve my system's functionality, and it seemed to provide a full suite of optimization products. Both "Advanced System Optimizer" and "RegCleanPro" were relatively inexpensive (approximately $30-$40 each).

149. On July 20, 2014, the day before I was to deliver my computer to my counsel, I opened both software products on my computer and looked into how each operated. To the best of my recollection, I ran the "RegCleanPro" software to clean up the computer registry after I deleted my Internet browser history.

150. As described above, I certainly loaded the "Advanced System Optimizer" software onto my computer and investigated what products it offered and what the use of those products would entail. I am certain that I did not run the "Secure Delete" product included in the "Advanced System Optimizer" suite of products, and I can say

[88] BM002046

with absolute certainty that I did not use that product or any other to delete any Catalyst documents or anything else from my computer that could have been relevant to this litigation. Since my computer was returned to me after the image was taken, I have used “Advanced System Optimizer” a number of times to clean up my computer and optimize its functioning.

151. On July 21, 2014, I delivered my personal electronic devices to my counsel’s office, as scheduled. I understand that an image was then taken of those devices.

152. I understood and respected my obligations under the undertaking and the Firestone Order. I took my obligations under each very seriously, and never intended to breach either.

153. To be perfectly clear, in deleting my Internet browser history, I did not intend to destroy any evidence relevant to this litigation, and I do not believe that I did so. In any event, I did not intend to delete my web browser history in order to affect the outcome of the litigation.

154. I learned for the first time from De Alba’s examination for discovery that Catalyst appears to allege that I sent emails to West Face containing confidential Catalyst information pertaining to the WIND transaction, and that I subsequently destroyed such emails. I absolutely deny this suggestion. I sent no such emails. Moreover, I never deleted or destroyed any emails, or other evidence, in order to affect the outcome of this litigation.

I. Response to other allegations in the Riley Affidavit

155. At paragraph 25 of the Riley Affidavit, Riley summarizes certain of Martin Musters' findings in connection with his analysis of my workplace computer. Although I addressed these issues in my earlier affidavits, I think my responses bear repeating here, given Catalyst's allegations.

156. With respect to the specific allegations, I note as follows:

(a) Regarding paragraph 25(a): At the time I reviewed old Catalyst investor letters, I was intending to leave Catalyst and looked over investor letters to look for potentially negative statements made by Glassman about employees who left the firm. The reason I skimmed the documents quickly was because the personnel updates were always at the end of the letters, so I skipped to the bottom of each letter to check whether it contained any relevant information for my search. Riley also notes many of the letters that I reviewed concerned Catalyst's Stelco investment. I believe that Catalyst exited that investment in 2008, and the company no longer exists.

(b) Regarding paragraph 25(b): I frequently reviewed old transaction files out of personal curiosity, and in order to enhance my education in the business. It was for this reason that I opened several files pertaining to Catalyst's investment in Stelco. However, due to the complete lack of context I found them very complex and did not take the time to try to understand them.

(c) Regarding paragraph 25(c): I downloaded these documents from the WIND data room at the beginning of our due diligence review. I downloaded them in quick succession to review them to see if they contained any useful information while doing the due diligence work described above.

(d) Regarding paragraph 25(d): The Box accounts in question were established either by Catalyst or by Catalyst portfolio companies, with full knowledge of Catalyst, for the purpose of information-sharing. These accounts were not personal to me. The Dropbox account was personal.

(e) Regarding paragraph 25(e): Analysts at Catalyst were expected to work extremely long hours, including from home and while out of the office. Catalyst's remote access system, which Riley refers to, was very poor quality, particularly when travelling. By the end of 2013 and through the balance of my employment, I was frequently travelling 3-5 days a week. It was generally more efficient, when working outside the office, to email documents to myself and work locally. This was a common practice among Catalyst employees. Moreover, this was my approach to working outside of the office throughout my entire tenure at Catalyst; it was not something I started doing once I decided to resign my employment with Catalyst.

157. In response to the allegation at paragraph 26 of the Riley Affidavit, it is true that I "wiped" the data from my Blackberry prior to returning it to Catalyst. My Blackberry

contained photographs and text messages of a personal and private nature, and I thought it was completely reasonable to take steps to ensure that they would not be accessible to the next user of the company-issued Blackberry. The only email address associated with the Blackberry was my Catalyst email address, and Catalyst had full access to those emails on its server.

158. Riley states, at paragraph 30 of the Riley Affidavit, that I apparently intended to deceive the Court when I stated that there was no basis to search my personal computer in my first affidavit in this action. At the time I made that statement, I did not realize that I had all the documents that I did on my personal computer. I typically set up work folders on my computer to organize my work, and I had deleted all those folders and the documents therein when I left Catalyst but before any preservation order was made in the course of these proceedings. I was unaware that the original copies remained in the “My Documents” and “Downloads” folders (which is where the original documents were stored before being copied into the work folders). As noted in the ISS Report, virtually all the documents on my computer that contained Catalyst information were ultimately located in these folders.

J. Effect of this litigation on my life and career

159. I ceased working at West Face as of July 16, 2014, the date of the Firestone Order, and remained off work due to this ongoing litigation. As it became clear that this litigation would not be ending any time soon, my employment was terminated without cause on August 31, 2015. West Face and I mutually agreed that the termination of my employment resulted from my resignation, and West Face provided me a lump sum

payment in lieu of notice. I attach a copy of the termination letter, dated August 24, 2015 as **Exhibit "83"**[89] to this affidavit.

160. It was incredibly stressful for me and my fiancée for me to be off work without any certainty as to when I could resume my career. Even more stressful was the almost year-long period during which Catalyst pursued and prolonged contempt proceedings against me, in which it sought to have me imprisoned.

161. On June 27, 2014, West Face agreed to pay or reimburse me for the reasonable lawyer's fees and disbursements incurred in the course of defending this litigation. West Face has not agreed to indemnify me for any judgment or order that ultimately may be made to me. Under this agreement, West Face and I are separately represented. I attach a copy of this letter as **Exhibit "84"**.[90]

162. On June 1, 2016, I learned that Catalyst had issued a statement of claim against West Face, and the consortium of investors with which it had purchased WIND in September 2014. I attach a copy of the statement of claim as **Exhibit "85"**.[91]

[89] BM0005356
[90] BM0005346
[91] BM0005358

Affirmed before me in the City of
Toronto in the Province of Ontario on
June 2, 2016.

Denise Cooney
A Commissioner for Taking Affidavits

Brandon Moyse

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

THE CATALYST CAPITAL GROUP INC. Plaintiff	-and-	BRANDON MOYSE et al. Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

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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 15 OF 19)

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