

**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 16 OF 19)**

December 7, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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
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Defendants

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Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

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

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

VOL 1
June 06, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 1/Volume 1 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 6th day
of June, 2016, commencing at 9:00 a.m.

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

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

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16 & Matthew Milne-Smith, Esq.,
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18 West Face Capital Inc.
19

20 Also Present:

21 Tanya Barbiero (Law Clerk, Davies)
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WITNESS:

GABRIEL DE ALBA

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1 -- Upon commencing at 9:00 a.m.

2 THE COURT: If I look buggy, it's
3 because I was at the eye doctor at eight o'clock
4 this morning and got drops. My pupils are still
5 coming down to earth. Thank you.

6 MR. DIPUCCHIO: Good morning, Your
7 Honour. How are you?

8 Your Honour, I'll take you through a
9 relatively brief opening statement. Obviously you
10 know that in this trial the court is going to be
11 asked to determine whether certain highly
12 confidential information belonging to The Catalyst
13 Capital Group was shared by Brandon Moyses, a former
14 employee, with his prospective and eventual
15 employer, West Face Capital.

16 The confidential information was
17 obtained by Moyses through the course of his
18 employment with Catalyst, and Catalyst alleges that
19 West Face was the recipient of and misused the
20 confidential information that it received in order
21 to become the successful bidder ultimately for
22 VimpelCom's stake in Wind Mobile.

23 At the end of the day, as a result of
24 the alleged misuse of the highly confidential
25 information, West Face earned a profit of \$500

1 million at Catalyst's expense and Catalyst is
2 obviously asking at the conclusion of the trial
3 that that profit be disgorged by West Face and paid
4 to Catalyst.

5 The case and the evidence that you're
6 going to be hearing over the next week and a half
7 deals with two intersecting narratives really. The
8 first narrative is Catalyst's and West Face's
9 pursuit of the acquisition of Wind from a company
10 called VimpelCom, as you know, and you'll hear
11 evidence that both Catalyst and West Face were
12 pursuing that opportunity throughout 2014 and it's
13 really the 2014 timeframe that's relevant here.

14 Meanwhile, as that was happening, the
15 intersecting narrative that you're going to hear
16 about relates to Brandon Moyse's work on behalf of
17 Catalyst as part of what was called the
18 telecommunications deal team at Catalyst and the
19 work that Mr. Moyse specifically did in relation to
20 Wind on behalf of Catalyst at a very critical time
21 in early 2014, and then his contemporaneous efforts
22 while he was doing that work on behalf of Catalyst
23 to find a new job and to land a position at West
24 Face, which he was ultimately successful in doing
25 in May of 2014.

1 It's really through that second
2 narrative that you're going to hear evidence about
3 Moyses and West Face's cavalier attitude towards
4 Catalyst confidential information.

5 The case, though it's evolved, started,
6 obviously, quite innocuously as an action to
7 enforce the restrictive covenant and the
8 confidentiality undertaking of Moyses's employment
9 with Catalyst.

10 Moyse informed Catalyst on May 24th,
11 2016 that he was resigning and then two days later
12 he informed Catalyst that he was going to be
13 commencing employment at West Face and Moyses's
14 employment agreement prohibited him from working
15 with a competitor in Toronto for a period of six
16 months, and both defendants, West Face and Moyses,
17 initially took the position that West Face was not
18 a competitor to Catalyst and therefore the
19 injunction proceeding was brought on.

20 THE COURT: Can I just ask, is someone
21 going to provide a chronology in neutral form? It
22 might be helpful.

23 MR. DIPUCCHIO: We can do that. We
24 also have a cast of characters I think that we can
25 probably circulate to Your Honour. That may assist

1 as we work our way through it. But the events I'm
2 talking about now in relation to Moyle finding new
3 employment --

4 THE COURT: Sorry.

5 MR. DIPUCCHIO: The events that I'm
6 describing now with respect to Mr. Moyle taking up
7 his new employment and the correspondence that went
8 back and forth between counsel was the May/June
9 2014 timeframe. That's where we are.

10 You're going to hear evidence about the
11 kind of knowledge and information that Mr. Moyle
12 had through his work on the telecommunications deal
13 team throughout 2014 and how that knowledge, and
14 this is the important point, how that knowledge and
15 information in the hands of West Face could be used
16 to essentially close a deal to purchase Wind as
17 part of a consortium of investors.

18 Because of the positions taken by Moyle
19 specifically, you're going to hear a lot of
20 evidence in this trial about the Catalyst
21 organizational structure and the flat
22 organizational structure of Catalyst, and the
23 purpose of that evidence is obviously going to be
24 to demonstrate to you that Moyle did have
25 significant responsibility and that he did form

1 part of a very critical team at Catalyst that was
2 working on the telecommunications opportunities.

3 Because of Catalyst's relatively small
4 size and its culture, analysts like Moyse, and the
5 defendants continually refer to him as a junior
6 analyst, the fact of the matter is that analysts
7 like Moyse are expected to and do participate and
8 contribute to all elements of a deal including the
9 strategic decision-making and negotiations and that
10 becomes very important as we progress through the
11 narrative.

12 You're going to hear evidence from
13 Mr. de Alba who is here today and then Mr. Glassman
14 tomorrow about the fact that they regularly shared
15 their strategic thoughts and the status of the
16 negotiations with all of the members of the deal
17 team including Mr. Moyse throughout 2014.

18 With respect to Mr. Moyse specifically,
19 Your Honour, he joined Catalyst on November 1st,
20 2012. As I said, his employment agreement included
21 the non-competition and non-solicitation clause and
22 confidentiality obligations. None of that I think
23 is controversial at this point.

24 The agreement clearly states that Moyse
25 would acquire and in fact he did acquire

1 confidential information about certain matters,
2 including, for example, investment strategies,
3 negotiating positions, prospective acquisitions,
4 all of the stuff that we would consider to be
5 confidential and that Catalyst considered to be
6 confidential.

7 Moyle himself has a background in the
8 industry, having worked at RBC and Credit Suisse in
9 New York. He has an undergraduate math degree. He
10 came to Catalyst with excellent credentials and was
11 given broad responsibility.

12 The court is going to hear evidence
13 that Moyle really started searching for a new
14 position in December of 2013 and that he didn't
15 enjoy at the end working at Catalyst, so much so
16 that you're going to see evidence that he developed
17 quite a strong animus towards Catalyst and in
18 particular towards the principals of Catalyst,
19 including Mr. de Alba and Mr. Glassman, and the
20 animus towards Catalyst continued to exhibit itself
21 while he was interviewing with potential employers
22 and even long after, even long after he departed
23 Catalyst.

24 Throughout early 2014, as I say, Moyle
25 had a significant and growing role on Catalyst's

1 telecommunications deal team and what he did
2 initially was he prepared a pro forma statement
3 showing the combined asset values of Wind and
4 Mobilicity in the spectrum of those two companies,
5 and that analysis that he did was actually a very
6 significant part of Catalyst's decision, formed a
7 very significant part of Catalyst's decision to
8 pursue the opportunity ultimately.

9 At the time, when he was preparing that
10 analysis, Catalyst was in discussions with
11 VimpelCom about a potential purchase. And
12 VimpelCom, Your Honour, at that time, early 2014,
13 had announced that it basically had written off its
14 entire investment in Wind and was looking for an
15 exit from Canada.

16 Despite commencing his employment
17 search in December of 2013, Moyse was unable to
18 land a job during the first quarter of 2014 but in
19 March of 2014 you're going to hear that Moyse
20 reached out to a gentleman by the name of Tom Dea
21 who was one of the partners at West Face Capital
22 and Moyse had interviewed with West Face in 2012
23 and he remained in contact with Dea and he renewed
24 that contact when it was publicly announced that
25 West Face was launching a special situations fund,

1 which is a fund that is -- makes the same kind of
2 specialized investments that Catalyst makes,
3 basically.

4 So the two agreed to meet for coffee,
5 i.e. Moyse and Dea, on March 26 of 2014, and that's
6 a critical date in the chronology, and the reason
7 it's critical is because on March 26, 2014 Moyse
8 was being tasked by Catalyst to build a critical
9 PowerPoint presentation and the PowerPoint
10 presentation was in regards to a meeting that
11 Catalyst was going to be having with
12 representatives of the federal government and
13 Industry Canada the following day, March 27.

14 You might remember, Your Honour, that
15 Catalyst had a lead position in Mobilicity's debt
16 and Mobilicity was under CCAA protection at the
17 time, as Your Honour is aware. Catalyst, at the
18 same time that it was dealing with the Mobilicity
19 CCAA, was also pursuing VimpelCom about a potential
20 purchase, and Catalyst's vision at that point in
21 time, March of 2014, was that it would hopefully
22 acquire VimpelCom's interest in Wind and then
23 combine the assets of Wind and Mobilicity so as to
24 deliver to the government really what was the
25 government's dream scenario of a viable fourth

1 wireless carrier in the Canadian telecommunications
2 landscape.

3 You're going to hear from Mr. Glassman
4 in particular that before that strategy could be
5 executed on behalf of Catalyst, i.e. combining Wind
6 and Mobilicity and forming the fourth wireless
7 carrier, Catalyst required certain concessions from
8 the federal government with respect to spectrum
9 licenses, and the spectrum licenses, as Your Honour
10 knows, are the licenses really that allow the
11 telecommunications company to operate and provide
12 services.

13 Catalyst wanted the government and
14 needed the government to confirm that Catalyst
15 would be able to exit from its investment in a
16 merged Wind/Mobilicity entity within five years
17 based on certain concessions, and that's why these
18 key discussions were occurring on March 27th with
19 Industry Canada and the Prime Minister's Office and
20 the Privy Council.

21 If I could ask that CCG0011565 be
22 brought up. Your Honour, this --

23 THE COURT: Just wait a second.

24 MR. DIPUCCHIO: 11565, Your Honour.

25 THE COURT: Just a second, I've got it.

1 Which number was it?

2 MR. DIPUCCHIO: It was CCG0011565.

3 THE COURT: Is this in the exhibits of
4 Mr. de Alba?

5 MR. DIPUCCHIO: It should be one of the
6 exhibits to Mr. de Alba. Exhibit 20 to Mr. de
7 Alba.

8 THE COURT: Exhibit what?

9 MR. DIPUCCHIO: 20. What you should be
10 looking at, Your Honour, if you've got it, is a
11 presentation entitled "Canada Wireless
12 Presentation."

13 THE COURT: I've got an email, it's a
14 one-page.

15 MR. DIPUCCHIO: The next page would be
16 the cover page.

17 THE COURT: Oh, I see.

18 MR. DIPUCCHIO: Do you see that?

19 THE COURT: Yes, okay.

20 MR. DIPUCCHIO: So that presentation,
21 Your Honour, you're going to be hearing a lot of
22 evidence about that presentation and another
23 presentation that's made subsequently, but that is
24 the presentation that was prepared by Mr. Moyse,
25 taking the lead, on March 26th.

1 And what it does, Your Honour, and why
2 it's so significant is that that presentation
3 outlines Catalyst's regulatory strategy with
4 respect to a fourth carrier, and it also sets out
5 Catalyst's negotiating positions with the federal
6 government and it proposes three possible outcomes
7 depending on the various concessions that the
8 government would be willing to grant with respect
9 to spectrum licenses.

10 So if you go to, Your Honour, the
11 seventh slide, I believe it is, of that
12 presentation, you're going to see "Strategic
13 Options: Option 1."

14 THE COURT: Um-hmm.

15 MR. DIPUCCHIO: That's the first
16 scenario that Catalyst was proposing and it really
17 deals with the merger or combination, as it's
18 described, of Wind and Mobilicity to create a
19 fourth national carrier focused on the retail
20 market. So this is focusing on capturing market,
21 retail market away from the incumbent three
22 carriers.

23 In order to accomplish this, you'll
24 see, Your Honour, at the third bullet point,
25 Catalyst was going to require a number of things.

1 Amongst other things, the ability to transfer
2 spectrum to an incumbent within five years, and
3 that was in order to ensure that Catalyst would
4 have an exit strategy.

5 THE COURT: Sorry, which part of it?

6 MR. DIPUCCHIO: So if you see in the
7 "Requires," bullet point 3.

8 THE COURT: Yes.

9 MR. DIPUCCHIO: There is a bunch of
10 requirements.

11 THE COURT: Yes.

12 MR. DIPUCCHIO: And then it says
13 ability to exit the investment with no restrictions
14 in five years.

15 THE COURT: I see, in five years.

16 MR. DIPUCCHIO: The ability to operate
17 as a retail only business using incumbent's
18 networks outside license areas to accelerate
19 subscriber growth, and then potential to partner,
20 exchange or rent spectrum from and to incumbents.
21 In other words, the ability to essentially transfer
22 spectrum to the incumbents if required.

23 Then if you go to the following slide,
24 you're going to see strategic option number 2 and
25 that's where Catalyst would operate a combination

1 of Wind and Mobilicity as a wholesaler, so this is
2 what we call a wholesale option, where essentially
3 it would be auctioning off spectrum to the
4 incumbents in a competitive process.

5 Again, there were a number of
6 requirements, less so in this particular case, but
7 there were still a number of requirements that
8 Catalyst was going to need from the federal
9 government in order to have that option be a viable
10 option.

11 Then if you go to the next slide,
12 you're going to see strategic option number 3, and
13 that was an option that Catalyst had spent a lot of
14 time analyzing, you're going to hear, and basically
15 what Catalyst was warning the government of in this
16 particular scenario is that the government had
17 significant litigation risk, Your Honour, with
18 respect to the unilateral and retroactive
19 restrictions that had been imposed on spectrum
20 licenses in 2008.

21 And Catalyst, what Catalyst was doing
22 here was warning the government that it would face
23 litigation from any buyer of Wind or Mobilicity as
24 a result of the retroactive and unilateral
25 restrictions on spectrum licenses. But critically,

1 and this is the critical point, that Catalyst could
2 not lead that litigation because of its involvement
3 in other regulated industries.

4 You're going to hear evidence, Your
5 Honour, that Catalyst knew internally that the
6 litigation would likely be successful but it needed
7 concessions, which you've seen in this document,
8 because it couldn't afford to litigate with the
9 government and put its other businesses at risk.

10 So that was a critical part of the
11 puzzle and you're going to hear a lot about that
12 from Mr. de Alba and Mr. Glassman.

13 And you'll note, Your Honour, in
14 passing, that this document at the bottom
15 right-hand corner --

16 THE COURT: Let me ask you a question.
17 This litigation against the government --

18 MR. DIPUCCHIO: Essentially challenging
19 the retroactive restrictions.

20 THE COURT: I understand that. To some
21 extent that would be a matter of speculation,
22 wouldn't it?

23 MR. DIPUCCHIO: Well, there was a lot
24 of analysis as to whether or not that litigation
25 ultimately would be brought and would be

1 successful, and that's what you're going to hear,
2 you're going to hear that a central part of the
3 strategy here was trying to essentially convince
4 the federal government that it was at risk of
5 litigation, embarrassing litigation, and as a
6 result of that litigation risk, essentially getting
7 the federal government to soften -- to soften its
8 stance and grant concessions to Catalyst.

9 But the key point, Your Honour, and
10 again I'll repeat it again, you're going to hear
11 evidence on this, is internally Catalyst knew that
12 it couldn't litigate with the federal government
13 because of its involvement in other regulated
14 industries.

15 So I was just saying, Your Honour,
16 you'll note obviously in passing on the bottom
17 right-hand side of each page that the document is
18 marked confidential. There is absolutely no
19 question that this document contains highly
20 sensitive and confidential information, and that
21 Moyse, as the primary author of this document or
22 the lead preparer of this document, was privy and
23 well understood, or privy to and well understood
24 all of this information and all of the strategy
25 that it represented.

1 Now, on that very same --

2 THE COURT: Let me ask you about this
3 litigation again. Catalyst, you say Catalyst
4 couldn't do it. This statement must have been with
5 respect to the possibility of Mobilicity or the
6 shareholders of Mobilicity suing --

7 MR. DIPUCCHIO: The estate of
8 Mobilicity, exactly, or any potential purchaser of
9 Wind, other than Catalyst, i.e. if the government
10 didn't soften its stance and maintained its
11 position with respect to the concessions that
12 Catalyst was requesting that there would likely be
13 litigation and that that litigation would likely be
14 successful against the federal government.

15 THE COURT: Is it your case that the
16 possibility of litigation was confidential to
17 Catalyst?

18 MR. DIPUCCHIO: No. We'll come to
19 exactly what the theory of the case is, Your
20 Honour. For the moment let's just say that this
21 was the strategy, this was Catalyst's strategy, and
22 it was known by Mr. Moyse and we'll get to exactly
23 how that plays out in the actual process.

24 THE COURT: Thank you.

25 MR. DIPUCCHIO: Now, on the very same

1 day that that presentation is being frantically
2 prepared by Mr. Moyse for the meetings on March 27,
3 Mr. Moyse meets with Tom Dea at West Face to
4 discuss the possibility of finding new work at West
5 Face, and you're going to hear evidence about that
6 meeting, obviously.

7 Then what happens on the evening of
8 March 26th is two important emails are sent by
9 Mr. Moyse. The first email is obviously attaching
10 that presentation, Your Honour just looked at it,
11 and that's a critical email. The second critical
12 email that goes out on March --

13 THE COURT: That was sent to whom?

14 MR. DIPUCCHIO: That was sent to the
15 partners, basically. You'll see the recipients,
16 Mr. Glassman, Mr. de Alba, Mr. Riley, and then of
17 course a gentleman by the name of Zach Michaud who
18 is one of the vice-presidents at Catalyst.

19 THE COURT: So it was internal?

20 MR. DIPUCCHIO: It was internal, purely
21 internal. This was the presentation that was going
22 to be used with the federal government the
23 following day. And in fact you're going to hear
24 evidence, Your Honour, that it was so confidential
25 and so sensitive that after the presentation is

1 made to the government officials, Mr. Riley gives
2 instructions to everybody on the deal team to
3 destroy any copies of the presentation. Ultimately
4 that doesn't happen --

5 THE COURT: No, I understand.

6 MR. DIPUCCHIO: -- because we still
7 have a copy of it, but those are the instructions.
8 As I say, that's the first email that's sent on the
9 26th.

10 The second email that gets sent on the
11 26th by Mr. Moyse is an email that's sent to
12 Mr. Dea hours later and this email, which is at
13 WFC0075126 --

14 THE COURT: Which exhibit number?

15 MR. DIPUCCHIO: That is not an exhibit
16 in Mr. de Alba's affidavit. That should be on your
17 iPad as the opening statement documents, I hope.

18 THE COURT: Let me see. Where do I get
19 to the opening statement? I see it, okay, Catalyst
20 opening. Which number?

21 MR. DIPUCCHIO: So the document is
22 WFC0075126.

23 THE COURT: Document 5.

24 MR. DIPUCCHIO: What you should be
25 looking at, Your Honour, hopefully, is an email

1 chain that starts with -- I guess at the very top
2 it's an email from Mr. Dea to his partners --

3 THE COURT: Yes.

4 MR. DIPUCCHIO: -- on March 27th. So
5 if you look at the email, Your Honour, from
6 Mr. Moyse to Mr. Dea, that's the second email in
7 the chain there, that is an email sent on March
8 27th at 1:47 a.m. where Mr. Moyse is attaching his
9 CV and deal sheet and a few investment write-ups
10 he's done at Catalyst.

11 Attached to that email, Your Honour,
12 were four investment memos, they're laid out there,
13 Homburg, NSI, Rona and Arcan Resources, four
14 confidential investment memos that Mr. Moyse and
15 others had prepared at Catalyst.

16 Now, you're going to hear a lot of
17 evidence about these investment memos and in fact I
18 believe Mr. Moyse and West Face will acknowledge
19 that they shouldn't have been sent at this point.
20 There is no question they are confidential, there
21 is no question those investment memos contained
22 confidential information.

23 THE COURT: Will there be evidence that
24 the memos contained confidential information
25 regarding this initiative to acquire Mobilicity?

1 MR. DIPUCCHIO: No, no, no, they're not
2 connected in any way to ultimately what's at issue
3 here. There will be some evidence given in respect
4 of Arcan and what happened in relation to Arcan,
5 but it ultimately will form no part of what you're
6 going to have to decide, Your Honour, in terms of
7 whether confidential information relating to Wind
8 was transferred.

9 But the point about this email that
10 makes it so important, Your Honour, number one is
11 that Mr. Moyse had no -- apparently had no issue in
12 sending confidential memos and -- are the memos
13 attached? If you flip through just very briefly to
14 the actual memos that are attached, Your Honour,
15 the only thing I want you to look at is at the top
16 of each page of these memos is a clear header that
17 says "For internal discussion purposes only,
18 confidential." And that appears in all of the
19 memos.

20 There just can be no question that
21 these were internal and confidential to Catalyst
22 and yet Mr. Moyse sees fit to transfer these memos
23 to West Face, and then West Face internally
24 distributes the memos. Mr. Dea distributes them on
25 to his partners so he doesn't -- he doesn't delete

1 the memo or immediately take issue with what
2 Mr. Moyse sends him. He actually, the evidence is,
3 quickly reviews some of the information and sends
4 it on to his partners who also do the same.

5 Moyse, interestingly enough, once he
6 sends this email, Your Honour, deletes it, and he
7 did so to cover his tracks because he knew,
8 immediately knew, that what he had done was wrong.
9 So it wasn't an innocent mistake, I'm going to
10 suggest to you, he sends it and then takes the
11 active step of deleting the email so that he covers
12 his tracks.

13 And Mr. Moyse's deletion of potentially
14 incriminating evidence like this email is something
15 that's going to feature prominently in this case
16 and you're going to hear some evidence -- you know
17 that the claim involves spoliation as well, and
18 you're going to hear more evidence about deletion
19 of potentially incriminating evidence and I'll come
20 to that in a moment.

21 Two days after sending Mr. Dea these
22 confidential memos, so now we're on March 28th,
23 2014 in the chronology, Your Honour, Mr. Moyse
24 accesses a series of files from a directory called
25 Investor Letters in the Catalyst system, and you're

1 going to hear evidence about the fact that Moyse
2 had absolutely zero reason to be accessing that
3 folder.

4 Moyse then attends additional
5 interviews with West Face on April 16th. He meets
6 with the other partners, a gentleman by the name of
7 Tony Griffin who you're going to be hearing from in
8 this trial, a gentleman by the name of Peter
9 Fraser, and then another West Face representative,
10 Yu-jai Zhu who you'll also be hearing from.

11 On April 24th, Moyse is invited back to
12 West Face to meet with Greg Boland and you'll hear
13 evidence that on the 25th, the day after he
14 schedules his further interview with Mr. Boland,
15 Moyse starts looking through a folder in the
16 Catalyst system that contains Stelco files.

17 And Stelco, Your Honour, was an
18 opportunity where Catalyst was involved and West
19 Face was involved as well, and Moyse had no
20 legitimate business reason to be looking in the
21 Stelco folder, and nonetheless he was doing so a
22 day after he schedules his interview with
23 Mr. Boland.

24 Moyse admits and has admitted earlier
25 in this proceeding that he transferred these files

1 to his personal DropBox account.

2 So while this is all going on around
3 the same time that Moyse is interviewing with West
4 Face in late April, Catalyst is in active
5 discussions to acquire VimpelCom's interest in
6 Wind. On May 6th of 2014 Catalyst proposes terms
7 for a deal, and essentially the proposal was to --

8 THE COURT: There is a proposal to
9 VimpelCom?

10 MR. DIPUCCHIO: Yes. And essentially
11 the proposal was to pay an enterprise value of 300
12 million, the transaction would close by May 23rd.
13 All of this was somewhat important because Wind was
14 going to be defaulting on significant vendor debt
15 on April 30th and it had until May 30th to cure the
16 default, so it was important to try and keep the
17 timelines tight, and that the transaction would
18 ultimately pay off a portion of the vendor debt and
19 leave some cash left over for VimpelCom.

20 And that, those deal terms were largely
21 based on the financial analysis that had been
22 performed by Mr. Moyse back in March in which he
23 was analyzing the value of the spectrum, the
24 Mobilicity and Wind spectrum.

25 The court is going to hear that

1 Mr. Moyse, after May 6th, particularly after May
2 6th, was asked to do a significant amount of work
3 on the Wind file. In addition to his typical deal
4 duties, Moyse was aware of and participated, as I
5 say, in all of these internal strategic discussions
6 and in particular the discussions about the
7 regulatory approach.

8 And just to give you a sense of the
9 kind of things that Mr. Moyse was privy to, if you
10 can turn up in that folder of documents, Your
11 Honour, CCG0009482, here you'll see --

12 THE COURT: Just hang on a second.

13 MR. DIPUCCHIO: Sure. 9482.

14 THE COURT: I've got your opening
15 documents. I don't see it. It would be helpful if
16 you would put in there where I find it and what the
17 number is, not the long number but the number.
18 What is the document number?

19 MR. DIPUCCHIO: So CCG0009482. Is it
20 not there, Your Honour?

21 THE COURT: Oh, I see, it's number 6.

22 MR. DIPUCCHIO: So here what you're
23 looking at, Your Honour, just by way of example,
24 and we're obviously going to take you through many
25 more of these documents, but this is the kind of

1 sophisticated email chain that Mr. Moyse was copied
2 on, routinely copied on in this timeframe, in May,
3 as the Wind opportunity heats up.

4 And you'll see here there is
5 discussions first from Mr. de Alba about the
6 position with the government and how things could
7 be positioned with the government in order to
8 extract the kind of concessions that Catalyst
9 wanted, and then you'll see Mr. Glassman's response
10 which again adds another layer of strategy in terms
11 of the approach that Catalyst would be taking, and
12 all of that Mr. Moyse was privy to and was part of.

13 The reason I'm making such a big deal
14 about this, Your Honour, and we will be making such
15 a big deal about this throughout the course of the
16 trial, is because you're going to see evidence that
17 Mr. Moyse initially gave when the injunction motion
18 was brought way back when, where Mr. Moyse's
19 position was that he had little to no involvement
20 in Wind.

21 That was his initial position on the
22 record, sworn evidence, that he had little to no
23 involvement in Wind, and we're going to show you
24 how untrue that statement is and how his evidence,
25 quite frankly, has morphed as the years have gone

1 on and we find ourselves here today to finally
2 acknowledge, quite frankly, in the face of
3 overwhelming documentary evidence, what his role
4 actually was.

5 So on May 12th, the next critical date,
6 Your Honour, is May 12th and that's when Mr. Moyse
7 again prepares a presentation to the Government of
8 Canada and that one can be found at CCG0009517.
9 It's number 7 on your list, Your Honour.

10 THE COURT: I don't know how to get out
11 of these documents to get back to the opening.

12 MR. DIPUCCHIO: Your Honour, it's
13 really -- at the end of the day, the presentation I
14 was going to take you to is largely similar to the
15 one that we looked at earlier and it repeated the
16 same message.

17 However, it was made clear to the
18 government, as you can see if you go through
19 options 1 and 2 in this particular presentation,
20 and you see right there option 1 is described as
21 now severely hindered, and option 2, the wholesale
22 option, was fast becoming the most viable option,
23 and that's what Catalyst was -- the message that
24 Catalyst was delivering to the government on May
25 12th.

1 You're going to hear evidence from
2 Mr. Glassman and from Mr. Riley who attended the
3 meetings in Ottawa with the presentation that Moyse
4 created in hand that during the meetings Catalyst
5 did make its pitch for the regulatory concessions
6 that you'll see in those documents, and that
7 Mr. Glassman in particular was of the view that
8 despite the government's tough talk in terms of not
9 granting any regulatory concessions, that
10 ultimately the government would have to bend and
11 grant the concessions, and that if Catalyst did
12 conclude a deal with VimpelCom the government would
13 be faced with a bit of a predicament in that you
14 had a purchaser who was prepared to deliver the
15 dream scenario of a fourth wireless carrier but it
16 still needed regulatory concessions from the
17 government in order to do so and the government was
18 going to be put in a position of having to
19 essentially nix the fourth carrier unless it agreed
20 to regulatory concessions, thereby facing immense
21 public backlash.

22 So the outcome of that meeting and the
23 views that had been formed during that meeting were
24 immediately reported back to Moyse and the rest of
25 the deal team at Catalyst and the implications of

1 the meeting were discussed.

2 And the message, the very important
3 message that comes out of that meeting and is
4 understood by everybody, Your Honour, including
5 Moyse, is that Catalyst would need a condition of
6 regulatory approval and that it simply could not
7 waive that condition under any circumstances.

8 However, Catalyst also knew that the
9 government faced significant litigation risk if it
10 didn't grant the concessions outlined in the
11 presentations. So while it needed a regulatory
12 approval condition, it felt that the government
13 would, in effect, be put in a position of having to
14 grant those regulatory concessions.

15 Now, on May 16th Mr. Moyse goes away on
16 a vacation to Southeast Asia and he tells a
17 colleague that it's possible that West Face will
18 make him an offer while he was on vacation and he
19 might not be returning to Catalyst.

20 Notwithstanding, the evidence is going
21 to show that Moyse did continue while he was on
22 vacation to work, actively work on the Wind file on
23 behalf of Catalyst, that he gives comments to his
24 colleagues about a financial model prepared by
25 Morgan Stanley.

1 I'm not going to take you to the emails
2 because Your Honour is having problems with the
3 iPad, you'll see them in the evidence, but between
4 May 21st and May 23rd, while Moyse is on vacation
5 and actively working on the Wind transaction, he
6 has communications with a colleague at Catalyst and
7 he's asking pointed questions about Wind, i.e.
8 whether Catalyst has made an offer for Wind, and at
9 the same time he's having conversations with
10 Mr. Dea on the phone, we know.

11 At midnight on May 24th, while he's
12 still on vacation, Moyse gives his notice to Mr. de
13 Alba that he would be resigning. He doesn't tell
14 Mr. de Alba where he's going to be going to, and he
15 tells another one of his colleagues at the same
16 time that that was intentional, i.e. he was
17 intentionally not telling Mr. de Alba at that time
18 where he was going to.

19 On May 26th, Moyse returns to Catalyst
20 and you're going to hear evidence that at that
21 point he tells Mr. de Alba that he's going to be
22 going to West Face and Mr. de Alba immediately
23 expresses concern about that, and certain events
24 follow.

25 You're going to hear that on May 30th,

1 a few days after being advised that Moyse is going
2 over to West Face, Catalyst writes to Moyse and to
3 West Face basically warning them that the actions
4 amount to a breach of the employment -- the terms
5 of the employment agreement that Moyse had signed
6 and in particular the non-competition provision,
7 and also expressing concerns about potential
8 confidential information that could flow to West
9 Face.

10 On June 3rd, West Face's counsel writes
11 back to Catalyst and says essentially that the
12 non-competition and non-solicitation clauses are
13 unenforceable and basically brushes off the concern
14 about any confidential information, and this
15 notwithstanding, Your Honour, that obviously by
16 this point in time Moyse has already transmitted
17 what everybody now acknowledges was confidential
18 information to West Face in the form of the four
19 research memos.

20 Now, significantly, Your Honour, the
21 very next day, June 4th, and I don't know if you
22 can turn up this document but we can bring it up
23 and you can look at it on the monitor.

24 THE COURT: Where is it?

25 MR. DIPUCCHIO: WFC --

1 THE COURT: Whereabouts is it?

2 MR. DIPUCCHIO: It's in the opening
3 statement brief, Your Honour.

4 THE COURT: What number?

5 MR. DIPUCCHIO: 16.

6 THE COURT: 16? Thank you.

7 MR. DIPUCCHIO: It's WFC0068142. So
8 what you're looking at here, Your Honour, is --
9 there's going to be a lot of submissions made at
10 the end of the trial about this particular email.
11 The significant one is the one from Mr. Griffin
12 who, as you will recall, is one of the partners at
13 West Face, to Mr. Lacavera, at the bottom of the
14 page. Mr. Lacavera was one of the management team
15 at Wind, as you know, and also had an interest in
16 it.

17 The email is significant, Your Honour,
18 because at this time there was a non-disclosure
19 agreement in place with VimpelCom and the
20 non-disclosure agreement with VimpelCom obviously
21 prevented either party from --

22 THE COURT: Sorry, a non-disclosure
23 agreement between?

24 MR. DIPUCCHIO: VimpelCom and Catalyst.
25 In fact, between, one would imagine, VimpelCom and

1 any of the potential purchasers. And the
2 non-disclosure agreement prevented either party
3 from revealing, obviously, that they were in
4 negotiations, and yet Mr. Griffin is saying a
5 number of things in the email at the bottom of the
6 page, including talking about Catalyst's proposal.
7 You'll see the line:

8 "Catalyst seems to be a lot of
9 air."

10 It's right at bottom of the page:
11 "Catalyst seems to be a lot of air."

12 And we're going to ask you at the
13 conclusion of the trial, after you've heard all of
14 the evidence, we're going to ask you to draw
15 certain inferences about how Mr. Griffin could be
16 making these kinds of comments about Catalyst in
17 this particular environment.

18 THE COURT: What's the inference you'll
19 ask me to draw?

20 MR. DIPUCCHIO: Sorry, Your Honour?

21 THE COURT: What's the inference you'll
22 ask me to draw?

23 MR. DIPUCCHIO: I'm going to ask you to
24 draw an inference that he knew exactly what
25 Catalyst was bidding and what its negotiating

1 strategy was and that it was for that reason that
2 he's able to say Catalyst seems to be a lot of air.

3 THE COURT: Are you going to ask for an
4 inference that he got this, knew this from
5 Mr. Moyses?

6 MR. DIPUCCHIO: Yes, indeed. So you're
7 going to hear that Moyses -- Moyses's counsel
8 replies to the May 30th letter on June 5th and the
9 response you hear from Moyses's counsel essentially
10 is that --

11 THE COURT: Where do I find it?

12 MR. DIPUCCHIO: You're going to see it.
13 It's not in my brief. I don't intend to take you
14 to it now, Your Honour, but essentially what the
15 response is is that Mr. Moyses wasn't in possession
16 of any confidential information and what he was
17 doing at Catalyst wasn't proprietary and it was all
18 based on well-known methodologies.

19 So on June 13th, Catalyst writes to
20 West Face and Moyses to again try to come to terms
21 on Mr. Moyses's non-competition clause, and again
22 Catalyst is rebuffed. And West Face in particular
23 on June 19th writes to Catalyst and says that it
24 hasn't provided any evidence that Moyses has
25 breached any of his confidentiality obligations,

1 that letter having been sent knowing full well that
2 Moyse had breached his confidentiality obligations
3 at the very least by sending the four investment
4 memos. And all of this was subject to comment,
5 obviously, by Justice Lederer in his decision
6 granting the injunction.

7 On June 23rd, Your Honour, that's the
8 date Moyse commences his employment at West Face,
9 there is a motion for interim relief that's heard
10 on July 16th of 2014, and you're going to hear
11 evidence, Your Honour, particularly through the --
12 essentially through our forensic expert about the
13 fact that Moyse was accessing various Catalyst
14 files before his departure and sending many
15 Catalyst files to himself through his personal
16 email and through a personal internet-based sharing
17 tool known as DropBox. Your Honour may be familiar
18 with it.

19 Ultimately on July 16, 2014 there is a
20 consent order made by Justice Firestone and
21 essentially the consent order is that Moyse would
22 not continue to work at West Face pending the
23 motion for interlocutory relief and, importantly,
24 that Moyse would have his personal devices turned
25 over to his counsel to be forensically imaged and

1 then there would be a further motion to determine
2 what to do with those forensic images, but there
3 was a preservation order made by Justice Firestone.

4 Justice Firestone also ordered in that
5 consent order that Moyses produce an Affidavit of
6 Documents outlining the documents, Catalyst
7 documents he had in his possession, power or
8 control. And what we get back, Your Honour, this
9 having come after being assured that there was no
10 confidential information that Moyses was in
11 possession of, we get back an affidavit that shows
12 that he has 830 Catalyst documents in his
13 possession.

14 The other key piece of evidence that
15 you're going to hear with respect to that, the
16 sequence of events around the consent order, Your
17 Honour, is that on July 16th, the very same day
18 that the parties appeared in court in order to
19 obtain the preservation order, Mr. Moyses had
20 installed a military grade scrubber designed to
21 delete files to even prevent a forensic analysis
22 from recovering, and that forensic -- that military
23 grade scrubber was purchased by Mr. Moyses the
24 morning of the motion. And we only come to know
25 that obviously because the ISS reports it in its

1 report subsequently.

2 The evidence is also going to show that
3 Mr. Moyse admitted to intentionally deleting his
4 internet browsing history at some stage after the
5 preservation order was made, and that the day
6 before, the very day before Moyse hands over his
7 computer in order for the forensic image to be
8 taken, I believe it was July 20th, the very day
9 before he hands over the computer he accesses the
10 military grade scrubber that he purchased the
11 morning of July 16th.

12 And we're going to be asking the court
13 at the conclusion of the trial to obviously draw
14 certain inferences from all of that conduct that
15 occurred which --

16 THE COURT: When you say he accesses
17 the scrubber, what do you mean by accesses?

18 MR. DIPUCCHIO: It means essentially he
19 opens the scrubbing program and you're going to
20 hear --

21 THE COURT: Is there evidence that he
22 then deleted files?

23 MR. DIPUCCHIO: You're going to hear
24 evidence from the experts about what that means,
25 Your Honour, and what steps can be taken to even

1 cover your tracks in that regard. So obviously
2 we're going to be asking you to draw inferences
3 from all of that conduct on the part of Mr. Moyse
4 and ultimately we're going to suggest to you that
5 that amounts to spoliation on a balance of
6 probabilities.

7 The story continues, Your Honour. On
8 July 23rd, shortly after we appear in court,
9 Catalyst and VimpelCom enter into an exclusive
10 arrangement, exclusive negotiating arrangement,
11 which operated for a period of time. Catalyst
12 during this period was convinced that a deal would
13 be concluded.

14 On August 3rd, you're going to see
15 evidence that the parties -- and you're going to
16 hear evidence that the parties had agreed that the
17 share purchase agreement was virtually settled
18 between Catalyst and VimpelCom and there were only
19 a small handful of issues that were left to be
20 resolved, and the final step in the process was for
21 VimpelCom to sort of go through the rubber-stamping
22 of having its Board of Directors approve the share
23 purchase agreement.

24 During all of this, Your Honour, during
25 all of this negotiating, Catalyst always maintains

1 its stance, obviously, that it needs the regulatory
2 approval condition and that it needs the regulatory
3 concessions from the federal government. And that
4 in Catalyst's mind had all been resolved.

5 On August 11th --

6 THE COURT: All been resolved with
7 whom?

8 MR. DIPUCCHIO: That there be a
9 regulatory approval condition. On August 11th --

10 THE COURT: I just want to make sure I
11 understand what you're saying. In Catalyst's mind
12 it had been resolved. Was there some resolution
13 with the government on this?

14 MR. DIPUCCHIO: No, what I meant to
15 say, Your Honour, sorry, I was a bit unclear on
16 that, what I meant to say was that the parties had
17 agreed that VimpelCom would bear the regulatory
18 risk, i.e. there would be a regulatory approval
19 condition and the transaction would ultimately be
20 subject to working things out with the federal
21 government and obtaining those concessions, and
22 VimpelCom had agreed to bear that risk, which was
23 critical, as you've seen from all the
24 presentations.

25 On August 11th matters are so advanced

1 that VimpelCom and Catalyst have a call with
2 Industry Canada in which they tell the regulator
3 that the deal was done, so August 11th there is a
4 public -- not a public announcement but an
5 announcement to Industry Canada in effect that the
6 deal is done.

7 By August 15th, Your Honour, things had
8 changed. VimpelCom comes back, after some delay in
9 obtaining this sort of rubber-stamp board approval,
10 VimpelCom comes back with a variety of eleventh
11 hour demands, including demands with respect to
12 obtaining regulatory approvals within two months,
13 which was an impossibly short period of time, and
14 also a break fee, a substantial break fee if
15 Catalyst couldn't obtain the regulatory approval
16 that it was seeking. And that was obviously a
17 significant, significant issue because it had been
18 the subject of all sorts of negotiation in advance
19 and it was being reintroduced at the eleventh hour,
20 inexplicably.

21 As it now turns out, Your Honour, we
22 know that there was a reason for this late-breaking
23 development, and the reason is that in late July
24 West Face had joined a consortium of investors that
25 were also interested in acquiring VimpelCom's

1 interest in Wind, and the consortium included
2 Tennenbaum Capital, a firm known as LG, and others
3 which you'll hear about.

4 On August 6th the consortium sends over
5 an offer, and this is in the middle of the
6 exclusive negotiation period with Catalyst, the
7 consortium sends over an offer. It's on your
8 device, Your Honour, it's WFC0075054, number 17 in
9 the opening statement brief.

10 THE COURT: Thank you.

11 MR. DIPUCCHIO: And the key, the key
12 point about this offer, Your Honour, is that it
13 doesn't contain any regulatory approval condition,
14 and you're going to hear evidence that no diligent
15 fund manager could take that risk or would take
16 that risk; that is, of course, unless the
17 consortium had knowledge that that particular piece
18 of information would be critical to its winning the
19 deal over Catalyst, i.e. that if it waived the
20 regulatory approval condition that that would give
21 it a leg-up on the Catalyst offer that was being
22 negotiated right at that time.

23 And the deal, the offer that's
24 submitted, Your Honour, significantly, is for the
25 same value. It's for the same value, so it's not

1 as if they're trying to top the offer by bidding,
2 you know, \$20 million more or \$30 million more.

3 The distinguishing feature is the
4 regulatory approval condition and the inference
5 obviously we're going to ask Your Honour to draw is
6 that the consortium knew and could only know by
7 receipt of confidential information from Moyse that
8 Catalyst couldn't waive that condition and wouldn't
9 waive that condition and that therefore that would
10 distinguish its offer or its bid from the Catalyst
11 bid.

12 So Catalyst's exclusivity lapses
13 ultimately on August 18th, Your Honour, and then
14 less than a month later the consortium announces
15 that it's concluded a deal with VimpelCom to
16 purchase Wind, and, as you know from the Plan of
17 Arrangement that you approved earlier this year,
18 ultimately Wind is sold to Shaw for well over a
19 billion dollars and Catalyst -- and that's what
20 gives rise to Catalyst's damages that are being
21 sought here.

22 At the end of the day, Your Honour,
23 there's three issues, obviously, that have to be
24 determined.

25 Number one, did Moyse transmit

1 Catalyst's confidential information to West Face.

2 THE COURT: Um-hmm.

3 MR. DIPUCCHIO: Is there direct
4 evidence from which you can draw reasonable and
5 fair inferences that allow you to conclude so? We
6 say yes.

7 Did West Face misuse that confidential
8 information in submitting its bid? Again we say
9 the inescapable conclusion is yes, it did.

10 And the third issue is did Moyse commit
11 the tort of spoliation which we talked about
12 already in relation to his activities around the
13 preservation.

14 You're going to hear from many
15 witnesses. I will give you a rundown of who is
16 going to be testifying from the Catalyst side.

17 You are going to hear from Mr. de Alba
18 first. He was the lead partner on the Wind
19 transaction, Your Honour, so he's the one that's
20 going to testify about the activities of the
21 investment and the deal team at Catalyst, what
22 exactly was happening in that regard and,
23 importantly, to Moyse's extensive involvement
24 obviously in all aspects of the deal and the
25 transaction.


1 You're going to hear from Mr. Glassman,
2 the managing partner of Catalyst, and
3 Mr. Glassman's evidence will focus primarily on,
4 because Mr. Glassman was leading this aspect of the
5 deal, the discussions with Industry Canada and the
6 federal government and the importance of the
7 regulatory strategy and how Mr. Moyse was aware of
8 that strategy and why it was so important for
9 Catalyst to have a regulatory approval condition in
10 the offing.

11 And you'll hear from Jim Riley, the COO
12 of Catalyst. He has sworn a number of affidavits
13 in this proceeding already and his evidence is
14 going to focus primarily on the events after Moyse
15 departs and the efforts that were made to ensure
16 that Moyse wasn't misusing Catalyst confidential
17 information.

18 Then finally you're going to hear from
19 our expert, a gentleman by the name of Marty
20 Musters, and Mr. Musters is going to give evidence
21 just in relation to the electronic activity and the
22 activity in relation to the military grade scrub.

23 You're going to hear from many
24 witnesses on behalf of West Face and obviously from
25 Mr. Moyse himself.

This is Exhibit "57" 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.

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

VOL 1
June 06, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 1/Volume 1 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 6th day
of June, 2016, commencing at 9:00 a.m.

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

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

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

6
7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq.,
9 & Brad Vermeersch, Esq. for the Plaintiff.
10
11 Robert A. Centa, Esq.,
12 & Kris Borg-Olivier, Esq.,
13 & Denise Cooney, Esq. for the Defendant,
14 Brandon Moyse
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
19

20 Also Present:

21 Tanya Barbiero (Law Clerk, Davies)
22
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1 my opening, rather. I wish it was my closing. A
2 lot of work still to do.

3 THE COURT: Thank you. Will there be
4 any other openings right now or are we just going
5 to start with the plaintiff's case?

6 MR. THOMSON: I intend to open.

7 THE COURT: Very well. Just before you
8 start...

9 We'll take five minutes.

10 -- RECESS AT 10:33 --

11 -- UPON RESUMING AT 10:40 --

12 THE COURT: Mr. Thomson?

13 MR. THOMSON: Thank you, Your Honour.

14 So we have a PowerPoint that I intend to follow on
15 my opening and there are several documents that
16 have been produced along the way that are embedded
17 in the PowerPoint, there will be no need to turn up
18 separate documents.

19 THE COURT: All right.

20 MR. THOMSON: We say by way of overview
21 that this action arises really from two unrelated
22 events, the first being the hiring of Moyse by West
23 Face in May of 2014, and the second, of course, is
24 the acquisition of Wind Mobile that took place in
25 mid-September of 2014 but significantly was

1 commenced, if you will, the process was commenced
2 by West Face well before they heard of Brandon
3 Moyse. So this isn't a case where Moyse arrives at
4 West Face, West Face then begins to pursue the
5 acquisition of Wind Mobile. In fact, steps were
6 taken to pursue the acquisition going back to
7 November of 2013, and you'll see in a moment that
8 West Face was actually substantially more advanced
9 than Catalyst was in pursuing Wind Mobile at the
10 time they hire Brandon Moyse.

11 So what do we say by way of a central
12 theme of our case? What's really going on here?
13 It's very simple. Catalyst is the ultimate bitter
14 bidder, and there is a level, I say this with
15 respect, but there is a level of almost untrammelled
16 arrogance running through the Newton Glassman view
17 of the world that only he knew how things would
18 play out with Wind; only he had a proper assessment
19 of the future and prospects of Wind; only he knew
20 how the Government of Canada would react when asked
21 for regulatory concessions. As it turns out, he
22 got it all wrong. He got it all wrong.

23 His business judgment did not coincide
24 with that not just of West Face, but of all of the
25 partners that West Face ultimately teamed up with

1 to form the consortium in the summer of 2014 and
2 make the successful offer for Wind, including
3 Tannenbaum, Guppy and others.

4 So a whole bunch of sophisticated
5 people took a look at Wind and the business of Wind
6 and had a very, very different view than Glassman
7 had and that Riley had. It turns out their view
8 was correct. Glassman and Riley got it wrong and
9 now they want to complain by seeking to fault West
10 Face for conduct that it simply never engaged in.
11 Never engaged in.

12 There is no substance whatsoever, we
13 say with respect, to the claim that West Face
14 misused the confidential information of Catalyst
15 concerning Wind because there was no such
16 information ever conveyed to West Face by
17 Mr. Moyle.

18 So, this is one of those cases where
19 Catalyst comes along with the benefit of hindsight
20 to throw stones in the direction of West Face where
21 there is no basis for the stones being thrown.

22 To be clear, in the next slide, there
23 is simply no evidence to support the allegation
24 that Mr. Moyle transferred any confidential
25 information to West Face about Wind. I go beyond

1 that to say that there is no evidence that
2 Mr. Moyse conveyed any information whatsoever to
3 West Face about Wind, let alone confidential
4 information of Catalyst.

5 Now, what has Catalyst filed at the
6 trial? What evidence do they rely upon in terms of
7 witnesses from Catalyst to try to prove this case?
8 They filed two affidavits of Mr. Glassman and
9 Mr. de Alba. There is no statement in either of
10 those affidavits that Mr. Moyse conveyed
11 confidential information of Catalyst about Wind to
12 West Face, they give no evidence that West Face has
13 misused any such information, and they concede in
14 their affidavits that Catalyst in fact could have
15 reached an agreement with VimpelCom in August of
16 2014 if Catalyst had chosen to do so but Catalyst
17 refused to meet the conditions of VimpelCom.

18 It's as simple as that. Catalyst made
19 the business decision on August 15th of 2014 not to
20 meet the VimpelCom conditions, not to meet the
21 requirements of the chairman of the board of
22 VimpelCom, not to protect VimpelCom concerning
23 regulatory issues with the Government of Canada,
24 and instead to let the Catalyst period of
25 exclusivity expire, let VimpelCom consider other

1 offers, and I'm going to take you to the documents
2 in a moment saying that, so let VimpelCom consider
3 its offers from others, let's see what happens.

4 And guess what happened? Exclusivity
5 ended on August 18th of 2014, West Face made an
6 offer, the offer of West Face basically negated
7 regulatory risk to VimpelCom, it was simple, it was
8 clean, it gave VimpelCom the exit they were looking
9 for from Canada.

10 As a result, West Face succeeded even
11 though Catalyst did not, and now Catalyst complains
12 about the business choice it made in mid-August of
13 2014 with its eyes wide open based on the advice it
14 received from Morgan Stanley, its financial
15 advisors, and from the Faskens firm, its legal
16 advisors. That's not the basis for a claim against
17 West Face.

18 Now, what about Riley? So three
19 witnesses have given evidence in respect of the
20 trial on behalf of Catalyst, so de Alba, Glassman
21 and Riley. Now, unlike Mr. Riley, Mr. Glassman and
22 Mr. de Alba prepared affidavits for use at trial.

23 What did Mr. Riley do? Mr. Riley,
24 instead of preparing a proper and properly
25 admissible affidavit for use at trial, simply

1 re-filed five interlocutory affidavits that he has
2 filed along the way in the Moyse case starting as
3 early as, I think it is, June 26th or so of 2014,
4 all of which were filed in relation to matters such
5 as injunction applications, complaints against
6 Moyse and so on.

7 And I'm going to ask Your Honour, when
8 Mr. Riley sets foot in the witness box, to take a
9 very careful look at the affidavits he has filed in
10 this case, because rather than prepare a proper
11 affidavit that would contain admissible evidence
12 for use at trial, he simply re-filed the other
13 affidavits that are remarkable by any measure.

14 I've done this for a long time; I'm not
15 sure I've ever seen affidavits quite like these
16 ones. They are rife with speculation, conjecture,
17 hearsay, double hearsay, numerous factual errors.
18 And yet Mr. Riley saw fit to file those affidavits
19 for use at trial.

20 So, much of the evidence is simply not
21 admissible at all, it's objectionable, he has
22 almost no relevant evidence to give in this
23 proceeding, with the result that Catalyst's claim
24 will fail based on its own evidence.

25 Now, you may recall that early on, when

1 I first became involved in this case, which was
2 January of this year, that was at a point in time
3 when there were appeals pending to the Divisional
4 Court concerning Catalyst's request to have a
5 so-called ISS, an independent solicitor appointed
6 to look at the documents of West Face.

7 The position taken by Catalyst at that
8 point in time was that if an ISS was appointed in
9 respect of West Face, the ISS might uncover actual
10 evidence to support its claim. Might uncover
11 evidence that Mr. Moyse had in fact conveyed
12 information to West Face about Wind Mobile.

13 As it turns out, as you know, Catalyst
14 lost those appeal proceedings in the Divisional
15 Court, there was no ISS appointed. West Face has
16 honoured its production obligations and there is
17 simply no evidence whatsoever, based on a
18 completely comprehensive reading of every single
19 document exchanged between Moyse and West Face and
20 every document that Moyse generated, received or
21 was copied on while he was at West Face, simply no
22 evidence whatsoever that he ever conveyed a single
23 piece of information to West Face about Wind
24 Mobile. In fact, all of the evidence is directly
25 to the contrary both from Moyse and from all the

1 people at West Face who dealt with him.

2 Now, you heard Mr. DiPucchio, he is a
3 very skilled lawyer, you heard Mr. DiPucchio say in
4 his opening over and over again "Your Honour, I'm
5 going to ask for findings against West Face that it
6 did in fact receive information from Mr. Moyse
7 about Wind Mobile."

8 Every time he made this submission he
9 said the same thing, "I'm going to ask you to draw
10 an inference, I'm going to ask you to draw an
11 inference." Now, the reason he's asking you to
12 draw an inference, of course, is because he has no
13 evidence to support the allegation. The request to
14 draw an inference is the last refuge of someone
15 with no evidence.

16 So absent evidence to support the
17 findings that you have been asked to make, my
18 friend has been forced to resort to the drawing of
19 an inference, and of course there's all sorts of
20 law as to the limits on the court's ability to draw
21 inferences in cases of this nature.

22 At a minimum, there has to be a strong
23 evidentiary foundation to support the drawing of
24 the inference. In this case, all Catalyst has done
25 is attempted over and over and over again to cast

1 perfectly innocuous events in a sinister light and
2 that is not the basis on which a court can draw an
3 inference.

4 Now, what are the facts that pertain to
5 the underlying issues in the case? You start with
6 what we call the prosaic hiring of Mr. Moyse.
7 That's a Milne-Smith word, not a Thomson word - in
8 North Bay we don't use words like "prosaic."

9 So what happened? In the simplest
10 possible terms, Moyse begins to work at Catalyst
11 November of 2012. He becomes unhappy with working
12 at Catalyst, for reasons that he will presumably
13 explain when he gives evidence. The reasons really
14 don't matter to West Face, but the bottom line is
15 he begins to look for jobs elsewhere at a whole
16 variety of places but including West Face.

17 He contacts West Face on March 14th of
18 2014. West Face has recently launched a new fund
19 called the Alternative Credit Fund and they need
20 help running that fund. Moyse expresses an
21 interest in working at West Face on this new
22 venture, the new fund. West Face needs an analyst.
23 And so they begin now to look at Moyse and they
24 begin to look at his credentials.

25 And here at slide 7 is the email that

1 Moyse sends to Mr. Dea at West Face on March 14th
2 of 2014 where he refers to the launch of this new
3 fund. He says he's starting to look at exploring
4 other opportunities, this seems something that
5 would definitely be of interest to him, and he
6 explains reasons why he might be interested in
7 joining West Face.

8 That leads to a total of three meetings
9 that take place between Mr. Moyse and
10 representatives of West Face before he is
11 ultimately hired.

12 So first a brief meeting with Mr. Dea
13 on March 26th of 2014; they meet for coffee at a
14 local coffee shop called Aroma. They have a
15 high-level chat concerning Mr. Moyse's background,
16 his work at Catalyst, and discuss why he might want
17 to join West Face.

18 April 15, he comes back to West Face
19 and he meets briefly with three people, so two of
20 them are partners, so Peter Fraser and Tony
21 Griffin, both partners of West Face, and I'm going
22 to mispronounce the next name, Yu-jai Zhu is a
23 vice-president I believe of West Face and basically
24 an analyst. They interview Mr. Moyse briefly,
25 again about his background, about his credentials,

1 about the kind of work he had been doing at a high
2 level and about the work he would like to do at
3 West Face.

4 And then finally on April 28th
5 Mr. Boland, who was the CEO of West Face, has a
6 very brief interview with Mr. Moyse, just to check
7 him out and make sure he was a good guy.

8 What is significant is that Wind is not
9 discussed at any point along the way in any of
10 these interviews. Never referred to. And you'll
11 hear evidence from a number of these people who
12 will deal with that very point.

13 I'm going to take you in a moment to
14 Mr. Zhu's notes of his interview with Mr. Moyse to
15 explain what we were told by counsel for Catalyst
16 as recently as Friday of last week about the
17 inference they intend to draw from that interview.
18 We had no intention of calling Mr. Zhu as a witness
19 until Friday afternoon when we were told about the
20 inference they seek to draw based on his interview
21 notes, so he will now be a witness to dispel the
22 inference that Catalyst would like to hang its hat
23 on.

24 In any event, Moyse is not discussed at
25 any point along the way before he is hired. He

1 becomes frustrated by the pace of the hiring
2 practices, but West Face is proceeding carefully in
3 a very different way.

4 What does West Face do? They go out
5 and they check his references. They ask for
6 references, so they check the references. And what
7 do they discover? They discover that Moyse has, as
8 we say in slide 9, excellent qualifications, so he
9 is a graduate of one of the leading universities in
10 the US, the University of Pennsylvania, with a
11 degree in mathematics, he has a strong work
12 background both at RBC, at Credit Suisse in New
13 York and with Catalyst. Significantly, has
14 experience both in debt capital markets and in
15 private equity, and his references are quite
16 outstanding. The next documents will show you
17 that.

18 So here on slide 10 is an email sent by
19 Mr. Mercein, Thomas Mercein of Credit Suisse, to
20 Mr. Dea at West Face on May 15 of 2014. He
21 describes Moyse as:

22 "Great kid, very smart and hard
23 working.

24 He was the guy that did all my
25 stuff when he was in my group. I

1 was consistently impressed with his
2 work.

3 You are the man.

4 Tommy."

5 And then the next one from Rich Myers
6 of Credit Suisse to Mr. Dea a day or two later, May
7 16th:

8 "Sounds good. Nothing negative
9 at all to say about Brandon - quite
10 the opposite. He was among the very
11 best analysts we've had and was
12 given the lead on several high
13 profile internal projects with
14 senior management focus."

15 So he comes in with tremendous
16 credentials and strong references. Again, nothing
17 whatsoever to do with the fact that he had worked
18 on Wind because no one at West Face knew he had
19 worked on Wind, the subject never came up.

20 Now, I referred to this a moment ago,
21 the Catalyst approach to mischaracterize these
22 innocuous events typified by its intention to
23 allege that Mr. Moyse discussed Wind during his
24 interview with Mr. Zhu on April 15, 2014 based on
25 his handwritten notes.

1 So what do the notes say? Mr. Zhu's
2 handwritten notes are on the left side of the next
3 slide and a typed transcription is on the right
4 side. So these are his notes of his interview with
5 Moyses on April 15th of 2014. And you'll see, if
6 you look at the note, there is no reference
7 whatsoever to Wind, none.

8 So what are we told last Friday? We
9 are told by Catalyst counsel that because of the
10 reference about five lines down under the heading
11 "Catalyst live deals," they intend to ask the court
12 to draw an inference that the reference to "live
13 deals" must mean that he discussed Wind Mobile with
14 Mr. Zhu, even though Wind is not referred to at all
15 in the note.

16 What does Mr. Zhu say when we asked him
17 about that on Friday? Here is his affidavit sworn
18 last Friday afternoon, June 3. You'll see him
19 testify, vice-president of West Face:

20 On the afternoon of Friday,
21 June 3, 2016, I was informed by
22 Mr. Panet, general counsel to West
23 Face, that Catalyst intends to rely
24 on a note I took of my interview
25 with Mr. Moyses on April 15, 2014 to

1 suggest that Mr. Moyse and I
2 discussed Wind Mobile during his
3 interview. For the reasons set out
4 below, I can state categorically
5 that that suggestion is simply
6 false."

7 He goes on to explain the note, what
8 they did discuss and why they would never have
9 discussed Wind Mobile.

10 Now, what is the sequence of events
11 surrounding the actual hiring of Moyse? They are
12 very simply these.

13 On May 16, after checking his
14 references, West Face makes a verbal offer of
15 employment to Moyse. I believe he was travelling
16 in Southeast Asia at the time. They eventually
17 follow up with a written offer of employment on May
18 22nd. They again decide to hire Mr. Moyse for
19 completely innocuous reasons, so a strong academic
20 background, his skills as an analyst, and excellent
21 references, again nothing whatever to do with Wind.

22 He was hired to fill an immediate need,
23 and you'll see on this slide several emails that
24 deal with that immediate need and why they hired
25 him. And the key email is in the middle of the

1 slide, it's an email from Mr. Dea to Mr. Boland,
2 Mr. Fraser, Mr. Griffin, the three other partners
3 of West Face, where you see the highlighted part of
4 it saying:

5 "I think the immediate need is
6 to have someone mostly dedicated to
7 grinding out possible debt deals.
8 Anyone else?"

9 And Mr. Boland writes back and says:
10 Agreed, reach out to another person, put him off
11 for a bit, and so on and so on.

12 Now, what's important about that, Your Honour, that
13 particular slide, is of course the Wind Mobile
14 transaction couldn't be further away from a debt
15 deal. Debt deals were the Alternative Credit Fund
16 and the reason for hiring Moyse again had nothing
17 whatsoever to do with the sort of transaction that
18 West Face, independent of Mr. Moyse, ultimately
19 proceeded with in the summer of 2014.

20 Now, let me pause here and address a
21 submission made by Mr. DiPucchio in his opening.
22 He said the evidence will show -- I took a note of
23 it, he said the evidence will show that West Face
24 took a cavalier approach, to use his phrase, a
25 cavalier approach to dealing with the confidential
information of Catalyst. And I say by way of
opening, with respect, nothing could be further
from the truth.

In fact, it is remarkable to see the

1 number of precautions that West Face took to
2 protect the confidential information of Catalyst
3 before they ever let Moyse set foot in the door.

4 So what were the precautions? Here we
5 are on May 22nd of 2014, this is the same day that
6 they send a written offer of employment, Your
7 Honour, and this is a month before Moyse ever
8 darkens the door of West Face. You'll see here an
9 extract from Mr. Singh's affidavit. Mr. Singh was
10 the general counsel of West Face at the time.
11 Mr. Singh says that:

12 "On or about May 22, 2014, the
13 same day that West Face provided a
14 written offer of employment to
15 Brandon, I spoke with Brandon and
16 advised him that West Face takes
17 matters of confidentiality very
18 seriously and that he was not to
19 disclose any information belonging
20 to Catalyst. I pointed out to
21 Brandon that this obligation was
22 also included as part of his
23 employment contract with West Face,
24 which states that he must not use
25 any property in the course of his

1 employment with West Face which is
2 confidential or proprietary
3 information of any other person,
4 company, group or organization,
5 which I told him would include
6 Catalyst."

7 He was given a specific admonition by
8 the general counsel a month before he sets foot in
9 the door that he cannot disclose and he must not
10 disclose to West Face any information of Catalyst,
11 which of course would include Wind.

12 Now, what is - this is important, Your
13 Honour - what is quite literally the only evidence,
14 the only evidence Catalyst has of Mr. Moyse
15 conveying any information to West Face that it
16 perceives to be confidential? It is the email of
17 March 27, 2014. So let me pause here and just tell
18 you why this was sent.

19 When Mr. Dea met with Mr. Moyse I
20 believe the day before for a coffee at Aroma and
21 Moyse was now looking for a job at West Face, Mr.
22 Dea said to Moyse, we're going to need to see some
23 of your writing samples to be able to evaluate how
24 you write, but, he said, do not include in the
25 writing samples any information confidential to

1 Catalyst. So he specifically told him do not give
2 us anything that will be confidential to Catalyst
3 but we want to look at your writing.

4 So what does Moyses send on March 27?
5 He sends him his CV, he sends him something called
6 a deal sheet which is just a list of deals he had
7 worked on, and then, as you'll see, he says in the
8 first sentence of the email:

9 "...and a few investment
10 write-ups I've done at Catalyst."

11 And look what he says in the
12 highlighted part below that in the email, so an ex
13 post facto investment write-up about a company
14 called Homburg, reference to NSI, only public
15 information was used for the write-up. Rona,
16 prepared this with only public info. Arcan
17 Resources:

18 "The memo represents a couple
19 weeks' work off completely public
20 info."

21 So West Face is assured by Mr. Moyses
22 that the writing samples that are attached are
23 based on purely public information, that's the
24 basis on which -- and the reason he's saying that
25 is because he was given that specific admonition by

1 West Face when Mr. Dea asked for writing samples
2 when they met at Aroma the day before, on March
3 26th.

4 Now, you will see that for dramatic
5 effect we have called this a red herring and we
6 even put it in red on the slide.

7 THE COURT: Was that your input?

8 MR. THOMSON: Mr. Milne-Smith claims
9 credit for that.

10 MR. MILNE-SMITH: No, Mr. Thomson
11 wanted to put a fish in.

12 THE COURT: You are responsible for the
13 word "prosaic"?

14 MR. MILNE-SMITH: If credit is going to
15 be given where it is due, someone much smarter than
16 myself, Mr. Carlson.

17 MR. THOMSON: I am surrounded by a
18 bunch of smarty-pants.

19 Your Honour, the reason this is a red
20 herring is because none of these writing samples
21 have anything whatsoever to do with Wind Mobile.
22 With respect to the companies in question, it turns
23 out to be a complete red herring because West Face
24 did not invest in Homburg, did not invest in NSI,
25 did not invest in Rona.

1 It only made one investment in Arcan
2 Resources and did so based on a Plan of Arrangement
3 that only took place on June 23 of 2014, well after
4 these writing samples were generated several months
5 before, or years before, and well before they were
6 communicated to West Face on March 27. That Plan
7 of Arrangement clearly was not part of Moyse's
8 analysis while at Catalyst. Moreover, Catalyst
9 passed on investing in all of NSI, Rona and Arcan.

10 This couldn't be a bigger red herring.
11 This does not support in any way, shape or form the
12 contention that West Face was somehow cavalier
13 about receiving from Moyse confidential information
14 at all from Catalyst, and doesn't support the
15 contention in any way that Mr. Moyse conveyed
16 information to West Face about Wind Mobile.

17 THE COURT: Let's take the morning
18 break, 20 minutes.

19 -- RECESS AT 11:06 --

20 -- UPON RESUMING AT 11:26.

21 MR. THOMSON: Your Honour, the next
22 phase of the story from West Face's perspective
23 deals with its response to the concerns of
24 Catalyst. So of course up until May 24th or so,
25 when West Face is making offers to Moyse, it

1 doesn't know that it's going to be met with the
2 complaints that it eventually receives, but it does
3 become aware shortly thereafter of the concerns of
4 Catalyst.

5 So what happens? Here's the basic
6 sequence of events on slide 21. So May 24th of
7 2014, Moyse tells Catalyst that he is resigning.
8 May 26th, which is a Monday, Moyse returns to
9 Catalyst from his vacation in Southeast Asia, he
10 tells Riley that he has accepted a position at West
11 Face. What happens? Riley immediately sends Moyse
12 home and cuts off all access to the Catalyst
13 servers.

14 So that's important, Your Honour, for
15 this reason, just to make a mental note of this,
16 that in the entire period from May 26th onwards
17 Moyse is not kept apprised by Catalyst of anything.
18 He is not told by Catalyst about its negotiations
19 with VimpelCom, he is not told by Catalyst about
20 its discussions with the Government of Canada. He
21 has no idea what positions Catalyst may or may not
22 have taken, what positions VimpelCom may or may not
23 have taken, how the position of Catalyst may have
24 morphed, changed, been revised over time.

25 He simply is not there and believe me

1 when I tell you the evidence will be that
2 Mr. Glassman is not picking up the phone and
3 calling Mr. Moyse sitting at home about to join
4 West Face to say, guess what just happened in my
5 last discussion with the government, or with anyone
6 else for that matter.

7 So what happens? May 30th, 2014, this
8 is of course before Moyse joins West Face,
9 Catalyst's counsel sends a letter to West Face
10 expressing concerns over the hiring. Now, as of
11 that point in time West Face has no idea that Moyse
12 has been part of the deal team, the Wind deal team
13 at Catalyst.

14 June 18 of 2014, my good friend
15 Mr. DiPucchio writes a note or calls someone on the
16 West Face side, this is before we became involved,
17 but to say that Catalyst was particularly concerned
18 that Moyse had been involved while he was at
19 Catalyst on a telecom file. West Face simply makes
20 the informed assumption, it's a guess basically,
21 but makes the assumption that the telecom file was
22 Wind because that was the telecom file that West
23 Face was involved in.

24 So what do they do? This is where they
25 are to be commended, not faulted. They take a

1 series of steps to protect Catalyst and they do
2 so -- all of this is before Moyses joins West Face.

3 What do they do? June 19 of 2014, West
4 Face implements an impenetrable confidentiality
5 wall. They forbid Moyses from communicating with
6 anyone at West Face about Wind, vice versa and
7 that's announced within the firm. Memos are sent
8 within the firm. A meeting is held to tell people
9 stay away from Moyses, he has nothing to do with
10 Wind and we're not going to be discussing this
11 transaction in his presence, and that's exactly
12 what they ended up doing.

13 The IT group at West Face restricts his
14 access to Wind files and we've been through it and
15 there is no evidence whatsoever that Moyses ever
16 gained access to a Wind file in the brief period he
17 was employed by West Face.

18 June 19 of 2014, the chief compliance
19 officer of West Face calls Moyses, tells him that
20 he's not to talk about Wind with anyone at West
21 Face, he is not to disclose to anyone at West Face
22 any information about Wind, he is not to attempt to
23 access any West Face files regarding Wind.

24 And she will testify, Your Honour, at
25 the trial of this action to tell you what happened

1 during that discussion with Mr. Moyse, this is not
2 the subject of any debate, this was a matter of
3 admonishment. Her name is Supriya Kapoor, for your
4 notes, and she will testify during the course of
5 the trial.

6 Don't forget, just before the break we
7 established he had received a similar warning,
8 similar admonitions from the general counsel of
9 West Face a month before on May 22nd, 2014. So
10 multiple warnings coupled with a confidentiality
11 wall, all before he ever sets foot in the door at
12 West Face.

13 He begins working at West Face on June
14 23 of 2014. Two days later Catalyst sues him and
15 sues West Face and takes steps to pursue an
16 interlocutory injunction to enforce these
17 restrictive covenants that Mr. DiPucchio referred
18 to in the employment contract which West Face
19 believed were not enforceable.

20 You will see that he is only employed
21 by West Face for three weeks, so he is there
22 between June 23 and July 16. On July 16 the
23 parties agree to a consent interim order and he is
24 placed on indefinite leave. As it turns out, Your
25 Honour, he never comes back to West Face.

1 So he was there for a total of about 15
2 days and that's it. There is no further
3 substantive communications between Moyse and West
4 Face. To the extent there was any communication,
5 it was about benefits and matters of that sort
6 after July 16.

7 What do we know about the forensic
8 review of Moyse's involvement in these sorts of
9 matters while he was at West Face?

10 Well, West Face retains an independent
11 computer consultant, Mr. Burt-Gerrans, to take a
12 very careful look at Moyse's use of facilities at
13 West Face, including his desktop computer which was
14 still intact, it had not been reused by anyone else
15 at West Face so we have a complete record of what
16 Moyse did while he was at West Face. There was no
17 deletion of data so we have it all. With respect
18 to the data on the personal computer, no copying of
19 data from or to external storage devices, no record
20 that Moyse accessed his external DropBox account.

21 All of his emails were preserved.
22 They've all been gone through. There were hundreds
23 and hundreds of emails, even though he was only
24 there for three weeks, and suffice to say they are
25 all perfectly innocuous and none pertained to Wind

1 Mobile.

2 So the evidence of Mr. Burt-Gerrans is
3 not challenged, he will not be cross-examined at
4 trial because his evidence has been accepted.

5 Now, Catalyst has had all those emails,
6 by the way, since March of 2015, so for well over a
7 year.

8 So what about the Wind allegation,
9 slide 26? There is simply no evidence to
10 substantiate these allegations about Wind. So no
11 evidence that Moyle said anything to Dea or anybody
12 else at West Face about Wind before he was hired
13 either at the March 26th interview or the ones on
14 April 15 or 28; no evidence that he said anything
15 to anyone at West Face about Wind after he was
16 hired or in the period before they made him an
17 offer and before he joined West Face; no evidence
18 that the confidentiality wall was ever breached
19 prior to, during or after his three weeks of
20 employment at West Face. There is just simply no
21 evidence that Moyle communicated anything to anyone
22 at West Face ever about Wind Mobile by any mode of
23 communication, written or oral.

24 Now, that's really the beginning and
25 the end of Catalyst's case against West Face.

1 There is just no substance to it.

2 To fill in a few of the facts and to
3 respond to some of Mr. DiPucchio's comments and
4 allegations made in his opening, if you then roll
5 back and fill in some of the gaps.

6 So slide 29, the efforts to acquire
7 Wind begin November 14th of 2014 when Lacavera, who
8 is the CEO of Wind, calls Tony Griffin of West Face
9 and advises that VimpelCom wants to sell its
10 interest.

11 The next slide is the November 8, 2013
12 expression of interest that is provided by West
13 Face to Catalyst. And no reason to go through it
14 in detail but you'll see if you read it that they
15 are looking at proceeding on the basis of a
16 so-called enterprise value, toward the end of that
17 document, an enterprise value between 450 to 550
18 million dollars, comprised of \$150 million of third
19 party debt and an equity value of between 300 and
20 400 million dollars.

21 Now, let me pause there, Your Honour,
22 and say this. At that point in time, November of
23 2013 into the spring of 2014, Wind had a big
24 problem. The big problem Wind had was that
25 VimpelCom had effectively tired of being in Canada.

1 VimpelCom had been trying to obtain approval from
2 the Government of Canada to acquire majority
3 control of Wind. The government said no. In the
4 media it was reported the government said no
5 because VimpelCom is backed by Russians, the chair
6 of the board is a Russian, there were national
7 security concerns and the government said with
8 these national security concerns we're not going to
9 authorize VimpelCom to become the de jure control
10 owner of Wind Mobile.

11 So VimpelCom became quite frustrated
12 with those efforts. VimpelCom, by the time you get
13 to the spring of 2014, has accumulated shareholder
14 debt owed to it of about 1.5 billion dollars for
15 funding the operations of Wind. It can't get
16 approval from the government.

17 It has another problem which is that
18 there is debt owed by Wind Mobile to the vendors of
19 equipment to Wind, so companies like Alcatel-Lucent
20 and so on that had sold equipment, wireless
21 equipment and so on, they were owed about \$150
22 million in debt and that debt was nearing the stage
23 of default. In fact, that debt went into default
24 after VimpelCom effectively cut off support for
25 Wind Mobile in the spring of 2014. And so part of

1 the transaction had to do with either taking that
2 debt out or at least renegotiating or dealing with
3 it in some way that would deal with the vendor
4 debt.

5 Now, I said at the start of my opening
6 that West Face actually had an early lead over
7 Catalyst on negotiations to acquire Wind and these
8 are the relevant dates.

9 With respect to the initial expression
10 of interest, you will see West Face's was sent in
11 November 8, 2013, we just looked at that;
12 Catalyst's not until January 2nd, 2014. With
13 respect to non-disclosure agreements, West Face
14 executed its on December 7, 2013; Catalyst not
15 until March 21, 2014. In terms of gaining access
16 to the Wind data room, West Face obtained access
17 December 10, 2013; Catalyst not until May 2014.
18 And with respect to a first presentation from the
19 management of Wind, West Face December 18, 2013;
20 Catalyst not until May 2014.

21 Your Honour, this is important because
22 it puts the lie to any suggestion that West Face
23 pursued Wind because of Moyse. West Face's pursuit
24 of Wind had nothing whatsoever to do with Moyse.
25 They were completely unrelated events.

1 Now, by June 18, 2014, which is the
2 first time that West Face is told that Moyse had
3 worked on a telecom file at Catalyst, what had West
4 Face done? They made any number of proposals to
5 acquire Wind to VimpelCom; they had been in contact
6 on any number of occasions with Mr. Lacavera of
7 Globalive and Mr. Leitner of Tannenbaum. They both
8 eventually were part of the syndicate that was
9 formed to acquire Wind in September 2014. They had
10 accepted VimpelCom's demand for an enterprise value
11 of \$300 million.

12 Let me pause there. In Mr. DiPucchio's
13 submissions this morning he talked about how
14 coincidental it was that West Face ended up with
15 the same effective purchase price, if you will, as
16 Catalyst using an enterprise value of \$300 million.

17 It's a very simple explanation.
18 VimpelCom made that demand known to all bidders.
19 That's what they wanted and they made that demand
20 known in May of 2014. It was actually publicized.
21 It was sitting in the Globe and Mail. There was no
22 secret whatsoever as to what VimpelCom wanted to
23 get out of Canada and for its interest in Wind, so
24 all bidders were proceeding on the same basis.

25 What did West Face know about

1 VimpelCom? They knew that VimpelCom, because it
2 was selling Wind at a bargain basement price,
3 wanted a quick, clean exit with minimal regulatory
4 risk. That was a central facet of VimpelCom's
5 demands to West Face right from the get-go.

6 What then happens? April, May, June,
7 early July, West Face receives feedback from
8 VimpelCom again and again, this is in Mr. Griffin's
9 affidavit, it's a competitive sales process,
10 business priced to sell, this is an as-is/where-is
11 sale, and because of difficulties they had
12 experienced with the Government of Canada, they
13 wanted this clean, quick exit with no regulatory
14 risk.

15 And the contemporaneous documents
16 support all of this. So here is an email from Mr.
17 Griffin of West Face to Mr. Boland and a variety of
18 others about VimpelCom as of May 2nd, 2014 about
19 their feedback and proposal West Face had made.

20 Q. They do not wish to have any
21 rollover equity participation in the
22 business."

23 The next document, which is June 10th
24 of 2014 from Francois Turgeon at UBS, UBS acted as
25 the financial advisors for VimpelCom throughout

1 these transactions. What does UBS say on behalf of
2 VimpelCom?

3 "The delayed settlement feature
4 you proposed does not work for
5 VimpelCom. VimpelCom has the
6 objective of a clean exit at a \$300
7 million enterprise value.

8]VimpelCom] is not prepared to have
9 any portion of the proceeds
10 contingent on a future event."

11 So the position being taken by
12 VimpelCom both directly and through UBS is
13 consistent all the way through.

14 Several weeks later, June 23, 2014,
15 Mr. Turgeon of UBS to Mr. Griffin of West Face
16 talking about a markup of a draft of a share
17 purchase agreement that had been provided by UBS to
18 West Face where he says to Mr. Griffin that your
19 markup is not really helpful, it seems to be
20 completely redoing the share purchase agreement,
21 and so on and so on.

22 "As discussed on Friday, our
23 client is looking for a clean exit
24 on 'as-is basis' with a share
25 purchase agreement very close to

1 what we have sent you."

2 So basically stop screwing around, give
3 us the money, give us a clean agreement and we're
4 out, and that was the message that West Face
5 received from VimpelCom directly all the way
6 through.

7 Now, what happened when Moyse was at
8 West Face? West Face was pursuing Wind with
9 another strategic party that eventually declined to
10 participate.

11 And, Your Honour, you met with Mr.
12 Tenai on Friday of last week about the other party,
13 so during the very brief period of three weeks
14 while Moyse was at West Face, West Face was
15 pursuing what proved to be a dead end, a completely
16 different transaction than the one they did pursue
17 after he left. So even if someone had been
18 discussing Wind with Moyse, which they didn't,
19 nothing would have turned on it.

20 In any event, Moyse has no involvement
21 whatsoever in that transaction or any other
22 transaction while he's at West Face because of the
23 confidentiality wall.

24 And, Your Honour, as you've said in a
25 number of previous cases, sometimes the best

1 evidence as to what people actually knew, what they
2 thought, what they did at the time are the
3 contemporaneous documents. So let's look at one
4 contemporaneous document of Moyse to see what he
5 knew when he was at West Face about the Wind
6 transaction.

7 You'll see here at the top of the next
8 page an email from Moyse sent on September 16 of
9 2014 to one of his friends. And September 16, Your
10 Honour, is the very day that the West Face
11 acquisition of Wind was signed, it was completed on
12 the very day it was signed and publicly announced
13 all on the same day.

14 So this is an email from Moyse when he
15 becomes aware for the first time of the West Face
16 acquisition of Wind. Of course at this point he's
17 in the penalty box, he's been gone from West Face
18 since mid-July, but let's see what he says.

19 Saying to his friend, who says this is
20 a pretty big acquisition, they need more people.
21 And Moyse says:

22 "Haha - think they're just
23 backing them financially (my guess
24 is they are lenders to the new
25 company and maybe have some equity

1 or warrants). Sounds like Lacavera
2 will probably be the largest equity
3 holder and majority owner. Don't
4 know for sure since I couldn't work
5 on it! I'm sure Catalyst is pissed
6 especially now since they had wanted
7 to buy it."

8 What's significant about that email is
9 that Mr. Moyse gets literally everything wrong. He
10 gets literally everything wrong. That's not
11 remotely close to a fair description of the West
12 Face transaction. I'm not faulting him. It's all
13 wrong because he simply didn't know because he had
14 no involvement.

15 Now, what about, why did the Catalyst
16 transaction actually fail? Why didn't they close
17 the deal with VimpelCom?

18 The next slide, slide 40. Catalyst
19 takes the position repeatedly in its dealings with
20 the Government of Canada that it could not and
21 would not proceed with an acquisition of Wind
22 unless it obtained regulatory concessions from the
23 Government of Canada. And the problem with
24 Catalyst's position, Your Honour, was that the
25 Government of Canada confirmed repeatedly that it

1 was not willing to grant Catalyst those
2 concessions.

3 And can I pause here and draw a
4 dividing line between regulatory approval on the
5 one side and regulatory concessions on the other,
6 because they're two very different things.

7 The Catalyst transaction in question
8 would have involved a change of control of Wind
9 Mobile. Because it's a change of control of the
10 licensee, you had to obtain government approval for
11 that change of control, otherwise you can't
12 proceed. So government approval is baked into the
13 Catalyst transaction from day one. It simply could
14 never proceed to acquire Wind without obtaining
15 government approval.

16 Government concessions were a
17 completely different animal. The government can
18 approve the transaction, say go ahead and acquire
19 Wind, without ever giving you a single concession.
20 So requests for a concession really had nothing
21 whatsoever to do with government approval unless
22 you link the two together. And that distinction is
23 very important in terms of looking at what Catalyst
24 eventually did with the government.

25 Here is an email - this is important,

1 Your Honour - from Bruce Drysdale. This is now the
2 next slide. Drysdale is Catalyst's government
3 relations consultant and the evidence will show
4 that Drysdale had significant experience with
5 government, he worked in government, he worked for
6 and on behalf of three cabinet ministers, formed
7 his own consulting firm a number of years ago, and
8 he's retained by Catalyst to give them advice on
9 dealing with the government.

10 Let's look at what Drysdale says to
11 Catalyst on July 25 of 2014 where he says -- you
12 have to read these from the bottom up, so at the
13 bottom of the page he is referring to a discussion
14 he's had with a fellow named James Nicholson and
15 James Nicholson is one of the most senior people at
16 Industry Canada who is responsible for the Wind
17 transaction. He says in the highlighted part:

18 "Lastly, Nicholson implied that
19 Catalyst seeking any concessions was
20 a dead end as we have gone down that
21 road twice before with them and they
22 are unlikely to be flexible."

23 At the top of the page, same day, two
24 hours later, he says to Mr. de Alba, copied to
25 Mr. Riley:

1 "I worry we end up with a
2 stranded asset where Ottawa allows
3 us to buy Wind and approves transfer
4 of spectrum," that's the transfer of
5 spectrum to the new Wind company
6 owned by Catalyst, "but won't
7 license operation to be a
8 re-seller," which I'll explain in a
9 moment, "or won't give us
10 concessions to build it out. Then
11 they limit who we can sell it to."

12 What he's saying is they will approve
13 the transaction but not give you concessions; if
14 they don't give you the concessions, you will end
15 up with a stranded asset. So this is a high risk
16 proposition to Catalyst and you have to proceed
17 with this with your eyes wide open to be careful.

18 What does he say shortly thereafter?
19 This is now Sunday, August 3 of 2014, he writes a
20 very important email to Glassman and de Alba,
21 copied to Riley, so the three partners of Catalyst.
22 He says he was in Ottawa last week, he met with
23 Nicholson from Industry Canada, he also has coffee
24 with a senior official from the Privy Council
25 Office, he says he was able to have frank

1 conversations with both, also pursuing the Catalyst
2 position.

3 "Below please see some of the
4 feedback and insights from Nicholson
5 and the Privy Council Office."

6 And look at the highlighted part below:

7 "Both Industry Canada and the
8 Privy Council Office and the Prime
9 Minister's Office are adamant that
10 the current federal policy will not
11 change."

12 Pause there, Your Honour. The current
13 federal policy prohibited the transfer of spectrum
14 from new entrants to incumbents. He goes on to
15 say:

16 "Nicholson clarified the
17 federal position saying Minister
18 Moore and Industry Canada officials
19 would not be opposed to Catalyst
20 buying Wind but Ottawa would not
21 provide concessions Catalyst
22 outlined in its May presentation for
23 building out a fourth carrier nor
24 would Ottawa allow Catalyst or
25 anyone else to become a re-seller."

1 This is one of the options
2 Mr. DiPucchio explained in his opening.

3 "Nicholson said that if
4 Catalyst signs a sale and purchase
5 agreement with Wind it should do so
6 with a clear understanding it would
7 have to build out a fourth carrier
8 without concessions and without
9 ability to sell to an incumbent
10 after 5 years."

11 So Catalyst's exit strategy is down the
12 drain. And then at the very bottom of the page:

13 "Nicholson said that if nobody
14 steps forward to build out a fourth
15 carrier as a straight-up proposition
16 (no concessions, no ability to sell
17 incumbents after 5 years, etc.) then
18 the Harper government has
19 'mitigating strategies' in place to
20 deal with that scenario."

21 So, Your Honour, why is all that
22 important? Because Mr. Glassman has filed an
23 affidavit in these proceedings in which he has said
24 for trial purposes: In the absence of the
25 concessions we weren't prepared to proceed with an

1 acquisition of Wind, the Government of Canada has
2 now stated and the Minister has said very clearly
3 there will be no concessions.

4 It's as simple as that. That's why
5 this whole effort to somehow fault, of all people,
6 fault West Face for the failure of the Catalyst
7 transaction is a complete non-starter. It's a
8 complete non-starter. The whole strategy of
9 Catalyst, as it turns out, was stillborn right from
10 the beginning for reasons that have nothing
11 whatsoever to do with Moyse and nothing that has
12 anything to do with West Face.

13 So how does Catalyst try to link all of
14 this now back to West Face? They say that Moyse
15 knew Catalyst's regulatory strategy. Why? Because
16 he transcribed notes for a PowerPoint presentation
17 that Glassman or Riley used in a presentation to
18 Industry Canada on March 27 of 2014. The key
19 concession that they were seeking was this exit
20 strategy of allowing Catalyst to exit its
21 investment in Wind without restrictions in five
22 years, including by selling wireless spectrum of
23 Wind to an incumbent.

24 And you'll see here a copy of the next
25 slide, part of the presentation delivered by

1 Catalyst to the Government of Canada on March 27 -
2 Mr. DiPucchio showed you, I think, part of this -
3 and Catalyst again presents three strategic options
4 for consideration by the government in that
5 meeting.

6 So the first option is a combination of
7 Wind Canada and Mobilicity to create a fourth
8 national carrier focused on the retail market. So
9 this is now a retail operation, which of course had
10 been the government's focus from day one.

11 You'll see the next sentence is
12 actually quite important, so negotiations with
13 VimpelCom are well advanced but no deal - no deal -
14 can be completed without establishing a viable
15 regulatory and economic framework so we can't
16 proceed unless you give us the concessions.

17 Then under the heading "Requires," one
18 of the changes that would be necessary to create
19 that viable regulatory and economic framework,
20 among others, the very last bullet, the ability to
21 exit the investment with no restrictions in five
22 years. So that was one of the key concessions
23 Catalyst sought.

24 Option 2 was the so-called reseller
25 option, which we just discussed a moment ago, so a

1 combination of Wind and Mobilicity to create a
2 fourth national carrier focused on the wholesale
3 market. What they were contemplating was that they
4 would combine these two companies to create a
5 fourth national carrier but not focused on the
6 retail market, rather focused on renting its
7 spectrum to incumbents in a competitive bidding
8 situation. That's the reseller option.

9 The problem with that is of course that
10 that required government approval because that
11 involves, under the Government of Canada rules, a
12 transfer of wireless spectrum. Again, what did
13 that option require? The last bullet, the ability
14 to exit the investment with no restrictions in five
15 years, and so on.

16 So that was the Catalyst exit strategy.
17 And the end of the story is the government just
18 says no, we're simply not prepared to allow this.

19 Now, what was the threat that was made?
20 What was the threat that was made in meetings on
21 March 27 and on May 12 as to why the government
22 should choose option 1 or option 2? The threat was
23 option 3.

24 In this case option 3 dealt with
25 Mobilicity rather than Wind Mobile, so CCAA

1 Mobilicity court process sale to Telus with or
2 without the government support, so the threat was
3 that if the government will not agree to the sale
4 of Mobilicity to Telus, litigation is going to
5 arise; in that litigation, everyone will be lined
6 up on one side with the government on the other, so
7 Mobilicity estate, the court-appointed monitor, the
8 Ontario court which would mean you, actually, Your
9 Honour, industry incumbents on one side versus the
10 federal government on the other.

11 And then the threat is really on the
12 last part of the page, VimpelCom deal will be off
13 the table, reluctantly the government will be
14 facing a long and inconvenient front-page battle
15 that will be characterized as a policy failure and
16 Catalyst will have to support the Mobilicity
17 estate.

18 So Catalyst would jump into the
19 litigation, if you will, to support the people
20 suing the government, it will be embarrassing for
21 the government, it will be front-page news and it
22 will be perceived as a policy failure. And that
23 was the stick, if you will, to try to get the
24 government to agree to options 1 or 2. As it turns
25 out, that message fell on completely deaf ears and

1 the government simply said no. It said no in July
2 and said no again in early August.

3 Now, this whole issue - Mr. DiPucchio
4 made a submission on this a moment ago that I'm
5 going to come back to in a second - this notion
6 that the Catalyst VimpelCom deal was somehow
7 conditional on Catalyst obtaining these regulatory
8 concessions from Industry Canada.

9 Here is an affidavit filed by Mr. Riley
10 February 18th of 2015 where he says the only point
11 over which the parties, that's VimpelCom and
12 Catalyst, could not agree was regulatory approval
13 risk. Catalyst wanted to ensure that its purchase
14 was conditional on receiving certain regulatory
15 concessions from Industry Canada.

16 And then the next affidavit, sworn May
17 1 of 2015, where he says at the time the
18 anticipated deal with VimpelCom was conditional on
19 Industry Canada approval and the granting of
20 certain regulatory concessions to a Catalyst-owned
21 Wind that in Catalyst's mind would make it easier
22 for a fourth national carrier to succeed. These
23 concessions were essentially the same regulatory
24 concessions summarized in the PowerPoint
25 presentation Moyse helped create in early 2014.

1 And that's the PowerPoint I just took
2 you to.

3 The problem with that evidence, Your
4 Honour, is, based on Catalyst's own admission, it's
5 simply wrong. It's simply wrong. The
6 VimpelCom/Catalyst transaction was never
7 conditional upon Catalyst receiving these
8 regulatory concessions.

9 Why do we say that? Because of the
10 following answering to undertaking. So the answer
11 to undertaking was to advise if any drafts of the
12 share purchase agreement being negotiated between
13 Catalyst and VimpelCom contained a condition that
14 the deal could not close unless Catalyst obtained
15 certain regulatory concessions from the government.
16 The answer to undertaking is: The drafts of the
17 share purchase agreement exchanged by Catalyst and
18 VimpelCom contained certain regulatory conditions.
19 None were expressly predicated on Catalyst
20 obtaining regulatory concessions.

21 So, there is just simply no doubt. If
22 you look at the share purchase agreement, Your
23 Honour, there is no condition to that effect in any
24 draft that we've seen, and we've seen, we believe,
25 every single draft. It never existed.

1 Moreover, if you look at the actual
2 condition that was agreed to in the share purchase
3 agreement before the Catalyst/VimpelCom transaction
4 came to an end, you'll see in section 6.3(d) of the
5 share purchase agreement that specifically
6 precluded Catalyst from seeking the very
7 concessions it had sought in the meetings in March
8 and in May.

9 So section 6.4:

10 "The purchaser," that's
11 Catalyst, "shall not knowingly take
12 or cause to be taken any action
13 which would be expected to prevent
14 or delay the obtaining of any
15 consent or approval required
16 hereunder, including (a) ...seeking
17 an approval from any governmental
18 authority for a transaction other
19 than the transactions contemplated
20 hereby," which of course did not
21 include the sort of things Catalyst
22 had in mind.

23 And to make that clear, skipping down a
24 sentence:

25 "For greater certainty, for the

1 duration of the interim period,"
2 that's before closing, "[Catalyst]
3 shall not develop, evaluate or
4 analyze any studies, analyses,
5 reports or plans relating to the
6 sale of the business, or any of its
7 assets, by the purchaser to an
8 incumbent, or discuss with any
9 governmental authority the sale or
10 transfer of the business, or any of
11 its assets, by the purchaser to an
12 incumbent."

13 So what did the agreement contemplate,
14 Your Honour? It expressly precluded Catalyst from
15 even studying its exit strategy, let alone
16 discussing the exit strategy with representatives
17 of the Government of Canada, a very, very, very key
18 provision in this case.

19 Now, notwithstanding that they were
20 prepared to agree and sign that agreement, it's
21 clear from the evidence of Glassman that Catalyst
22 had no intention of abiding by that requirement
23 whatsoever.

24 What does Glassman say?

25 "I was involved in Catalyst's

1 negotiations with VimpelCom but de
2 Alba was Catalyst's lead
3 negotiator... I was primarily
4 responsible for Catalyst's
5 negotiations with Industry Canada
6 and the Federal Government
7 concerning critical regulatory
8 issues that I had decided needed to
9 be resolved before Catalyst
10 purchased Wind."

11 He had said that these concessions had
12 to be obtained before he purchased Wind, not after.
13 Then he says the same thing, Your Honour, I'm not
14 going to take you through it, but paragraph 10 of
15 his affidavit and indeed in any number of other
16 paragraphs in the affidavit he says the very same
17 thing, which is we will not proceed unless and
18 until we obtain the concessions and they have to be
19 obtained before we acquire Wind because they
20 weren't prepared to be saddled with the burden of
21 having Wind in circumstances where the concessions
22 could not or would not be granted.

23 Now, at the next slide, the one that's
24 on the screen now, this is part of the discovery
25 transcript of Mr. de Alba taken on May 11 of this

1 year, so three weeks ago or so, where he's asked
2 the question: What would Catalyst have done if
3 they did not obtain any of these regulatory
4 concessions? His answer was:

5 "Answer: We would not have
6 proceeded.

7 Question: You would not have
8 proceeded?

9 Answer: We have not obtained any
10 of those concessions?

11 Question: Right.

12 Answer: No."

13 So the position of Catalyst was they
14 would not have proceeded to acquire Wind if they
15 had not obtained the concessions and the Government
16 of Canada had said clearly, as I showed you a
17 moment ago, that they were not prepared to grant
18 Catalyst the concessions it had sought.

19 Now, what happened at the end of the
20 Catalyst deal? They entered into exclusive
21 negotiations with VimpelCom on July 23 of 2014.
22 They have exclusivity between July 23 and August
23 18. Moyses of course knows none of this because
24 he's been gone from Catalyst since May, he's been
25 gone from West Face since July, so he has no idea,

1 none of this is coming through Moyse.

2 August 7 of 2014, this consortium of
3 Tannenbaum, LG Capital, West Face makes an
4 unsolicited offer for Wind. There is no evidence
5 that that offer played any role in the failure of
6 Catalyst to reach an agreement with VimpelCom, but
7 in any event, even if that weren't the case,
8 Catalyst has made the deliberate, tactical choice
9 not to assert inducing breach claims in this case
10 even though Catalyst first learned of that
11 consortium offer in August or September of 2014,
12 and that's from the discovery transcript of de
13 Alba.

14 VimpelCom agrees on August 8 of 2014 to
15 extend the negotiation rights exclusively to August
16 18.

17 What happens to the offer made by West
18 Face? The answer is VimpelCom ignores it. And
19 you'll see some of the emails on the West Face side
20 of the table from the timeframe where that's
21 effectively what they're saying, and I'll skip to
22 one or two that show this.

23 And here is the first response on the
24 next slide from a gentleman named Felix Saratovsky
25 about a week after the West Face consortium

1 unsolicited offer is made, so August 15th of 2014.
2 Saratovsky who is leading the negotiations on
3 behalf of VimpelCom writes to Mr. Boland of West
4 Face to say:

5 "Greg, thank you for your
6 email. We continue to be in an
7 exclusivity period. We will
8 certainly contact you if exclusivity
9 expires early next week."

10 Mr. Boland writes back at the top of
11 the page to say:

12 "First time he has responded so
13 not a bad sign."

14 So this is the first response they get
15 from Saratovsky a week later, August 15th, and all
16 it is is to say we are not going to contact you, we
17 will only contact you if things fall apart with the
18 people at Catalyst.

19 Now, how did Catalyst end up falling
20 off the rails on its own negotiations with
21 VimpelCom? It's very simple. Catalyst assumes
22 incorrectly that the VimpelCom board approval which
23 was required right from the outset will simply be a
24 rubber stamp, that the board of VimpelCom will not
25 insist on changes, whatever they had negotiated up

1 to that point in time.

2 The chairman of VimpelCom, a Russian
3 fellow named Aleksey Reznikovich, it turns out when
4 he takes a look at this he is concerned about the
5 risk to VimpelCom of not receiving regulatory
6 approval. He never asked Catalyst to draw up the
7 general condition for obtaining regulatory
8 approval. Of course he couldn't because it was
9 required under the Industry Canada rules. Instead,
10 what he asked Catalyst to do was to agree to a 5 to
11 20 million dollar break fee if the approval was not
12 granted within 60 days.

13 Effectively he's seeking an additional
14 condition, if you will, Your Honour, an additional
15 term of the arrangement that will protect VimpelCom
16 against the downside risk of not getting regulatory
17 approval. It's that term that Catalyst refuses to
18 agree to.

19 Glassman and de Alba, we say, now
20 essentially concede that Catalyst could have closed
21 a deal with VimpelCom but chose not to because they
22 felt that that position of VimpelCom taken by its
23 chairman was unreasonable in mid-August of 2014.
24 There is of course no evidence, we say, that
25 Catalyst ever attempted to solve that problem,

1 didn't negotiate for a lower break fee, didn't
2 negotiate for a different solution to address the
3 chairman's concerns. Instead, they effectively
4 agreed, or decided, rather, to walk away from the
5 transaction.

6 By August 15th of 2014 they decided not
7 to accept VimpelCom's terms coming from the
8 chairman. They decided instead to allow their
9 period of exclusivity to expire and to allow
10 VimpelCom to consider its options.

11 And here is a very significant email
12 exchange on the next page containing emails from
13 the professional advisors of Catalyst, legal and
14 financial and investment bankers, all on August 15
15 of 2014.

16 Your Honour, Ben Babcock of Morgan
17 Stanley is the lead investment banker on this
18 transaction for Catalyst. You see at the bottom of
19 that page, August 15th he writes to de Alba and
20 John Levin of Faskens to say: I agree, I think
21 Jon, I guess John Levin should go back --

22 THE COURT: Short for Jonathan.

23 MR. THOMSON: I guess that's right.

24 I agree. I think Jon should go
25 back and make these points to

1 Felix," that's Felix Saratovsky at
2 VimpelCom, "and leave it. Our
3 proposal deals with their
4 issues/concerns. Reznikovich," who
5 is the chairman of VimpelCom, "is
6 being very unreasonable and
7 unrealistic. No one will ever do
8 what he is asking."

9 So that's the bet they are making,
10 nobody will give the chairman of VimpelCom what
11 he's asking. Levin writes back:

12 "They are out to lunch and I
13 think we should tell them."

14 Mr. de Alba writes back moments later
15 to say: "Absolutely!" In capital letters and with
16 an exclamation point.

17 And then look at the advice from
18 Babcock of Morgan Stanley, August 15th, the same
19 day, he says:

20 "Tell them and then shut down
21 communication. This needs to go
22 past the exclusivity time and
23 Aleksey," that's the chairman,
24 "needs to see his alternatives and
25 their terms.

1 If we keep talking, we look
2 anxious to [the chairman]."

3 So the advice from Morgan Stanley is go
4 back and tell them that they're out to lunch, we're
5 not going to agree to the term demanded by the
6 chairman of VimpelCom, let's tell them that, shut
7 down communications, let our period of exclusivity
8 expire, let VimpelCom look at its options and see
9 what happens.

10 And what they are were banking on, Your
11 Honour, they simply made a bad bet, they made a bad
12 bet that nobody else would come along and make an
13 offer that might be acceptable to VimpelCom and
14 that is a bet that Catalyst lost.

15 Now, again, this has nothing to do with
16 Moyses, nothing whatsoever to do with Moyses. He is
17 not involved with this in any way, shape or form.

18 So at the end of the day where does
19 that take you? That Catalyst's failure to buy Wind
20 has nothing to do with the non-existent conveyance
21 of confidential information by Mr. Moyses to West
22 Face. Catalyst had its own reasons for not wanting
23 to agree to that additional term. They didn't
24 believe that Wind was viable on a stand-alone
25 basis; that was not the view of West Face.

1 Catalyst was not going to buy Wind without these
2 concessions, while the concessions were never
3 sought by West Face. Catalyst knew that the
4 government staunchly opposed granting such
5 concessions. The concessions were irrelevant to
6 West Face.

7 Moreover, Catalyst was free to pursue
8 the deal that West Face offered after August 18 and
9 indeed, as it turns out, based on the answers to
10 undertakings, did exactly that. But of course
11 whatever its efforts were, they came to nothing.

12 And Catalyst has refused to produce any
13 evidence of its post August 18 negotiations with
14 VimpelCom so we have no productions from Catalyst
15 in this case that postdate the end of the
16 exclusivity period on August 18th so we don't know
17 what they did, we don't know how they did it, we
18 don't know what approaches they made to VimpelCom
19 except that they clearly did so and they did so
20 during the period of August 25th to September 16 of
21 2014, which was the period in which West Face was
22 in exclusivity with VimpelCom.

23 Now, who are the witnesses that we
24 intend to call at trial? That's in the next slide.

25 THE COURT: Just before you do that,

1 just reading this slide --

2 MR. THOMSON: Yes.

3 THE COURT: -- is there any evidence
4 that Catalyst at this stage knew what the West Face
5 offer was?

6 MR. THOMSON: Well, they refused to
7 produce any documents after August 18 so we don't
8 know. We were met with a blanket refusal. Now,
9 we're going to ask you to draw an inference from
10 that refusal but we don't have a single document
11 from Catalyst that postdates August 18 of 2014 in
12 this case and you can draw your own inferences and
13 we'll ask you to do that at the end of the case.

14 THE COURT: Is there evidence that
15 Catalyst was dealing with VimpelCom?

16 MR. THOMSON: Yes, the two answers to
17 undertaking. So undertaking number 50, to advise
18 whether Catalyst undertook further efforts after
19 exclusivity expired to acquire Wind subject to Rule
20 30.4.12; the answer is yes. The next answer, to
21 advise whether Catalyst had any communications with
22 VimpelCom between August 25th and September 16th,
23 that's the period of exclusivity that West Face
24 had; the answer is yes.

25 THE COURT: I see.

1 MR. THOMSON: So we know that they
2 were; we just don't know what they were doing and
3 they won't produce the documents and they won't
4 disclose the evidence, so they suffer the
5 consequences of that choice at trial in the
6 Commercial List.

7 So, who are the witnesses that West
8 Face intends to call? There are 11 witnesses in
9 total. We only intend to call seven, I believe it
10 is, because Catalyst has decided not to
11 cross-examine four of them.

12 So you'll hear from Tony Griffin, a
13 partner of West Face. He is the person who had
14 primary responsibility for the whole Wind
15 transaction. He'll talk about how West Face
16 proceeded with the efforts to acquire Wind and he
17 will testify that this was simply a sound
18 investment worth the business risk, no need for the
19 concessions from the government and, most
20 importantly, Your Honour, given the only claim
21 asserted here, that Moyse had no involvement
22 whatsoever and conveyed no information whatsoever
23 with respect to Wind to anyone at West Face.

24 He will also testify that now that he
25 knows a bit more about what Catalyst actually did

1 at the time through the productions in the case,
2 that their strategy would have been completely
3 irrelevant to West Face given the very different
4 views these two enterprises had on the viability of
5 the Wind business. West Face believed the business
6 was viable, strong and could succeed, indeed
7 flourish, without the concessions. It turns out
8 West Face was exactly right and it turns out
9 Catalyst was exactly wrong.

10 Hamish Burt, who was a member of the
11 consortium that acquired Wind in September of 2014,
12 will testify that his firm had no knowledge of
13 Catalyst's regulatory strategy or any other
14 information about Wind Mobile.

15 Leitner from Tennenbaum Capital
16 Partners. Tennenbaum was involved in Wind Mobile,
17 I believe, before West Face was and they acquired a
18 bunch of the vendor debt of West Face. He will
19 testify that Tennenbaum had no knowledge of
20 Catalyst's regulatory strategy or information and
21 had a very different view of the Wind business than
22 Glassman and Catalyst apparently did.

23 Simon Lockie, who you may know, Lockie
24 is the chief legal officer of Globalive. He will
25 talk about the reasons why Catalyst ultimately

1 failed to acquire Wind, because he was on the other
2 side of the transaction to an extent, and their
3 refusal to meet the demands of the chairman of
4 VimpelCom in August of 2014.

5 Mr. Dea is the partner of West Face who
6 actually hired Moyse and he'll testify about what
7 happened during the hiring process for Moyse, why
8 Moyse was hired, and again talk about the efforts
9 taken by West Face to make sure that no information
10 was conveyed by Moyse to West Face that was
11 confidential to Catalyst.

12 Ms. Kapoor, chief compliance officer of
13 West Face, she will be a brief witness but she will
14 testify about the creation of the confidentiality
15 wall and about her discussions with Moyse before he
16 joined West Face about the importance of abiding by
17 that wall.

18 Mr. Zhu, a person I referred to briefly
19 before, he will testify again very briefly in the
20 case about his job interview with Mr. Moyse that
21 took place in April of 2014 to confirm for the
22 court that there was no discussion about Wind
23 during that interview and he'll testify why he's so
24 sure that that did not happen.

25 Mr. Singh will not testify but his

1 evidence has already been given in advance of the
2 trial. He testified about the precautions that
3 West Face took when they hired Moyse, about his
4 explanation to Moyse, his insistence that Moyse
5 abide by his confidentiality obligations to
6 Catalyst. Again, Catalyst has not asked to
7 cross-examine him at trial.

8 Mr. Burt-Gerrans again will not testify
9 at trial, simply file his evidence and the
10 transcript of his cross-examination, about his
11 review of the electronic files of West Face,
12 including Moyse's computer and about how there is
13 simply no evidence of any deletion of information
14 and no evidence that would suggest that Moyse
15 misconducted himself in any way, shape or form
16 during the course of his employment at West Face.

17 Chap Chow again will not testify at
18 trial but did give evidence before the trial
19 concerning his efforts to preserve Mr. Moyse's
20 computer. Why did he give evidence? Because
21 during the cross-examination of another witness in
22 a period just before an injunction application was
23 argued, there was a suggestion made of some issue
24 of spoliation of documents by West Face, so he
25 jumped into the fray to say there was no spoliation

1 whatsoever, every single document was preserved and
2 preserved in a timely and appropriate fashion.

3 And then Asser ElShanawany, an officer
4 of Wind who again will not testify at the trial but
5 gave evidence before the trial about the
6 acquisition of Wind and his involvement in the due
7 diligence process.

8 That takes me, Your Honour, finally to
9 the findings of fact that we will ask you to make
10 at the end of the trial and there are nine findings
11 that we will ask you to make.

12 And they are these: First --

13 THE COURT: I've read them.

14 MR. THOMSON: Okay. Then I can skip
15 past them.

16 Subject to any questions Your Honour
17 may have, those are my opening submissions.

18 THE COURT: Thank you. Mr. Centa?

19 MR. CENTA: Good morning, Justice
20 Newbould. My name is Rob Centa, I am here on
21 behalf of the defendant Brandon Moyse who is in
22 court this morning. Joining me at the counsel
23 table is my partner Kris Borg-Olivier and my
24 colleague Denise Cooney. We are ably assisted on
25 the tech side by Virginia Fletcher.

This is Exhibit "58" 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.

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

VOL 1
June 06, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 1/Volume 1 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 6th day
of June, 2016, commencing at 9:00 a.m.

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

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

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

7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq.,
9 & Brad Vermeersch, Esq. for the Plaintiff.
10
11 Robert A. Centa, Esq.,
12 & Kris Borg-Olivier, Esq.,
13 & Denise Cooney, Esq. for the Defendant,
14 Brandon Moyse
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
19

20 Also Present:

21 Tanya Barbiero (Law Clerk, Davies)
22
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I N D E X

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GABRIEL DE ALBA

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18 THE COURT: Thank you. Mr. Centa?

19 MR. CENTA: Good morning, Justice
20 Newbould. My name is Rob Centa, I am here on
21 behalf of the defendant Brandon Moyse who is in
22 court this morning. Joining me at the counsel
23 table is my partner Kris Borg-Olivier and my
24 colleague Denise Cooney. We are ably assisted on
25 the tech side by Virginia Fletcher.

1 Justice Newbould, in this litigation
2 Catalyst alleges Mr. Brandon Moyse gave
3 confidential Catalyst information about Wind to
4 West Face which was critical to West Face's ability
5 to succeed in its quest to purchase Wind Mobile in
6 August and September 2014 and that Mr. Moyse
7 committed the tort of spoliation, that is he
8 intentionally destroyed relevant evidence with the
9 intention of hindering Catalyst's ability to
10 prosecute this action; he did so when he deleted
11 his internet browser history from his computer
12 before it was turned over to be imaged pursuant in
13 the early stages of this litigation.

14 In our submission, the evidence you
15 will hear during this trial will not support or
16 make out either of those allegations.

17 We will expect to call two witnesses,
18 Mr. Moyse and Kevin Lo of Froese Forensic Partners.
19 Mr. Lo will provide expert evidence with respect to
20 the spoliation and computer forensic matters that
21 are at issue in this trial.

22 Now, you've heard a lot about
23 allegations of what Mr. Moyse did or didn't do so
24 far this morning in my friends' opening. Let me
25 tell you a little bit about the evidence you're

1 going to hear about Mr. Moyse himself.

2 He is a 28-year-old man with a BA in
3 mathematics from the University of Pennsylvania.
4 He started his career at Credit Suisse and then
5 moved to RBC Capital Markets and finally on to
6 Catalyst where he worked as an investment analyst
7 for only about a year and a half.

8 And it's sometimes important to step
9 back, Your Honour, in this case and remember the
10 very short periods of time that are at issue in
11 this case.

12 Mr. Moyse was not a long-term employee
13 at Catalyst. Mr. Moyse, the evidence will show,
14 was not involved in the telecommunications file for
15 a long period of time. The evidence will show that
16 Mr. Moyse was not involved in the Wind file for a
17 very long period of time. And while there were
18 some periods of intense activity, we will ask you
19 to step back and perhaps use the very handy
20 calendar that my friends have prepared because
21 we're going to see that a lot of this activity is
22 taking place in compressed timeframes.

23 It wasn't long after he started work on
24 the Wind file doing due diligence that he departed
25 West Face -- departed Catalyst for West Face, and

1 it is the circumstances of his departure that in
2 part give rise to this litigation.

3 As a result of this litigation,
4 Brandon's only work at West Face was for
5 approximately three and a half weeks before he was
6 ordered off active duty, ultimately never to
7 return. As a result of this litigation, he
8 remained on the shelf until late August 2015 when
9 he departed West Face on mutually agreeable terms
10 and he remained unemployed until December 2015 when
11 he obtained alternate employment as an investment
12 analyst at Stornoway Private Management in Toronto.

13 I want to make some things very clear
14 and put them right up front. Mr. Moyse made some
15 mistakes. You'll hear from Brandon that he made a
16 number of mistakes in connection with his move from
17 Catalyst to West Face between March and July 2014.
18 He has openly acknowledged these errors in
19 judgment. In particular, he made four significant
20 errors.

21 First, the evidence will show that
22 during the course of his recruitment to West Face,
23 West Face asked Brandon to send in some writing
24 samples and they were very careful and deliberately
25 asked him not to include any confidential

1 information, and Brandon sent West Face four memos
2 he created during the course of his time at
3 Catalyst and each of them was marked confidential.

4 And it's important to note that none of
5 these four memos related to Wind and none of them
6 related to any telecom file, and three of them were
7 simply analysis of publicly available information.
8 But that doesn't matter; it was a mistake for him
9 to have sent them and he admits that.

10 Then he made a second mistake. When he
11 quickly realized that he should not have sent West
12 Face an email containing four unredacted investment
13 memos, rather than immediately disclosing to
14 Catalyst that he had done so in pursuit of another
15 job, which admittedly would have been the best
16 practice, it may have led to a pretty short tenure
17 at Catalyst but that would have been the right
18 thing to do, or instead of raising it with West
19 Face, which he should have done, he simply deleted
20 the email from his "sent" folder and that was a
21 mistake.

22 Following his resignation from Catalyst
23 and prior to starting his employment at West Face,
24 Brandon returned his company-issued BlackBerry to
25 Catalyst and before doing so he "wiped" his

1 BlackBerry. And you will hear evidence from
2 Brandon that he did so because he wanted to delete
3 his personal text messages and pictures that he had
4 used his company-issued device to send and to take,
5 and because he understood and knew that any
6 Catalyst related emails that he had sent or
7 received through his Catalyst email account would
8 be independently preserved on Catalyst's servers.
9 Nevertheless, it was a mistake for him to do so.
10 He should have sought permission before he deleted
11 his personal items from his company device before
12 returning it.

13 And fourth, prior to turning over his
14 home computer and his personal devices to be imaged
15 pursuant to a consent order issued in this
16 litigation, Brandon deleted his internet browsing
17 history from that computer. You will hear from
18 Brandon that he did so because he was embarrassed
19 that a search of his internet browser history would
20 reveal his personal browsing habits which included
21 visits to adult entertainment websites and he did
22 not want Catalyst to have access to this
23 information or for his personal information to come
24 out. That was a mistake. And if he thought it was
25 going to keep that from public view, he was wrong.

1 There have now been at least two court decisions
2 reporting on his personal browsing habits.

3 But you will hear his evidence that he
4 did not delete any material relevant to this
5 litigation, that he did not intend to delete any
6 information relevant to this litigation, and while
7 there were better ways to address his concern, he
8 did not, in the act of deleting that browser
9 history, interfere in any way with Catalyst's
10 ability to prove its case. It was a mistake but
11 did not amount to the tort of spoliation.

12 Brandon has paid a very steep price for
13 these mistakes. He's been involved in this
14 litigation since 2014. This litigation has had an
15 extremely deleterious effect on a promising young
16 career. He's been kept on the shelf and out of the
17 workforce. He has suffered a period of
18 unemployment and for over a year he had to live
19 with the prospect of Catalyst trying to send him to
20 jail for a contempt proceeding that was ultimately
21 unsuccessful.

22 And now from those four mistakes and
23 scant additional evidence, Catalyst will ask this
24 court to draw the inference that Brandon passed on
25 confidential information relating to Wind to West

1 Face, confidential information with respect to its
2 telecommunications strategy, confidential
3 information with respect to its regulatory
4 approach, and then intentionally destroyed evidence
5 that he did so in order to frustrate Catalyst's
6 ability to prove its case.

7 At the end of the case we will be
8 asking you to find it is neither reasonable nor
9 logical to draw any of the inferences that Catalyst
10 wishes upon you. And it will be unreasonable
11 because you will hear uncontradicted evidence, both
12 from Mr. Moyse and from the West Face witnesses
13 that they never discussed Wind or the
14 telecommunications industry at all during the
15 recruiting process. You will hear uncontradicted
16 evidence from Mr. Moyse and the West Face witnesses
17 that he never sent them any emails containing
18 confidential information from Catalyst with respect
19 to Wind or the telecommunications industry.

20 You will hear and you have heard from
21 my friends that West Face put up a confidentiality
22 wall on June 19th, 2014 before Mr. Moyse started
23 work to prevent the sharing of any information
24 between Brandon and West Face and there is no
25 evidence that this wall was in any way or at any

1 time ineffective.

2 You will hear evidence that not a
3 single document containing Catalyst's confidential
4 information regarding Wind has been found at West
5 Face. You will hear evidence that not a single
6 email has been produced between Brandon and West
7 Face that contains any of Catalyst's confidential
8 information about Wind, not from Brandon's end, not
9 from West Face's end.

10 Catalyst has already unsuccessfully
11 argued that Brandon deleted relevant evidence
12 before Justice Glustein when it attempted to have
13 Brandon found in contempt of the court order.
14 Catalyst's evidence on this issue has not improved
15 since the record before Justice Glustein.

16 Brandon will give you extensive
17 evidence about his involvement in the Wind file
18 while he was at Catalyst. We expect that much of
19 the evidence led by the parties will focus on the
20 extent of his role at Catalyst and in the
21 telecommunications files in particular. You will
22 hear from Brandon that he had time-limited
23 involvement in the file and that, critically, his
24 understanding of Catalyst's regulatory strategy was
25 limited. However, regardless of whether Brandon

1 could, based on his level of knowledge and
2 involvement in Catalyst's telecommunications file,
3 whether he could have passed on the information to
4 West Face, his uncontradicted evidence will be that
5 he did not do so.

6 Catalyst will attempt to persuade you
7 that Brandon was an integral part of the telecom
8 team, had intimate knowledge of its regulatory
9 strategy in the telecommunications sector, but we
10 expect you will hear from Brandon that as an
11 investment analyst he was the most junior person on
12 the Catalyst deal team, that the culture at
13 Catalyst was hierarchal with much of the key
14 decision-making being done behind closed doors at
15 the partner level with little or no input from the
16 analysts, that he was first assigned to the
17 telecommunications team in March of 2014 and that
18 his work on the Wind file was quite insignificant
19 in March and in April while he worked on various
20 other Catalyst files and was out of the office
21 working on those projects approximately half his
22 time.

23 He will tell you that his involvement
24 with Catalyst's regulatory strategy for the
25 creation of the fourth national wireless carrier

1 was limited essentially to the administrative task
2 of creating the PowerPoint presentation that you
3 saw earlier this morning.

4 His evidence will be that yes, he was
5 involved in the creation of that PowerPoint slide,
6 but it was essentially transcribing notes given to
7 him by the partners and the vice-presidents at
8 Catalyst who, the evidence will show, were
9 intimately more familiar with the regulatory
10 strategy, and he turned those handwritten
11 scratchings into the PowerPoint presentation. A
12 very different role than that is suggested upon him
13 by Catalyst.

14 He was involved in the Wind file in an
15 active and significant way for approximately 10
16 days in May of 2014 before he started his vacation,
17 and, as you heard earlier, the evidence will show
18 that he resigned before he returned from that
19 vacation. And during those 10 days his involvement
20 primarily consisted of business due diligence and
21 work supporting the drafting, the initial drafting
22 of an investment memorandum that was not complete
23 by the time he resigned.

24 His work on the investment memo did not
25 focus on regulatory and strategic issues that

1 Catalyst now says that he's passed on to West Face.

2 To the extent there is a dispute as to
3 how much knowledge and how much access to
4 information Mr. Moyse had during his time at
5 Catalyst, we'll ask you to look at the objective
6 contemporaneous evidence of his involvement, the
7 emails, the documents, the work product that has
8 been produced in this litigation.

9 We expect you will find that that
10 objective evidence confirms Brandon's limited
11 involvement and his knowledge of -- his limited
12 knowledge of the regulatory concerns.

13 We expect you will hear Mr. Moyse's
14 output on the Wind file consisted principally of
15 contribution to four different pieces of work
16 product: A highly simplistic pro forma modelling a
17 combination of Wind and Mobilicity businesses, two
18 versions of the PowerPoint presentation to Industry
19 Canada, and an investment memorandum.

20 Now, the investment memorandum,
21 Mr. Moyse's evidence will be that he assisted his
22 colleague Mr. Lorne Creighton in putting together
23 the memorandum based on information from the data
24 room and public sources but that his work did not
25 touch on the regulatory issues.

1 Catalyst will try and has tried in its
2 affidavits very hard to make Brandon seem like the
3 critical player on the Wind team with extensive
4 experience and inside knowledge. Mr. de Alba
5 described Brandon as an integral member of the
6 Catalyst team but the evidence will establish
7 otherwise.

8 Undoubtedly Mr. Moyse is a highly
9 intelligent and engaged analyst and of course he
10 worked hard and picked up information during the
11 time he worked on the Wind deal. However, the
12 evidence will show that by the time he went on
13 vacation and then resigned his employment at
14 Catalyst in May 2014, Brandon had only 10 days of
15 real involvement in the Wind file at the early
16 stage of the deal with no real knowledge or
17 understanding of the regulatory concessions that
18 Catalyst says was so crucial to its position on
19 this transaction.

20 The second part of Catalyst's case
21 against Mr. Moyse is he then passed on this
22 knowledge to West Face. You will hear throughout
23 the early months of 2014 that Brandon was trying to
24 find another job. He was unhappy at Catalyst, he
25 was unhappy with the work he was doing, he was

1 unhappy with the work environment and he hoped to
2 move elsewhere.

3 And we expect you will hear from
4 Brandon that although he interviewed at a number of
5 different firms, West Face was his first choice of
6 places to move. The recruitment exercise with West
7 Face between March and May of 2014 consisted
8 primarily of a series of meetings and interviews
9 with West Face partners to discuss his interests,
10 why he was considering leaving Catalyst, and to
11 determine from their perspective whether or not he
12 would be a good fit with their group.

13 When Brandon was meeting with West
14 Face's partners between March and April of 2014,
15 his evidence will be that he had no idea that West
16 Face was actively pursuing Wind at the same time
17 that Catalyst was. Brandon's evidence will be that
18 he did not discuss any active opportunity, any
19 particular active opportunities he was working on
20 with West Face, including Wind, during the West
21 Face recruitment period.

22 And you will hear from Brandon's
23 perspective his discomfort with the West Face
24 recruitment process. It was too slow. It was
25 taking too long. He wanted it to work out but he

1 wasn't sure if it was going to and he felt
2 frustrated when West Face delayed in following up
3 after the interviews in responding to his emails.
4 At the same time he was increasingly unhappy at
5 Catalyst and this expression -- this frustration
6 was expressed in a number of emails to his
7 girlfriend, now his fiancée.

8 Brandon will testify that the first
9 time he learned that West Face may be involved in
10 pursuing a Wind transaction is when he spoke to
11 Mr. de Alba on May 26th, two days after he resigned
12 from West Face in his exit interview with Mr. de
13 Alba. He only had confirmation that West Face was
14 pursuing Wind on June 19th, 2014 when he received a
15 confidentiality screen from West Face screening him
16 off of all work on a potential Wind transaction.

17 The evidence of both Mr. Moyses and West
18 Face will be crystal clear: West Face was very
19 concerned about preserving confidentiality, they
20 said it, they meant it. Brandon and West Face
21 respected the confidentiality wall that was put up
22 and they followed it assiduously and we do not
23 anticipate there will be any evidence to suggest
24 that that confidentiality wall was breached.

25 THE COURT: You said something a minute

1 ago, I think you made a mistake. You said he had
2 an exit interview with Mr. de Alba two days after
3 he resigned from West Face. I think you meant to
4 say Catalyst.

5 MR. CENTA: I meant to say Catalyst, I
6 apologize.

7 Mr. DiPucchio in his opening this
8 morning took you to a number of documents but what
9 documents -- what he didn't take you to or what he
10 didn't show you was any direct evidence of
11 communications between Wind -- about Wind between
12 Brandon and anyone at West Face that disclosed any
13 confidential information belonging to Catalyst.
14 There is no direct evidence of that point.

15 And this confirms the findings you will
16 read in the ISS report who reviewed Brandon's
17 devices in early 2015 and found no evidence upon
18 the forensic review that Mr. Moyse ever transmitted
19 any Catalyst confidential information about Wind to
20 West Face.

21 Now, you heard this morning in Mr.
22 DiPucchio's opening about the abuse of the secure
23 delete function and I want to tell you a little bit
24 about what the evidence is going to be in response
25 to that.

1 Catalyst has pleaded spoliation against
2 Mr. Moyse as an independent cause of action even
3 though no Canadian court has ever held that such a
4 cause of action exists. As Your Honour knows well,
5 spoliation is more frequently referred to as an
6 evidentiary principle rather than a cause of
7 action, but in order to establish spoliation in
8 this proceeding against Mr. Moyse he will have to
9 establish that the missing evidence was relevant,
10 that it must have been destroyed intentionally,
11 that at the time of the destruction litigation must
12 have been ongoing or contemplated and must be
13 reasonable to infer the evidence was destroyed in
14 order to affect the outcome of the litigation.

15 And it's worth pausing to note that
16 Catalyst has not alleged spoliation against West
17 Face, though to the extent there is an allegation
18 that Brandon deleted evidence that he communicated
19 Catalyst's confidential information to West Face,
20 West Face would have been the recipient of that
21 confidential information and would also have had to
22 delete this information lest it be produced in the
23 litigation, and there is of course no evidence that
24 West Face destroyed any such evidence and West
25 Face's productions in this litigation are

1 unchallenged.

2 As Your Honour noted in your January
3 26th endorsement approving the Plan of Arrangement,
4 there is a full and complete history of West Face's
5 productions in this matter and there are no
6 outstanding production issues.

7 Setting aside whether or not spoliation
8 exists as a cause of action in Canadian law, we
9 will anticipate arguing that whether it does or it
10 doesn't, spoliation is not made out in this case.

11 Critically, in order to establish
12 spoliation, there must be evidence that a
13 particular piece of evidence has been destroyed and
14 that particular piece of evidence must be relevant
15 to the outcome of the litigation. It is not
16 sufficient for a plaintiff to speculate that some
17 evidence may have been destroyed that may have been
18 relevant to the case.

19 And we anticipate at the close of the
20 case, Catalyst will not have led any evidence to
21 suggest that Brandon possessed a specific piece of
22 relevant evidence that he destroyed with a view to
23 affecting the litigation in this case.

24 We expect you will hear uncontradicted
25 evidence from Mr. Moyse that he deleted his

1 internet browser history in the following
2 circumstances.

3 Following a court attendance in which
4 he consented to an order requiring him to preserve
5 relevant documents, Mr. Moyse understood he would
6 be handing over his electronic devices to his
7 counsel so that an image of them could be made and
8 that Catalyst would then be seeking to establish a
9 process for the review of his images.

10 Mr. Moyse was concerned that the images
11 on his computer hard drive would disclose his
12 personal browsing history which was not relevant to
13 the matters in dispute in this litigation but would
14 be personally embarrassing to have reviewed.

15 He did not understand how an ISS
16 protocol which would prevent Catalyst from
17 reviewing his personal information may have worked
18 and he therefore decided to delete his internet
19 browser history from his computer to remove his
20 personally embarrassing material before delivering
21 the computer to his counsel to be imaged.

22 Critically, we expect there will be no
23 basis on which this court can infer that Brandon's
24 internet browser history contained any relevant
25 information to this action. Justice Glustein has

1 already held, based on the same record as the one
2 before this court, that the evidence could not
3 support such a conclusion.

4 Now, in connection with its claim for
5 spoliation, Catalyst also alludes to a program
6 called Secure Delete or a scrubber. I think four
7 times this morning I've already heard of it being
8 referred to as a military grade, perhaps the most
9 impressive feat of marketing ever committed by a
10 piece of software.

11 And there is no doubt that the ISS
12 found a folder called Secure Delete on Brandon's
13 computer shortly before he turned the computer over
14 for imaging. You will hear competing testimony
15 from the parties' expert witnesses, Mr. Musters
16 from Catalyst and Mr. Lo on behalf of Mr. Moyse,
17 concerning the presence of that Secure Delete
18 folder.

19 As you will hear, Secure Delete is one
20 of a number of programs contained in a package of
21 software products that Brandon purchased prior to
22 turning the computer over for forensic imaging.
23 Catalyst will make much of the presence of this
24 folder on Mr. Moyse's computer and of the Secure
25 Delete program.

1 Mr. Moyse's evidence is that he never
2 ran the Secure Delete program on his computer but
3 may have clicked on it when he was investigating
4 the different features in the package of software
5 products.

6 You will hear from Mr. Lo that there is
7 no evidence on Mr. Moyse's computer that the Secure
8 Delete program was ever run to delete a file, and
9 that when the Secure Delete program is run, a log
10 is created that records the deletion of the data.
11 Mr. Lo's analysis of Brandon's computer determined
12 that no such log existed on Mr. Moyse's computer.

13 Mr. Moyse will argue at the end of the
14 day that the weight of the expert evidence points
15 to the conclusion that Brandon never ran the Secure
16 Delete program to delete any files from his
17 computer.

18 There is no evidence before you that
19 any emails were sent by Mr. Moyse or received by
20 West Face that contained any of Catalyst's
21 confidential information regarding Wind.

22 We expect you will find and urge you to
23 find, regardless of whether or not the tort of
24 spoliation exists in Canadian law, there is a
25 complete and utter lack of evidence to ground such

1 a claim against Mr. Moyle in the circumstances of
2 this case. At the end of the case we will be
3 asking for the similar range of findings of fact as
4 set out by our friends at West Face, and in
5 addition ask you to dismiss the claim against
6 Mr. Moyle for the tort of spoliation.

7 Unless you have any questions, that
8 concludes our opening statement. And the only
9 thing that I think we would need to address is
10 whether or not we need an order excluding witnesses
11 from the proceeding.

12 MR. THOMSON: We think that order
13 should be made.

14 MR. DIPUCCHIO: We agree.

15 THE COURT: All right. Who will be the
16 witnesses for the parties that will remain? I
17 assume the experts will be excluded.

18 MR. THOMSON: No witnesses will remain.
19 West Face is represented by Mr. Panet who is the
20 general counsel of West Face.

21 MR. DIPUCCHIO: We simply request, Your
22 Honour, that Mr. Riley be allowed to remain in
23 order to instruct us.

24 MR. CENTA: And we request Mr. Moyle.

25 THE COURT: He is entitled, he is a

This is Exhibit "59" 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.

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

VOL 1
June 06, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 1/Volume 1 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 6th day
of June, 2016, commencing at 9:00 a.m.

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

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

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

6
7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq.,
9 & Brad Vermeersch, Esq. for the Plaintiff.
10
11 Robert A. Centa, Esq.,
12 & Kris Borg-Olivier, Esq.,
13 & Denise Cooney, Esq. for the Defendant,
14 Brandon Moyse
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
19

20 Also Present:

21 Tanya Barbiero (Law Clerk, Davies)
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I N D E X

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WITNESS:

GABRIEL DE ALBA

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1 party. So read the order then.

2 THE REGISTRAR: By order of His Honour,
3 the Honourable Mr. Justice Newbould, all witnesses
4 in this case with the exception of the parties to
5 the action will leave this court and remain outside
6 until their name is called. You will not discuss
7 any matters concerning the case with any witness or
8 party who has previously testified in this case,
9 and any witness who has testified in this case will
10 not communicate with any witness or party who has
11 yet to testify. Will any such witnesses please
12 leave the courtroom at this time.

13 THE COURT: Why don't we stop for the
14 lunch break now and come back at 2:00. I would
15 like to see Mr. DiPucchio, Mr. Thomson, Mr. Centa,
16 just the three of you.

17 -- LUNCHEON RECESS AT 12:40 --

18 -- UPON RESUMING AT 2:00 --

19 THE COURT: Yes, Mr. DiPucchio.

20 MR. DIPUCCHIO: Good afternoon, Your
21 Honour. We'll call Mr. de Alba to the stand.

22 GABRIEL DE ALBA: SWORN.

23 EXAMINATION IN-CHIEF BY MR. DIPUCCHIO:

24 Q. Mr. de Alba, I'm just going to
25 remind you to keep your voice up when you testify

1 because the room is obviously large and the
2 acoustics aren't all that great.

3 A. Is there a microphone?

4 Q. Mr. de Alba, do you recall
5 swearing an affidavit on May 27, 2016 in this
6 matter?

7 A. Yes, I do.

8 Q. And you understand that that
9 affidavit constitutes your evidence in-chief --

10 A. Yes, I do.

11 Q. -- in this trial, and you adopt
12 the contents of that affidavit as your evidence
13 in-chief?

14 A. Yes, I do.

15 Q. All right. I'm going to take you
16 just through some highlights of your evidence.
17 First of all, can you describe for the court your
18 position at Catalyst?

19 A. Sure. I am a managing director
20 and partner at the Catalyst Capital Group.

21 Q. Okay. And what are your
22 responsibilities?

23 A. It goes from looking at investment
24 positions, analyzing investment opportunities,
25 negotiating those investment opportunities, once --

1 also coordinating the team, the investment team,
2 and also once we make investments, also reviewing
3 the performance of those investments and the
4 execution and operational turn-arounds of those
5 investments.

6 Q. And to whom does Brandon Moyse
7 report, or did Brandon Moyse report while he was at
8 Catalyst?

9 A. To me, I was leading the
10 investment professional team.

11 Q. How long have you been employed at
12 Catalyst?

13 A. Basically since its inception in
14 2002.

15 Q. Can you very briefly describe your
16 educational background for the court?

17 A. Sure. I have studies from the
18 University of New York as an undergrad, I have an
19 MBA from Columbia Business School, also have
20 graduate studies in mathematics and computer
21 science from Harvard University which I did not
22 finish.

23 And I started my career in the, after
24 basically completing university in New York, at a
25 bank called Bankers Trust, focusing on that side,

1 on merchant banking and international investment
2 opportunities. I left Bankers Trust and joined
3 what was then basically Bank of America's
4 international investment merchant banking efforts
5 as well, which I was one of the founding members.
6 I continued and became the head of the capital
7 markets group working also not only on investments
8 of the bank but also on a number of performing
9 situations for the bank.

10 I wanted to have operational expertise.
11 I left the bank to work on the restructuring of
12 AT&T Latin America. Subsequently sold that company
13 and joined Catalyst basically at its inception in
14 2002.

15 Q. And can you describe for us again
16 from a very general perspective what kinds of
17 investments Catalyst invests in?

18 A. Yeah, the focus of the fund is to
19 invest in distressed and turn-around opportunities
20 which means situations where there could be capital
21 structure -- capital structure opportunities to
22 restructure the business, as well as operational
23 turn-arounds. Looking to do both, improve the
24 balance sheet of a company as well as being able to
25 then improve the execution and the performance of

1 the company in its future, certainly looking to
2 monetize those investments once we execute on a
3 strategy.

4 Q. In your affidavit you have
5 described the investment team and culture at
6 Catalyst. Can you tell us a little bit about the
7 work culture at Catalyst for the investment
8 professionals that work there?

9 A. It is a very close team. It is a
10 small team. We have purposely kept it small. We
11 think that the work that we do requires direct
12 involvement from all members of the team. We don't
13 believe that, you know, people should be
14 compartmentalized in various situations but
15 actually that they should have a good understanding
16 of what's happening across the firm. The aim again
17 is that they would have the direct communication
18 and analysis of all the investment opportunities by
19 all members of the investment team, so we purposely
20 kept it flat.

21 We looked also to have alignment with
22 investors. So, for example, on every single
23 investment that the funds do, also the investment
24 professionals need to participate with their own
25 capital to have also exposure to the same deals and

1 basically have alignment with investors in that
2 respect as well.

3 Q. Is that what you have described in
4 your affidavit as the 60/40 plan?

5 A. No, that's an additional
6 component. The compensation allows for
7 participation on the gains and those gains are --
8 60 percent of those gains are basically shared
9 amongst the members of the deal team while 40
10 percent get distributed across the firm in the form
11 of shareholder ownership.

12 So the 60 percent goes to the deal team
13 specifically, but what I'm also referring to is
14 they co-invest which is basically all investment
15 professionals writing our own cheques in alignment
16 to when we're investing our limited partners'
17 capital.

18 Q. Between the period of March 1 and
19 May 26 of 2014, how many analysts did Catalyst have
20 on staff?

21 A. I think only one or two at that
22 time.

23 Q. And who were they?

24 A. Brandon Moyse was one and for a
25 period of time, Andrew Yeh had left the firm,

1 Andrew Yeh, Y-E-H, and another analyst joined
2 later, his name is Lorne Creighton. After Andrew
3 Yeh left, Lorne Creighton joined.

4 Q. And tell us what kind of role does
5 an analyst have on the deal team?

6 A. Well, one of the -- it is not
7 only, as I mentioned to you before, in terms of
8 getting high quality people that can be willing to
9 integrate into the deals and have alignment with
10 the economics and basically participate in the
11 process of reviewing the opportunities, we have a
12 very close team in which there is great
13 responsibility and this is one of our, I want to
14 say, recruitment selling approaches, that people
15 will be given responsibility beyond what they would
16 have in other firms.

17 We look for empowerment. We also offer
18 basically our younger members of the team, we
19 pursue for them to have a career path to evolve not
20 only promotions from analyst to associate or VP,
21 but most likely to be able to build a career and
22 become partners at Catalyst.

23 So it's again a small team, very
24 cohesive, very transparent. We do this in multiple
25 ways. It is part of the culture. We have Monday

1 meetings and also Thursday meetings in which we
2 review all of the investment positions, we also
3 review the pipeline of deals.

4 In order to have empowerment and be
5 able to get the best out of each team member, we
6 are very transparent of how the opportunities are
7 negotiated, analyzed, discussed, and again also
8 execution on the turn-around.

9 Q. You mentioned the Monday morning
10 meetings both just a second ago and in your
11 affidavit as well. Is that the only time that the
12 investment professionals at Catalyst meet to
13 discuss matters?

14 A. No, they -- again the deal contact
15 continues. What happens in those meetings is that
16 we usually spend two to three hours reviewing our
17 current investments, discussing how we're seeing
18 it. We review the opportunity set. We also look
19 at some macro economic situations that could affect
20 our opportunity set.

21 But as we leave those meetings, we
22 continue to have a very close dialogue again within
23 this small team about all aspects of the deals. We
24 never compartmentalize the approach of saying well,
25 now you only do one task and never find out what's

1 going on. That's not something that we do. That's
2 something, again, that we believe is against the
3 growth and the potential of, you know, all members
4 of the team.

5 Q. And you also outlined in your
6 affidavit the kinds of information that Catalyst
7 considers confidential. Can you describe for us
8 why confidentiality plays such an important role at
9 Catalyst?

10 A. Yeah. I mean, just -- just the
11 knowledge of Catalyst could be interested in making
12 an investment on a certain company can move the
13 value of that potential investment. We had
14 experienced problems in the past for example when
15 we would even go to, let's call it, brokers or
16 agents which should be helping us find the paper,
17 and instead of finding the paper, they might decide
18 that that should be a good investment for
19 themselves and do what is called front running,
20 which they put a position on themselves and then
21 decide if they even show it to us or if they show
22 it to us at a later time at a higher price.

23 So just the fact that Catalyst might be
24 interested in making an investment is something
25 that we understand has had and will continue to

1 have potential economic repercussions, so we
2 conceal certainly our interest on the deal, the
3 analysis that we put on the deal, our interaction
4 with potential parties in relation to that deal.
5 Not to say all the work product that goes with it
6 is highly confidential.

7 Q. Let's turn to a discussion of Wind
8 specifically which forms the bulk of your affidavit
9 in-chief. Can you tell us how Catalyst became
10 involved in a potential transaction involving Wind?

11 A. Wind was part of a Catalyst
12 analysis and review of the opportunity set in the
13 wireless telecom market in Canada. It is important
14 to note, as I mentioned before, that even before I
15 joined Catalyst I had led the restructuring of AT&T
16 Latin America, had done multiple restructurings in
17 the telecom sector even before joining Catalyst.

18 On our initial fund, which was in 2002,
19 we made large investments in the telecom space
20 which were highly successful. So for us it was
21 only a natural as the wireless market had evolved
22 in the potential troubled dynamics for the new
23 players. It had become, you know, top priority for
24 us, not only because of our industry background, it
25 certainly was a very relevant distress opportunity

1 that fed our profile, and in the context of the
2 Canadian market, probably was the largest
3 restructuring at the time that was taking place.

4 So it certainly was, you know, very
5 important for us.

6 Q. And by 2013 what was Catalyst's
7 involvement in the telecommunications industry?

8 A. So the ability to invest in the
9 telecommunications industry and especially in the
10 wireless space was focused on two components. One
11 was Mobilicity which had public bonds so therefore
12 we can access the market and buy those bonds, as
13 well as doing the analysis and the work in
14 preparation to what we believed would be the
15 opportunity to consolidate the fourth and the fifth
16 largest wireless carriers into a single company.

17 So since Wind was private, we could not
18 purchase public securities, but we always intended
19 to review the opportunity of combining Mobilicity
20 with Wind.

21 Q. And in your affidavit you have
22 referred to the telecom deal team at Catalyst on a
23 number of occasions. Can you tell us who the
24 telecom deal team was, initially at least?

25 A. Yeah. So initially the deal team

1 certainly had Newton Glassman, the involvement of
2 Jim Riley as well, Zach Michaud was also involved,
3 Andrew Yeh was also involved. But, you know, being
4 also a small team, I was also involved. Being a
5 small team, we also had, you know, participants
6 from other members of the Catalyst team.

7 So what you might call it, you know,
8 the specific deal team, it was not fenced out or
9 bordered out from the involvement of other members
10 of the team which were encouraged to provide ideas,
11 to provide feedback, and again they were part of
12 the discussion and the strategies and the analysis
13 not only as we looked to develop their skill set,
14 but since they were also co-investing, that was an
15 important component of alignment.

16 There have been situations also in the
17 past, including when an analyst will -- in a Monday
18 meeting will raise concerns about a certain
19 investment and that will result in, you know, that
20 investment not being made.

21 So I just want to tell you that the
22 definition was, you know, much more open than just
23 a narrow deal team and the information was
24 basically transparent across all investment
25 professionals at Catalyst.

1 Q. And you mentioned Andrew Yeh who
2 was on the telecom deal team specifically. Did he
3 remain on the deal team throughout 2014?

4 A. I think he left in early 2014.

5 Q. And who replaced him?

6 A. Directly Brandon Moyses who had
7 also had some previous participation in the
8 communications and discussions related to the
9 telecom opportunities.

10 Q. All right. Mr. de Alba, I'd like
11 to ask you, how would you respond to the suggestion
12 that Brandon Moyses was unaware of discussions
13 between Catalyst and Wind before he joined the deal
14 team?

15 A. I think it's impossible. I think
16 it's inconsistent with the approach that I have
17 personally pursued, which is again transparency
18 with all team members across the key elements of
19 the deals which not only goes to the opportunity
20 set, but certainly how to execute and get that
21 opportunity.

22 In this case, West Face is a clear
23 competitor. We understood that they also had made
24 an investment in the Mobilicity bonds. We had even
25 pursued ways to acquire those bonds, so the

1 interaction of West Face within the opportunity set
2 in the wireless sector was something that was
3 widely known at Catalyst, and certainly when the
4 discussions, you know, took place at Catalyst, that
5 would be something that would certainly be
6 discussed.

7 Q. If I can ask you to turn up
8 Exhibit 13 to your affidavit. This is CCG0011536.
9 Do you have that, Your Honour?

10 This is a document sent by Mr. Moyse to
11 you and copied to Mr. Michaud and Mr. Yeh on March
12 8, 2014. Mr. de Alba, can you tell us what this
13 document shows and what it is?

14 A. Yeah. This is an analysis
15 conducted by Brandon Moyse which is circulated to
16 me as well as Zach Michaud and Andrew Yeh. The
17 analysis provides two -- or basically three key
18 valuation metrics related to the spectrum value
19 which is what Mobilicity and Wind paid to acquire
20 the spectrum. The network value, which is the
21 amount invested to build the network, and the total
22 drivers, those are the three key metrics on the
23 valuation of these two companies.

24 On the spectrum value that will give
25 you a reference again of what another party had

1 paid on an asset, like in this case spectrum which
2 goes up and becomes more valuable, so that became a
3 good reference in the context of what we would be
4 prepared to pay.

5 This was further enhanced by the
6 network value which includes only the hard
7 investment on equipment that had been made, so it's
8 another very important reference of the value of
9 the assets that had put around the spectrum, and
10 then the subscribers which is another key metric on
11 how you value a wireless company as per the number
12 of subscribers that they had.

13 What is important to note again is that
14 this is consistent with the Catalyst approach in
15 which we look to invest below the values which
16 other parties had paid or we understand would be
17 prepared to pay, and this clearly showed that, you
18 know, there will be certain value parameters which
19 will provide a cushion to Catalyst making an
20 investment for Wind and Mobilicity.

21 Q. And ultimately what was the
22 purpose for preparing this document? What did
23 Catalyst use it for?

24 A. Well, from my perspective again it
25 gave us reference of value that allowed us to make

1 submissions of bids and have discussions with
2 VimpelCom. It was also used with the Canadian
3 government to show the amount that had been
4 invested and how as a matter of respect to the
5 capital markets they should not let the
6 opportunities, or the investments, just go to the
7 wayside as that would be a bad dynamic for the
8 future ability to attract capital into Canada.

9 So it was very critical and did not
10 move in the context of Catalyst's valuation,
11 including its valuation and offer for Wind, as well
12 as the discussions with the Canadian government.

13 Q. And how would you respond then to
14 the suggestion that the analysis was not critical
15 to Catalyst's internal analysis of Wind?

16 A. That's not correct because again
17 it gave reference to the most important assets and
18 especially the most important asset which was the
19 spectrum value.

20 Q. And how would you respond to the
21 suggestion that Brandon Moyse was merely performing
22 basic acts of addition and subtraction, or
23 division, rather, in this analysis?

24 A. I don't think that's a correct
25 characterization. I think, as mentioned before,

1 Brandon was highly qualified, a highly respected
2 individual which was part of the empowerment team
3 of Catalyst. We had looked to continue to give him
4 not only more responsibility but certainly also
5 improve his career prospective. We had said that
6 to him multiple times. And we liked the way he,
7 you know, he would analyze situations and we were
8 basically giving him empowerment to do so.

9 Q. If we could have you turn up
10 Exhibit 10 of your affidavit, which is CCG0023893.
11 This is an email from you, Mr. de Alba, on March
12 22nd, 2014 to Carsten Revsbech at VimpelCom and
13 Francois Turgeon at UBS attaching an NDA.

14 Can you tell us what this email is all
15 about?

16 A. This email I believe includes the
17 signed non-disclosure agreement that was entered
18 between VimpelCom and Catalyst and someone at
19 VimpelCom related entities. The next component is
20 the request to get the business plan as well as
21 some of the value metrics from VimpelCom.

22 Q. And at the time that this
23 non-disclosure agreement or confidentiality
24 agreement is executed between Catalyst and
25 VimpelCom, was Mr. Moyse on the deal team?

1 A. I believe he was.

2 Q. And how would you respond to the
3 suggestion that Mr. Moyse was unaware that there
4 was even a confidentiality agreement that had been
5 signed?

6 A. That would have been impossible
7 because again he would have been an integral part
8 of the communications, discussions and strategy.

9 Q. Can we have you turn up Exhibit 20
10 to your affidavit, which is CCG0011564. Now, we
11 have seen this email earlier today and we know from
12 your affidavit that in March of 2014 Catalyst and
13 Mr. Moyse had prepared a PowerPoint presentation
14 for meetings in Ottawa.

15 Can you tell us what you remember about
16 the preparations at Catalyst for that meeting in
17 March?

18 A. Yes. The preparations were
19 substantial at the firm. The thinking was that
20 this was a critical meeting as to establish a
21 dialogue with the government in the context of the
22 options and the framework of the wireless market as
23 it existed in Canada at the time.

24 Q. And who led the preparation and
25 the presentation?

1 A. The presentation in this case was
2 led by Brandon. As you can see, he was also the
3 last person to basically provide the presentation
4 directly to the parties.

5 Q. And how would you respond, then,
6 to the suggestion that Mr. Moyse was merely acting
7 as an administrative assistant in putting changes
8 that were suggested by you and others to this
9 presentation?

10 A. Again, that's inaccurate, because
11 that's not the way we interact. We interact in a
12 way in which empowerment, the thinking process and
13 the skill-set from all professionals at the firm is
14 respected, requested and required. That allows us
15 to be efficient and in this case it will have been
16 important, again, for Brandon to fully bring his
17 thinking into it.

18 Q. And did he do so?

19 A. Yes.

20 Q. And if we turn to page 2 of the
21 presentation itself, Mr. de Alba, you look down at
22 the bottom right-hand corner and it's marked
23 confidential, as it is on each page. Why was that?

24 A. Because it set out Catalyst's
25 regulatory strategy and it was the precise dialogue

1 that was going to be had with the Canadian
2 government and it outlined the key strategic
3 options Catalyst was going to pursue.

4 Q. And what was the concern
5 specifically about maintaining confidentiality over
6 those?

7 A. Well again, if this goes into the
8 hands of a competitor, they will be able to
9 understand the critical points that were part of
10 Catalyst's strategy and that would put us in an
11 extraordinary disadvantage.

12 Q. If you turn to slide 2, the slide
13 entitled "Overview," here we see in the first
14 bullet point, the third comment is that: "Catalyst
15 is in advanced discussions with VimpelCom..." Do
16 you see that?

17 A. Yes.

18 Q. What was the basis for that
19 statement?

20 A. Throughout 2013 there had been --
21 and certainly throughout 2014, but since 2013 there
22 have been multiple discussions with VimpelCom
23 representatives as to their willingness to discuss
24 a merger with Mobilicity or a sale of Wind to
25 Catalyst.

1 Q. And how would you respond to the
2 suggestion that Mr. Moyse was unaware of whether
3 that statement was even true at the time that he
4 was putting together this presentation?

5 A. Again, I find it impossible.

6 Q. And why do you say that?

7 A. Because in order to -- well, it
8 goes to the essential parts of being a member of
9 the Catalyst team, that implies full transparency.
10 That full transparency would have been giving
11 updates to all investment professionals about the
12 status of the discussions with VimpelCom. That
13 would happen at the minimum, as mentioned before,
14 two times a week in the weekly meetings, but as we
15 were doing the work and analysis, we would also
16 continue to be having updates for all members of
17 the team.

18 Q. And if you turn to slide 7 of this
19 presentation, you'll see reference to a strategic
20 option 1. Can you explain to us briefly what that
21 strategic option refers to?

22 A. Yeah, as it can be read from the
23 slide, it mentioned that there have been advanced
24 -- or there have been discussions with VimpelCom
25 that were now advanced in the context of merging

1 Wind Canada with Mobilicity to create the scale for
2 the fourth national carrier, which was the
3 solution, as it says here, the solution that the
4 government's policy wanted to achieve.

5 Q. And at the very bottom of that
6 slide you see the reference to an ability to exit
7 the investment with no restriction in five years?

8 A. Yes.

9 Q. Why did Catalyst need an ability
10 to exit the investment in five years?

11 A. When an investment is made, one of
12 the key attributes that needs to be understood is
13 how that investment is going to be exited, so you
14 will look at the various alternatives to monetize
15 the value.

16 In this case, as it says, Catalyst was
17 going to prepare the pursuit of other strategic
18 alternatives such as an IPO, or to a sale to
19 another strategic, but if that was not successful,
20 we were requesting the ability to sell after five
21 years without restrictions.

22 Q. And if you just flip back one
23 slide to slide 6 for a moment, you see there at the
24 bottom of the page the pro forma analysis?

25 A. Yes.

1 Q. Who prepared that?

2 A. Again, Moyse. Brandon Moyse.

3 Q. And then if you flip forward to
4 page 8, which is the second strategic option, can
5 you tell us very briefly what this option referred
6 to?

7 A. Yes, this option was focused on if
8 the Canadian government was not comfortable with
9 basically providing certain regulatory concessions,
10 what Catalyst had done in the past, and even in
11 this case prior to my life at Catalyst, I had
12 bought a telecom, which in this case was dark
13 fibre, which is the fibre that could be utilized to
14 transfer data and voice, and that fibre will be
15 leased to other players in the market.

16 So what we were looking in this case is
17 to have the ability to lease, rent or even exchange
18 fibre with some of the industry players.

19 Q. And to the best of your knowledge,
20 was this particular option, option number 2, ever
21 discussed publicly by Catalyst or in the media?

22 A. No.

23 Q. Did you actually attend the
24 meeting with representatives of Industry Canada and
25 the federal government on March 27th?

1 A. I did not.

2 Q. And did you come to find out what
3 was discussed at those meetings?

4 A. Well, we knew from the preparation
5 of the materials what was going to be discussed,
6 and after the meeting took place, both Newton
7 Glassman and Jim Riley gave the full team a debrief
8 of what had happened at that meeting.

9 Q. And when you say they gave the
10 full team a debrief, who was it that they were
11 debriefing?

12 A. Including, you know, Zach Michaud,
13 Brandon Moyse and myself.

14 Q. If we can turn to Exhibit 23 of
15 your affidavit, which is CCG0009482, this is a
16 chain of emails that were exchanged between May 6th
17 and 7th, 2014 internally at Catalyst.

18 If you go to the -- I guess the email
19 at the bottom of the page is from Mr. Glassman
20 talking about deal structure. Can you tell us what
21 his email refers to?

22 A. Just one second to read it,
23 please.

24 Q. Yes.

25 A. (Witness reads document). Yes, if

1 you start in the lower part of the page, it is the
2 statement from Newton Glassman which talks about
3 the value. It says the 300 can be taken not in
4 cash because we could be also absorbing some of the
5 liabilities, like it says here, current vendor
6 financing, so it might not be that the full payment
7 is in cash, but it could be in cash, as it says,
8 but it could be also Catalyst absorbing some of the
9 liabilities that existed.

10 What it's also important is on the
11 second line, it clarifies that now we are just
12 confirming, as mentioned before, the valuation
13 analysis and the regulatory analysis had been done,
14 so what we were confirming was the spectrum
15 ownership and, you know, certainly the opinions,
16 et cetera, as well as it clarifies the need to have
17 a condition related to government approval.

18 So the two main fundamental parameters,
19 or actually the three main parameters are here,
20 \$300 million in value, the fact that we are
21 basically just confirming the work that had been
22 done before, and the confirmation as well that
23 there is -- they need to have a condition of
24 government approval. Those are the three main
25 metrics of how Catalyst looked at this deal.

1 Q. Okay. And then you respond to
2 that email in the email that's at the middle of the
3 page. First of all, you copy, I see, amongst other
4 people, Brandon Moyses on that email. Why was
5 Mr. Moyses being copied on this particular email
6 chain?

7 A. Again, to be repetitive, my
8 approach to deal teams is that everybody needs to
9 be fully informed at all times in order to be able
10 to think about what is execution and strategies
11 related to that deal, and also to continue to
12 develop, you know, professionally. So that's just
13 an approach to the deal to strengthen the team and
14 an approach to the team to strengthen the
15 development and transparency at Catalyst.

16 Q. In the second paragraph of your
17 email, the one that begins "This can be positioned
18 to our advantage," and I think you're referring
19 there to the fact that the vendor financing is in
20 the default notice period, what did you mean by
21 "This can be positioned to our advantage with the
22 government"?

23 A. That connects to the point that
24 Newton Glassman was making about Catalyst absorbing
25 some of the liabilities that existed. In this case

1 my response is we might not be able to just absorb
2 those liabilities, and the thinking was if the
3 vendors wanted to just remain, they could have
4 rollover for a longer period of time.

5 Since now there was pressure from the
6 vendors because of the default and the acceleration
7 that that will entail, that this could be
8 positioned, you know, for our advantage with the
9 government as there would be a greater urgency to
10 find a solution to what was unraveling as a
11 creditor problem for Wind.

12 Q. And then there is a response from
13 Mr. Glassman at the top of the page. Can you tell
14 us what you took from Mr. Glassman's response?

15 A. He says government has told us
16 that they will not give us in writing the right to
17 sell the spectrum in five years. So first he says
18 in writing, but it continued to be part of the
19 dialogue that the government was also open to have
20 discussions with us about that and what we were
21 going to require to acquire Wind and pursue the
22 fourth network strategy in combination with
23 Mobilicity.

24 His response, as it says, is that that
25 takes option 1 and that's part of the negotiation

1 with the government in which it is well, you're
2 basically taking us on the ability to focus on the
3 retail network and are taking us to the wholesale
4 leasing strategy.

5 Q. And then Mr. Glassman refers to a
6 meeting in Ottawa early next week. Do you know
7 what meeting he was referring to?

8 A. I believe there was going to be a
9 follow-up in-person meeting in which the government
10 was looking to get further clarity about basically
11 the capital markets and the negotiating framework
12 around Wind, and since they on a follow-up basis
13 were dealing with Mobilicity which was already
14 insolvent, that there were going to be discussions
15 about, you know, how to -- how to resolve for the
16 positive benefit of the government these
17 four-carrier strategy.

18 As noted in the last word about
19 mediation, what had happened in the Mobilicity case
20 was that there was a mediation trying to bring the
21 government as well to understand the difficult
22 position that Mobilicity was experiencing, and also
23 for them to -- you know, in that case for the
24 mediator to bring the parties to try to find some
25 openings about how the government would be more

1 open to what had been their public language.

2 Q. Now, just before we leave this
3 document, Mr. de Alba, how would you respond to the
4 suggestion that Mr. Moyses did not understand what
5 you and Mr. Glassman were discussing in this email
6 chain?

7 A. I find it impossible. The key
8 metrics are here. You have the metric of
9 valuation, you have the metric of how we are now
10 just confirming the spectrum ownership issues, and
11 the condition of government approval. I mean, it's
12 plain fact right there.

13 It also lays out the negotiating
14 discussions that are happening amongst the team
15 members about how to react to the government and
16 how to position various events with the government.

17 So you have the government strategy,
18 you have the valuation strategy, you have the final
19 confirmation that was required and this is being
20 played out.

21 Q. Would this email chain have been
22 the first time that Mr. Moyses was ever involved or
23 kept abreast of those discussions and negotiations?

24 A. Absolutely not. This does not
25 spring out of the blue. This again is part of a

1 framework of communication and discussions among
2 the Catalyst team members.

3 Q. If I could ask you to turn up
4 Exhibit 37 of your affidavit, which is CCG0009516.
5 This again is something we saw earlier this
6 morning. It's an email from Mr. Moyse to you
7 initially at 11:40 a.m. and Zach Michaud.

8 Can you tell us why Brandon Moyse was
9 sending you a soft copy of the attached
10 presentation which was again a copy of a
11 presentation to be made to Industry Canada?

12 A. Well, because he was basically
13 leading the putting together of that presentation.

14 Q. And how would you respond to the
15 suggestion that Mr. Moyse did not contribute to the
16 content of this presentation, that he was only
17 inputting changes from others at Catalyst?

18 A. Again, that's impossible. He has
19 been part of the strategic discussions, he has been
20 part of the valuation strategy, he has been part of
21 the update from the first meeting, the evolution
22 from that first meeting with the government. He's
23 certainly involved in the discussions that are
24 happening in relation to Wind. He's an overall
25 fully transparent member that has overall and full

1 transparency of what's occurring at Catalyst on the
2 Wind deal.

3 Q. And you have testified in your
4 affidavit about the content of this particular
5 presentation so I'm not going to take you through
6 that again, but I am going to ask you how would you
7 respond to the suggestion that Mr. Moyse didn't
8 know which statements in the presentation were
9 statements of fact and which were negotiating
10 positions?

11 A. I think it's impossible. As noted
12 even from the prior emails, you have clarity on the
13 main terms, economically, regulatory and what was
14 needed from Catalyst in order to complete the
15 acquisition of Wind as to what the process that was
16 going to take place with Wind's management.

17 Q. Now, we know from your affidavit
18 that Mr. Moyse left for a vacation on May 16th,
19 2014. Did you express any concern about him going
20 away for a vacation in the middle of the Wind deal?

21 A. Yes, I had concerns but what I was
22 told and made understood by Brandon was that that
23 trip has been planned well ahead and that he was
24 going to propose to his fiancée on the trip. So
25 that was the reason why we ultimately said okay, go

1 and take the trip.

2 However, he continues to be involved in
3 the communications that are taking place, also with
4 the expectation that, you know, he continues to be
5 familiar with what is happening with the deal, and
6 certainly while we will try not to bother, he will
7 need to be updated and when required be able to
8 participate as if he had been at the office.
9 That's just the approach of the work that we do.

10 Q. And to your knowledge did
11 Mr. Moyses continue to be available and participate?

12 A. Yes.

13 Q. Now, we know that Mr. Moyses gave
14 notice of his resignation to you on May 24th. What
15 do you say to Mr. Moyses's suggestion that he had no
16 knowledge that Catalyst believed that West Face was
17 also a bidder on Wind at that time?

18 A. Again, I think that's totally
19 inaccurate. That discussions in relationship to
20 West Face being a competitor on the Wind
21 transaction had happened before. We also
22 understood that West Face had made an investment on
23 the Mobilicity bonds which we also saw as a direct
24 connection to the fourth-carrier strategy. We
25 actually thought that the bonds that West Face had

1 were very relevant for us and we were even pursuing
2 to acquire those bonds actively, so we had
3 continuous discussions about West Face's
4 involvement in Wind and in Mobilicity.

5 Q. Mr. de Alba, you have given
6 evidence in your affidavit in-chief with respect to
7 a conversation that took place in June with Greg
8 Boland.

9 THE COURT: Let me just ask a question,
10 Mr. DiPucchio, just on that last subject matter. I
11 just want to understand. I understand what you're
12 doing, you're asking this witness what he thinks
13 about something that Mr. Moyse knew or didn't know.

14 Just with respect to knowing whether or
15 having a belief that West Face was involved in --
16 Catalyst believed that West Face was also a bidder
17 on Wind, were you party to any discussion with
18 Mr. Moyse about Catalyst believing that West Face
19 was a bidder on Wind?

20 THE WITNESS: Yes, sir. As we
21 discussed, it started with our holdings in
22 Mobilicity and Mobilicity was part of the
23 four-carrier strategy together with Wind. What we
24 understood were the holdings that West Face had in
25 Mobilicity were the amount in terms of dollars that

1 Catalyst required to have a blocking position on
2 Mobilicity and at the same time we understood that
3 they were --

4 THE COURT: My question, Mr. de Alba,
5 is not what you understood. Were you party to a
6 conversation with Mr. Moyse about this?

7 THE WITNESS: Yes, sir. The reason I'm
8 telling you what I understood is because what I
9 understood would be something I would transfer in
10 terms of knowledge to the team. So being a
11 tight-knit team which communicates the status of
12 the strategies, whatever I knew I would have
13 transferred to the full deal team.

14 BY MR. DIPUCCHIO:

15 Q. And in what context would that
16 have occurred, Mr. de Alba?

17 A. Both the weekly meetings, as well
18 as the conversations in relationship to people's
19 co-investment, as well as the full approach to the
20 deals, Wind and Mobilicity.

21 Q. All right. So I was asking you
22 before we got into that exchange about the
23 conversation that you testified about with
24 Mr. Boland in June. Do you recall that?

25 A. Yes.

1 Q. And tell us why you called
2 Mr. Boland on June 20th?

3 A. I actually called trying to pursue
4 an arrangement, a constructive arrangement in the
5 context of Moyse. It was an invitation to have an
6 in-person meeting, to have a framework about what
7 had happened in the context of Moyse and that we
8 were concerned, and, you know, we also thought that
9 potentially there could be some open dialogue
10 about, you know, how they will be pursuing other
11 things.

12 Remember, we understood that they held
13 also some bonds in Mobilicity and were potentially
14 pursuing Wind. So it was pursuing a constructive
15 dialogue. It was done respectfully and politely,
16 but it was very shocking that when I mentioned the
17 concerns that we had in relationship to Moyse,
18 Mr. Boland's reaction was extraordinarily
19 aggressive, as if he resented that I was making the
20 request, as if I was trying to impose something on
21 his will, and basically told me to fuck off.

22 Q. Okay. And what was it that you
23 were proposing to Mr. Boland?

24 A. A discussion in person.

25 Q. Now, if you would fast-forward to

1 the period when you learned finally that West Face
2 and the consortium had successfully made a bid for
3 VimpelCom's interest in Wind, can you tell us when
4 did you first become aware of the deal terms that
5 the consortium proposed of VimpelCom?

6 A. Just when we learned that West
7 Face had lobbed a letter or a proposal at the time
8 of this trial.

9 Q. So the question, when did you
10 first learn that they had actually made a proposal?

11 A. In the past couple of months.

12 Q. And what was your reaction to
13 seeing the proposed deal terms that had been lobbed
14 over in August when you first saw them in the first
15 couple of months?

16 A. Well, it was very surprising and
17 shocking that they had basically waived the
18 regulatory condition, in particular since they were
19 pursuing together with a consortium, which raises
20 the complexity of a deal because you need to deal
21 with multiple parties on how you deal with the
22 government, that they were proposing to do it
23 without government approval.

24 That is shocking again because without
25 clarity about that happening, they could have been

1 left with a stranded investment without having
2 control of the main drivers of why you invest,
3 which are the economic components and the
4 governance components, and left at the mercy of
5 what was then the controlling shareholder who could
6 unilaterally determine the corporate and business
7 behaviour of the business.

8 So I find it, you know, very surprising
9 to the point of reckless allocation of investors'
10 capital to invest without certainty that you will
11 even be approved.

12 You will also have a franchise damaging
13 approach because if the government was to decide
14 no, that would lead to a confrontation with the
15 Canadian government which would be detrimental for
16 the franchise of that business going forward.

17 THE COURT: Can I just ask a question.
18 Did you say you just learned of these terms a
19 couple of months ago from now, just going back a
20 couple of months?

21 THE WITNESS: Yes, the detailed terms,
22 yes, sir.

23 THE COURT: Part of the discovery
24 process in this lawsuit?

25 THE WITNESS: Correct, sir.

1 MR. DIPUCCHIO: Those are my questions,
2 Your Honour.

3 THE COURT: Thank you, Mr. DiPucchio.
4 Any cross-examination? Mr. Centa?

5 MR. CENTA: Yes, thank you, Justice
6 Newbould.

7 Justice Newbould, in Mr. de Alba's
8 examination folder there should be a folder of
9 documents that relate to my cross-examination of
10 Mr. de Alba, probably under the Moyse defendant
11 folder. No luck?

12 THE COURT: I can't find it.

13 MR. BORG-OLIVIER: Under de Alba, under
14 evidence and submissions during trial, open the de
15 Alba file folder, go to cross-examination, then go
16 to the Moyse defendants.

17 THE COURT: Oh, I see it. Yes, I have
18 it. Thank you.

19 CROSS-EXAMINATION BY MR. CENTA:

20 Q. Good afternoon, Mr. de Alba.

21 A. Good afternoon.

22 Q. Just so I can understand, how many
23 partners are there at Catalyst?

24 A. Three partners.

25 Q. And I understood your evidence

This is Exhibit "60" 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.

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

VOL 1
June 06, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 1/Volume 1 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 6th day
of June, 2016, commencing at 9:00 a.m.

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

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

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

7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq.,
9 & Brad Vermeersch, Esq. for the Plaintiff.
10
11 Robert A. Centa, Esq.,
12 & Kris Borg-Olivier, Esq.,
13 & Denise Cooney, Esq. for the Defendant,
14 Brandon Moyse
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
19

20 Also Present:

21 Tanya Barbiero (Law Clerk, Davies)
22
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GABRIEL DE ALBA

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1 MR. DIPUCCHIO: Those are my questions,
2 Your Honour.

3 THE COURT: Thank you, Mr. DiPucchio.
4 Any cross-examination? Mr. Centa?

5 MR. CENTA: Yes, thank you, Justice
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14 evidence and submissions during trial, open the de
15 Alba file folder, go to cross-examination, then go
16 to the Moyse defendants.

17 THE COURT: Oh, I see it. Yes, I have
18 it. Thank you.

19 CROSS-EXAMINATION BY MR. CENTA:

20 Q. Good afternoon, Mr. de Alba.

21 A. Good afternoon.

22 Q. Just so I can understand, how many
23 partners are there at Catalyst?

24 A. Three partners.

25 Q. And I understood your evidence

1 earlier this afternoon to be that at Catalyst it is
2 extremely important to you to have a non-hierarchal
3 structure, correct?

4 A. It is important to have
5 transparency and the communication of the
6 strategies of the deal team. If you characterize
7 that as non-hierarchical, I would agree.

8 Q. And to empower your deal team
9 members?

10 A. Absolutely.

11 Q. I think what you said was you look
12 to empower the younger members of the team because
13 you hope for them to have a career path to evolve
14 not only promotions from associates to
15 vice-president, but most likely to build a career
16 path and become partner at Catalyst. That was your
17 evidence?

18 A. Correct.

19 Q. Sir, in 14 years at Catalyst, how
20 many of your associates have become partners?

21 A. We usually have associates that --
22 well, they have more experience that they will have
23 when they receive the title. We basically build
24 them up to gain that expertise to what is the
25 Catalyst process. So at the moment we have made no

1 promotion to partners. The two partners are
2 basically from the firm from the get-go and
3 Mr. Riley joined later.

4 But we have made multiple promotions
5 from analyst to associates, I will tell you
6 probably more than half a dozen, and we have also
7 made several promotions from associates to VP on
8 the path to partnership. The path to partnership
9 is also discussed every year on the year end
10 reviews.

11 Q. Your evidence was most likely to
12 build a career path and become partners at
13 Catalyst. And in the 14 years that Catalyst has
14 been in operation, not a single associate has been
15 promoted to become a partner, correct?

16 A. Not yet.

17 Q. Not ever?

18 A. Not in the past. It doesn't mean
19 that's not the path in the future, sir.

20 Q. This isn't a hard question. From
21 the day Catalyst opened until today, you have not
22 made a single associate a partner, correct?

23 A. Not yet.

24 Q. And can you estimate how many
25 associates have left Catalyst since it started 14

1 years ago?

2 A. Five or so.

3 Q. Five?

4 A. Yes.

5 Q. Mr. de Alba, you gave some
6 evidence about the Monday meetings, Monday morning
7 meetings, and this is referred to also in paragraph
8 11 of your affidavit. Do you recall that?

9 A. Yes.

10 Q. And you said that each
11 professional is required to attend the Monday
12 morning meeting?

13 A. Correct.

14 Q. When the professionals are
15 required to be out of the office on travel and miss
16 a Monday meeting, they do not dial in, correct?

17 A. No, sir. The policy -- sorry.
18 The policy is that people should not travel on
19 Mondays. Such is the importance of the weekly
20 Monday meetings that the policy is not to travel on
21 Monday. It will be exceptional for somebody not to
22 attend a Monday meeting. If somebody does not
23 attend, it is going to be extraordinary
24 circumstance and most likely they will dial in.

25 Q. And no one at Catalyst prepares a

1 formal written agenda for a Monday morning meeting,
2 correct?

3 A. No, there are agendas that get
4 prepared.

5 Q. No, sir, because we have not seen
6 a single agenda for a Monday morning meeting
7 produced in this litigation that refers to Wind.
8 Not one. So I put it to you again, no one prepares
9 formal written agendas for Monday morning meetings
10 at Catalyst, correct?

11 A. No, there are agendas that get
12 circulated so there are agendas.

13 Q. And these agendas would refer to
14 the transactions under discussion?

15 A. Yes.

16 Q. Specifically like Wind?

17 A. Yes.

18 Q. And we would be able to see on
19 those documents how many times and how often Wind
20 was discussed?

21 A. Through the sequence of events,
22 yes.

23 Q. And that would probably go back as
24 far as your earliest discussions about Wind with
25 VimpelCom through 2012, through 2013, through 2014?

1 A. In some form, yes.

2 Q. And do you have any explanation
3 for how we have not seen a single agenda produced
4 in this litigation that mentions Wind?

5 A. I do not know why.

6 Q. And I take it that no one prepares
7 any materials to be reviewed in a Monday morning
8 meeting, do they?

9 A. Other than agendas?

10 Q. Any written materials, leave aside
11 the agendas. Well, what is on an agenda?

12 A. You should have the opportunities
13 that are being looked at.

14 Q. Um-hmm.

15 A. You should have -- it has the
16 status of existing investments.

17 Q. Um-hmm.

18 A. And it will have, you know, the
19 focus of disparity of those and a brief note to
20 them.

21 Q. It would have a brief description
22 of Catalyst strategy about that deal at that point
23 in time?

24 A. Not that detailed, no. It will be
25 brief.

1 Q. A brief description?

2 A. Just a one-pager, right?

3 Q. Yes. And that would describe the
4 strategy of Wind at a particular time?

5 A. Not in the agendas. The strategy
6 would be discussed verbally. That's why the
7 meeting lasts three hours.

8 Q. Beyond the one-page agenda that we
9 discussed, no one prepared any other written
10 material to be reviewed at Monday morning meetings?

11 A. Usually not. The discussions are
12 verbal. I mean, people might prepare for those
13 meetings with their own notes, but there is no
14 formal materials.

15 Q. And no one at Catalyst prepares
16 formal minutes of what is discussed at those
17 meetings?

18 A. That's correct.

19 Q. No one at Catalyst prepares a
20 to-do list following those meetings?

21 A. That's a -- responsibilities are
22 assigned.

23 Q. But there's no formal "here's what
24 we discussed at today's Monday morning meeting,
25 here are the assignments coming out of the Monday

1 meeting"?

2 A. A verbal discussion and assignment
3 of task, I would consider that formal.

4 Q. But not in writing?

5 A. Correct.

6 Q. And no one at Catalyst ever took
7 and retained any notes from a Monday morning
8 meeting that relate to Wind?

9 A. Not that I'm aware of.

10 Q. And no one at Catalyst prepared
11 any presentations regarding Wind for use at a
12 Monday morning meeting as a Word document or a
13 PowerPoint or an Excel spreadsheet?

14 A. That would not be the practice.

15 Q. So other than these agendas that
16 we have heard about but have not seen a single one
17 of, there is no contemporaneous objective evidence
18 about what was discussed at a Monday morning
19 meeting about Wind, nothing in writing?

20 A. Can you repeat the question?

21 Q. There is no contemporaneous
22 written objective evidence about what was discussed
23 at a Monday morning meeting about Wind?

24 A. The communications that you see
25 happening around the Wind deal amongst the members

1 of the deal team again would be consistent with
2 what was discussed at the Monday meetings.

3 Q. I'm not asking about documents
4 that are consistent with it. I am asking that
5 there is no contemporaneous written objective
6 evidence about what was discussed at a Monday
7 morning meeting about Wind?

8 A. I believe the work product that is
9 happening on those deals is contemporary with the
10 discussions that are happening on the weekly
11 meetings. They are in part of the same context.
12 What is discussed is part of what is being
13 negotiated so they are contemporaneous and they are
14 consistent.

15 Q. The documents around it are
16 evidence of the work that is being done. I am
17 asking if you can point to a single piece of
18 written contemporaneous objective evidence that
19 describes what was discussed at a Monday morning
20 meeting, at any of them, about Wind?

21 A. I have to check what is on the
22 record.

23 Q. We have. There is nothing. Can
24 you point to anything?

25 A. I don't have all -- all the

1 documents available.

2 Q. You said that Catalyst has had a
3 long-standing interest in the telecom industry.

4 A. Yes, sir.

5 Q. And that goes back at least to
6 April of 2011 when you took a \$60 million first
7 lien debt issued in Mobilicity?

8 A. The Catalyst interest on telecom
9 goes since phone number one. I think what you
10 might be asking relates to the wireless.

11 Q. Thank you for clarifying. Is that
12 the first wireless transaction?

13 A. Yes, at Catalyst.

14 Q. And were you involved in that
15 transaction?

16 A. Yes.

17 Q. And then we have in 2012 Globalive
18 approached Catalyst about supporting the purchase
19 of VimpelCom's interest in Wind as described in
20 your affidavit in paragraph 24?

21 A. Can you repeat the question?

22 Q. In 2012 Globalive approached
23 Catalyst about supporting a purchase of VimpelCom's
24 interest in Wind? That's your affidavit, paragraph
25 24.

1 A. Yes.

2 Q. You were involved in that?

3 A. Correct.

4 Q. And in early 2013 VimpelCom
5 approached you about possibly selling its stake in
6 Wind?

7 A. It was more than that. It was
8 potentially selling the stake in Wind and our
9 merger with Mobilicity.

10 Q. Right. In December of 2013 the
11 Catalyst team with responsibility for the
12 Mobilicity file consisted of Mr. Glassman, correct?

13 A. Correct.

14 Q. Mr. de Alba, you?

15 A. Correct.

16 Q. Mr. Riley?

17 A. Correct.

18 Q. Mr. Michaud?

19 A. Correct.

20 Q. And Mr. Yeh?

21 A. Correct.

22 THE COURT: Can I just ask another
23 question. Mr. Glassman's position at Catalyst, is
24 he a partner or what's his position?

25 THE WITNESS: He is managing partner of

1 the firm.

2 THE COURT: So when you said there are
3 three partners, is he one of the partners?

4 THE WITNESS: Correct, sir.

5 THE COURT: You're the second partner?

6 THE WITNESS: Yes.

7 THE COURT: Mr. Riley is the third
8 partner?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you.

12 BY MR. CENTA:

13 Q. And in your view, Mr. de Alba,
14 each of those individuals on the Catalyst deal team
15 with Mobilicity in December of 2013, each of those
16 individuals was an integral member of the team?

17 A. Yes.

18 Q. There were no non-integral members
19 of the team?

20 A. No.

21 Q. Would you agree that Mr. Yeh, the
22 analyst, was less integral to the team than you
23 were?

24 A. People play different roles but
25 everybody is part of the same information flow and

1 discussion of strategy.

2 Q. Would you agree with me that
3 Mr. Yeh was less integral to the Catalyst deal team
4 on the Mobilicity file than you were?

5 A. Yes.

6 Q. And Mr. Moyse was not a part of
7 the Mobilicity team in December 2013?

8 A. He -- I don't recall -- I don't
9 think he was. However, he had made a co-investment
10 utilizing his own cash as part of Catalyst initial
11 investment in Mobilicity. So he would have been
12 familiar that Catalyst was pursuing the fourth
13 strategy as he had invested money in it.

14 Q. Mr. de Alba, would you agree with
15 me that Mr. Moyse was not a member of the
16 Mobilicity deal team at Catalyst in December of
17 2013?

18 A. The problem with being a small
19 firm, there is not a clear separation of the deal
20 team, but he was not part of the core team but he
21 was still part of the team.

22 Q. I don't think it's too hard for
23 Catalyst to answer that question because Catalyst's
24 answer to undertaking number 5 on your examination
25 for discovery was, when the question was asked to

1 advise who on Catalyst core deal team -- who was on
2 Catalyst core deal team for Mobilicity as at the
3 end of 2013, and the answer was: The team that was
4 responsible for the Mobilicity file as at the end
5 of 2013 was Newton Glassman, Gabriel de Alba, James
6 Riley, Zach Michaud, Andrew Yeh.

7 Does that refresh your memory?

8 A. No, it actually is consistent with
9 my last answer which I said he was not part of the
10 core team. I clarified the core team. But he was
11 still part of the team and had connection with
12 Mobilicity.

13 Q. So there's the core deal team and
14 then there is another concentric circle that is
15 another deal team?

16 A. No, there's a whole Catalyst team.
17 The team, we are, as mentioned before, five or six
18 investment professionals.

19 Q. And Mr. Moyse was not part of the
20 core deal team for Mobilicity at the end of
21 December 2013?

22 A. Correct.

23 Q. Great. Now, in your affidavit you
24 say that beginning in March 2014 Moyse was an
25 integral member of Catalyst's telecommunications

1 deal team. Should we stop and clarify, we need to
2 insert the word "core" there?

3 A. Could you repeat your question
4 again?

5 Q. Your affidavit says beginning in
6 March 2014 Moyses was an integral member of
7 Catalyst's telecommunications deal team. Should we
8 insert the word "core" in front of "deal"?

9 A. Correct. Correct.

10 Q. So my misunderstanding perhaps
11 arose from your language in the affidavit, sir,
12 when I suggested to you he was not a member of the
13 deal team in December 2013, correct?

14 A. Correct.

15 Q. Now, you affirmed that in the
16 beginning of 2014 Mr. Moyses was an integral member
17 of Catalyst's telecommunications core deal team and
18 a keen and proactive member of the Catalyst
19 telecommunications team and you affirmed in
20 paragraph 47 that as early as January 13, 2014
21 Mr. Moyses was demonstrating his involvement in the
22 telecommunications deal team. Correct?

23 A. Correct.

24 Q. In response to an undertaking to
25 your examination for discovery, Catalyst identified

1 and produced every document suggesting Mr. Moyse's
2 participation in analyzing the wireless market at
3 Catalyst prior to May 6th, 2014.

4 So Catalyst identified for us the
5 constellation of documents that demonstrated
6 Mr. Moyse's participation in analyzing the wireless
7 market at Catalyst prior to May 6th, 2014.

8 Catalyst identified 32 documents and
9 I'm going to take you through them one at a time,
10 there is some duplication, so just taking out some
11 of the duplicates in an email chain.

12 Justice Newbould, I am hoping you are
13 going to find the first document I am going to take
14 you to at tab 5.

15 THE COURT: I hope we're not going to
16 spend a whole lot of time on 32 documents.

17 MR. CENTA: Well --

18 THE COURT: Is this part of the
19 argument or is it cross-examination?

20 MR. CENTA: This is part of the
21 cross-examination.

22 THE COURT: All right.

23 BY MR. CENTA:

24 Q. Now, this is a document, an email
25 from Mr. Moyse to Zach Michaud and Andrew Yeh on

1 January 13th, 2014 forwarding a newspaper article
2 from the Financial Post. And this is the document
3 you identify as Mr. Moyse demonstrating his
4 involvement in the telecommunications deal team on
5 that date, correct?

6 A. It is.

7 Q. If you turn to tab 6, you'll see
8 what happens the next -- what happens next is that
9 Mr. Michaud flips this article to Mr. Glassman,
10 Mr. de Alba, Mr. Riley, Bruce Drysdale with copies
11 to Jon Levin, David Moore litigation counsel and
12 Mr. Yeh. Do you see that?

13 A. Yes.

14 Q. And Mr. Michaud does not include
15 Mr. Moyse in that list, correct?

16 A. Correct.

17 Q. And there is no follow-up
18 communications we have identified between
19 Mr. Michaud and Mr. Moyse about this article,
20 correct?

21 A. Correct.

22 Q. And you'll agree with me, sir,
23 that the act of flipping a newspaper article does
24 not mean that Mr. Moyse was then analyzing the
25 wireless market?

1 A. No, that does not mean that.

2 Q. Even the act of reading that
3 newspaper article wouldn't mean that he was
4 analyzing the wireless --

5 A. No, it does mean that -- I cannot
6 speculate what he was analyzing or not, but it's
7 very clear that he understands that Catalyst is
8 interested in Wind and he is providing something
9 that he understands is important to the analysis of
10 Catalyst.

11 Q. By flipping a newspaper article
12 about Wind to Mr. Michaud?

13 A. Correct.

14 Q. And to the extent that this
15 article spawned any analysis at Catalyst, Mr. Moyse
16 was not involved in that analysis because at that
17 time Mr. Moyse was not working with Mr. Michaud on
18 the Wind/Mobilicity combination model, correct?

19 A. You cannot say that. Being a
20 small team, it would be natural that they also
21 would discuss it, otherwise how could Mr. Moyse
22 decide that that could be a relevant article. He
23 needed to have a background and that's part of the
24 approach.

25 Q. So I can't say that Mr. Moyse was

1 not working with Mr. Michaud on the combination
2 model?

3 A. No, you cannot say that.

4 Q. Please turn to tab 8. This is an
5 email from Zach Michaud to you dated January -- or,
6 sorry, March the 1st, I think, 2014. No, January
7 3rd, 2014. Second paragraph:

8 "Brandon and I are working on
9 the cash flow request for NMFG."

10 What does NMFG stand for?

11 A. Natural Markets Food Group.

12 Q. "And Andrew and I are refining
13 the Wind/Mobilicity combination
14 model as well."

15 Mr. Michaud doesn't say Mr. Moyse is
16 working on the Wind/Mobilicity combination model,
17 does he?

18 A. No, not on this email.

19 Q. We agree then that Mr. Moyse was
20 not working on the Wind/Mobilicity combination
21 model at this time?

22 A. Not from these -- not from this
23 email but you could not determine if he will have
24 been in discussions with Andrew and having a
25 dialogue about it.

1 Q. Sir, we have not been able to
2 identify any emails where Mr. Michaud assigned on
3 this date any work to Mr. Moyse on the
4 Wind/Mobilicity combination model, and this is an
5 email from Mr. Michaud informing you before he goes
6 on vacation who is working on what.

7 And I take it you would take
8 Mr. Michaud's email at face value as correctly
9 describing who was working on what at that time?

10 A. No, I would take it as who has
11 direct responsibility on the task. It doesn't mean
12 that other members of the team cannot interact and
13 work together.

14 Q. But there is no evidence of that
15 in Mr. Michaud's email?

16 A. Correct.

17 Q. On February the 21st, 2014, as set
18 out in paragraph 31 of your affidavit, you had a
19 long telephone conversation with Mr. Turgeon of UBS
20 during which you discussed a possible merger
21 between Wind and Mobilicity, correct?

22 A. Sorry, I was looking at the
23 screen. Are you going to pull up a document or is
24 that a question?

25 Q. I'll get there.

1 A. Okay.

2 Q. For now, February 21st, 2014 you
3 affirmed in paragraph 31 of your affidavit you had
4 a long telephone conversation with Francois Turgeon
5 of UBS during which you discussed a possible merger
6 between Wind and Mobilicity?

7 A. Yes.

8 Q. And you created an email
9 summarizing that conversation?

10 A. I believe so.

11 Q. And we'll find that email at tab
12 9, in the middle of the page, an email from you
13 dated Friday, February 21st, 2014?

14 A. Yes, I have it.

15 Q. You see it?

16 A. Yes.

17 Q. And you sent that email to
18 Mr. Glassman, Mr. Levin, Mr. Riley, Mr. Yeh, Mr.
19 Mione and Mr. Michaud, correct?

20 A. Correct.

21 Q. But not to Mr. Moyse?

22 A. No.

23 Q. And that's because by February the
24 21st, 2014 Mr. Moyse was still not a member of the
25 core deal team and you did not provide him with any

1 information on that date about your long
2 conversation with Wind's VimpelCom?

3 A. I did not provide it in that email
4 but -- on that day, but that doesn't mean that we
5 did not have subsequent discussions as it would be
6 common for me to go to the analysts and associates
7 and say this is what's going on in relationship to
8 the deals.

9 Q. But you could have included him in
10 that email chain and you chose not to?

11 A. Correct.

12 Q. On February the 21st, if you'll
13 turn to tab 10, you'll see here is Mr. Michaud
14 flipping to Mr. Moyse on February 21st the 2013 and
15 2022 Wind strategy document and that attachment is
16 found at tab 57. I'm not going to turn it up.

17 And at this time -- in this email there
18 is no request from Zach -- sorry, Mr. Michaud that
19 Mr. Moyse conduct any analysis of this document, it
20 is just an email attaching a document so that
21 Mr. Moyse has it in his possession?

22 A. The email is just a forwarding of
23 a file.

24 Q. Correct, just forwarding a file.
25 Another document that Catalyst identified as

1 demonstrating Mr. Moyses's involvement in the
2 telecommunications sector is found at tab 11.
3 February 27th, 2014 Mr. Michaud sends an email to
4 Mr. Moyses and Mr. Yeh asking -- saying "Can someone
5 grab this and send to G."

6 And in Catalyst shorthand, if someone
7 is saying "to G," are they referring to you?

8 A. Yes.

9 Q. And then if you turn to the next
10 tab, tab 12, you'll see that Mr. Yeh finds the
11 document and sends it to Mr. Glassman, you,
12 Mr. Riley, Mr. Michaud, Mr. Moore, Mr. Levin, and
13 not Mr. Moyses. That's at tab 12.

14 A. Correct.

15 Q. You'll agree with me that
16 Mr. Michaud's original email at tab 11 does not --
17 is not a document suggesting Mr. Moyses's
18 participation in analyzing the wireless market at
19 Catalyst, correct?

20 A. No. I disagree with that. He is
21 being kept apprised [sic] on a follow-up basis so
22 he's familiar with what's going on.

23 Q. No, sir, I think you
24 misunderstood. Mr. Michaud makes a request and
25 then Mr. Yeh appraises everyone by forwarding the

1 article and does not include Mr. Moyle in the email
2 distribution list?

3 A. Yes, but that doesn't mean that
4 Mr. Moyle is not aware about why that email is
5 important and he has been, on a follow-up basis,
6 kept apprised of developments.

7 Q. Mr. Yeh didn't keep him apprised
8 by including him on the email distribution list,
9 did he?

10 A. Mr. Michaud kept him apprised by
11 requesting the article, which meant it's important.

12 Q. And is that the level of appraisal
13 and involvement and transparency that Catalyst
14 prides itself on?

15 A. No, that was just an action
16 consistent with somebody to have familiarity. If
17 this was just a request from an article, it could
18 be requested from an assistant. It is being
19 requested from a professional or from the
20 professionals so they understand what is important.

21 Q. The next document identified by
22 Catalyst is found at tab 13. March 6th, 2014,
23 Mr. Moyle identifies an article and sends it to
24 Mr. de Alba, Mr. Michaud, Mr. Yeh and this is an
25 article about Wind -- about VimpelCom writing down

1 its investment in Wind.

2 Now, this was an important development,
3 correct?

4 A. Yes.

5 Q. This news was big news?

6 A. Yes, it was.

7 Q. This would have a serious effect
8 on any negotiations that Catalyst was undertaking
9 with VimpelCom?

10 A. This help us cement value because
11 when somebody writes investment to zero, it means
12 that basically money above that will be better than
13 zero.

14 Q. All bets are off, the sky is the
15 limit, the deal parameters are now much wider, more
16 accessible?

17 A. More accessible.

18 Q. And this told you -- led you to
19 believe that Catalyst could potentially purchase
20 Wind for a price at or less than the value of its
21 spectrum assets?

22 A. Correct.

23 Q. And Catalyst relies on this
24 document also to suggest Mr. Moyse's participation
25 in analyzing the wireless market?

1 A. It's one of the elements, indeed.

2 Q. Because this was an important
3 decision and this was going to produce work to be
4 done to best position Catalyst to seize on this
5 advantage?

6 A. What do you refer to by "this"?

7 Q. This news that VimpelCom had
8 written down its investment in Wind, this was going
9 to produce work and analysis to be done in order to
10 position Catalyst to take advantage of this
11 opportunity?

12 A. I believe that work had been
13 already progressing at that point in time.

14 Q. Right. But this was a new
15 development. This was a new fact, a big new fact?

16 A. Yes, the basic -- the basic fact
17 is that, as mentioned, you have now a party that is
18 a willing seller that has recognized to the public
19 markets that for them the value in Wind Canada is
20 worth nothing.

21 Q. Right.

22 A. So that gives you a parameter of
23 the seller's expectations as to what their asset is
24 worth.

25 Q. And this was an important

1 development as Catalyst was positioning itself to
2 negotiate with VimpelCom for a potential purchase?

3 A. Yes.

4 Q. So if you turn to tab 14, let's
5 see what happens after Mr. Moyse sends this article
6 to the group. If you turn to page 3 of tab 14, at
7 the top of the page you will see this is the
8 original email from Mr. Moyse to Mr. de Alba,
9 Mr. Michaud and Mr. Yeh. See that? Turn back one
10 page. Sorry, back towards the front, thank you.

11 And scroll down to the 9:56 email.

12 Here's what happens. You take Mr. Moyse's email
13 and you forward it to Mr. Yeh and ask him to answer
14 a question for you. Correct?

15 A. Correct.

16 Q. You don't "reply all." You
17 forward to Mr. Yeh, correct?

18 A. Correct.

19 Q. When you forward to Mr. Yeh, you
20 delete Mr. Moyse from the distribution list,
21 correct?

22 A. Could you go back? I mean, if
23 this is part of the same chain, then yes.

24 Q. Yes, it is. So you see the
25 original email from 5:51 a.m. is from Mr. Moyse to

1 you, Mr. Michaud, Mr. Yeh, you turn around and
2 forward that email to Mr. Yeh and Mr. Michaud but
3 do not include Mr. Moyses in that distribution?

4 A. Correct.

5 Q. Correct?

6 A. Correct.

7 Q. And above that there is another
8 four or five emails, a further exchange on this
9 point, none of which involve Mr. Moyses, correct?

10 A. Correct.

11 Q. So you don't ask Mr. Moyses to
12 assess the amount to which they wrote the
13 investment down, correct?

14 A. Correct.

15 Q. You don't ask Mr. Moyses to
16 investigate the precise metrics reported related to
17 Wind Canada's subscribers? Correct?

18 A. Correct.

19 Q. You didn't ask him to analyze the
20 wireless market on this occasion, correct?

21 A. As per this email, yes.

22 Q. In fact, by forwarding this
23 message rather than choosing "reply all" you made
24 sure that Mr. Moyses did not see any of the
25 additional information that would be contained in

1 that email chain, correct?

2 A. At that point in time.

3 Q. At that point in time, which is
4 March 6th, 2014, you did not see Mr. Moyse as an
5 integral member of Catalyst's core deal team on
6 telecommunications, correct?

7 A. Not necessarily, because while
8 these specific tasks were given to Andrew, the
9 outcome is likely to have shared amongst all team
10 members verbally.

11 Q. But in the interests of
12 transparency and having full access to information
13 you talked about at Catalyst, forwarding the email
14 to Mr. Yeh and dropping Mr. Moyse from the
15 communications chain is not the way to foster fully
16 transparent communications on the core deal team,
17 is it?

18 A. No, I disagree. Because if you
19 are doing what is the task of going to a public
20 document to extract or in this case an article to
21 extract information, it not necessarily has the
22 same impact or magnitude of the discussion of the
23 strategy which are critical for everybody to
24 understand.

25 Q. So let me understand that. So

1 going to a public document and extracting the
2 information doesn't have the same sort of
3 analytical dimensions as the negotiations and
4 discussions around it?

5 A. The task of putting it together,
6 the task of putting it together can be given to a
7 person to -- for that person to conduct the
8 analysis, expecting that analysis to be done
9 correctly, and then when that analysis is complete
10 or advanced, it can be discussed with the totality
11 of the team.

12 Q. And it's the discussion and the
13 analysis that is more important than just the
14 extracting of the information from the public
15 document and that's why --

16 A. It depends, right? It depends
17 what document and the context. It depends.

18 Q. At tab 7 -- sorry, at tab 15,
19 Mr. Yeh forwards a later version of the article we
20 just looked at to a long list including Mr. Moyse.
21 You see that?

22 A. Yes, I do.

23 Q. And that brings us to March 7 when
24 Mr. Moyse and Mr. Michaud begin to work on the
25 combined pro forma for Mobilicity and Wind. And

1 your evidence is that this combined pro forma for
2 Mobilicity and Wind was a critical document in your
3 assessment of the potential transactions available
4 to you?

5 A. Correct.

6 Q. It informed Catalyst's strategy
7 going forward?

8 A. As to value, yes.

9 Q. It was important enough to include
10 in the presentation to the Canadian government,
11 correct?

12 A. Correct.

13 Q. This was a central document in
14 Catalyst's work on this file?

15 A. Correct.

16 Q. At paragraph 50 of your affidavit
17 you say:

18 "Moyse's pro forma analysis was
19 critical to our internal analysis of
20 Wind's value. We were very
21 interested in the value of Wind's
22 spectrum which we viewed as a
23 critical asset and the main value
24 driver in relation to proposed
25 VimpelCom. We never deviated from

1 this analysis."

2 Correct?

3 A. Correct.

4 Q. At tab 16 Mr. Moyse sends his
5 first draft to Mr. Michaud on March 7th at 7:27 in
6 the evening. He writes:

7 "Checked with Andrew - he
8 doesn't seem to think there is
9 anything more recent than June 30,
10 2013, for Mobilicity. I grabbed the
11 subs..."

12 I think that means subscribers; do you
13 agree with me?

14 A. Correct.

15 Q. "...from the factum in the
16 initial filing on September 29.
17 Also, they didn't break out net
18 network value in the June
19 financials, but in the December ones
20 it was 99 percent plus of total
21 PP&E, so I just took the full PP&E
22 number from June 30. Let me know
23 your comments."

24 And then the chart is set out. Do you
25 see that?

1 A. Yes, I do.

2 Q. Turn to tab 17. Mr. Michaud does
3 not respond to Mr. Moyse until the next morning at
4 11:41 a.m. Mr. Michaud says:

5 "They did report for September
6 30. Please get access to the data
7 room."

8 That's the entirety of his response.

9 See that?

10 A. Correct.

11 Q. And then the work continues. We
12 turn to tab 18, about 12 minutes later Mr. Moyse
13 responds:

14 "I was in the data room. The
15 most recent folders for Q2 2013 was
16 uploaded August 20."

17 He then provides the log-in
18 credentials.

19 "I've also looked through the
20 docket and motions/monitor reports
21 and don't see anything updated."

22 Turn to the next tab, tab 19.

23 Mr. Michaud responds three minutes later and says:

24 "Also, there is updated filings
25 on the monitor's website that should

1 give you subscriber numbers. I
2 believe it is closer to 180,000
3 now."

4 A. I see that.

5 Q. Then at tab 20 Mr. Moyse responds
6 five minutes later:

7 "Yes, you're right. The
8 February report says 166 but 190 'if
9 inactive subscribers were included'.
10 Not sure what that means for a
11 prepaid company (seems meaningless
12 to me) so please see below for the
13 updated table."

14 And you'll see he's then updated the
15 report to drop in 166,000 prepaid subscribers for
16 Mobilicity. See that?

17 A. Yes. I see that, yes.

18 Q. Tab 21, Mr. Michaud responds to
19 that draft 15 minutes later, and says:

20 "Go off the latest VimpelCom
21 filings for Wind subscribers and
22 financials where possible. Put in
23 the 190,000 to help the division of
24 economics."

25 Do you understand what the phrase "the

1 division of economics" means there?

2 A. Yes.

3 Q. What does that mean?

4 A. When discussing the potential
5 merger between Mobilicity and Wind, this will mean
6 that a higher number of subscribers, if subscribers
7 is used as a parameter of allocation of value
8 between Wind and Mobilicity, a higher number will
9 give larger allocation of economics to Mobilicity.

10 Q. And so then if we turn to tab 22,
11 Mr. Moyse responds 11 minutes later and says:

12 "Sure."

13 And the "sure" is responding to
14 Mr. Michaud telling him to put in 190 instead of
15 166 in the subscriber numbers. So you will see now
16 we have total subscribers under Mobilicity of
17 190,000. So you agree with me that the decision to
18 put 190,000 in as the subscriber number is
19 Mr. Michaud's decision, not Mr. Moyse's decision?

20 A. I think that they both discuss it
21 and they ultimately came up with the agreement,
22 right?

23 Q. Well, Mr. Michaud's language is
24 "put in 190 to help the division of economics" and
25 Mr. Moyse says "sure." That, I would put it to

1 you, is Mr. Michaud telling Mr. Moyse to put in 190
2 and Mr. Moyse agreeing with Mr. Michaud's
3 instructions to put in 190. Do you agree with me?

4 A. No. I don't see it as an
5 instruction. I see it as a communication amongst
6 two of the investment professionals discussing
7 again the valuation of an allocation of the
8 economics to be used in the case of a potential
9 merger, and ultimately it becomes obvious that a
10 higher number of subscribers for Mobilicity in the
11 case of a merger will be higher economics. So it's
12 not an instruction, it's a rational discussion that
13 results in a better positioning of value for
14 Mobilicity.

15 THE COURT: How much longer do you
16 think you're going to be, Mr. Centa?

17 MR. CENTA: In cross-examination?

18 THE COURT: Yes.

19 MR. CENTA: I suspect at least a half
20 an hour.

21 THE COURT: Let's take 15 minutes now.

22 -- RECESS AT 3:35 --

23 -- UPON RESUMING AT 3:50 --

24 BY MR. CENTA:

25 Q. Thank you, Mr. de Alba. We were

1 talking about the back and forth exchange between
2 Mr. Moyse and Mr. Michaud that led to the delivery
3 of the Mobilicity and Wind combined pro forma to
4 you.

5 And just to close off that, I believe
6 that Mr. Michaud sends an email to Mr. Moyse at
7 12:35 p.m., that's found at tab 23, in which
8 Mr. Michaud signs off and says "Okay, let's send
9 this to G." That's at 12:35.

10 And then at 12:38, Mr. Moyse at tab 24
11 provides a couple of small editorial changes to
12 Mr. Michaud. At tab 25 Mr. Michaud signs off again
13 at 1:13 and at tab 26 Mr. Moyse sends the final
14 product to you, March 8, 1:21 p.m.

15 So all of the edits that you and I just
16 looked at took place between Mr. Michaud's response
17 to Mr. Moyse at 11:41 a.m. on March 8th and the
18 final version goes to you at 1:21 p.m. that same
19 day, okay?

20 A. Okay.

21 Q. And Mr. Moyse writes to you at tab
22 26:

23 "As discussed with Zach, please
24 see below for Mobilicity and Wind
25 spectrum value, network value and

1 total subscribers both individually
2 and on a pro forma combined basis as
3 well as the percentage share of each
4 company in the combined total. Let
5 us know if you have any questions."

6 Now, we've been able to identify in the
7 database some of the source documents that
8 Mr. Moyse and Mr. Michaud referred to in their
9 emails back and forth that provide the information
10 that Mr. Moyse then includes in the table.

11 So first, the spectrum value for
12 Mobilicity, if you turn to tab 27, and this is an
13 excerpt of a record -- court record of proceedings.
14 If you'll turn to page 23 of the PDF which is
15 labelled page 718 of the record in the top right
16 corner, or page 16 in the bottom right corner,
17 depending on your preference, these are the
18 consolidated financial statements ended December
19 31st, 2012 for Data and Auto Visual Enterprises
20 Holdings Inc.

21 And you'll see in Note 11, intangible
22 assets. Down in the bottom, the big paragraph
23 below Note 11, three lines from the bottom there is
24 a sentence that says payments made to Industry
25 Canada for the spectrum totalled \$243,159,000. Do

1 you see that?

2 A. Yes, I do.

3 Q. And that is the number that
4 Mr. Moyse included in the table that was sent to
5 you on March the 8th, the Mobilicity spectrum
6 value, 243,159,000?

7 A. Yes, I do.

8 Q. And the spectrum value for Wind,
9 if you turn to tab 28, page 2 of the document, it
10 has 680 written in the top right corner, you will
11 see under -- this is the unaudited consolidated
12 statements of financial position for the same
13 entity, under non-current assets you'll see
14 property and equipment with a value of \$97,417,634,
15 and that is the source of the spectrum value for
16 Wind that Mr. Moyse included in the chart, correct?

17 A. Correct.

18 Q. And the network value --

19 THE COURT: Where is that?

20 MR. CENTA: This is under non-current
21 assets, property and equipment as at June 30th,
22 2013.

23 THE COURT: Yes.

24 MR. CENTA: Property and equipment
25 \$97,417,634. And that's listed as network value of

1 Mobilicity on the chart that was sent to Mr. de
2 Alba.

3 THE COURT: Well, you just said it was
4 a value for Wind. This is Mobilicity.

5 THE WITNESS: It is.

6 MR. CENTA: I'm sorry, I misspoke. Let
7 me roll that back. That was for Mobilicity. You
8 see the second line under Mobilicity --

9 THE COURT: No, I understand that, but
10 when you said Wind --

11 MR. CENTA: I'm sorry, I misspoke
12 myself.

13 THE COURT: All right.

14 BY MR. CENTA:

15 Q. That's the network value for
16 Mobilicity. The entry for Mobilicity for the total
17 number of subscribers is found in tab 29, which is
18 an affidavit sworn by William Aziz, and if you'll
19 turn to page 2 of the document, paragraph 9,
20 sentence 1, tab 29, page 2, paragraph 9, first
21 sentence: The applicants currently have over
22 166,000 customers. And then Footnote No. 2: This
23 would exceed 190,000 if inactive subscribers were
24 included.

25 And that's the source of the total

1 subscribers count for Mobilicity that Mr. Moyse
2 included in the pro forma that he sent to you,
3 correct?

4 A. Correct.

5 Q. And actually those two sentences
6 reflect the debate that Mr. Michaud and Mr. Moyse
7 were having that we described around which
8 subscriber number to include?

9 A. Correct.

10 Q. And the total number of
11 subscribers for Wind included in the pro forma is
12 found at tab 30. If you turn to page 28 of the
13 document at tab 30, this is the VimpelCom reports
14 for Q4 2013 and fiscal year 2013 results.

15 Under Canada country detail, you'll see
16 customers denominated in hundred thousands, 4th
17 Quarter 2013, 649,000, and that is the number that
18 appears in the Wind column for total subscribers in
19 the chart that Mr. Moyse sent to you, correct?

20 A. Correct.

21 Q. And the other numbers for Wind are
22 described as arising from Wind's -- in Footnote 2
23 to Mr. Moyse's pro forma, Wind's spectrum value,
24 network value as of September 30th, 2012,
25 subscribers from Q4 2013 results announcement on

1 March 6th.

2 We weren't able to locate those
3 documents in the database but it's fair to say
4 those would have been found in the Wind data room?

5 A. I do not know.

6 Q. But they would have been the
7 financial results that are as described by
8 Mr. Moyse in his footnotes to you?

9 A. Yes.

10 Q. And again, the same activity you
11 would have gone through to identify the numbers,
12 taken them from those statements and put them in
13 the pro forma chart, correct?

14 A. Yes.

15 Q. Now, once he'd taken the numbers
16 from the publicly-available information, if you
17 turn back to tab 26, what he does is if Mobilicity,
18 if I can call Mobilicity column A and Wind column
19 B, he just adds column A and column B to come up
20 with a total, correct?

21 A. Correct.

22 Q. And so he adds spectrum value to
23 spectrum value and comes up with a total, the same
24 with network value and the same with total
25 subscribers, correct?

1 A. Correct.

2 Q. And then in the next column he
3 simply divides first Mobilicity into the total to
4 come up with a percentage; is that correct?

5 A. Correct.

6 Q. And then Wind into the total to
7 come up with a percentage, correct?

8 A. Correct.

9 Q. And would you agree with me, sir,
10 that no knowledge of the telecommunications
11 industry was required to prepare this particular
12 pro forma?

13 A. I would disagree. Even again the
14 debate related to what subscriber number to use is
15 important and Brandon went through the exercise of
16 even looking at the fact to bring that point even
17 though that was a footnote. In addition to that,
18 the three main metrics again are the key valuation
19 metrics for the companies.

20 Q. And no knowledge of Catalyst
21 strategy or plans was required to complete this
22 assignment?

23 A. That's not correct. The fact that
24 again the discussion happened about which number to
25 utilize as the subscribers implied that there was a

1 negotiation going on in which Catalyst was talking
2 to Wind and wanted to present a value allocation of
3 a combined company to Wind.

4 Q. Sir, the exchange between
5 Mr. Michaud and Mr. Moyse says nothing of that
6 sort, does it?

7 A. It does. When you -- in the
8 question when you asked me about 190 and what was
9 the composition of value, if I recall correctly,
10 that was the set-up for a negotiation with Wind.

11 If you own, for example, 31 percent of
12 the spectrum value versus 68.9 percent or that's
13 the allocation of spectrum value, one versus the
14 other one, when you are sitting down with Wind you
15 will tell them, listen the spectrum value at the
16 time when the option took place, ours is worth
17 31.1, yours is 68.9, a fair allocation of a
18 combined business would be 31.1 to 68.9. There
19 were implicit discussions about valuation in
20 relationship to the combination.

21 Q. And these numbers are all
22 calculated at different points in time, correct?

23 A. They are a frame of negotiation,
24 indeed, at different points in time, yeah.

25 Q. And this is the only piece of

1 analysis that we've seen produced by Catalyst
2 prepared by Mr. Moyse in relation to Wind prior to
3 the March 26th, 2014 PowerPoint, correct?

4 A. The analysis that was taking
5 place, for you to have the context, included these,
6 and also, as you noted, a very important event
7 which was the write-off of the investment --

8 THE COURT: It would be better if you
9 just listened to the question, sir.

10 THE WITNESS: Well, my answer is no.
11 There was more analysis involved.

12 BY MR. CENTA:

13 Q. Well, I've taken you through all
14 of the documents that Catalyst identified as
15 representing Mr. Moyse's -- evidence of Mr. Moyse's
16 analysis of the wireless market at Catalyst, and we
17 got to the pro forma, and I said to you that this
18 is the first document that demonstrates Mr. Moyse
19 conducting any analysis - any analysis - of the
20 wireless market before this date. Do you agree
21 with me?

22 A. My response is no.

23 Q. Okay. On March the 11th, Mr. Yeh
24 sends Mr. Glassman, Mr. Michaud, Mr. Moyse,
25 Mr. Levin, an article about the industry. And

1 that's at tab 31. You see that?

2 A. Yes, I do.

3 Q. And acknowledge Mr. Moyse is
4 included in that distribution list?

5 A. Yes.

6 Q. So that takes us now to March the
7 26th and I've looked at all the -- taken you
8 through all the documents Catalyst identified that
9 evidenced Mr. Moyse's involvement in the
10 telecommunications sector and now we're at March
11 26, which is the day that the PowerPoint
12 presentation is created by Catalyst with
13 Mr. Moyse's involvement, correct?

14 A. Correct.

15 Q. And you'll find that email, we
16 looked at it many times, but at tab 34, the email
17 from Mr. Moyse to you. And Mr. Glassman and
18 Mr. Riley attended the meeting for Catalyst along
19 with Catalyst government relations representatives
20 in Ottawa on the 27th?

21 A. Yes.

22 Q. And that was a very important
23 meeting?

24 A. Yes.

25 Q. Catalyst sent two of the three

1 partners?

2 A. Correct.

3 Q. You did not attend?

4 A. Correct.

5 Q. Mr. Michaud did not attend?

6 A. Correct.

7 Q. And Mr. Moyses did not attend?

8 A. Correct.

9 Q. Mr. Moyses did not attend despite
10 the fact that, on your telling, he led the creation
11 of this PowerPoint presentation?

12 A. Correct.

13 Q. And we know that the pro forma
14 analysis is incorporated into the PowerPoint
15 presentation, correct?

16 A. Yes.

17 Q. Other than that, there are no
18 emails assigning Mr. Moyses any research tasks to be
19 folded into this PowerPoint presentation, correct?

20 A. Not from the record.

21 Q. There aren't any emails, correct?

22 A. No.

23 Q. Except for the combined pro forma,
24 there are no documents reflecting any work
25 performed by Mr. Moyses before March 26th that gets

1 incorporated into the PowerPoint presentation,
2 correct?

3 A. I will need to check the
4 presentation to see if there is -- also includes
5 the language related to the fact that VimpelCom had
6 written up the investment to zero because those --
7 those were the two boundaries, the zero from
8 VimpelCom and the metrics from the table from
9 Moyse.

10 Q. And we looked at Mr. Moyse's
11 involvement in the zero to VimpelCom and that was
12 to send an email, flip a newspaper article to you
13 and then you forward it on and removed him from the
14 distribution list, correct?

15 A. Yeah, I believe that was the case.

16 Q. Okay. Now, Mr. de Alba and
17 Mr. Riley and Mr. Michaud were all members of the
18 Mobilicity team, the Mobilicity core deal team,
19 correct?

20 A. Correct.

21 Q. They had all been involved in the
22 telecommunications industry for some time?

23 A. Correct.

24 Q. For many years?

25 A. I believe so, yes.

1 Q. All three men had much greater
2 experience in the telecommunications file than did
3 Brandon Moyse?

4 A. I believe so.

5 Q. All three men had much more
6 exposure to the complex regulatory and government
7 relations issues posed by this file than did
8 Mr. Moyse?

9 A. I'm not sure.

10 Q. Let's talk about you then. Did
11 you have much more exposure to the complex
12 regulatory and government relations issues posed by
13 this particular wireless telecommunications file
14 than Mr. Moyse did?

15 A. I have more experience but not
16 necessarily more exposure.

17 Q. How many years had you been
18 involved in the wireless telecommunications
19 regulatory issues by March of 2014?

20 A. A year and a half. Two years.

21 Q. I thought you told me you were
22 involved with the first acquisition of Mobilicity's
23 debt in 2011?

24 A. Yes, that's correct.

25 Q. So that's at least three years?

1 A. Yeah, that's right.

2 Q. And were you involved at all in
3 the wireless industry before that?

4 A. Yes. Not in Canada.

5 Q. So you had international wireless
6 experience?

7 A. Yes.

8 Q. You were also involved in the
9 Mobilicity CCAA proceedings?

10 A. Correct.

11 Q. And Mr. Riley, was he involved in
12 the Mobilicity CCAA proceedings?

13 A. Correct.

14 Q. And was he involved in the
15 acquisition back in 2011 of the first lien debt
16 issue of Mobilicity?

17 A. I don't recall.

18 Q. Mr. Michaud was a member of the
19 core Mobilicity deal team at least no later than
20 December of 2013 and from before that as well?

21 A. Correct.

22 Q. And he had more experience in the
23 telecommunications industry than did Mr. Moyse?

24 A. Only from having spent more time
25 at Catalyst but I don't think from prior work.

1 Q. Mr. de Alba, I put it to you that
2 Mr. Moyses did not lead the preparation of the
3 PowerPoint presentation?

4 A. Can you --

5 Q. That he did not lead the
6 preparation of the PowerPoint presentation, did he?

7 A. Yes, he did.

8 Q. All of the ideas and the
9 negotiating positions contained in this
10 presentation came from Mr. de Alba, Mr. Riley, and
11 Mr. Michaud, correct?

12 A. No.

13 Q. He was simply a scribe preparing
14 the slide at the direction of senior members of
15 Catalyst?

16 A. I don't agree.

17 Q. They put the information on pieces
18 of paper, walked them into him, he laid them out,
19 he designed them, he inserted the pro forma
20 preparation he had done, but that was the extent of
21 his involvement, correct?

22 A. I don't agree.

23 Q. Mr. de Alba, there are no
24 documents that I've taken you to that suggest that
25 Mr. Moyses would have been remotely qualified or

1 prepared to create this presentation in 24 hours in
2 advance of this crucial meeting with Industry
3 Canada. Do you agree with me?

4 A. He did not create it. He led it.

5 Q. He inputted information into
6 PowerPoint at the direction of the partners and
7 vice-president of Catalyst he was working with,
8 correct?

9 A. No.

10 Q. They came up with option 1, 2 and
11 3 and told them to him, correct?

12 A. No.

13 Q. Mr. Moyse came up with option 1, 2
14 and 3?

15 A. The team together came up with the
16 options, the team together came up with the
17 presentation, and he was the person responsible for
18 putting it together into a single presentation.

19 Q. Mr. de Alba, are you suggesting
20 that the documents we've looked at that show
21 Mr. Moyse's involvement from January 2014 to March
22 26th, 2014 that he was involved in the creation of
23 options 1, 2 and 3?

24 A. Yes.

25 Q. You state in your affidavit at

1 paragraph 59 that Catalyst believed that the
2 federal government faced a lawsuit over retroactive
3 changes made to spectrum licenses it had issued in
4 2008?

5 A. Sorry, can you repeat the
6 question?

7 Q. In paragraph 59 of your affidavit
8 you state that Catalyst believed that the federal
9 government faced a lawsuit over retroactive changes
10 made to spectrum licenses that it had issued in
11 2008?

12 A. Correct.

13 Q. And you believed that that
14 litigation would likely be successful?

15 A. Correct.

16 Q. And you stated that Catalyst had
17 performed extensive analysis of that?

18 A. Correct.

19 Q. There are no documents to suggest
20 that Mr. Moyse contributed to that extensive
21 analysis, are there?

22 A. No.

23 Q. There are no documents suggesting
24 that Mr. Moyse ever reviewed this extensive
25 analysis or that it was ever provided to him?

1 A. Not in writing.

2 Q. On April 18th there is an email
3 chain on which Mr. Moyse is a member, and I'm not
4 going to turn them all up, they run from tabs 36 to
5 47. I think we had part of this conversation
6 already. It was a discussion among Mr. Glassman,
7 Mr. Michaud, Mr. de Alba, Mr. Riley, Mr. Levin,
8 Mr. Moore about the Mobilicity transaction with
9 Telus, and Mr. Moyse is copied in all of those, so
10 he does see that email conversation so I'm not
11 going to turn them up, but he is present and does
12 see those.

13 And then there are no other documents
14 until May 6th when Mr. Moyse found out that
15 Catalyst would be bidding on a deal.

16 We also talked about the second
17 presentation -- second PowerPoint presentation that
18 is used at the meeting with the government on May
19 the 12th. Do you recall that?

20 A. Yes.

21 Q. And you said that Mr. Moyse led
22 the preparation of that PowerPoint presentation as
23 well?

24 A. Correct.

25 Q. And you also said that Mr. Moyse,

1 when he's emailed you the document the last time,
2 he was the last person to touch it and that was
3 evidence of his important role in completing the --
4 in creating the PowerPoint presentation?

5 A. Correct, part of it.

6 Q. So turn to tab 48, please.

7 Mr. Glassman -- page 2 of tab 48, on May the 12th
8 at 9:41 a.m. Mr. Glassman sends an email to you and
9 Mr. Michaud, copy to Mr. Riley, copy to Mr. Levin,
10 subject Mobilicity and Wind:

11 "Any analysis/documents
12 available for today's meetings?
13 Comments? Leaving airport in an
14 hour. Let's go."

15 He's referring there to the PowerPoint
16 presentation, correct?

17 THE COURT: You're going pretty fast.
18 Where are you referring to?

19 MR. CENTA: I'm sorry, page 48.

20 THE COURT: I've got page 48.

21 MR. CENTA: Page 2.

22 THE COURT: If you want me to follow
23 it, you'd better take a look at me once in a while.

24 MR. CENTA: My apologies.

25 THE COURT: Now, where are you reading

1 from?

2 MR. CENTA: I'm reading from the email
3 below the line from Mr. Glassman, the email dated
4 May 12th at 9:41 to Mr. de Alba, Mr. Michaud,
5 Mr. Riley, Mr. Levin.

6 THE COURT: Yes.

7 BY MR. CENTA:

8 Q. It says:

9 "Any analysis/documents
10 available for today's meetings?
11 Comments? Leaving airport in an
12 hour plus. Let's go."

13 He is asking there about the PowerPoint
14 presentation; correct?

15 A. Would it be possible to see the
16 response that is above?

17 Q. Absolutely. You respond at 9:56
18 and then you respond again at 10:56. The 10:56
19 response says:

20 "Fasken will give you
21 presentation in Ottawa. We're
22 finishing it now."

23 A. Correct.

24 Q. So that's a reference to the
25 PowerPoint presentation, correct?

1 A. Correct.

2 Q. Now, Mr. Glassman did not send
3 that email to Mr. Moyse who was leading the
4 creation of the PowerPoint presentation, on your
5 view, correct?

6 A. I believe Mr. Moyse was finalizing
7 the presentation and was under pressure to finish
8 it up to send to Fasken for Fasken to print at
9 their Ottawa offices.

10 Q. And Mr. Glassman, when he was
11 wondering whether there was a presentation, did not
12 send his email to Mr. Moyse, did he?

13 A. He did not.

14 Q. He did not. He sent it to you and
15 Mr. Michaud?

16 A. Correct.

17 Q. Wondering where the presentation
18 was?

19 A. Correct.

20 Q. I put it to you that's because you
21 and Mr. Michaud and Mr. Riley were copied on that
22 email, had much more responsibility for the
23 creation of the second PowerPoint presentation than
24 did Mr. Moyse?

25 A. He might have not -- Mr. Glassman

1 might not have wanted to overwhelm Mr. Moyse with
2 more pressure at that point in time.

3 Q. Was Mr. Glassman often that
4 considerate of his analysts' time?

5 A. Absolutely.

6 Q. He wanted to make sure they
7 weren't put under too much pressure?

8 A. Absolutely.

9 Q. He wanted to make sure they had
10 sufficient time to do their jobs?

11 A. Absolutely.

12 Q. And he would not have wanted to
13 burden Mr. Moyse by sending him an email asking him
14 where the presentation was?

15 A. Yes.

16 Q. And that's consistent with your
17 non-hierarchical approach at Catalyst?

18 A. When somebody is meeting a
19 deadline, the last thing you want to do is
20 overwhelm that person with more pressure.

21 Q. You testified earlier that
22 everybody on a deal team needs to be fully informed
23 at all times in order to be able to think about and
24 execute strategies related to the deal, correct?

25 A. Yes.

1 Q. And you also testified that
2 analysts like Mr. Moyse are expected to contribute
3 to all elements of the deal including strategy,
4 deal making and negotiations?

5 A. Correct.

6 Q. And that analysts are expected to
7 be able to present the status of a deal at all
8 times, correct?

9 A. Correct.

10 Q. And Mr. Creighton was also the
11 analyst on the Wind deal?

12 A. He had just joined, I believe.

13 Q. He had just joined. But he was
14 working on the Wind deal particularly during the
15 time that Mr. Moyse was on vacation?

16 A. Yes.

17 Q. And in fact I believe
18 Mr. Creighton was involved in the very early
19 diligence sessions as early as May the 6th when the
20 diligence process started, correct?

21 A. Yes.

22 Q. And at paragraph 108 of your
23 affidavit you explain that by May 15th, Catalyst
24 hadn't received certainty from Industry Canada
25 regarding exit conditions and you talk about a

1 potential slowdown strategy with VimpelCom. Do you
2 recall that evidence?

3 A. Can you pull it up?

4 Q. It's in the affidavit, paragraphs
5 108 and 109. If I can just give this to you. I
6 think I'm violating a rule of a paperless trial
7 here. It describes that you may not be able --

8 A. Can you point me out the section,
9 please?

10 Q. Sorry, paragraphs 108 and 109.
11 Take your time.

12 A. (Witness reads document). Yes,
13 sir.

14 Q. So that's the state of play at May
15 15th, a deal is potentially slowing down because
16 you haven't yet received Industry Canada approval,
17 correct?

18 A. Certainty from Industry Canada,
19 yes.

20 Q. And --

21 A. I don't think approval could be
22 obtained at that point in time. Application had
23 been made.

24 Q. That's fair. I misspoke. I think
25 you phrased it better than I did.

1 Over to paragraph 116 in your
2 affidavit, you write on May 23rd, 2014 Catalyst
3 intended to send a draft of the SPA to VimpelCom.
4 Correct?

5 A. Let me --

6 Q. Absolutely. Take your time.

7 A. Can you point again, please?

8 Q. Paragraph 116, first sentence.

9 A. Yes.

10 Q. Okay. To remind you, you said
11 that at all times everyone needs to be informed,
12 everyone on the deal team needs to be fully
13 informed at all times in order to be able to think
14 about the execution and strategies for a deal,
15 correct?

16 A. Correct.

17 Q. If you can turn to tab 59. This
18 is an email from Mr. Creighton, the analyst who is
19 working in Toronto, to Mr. Moyse, the analyst on
20 vacation in Southeast Asia on May 21st.
21 Mr. Creighton writes: On Wind --

22 THE COURT: You know, I'm completely
23 lost here.

24 MR. CENTA: Sorry, Your Honour. I'm
25 confused. It comes up on my screen.

1 THE COURT: Well, you are going so
2 quickly.

3 MR. CENTA: This is tab 59.

4 THE COURT: I have to go back to the
5 affidavit. I'm trying to find out where you are in
6 your cross-examination now. I can't find it.

7 MR. BORG-OLIVIER: Go under de Alba,
8 cross-examination, and then Moyse defendants.

9 THE COURT: Where do I find that?

10 MR. BORG-OLIVIER: Go under evidence
11 and submissions during trial, then under tab 1, de
12 Alba.

13 THE COURT: Just a second. Okay,
14 thanks. Which number?

15 MR. CENTA: 59, Your Honour.

16 THE COURT: Okay.

17 BY MR. CENTA:

18 Q. And on May 21st, Mr. Creighton,
19 who is the analyst working in Toronto, says to
20 Mr. Moyse, the analyst who is in Southeast Asia on
21 vacation:

22 "On Wind, Zach said as far as
23 he knows the plan is to submit an
24 offer Friday... I'm continuing to
25 work on the memo, and Zach asked for

1 more diligence questions that we can
2 bombard them with... No real idea
3 what's going on or if we are
4 actually going to do the deal."

5 Mr. de Alba, you'll agree with me that
6 in this email, Mr. Creighton, the analyst on the
7 ground, says he has no real idea what's going on.
8 Correct?

9 A. That was his writing.

10 Q. And he has no idea whether
11 Catalyst is going to do the deal?

12 A. First of all, he doesn't say he
13 has no idea what's going on. He says that there is
14 going to be -- he believes, he said as far as he
15 knows the plan is to submit an offer on Friday. So
16 he is aware about an offer coming. He certainly
17 continues to work on the memo and he continues to
18 be involved in the due diligence process with, I
19 think, the comment "bombard them," that means to
20 make the process -- add more questions to the
21 process to slow it down.

22 So he's giving you pointers from those
23 first two sentences. What he says is that he has
24 no idea if we are actually going to do the deal but
25 that doesn't mean that he is not familiar of what

1 is happening on the ground.

2 Q. What he says is "No real idea
3 what's going on or if we are actually going to do
4 the deal." Correct?

5 A. He's describing about what's going
6 on. Submit an offer on Friday, continue to work on
7 the memo, more due diligence questions that we can
8 bombard them with, so, you know, he's giving you
9 specifics.

10 Q. And he says that from those
11 specifics he has no real idea what's going on?

12 THE COURT: We can all see that. Maybe
13 you should move on.

14 BY MR. CENTA:

15 Q. Mr. de Alba, from time to time you
16 use your personal email account to send and receive
17 messages that relate to Catalyst business?

18 A. Only in extraordinary
19 circumstances.

20 Q. If you turn to tab 56, this is an
21 example of you sending a message and copying your
22 "@AOL" account. Do you see that in the "to" line,
23 GdeAlba@AOL.com?

24 A. Correct.

25 Q. And Catalyst produced 18 different

1 documents that were sent to your "@AOL.com" email
2 address between July 31st and August 3rd, 2014?

3 A. Yeah.

4 Q. And you're not suggesting that by
5 copying your AOL account that you were breaching
6 any duty of confidence you owed to Catalyst,
7 correct?

8 A. Correct.

9 Q. Mr. de Alba, after all of the
10 extensive productions in this case, you cannot
11 identify a single confidential Catalyst document
12 relating to Wind that ended up in the possession of
13 West Face, can you?

14 A. I can't.

15 Q. Mr. de Alba, you cannot identify a
16 single email received by West Face from Mr. Moyse
17 that contained any confidential Catalyst
18 information about Wind, can you?

19 A. No, I can't.

20 Q. Mr. De Alba, you cannot identify a
21 single email sent by Mr. Moyse to West Face that
22 contained any confidential Catalyst information
23 about Wind?

24 A. Correct.

25 Q. Mr. Moyse never told you that he

1 had provided confidential Catalyst information
2 about Wind to West Face, did he?

3 A. I never asked.

4 Q. No one at West Face has ever told
5 you that Mr. Moyse provided confidential Catalyst
6 information about Wind to West Face?

7 A. No, I have not asked.

8 Q. Not that you didn't ask; no one
9 has told you that either, correct?

10 A. Correct.

11 Q. No one in the entire world has
12 ever told you that Mr. Moyse provided confidential
13 Catalyst information about Wind to West Face, have
14 they?

15 THE COURT: I don't think that would be
16 very helpful anyway, would it? To me? Wouldn't it
17 be hearsay?

18 MR. CENTA: We would take it --

19 THE WITNESS: No.

20 MR. CENTA: -- for a non-hearsay
21 purpose.

22 BY MR. CENTA:

23 Q. You have no direct evidence - I'm
24 not asking about inference drawing - you have no
25 direct evidence that Mr. Moyse provided any

1 confidential Catalyst information about Wind to
2 West Face, do you?

3 A. No, I don't.

4 MR. CENTA: Those are my questions.

5 Thank you very much.

6 THE WITNESS: Thanks.

7 THE COURT: Mr. Milne-Smith?

8 CROSS-EXAMINATION BY MR. MILNE-SMITH:

9 Q. Good afternoon, Mr. de Alba. Your
10 evidence this afternoon, as I understand it, was
11 that mere knowledge of Catalyst's involvement in a
12 deal could move the value of the company. Do you
13 recall that?

14 A. Correct.

15 Q. But you would, of course, agree
16 with me that by 2013 at the latest, there was in
17 fact public discussion of Catalyst's interest in
18 merging Mobilicity and Wind?

19 A. Correct.

20 Q. So this is not the kind of case
21 where the mere knowledge of your involvement was
22 going to move the value or allow someone to take a
23 blocking position?

24 A. It actually did.

25 Q. Mr. de Alba, in 2013, knowledge of

1 Catalyst's interest was already public, correct?

2 A. Correct.

3 Q. Okay. Thank you. Now, you gave
4 evidence that West Face had a position in
5 Mobilicity as of 2014?

6 A. Yes.

7 Q. Were you aware that in fact West
8 Face sold its position in Mobilicity's debentures
9 or bonds in February of 2013?

10 A. Not aware.

11 Q. Am I correct that during the
12 course of your negotiations with VimpelCom, you had
13 an idea about the identity of some of the competing
14 bidders for Wind, correct?

15 A. Correct.

16 Q. For example, you knew, and you've
17 already given evidence that you knew about West
18 Face?

19 A. Yes.

20 Q. And you also knew that Tennenbaum
21 Capital Partners, Blackstone, Oak Tree, and a
22 strategic party whose name we're not going to
23 identify were also potentially involved?

24 A. Correct.

25 Q. And you gave evidence this

1 afternoon, Mr. de Alba, that you only learned the
2 terms of West Face's offer in the last two months.
3 Do you recall that?

4 A. Correct.

5 Q. Were you aware that in his March
6 7th, 2015 affidavit Tony Griffin actually attached
7 the West Face offer?

8 A. Yes.

9 Q. Did you review that affidavit at
10 the time?

11 A. I don't recall seeing the offer
12 then.

13 Q. Okay. So you'd certainly accept
14 my proposition to you that those terms were known
15 to Catalyst, whether or not you actually were aware
16 of them?

17 A. If they were there, yes.

18 Q. And you certainly knew in August
19 or September of 2014 that the West Face consortium
20 had made a proposal to VimpelCom?

21 A. I don't recall if I knew that they
22 -- the consortium had made a proposal.

23 Q. You were informed by Chris
24 Gauthier at the time that they had made a proposal,
25 correct?

1 A. That there was another party
2 making a proposal. I don't recall if it was all
3 the consortium or who it was.

4 Q. You were aware in August or
5 September from Mr. Gauthier that Bennett Jones --
6 sorry, let me just make sure we're all on common
7 ground. Mr. Gauthier was at Bennett Jones who were
8 counsel to VimpelCom, correct?

9 A. Correct.

10 Q. And Mr. Gauthier informed you in
11 August or September of 2014 that the West Face
12 consortium, the consortium that included West Face,
13 had made a proposal during the period of
14 exclusivity?

15 A. I don't recall if he informed that
16 there was another proposal or who precisely had
17 made the proposal.

18 Q. You learned from Mr. Gauthier that
19 the approach that had been pursued by the West Face
20 consortium and by VimpelCom was to continue to
21 receive proposals in order to have a potential
22 alternative. You were aware of that in
23 September/August of 2014, correct?

24 A. No, I learned that the proposal
25 was submitted from this trial.

1 Q. Mr. de Alba, do you recall being
2 examined for discovery by me on May the 11th of
3 2016?

4 THE COURT: Do you have a copy of that
5 for me?

6 MR. MILNE-SMITH: Yes, sorry. The
7 transcript is at tab 2, is it?

8 THE COURT: Tab 2 of what?

9 MR. MILNE-SMITH: Tab 2 of the
10 cross-examination brief. Since this is the first
11 time we're going to it, let me just help Your
12 Honour make sure you get there.

13 So if you go into the Catalyst --
14 Catalyst, in the main folder, if you then go into
15 transcripts and undertakings.

16 THE COURT: Okay.

17 MR. MILNE-SMITH: Then there are
18 discovery transcripts.

19 THE COURT: Sorry. Just a minute.
20 Under discovery transcripts?

21 MR. MILNE-SMITH: Yes, discovery
22 transcripts.

23 THE COURT: Yes.

24 MR. MILNE-SMITH: And then de Alba.

25 THE COURT: Yes.

1 MR. MILNE-SMITH: And then there will
2 be --

3 MS. BARBIERO: It's also tab 2 of our
4 cross-examination brief.

5 MR. MILNE-SMITH: The folder I've taken
6 you to is the very first --

7 THE COURT: 000?

8 MR. MILNE-SMITH: Correct. That will
9 bring up the transcript.

10 THE COURT: Yes.

11 MR. MILNE-SMITH: So, Your Honour,
12 we're on page 191 of the transcript.

13 THE COURT: Page what?

14 MR. MILNE-SMITH: 191.

15 THE COURT: Yes.

16 MR. MILNE-SMITH: Starting at question
17 709, about half-way down the page.

18 BY MR. MILNE-SMITH:

19 Q. "Question: You believe that
20 Mr. Saratovsky and the VimpelCom
21 board breached their exclusivity
22 obligations to Catalyst?

23 Answer: I do believe that.

24 Question: Okay. When did you form
25 that belief?

1 Answer: After, I need to remember
2 precisely, but after we lost the
3 exclusivity --

4 Question: Yes.

5 Answer: -- I learned from
6 Mr. Gauthier that the approach that
7 had been pursued by the West Face
8 consortium and by VimpelCom was to
9 continue to receive proposals in
10 order to have a potential
11 alternative. And he invited and
12 noted that the exclusivity did not
13 have a notification clause if other
14 proposals would have been received,
15 and he further, you know, mentioned
16 that that's, you know, something
17 that had been happening.

18 Question: And this you found out
19 back in August 2014 after your
20 exclusivity expired?

21 Answer: I don't remember precisely
22 when.

23 Question: But in that
24 August/September timeframe?

25 Answer: I don't remember precisely

1 when.

2 Question: It wasn't, like, this
3 year, it was back at the time the
4 events in question were happening?

5 Answer: Yeah, but I don't remember
6 if -- yes."

7 Were you asked those questions and did
8 you give those answers?

9 A. Yes.

10 Q. Thank you.

11 THE COURT: The next question, "And
12 were they true."

13 BY MR. MILNE-SMITH:

14 Q. And were they true?

15 A. Yes.

16 Q. Were they true when given?

17 A. Yes.

18 Q. You gave evidence this afternoon,
19 Mr. de Alba, about a conversation that you had with
20 Mr. Boland on June 20th. Do you recall that?

21 A. Yes.

22 Q. Is it also true that the day
23 before that conversation, in other words on June
24 19th, your counsel had written to counsel for West
25 Face and threatened to commence litigation if the

1 non-compete covenant was not respected. Were you
2 aware of that?

3 A. I believe, yes.

4 Q. The non-compete was for six
5 months, correct?

6 A. Correct.

7 Q. So Catalyst's position was that
8 Mr. Moyse couldn't work for six months?

9 A. Correct.

10 Q. And you communicated that position
11 again in your conversation with Mr. Boland,
12 correct?

13 A. Correct.

14 Q. So it was in the context of that
15 indication of Catalyst's intention that you
16 received the response from Mr. Boland that you
17 described, correct?

18 A. Correct.

19 Q. Mr. de Alba, given your history
20 and awareness and Catalyst's involvement in the
21 telecom industry, is it fair to say that at the
22 beginning of 2014 you were aware that regulatory
23 approvals were a key concern for VimpelCom?

24 A. Correct.

25 Q. They had experienced numerous

1 regulatory difficulties with the Government of
2 Canada in the past?

3 A. Correct.

4 Q. And they wanted to be sure that
5 any deal they entered into for the sale of Wind
6 would obtain the necessary regulatory approvals?

7 A. Could you repeat the question,
8 please?

9 Q. VimpelCom wanted to be sure that
10 any deal they entered into for the sale of Wind
11 would obtain the necessary regulatory approvals?

12 A. They wanted the deal that would
13 give the most certainty to obtain those approvals
14 according to the options available.

15 Q. Mr. de Alba, you'll recall that on
16 March 27th a presentation was made to Industry
17 Canada?

18 A. Correct.

19 Q. You've talked about that at some
20 length.

21 A. Yes.

22 Q. And am I correct that the
23 non-disclosure agreement between Catalyst and
24 VimpelCom had been executed only five days earlier?

25 A. Correct.

1 Q. And at that point you had not
2 received or exchanged a draft share purchase
3 agreement?

4 A. I believe so.

5 Q. And you had not received a
6 management presentation from Wind?

7 A. I don't recall but I think the
8 records...

9 Q. In fact, the management
10 presentation occurred at the due diligence kickoff
11 meeting on May 9th, correct?

12 A. Correct.

13 Q. So you hadn't yet received the
14 management presentation?

15 A. I don't believe so.

16 Q. And you hadn't gained access to
17 the data room yet?

18 A. Correct.

19 Q. But is it nonetheless your
20 position that you were in advanced negotiations
21 with VimpelCom at that stage?

22 A. Correct.

23 Q. Wouldn't it be more fair to say,
24 Mr. de Alba, that negotiations hadn't yet even
25 commenced in any substance as of March 27th?

1 A. That's not correct. There had
2 been multiple discussions in 2013 and proposals
3 were made before that.

4 Q. And you have, of course,
5 instructed your counsel to produce all records of
6 those negotiations, correct?

7 A. Yes.

8 Q. And to the best of your knowledge,
9 your counsel would have done so?

10 A. Yes.

11 Q. So if there is anything out there
12 evidencing your advanced discussions, they would be
13 in the records of this case, correct?

14 A. That dealt with the timeframe,
15 yes. There might be some discussions that happened
16 earlier.

17 Q. Let's pull up tab 22 of the
18 cross-examination binder. This is CCG00--

19 THE COURT: Wait, wait.

20 MR. MILNE-SMITH: Do you have the right
21 folder, Your Honour?

22 THE COURT: Pardon?

23 MR. MILNE-SMITH: Do you have the right
24 folder?

25 THE COURT: I'm looking for it.

1 MR. MILNE-SMITH: This is the way I
2 have to do it. If you go back to the root, and
3 then we go Catalyst evidence in-chief -- sorry,
4 sorry, I am incorrect. I am still getting the hang
5 of it. Evidence and submissions during trial,
6 that's where we need to start. Evidence and
7 submissions during trial.

8 THE COURT: Um-hmm.

9 MR. MILNE-SMITH: And then you go into
10 01 --

11 THE COURT: I've got it.

12 MR. MILNE-SMITH: -- de Alba,
13 cross-examination, West Face defendants, de Alba
14 cross and then tab 22. So if I've led you through
15 that correctly, you should now have CCG0028351.

16 BY MR. MILNE-SMITH:

17 Q. So this is, if you go down on that
18 page, sorry, still on page 1, you can see there is
19 an email from Francois Turgeon at UBS?

20 A. Yes.

21 Q. And UBS were the investment
22 bankers for VimpelCom?

23 A. Yes.

24 Q. And if we just then go up to your
25 response to Mr. Turgeon's email, you say:

1 "Thank you. Agree to the
2 concepts below. Due diligence can
3 start on Monday or Friday, please
4 tell me when Wind team will be
5 ready."

6 That was your response?

7 A. Yes.

8 Q. And then if we go to the next tab,
9 tab 23, this is CCG0028356, and we can just scroll
10 down a little bit to see your email of 3:34 p.m. on
11 Tuesday, May the 6th, you're writing to Mr. Babcock
12 at Morgan Stanley, correct?

13 A. Correct.

14 Q. And you say:

15 "Would like to engage MS on the
16 acquisition of Wind Canada. As you
17 might be aware, and as per our
18 discussions, process is moving fast
19 and due diligence can start this
20 week."

21 You wrote that to Mr. Babcock?

22 A. Correct.

23 Q. But your position, as I understand
24 it, notwithstanding what you said in those two
25 emails we just looked at, your position is what you

1 meant was the due diligence in fact was already
2 underway; is that right?

3 A. The work had been done to
4 determine the valuation metrics and the regulatory
5 requirements in the majority.

6 Q. Mr. de Alba, do you agree with me
7 that as of the date of these two emails we just
8 looked at, May 6th, due diligence in fact had not
9 yet started?

10 A. Due diligence with the company,
11 but that doesn't mean that Catalyst had not done
12 internal due diligence or internal analytical work.

13 Q. I'm going to suggest to you,
14 Mr. de Alba, as a very sophisticated investor, you
15 understand that due diligence for a private company
16 means signing a non-disclosure agreement and
17 gaining access to the company's non-public
18 information via a data room; would you agree with
19 me?

20 A. Correct.

21 Q. And you hadn't done that as of May
22 6th?

23 A. Correct.

24 Q. Let's just make sure, by way of
25 setting some more ground work, let's make sure we

1 understand the structure of the transaction. Can
2 we go to tab 21, please.

3 So this is a Wind Canada management
4 presentation. It's dated March 2014, but I
5 understand, Mr. de Alba, that you received this
6 pursuant to the email we just looked at from
7 Mr. Turgeon on May the 6th, correct?

8 A. Correct.

9 Q. If we could go to page 9, this
10 sets out the corporate structure.

11 Do you have that, Your Honour?

12 THE COURT: Yes.

13 BY MR. MILNE-SMITH:

14 Q. So you see at the bottom right
15 there is Globalive Wireless Management Corp.? You
16 see that?

17 A. Yes, I do.

18 Q. Then there is a footnote 1 that
19 says Globalive Wireless Management Corp. is also
20 known as Wind Canada?

21 A. Yes.

22 Q. So when we talk about Wind Canada
23 colloquially or Wind Mobile, what we really are
24 talking about in terms of a corporate game is GWMC,
25 correct?

1 A. Yes.

2 Q. And GWMC is 100 percent owned by
3 Globalive Investment Holdings Corp.?

4 A. Correct.

5 Q. And we'll sometimes see that
6 referred to as GIHC?

7 A. Okay.

8 Q. And it is GIHC that is owned
9 roughly one-third voting equity, two-thirds total
10 equity by VimpelCom. You see that on the
11 right-hand side?

12 A. Yes.

13 Q. And then the two-thirds voting,
14 one-third total equity by a combination of AAL
15 Holdings and Mojo Investments, correct?

16 A. Correct.

17 Q. Could we then turn to tab 25. I
18 think we just -- this just shows the covering
19 email?

20 THE COURT: Which one?

21 MR. MILNE-SMITH: Go to 25.2, please.

22 BY MR. MILNE-SMITH:

23 Q. So this is, as I understand it,
24 Mr. de Alba, CC -- sorry, it's CCG0009527, and as I
25 understand it, this is the first draft of the share

1 purchase agreement received by Catalyst from
2 VimpelCom, correct?

3 A. Correct.

4 Q. And if we go to page 5 of this
5 document, using the numbering at the top right-hand
6 corner, you'll see that the seller is defined with
7 the heading as Globalive Investment Holdings Corp.?

8 A. Yes.

9 Q. You remember the share -- the
10 management chart we looked at or the corporate
11 chart we looked at, that's the company that owns
12 Wind, correct?

13 A. Correct.

14 Q. And you'll see in the first
15 recital it says that the seller owns all of the
16 issued and outstanding shares of Globalive Wireless
17 Management Corp.; see that?

18 A. Right.

19 Q. And that's Wind Mobile
20 effectively?

21 A. Yes.

22 Q. And the purchase price is actually
23 not set out in this draft, it comes a little bit
24 later, but I take it we're on common ground that at
25 a relatively early stage, the purchase price was

1 agreed to be \$300 million, correct?

2 A. Correct.

3 Q. Subject to some working capital
4 adjustments?

5 A. Correct.

6 Q. And that 300 million then
7 obviously covered the interests of both VimpelCom
8 and AAL?

9 A. Correct.

10 Q. Right? So you weren't just buying
11 VimpelCom's interest for 300 million, or an
12 enterprise value of 300 million, you were buying
13 the whole shebang, AAL, VimpelCom, everything, for
14 an enterprise value of 300 million --

15 THE COURT: A hundred percent, that's
16 what you're talking about?

17 BY MR. MILNE-SMITH:

18 Q. Yes.

19 A. Yes.

20 Q. And were you aware of the terms by
21 which AAL was to receive payment for its shares
22 from VimpelCom?

23 A. No.

24 Q. Could you turn to paragraph 6.3(d)
25 on page 27. So, if we look down about two-thirds

1 of the way through that clause, there is a sentence
2 starting "In addition." Do you see that?

3 A. Yes, I see it.

4 Q. It says:

5 "In addition, subject to
6 section 6.4, the purchaser shall not
7 knowingly take or cause to be taken
8 any action which would be expected
9 to prevent or delay the obtaining of
10 any consent or approval required
11 hereunder, including entering into
12 any timing or other agreements with
13 any governmental authority without
14 the express written consent of the
15 seller, for the consummation of the
16 transaction contemplated hereby."

17 Do you see that provision, Mr. de Alba?

18 A. Yes.

19 Q. And you understood, of course,
20 that seeking regulatory concessions like the ones
21 set out in the presentation of March 27 could
22 potentially prevent or delay approval, correct?

23 A. Potentially.

24 Q. And VimpelCom, putting in a clause
25 like this that prohibited without their express

1 written consent taking any action that could
2 prevent or delay obtaining approval, was consistent
3 with VimpelCom's known desire to minimize the risk
4 of obtaining regulatory approval, correct?

5 A. Correct.

6 Q. And if we could just flip forward
7 to page 32, you'll see under section 7.3, General
8 Conditions...

9 Do you have that, Your Honour?

10 THE COURT: No, I'm making a note.

11 MR. MILNE-SMITH: I will wait then.

12 THE COURT: Which page?

13 MR. MILNE-SMITH: Page 32. This again
14 is, just for the record, CCG0009527. Page 32,
15 looking at section 7.3.

16 THE COURT: You're talking about the
17 page at the top?

18 MR. MILNE-SMITH: Yes. I always refer
19 to the page number at the top and I would ask
20 Mr. Carlson to kick me if I refer to anything else.

21 THE COURT: Okay.

22 BY MR. MILNE-SMITH:

23 Q. So the section 7.3, feel free to
24 read it, it's very short, Mr. de Alba, but am I
25 correct in reading this that in the very first

1 draft provided by VimpelCom, it was a condition of
2 closing that the parties obtained approval for the
3 transaction under the Competition Act and from
4 Industry Canada, correct?

5 A. Correct.

6 Q. And this, of course, was never a
7 matter of controversy, correct?

8 A. Which part was never a matter of
9 controversy?

10 Q. Requiring these conditions. Both
11 sides always agreed that for the contemplated
12 transaction you needed the approval of the
13 Competition Bureau and Industry Canada, correct?

14 A. Correct.

15 Q. And if we could go then to tab 28,
16 28.1 to start -- oh, I'm sorry, there's only one
17 tab 28 here.

18 THE COURT: I've got 28.1 and 28.2.

19 MR. MILNE-SMITH: Let's go to 28.1.

20 BY MR. MILNE-SMITH:

21 Q. So this is just the covering
22 email. I'm sorry we have to do it this way, Your
23 Honour, they come up as separate documents in the
24 database so we unfortunately have to flip through
25 them.

1 This is an email from Daniel Battista
2 at Faskens. He was one of the lawyers working for
3 Jon Levin on behalf of Catalyst, correct?

4 A. Correct.

5 Q. Mr. Batista says:

6 "Attached, in clean and
7 blackline against the original draft
8 provided to us, is the revised draft
9 of the SPA."

10 So this is enclosing Catalyst's
11 proposed changes to the SPA?

12 A. It's internal circulation of the
13 comments from Faskens and I don't recall if these
14 are the terms sent back.

15 Q. Okay. But at least it's on behalf
16 of Catalyst?

17 A. Correct.

18 Q. And we do see that Brandon Moyses
19 is in the list of cc's?

20 A. Correct.

21 Q. And am I correct in understanding
22 that this May 24th draft would have been the last
23 version that was copied or sent to Mr. Moyses?

24 A. I don't recall.

25 Q. But you're not aware of anything

1 after this?

2 A. Correct.

3 Q. So if we then go to tab 28.2,
4 which is the draft itself, and this is CCG0011364,
5 if we go to page 37 of the document -- sorry, we're
6 going to go over to page 38. You'll see the change
7 that Fasken Martineau have proposed on page 38 to
8 subsection (d), it's effectively deleting the
9 entire clause as drafted by VimpelCom that we just
10 looked at. Do you see that, Mr. de Alba?

11 A. Yes, I do.

12 Q. And they have put in a provision
13 in its place with a limitation on VimpelCom's
14 ability to receive Catalyst's confidential
15 information, correct?

16 A. Yes.

17 Q. And the reason Catalyst proposed
18 deleting VimpelCom's section 6.3(d) is that
19 Catalyst wanted to reserve the right to seek
20 government concessions during the interim period
21 between signing and closing, correct?

22 A. We were in discussions with those
23 concessions.

24 Q. But that was the motivation for
25 why you made this proposal?

1 A. To discuss with the government,
2 approval and the regulatory framework.

3 Q. Catalyst wanted to reserve the
4 right to seek government concessions during the
5 interim period between signing and closing,
6 correct?

7 A. Correct.

8 Q. And the concessions in question
9 specifically that you wanted to be able to pursue
10 were those that you had raised with the Government
11 of Canada on March 27th and May 12th, correct?

12 A. Correct. Those are the main
13 concessions.

14 Q. Right. And if we go to page 43,
15 so you see 7.1 is purchaser's conditions. The
16 purchaser obviously is Catalyst in this draft?

17 A. Yes.

18 Q. And if you just flip from page 43
19 and then over to page 44, there are a number of
20 additions, but please satisfy yourself. Nowhere
21 does Catalyst try to add a condition of obtaining
22 regulatory concessions from the Government of
23 Canada; am I correct?

24 A. Give me just one second to read
25 it.

1 Q. Of course.

2 A. Can you go over to see the
3 section, please?

4 Q. Yes, can you just make it smaller
5 so he can see the whole page. So you can look at
6 all those lists in 7.1 which are your conditions.

7 A. (Witness reads document). Yes.

8 Q. There is no condition there of
9 obtaining regulatory concessions, correct?

10 A. I don't recall if the transition
11 service agreement included regulatory concessions.

12 Q. Well, I'm going to put to you,
13 Mr. de Alba, that in fact not in the transition
14 services agreement and not anywhere else was there
15 a condition of obtaining regulatory concessions.
16 Do you agree with that? Do you accept that?

17 A. I don't recall.

18 Q. Okay. And if we can then go to
19 the next page, and you see the general conditions
20 there, so these are ones that are in favour of both
21 the purchaser and the seller?

22 A. Yes.

23 Q. And again, you'd agree with me
24 that there is no condition added there of obtaining
25 regulatory concessions?

1 A. (Witness reads document). Okay.

2 Q. Mr. de Alba, is it fair to
3 describe you as the lead negotiator for Catalyst
4 throughout the piece right from May through to
5 August of 2014?

6 A. Yes.

7 Q. And am I, in fact, correct, I've
8 looked through all of the agreements and I didn't
9 see it but maybe you can point me to something
10 else, am I correct that in no draft exchanged
11 between Catalyst and VimpelCom was there ever a
12 condition of obtaining regulatory concessions in
13 favour of a Catalyst-owned Wind?

14 A. It was the right to Catalyst to
15 pursue those concessions.

16 Q. We're going to come to that
17 tomorrow but that actually wasn't my question. My
18 question is, in no draft was there a condition that
19 the deal wouldn't proceed -- let's understand
20 that's what a condition means, a deal doesn't
21 proceed unless it happens?

22 A. Right.

23 Q. There was never in any draft a
24 condition of obtaining regulatory concessions in
25 favour of a Catalyst-owned Wind, correct?

1 A. There were regulatory approvals
2 and there were discussions about concessions.

3 Q. That's not my question, Mr. de
4 Alba. We looked at the regulatory approvals,
5 they're right on the page in front of you. Those
6 are the general conditions. Those are Competition
7 Act and Industry Canada approvals. We talked about
8 those, remember that?

9 A. Yes.

10 Q. That is not the same thing as
11 saying that it's a condition precedent that
12 Catalyst obtains concessions from the government;
13 you'd agree with me? You understand the
14 distinction I am drawing?

15 A. Yeah, the part that I'm having
16 trouble with is in the dialogue with Industry
17 Canada and with the government, we were requesting
18 concessions.

19 Q. I know you were, Mr. de Alba, but
20 that's an entirely separate question. I'm not
21 asking you about your dialogue with Industry
22 Canada. I'm talking about the drafts of the share
23 purchase agreement exchanged with VimpelCom; do you
24 understand that?

25 A. Yes.

1 Q. And in those drafts, there never
2 appeared a condition that the deal couldn't proceed
3 unless Catalyst obtained regulatory concessions in
4 favour of a Catalyst-owned Wind?

5 A. Correct.

6 MR. MILNE-SMITH: Thank you. Your
7 Honour, if that's convenient, we've just hit five
8 o'clock and that's a convenient time from my
9 perspective.

10 THE COURT: Very well, we'll start at
11 nine o'clock tomorrow morning.

12 MR. DIPUCCHIO: Your Honour, just on
13 that point, we're not even 24 hours into this --

14 THE COURT: Sorry?

15 MR. DIPUCCHIO: We're not even 24 hours
16 into this and I have one little indulgence to ask
17 of the court. I was just informed that I have a
18 medical appointment that I've been waiting on and
19 it's just been booked tomorrow morning for 7:30 or
20 something like that.

21 I'm going to try to get myself in here
22 but I'm just asking the court if we can start at
23 9:30 instead of 9:00, just to give me a little bit
24 of a cushion, because it's in the west end.

25 THE COURT: That's fine.

1 MR. MILNE-SMITH: I apologize, Your
2 Honour, just so I don't have to come back to this
3 document, can I ask a couple of clean-up questions
4 just on this one document?

5 THE COURT: Sure.

6 BY MR. MILNE-SMITH:

7 Q. Mr. de Alba, I take it you'd agree
8 with me there is no evidence that anyone at
9 Catalyst discussed this draft that we're looking at
10 right now, no one discussed this with Mr. Moyse,
11 correct?

12 A. He was copied on it. I suspect he
13 was part of the discussions.

14 Q. Okay. I know he was copied on it.
15 I'm talking about discussions in the actual email
16 exchange where the subject is discussed or phone
17 conversations. There were no phone conversations
18 with Mr. Moyse about this document?

19 A. There could have been. I don't
20 know why you claim that there were not.

21 Q. Okay. If you could go to tab 3.
22 Can we bring up tab 3, and if we go -- so these are
23 just the answers to undertakings, Your Honour.

24 THE COURT: I'm sure you've done this.
25 What's the date of this draft? When was it --

1 MR. MILNE-SMITH: It was May 24th.

2 THE COURT: That's when Faskens sent it
3 out?

4 MR. MILNE-SMITH: That's right. That's
5 what we looked at, the Daniel Batista email was on
6 May 24th which, as Your Honour knows from the
7 evidence already gone in in the trial, that was the
8 date that Mr. Moyse gave notice of his departure.

9 BY MR. MILNE-SMITH:

10 Q. So this is tab 3 which is the
11 undertakings brief, and if we go to page 5 of this
12 document --

13 THE COURT: Hang on. Tab 3 or 3A?

14 MR. MILNE-SMITH: 3. This is, for the
15 record, WFC0111298.

16 THE COURT: All right.

17 BY MR. MILNE-SMITH:

18 Q. So on page 5 there is undertaking
19 number 19, and the question was to confirm that
20 there is no evidence that anyone at Catalyst
21 discussed any of the revisions set forth in
22 CCG0011325 with Mr. Moyse, and the answer is:

23 "There is no evidence that
24 anyone at Catalyst discussed the
25 revisions in CCG0011325 with

1 Mr. Moyse."

2 Do you accept that?

3 A. It's missing the point that there
4 could have been a conference call or some
5 discussion with counsel. That would become --

6 Q. Mr. de Alba, I'm not asking about
7 what could have happened. I am asking about what
8 your evidence is about what did happen. Can you
9 sit here in the box today and give evidence under
10 oath that Mr. Moyse participated in a conference
11 call about the May 24th draft of the SPA? Can you
12 give that evidence?

13 A. No.

14 Q. And of course you have no evidence
15 that he actually read it?

16 A. No.

17 Q. You can't say whether he read it?

18 A. No.

19 MR. MILNE-SMITH: I apologize for the
20 false hope, Your Honour, but that really is where
21 I'm done for the day.

22 THE COURT: So you're saying it was
23 sent out on May 24th by Faskens?

24 MR. MILNE-SMITH: Correct. Could we
25 just bring up, just for His Honour, tab 28.

1 THE COURT: I'll take your word for it.
2 May 24 of 2014. You're saying that's the day that
3 he told Mr. de Alba, was it email or telephone or
4 something?

5 MR. MILNE-SMITH: Email. So we've
6 brought that covering email back up, Your Honour.
7 It's CCG0011362, May 24th.

8 THE COURT: Okay.

9 MR. MILNE-SMITH: Now, the only
10 complication there, Your Honour, I just want to be
11 completely transparent about this, I think this is
12 something that we agree on between us, there was
13 some issue with the timing of Catalyst emails, that
14 they were appearing with date stamps five hours
15 after they should have been.

16 So I can't sit here and swear to you
17 that this is 12:23 a.m. on the 24th as opposed to
18 8:00 p.m. on the 23rd but this is the best I've
19 got.

20 THE COURT: Okay. That's it?

21 MR. MILNE-SMITH: Yes. For today.

22 THE COURT: All right. I don't know if
23 you've been a witness before, Mr. de Alba, but the
24 ground rules are that now that you're under
25 cross-examination, you're not entitled to talk

1 about this case at all with anyone until you're
2 back in the box tomorrow.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 -- Whereupon court adjourned at 5:08 p.m.

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

VOL 2
June 07, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

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

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

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

2

3

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

5

6 Rocco DiPucchio, Esq.,

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

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

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

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

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

17 West Face Capital Inc.

18

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

2

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

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

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

13 THE WITNESS: Yes, good morning.

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

16 Q. Good morning, Mr. de Alba.

17 A. Good morning.

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

22 A. Correct.

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

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

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

7 A. Correct.

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

10 A. Yes.

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

14 A. Yes.

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

19 So do you recall receiving this email?

20 A. Do you mind if I read it?

21 Q. Sure.

22 A. (Witness reviews document.)

23 Yes, I do recall.

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

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

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

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

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

14 THE COURT: That's fine.

15 BY MR. MILNE-SMITH:

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

21 A. Yes.

22 Q. Okay, and am I correct --

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

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

1 42.

2 THE COURT: 42, thank you.

3 BY MR. MILNE-SMITH:

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

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

9 A. That's correct.

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

13 A. No.

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

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

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

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

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

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

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

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

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

23 A. Yes.

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

1 A. Correct.

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

4 THE COURT: Just wait a second.

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

7 THE COURT: Go ahead. Which question?

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

10 THE COURT: Yes.

11 BY MR. MILNE-SMITH:

12 Q. Okay.

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

19 Answer: We were going to try."

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

22 A. That's correct.

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

25 A. Yes.

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

6 A. It is tough to say for me.

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

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

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

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

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

23 A. That's correct.

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

1 A. Correct.

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

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

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

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

11 BY MR. MILNE-SMITH:

12 Q. My apologies.

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

15 A. Correct.

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

22 A. Correct.

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

1 between Catalyst and VimpelCom?

2 A. Correct.

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

7 A. Correct.

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

10 A. Yes.

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

12 THE COURT: Just a minute.

13 Go ahead.

14 BY MR. MILNE-SMITH:

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

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

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

25 A. Yes.

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

4 A. Yes, I do.

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

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

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

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

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

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

2 THE COURT: Just wait a second.

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

6 MS. BARBIERO: Tab 28.2.

7 THE COURT: Which document?

8 BY MR. MILNE-SMITH:

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

14 A. Correct.

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

16 THE COURT: The page number at the top?

17 BY MR. MILNE-SMITH:

18 Q. Page number at the top, yes.

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

22 A. Correct, correct.

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

25 A. Yes.

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

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

8 Q. Okay.

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

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

14 A. Yes.

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

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

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

24 A. Not from my memory.

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

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

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

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

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

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

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

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

1 ID number:

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

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

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

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

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

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

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

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

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

24 MR. DiPUCCHIO: That is fine.

25 BY MR. MILNE-SMITH:

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

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

10 A. Yes, I do.

11 Q. So Mr. Saratovsky writes and says:

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

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

24 A. Yes.

25 Q. And then in the next paragraph he

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

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

9 Q. Okay.

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

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

14 A. Correct.

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

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

1 automatically by 5 Toronto business
2 days."

3 Is that correct?

4 A. Correct.

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

9 THE COURT: Go ahead.

10 BY MR. MILNE-SMITH:

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

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

19 And then skipping past the
20 parenthetical:

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

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

1 A. Correct.

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

5 A. I believe so.

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

8 A. It doesn't seem, no.

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

13 A. Yes.

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

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

20 BY MR. MILNE-SMITH:

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

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

25 A. Okay, thank you.

1 (Witness reviews document.)

2 I have read it.

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

8 A. That is not correct.

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

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

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

1 Answer: Not to be unreasonably
2 withheld."

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

5 A. Yes.

6 Q. And you gave that answer
7 truthfully?

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

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

14 A. Correct.

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

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

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

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

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

25 A. On that option, yes.

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

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

8 MR. MILNE-SMITH: Yes.

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

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

17 BY MR. MILNE-SMITH:

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

23 A. Correct.

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

1 CCG0026625; correct?

2 A. That's correct.

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

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

10 A. Yes.

11 Q. So:

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

22 Do you see that?

23 A. Correct.

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

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

4 A. Correct.

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

8 A. I believe that is correct.

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

13 A. Correct.

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

17 A. I don't think so.

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

23 A. Yes.

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

1 A. I believe that is correct.

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

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

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

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

8 BY MR. MILNE-SMITH:

9 Q. (d).

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

11 THE COURT: I am completely confused.

12 You started off by asking about 6.3(e).

13 MR. MILNE-SMITH: Yes.

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

16 BY MR. MILNE-SMITH:

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

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

25 A. Yes.

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

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

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

6 A. I believe so.

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

10 A. I think that is correct.

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

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

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

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

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

5 A. I think that is correct.

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

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

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

15 A. Correct.

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

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

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

1 restrictions on ability to pursue concessions?

2 A. I believe so.

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

7 A. Correct.

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

12 A. Correct.

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

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

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

24 A. That is not correct.

25 Q. Okay. On the March 27th

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

4 A. That is not correct.

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

8 A. Correct.

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

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

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

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

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

22 A. Correct.

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

25 A. Yes.

1 Q. In the second point:

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

4 Do you see that?

5 A. Correct.

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

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

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

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

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

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

3 BY MR. MILNE-SMITH:

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

8 A. As part of the negotiation.

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

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

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

20 A. That's correct.

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

1 not allowed to seek that concession?

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

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

7 A. It depends what options they had.

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

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

12 Q. Okay.

13 A. -- they could give it.

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

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

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

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

25 A. I believe that's correct.

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

5 A. Correct.

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

9 A. I think that is correct.

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

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

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

19 A. I believe so.

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

24 A. Correct.

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

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

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

6 THE COURT: Sorry?

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

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

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

13 BY MR. MILNE-SMITH:

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

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

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

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

24 A. I'm sorry.

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

1 just read my question again to you.

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

6 A. I am not aware of it.

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

11 A. Not from the record.

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

17 A. I believe that is correct.

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

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

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

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

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

8 Q. You could have asked VimpelCom.

9 A. Wouldn't that be a breach?

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

14 A. I think we reached out again.

15 Q. Pardon me?

16 A. We did reach out again.

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

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

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

1 A. That is not accurate.

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

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

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

10 A. Correct.

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

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

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

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

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

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

1 a different direction.

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

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

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

9 THE WITNESS: Thank you.

10 THE COURT: Any re-examination?

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

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

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

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

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

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

25 THE COURT: Well, we are going to find

This is Exhibit "61" 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.

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

VOL 2
June 07, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

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

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

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

2

3

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

5

6 Rocco DiPucchio, Esq.,

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

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

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

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

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

17 West Face Capital Inc.

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1 his affidavit?

2 THE COURT: Yes.

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

5 NEWTON GERSHON ZEB GLASSMAN: AFFIRMED.

6 EXAMINATION IN-CHIEF BY MR. DiPUCCHIO:

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

10 A. I do.

11 Q. And you have reviewed that
12 affidavit?

13 A. I do.

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

16 A. I do, except for the typos.

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

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

24 Q. When did you found the firm?

25 A. Technically the firm's first

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

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

7 A. I did.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 A. Virtually every week.

6 Q. All right.

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

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

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

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

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

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

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

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

25 Q. Now, I want to turn your attention

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

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

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

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

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

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

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

12 A. Oh, I see. Yes.

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

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

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

1 it was two years.

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

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

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

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

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

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

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

25 A. Well, that is a difficult

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

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

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

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

23 A. I hoped it was coming.

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

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

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

5 Q. Sorry, the presentation.

6 A. Sorry.

7 Q. I apologize.

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

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

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

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

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

5 THE WITNESS: Yeah.

6 THE COURT: But this one was kept?

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

22 THE COURT: Thank you.

23 BY MR. DiPUCCHIO:

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

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

4 A. That requires some background.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A. I think four people showed up to

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

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

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

17 Q. And what analysis was that?

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

22 Q. All right. Did you --

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

25 Q. Okay. Did you discuss the

1 possibility of litigation with the government
2 officials?

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

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

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

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

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

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

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

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

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

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

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

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

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

5 A. Pretty much all day.

6 Q. All right, and --

7 THE COURT: Just a second.

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

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

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

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

16 BY MR. DiPUCCHIO:

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

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

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

3 Q. Did that include Mr. Moyse?

4 A. Absolutely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Q. Okay, tell us about that.

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

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

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

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

1 strategy.

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

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

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

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

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

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

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

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

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

20 THE COURT: Go ahead, Mr. Thomson.

21 MR. THOMSON: Thank you, Your Honour.

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

25 THE COURT: Just a second.

1 Yes, I do.

2 CROSS-EXAMINATION BY MR. THOMSON:

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

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

7 A. I do.

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

10 A. I do.

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

15 A. That is true.

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

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

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

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

25 Q. Did you ever practice law?

This is Exhibit "62" 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.

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

VOL 2
June 07, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

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

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

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

2

3

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

5

6 Rocco DiPucchio, Esq.,

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

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

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

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

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

17 West Face Capital Inc.

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1 Yes, I do.

2 CROSS-EXAMINATION BY MR. THOMSON:

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

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

7 A. I do.

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

10 A. I do.

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

15 A. That is true.

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

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

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

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

25 Q. Did you ever practice law?

1 A. I did not.

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

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

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

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

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

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

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

20 A. No.

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

24 A. No.

25 Q. You have never been employed by

1 the CRTC or by Industry Canada; correct?

2 A. No.

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

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

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

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

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

20 A. Well.

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

23 A. He is.

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

1 A. He is.

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

4 A. Should be.

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

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

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

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

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

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

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

7 Answer: Yeah, chief investment
8 officer."

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

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

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

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

1 Catalyst?

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

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

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

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

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

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

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

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

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

21 Q. All right.

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

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

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

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

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

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

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

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

4 A. Sure.

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

8 A. Something like that.

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

13 A. I am.

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

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

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

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

1 Q. It is not in the record.

2 A. Then it is correct.

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

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

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

11 A. Of course not.

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

17 A. That is true.

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

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

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

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

5 A. I think I did.

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

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

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

21 A. I stand by my answers.

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

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

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

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

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

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

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

17 A. That's correct.

18 Q. Those were your words?

19 A. That's correct.

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

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

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

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

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

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

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

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

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

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

6 A. I am.

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

11 A. Sure.

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

16 A. Of course.

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

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

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

25 A. No.

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

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

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

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

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

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

21 Q. I have simple little questions.

22 A. And I am answering --

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

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

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

6 A. Yes, lead.

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

10 A. Yes, primarily.

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

17 A. Yes, some informal discussions
18 continued.

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

23 A. None to my recollection.

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

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

3 A. Of course not.

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

6 A. I would hope not.

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

10 A. I would hope not.

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

16 A. We do.

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

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

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

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

4 A. I would hope so.

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

7 A. I would hope not.

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

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

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

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

25 Q. He would certainly know by the

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

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

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

12 A. Correct.

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

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

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

22 A. I was involved.

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

1 A. For sure.

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

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

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

9 A. Arguable.

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

13 A. I don't understand the question.

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

19 A. On what subject?

20 Q. On the Wind transaction.

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

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

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

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

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

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

13 THE COURT: Which one, 10.1 or 10.2?

14 BY MR. THOMSON:

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

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

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

1 Group Inc.; do you have that?

2 A. I see that.

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

6 A. Yes.

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

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

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

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

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

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

25 Q. Okay, listen to my question. As

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

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

7 Q. Did I ask you that?

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

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

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

19 A. I see that.

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

25 "Question: Now, am I correct

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

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

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

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

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

19 Answer: Not at that point in
20 time.

21 Question: Meaning I'm correct?

22 Mr. Winton: You're correct."

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

1 until early May of 2014?

2 A. Correct.

3 Q. That is my second point.

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

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

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

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

20 A. I do.

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

25 A. I know that.

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

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

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

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

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

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

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

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

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

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

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

19 A. He was.

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

22 A. He was.

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

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

4 And then scroll up, please. And

5 Mr. Michaud says:

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

8 And scroll up, please. And above that

9 at 12:42 p.m. Yao says:

10 "Got it. So for item number 4
11 on the agenda, I gather it's going
12 to be a discussion on how our
13 technical diligence team can gain
14 access to perform [due diligence]?"

15 And then just above that Michaud writes
16 back on May 16th and says:

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

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

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

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

11 A. I think so.

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

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

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

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

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

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

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

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

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

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

1 A. What date, sorry?

2 Q. March 27, 2014.

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

4 But I don't know for a fact.

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

10 A. That sounds appropriate.

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

18 "Here it is."

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

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

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

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

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

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

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

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

1 email chain.

2 A. Can you go down, please?

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

5 A. You see where it says:

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

11 Q. Yes.

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

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

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

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

24 A. Yes.

25 Q. Scroll up, please. You see the

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

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

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

10 A. Yes.

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

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

21 Do you have that?

22 A. Yes, I see that.

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

1 agreement we looked at three seconds ago?

2 A. It might be.

3 Q. And then the question at 244:

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

9 Answer: Correct.

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

13 Answer: Yes.

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

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

22 [-- Court reporter appeals.]

23 BY MR. THOMSON:

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

1 answer was:

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

5 And at question 247:

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

10 And Mr. Winton says:

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

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

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

25 Q. So you are not prepared to accept

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

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

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

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

16 A. Absolutely.

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

19 A. For sure.

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

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

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

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

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

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

17 A. I did.

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

20 A. I hope I did.

21 Q. Now --

22 A. To the best of my ability.

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

1 A. Yes.

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

9 A. Yes.

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

12 A. Yes.

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

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

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

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

1 providing direction.

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

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

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

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

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

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

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

25 A. I never destroyed any document

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

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

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

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

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

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

22 A. To me personally?

23 Q. Yes.

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

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

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

11 Q. Who made that request?

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

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

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

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

21 A. Correct.

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

1 A. Correct.

2 Q. You were; correct?

3 A. I was the chief architect.

4 Q. Acting in collaboration with

5 Riley, de Alba and Drysdale; correct?

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

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

14 A. No.

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

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

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

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

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

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

12 Q. All right.

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

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

16 A. Absolutely. Critical.

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

24 A. Quite.

25 Q. And you will see, if you scroll

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

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

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

10 A. We have.

11 Q. Including Mr. Drysdale?

12 A. We have.

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

17 A. I do.

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

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

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

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

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

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

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

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

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

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

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

12 A. No.

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

17 A. And telecom issues, both.

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

21 A. For sure.

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

25 A. Until he introduced us.

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

4 A. Until we developed them, yes.

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

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

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

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

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

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

25 Q. Now, am I right that during the

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

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

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

13 A. Yes.

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

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

20 And the third bullet underneath that
21 heading says:

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

1 Do you see that?

2 A. I do.

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

6 A. I disagree with you.

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

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

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

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

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

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

14 A. I do.

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

17 A. Yes.

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

20 THE COURT: What is the date of this?

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

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

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

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

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

6 THE COURT: I have it.

7 BY MR. THOMSON:

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

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

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

19 A. As of March 27th.

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

24 A. Yes.

25 Q. And you then explained the

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

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

5 Correct?

6 A. Yes. At that time.

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

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

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

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

19 Q. Am I right?

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

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

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

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

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

12 A. I see that.

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

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

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

3 Do you see that?

4 A. I do.

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

13 A. On or about.

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

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

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

24 A. Well, then I read it.

25 Q. -- within 30 minutes of the email

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

5 A. Yes.

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

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

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

20 A. As of that date, yes.

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

1 A. At that time, yes.

2 Q. And what you are referring to is
3 that a significant portion of this 300 million
4 dollar purchase price might have been used to
5 either deal with or retire the vendor debt;
6 correct?

7 A. Not retire. Either purchase or
8 replace, which would probably also require further
9 enhancement.

10 Q. Now --

11 A. So the purchase of Wind would
12 require buying, just to be clear, VimpelCom or its
13 subsidiary's interest in Wind. It would require a
14 whole bunch of other capital, including probably
15 augmenting certain things, number one, so it is
16 very easy to understand why you might be confused
17 between a 300 million dollar number and a 500
18 million dollar number.

19 There are two reasons. One is March
20 26th versus May 7th, and the other is that our own
21 internal analysis showed us that we had to build
22 out certain parts of the network. So to, quote,
23 "buy" Wind, we would still have to do a whole bunch
24 of things that would still require money, not the
25 least of which is deal with potentially other

1 stakeholders, including vendors and other
2 shareholders.

3 Q. Are you finished?

4 A. I am.

5 Q. Were you aware at the time of this
6 meeting that one of the government's --

7 THE COURT: Which meeting?

8 MR. THOMSON: I'm sorry?

9 THE COURT: When you say "this
10 meeting", are you talking about the March 27th?

11 BY MR. THOMSON:

12 Q. Yes, I'm sorry, I apologize. I'm
13 going back to the March 27th meeting. If you have
14 the document, I'm just trying to give you a number.

15 On the March 27th meeting, were you
16 aware at the time of that meeting that one of the
17 government's policy goals was to support the
18 creation of a successful fourth national wireless
19 carrier?

20 A. Absolutely.

21 Q. Am I right that in doing so, the
22 government was focussed on the Canadian consumer?

23 A. I would say they were primarily
24 focussed on the retail customer, which you would
25 call the consumer/customer.

1 Q. All right, so if we go back to the
2 slide presentation of March 27, please, at tab 11,
3 and if you turn to slide 3, you will find a slide
4 entitled "The Government is Focussed on the
5 Canadian Consumer"; do you have that?

6 A. I do.

7 Q. And am I right, just to get our
8 terms straight before I get into the content of the
9 slides, that as of March of 2014 the incumbent
10 carriers in Canada were Rogers, Telus and Bell?

11 A. Nationally, yes.

12 Q. Together they occupied a dominant
13 position in the wireless market with a combined
14 market share in excess of 85 percent?

15 A. As they do today. It is actually
16 a little bit more today.

17 Q. Am I right that the government's
18 concern was that Canadian consumers were paying
19 higher prices than they should and that they had a
20 relatively poor service selection?

21 A. That was the government's public
22 articulated position, yes.

23 Q. And that is reflected in your
24 slide?

25 A. Yes.

1 Q. Slide 3. Am I right that the
2 government's goal was to increase the level of
3 competition in the wireless industry in Canada?

4 A. The government's ultimate goal was
5 to reduce the cost to the consumer and preferably
6 also simultaneously increase the quality of
7 service. The way they would explain it in a short
8 version was choice or competition, but it was
9 actually the result of the competition or their
10 hoped result of the competition that was more
11 important to them than the competition itself.

12 Q. And if you turn to slide 6, you
13 will find a slide entitled, again, "Economics of
14 Creating the 4th Wireless Network", which we looked
15 at a moment ago, and one of the positions you were
16 taking with the government, one of the explanations
17 you gave for the concessions you were asking for
18 was that the investment required to create a
19 successful fourth wireless network in Canada would
20 be in the range of 1.5 to 2 billion dollars, a
21 significant investment?

22 A. Huge.

23 Q. And there is a reference here,
24 again for His Honour's notes, you'll see under the
25 heading "Economic Implications" there is a darkened

1 bolded section saying that the total initial
2 investment is 917 million dollars, and then a
3 reference just below that to "LTE network build";
4 do you have that?

5 A. I see it.

6 Q. At 250 to 500 million dollars.
7 And just so His Honour has it, LTE was then the
8 most advanced fourth generation technology used to
9 provide wireless services in Canada; correct?

10 A. I don't know if it was the most
11 advanced. It was one of the methodologies of
12 providing fourth generation technology.

13 Q. It was certainly one of the most
14 advanced?

15 A. Yeah.

16 Q. And these were services that Wind
17 was then not providing?

18 A. Couldn't.

19 Q. Because it didn't have the
20 spectrum?

21 A. Correct.

22 Q. Now, against that backdrop, you
23 then provide the government with three strategic
24 options, and so let's look at those quickly, as
25 well as the regulatory concessions Catalyst said

1 that it would require in order to proceed. And
2 turn, please, to Option 1, and you will find that
3 at slide 7.

4 And as I understand Option 1, it was --
5 it involved, rather, a combination of Wind Canada
6 and Mobilicity to create a fourth national carrier
7 focussed on the retail market; correct?

8 A. Yes.

9 Q. And the position taken by Catalyst
10 and the representation it made to the Government of
11 Canada was that:

12 "Negotiations with VimpelCom
13 are well advanced but no deal can be
14 completed without establishing a
15 viable regulatory and economic
16 framework."

17 A. That's right, no deal for Wind and
18 Mobilicity.

19 Q. And let's just make sure we have
20 this. Again, come back to your own words. Did
21 VimpelCom own Mobilicity?

22 A. No, it says, if you read it
23 carefully, "Combination of Wind Canada/Mobilicity
24 to create a fourth network."

25 And the bullet point says:

1 "Negotiations with VimpelCom
2 are well advanced", which implies
3 about Wind, "but no deal can be
4 completed", meaning the
5 Wind/Mobilicity deal, "without
6 establishing a viable regulatory and
7 economic framework."

8 Q. I see. That is just not what the
9 slide says.

10 A. It is exactly what the slide says.

11 Q. It is exactly not what the slide
12 says, Mr. Glassman.

13 A. Well, we can read English
14 differently. It is absolutely what it says. It
15 says the combination of Wind and Mobilicity.

16 Q. And then let's look at what you
17 told the government that this Option 1, that is,
18 the creation of this fourth national carrier
19 focussed on the retail market, would require. So
20 it would require a series of regulatory
21 concessions; correct?

22 A. We believed it did.

23 Q. And one of the concessions, the
24 last one on the page, was:

25 "The ability to exit the

1 investment with no restrictions in 5
2 years."

3 And then below that:

4 "Catalyst will make an
5 undertaking that before selling to
6 an incumbent, it will pursue an IPO
7 or another strategic sale prior to
8 the end of the 5 year period."

9 So that was the position that you took
10 with the Government of Canada on March 27th as to
11 what Option 1 would have required; correct?

12 A. That was our analysis and view, in
13 order to get a combined Wind/Mobilicity.

14 Q. Is it fair to say that your view
15 and Catalyst's view was that a combination of Wind
16 and Mobilicity would be stronger and more viable
17 than either company operating separately on a
18 stand-alone basis?

19 A. Absolutely.

20 Q. And indeed, am I right that you
21 had expressed that view in public comments to the
22 media a number of months before the meeting on
23 March 27th?

24 A. I don't recall.

25 Q. Pull up, please, tab 6 of the

1 cross-examination binder. This is document, Your
2 Honour, WFC0078062, and it is an article from the
3 Financial Post entitled "Mobilicity bondholder
4 looking to get in on action if Verizon comes to
5 Canada", an article written by Theresa Tedesco and
6 Christine Dobby of June 27, 2013. Do you have
7 that, Mr. Glassman?

8 A. I do.

9 Q. I take it you speak with Ms.
10 Tedesco from time to time from the National Post?

11 A. On occasion.

12 Q. And you will see the headline
13 below the picture is:

14 "Catalyst Capital Group eyes
15 rumoured Verizon-Wind Mobile deal."

16 Do you have that?

17 A. I see the headline.

18 Q. And the part I want to take you to
19 is the very bottom of that first page where you are
20 quoted, and so the article says:

21 "Newton Glassman, co-founder
22 and managing partner of Catalyst,
23 would not comment on the nature of
24 his firm's involvement with Verizon
25 or Wind. However, he told the

1 Financial Post that Catalyst 'is not
2 interested in Mobilicity on a
3 standalone basis. Never were; never
4 will be'."

5 And then at the top of the next page:

6 "Why? 'Mobilicity on its own
7 is a flea on an elephant's butt of
8 wireless telecom in Canada. The
9 only way to build a fourth wireless
10 provider in Canada is through Wind
11 because of the subscriber base and
12 spectrum.'"

13 And I take it those are comments you
14 made to the National Post around the time this
15 article was published in June of 2013?

16 A. Yes, June of '13.

17 Q. Now, let me take you back to the
18 presentation at tab 11 of March 27 of 2014, again
19 to slide 7 with respect to Option 1. Now, am I
20 right in saying this, that you talked earlier in
21 your evidence in-chief about the official position
22 taken by the Government of Canada during the course
23 of your meetings on March 27 of 2014 that you
24 certainly received no commitment by anyone from the
25 Government of Canada that if Catalyst were to

1 pursue an acquisition of Wind and complete it, the
2 government would then permit Catalyst to exit its
3 investment in Wind with no restrictions in five
4 years; that commitment was not made, was it?

5 A. There was no official commitment
6 on any regulatory request made.

7 Q. Including that one?

8 A. Including that one, nor did we
9 expect it.

10 Q. And that was the most important
11 concession Catalyst was looking for at the time of
12 the meetings on March 27th, wasn't it?

13 A. No, it wasn't the most important.
14 They were all very important, and we didn't expect
15 any of them to be conceded at that time.

16 Q. So if Mr. de Alba testified no
17 more than two hours ago in this very courtroom that
18 that was the most important concession Catalyst was
19 seeking from the Government of Canada, your
20 evidence under oath is that Mr. de Alba was simply
21 wrong; correct?

22 A. No, my evidence is that they were
23 all very, very important, and at different times
24 different parts of them and different concessions
25 were very important. To me, it was a very

1 important concession. I don't know if I would
2 characterize it as the most important.

3 So for example, if they gave the
4 concession for six years instead of five years or
5 seven and a half years instead of five years, that
6 would still be a victory.

7 Q. They gave you no such concession?

8 A. Yes, but you said it is the most
9 important, and as is, it is not the most important.

10 Q. Okay, answer this question. They
11 gave you no such concession during the meeting on
12 March 27th, did they?

13 A. Nor did we expect one, and the
14 whole team knew we didn't expect one.

15 Q. And indeed, if we fast-forward all
16 the way to the end of the story, Mr. Glassman, am I
17 right that the Government of Canada never gave
18 Catalyst that concession, did they?

19 A. Nor did we ever expect them to
20 until we delivered them a deal.

21 THE COURT: Mr. Glassman, it would be
22 helpful if you just answered the questions. You
23 are not here to argue the case, which is what you
24 are engaging in.

25 BY MR. THOMSON:

1 Q. And part of Catalyst's exit
2 strategy involved at the end of five years the
3 unrestricted right to sell or transfer either Wind
4 or its wireless spectrum to one or more of the
5 incumbents?

6 A. Not quite. Our ask was for a
7 five-year period.

8 Q. That was Catalyst's exit strategy
9 as represented to the Government of Canada during
10 the meetings on March 27 of 2014; correct?

11 A. That was our ask.

12 Q. Now, your view and Catalyst's
13 position was that these concessions were required
14 in order to make the retail carrier option viable;
15 correct?

16 A. Yes.

17 Q. In your view, Catalyst's request
18 to sell the fourth wireless carrier without
19 restrictions after five years was crucial; correct?

20 A. I don't know what you mean by
21 "crucial". Very, very important.

22 Q. Pull up the witness's affidavit,
23 please, at tab 1, and pull up, please, paragraph
24 29. At the start of paragraph 29, Mr. Glassman,
25 you say this:

1 "All of the concessions sought
2 from [Industry Canada] were
3 important. However, Catalyst's
4 request to sell the fourth wireless
5 carrier without restriction, after
6 five years was crucial", your word,
7 not my word, "was crucial given the
8 retroactive and unilateral changes
9 to the historical licences and the
10 impact on the economics of Option 1
11 and 2 and the financeability of
12 either."

13 Do you accept that Catalyst's request
14 to sell the fourth wireless carrier without
15 restrictions after five years was crucial to
16 Catalyst?

17 A. Crucial in the context of, yes, in
18 my use of the word "crucial", yes. As I said
19 earlier, I don't know what you mean by "crucial".

20 Q. I'm just using your word, sir.
21 And had a direct and important bearing on the
22 financeability of the option?

23 A. Absolutely.

24 Q. And you said in-chief, and these
25 were your words, let me give them back to you, you

1 said, quote:

2 "No bank is going to lend you
3 against something that you can't
4 sell, because that means the
5 collateral value is zero."

6 A. I think I said more than a bank.
7 I think I said a bank or an arm's length third
8 party.

9 Q. I'm just quoting your words back
10 from the transcript.

11 A. I think my quote -- I think my
12 quote was a bank or an arm's length third party.

13 Q. Well, that is not what you said.
14 In any event, let me just put it right to you.
15 Your view at the time was and still is that no bank
16 was going to lend against something you can't sell
17 because that means the value of the collateral is
18 zero; correct?

19 A. It means that in light of the
20 retroactive and unilateral changes, I did not and I
21 still did not believe that you could finance that,
22 that's right, and there were articles at the time
23 in the press saying that.

24 Q. And of course, what you can't
25 account for is what happened with the financing of

1 the operations of Wind Mobile after the West Face
2 consortium acquired Wind in September of 2014, can
3 you?

4 A. There were lots of intervening
5 events in that time too.

6 Q. Now, let me turn to Option 2,
7 which is slide 8. Am I right that Catalyst's
8 second option involved combining Wind and
9 Mobilicity to create a fourth national wireless
10 carrier but focussed on the so-called wholesale
11 market rather than on the retail market?

12 A. Yes.

13 Q. Option 2 contemplated creating
14 this national wireless carrier by combining Wind
15 and Mobilicity that would rent its wireless
16 spectrum to the existing incumbent carriers;
17 correct?

18 A. It is an oversimplification, but
19 yes.

20 Q. Of course, you understood at the
21 time that Catalyst had no right to proceed with
22 Option 2 without the approval of the Government of
23 Canada; correct?

24 A. Correct.

25 Q. Option 2 also required regulatory

1 concessions to be viable?

2 A. Fewer, but yes.

3 Q. And if we turn to slide 8, if you
4 have it in front of you, and look under the heading
5 "Requires".

6 A. Yes.

7 Q. If you look at the second bullet
8 under the heading "Requires" -- well, I'll go
9 through them both, so first:

10 "Potential to
11 partner/exchange/rent spectrum from
12 and to incumbent to fill spectrum
13 requirements for nationwide
14 communications."

15 That was the first requirement;
16 correct?

17 A. Subordinate licensing, yes.

18 Q. The second was the:

19 "Ability to exit the investment
20 with no restrictions in five years."

21 And with the same undertaking referred
22 to in Option 1; correct?

23 A. Correct.

24 THE COURT: Mr. Thomson, whenever it is
25 convenient, we'll stop for lunch.

1 MR. THOMSON: It is fine now, Your
2 Honour. Thank you.

3 THE COURT: Okay, we'll stop now until
4 2:15.

5 -- RECESSED AT 12:57 P.M.

6 -- RESUMED AT 2:23 P.M.

7 THE COURT: Mr. Thomson.

8 BY MR. THOMSON:

9 Q. Thank you, Your Honour.

10 Mr. Glassman, just before we broke for
11 lunch, we were discussing the March 27th, 2014
12 meeting with the Government of Canada.

13 A. Yes.

14 Q. Am I right that as of the time of
15 the meeting with the Government of Canada on March
16 27th, your belief was that without the regulatory
17 changes that Catalyst had asked for, that the
18 fourth carrier would only be able to compete in the
19 short term with incumbents on price and then,
20 because of their size, incumbents would quickly
21 squeeze a fourth carrier out of the market?

22 A. It was my view.

23 Q. It was also your view that in the
24 regulatory environment that existed in 2014, new
25 entrants such as Wind were not equipped to survive

1 any kind of competitive war with the incumbents,
2 and that was your view; correct?

3 A. It was.

4 Q. And that is what you told the
5 government?

6 A. Yes, and internally.

7 Q. Now, am I correct that as a matter
8 of firm policy, Catalyst needed increased certainty
9 about how you could monetize any investment it
10 might make in Wind within five years or less?

11 A. Not quite. It would be more
12 accurate to say that with any investment, not just
13 Wind, we always have to look at an exit strategy,
14 as does every investment firm.

15 Q. And that is a matter of firm
16 policy at Catalyst; correct?

17 A. Yeah, to the best of my knowledge,
18 it is firm policy at every firm. It is one of the
19 risk factors.

20 Q. And am I also right that
21 throughout this entire process, your job was to
22 identify the worst possible scenario that might
23 arise and then attempt to mitigate or eliminate the
24 risk associated with that scenario?

25 A. I'm sorry, can you repeat the

1 question?

2 Q. Your job throughout this matter
3 was to identify the worst possible scenario that
4 might arise and then mitigate or eliminate the risk
5 associated with that scenario; is that a fair
6 statement of your job?

7 A. I think it is an
8 oversimplification of my job.

9 Q. Turn up tab 25-B, please. And
10 you'll find here, Your Honour, document CCG0024640.
11 This is a series of emails, Mr. Glassman, that you
12 were involved in with Mr. Levin and Mr. de Alba on
13 August 11, 2014, and the one I want to take you to
14 is at the top of the second page, an email you
15 wrote on August 11th of 2014 at 8:54 a.m. Do you
16 have that?

17 A. Yes.

18 Q. And the part that I am interested
19 in is the second sentence where you say about four
20 words into that sentence, you say:

21 "[...] my job is to identify
22 the worst scenario and then
23 mitigate/eliminate risk related to
24 such. That is exactly what I am
25 doing here and am now demanding this

1 deal be publicly disclosed [...]"
2 and so on.

3 I'm going to come back to this email
4 momentarily, but I want to understand the
5 description of what you perceived your job to be.

6 So it was, as I understand it based on
7 your email, to identify the worst scenario and then
8 mitigate/eliminate the risk relating to that
9 scenario?

10 A. No, I think you are taking my
11 email out of context. There is an exchange going
12 on, and I clearly meant that it was one of my jobs,
13 one of the issues I have to deal with is that
14 particular issue. This is a conversation with
15 somebody who has been my and my firm's counsel for
16 20-odd years, and he was my counsel before he was
17 my firm's counsel. He knows exactly what I meant
18 by it.

19 Q. You are referring to Mr. Levin
20 now?

21 A. I am.

22 THE COURT: Just before you go any
23 further, I'm trying to get into the laptop and I
24 have to select a wireless network. Which one do I
25 select?

1 MR. DiPUCCHIO: That is a good
2 question.

3 [DISCUSSION OFF THE RECORD.]

4 THE COURT: Okay.

5 MR. THOMSON: Are you in now?

6 THE COURT: Yes.

7 BY MR. THOMSON:

8 Q. Mr. Glassman, we have been
9 discussing both before the break and just after the
10 break your views about the prospects and the
11 viability of Wind Mobile; fair enough?

12 A. Or a fourth network of which Wind
13 was a part, a potential part.

14 Q. And are you prepared to concede,
15 in fairness, Mr. Glassman, in 2014 others may have
16 had a different view than you did concerning those
17 issues?

18 A. I think that there was a range of
19 opinions, but the vast majority of knowledgeable
20 people in telecom, including people that have been
21 quoted in the press such as analysts, had a very
22 similar view, perhaps different at the margins in
23 terms of degree or otherwise, but generally, in
24 terms of the competitive landscape, very similar.

25 Q. You don't profess to be the only

1 person in Canada or the United States with business
2 acumen, do you?

3 A. God no.

4 Q. You don't profess to be the only
5 person in Canada or the United States with
6 knowledge of the way in which the wireless industry
7 operates?

8 A. For sure not.

9 Q. And of course, you don't profess
10 to be the only person in Canada who in 2014 knew a
11 thing or two about the operations of Wind Mobile?

12 A. Of course not.

13 Q. Wind was a private company and not
14 a public company; correct?

15 A. To the best of my knowledge, it
16 was quasi public because I think a piece of their
17 debt was traded in the institutional market, so it
18 wasn't public equity but there was I think a piece
19 of debt, and I might be wrong, but I think a piece
20 of the debt traded in the institutional market.

21 Q. Would you accept this, in
22 fairness, Mr. Glassman, that West Face, Tennenbaum
23 and Mr. Guffy and Mr. Lacavera and the Government
24 of Canada may all have had different views than you
25 did concerning the prospects of Wind in 2014?

1 A. They may have, and they may not
2 have. I don't know what their views were. I have
3 an insight into the government's views.

4 Q. Now, let me look at slide 9, which
5 is option -- so this is now slide 9 of your
6 presentation at tab 11 of the cross-examination
7 binder. So this was so-called Option 3; correct?

8 A. It was part of Option 3, yeah.

9 Q. And Option 3, just reading the
10 slide, involved a CCAA Mobilicity Court process
11 sale to Telus with or without government support;
12 fair enough?

13 A. That is what it is headlined, yes.

14 Q. And that is what is described in
15 the slide. So it goes on to say, as an example,
16 one bullet down:

17 "If the government does not
18 support Mobilicity's sale to Telus,
19 litigation will be used to force a
20 sale."

21 You were telling the government that if
22 that litigation were to erupt in the Mobilicity
23 CCAA process, that the litigation would be public
24 and then create a confrontation between all the
25 people listed on the box on the left and the

1 Government of Canada; correct?

2 A. A little bit more than that. What
3 is not on the slide was that we were telling the
4 government that the current stakeholders in the
5 Telus proposed transaction would not be successful
6 because of the way it was structured but that the
7 estate would eventually get it right. And that is
8 why you see on the left-hand side it says,
9 "Mobilicity estate, court approved monitor, Ontario
10 court, industry incumbents", because there was a
11 variation of what was about to happen related to a
12 Telus or Telus as an example of an incumbent that
13 we thought would be forthcoming.

14 Q. Now, skip down to the bottom of
15 the slide, scroll down, please, and in the
16 second-last bullet on the page one of the things
17 you told the Government of Canada on March 27th was
18 that if this were to happen the:

19 "VimpelCom deal will be off the
20 table."

21 Correct?

22 A. Yes.

23 Q. And you also told the government
24 that the:

25 "Government will be facing a

1 long and inconvenient 'front page'
2 battle that will be characterized as
3 a policy failure."

4 Correct?

5 A. Yes, that is what I wrote, or what
6 we --

7 Q. And then you also told -- I'm
8 sorry?

9 A. What we wrote.

10 Q. You also told the Government of
11 Canada that if that were to happen, "Catalyst will
12 have to support the Mobilicity estate" in the
13 litigation against the government; correct?

14 A. Yes. And the last bullet is that
15 we would continue to support the government as long
16 as our contractual rights were respected, a very
17 important point.

18 Q. Now, am I right that by the time
19 of this meeting, you and Mr. Riley were both aware
20 that the Government of Canada had blocked on at
21 least one or two occasions a proposed sale of
22 Mobilicity to Telus?

23 A. I can't remember if it is before
24 March 27th because I just don't have the dates of
25 the Telus transactions, but ultimately you are

1 correct. I think it was blocked three times or
2 four times, mostly because of where and how it was
3 structured.

4 Q. The government had done so both
5 before and after Mobilicity was forced to file for
6 protection under the CCAA; correct?

7 A. I don't remember if the first
8 proposal from Telus was before the CCAA.

9 Q. Please pull up tab 5. And, Your
10 Honour, here you will find a news release issued by
11 the Government of Canada on June 4th of 2013. It
12 is WFC0111504. And, Mr. Glassman, you will find
13 here a news release issued by the Government of
14 Canada entitled "Harper government protecting
15 consumers and increasing competition in Canadian
16 wireless sector"?

17 A. I see it.

18 Q. And you will see the date of the
19 news release is June 4th of 2013?

20 A. I do.

21 Q. And it refers to The Honourable
22 Christian Paradis, Minister of Industry?

23 A. I see that.

24 Q. And You will see it says in the
25 first paragraph that he today announced decisions

1 to further promote competition in the Canadian
2 wireless telecommunications market to give
3 Canadians access to the latest technology at better
4 prices.

5 And the part that I am interested in is
6 the last two paragraphs on the first page.

7 A. The first page, sorry?

8 Q. The last two paragraphs on the
9 first page saying:

10 "The Minister also announced
11 that Telus' application to transfer
12 Mobilicity's spectrum licences will
13 not be approved. Mobilicity's
14 licences were among those set aside
15 for new entrants in the 2008
16 advanced wireless services auction,
17 which included restrictions on
18 transferring licences to
19 incumbents", and so on.

20 And so the first block --

21 A. Sorry, I hope you did notice that
22 the last paragraph, the second-last line says,
23 quote:

24 "[...] ahead of the five-year
25 limit [...]"

1 Q. Well, we'll come back to that, but
2 let's just put that in the record so we have it:

3 "Our government has been clear
4 that spectrum set-aside for new
5 entrants was not intended to be
6 transferred to incumbents. We will
7 not waive this condition of licence
8 and will not approve this, or any
9 other, transfer of set-aside
10 spectrum to an incumbent ahead of
11 the five-year limit,' said Minister
12 Paradis. 'Our government will
13 continue to allow wireless providers
14 access to the spectrum they need to
15 compete and improve services to
16 Canadians. We are seeing Canadian
17 consumers benefit from our policies
18 and we will not allow the sector to
19 move backwards. I will not hesitate
20 to use any and every tool at my
21 disposal to support greater
22 competition in the market.'"

23 So my point was very simple, which is
24 the Harper government blocked the proposed sale of
25 Mobilicity to Telus. This now is in June of 2013,

1 which was before Mobilicity filed for protection
2 under the CCAA; fair enough?

3 A. Yes, and ahead of the five-year
4 limit which would expire sometime after that date.

5 Q. I'm going to come back to that.
6 I'm just trying to establish timing now.

7 A. Uhm-hmm.

8 Q. Again, we are back to the debate
9 we had before lunch. Just please answer my
10 questions. This is before Mobilicity filed for
11 protection under the CCAA, is it not?

12 A. I think Mobilicity filed in
13 September of 2013.

14 Q. You are right. And then the
15 Minister -- well, I'll stay with this one. You are
16 aware that the Minister of Industry blocked that
17 sale for transfer even after a proposed Plan of
18 Arrangement to sell Mobilicity to Telus for 380
19 million dollars was approved by this Court on May
20 28, 2013? Were you aware of that?

21 A. I am, which is why our experience
22 at NextWave became incredibly important.

23 Q. And let's turn up tab 7, please,
24 of the cross-examination binder. So here you will
25 see a decision rendered by Justice Newbould on

1 September -- sorry, on October 4th of 2013
2 concerning the filing by Mobilicity under the CCAA.
3 This is WFC0111546.

4 And if you scroll down, please, into
5 the judgment, keep scrolling, and stop there,
6 please, you will see at the very first paragraph of
7 the judgment that Justice Newbould says that on
8 September 30th, the Applicants, Mobilicity Group,
9 applied for protection under the CCAA.

10 So the first blocking took place before
11 the filing for CCAA protection; fair enough?

12 A. When you say "blocking", I'm
13 assuming you mean of the Telus proposed
14 transaction?

15 Q. Yes.

16 A. Yes.

17 Q. And then there was another
18 blocking of a proposed transfer of spectrum from
19 Mobilicity to Telus in October of 2013. Were you
20 aware of that?

21 A. I don't remember the exact date,
22 but I'll take your word for it that it was in
23 October or November.

24 Q. Okay, pull up, please, tab 8. So
25 tab 8 is document WFC0111314. This is a Globe and

1 Mail article entitled -- sorry, of October 30 of
2 2013 entitled "Mobilicity's outlook murky as Ottawa
3 rejects Telus bid." And it goes on to refer to the
4 government having rejected in late October of 2013
5 Telus's second attempt to purchase the
6 cash-strapped wireless carrier?

7 A. Which I think was still within the
8 five years of the original licence.

9 Q. Am I right that, again, in March
10 of 2014 Telus lost another battle with the
11 Government of Canada in its efforts to acquire
12 Mobilicity?

13 A. On or about March. I don't know
14 the exact date.

15 Q. Okay, pull up the witness's
16 affidavit, please, tab 1, and turn, please, to
17 paragraph 15 of Mr. Glassman's affidavit where you
18 say, Mr. Glassman, in the first sentence of
19 paragraph 15:

20 "In March of 2014, Telus fought
21 and lost to the Federal Government
22 over its efforts to purchase the
23 holding company of Mobilicity."

24 A. Yes.

25 Q. I take it that was the correct

1 date in your affidavit sworn about ten days ago?

2 A. It doesn't say when in March, so I
3 assume it was in March, and it says "the holding
4 company of Mobilicity", which is critical as well.

5 Q. Now, it was against that important
6 backdrop, I'm going to suggest to you, that is, the
7 Telus acquisition of Mobilicity or its spectrum
8 having been rejected three times by the government
9 starting in June of 2013, that your meeting with
10 the government took place on March 27th; fair
11 enough?

12 A. That is a statement of fact. I'm
13 not sure if there was a question there.

14 Q. All these events had taken place
15 by the time you met with the government on March
16 27th; correct?

17 A. Yes, yes.

18 Q. Now, the reaction of
19 representatives of the Government of Canada to the
20 presentations made to them on March 27th, and
21 again, I took a careful note of your evidence
22 in-chief, you said that there were two reactions,
23 what you call an explicit official reaction;
24 correct?

25 A. Correct.

1 Q. And then you said that there was
2 an unofficial reaction. So let's stay with the
3 explicit official reaction, and again, I'm going to
4 quote your words back to you directly. The
5 explicit official reaction of the Government of
6 Canada on March 27th was, quote, "we will not give
7 you or anybody else regulatory relief"; correct?

8 A. Correct.

9 Q. And then with respect to the
10 unofficial reaction, you said it was this, quote:

11 "We appreciate your input, and
12 we are particularly interested in
13 understanding the litigation and
14 your personal experience,
15 Mr. Glassman, in NextWave and why
16 you think this is as bad, if not
17 worse, than NextWave."

18 That was the unofficial reaction?

19 A. That was part of the unofficial
20 reaction.

21 Q. And are you able to point to even
22 one contemporaneous document that either refers to
23 or records an alleged softening of the Government
24 of Canada's position towards the regulatory
25 concessions Catalyst had sought?

1 A. Only my experience with them.

2 Q. There is no note, no email, no
3 memo of you, Riley, Drysdale recording that having
4 taken place?

5 A. There are emails, and I believe
6 there's quite a few of them, of my telling the team
7 contemporaneous at that time that I believed that
8 it was a negotiating position by the government and
9 that they were softening.

10 Q. I see. Well, I'll wait for
11 Mr. DiPucchio to show Justice Newbould those emails
12 because I haven't seen them.

13 MR. DiPUCCHIO: Well, you can show
14 them, if you are going to challenge them.

15 BY MR. THOMSON:

16 Q. Now, I'm going to suggest to you
17 that there was in fact no softening that took place
18 either in the meeting of March 27th or after and
19 you were made well aware of that lack of softening
20 as the events unfolded in July and August of 2014?

21 A. You are utterly and completely
22 wrong.

23 Q. And all you have done, Mr.
24 Glassman, is put self-serving statements into the
25 mouths of unnamed people at the Government of

1 Canada in your affidavit who of course are not
2 before the Court and have played no role in this
3 proceeding; fair enough?

4 A. Is there a question there?

5 Q. Yes, that is what you have done,
6 isn't it?

7 A. It is not.

8 Q. And no one from the Government of
9 Canada ever committed to grant Catalyst the
10 unrestricted right to sell Wind or its spectrum to
11 an incumbent carrier, it never had, did it?

12 A. As I said earlier, nor would they
13 have to until there was a deal in front of them.

14 Q. And nobody ever committed to give
15 you that right after there was a deal in front of
16 them, did they?

17 A. Nor would they have to, nor should
18 they from a game theory perspective until the deal
19 was in front of them.

20 Q. I'm not discussing game theory.
21 I'm talking about the actual facts of what
22 happened. It never happened, did it?

23 A. No, nor did we expect it to, which
24 was communicated to the whole team.

25 Q. Nor did anyone from the Government

1 of Canada ever approve of Catalyst's wholesale
2 strategy as reflected in Option 2, did they? It
3 never happened?

4 A. I don't know what you mean by
5 "approve".

6 Q. Nobody ever approved the strategy.
7 No one ever said we will give you the right to
8 proceed down that path, did they?

9 A. No, the same answer. They didn't
10 have to until there was a deal in front of them and
11 a request.

12 Q. Now, let's talk about Mobilicity
13 for a moment and go back to tab 7, please, of the
14 cross-examination binder. This is the -- scroll to
15 the top, please, of the first page. This is a
16 decision of Justice Newbould again of October 4,
17 2013, WFC0111546.

18 Am I right that as of the time of these
19 proceedings, Catalyst held roughly 32 percent of
20 the first lien notes issued by Mobilicity?

21 A. Just over 32 percent.

22 Q. Roughly 62 million dollars in
23 first lien notes?

24 A. Yes.

25 Q. And Catalyst certainly did not own

1 or control Mobilicity at least as of the time of
2 this decision in October of 2013, did it?

3 A. As later events would show, we de
4 facto had -- we did not legally control it, but we
5 de facto ended up controlling its destiny.

6 THE COURT: Well, I have to ask you
7 again, please don't argue the case. Just answer
8 the question.

9 THE WITNESS: Well, I didn't know if he
10 meant legally.

11 THE COURT: He didn't ask you what
12 happened later.

13 THE WITNESS: But I didn't know if he
14 meant legally or de facto, because legally we did
15 not; de facto we clearly did.

16 BY MR. THOMSON:

17 Q. Let's just stay with what we know.
18 Certainly as of the date of this decision of
19 Justice Newbould of October 4th of 2013, am I right
20 that Justice Newbould approved the proposed DIP
21 lending facility over the objections of Catalyst?

22 A. He did.

23 Q. Justice Newbould approved the
24 continued appointment of Mr. Aziz as the Chief
25 Restructuring Officer of Mobilicity over the

1 objections of Catalyst?

2 A. He did.

3 Q. Justice Newbould stayed an
4 oppression claim commenced by Catalyst attacking
5 the bridge notes facility of Mobilicity over the
6 objections of Catalyst?

7 A. He did.

8 Q. Now, with respect to this issue of
9 this threat of litigation against the Government of
10 Canada that you refer to in your affidavit and you
11 also discussed it at length in your examination
12 in-chief this morning, again, if I can take you
13 back one last time to tab 11, which is the March
14 27th PowerPoint presentation, please, at slide 9.
15 This is Option 3 dealing with the CCAA Mobilicity
16 Court process sale to Telus with or without the
17 government's support. Do you see that?

18 A. I do.

19 Q. And we can easily agree, I'm sure,
20 Mr. Glassman, that this slide refers to the CCAA
21 proceedings involving Mobilicity rather than to
22 other litigation involving Wind?

23 A. Correct.

24 Q. And you refer in your affidavit
25 and your evidence in-chief this morning to some

1 other different type of litigation which you say
2 some independent third party might commence against
3 the Government of Canada resulting from what you
4 characterize as the unilateral imposition by the
5 government of retroactive conditions imposed on
6 spectrum licences issued by the government in 2008
7 at the time of the AWS spectrum auction; correct?

8 A. Correct.

9 Q. And you will agree with me, I'm
10 sure quite readily, that that other litigation is
11 not referred to in Catalyst's slides of March 27,
12 2014?

13 A. It actually is. It is tangential
14 and related to this slide that you are showing
15 right now.

16 Q. It is not referred to in any of
17 Catalyst's contemporaneous documents produced in
18 this litigation, is it?

19 A. The theme of it is. The actual
20 specifics of who would bring it, no.

21 Q. You are no doubt aware that
22 wireless spectrum in Canada is public property
23 owned by the Government of Canada?

24 A. Absolutely.

25 Q. Wireless spectrum in Canada --

1 A. Actually, not correct. It is
2 owned by the Government of Canada but licensed for
3 its use, which in the NextWave decision FCC lost
4 because others had property rights in that
5 spectrum.

6 Q. Does the FCC carry on business in
7 Canada?

8 A. No.

9 Q. Let's turn up tab 30 to make this
10 simple and see if we can reach agreement on one
11 simple proposition. Tab 30, please, of the
12 cross-examination binder. And here you will find
13 document WFC0111523, a decision of Justice Newbould
14 in a case called Quadrangle v. The Attorney General
15 of Canada; do you have that?

16 A. I do.

17 Q. And let's turn to paragraph 7 of
18 that judgment where Justice Newbould says:

19 "The defendant, Industry
20 Canada, is responsible for and has
21 complete control over the Canadian
22 wireless telecommunications market.
23 It owns Canada's radio frequency
24 spectrum and it determines who may
25 use that spectrum, for what

1 purposes, and on what conditions."

2 I take it you would agree with those
3 findings, would you not, sir?

4 A. Not completely. I think for the
5 purposes of this action, that was correct. If
6 other fact patterns were in front of the judge, he
7 would have to consider those in the context of what
8 rights had been either leased, purchased or
9 otherwise granted by Industry Canada to a licensee
10 holder, as the FCC had to.

11 Q. In 2007 and 2008 the Government of
12 Canada conducted a public auction of the so-called
13 AWS spectrum in Canada; correct?

14 A. Correct.

15 Q. The government established a
16 policy framework concerning that auction?

17 A. Including the rights that the
18 licensee would get.

19 Q. The Government of Canada
20 established a policy framework concerning that
21 auction; correct?

22 A. Correct.

23 Q. And if we turn up, please, tab 3
24 of the cross-examination brief, you will find
25 document WFC0111642, the policy framework of the

1 Government of Canada for the auction of spectrum
2 licences for advanced wireless services and other
3 spectrum in the 2 gigahertz range; do you see that?

4 A. I do.

5 Q. This is the policy framework that
6 was established by the government concerning that
7 spectrum auction; correct?

8 A. I'm not sure that it includes any
9 amendments or any adjustments that they made after
10 November 20, 2007.

11 Q. Now, am I right that in conducting
12 this spectrum auction, the government set aside 40
13 megahertz of spectrum for new entrants in certain
14 designated blocks?

15 A. I don't remember the amount, but
16 yes, they set aside -- it was a set-aside of
17 spectrum.

18 Q. And if we turn to page 5 of the
19 document, and I guess let's use the numbers in the
20 top right-hand corner, so page 6 in the top
21 right-hand corner under the heading "Spectrum Set
22 Aside":

23 "Forty megahertz of AWS
24 spectrum will be set aside for new
25 entrants only in frequency blocks B,

1 C and D"?

2 A. I see that.

3 Q. And am I right that the government
4 also prohibited spectrum acquired by new entrants
5 in the auction from being transferred to incumbents
6 for five years?

7 A. It did.

8 Q. Now, am I also right in saying
9 this, conversely, the government did not confer
10 upon new entrants the unrestricted right to sell
11 that spectrum to whoever they wanted for any reason
12 they wanted at the end of the five-year period;
13 correct?

14 A. I'm just thinking about your
15 question. There was an understanding that the
16 government would allow reasonable and that it would
17 act reasonably after the five years; otherwise,
18 there was no point in having a five-year
19 moratorium.

20 Q. The understanding of whom?

21 A. Everybody in the industry.

22 Q. I see.

23 A. Including the lenders that lent
24 hundreds of millions of dollars against the
25 collateral of the spectrum.

1 Q. Can we agree on this, Mr.
2 Glassman, that to your knowledge the transfer of
3 wireless spectrum in this country has always been
4 subject to the approval of the Government of
5 Canada?

6 A. Of course.

7 Q. Am I right, Mr. Glassman, if we
8 turn to tab 45 of the cross-examination brief, so
9 at tab 45 is document WFC0112324, and this is the
10 so-called Schedule B of Catalyst that lists all of
11 the documents over which it has asserted a claim of
12 privilege in this case, and you will see a total of
13 five documents; do you have that?

14 A. I see six. I think it is six, but
15 yeah.

16 Q. Let's call it six. I take it from
17 this Schedule B and from the lack of production in
18 this case that Catalyst did not seek or obtain a
19 legal opinion from its lawyers at Faskens, or any
20 other firm for that matter, concerning the merits
21 of this litigation against the government that you
22 discuss in paragraphs 13 to 31 of your affidavit;
23 is that fair enough?

24 A. To the best of my knowledge, we
25 never sought a formal opinion, no, nor did we think

1 we had to.

2 Q. Now, let me take you to paragraph
3 17 of your affidavit. Sorry, scroll back, yes, to
4 17. And I'm interested in the last several lines
5 of paragraph 17, so on page 7 of the affidavit
6 where you say in the last sentence of paragraph 17:

7 "Catalyst informed Industry
8 Canada and the Federal Government
9 that if the right stakeholders
10 initiated such an action, Catalyst
11 would have no legitimate choice but
12 to support such due to our fiduciary
13 duty to our investors - and expected
14 such action to ultimately win."

15 You then say this:

16 "IC counsel, in particular,
17 ultimately agreed with this
18 conclusion."

19 Do you see that?

20 A. I do.

21 Q. And you would accept, I'm sure,
22 Mr. Glassman, that you did not identify in your
23 affidavit which Industry Canada counsel allegedly
24 agreed with Catalyst's conclusion?

25 A. I did not identify him in my

1 affidavit.

2 Q. You did not specify in your
3 affidavit when they did so or under what
4 circumstances; correct?

5 A. I did not, but I will tell you it
6 was in the May meeting.

7 Q. And I am going to suggest to you
8 that all you have done, Mr. Glassman, in fairness
9 to the Court and to my client, is put self-serving
10 and unattributed hearsay statements into the mouth
11 of an unidentified lawyer from Industry Canada who
12 has played no role in these proceedings?

13 A. You are unequivocally wrong and
14 factually incorrect.

15 Q. And once again, Mr. Glassman, you
16 can't point to a single contemporaneous document
17 that records or reflects anyone from Industry
18 Canada having made that statement or accepting
19 Catalyst's conclusion, can you?

20 A. I attended the meetings. I know
21 exactly what they said and why.

22 Q. And then you do the same thing
23 again, sir, in paragraph 20 of your affidavit, in
24 the sentence just at the bottom of page 7 and
25 carrying over to page 8 where you say:

1 "[Industry Canada] had to
2 demonstrate a willingness to adhere
3 to the original terms of the
4 spectrum licences granted to
5 Mobilicity and Wind. I made it
6 clear, and internal Industry Canada
7 counsel essentially confirmed, that
8 we believed these conditions would
9 likely be reinstated in any event,
10 either ultimately or through
11 litigation or the government's own
12 decision."

13 And again, you failed to identify in
14 your affidavit who this internal Industry Canada
15 counsel allegedly was that gave you the
16 confirmation you refer to in the affidavit;
17 correct?

18 A. Clearly.

19 Q. And again, you can't point to any
20 contemporaneous document that reflects or records
21 that confirmation having been given, can you?

22 A. It makes perfect common sense if
23 you know the facts that that would be the internal
24 conclusion.

25 Q. What is the answer to my question?

1 You can't point to a single contemporaneous
2 document that reflects or records that confirmation
3 having been given, can you?

4 A. Well, as I said earlier, it was
5 clear in an email to the rest of the team that it
6 was my view that the position had softened, and I
7 included in that discussion the very next day,
8 which was May the 13th with the entire team, a
9 discussion of why that was and how it came, so I
10 think that is contemporaneous.

11 Q. And we have no documents
12 concerning that presentation to your own people, do
13 we?

14 A. We have an email that talks about
15 my sending it to the rest of the team.

16 Q. Now, can we agree on this much,
17 Mr. Glassman, that even if we were to take you at
18 your word and assume that some unidentified lawyer
19 at Industry Canada made such a statement in a
20 meeting you attended, that others at the Government
21 of Canada and the Department of Justice might well
22 have had a different view about the strengths and
23 weaknesses of this hypothetical claim you refer to
24 at length in your affidavit; is that fair enough to
25 say?

1 A. People can have all kinds of
2 opinions. I had the most experience with the most
3 closely related set of facts.

4 Q. Now, let me deal with the
5 destruction of Catalyst's PowerPoint. Am I right
6 that immediately following this meeting with the
7 Government of Canada on March 27 of 2014, either
8 you, Mr. Riley or Mr. de Alba instructed everyone
9 at Catalyst who had received a copy of this
10 PowerPoint presentation to destroy it?

11 A. I think that the team members
12 were -- my memory is that the team members were
13 asked to destroy it and we were keeping a master
14 file.

15 Q. And they were asked to destroy it
16 by you, Riley or de Alba; correct?

17 A. I think so. As you can see, the
18 firm kept a copy.

19 Q. Well, let me show you what we were
20 told. Turn up, please, Mr. Riley's transcript from
21 May of 2015. This is tab 39 of the
22 cross-examination binder. And please turn to
23 question 334, and here is what Mr. Riley said when
24 he was cross-examined on this very point May 13 of
25 2015:

1 "Question: Okay. And I
2 understand from e-mail received from
3 your counsel last night that the
4 PowerPoint presentation in question
5 has been -- was destroyed shortly
6 after it was given?

7 Answer: Yes.

8 Question: And no records of it
9 have been maintained?

10 Answer: That is correct."

11 So the understanding of Mr. Riley
12 certainly as of May of 2015 was that every copy of
13 the PowerPoint had been destroyed; fair enough?

14 A. I don't know if you are talking
15 about the March presentation or the May
16 presentation.

17 Q. It is the March presentation.

18 A. Well, you just said May, and in
19 any event, that is just not my recollection. My
20 recollection was that we were keeping a master.

21 Q. And so Catalyst was then asked to
22 check the accuracy of that answer, and so let me
23 show you what we got back. And so I would ask you
24 to pull up, please, tab 40 of the cross-examination
25 binder and turn to answer number 8, so number 8 at

1 the bottom of the page:

2 "Further to [undertaking] 7, to
3 provide any documents that support
4 Mr. Riley's suggestion that Mr.
5 Moyse was involved with Wind Mobile
6 before the two-week period in
7 question."

8 The answer to that question was:

9 "As previously explained, all
10 copies of the PowerPoint prepared in
11 March 2014 were destroyed."

12 So that is the answer we got back after
13 people checked with others at Catalyst as to what
14 happened to the PowerPoint.

15 A. Well, clearly it was discovered.

16 Q. And clearly someone found a copy.
17 But my point is the intention within Catalyst, the
18 intention within Catalyst as of March 2014 was to
19 destroy every single copy; correct?

20 A. No, I think the intention was to
21 destroy any copies in the hands of junior people.

22 Q. Okay, so what we were told then
23 during this cross-examination then was incorrect.
24 Let me then take you back to another examination
25 and look at Mr. de Alba's discovery transcript

1 which is my tab 41, please, and look at questions
2 140 and 141. Question 140 and 141, so stop there.

3 And you will see, just go up a bit,
4 please, to 139, so question:

5 "Question: We were informed
6 early [...]"

7 And this is the examination for
8 discovery three weeks ago:

9 "Question: We were informed
10 early in the course of this
11 litigation by your counsel that this
12 presentation we're looking at,
13 CCG11565, was destroyed after it was
14 presented. Are you aware of that?

15 Answer: As the information was
16 critical, we advise -- or it was
17 advised that the presentations were
18 destroyed so that the information
19 would not be floating around.

20 Question: It was advised by
21 who?"

22 And Mr. Winton says:

23 "I think I can assist. Let me
24 try to assist."

25 Mr. Milne-Smith says: "Okay."

1 And Mr. Winton says:

2 "My understanding, and Mr. de
3 Alba can correct me if this is
4 incorrect, is that after the -- at
5 the presentation the copies of this
6 PowerPoint were requested back from
7 the government members who attended.

8 Mr. Milne-Smith: Yes.

9 Mr. Winton: And taken back by
10 Catalyst and destroyed and a
11 direction went out to all members of
12 the deal team who had touched this
13 presentation to destroy all copies
14 from their records as well.

15 By Mr. Milne-Smith:

16 Question: And who made that
17 order?"

18 And Mr. Winton says:

19 "I understand it was either Mr.
20 Riley or Mr. Glassman or Mr. de
21 Alba."

22 And I take it that that is an accurate
23 summary of what happened? An instruction was given
24 and every copy at Catalyst was destroyed but
25 apparently one was not?

1 A. I don't think that is right. This
2 is a conversation between counsel, Mr. Milne-Smith
3 and Mr. Winton. They had an understanding and
4 Mr. Winton says that he understands it was either
5 Mr. Riley or Mr. Glassman or Mr. de Alba. It is
6 Mr. Winton that says that all members of the deal
7 team who touched this presentation were
8 suggested -- were directed to destroy it. And that
9 is just not my recollection.

10 Q. And his statements on the record
11 were never disavowed or corrected by anyone at
12 Catalyst; fair enough?

13 A. This is the first time I have seen
14 it. I can't speak to anybody else.

15 THE COURT: Can I ask a question, Mr.
16 Thomson?

17 MR. THOMSON: Yes.

18 THE COURT: The answer given by
19 Mr. Winton was that the government was asked to
20 hand back the presentations to you. I don't think
21 Mr. de Alba was there, but you were there.

22 THE WITNESS: Yes.

23 THE COURT: Do you recall that, were
24 they asked to give them back to you?

25 THE WITNESS: They asked us to take

1 them back.

2 BY MR. THOMSON:

3 Q. Now, to be crystal clear, you were
4 not asked by the Government of Canada to destroy
5 this presentation; correct?

6 A. Not this version, no.

7 Q. And in fact, your evidence
8 in-chief was that the government, and these were
9 your words when asked by Justice Newbould, you
10 said:

11 "The final product they had no
12 problem with our keeping."

13 A. That's right, the final.

14 Q. Now, am I right that within
15 roughly three weeks of your meeting with the
16 Government of Canada on March 27 of 2014 that yet
17 another Telus/Mobilicity transaction surfaced?

18 A. For the holding company.

19 Q. And let me ask you to turn up,
20 please, tab 12 of the cross-examination binder, and
21 here you will see emails with Mr. Drysdale and
22 others of April 18 of 2014. Your Honour, this is
23 CCG0009114.

24 And again, Mr. Glassman, you have to
25 read up from the bottom of the email chain, so let

1 me take you to the second page of the document
2 where you will find an email from Zach Michaud to
3 himself April 17th of 2014 at 11:46 p.m. saying:

4 "Mobilicity announced its
5 proposed transaction with Telus."

6 Do you see that?

7 A. I do.

8 Q. And then if you go up above and go
9 now back to the first page of this email chain, you
10 will find an email at the bottom of the first page
11 from Mr. de Alba to Mr. Drysdale, Mr. Riley and
12 others, and the question he asked is:

13 "Bruce, is the government in
14 support of this deal/transfer?"

15 Do you see that?

16 A. I do.

17 Q. And just above that, Drysdale
18 writes back on April 18th at 8:46 a.m. and says:

19 "Gabriel, the Harper government
20 remains clear it will not approve
21 this deal or transfer. Telus is
22 well aware of Ottawa's position.
23 This just sets up the legal battle
24 in my opinion."

25 And just above that de Alba writes back

1 the same day at 8:48 a.m., two minutes later, to
2 Drysdale and copied to Riley and others and says:

3 "Thanks Bruce, this seems
4 consistent with the previous
5 posture. Were you able to check on
6 this today? Any sense on how they
7 plan to defend its position? Will
8 their approach be legal and public
9 opinion?"

10 And then Drysdale writes back at 8:54
11 a.m. and says:

12 "Gabriel, very much so.
13 Minister Moore will likely come out
14 to say it will not approve the
15 proposed deal given market
16 concentration", and so on.

17 Now, I take it this exchange was
18 brought to your attention around the time it was
19 sent on April 18th of 2014?

20 A. I don't remember. But I think it
21 is very important to point out Mr. Drysdale's
22 comment about it setting up the litigation, which
23 is at the end of his email that is on the bottom of
24 page 1, I think it's page 1.

25 Q. Mr. Glassman, here we have a dog

1 that didn't bark issue. You will find no reference
2 in these emails to any softening of the Government
3 of Canada's position; fair enough?

4 A. Which position?

5 Q. The government's position
6 concerning the transfer of wireless spectrum from
7 new entrants to incumbents.

8 A. Not in this series of emails.

9 Q. Now --

10 A. But we do have evidence of a
11 tactical error.

12 Q. Let me take you to May 6th and 7th
13 and ask you to turn, please, to tab 15 of the
14 cross-examination binder where you will find emails
15 of May 6th and 7th, 2014. Your Honour, this is
16 CCG0009482.

17 And the email I'm interested in, Mr.
18 Glassman, is at the top of the first page, so it is
19 an email from you to Mr. de Alba, copied to Riley,
20 Moyse, Levin and Drysdale, where you say on May
21 7th:

22 "Government has told us today
23 via Bruce D [...]"

24 Would that be Bruce Drysdale?

25 A. It is.

1 Q. "Government has told us today
2 via Bruce Drysdale that they will
3 not give us in writing the right to
4 sell spectrum in five years. My
5 response is that that takes 'Option
6 1' off the table and we would only
7 be willing to build a wholesale
8 leasing business specifically with
9 the incumbents as the customers.
10 They know this. We are going to
11 Ottawa next week."

12 So I take it that this exchange sets
13 out accurately your reaction to this news you
14 obtained from the government as of May 6th that
15 because they would not give you in writing at that
16 point the right to sell spectrum in five years,
17 Option 1 is now off the table?

18 A. That is part of my reaction. It
19 is not the entirety of my reaction. The other
20 parts of my reaction had been discussed verbally
21 and this was confirming to people what we had
22 expected the government to say and do at that stage
23 of the negotiation.

24 Q. And that is exactly what you did
25 not say in the email. You didn't write back on May

1 7th of 2014 and say, "Hey, Bruce, no big deal, who
2 cares, never expected to get a commitment in
3 writing from the government because, until we had a
4 deal in hand, they wouldn't give us a commitment";
5 that was simply not said, was it?

6 A. I didn't have to say it to Bruce.
7 He knew it.

8 Q. And in fact, you said exactly the
9 opposite. You said because the government has told
10 us they will not give us in writing the right to
11 sell wireless spectrum in five years, Option 1 is
12 now off the table; we would only be willing to
13 build a wholesale leasing business specifically
14 with the incumbents as the customers. That was
15 your position as of May 7th, wasn't it?

16 A. Obviously, unless they actually
17 turned around and changed their position on selling
18 spectrum.

19 Q. And I am putting it to you, Mr.
20 Glassman, straight up that your contemporaneous
21 documents are flatly inconsistent with your
22 evidence today, flatly inconsistent. Do you accept
23 that?

24 A. I do not agree.

25 Q. And of course, am I right in

1 saying this, your wholesale option, the notion that
2 you would form a fourth national wireless carrier
3 to lease spectrum to the incumbents, I'm going to
4 suggest to you did little, if anything, to increase
5 the level of competition at the retail level of
6 trade which of course had been the government's
7 priority for more than seven years dating back to
8 2007?

9 A. That is just simply factually
10 incorrect. If you want, I can walk you through how
11 it increases competition.

12 Q. Throughout the entire period from
13 March to September of 2014, am I right that you
14 remained adamant that any share purchase agreement
15 Catalyst might enter into with VimpelCom contained
16 a condition of government approval?

17 A. Yes.

18 Q. And you then met with the
19 government on May 12th of 2014?

20 A. Yes. May 11th or May 12th? May
21 12th.

22 Q. By the time of your meeting with
23 the government on May 12th, you were aware that
24 VimpelCom was proceeding on the basis of a total
25 enterprise value of 300 million dollars?

1 A. For their interest.

2 Q. For the whole company?

3 A. For their interest in the whole
4 company.

5 Q. You weren't here when Mr. de Alba
6 testified. It was for the whole company, wasn't
7 it?

8 A. At that point, yes, but there were
9 other investments that had to be made.

10 Q. Now, let's turn to the meeting
11 with the Government of Canada on May 12th of 2014.
12 You attended a meeting with Riley and Drysdale?

13 A. Yes.

14 Q. And you also used another
15 PowerPoint presentation during that meeting?

16 A. We did.

17 Q. One that you, Riley and de Alba
18 all played a role in preparing?

19 A. A role, yes.

20 Q. And if we turn up, please, tab 16
21 of the cross-examination binder, you will find
22 document CCG0009517. This is the presentation made
23 to the government on May 12th; correct?

24 A. I think so. I would -- if you
25 could turn the page, it probably has the date.

1 Yeah, it is the May 12th presentation.

2 Q. Am I right that you, Riley and de
3 Alba all reviewed the PowerPoint presentation
4 carefully before the meeting?

5 A. Probably some reviewed it more
6 carefully than others.

7 Q. You did so to ensure that it
8 described accurately the existing state of affairs
9 as well as the position of Catalyst; correct?

10 A. To the best of our ability.

11 Q. And if you could turn to the
12 second slide entitled "Overview", do you have that?
13 You say in the first bullet:

14 "Since our March 27 meeting the
15 environment to achieve the
16 government's policy objectives has
17 worsened, and the government could
18 soon be facing CCAA
19 protection/bankruptcy of both
20 Mobilicity and Wind", and so on.

21 One of the messages you intended to
22 convey and did convey to the government on May 12th
23 was that in the period since you last met, roughly
24 five or six weeks before on March 27th, things had
25 gotten worse; correct?

1 A. Correct.

2 Q. You told the government that in
3 the wake of VimpelCom's abandonment of Wind, Wind
4 was now in default with its lenders?

5 A. Amongst other issues. I don't
6 know if they are completely related, but yes, they
7 had defaulted and not paid an interest payment in
8 that period.

9 Q. And that is in your slide too in
10 the fourth paragraph:

11 "VimpelCom has abandoned Wind
12 Canada."

13 A. Well, they wrote it off to zero,
14 and they weren't allowing the company to pay to
15 stay current on its vendor debt, so that sounds
16 like abandonment to me.

17 Q. "VimpelCom has abandoned Wind
18 Canada as the investment is worth
19 zero to them, and they have refused
20 to inject any additional money into
21 the business. Wind Canada is now in
22 default with its lenders who are
23 pushing to be repaid by issuing a
24 default notice and also threatening
25 to file the company for CCAA."

1 Your position was that Wind is now in
2 dire straits and they had been abandoned by
3 VimpelCom?

4 A. Yeah, it is actually missing
5 another point, which was that Wind was burning
6 roughly 10 to 15 million dollars a month of
7 operating costs.

8 Q. And the point you make to the
9 government is that VimpelCom is now refusing to
10 inject any additional money into the business?

11 A. That is what we were told.

12 Q. Okay.

13 A. Told and observed. You know, you
14 don't default --

15 Q. Can we turn now to slide 4, and
16 under the heading "Economics of Creating the Fourth
17 Wireless Network", you may recall that you had a
18 similar slide on the March 27th presentation?

19 A. I do.

20 Q. And whereas in the March 27th
21 presentation the estimated cost to create the
22 fourth wireless network was 1.5 to 2 billion
23 dollars, you have now increased that estimate to
24 2.05 to 2.3 billion dollars?

25 A. Correct.

1 Q. And, sir, if you look above that
2 total calculation to the top of that series of
3 bullets just under the heading "Economic
4 Implications or Requirements", you see you have a
5 Wind Canada purchase price of 500 million dollars?

6 A. Yes.

7 Q. And of course, you had been told
8 on May 6th or 7th, and I took you to that this
9 morning, that what VimpelCom was looking for was a
10 purchase price based on a total enterprise value of
11 300 million dollars?

12 A. But that is not the entire
13 purchase price to the buyer. That is only what
14 they are writing a cheque to VimpelCom for.

15 Q. That included both the amounts to
16 VimpelCom and dealing with the vendor debt, as you
17 said in your email on May 6th or May 7th; correct?

18 A. But not dealing with other issues.

19 Q. Now, let's turn to slide 5, Option
20 1. Am I right that as of May 12th of 2014 you
21 continued to represent to the government that no
22 deal could be completed with VimpelCom without
23 establishing a viable regulatory and economic
24 framework?

25 A. I'm sorry, what is the question?

1 Q. You continued to represent to the
2 Government of Canada that no deal could be
3 completed with VimpelCom without establishing a
4 viable regulatory and economic framework; correct?

5 A. Yes.

6 Q. And am I right that during this
7 meeting, you made it absolutely clear to the
8 government that in the absence of these concessions
9 that Catalyst had sought, it would be virtually
10 impossible to finance Wind's operations, including
11 a proper build-out of its wireless network through
12 arm's length means?

13 A. That is our view, and that was our
14 view.

15 Q. And that is what you told the
16 government; correct?

17 A. It is.

18 Q. During this meeting on May 12th,
19 you told the government that Option 1 had now
20 become severely hindered; correct?

21 A. Correct.

22 Q. And if we turn to slide 6 which
23 deals with Option 2, you told the government on May
24 12th that Option 2, the creation of a wholesale
25 leasing carrier, was fast becoming the only

1 feasible option; correct?

2 A. Only feasible option for a fourth
3 carrier.

4 Q. Now, once again, representatives
5 of the Government of Canada who attended the
6 meeting on May 12th did not agree to grant to
7 Catalyst any of the regulatory concessions you had
8 asked for?

9 A. Nor did we expect them to.

10 Q. Instead, they told you they
11 remained concerned regarding granting approval for
12 the only remaining feasible option, namely the
13 wholesaler option or Option 2; correct?

14 A. That is exactly what we expected
15 and discussed with the whole deal team.

16 Q. And that is what they told you,
17 that they remained concerned regarding granting
18 approval for the only remaining feasible option,
19 namely the wholesaler option or Option 2; correct?

20 A. I don't quite think that is what
21 they said. My memory is that they said that it
22 wasn't something that they would prefer and it
23 wasn't something that they would necessarily
24 support. They weren't quite as adamant as I think
25 you are suggesting, or at least their body language

1 undermined their language, so they may have said it
2 but we didn't believe them completely.

3 Q. Is it fair to say that officially
4 Industry Canada remained concerned regarding
5 approval of the wholesaler option?

6 A. Yes, they were concerned.
7 Concerned.

8 Q. They refused to commit to permit
9 Catalyst to exit any investment it might make in
10 Wind without restrictions in five years?

11 A. Of course, nor did we expect them
12 to do it without a deal in front of them.

13 Q. And your belief at the time of the
14 meeting on May 12th of 2014 was that Industry
15 Canada was taking a hard negotiating position with
16 Catalyst?

17 A. Absolutely, and rightly so.

18 Q. Now, am I right that within one
19 week of the meeting with Industry Canada, Catalyst
20 obtained a written opinion from Faskens concerning
21 the issue of the transfer of wireless spectrum?

22 A. I have no idea if it was one week.
23 I don't even remember the opinion.

24 Q. Now, pull up, please, tab 19-A
25 where you will find an opinion written to the

1 Catalyst Group sent to Mr. de Alba in particular of
2 May 19 of 2014 from the Faskens firm, a gentleman
3 by the name of Steve Acker; do you have that?

4 A. I see it. It is actually to Mr.
5 de Alba and Mr. Michaud.

6 Q. And if you look to the bottom of
7 the first page, you will see that Faskens says in
8 summary:

9 "It will be evident from the
10 discussion below that there will be
11 a significant approval process
12 inherent in Globalive seeking to
13 acquire and/or obtain access to
14 spectrum owned by others. However,
15 it seems likely the government would
16 be supportive of Globalive's and
17 Catalyst's efforts so long as
18 Globalive is seeking to establish a
19 viable fourth national cellular
20 company."

21 And then they say this at the top of
22 the next page:

23 "That support would likely not
24 extend to any comfort as to the
25 government's willingness to

1 ultimately approve a transfer of
2 spectrum licences to Globalive in
3 due course to any of Bell" -- it
4 should say "[from] Globalive in due
5 course to any of Bell, Telus or
6 Rogers. However, it may be possible
7 for Catalyst to obtain comfort from
8 the government that no option will
9 necessarily be precluded in several
10 years' time."

11 So that was the advice you received
12 from Faskens as of the 19th of May?

13 A. And as you will notice, it is
14 incredibly carefully worded.

15 Q. Your Honour, that was document
16 CCG0026600.

17 Turn to page 7, please, of the opinion.
18 You will see at the top of page that 7 Faskens
19 says:

20 "It is important to note that
21 as the transfer framework and
22 government policy introduced in [a
23 particular document] is recent and
24 relatively untested, it is difficult
25 to predict how it will be applied or

1 even what the government intends by
2 'undue concentration'. However, the
3 current government has made it clear
4 that any proposed transfer of
5 commercial mobile spectrum to an
6 incumbent will be subject to very
7 close scrutiny and, in the current
8 climate, most unlikely to succeed.
9 Indeed, since the introduction of
10 CPC-2-1-23, the government has only
11 approved of transfers arising out of
12 internal corporate re-organizations
13 where no change in spectrum
14 concentration occurs."

15 Again, advice you received from your
16 lawyers at Faskens as of May 19 of 2014; correct?

17 A. And again, incredibly carefully
18 worded, including the phrase, quote, "relatively
19 untested, it is difficult to predict." The rest is
20 opinion by the writer, and I had more experience in
21 this than the writer did.

22 THE COURT: Mr. Glassman, it would
23 really help if you just dealt with the questions.

24 BY MR. THOMSON:

25 Q. Did you know that several years

1 ago Faskens merged with a firm called Johnston &
2 Buchan in Ottawa?

3 A. No, but I'll take your word for
4 it.

5 Q. Have you ever even heard of
6 Johnston & Buchan?

7 A. Vaguely.

8 Q. Would you have known that Johnston
9 & Buchan was the leading communications firm in
10 Canada before it merged with Faskens?

11 A. Okay.

12 Q. And do you know the depth of
13 experience that Johnston & Buchan had dealing with
14 wireless spectrum dating back 10, 20, 30 years?

15 A. So?

16 Q. But you claim to have more
17 experience in matters of this sort than the Faskens
18 firm did?

19 A. On this issue. On this issue.

20 Q. Okay. Now, let me fast-forward,
21 Mr. Glassman, to try to cut through this and get
22 you out of here. Let's go to July 25 of 2014, and
23 I would ask you to turn up, please, tab 21.

24 So at tab 21 you will see emails of
25 July 25 of 2014. And, Your Honour, these are at

1 CCG0025815. And they are emails dated July 25,
2 2014, involving Mr. de Alba and Mr. Glassman and
3 others.

4 Am I right, Mr. Glassman, that on July
5 25 of 2014 Mr. Nicholson of Industry Canada reached
6 out to Mr. Drysdale, your government relations
7 consultant?

8 A. Can you go to the bottom of the
9 chain, please?

10 Q. I'll make it easy for you. Let me
11 go to the second page of the emails and look at the
12 email in the middle of the second page. This is
13 from Mr. Drysdale to Mr. de Alba and Mr. Riley on
14 July 25 at 2:17 p.m.

15 A. Yes.

16 Q. Do you have that?

17 A. I do.

18 Q. And Mr. Drysdale says:

19 "James Nicholson reached out to
20 me today. We had a good
21 conversation. He was not as
22 negative on your proposed
23 transaction as I believed he would
24 be. They likely won't have an issue
25 with any straight up purchase of

1 Wind by Catalyst (depending where
2 money comes from). He also
3 indicated that Industry Canada would
4 allow the transfer of spectrum (I
5 remain skeptical). He suggested the
6 regulator would have views on
7 licensing of asset going forward.

8 Lastly, Nicholson implied that
9 Catalyst seeking any concessions was
10 a dead end, as we have gone down
11 that road twice before with them,
12 and they are unlikely to be
13 flexible."

14 So that was at 2:17 p.m.

15 If you then go to the top of the page
16 and look at what he says at 3:54 p.m., an hour and
17 a half later, and he says:

18 "I worry we end up with a
19 stranded asset where Ottawa allows
20 us to buy Wind and approves transfer
21 of spectrum but won't licence
22 operation to be a re-seller or won't
23 give us concessions to build it out.
24 Then they limit who we can sell it
25 to."

1 So you receive a negative message from
2 Mr. Nicholson at Industry Canada, coupled with a
3 warning from your government relations consultant
4 on July 25 that you could end up with a stranded
5 asset if you march down the path that you are on?

6 A. Not quite. He says that
7 Mr. Nicholson has reached out to him, which is
8 incredibly significant that James reached out to
9 him proactively. They had a good conversation, and
10 he was not as negative on the proposed transaction
11 as Mr. Drysdale suggested.

12 Q. Right.

13 A. He then goes through the
14 mechanics, which is all posturing, in my opinion.
15 This gave me incredible insight into what was going
16 on.

17 Q. And the warning you were given was
18 that your request for concessions might well be at
19 a dead end, right?

20 A. Right, until we deliver them a
21 live deal. It is at a dead end until you give them
22 a live deal.

23 Q. And of course, that is not what
24 Mr. Drysdale says in the email, does he?

25 A. Mr. Drysdale is not in the

1 business of investing. Mr. Drysdale is advising
2 purely on government relations.

3 Q. And he had more experience --

4 A. He says what he is worried about.

5 Q. And he had more experience in
6 matters of this sort than you did; correct?

7 A. Generally. Not on this issue,
8 neither in telecom nor on a specific issue where
9 there was a transferability issue as to whether it
10 was property, whether the government had the right
11 to do it or not. No one in Canada had that
12 experience, no one. Only people in the U.S. did,
13 and me.

14 Q. And this email exchange points out
15 an important distinction, Mr. Glassman, between
16 regulatory approval concerning an acquisition of
17 Wind by Catalyst on one side and the granting to
18 Catalyst of regulatory concessions on the other;
19 fair enough?

20 A. Different kinds of regulatory
21 concessions, yes.

22 Q. And the point being made by
23 Mr. Drysdale was that the government might well
24 grant you approval to buy Wind without giving you
25 any of the concessions you have asked for; that is

1 how you could end up with a stranded asset?

2 A. That is what he was worried about.
3 That was a scenario that was of deep concern to
4 him, as it should be.

5 Q. Now, let me then take you forward
6 to the first page of these emails and look at Mr.
7 de Alba's reaction at the bottom of the first page,
8 July 25 at 4:01 p.m., so the same day Mr. de Alba
9 says:

10 "Instead of worry we need your
11 help to turn it around!!"

12 Correct?

13 A. That is typical of my partner,
14 yes, he is putting pressure on Drysdale to try and
15 get it -- improve the probability of it ahead of
16 time and before there is a deal.

17 Q. And what Mr. de Alba doesn't say
18 is, "Bruce, don't worry, take a Valium, everything
19 is fine, we fully expect the government will do
20 nothing to help us until we have a signed deal";
21 that is not said, is it?

22 A. I would kill him if he did. I
23 would never take the pressure off our advisors. I
24 would make them do everything they could to
25 actually deliver it ahead of time and reduce the

1 risk.

2 Q. And if we then scroll up the page,
3 you write an email back the same day at 5:47 p.m.
4 where you say:

5 "Maybe we are being set up by
6 government to try and pressure us
7 for no/minimal concessions..."

8 Do you see that?

9 A. Yeah, I don't see who it is to.
10 It is to Gabriel, yeah.

11 Q. It's to de Alba.

12 A. Yeah.

13 Q. It's not to Drysdale. This is not
14 taking --

15 A. Yes.

16 Q. Just listen to me. This isn't
17 about taking pressure off your consultant. This is
18 your email, candid email to your partner?

19 A. Right.

20 Q. And you don't say, "Hey, Gabe, no
21 worries, my partner, everything is fine, don't
22 expect anything from the government until we have a
23 signed deal"; that statement is simply never made,
24 is it?

25 A. Nor would I ever make it to any

1 deal member. I would never relieve the tension on
2 any deal member on any deal at any point in time.

3 Q. Well, but wait, wait, wait. I
4 thought we had a flat, flat structure where
5 everybody knew everything?

6 A. We do. That doesn't mean that I
7 am not the instigator of pressure.

8 Q. So you weren't being straight-up
9 with Mr. de Alba; that is your evidence?

10 A. He knows exactly who I am. He
11 knows exactly what I was doing. He has worked with
12 me for 14 years. He knows I'm never going to let
13 up the pressure. Ask him.

14 Q. And then let's look at what Mr. de
15 Alba recommends and see what happens next. So at
16 the top of the page, de Alba writes back the same
17 day at 7:36 p.m. and he says:

18 "That is what I told Bruce, was
19 my fear is he was eager to connect
20 us with the government but not in a
21 dynamic to get concessions, just to
22 build the most basic credibility.

23 As the government response was we do
24 not believe you have an exclusivity,
25 Quebecor is telling us that they are

1 close to putting Wind and Mobilicity
2 together. Bruce was also saying
3 that they might sabotage our deal
4 not by refusing an approval but by
5 not responding timely to the share
6 purchase agreement end date or by
7 whispering to VimpelCom challenges
8 questions about the deal. I do
9 believe that the government is going
10 to scrutinize the business plan.
11 Our financial capacity to fund such,
12 and will check our investors. As I
13 did not trust the dynamic I suggest
14 we do not talk to the government
15 until we have the SPA signed.
16 Challenge with such is that we have
17 less flexibility. I am available if
18 you want to connect."

19 So his recommendation is no further
20 discussions with the government until we have a
21 signed share purchase agreement in hand?

22 A. In fact, there is your proof that
23 Gabriel knew exactly what I was doing, because he
24 wants to increase the pressure on the government by
25 not showing up until the SPA is signed and put the

1 pressure on them. It is in his second-last
2 sentence.

3 Q. I have a slightly different theory
4 of what happened here, which we'll talk about
5 momentarily. In any event, his recommendation was
6 no further discussions with the government until we
7 have executed a share purchase agreement with
8 VimpelCom; correct?

9 A. Which is the correct advice.

10 Q. And am I right that there were in
11 fact no further meetings that you or Mr. Riley or
12 Mr. de Alba attended with representatives of the
13 Government of Canada concerning the Wind
14 transaction at any time between the date of this
15 email on July 25 of 2014 and the completion of the
16 West Face transaction in mid-September of 2014?

17 A. Where is the question?

18 Q. That was the question. There were
19 in fact no further meetings that you, Riley or --

20 A. That is a statement of fact. You
21 are making a statement. Where is the question to
22 me?

23 Q. Just listen. There were in fact
24 no further meetings that you, Riley or de Alba
25 attended with representatives of the Government of

1 Canada concerning Wind at any time before West Face
2 completed its acquisition of Wind in mid-September
3 of 2014, were there?

4 A. None directly. Bruce Drysdale and
5 others maintained open contact with the government.

6 Q. And let's show --

7 A. We obviously had a channel.

8 Q. Let's show Justice Newbould what
9 happened as a result of Drysdale's continued
10 connections with the government and turn to August
11 3, a week later.

12 So pull up tab 23, please. So at tab
13 23 you will see a series of emails of August 3 of
14 2014, Mr. Glassman, that you were copied on or sent
15 to or from you. This, Your Honour, is CCG0025843.

16 And, Mr. Glassman, I want to take you
17 to the second page of the emails and read from the
18 bottom to the top, to have them in sequence. So on
19 Sunday, August 3 at 9:15 a.m., Mr. Drysdale writes
20 to you and Mr. de Alba, copied to Mr. Riley, an
21 email entitled "Ottawa Insights"; do you have that?

22 A. I do.

23 Q. And he says in his email:

24 "I was in Ottawa late last week
25 and met with James Nicholson in

1 Minister Moore's office for 45
2 minutes."

3 So just so we have it for the record,
4 if we pull out our calendars, the email we looked
5 at about two minutes ago was dated Friday, July 25,
6 and the meetings that are being referred to here
7 take place the very next week, the week of Monday,
8 July 28th.

9 So he says that:

10 "I was in Ottawa late last week
11 [...]"

12 Which would make it around the 31st,
13 possibly the 1st. He says:

14 "[...] and met with James
15 Nicholson in Minister Moore's office
16 for 45 minutes."

17 And he was, again, a senior official
18 from Industry Canada; correct?

19 A. I think he might have even been
20 the Chief of Staff of the Minister.

21 Q. And he says:

22 "I also had coffee with a
23 senior [Privy Council Office]
24 official. I was able to have frank
25 conversations with both, while also

1 pushing the Catalyst position.
2 Below please see some feedback and
3 insights from Nicholson and the
4 [Privy Council Office]. You will
5 want to factor these into your
6 discussions/negotiations."

7 So let's take them one at a time.
8 First, he says:

9 "[Industry Canada] and the
10 [Privy Council Office] and the
11 [Prime Minister's] Office are
12 adamant that the current federal
13 policy will not change."

14 Second, he says:

15 "Nicholson clarified the
16 federal position saying Minister
17 Moore and [Industry Canada]
18 officials would not be opposed to
19 Catalyst buying Wind but Ottawa
20 would not provide concessions
21 Catalyst outlined in its May
22 presentation for building out a
23 fourth carrier nor would Ottawa
24 allow Catalyst or anyone else to
25 become a re-seller."

1 The next bullet:

2 "Nicholson said that if
3 Catalyst signs a sale and purchase
4 agreement with Wind it should do so
5 with a clear understanding it would
6 have to build out a fourth carrier
7 without concessions and without the
8 ability to sell to an incumbent
9 after 5 years."

10 So all I'm going to suggest to you, Mr.
11 Glassman, clear and unequivocal messages being
12 conveyed to you through Mr. Drysdale by senior
13 people in Industry Canada and in the Privy Council
14 Office as of August 3 of 2014; fair enough?

15 A. Not completely fair. If you look
16 at the second bullet and you read it carefully, he
17 says that Nicholson and IC officials would not be
18 opposed to Catalyst buying Wind, and then sets up a
19 framework. There is no reason why one would
20 believe that the government would actually be in
21 favour of us buying it at that point unless they
22 knew that there were going to be further
23 discussions about the concessions. So the rest of
24 that bullet and the bullet afterwards is all
25 table-setting, in my opinion.

1 Q. They drew the very distinction you
2 and I discussed about three minutes ago between
3 regulatory approval for a Wind acquisition on one
4 hand and the granting of regulatory concessions on
5 the other?

6 A. Yes, because it is a two-step
7 process, and if they were willing to approve the
8 first step, they knew they were going to have a
9 problem in the second step or else there would be
10 litigation with other parties. That was the whole
11 message. This email confirms to me that they knew
12 exactly what the consequences would be and that
13 they were trying desperately to set the table for
14 the future discussion about regulatory concessions.

15 Q. They certainly did not tell you
16 they were prepared to make the concessions. In
17 fact, they told you, am I right, exactly the
18 opposite?

19 A. No one over the age of 15 with any
20 kind of experience in negotiation would do that.

21 Q. Well, let me --

22 MR. DiPUCCHIO: Let me interrupt for
23 one second. I think in fairness, Your Honour, the
24 way the screen is set up, there is a final
25 paragraph to that.

1 MR. THOMSON: I'm coming to that.

2 MR. DiPUCCHIO: Oh, okay. Well, I just
3 wanted to be fair to the witness because the
4 witness doesn't see it, Mr. Thomson.

5 MR. THOMSON: Okay, just scroll down.

6 THE COURT: You go ahead, Mr. Thomson.

7 BY MR. THOMSON:

8 Q. Let me now continue on with the
9 email. So the next bullet:

10 "Nicholson and the [Privy
11 Council Office] both told me that
12 Quebecor (both prior to PKP [...])"
13 And that would be Pierre Karl Peladeau?
14 Yes?

15 A. Sure.

16 Q. "[...] both told me that
17 Quebecor (both prior to [Pierre Karl
18 Peladeau] running for office as a
19 separatist and since) has lobbied
20 hard in Ottawa at all levels for
21 concessions to build out a fourth
22 carrier and have been told Ottawa
23 will not be providing them with any
24 concessions (beyond what regulatory
25 changes are being rolled out by the

1 CRTC in coming months). Nicholson
2 said Minister Moore and Prime
3 Minster Harper are entrenched.
4 There will be no flip flop."
5 Correct?

6 A. That is an awesome point. It
7 tells us that the government is so worried about it
8 that they are trying to create a horse race between
9 Quebecor as a potential bidder and Catalyst as a
10 potential bidder and that they are trying to tell
11 us, and be careful, because if it is a horse race,
12 we might be able to put some weight behind our no
13 concessions language.

14 What it tells me, which the average
15 reader may not get, is that Quebecor was telling
16 the government the exact same thing, they are going
17 to need concessions.

18 Q. And the government --

19 A. And that means that the government
20 knows that no matter what they do, they are going
21 to end up having a political problem about
22 concessions if one of us wins.

23 Q. What you were being told by the
24 government clearly and unequivocally through
25 Mr. Drysdale was this had reached the very highest

1 levels of government, it reached the Minister of
2 Industry and the Prime Minister of Canada? Take it
3 one step at a time. You were told that, were you
4 not?

5 A. Sir, with the greatest of respect,
6 there is a big difference between people's words
7 and people's actions. We were depending on
8 people's actions, and that is a very telling
9 development.

10 Q. Try to stay with me.

11 A. And in fact, if you look at it, it
12 says later that, quote, the government used
13 language called "mitigating strategies".

14 Q. I'm coming to that.

15 A. Which in our world means they had
16 nothing. They didn't even have a plan B.

17 Q. Mr. Glassman, one step at a time.
18 You were being told by the Government of Canada
19 through Mr. Drysdale that this had reached the very
20 highest levels of government, including the
21 Minister of Industry, Mr. Moore, and the Prime
22 Minister of Canada. Can we agree on at least that?

23 A. Sure, and it also tells me that
24 they are panicked.

25 Q. And, Mr. Glassman, you were told

1 clearly and unequivocally on August 3 of 2014 that
2 the Minister of Industry and the Prime Minister of
3 Canada were entrenched in their position and there
4 would be no flip flop; that is what you were told?

5 A. Except they were saying that they
6 would approve the actual purchase to Catalyst, and
7 they are implying they would approve a purchase to
8 Quebecor, which means that they both know full well
9 that there is a battle coming after whatever
10 approval of those two they provide.

11 And the last bullet makes the point.
12 They didn't have anything. They had no substance
13 to their, quote, "mitigating strategies". They
14 didn't even call it a plan B. They didn't even
15 indicate what they were going to do. They had
16 nothing. All they had was trying to put as much
17 pressure as they could on the potential bidder or
18 winner to reduce the demand for the nature of
19 concessions that was likely to come. At least they
20 knew it was coming from either Catalyst or Quebecor
21 if either of them won.

22 Q. Just tell me when you are
23 finished.

24 A. I'm done.

25 Q. Good. The next bullet:

1 "Nicholson said that if nobody
2 steps forward to build out a fourth
3 carrier as a straight-up proposition
4 (no concessions, no ability to sell
5 to incumbents after 5 years) then
6 the Harper government has mitigating
7 strategies in place to deal with
8 that scenario."

9 Something else you were told by Mr.
10 Drysdale on August 3; correct?

11 A. Yeah, a very telling statement.

12 Q. And am I right that you never went
13 back to the government to ask what the mitigating
14 strategies were?

15 A. I didn't need to. We know what
16 the language means.

17 Q. Nor did Mr. Drysdale on your
18 behalf; correct?

19 A. I don't know if he did. I don't
20 think he did.

21 Q. I'm going to suggest to you that
22 none of the messages and threats of litigation and
23 public embarrassment that you and Mr. Riley had
24 conveyed to the government on March 27th and on May
25 12th had found a receptive audience?

1 A. Is there a question there?

2 Q. Yes.

3 A. You can make whatever suggestion
4 you want. It doesn't make it right. You are
5 wrong.

6 Q. The government clearly had a
7 different view than you and others at Catalyst may
8 have, and they refused to blink?

9 A. No, you are saying the government
10 had a different view. What they told me was that
11 they actually agreed with our view and were very
12 worried about it. And even the change in
13 attendance between March 27th's presentation and
14 the May 12th presentation and the questions during
15 that meeting made it very clear that they
16 understood that there was a very real problem.

17 Q. And here we are now months later
18 at August 3 and you are confronted, Mr. Glassman,
19 with a major and potentially insurmountable
20 problem. Now, let me explain to you what the
21 problem is.

22 You had represented to the Government
23 of Canada on May 12th that Catalyst was staring
24 down the pipe at an investment that could be as
25 much as 2.3 billion dollars to build out a fourth

1 national wireless carrier; correct?

2 A. I don't know if it said as much as
3 2.3, or as much as 2.3 to 2.5.

4 Q. Let's use your higher number, 2.5
5 billion dollars --

6 A. Whatever is in the presentation.

7 Q. And just so we have it, that is in
8 the context of a transaction where you had
9 represented to the government that unless they were
10 prepared to grant you the concession you needed for
11 your exit strategy, you could not obtain external
12 financing; correct?

13 A. I said I believe the language we
14 used in the presentation was that we do not believe
15 it would be possible to finance it from banks or
16 arm's length third parties.

17 Q. And there is no way in the world
18 Catalyst was going to put up 2.3 billion dollars of
19 its own money to build the fourth national wireless
20 carrier, were you?

21 A. Not all was equity. Why would we
22 ever do that in all equity? No one else would
23 either.

24 Q. As of, just pick a date, August
25 2014, what was the total amount of funds you had

1 under administration at Catalyst, the total amount?

2 A. Unlevered, somewhere around
3 2-and-change billion dollars; levered, somewhere
4 around 12 billion dollars.

5 Q. Now, am I right that you had also
6 represented to Catalyst -- well, let me skip past
7 that. Let me get back to what you said. Having
8 received the email from Mr. Drysdale, take a look
9 at your reaction. So scroll up to midway through
10 the first page of these emails at tab 23 of the
11 cross-examination binder, so your email, do you
12 have that, of August 3 of 2014 at 9:58 a.m. where
13 you say --

14 A. I see that. I see the opening
15 line where I confirm what I just told you, that I
16 think it is all positioning.

17 Q. "Thanks Bruce. My view on
18 reading this is that it's all
19 positioning [...]"

20 THE COURT: Just a second. Where is
21 this?

22 MR. THOMSON: This is the witness's
23 email of August 3 of 2014 at 9:58 a.m. It is the
24 middle of the first page, Your Honour.

25 THE COURT: Yes, I see that here.

1 BY MR. THOMSON:

2 Q. And, sir, you say this:

3 "Thanks Bruce. My view on
4 reading this is that it's all
5 positioning and they themselves are
6 not sure what they will do until
7 someone is before them with a
8 specific list of demands.
9 Mitigating strategies is code for
10 they have no real plan B since they
11 don't yet know what they will be
12 facing. To disprove my theory,
13 someone would have to tell me
14 details of their mitigating
15 strategies so that we could evaluate
16 such against our requests."

17 And pausing there for a moment, you
18 confirmed a moment ago no one did give you the
19 details of the government's mitigating strategies;
20 correct?

21 A. Sure.

22 Q. You then say:

23 "It also tells me that they
24 know this is a complete cluster-fuck
25 right now and that they really don't

1 know how it's going to end.
2 Interesting that their opening
3 position would be an outright
4 refusal on any/all we suggested to
5 them in our [deck last week].
6 Finally, if they truly have made the
7 below position clear to Quebecor,
8 they have literally hurt Quebecor's
9 likelihood of doing a fourth carrier
10 [...] " --

11 A. It doesn't say "our deck last
12 week"; it says "in our last deck", because it
13 wasn't the week before, it was May 12th.

14 Q. "Finally, if they truly have
15 made the below position clear to
16 Quebecor they have literally hurt
17 Quebecor's likelihood of doing a
18 fourth carrier alone and approve our
19 or anyone who controls Wind."

20 You say:

21 "Mobilicity is basically
22 irrelevant now since the new AWS 3
23 spectrum is so cheap. Mobilicity's
24 spectrum value has been decimated so
25 long as acquired by someone with an

1 existing presence in Ontario, etc.,
2 (given the AWS 3 rules). If I am to
3 take them at their word re Quebecor
4 it would make sense and fit well
5 with Quebecor's comments about not
6 making this a priority for their
7 capital, needing/talking with
8 potential partners", et cetera.

9 And then you say this:

10 "Bruce, do they understand that
11 without making the spectrum
12 transferable at some time in the
13 future they have literally made it
14 impossible for anyone to get
15 financing/debt (since without
16 eventual transferability there is no
17 collateral value against which
18 lenders will lend) and therefore a
19 fourth carrier cannot and will not
20 make anyone reasonable minimum rate
21 of return? Notwithstanding their
22 words to you, this last point needs
23 to be drummed home to them this
24 weekend", in capital letters, "given
25 the timing of what is going on."

1 So your view at the time was that
2 government had succeeded because they refused to
3 grant concessions and making it literally
4 impossible for anyone to get financing or debt to
5 fund the creation of the fourth national wireless
6 carrier, and that's what you told Mr. Drysdale;
7 correct?

8 A. That is what I told Mr. Drysdale.
9 It is not exactly what I thought. It is close to
10 what I thought, but a lot of this email was to help
11 educate Bruce about why I thought the government
12 was taking the strategy they were taking and why I
13 thought my particular read in particular, but also
14 Gabriel's and likely Jim's, was that the government
15 not only had made a tactical error, but it is
16 exactly what we would expect them to do. And that
17 is why I wanted Bruce to carry the water back to
18 the government and make sure that they knew that
19 there is a very big risk that they have actually
20 undermined the collateral value to close to zero.

21 Q. And what you then said in the last
22 sentence of that email is:

23 "This last point needs to be
24 drummed home to them this weekend",
25 in capital letters, you were

1 shouting in your email, "given the
2 timing of what is going on."

3 And of course, this email is being sent
4 on Sunday, August 3, so what you were saying to
5 Drysdale is --

6 A. Also not a fair characterization.
7 Putting it in capitals does not mean I was
8 screaming or yelling at Bruce. I was making the
9 point that it is very important.

10 Q. You were making the point
11 emphatically?

12 A. Yes, but that doesn't mean I was
13 screaming. You said I was screaming.

14 Q. What you were saying was this is
15 urgent and you had better get back to them today;
16 it's Sunday and it's got to get done this weekend?

17 A. Yeah, I wanted him to. I wanted
18 him to set the table.

19 Q. And again, sir, Mr. Glassman, what
20 you never said to Drysdale is, "Look, Bruce, don't
21 worry about it, expected all this would happen,
22 didn't expect to get a single concession until we
23 had a signed deal in hand"? That you never said,
24 did you?

25 A. Nor would I ever. Only an idiot

1 would say that. I would keep the pressure up on
2 Bruce and any member of the team to the very last
3 second, as I should.

4 Q. Your view at the time was that no
5 one would believe that they could earn a reasonable
6 rate of return without certainty of an exit
7 strategy or regulatory changes; correct?

8 A. Well, I actually think it says
9 more than that. I think it says that and without
10 being able to go to lenders, so without leverage,
11 without actually having a levered return on the
12 situation and without having an exit strategy.

13 THE COURT: Mr. Thomson, we are going
14 to take an afternoon break. Is this a decent time?

15 MR. THOMSON: Yes, it is, thank you.

16 -- RECESSED AT 3:55 P.M.

17 -- RESUMED AT 4:10 P.M.

18 BY MR. THOMSON:

19 Q. Mr. Glassman, am I right that you
20 wanted and needed to resolve the regulatory issues
21 you had raised with the Government of Canada before
22 Catalyst acquired Wind and not after?

23 A. No, that is not correct.

24 Q. Could you turn up your affidavit,
25 please, and go to tab 1, paragraph 4, and in the

1 second sentence you say the following:

2 "I was primarily responsible
3 for Catalyst's negotiations with
4 Industry Canada and the Federal
5 Government concerning", this is what
6 you say, "critical regulatory issues
7 that I had decided needed to be
8 resolved before Catalyst purchased
9 Wind."

10 A. Yes, resolved one way or the
11 other, and it really should have said closed on
12 Wind. That is not what your question said.

13 Q. The question I asked you was you
14 wanted and needed to resolve these regulatory
15 issues before Catalyst purchased Wind, and I take
16 it the answer is "correct"? Your own words.

17 A. Yes, resolved and purchased being
18 the key phrases.

19 Q. That is the question you were
20 asked. Now, because of course if you obtained
21 regulatory approval for an acquisition of Wind
22 without obtaining the regulatory concessions you
23 had sought, you could expose Catalyst to the risk
24 of having to proceed with what Mr. Drysdale had
25 referred to as a stranded asset; fair enough?

1 A. Not correct. Resolved could be
2 resolved in one of two ways. If it was resolved in
3 a manner that was not good, meaning we didn't get
4 the concessions we wanted, we still always had the
5 ability to join with people in Option 3. Resolved.
6 It didn't say "resolved positively". It says
7 "resolved".

8 Q. Let me take you to paragraph 20 of
9 your affidavit where you said the following:

10 "It was communicated to
11 [Industry Canada] that Catalyst was
12 willing to be supportive of Industry
13 Canada's stated policy, put large
14 amounts of capital at risk and pull
15 together all of the necessary pieces
16 to build the fourth carrier.
17 However, before Catalyst would take
18 on this risk, [Industry Canada] had
19 to help via changes to the
20 regulatory framework before the
21 'fourth carrier' could increase
22 consumer choice/reduce pricing or
23 compete with the incumbents or
24 support a wholesale operator."
25 I take it that was true evidence when

1 you gave it roughly ten days ago when you swore
2 your affidavit?

3 A. Absolutely, as the opening phrase
4 says, "It was communicated to IC", absolutely
5 accurate.

6 Q. Now, am I right that that is
7 precisely why you intended to continue to negotiate
8 with the Government of Canada for the concessions
9 Catalyst had sought in the period after the share
10 purchase agreement with VimpelCom was executed but
11 before the transaction closed; correct?

12 A. I don't understand the question.

13 Q. You intended to continue to
14 negotiate with the government for the concessions
15 Catalyst was seeking in the interim period between
16 the signing of the agreement with VimpelCom and the
17 closing of the transaction?

18 A. Well, of course, by definition we
19 would have to continue discussions with them.

20 Q. Okay. Now, let me take you to the
21 last issue I have for you, which is the failure of
22 the Catalyst transaction. Am I right that
23 throughout the proposed transaction with Catalyst,
24 VimpelCom made it clear that the transaction was
25 subject to the approval of its board?

1 A. You would have to ask Mr. de Alba
2 what was communicated on that issue.

3 Q. Pull up tab 20, please, and I am
4 just going to pick one example to illustrate the
5 point and try to get you out of here, Mr. Glassman.

6 And here you will find a series of
7 emails of July 13 of 2014 involving Mr. de Alba and
8 Mr. Levin, Babcock and others. This is CCG0024196.
9 And the email I'm interested in is the very last
10 one on the page, on the first page, so just, sorry,
11 scroll to the middle of the page. It is an email
12 from Faaiz Hasan of VimpelCom to Mr. de Alba and
13 copied to others, and you will see he sets out a
14 series of points which don't matter for my
15 question. I'm interested in the very bottom of the
16 page where he says:

17 "Please note that the above
18 terms/SPA is subject to VimpelCom
19 board approval."

20 A. I'm sorry, can you go up to see
21 who sent it to me -- or who sent it to us, I mean?

22 Q. Yes, Faaiz Hasan of VimpelCom.

23 A. Yeah, so that is a pretty
24 formalized and normal routine statement. It would
25 also be expected that the board was informed as

1 major developments occurred in the course of a
2 deal.

3 Q. I take it that no one from
4 VimpelCom told you, start with you, no one from
5 VimpelCom told you that its board would be a rubber
6 stamp in granting its approval; correct?

7 A. That is not quite right. What I
8 was told was that subject to us meeting their
9 economic terms and having a fully negotiated SPA,
10 we should assume that the board would approve it.

11 Q. Who told you that?

12 A. Numerous people on the deal team,
13 some of the lawyers involved, Gabriel, others.

14 Q. Who from VimpelCom told you that?

15 A. No one from VimpelCom told it to
16 me, but it would also make sense in my experience
17 of deals. Nobody puts a surprise in front of their
18 board to have it turned down.

19 Q. In your affidavit you fault the
20 VimpelCom board for not following what you call a
21 typical approach that you would expect to see in a
22 transaction of this nature; correct?

23 A. I'm sorry, where do I say that?

24 Q. At paragraph 43 of your affidavit.

25 A. Yeah.

1 Q. Okay.

2 A. I remember saying that, or
3 something to that effect.

4 Q. Am I right that before this
5 transaction, you had never negotiated a transaction
6 with VimpelCom?

7 A. Correct.

8 Q. You had no previous experience
9 dealing with the board of VimpelCom; correct?

10 A. Correct, but we had done research
11 and we had gotten input from others who had.

12 Q. And you retained Morgan Stanley
13 because of its depth of experience in the banking,
14 in the investment banking world; correct?

15 A. I don't know what that question
16 means. We hired Morgan Stanley because we had a
17 relationship with them and that they are good at
18 this kind of stuff.

19 Q. And you trusted their advice?

20 A. To the extent that I trust any
21 advisor. Everything we get from an advisor has to
22 be at least questioned.

23 Q. And whereas you had no previous
24 experience dealing with the board of VimpelCom, did
25 you know that Mr. Babcock at Morgan Stanley did?

1 A. I think he had had one or two
2 experiences with them. I don't remember exactly.

3 Q. Can you pull up, please, tab 24,
4 where you will find a series of emails involving
5 Mr. de Alba and others of August 8 of 2014. And,
6 Your Honour, this is CCG0024567.

7 And, Mr. Glassman, I want to take you
8 to the bottom of the first page where you will find
9 an email from Mr. Babcock of Morgan Stanley of
10 August 8th of 2014 to Mr. Levin copied -- of
11 Faskens copied to de Alba and another person at
12 Faskens re timing, and he says this:

13 "I would add. All my
14 experience with this board [...]"
15 Which is the board of VimpelCom. I'm
16 happy to walk through all the emails, if you would
17 like.

18 "All my experience with this
19 board is there is nothing normal
20 about it. There is a lot of
21 complexity between management and
22 the board and constant games between
23 Telnor and Alfa, all of which
24 frustrates outsiders."
25 And did you know that that advice had

1 been given by Morgan Stanley to your deal team?

2 A. Well, that advice tells me not to
3 trust them. That advice tells me they are not
4 trustworthy and that they have played dirty tricks
5 in the past. That is what that says, which
6 eventually they actually did, coincidentally right
7 around that date.

8 Q. Now, am I right that when the
9 board of VimpelCom considered the proposed
10 transaction with Catalyst in August of 2014, the
11 board became concerned about the potential risks
12 associated with obtaining regulatory approval?

13 A. That is not correct. The board
14 had and management had already agreed to take the
15 risk of regulatory issues. They became newly
16 concerned about it after -- what appears to be
17 after or on or around August the 7th.

18 Q. Pull up, please, the
19 cross-examination brief at tab 25. Now, these are
20 emails of August 11th, 2014 between Mr. Saratovsky
21 of VimpelCom and Mr. de Alba and others. This is
22 CCG0027248.

23 And, Mr. Glassman, just going back to
24 the last answer you just gave, tell Justice
25 Newbould exactly when this transaction was

1 submitted to the board of VimpelCom before August
2 11 of 2014. Tell him what the date is, tell him
3 what they were asked to consider and what they
4 said. Go ahead.

5 A. I have no idea. I don't know what
6 the date they actually received it. I know that I
7 was told that the deal was done and that there was
8 a call on this same day, August the 11th, with
9 Industry Canada where VimpelCom themselves
10 confirmed to the government that the deal was done
11 but for a small few little technical issues, and
12 that only on this date was the first time that they
13 started making a big deal again about something
14 that had already been agreed to, which was
15 regulatory issues. And we now know why.

16 Q. So let's just take this one step
17 at a time. When you said, as you did at 4:19 p.m.
18 today, that the board had already agreed to take
19 the risk of regulatory issues, that answer was
20 clearly wrong, wasn't it?

21 A. No, that is not wrong.

22 Q. Because you can't point to any
23 circumstance where the board of this company had
24 considered this transaction before August 11 of
25 2014, can you?

1 A. No, but I can rely on the advice
2 of advisors, my deal team, people giving -- and
3 their own management giving assurances to my deal
4 team. We have the right to rely on those people.

5 Q. Mr. Glassman --

6 A. And then we know why they made a
7 180-degree turn.

8 Q. I say this with the greatest of
9 respect --

10 A. Because they got something that
11 was inappropriate in the interim.

12 Q. I say this with the greatest deal
13 of respect. You, sir, are making it up as you go
14 along, aren't you?

15 A. No, I think you are trying to put
16 a square peg in a round hole. Poorly, I might add.

17 Q. Now, let me take you then to the
18 contemporaneous --

19 THE COURT: Can I just ask a question.
20 Mr. Glassman, did you ever talk to anybody at
21 VimpelCom who was on the board who told you what
22 the board did or didn't do?

23 THE WITNESS: No, but I got reports
24 about the board --

25 THE COURT: No, I just asked you that.

1 THE WITNESS: No one specific, no one
2 that is directly on the board, but lots of reports.

3 THE COURT: All right.

4 BY MR. THOMSON:

5 Q. Let me take you to the story the
6 contemporaneous documents tell us, Mr. Glassman,
7 and ask you to look at the emails at tab 25 and, in
8 particular, the one at the very top of the first
9 page. This is now August 11 of 2014 at 7:38 a.m.
10 You would recognize Mr. Saratovsky as being the
11 chief negotiator on behalf of VimpelCom? Do you
12 know that?

13 A. One of the negotiators. I don't
14 know if he was the chief.

15 Q. All right, writing to Mr. de Alba
16 on August 11 of 2014, and if we pull out our handy
17 calendars, because the days of the week may matter
18 as we go through this unraveling, this is now
19 Monday, August 11, and he says this:

20 "The board members are
21 concerned about the consequences of
22 not getting regulatory approval.
23 After our experience with the
24 government, they are concerned about
25 the government's behaviour and

1 therefore wanted us to seek
2 protection in case the government
3 does not approve. They view the
4 interim funding as the amount at
5 risk so we need to discuss this
6 point. The second point is what
7 happens if we don't get approval by
8 December 31 but the parties want to
9 extend. How do we cover the funding
10 and planning after that. I want to
11 stress that we are open to finding
12 solutions to these that work for
13 both of us and I'm sure we can get
14 through this quickly. I am also
15 sure that we can get approval and
16 signing this week and we are
17 planning for it internally."

18 So you are told, at least de Alba is
19 told on August 11 of 2014 on the Monday that the
20 board of VimpelCom was concerned about the
21 consequences of not getting regulatory approval;
22 correct?

23 A. Well, he actually has two
24 contradictory statements. The sentence, the second
25 sentence says the board, they are concerned about

1 the government's approval, and then he says that I
2 want to stress we are open to finding solutions and
3 that I am sure we can get the approval and signing
4 it this week. That tells me that at that point it
5 wasn't a deal-breaker. He was testing an issue.
6 Otherwise, he would have said it is a deal-breaker.

7 Q. You see, I have got little bitty
8 questions, and I'm going to take this one step at a
9 time, so try to stay with me.

10 You are told on August 11 of 2014 by
11 Mr. Saratovsky that the board of VimpelCom was
12 concerned about the consequences of not getting
13 government approval; can we agree on that?

14 A. He says that.

15 Q. And then skip down to the next
16 sentence, and he says:

17 "After our experience with the
18 government", that is the Government
19 of Canada, "they are concerned about
20 the government's behaviour and
21 therefore wanted us to seek
22 protection in case the government
23 does not approve."

24 So now you are told that because of the
25 board's concern about the risks or consequences of

1 not getting approval from the government, they want
2 the deal team to seek protection?

3 A. Seek, not guarantee.

4 Q. Just listen. You were told that
5 they wanted, that the board wanted the deal team to
6 seek protection for VimpelCom; were you not told
7 that?

8 A. For the first time after they had
9 concluded the issue prior to August the 7th.

10 Q. I have just taken you to that, and
11 you told me four minutes ago you are not aware of
12 the board ever considering the transaction before
13 August 11?

14 A. No, I said I wasn't personally
15 aware. That doesn't mean that the board wasn't
16 aware of it. I said that I would have assumed and
17 it would have been normal for the board to be kept
18 informed.

19 Q. Sir, Mr. Glassman, I'm not going
20 to go over the same ground again. I'm going to
21 stand by the evidence you gave five minutes ago on
22 the very same point.

23 A. Me too.

24 Q. And then the next sentence:

25 "They view the interim funding

1 as the amount of risk, so we need to
2 discuss this point."

3 Now, let's just pause there for a
4 moment and take you back to a discussion you and I
5 had just before the break where you said in one of
6 your PowerPoints that the board of VimpelCom or
7 VimpelCom as a company had effectively cut off
8 funding for Wind Mobile in 2014; correct?

9 A. Yeah.

10 Q. And what the board is saying is if
11 we fund the operations of this company between the
12 date of signing a share purchase agreement with
13 Catalyst and the time the transaction is scheduled
14 to close and the government turns the deal down, we
15 need protection for our interim funding, we don't
16 want to be out that money. That is what they are
17 telling you; correct?

18 A. Well, they are not quite saying
19 that they'll fund it. They are saying that they
20 see it as at risk. They are not saying who will be
21 at risk.

22 Q. Clearly if it is a risk to
23 VimpelCom, they must be providing the funding?

24 A. No, that is not clearly right.
25 They may have had other arrangements. I don't know

1 what they were doing. I know that they were losing
2 roughly between 8 and 10 million dollars a month in
3 working capital. That is a very normal sentence to
4 find in a transaction for post-closing or
5 post-agreement prior to closing working capital
6 adjustments, especially for a business that is
7 losing money.

8 Q. And I'm going to suggest to you
9 that this very concern we have identified, that
10 they viewed the interim funding as the amount at
11 risk so they need to discuss this point, that led
12 directly to a request made about three days later
13 by the chairman of VimpelCom's board to Morgan
14 Stanley for a break fee in the range of 5 to 20
15 million dollars?

16 A. You can suggest whatever you want.
17 I have no idea if they were linked.

18 Q. You are aware, of course, that
19 that request was made by the chair of VimpelCom's
20 board to Morgan Stanley for a break fee in the
21 range of 5 to 20 million dollars about two or three
22 days after this email was sent; correct?

23 A. I'm a hundred percent aware that
24 sometime after the 7th and effectively after the
25 11th at night when they announced the deal to

1 Industry Canada, their posture on a whole host of
2 issues started changing with no explanation at the
3 time to us.

4 Q. Well, pull up Mr. de Alba's
5 affidavit, please, at tab 43, and turn to paragraph
6 157 where de Alba says:

7 "By August 15, 2014, VimpelCom
8 had adopted the position that it had
9 to manage the regulatory risk in a
10 more active manner. Specifically,
11 the chairman of VimpelCom's board
12 told Morgan Stanley that he wanted a
13 5 to 20 million dollar break fee if
14 Catalyst was so confident that it
15 would receive regulatory approval."

16 And I take it you have no evidence to
17 the contrary; correct?

18 A. I have evidence that it was a
19 brand new issue that just came up out of nowhere.

20 Q. I keep asking simple questions and
21 you keep giving speeches. The very simple question
22 is, several days later a request was made by the
23 chairman of VimpelCom's board to Morgan Stanley for
24 a break fee in the range of 5 to 20 million
25 dollars; isn't that true?

1 A. Yes.

2 Q. Now, am I correct that as of
3 August 11, 2014, VimpelCom had not secured board
4 approval for the Catalyst transaction?

5 A. I have no idea. I don't sit on
6 their board.

7 Q. And you were becoming impatient,
8 weren't you?

9 A. I was becoming very worried.

10 Q. Turn to tab 25-A, please. So at
11 tab 25-A you will see a series of emails exchanged
12 back and forth with you and others of August 11 of
13 2014, and this is CCG0024632. And I want to take
14 you to the email at the bottom of the first page
15 from Mr. Saratovsky of VimpelCom to Mr. Levin,
16 copied to de Alba, Babcock, and to about 14 or 15
17 other people at UBS, and so on, and you will see
18 the email says "Re: Exclusivity agreement signed",
19 he says:

20 "We will do all we can to
21 expedite but the reality is that we
22 have two public company boards that
23 need to approve it so I don't want
24 to set unrealistic expectations."
25 And then if you go above that, you will

1 see that that email ends up being sent on to you by
2 Levin at Faskens, and your response is at the top
3 of the first page, your email of August 11, 2014 at
4 10:17 a.m. sent to Levin and de Alba, and you say:

5 "Tell him that's his problem to
6 manage now. I expect this to be
7 press released today. Otherwise, no
8 deal. I am fed up. I do not want
9 to hear a single more excuse from
10 them."

11 So unpacking that a little bit, you
12 were told on August 11 that VimpelCom did not have
13 board approval, and in fact, it needed approval
14 from two public company boards before they could
15 proceed; correct?

16 A. Yeah, we saw it as a stall tactic,
17 which it was.

18 Q. I'm just asking what you were
19 told, sir. You were told on August 11 that
20 VimpelCom did not yet have board approval and in
21 fact needed the approval of two public company
22 boards; correct?

23 A. Yes, as a stall tactic, and then
24 they announced the deal to Industry Canada the same
25 day.

1 MR. THOMSON: Your Honour, this is
2 becoming a little bit exasperating, but I guess --

3 THE COURT: Well, Mr. Glassman wants to
4 argue his case. I asked him not to, but --

5 BY MR. THOMSON:

6 Q. He persists.

7 So, sir, you are the author of your own
8 misfortune, and we'll be making submissions about
9 this as we move forward.

10 So let's look at your reaction. Your
11 reaction was not one of sympathy for VimpelCom.
12 You asked Levin and de Alba to tell VimpelCom that
13 that was their problem to manage, and you expected
14 this to be press released today on August 11 of
15 2014, otherwise there was no deal; correct?

16 A. Yes, with a positive result.

17 Q. Well, we are going to see how
18 positive the result was in just about one minute.
19 By August 11, Mr. Glassman, you were furious not
20 only with VimpelCom but also with your own deal
21 team; correct?

22 A. No. Furious with VimpelCom,
23 frustrated with my deal team.

24 Q. Well, let's just see what you said
25 at the time. Turn up, please, tab 25-B. Again,

1 this is another series of emails on August 11 of
2 2014, the very same day. This is document
3 CCG0024640, a series of emails that you were
4 involved in.

5 And let me start at page 4 of this
6 email chain, an email you sent again on August 11
7 of 2014, Mr. Glassman, at 8:12 a.m. Do you have
8 that at the bottom of the page? On August 11 of
9 2014 at 8:12 a.m. you write an email and this goes
10 up the chain. We'll see where it goes in a minute.
11 You write and say:

12 "I am done with this situation.
13 Either it's announced immediately
14 and is fully binding subject to
15 regulatory approval (has always been
16 the deal) or Catalyst is out right
17 now."

18 So by 8 o'clock on the morning on
19 August 11 you are becoming frustrated and upset;
20 fair enough?

21 A. I'm pushing people, pushing
22 everybody.

23 Q. Just above that, Mr. Levin's
24 response at 8:19 a.m., and Levin writes back to you
25 copied to de Alba and says:

1 "Let's see what we can
2 organize. They need board approval
3 and do not have it."

4 Again, you are told for the second time
5 on the 11th they don't have board approval;
6 correct? Correct?

7 A. No, Jon is repeating what they
8 have already been told.

9 Q. You were being told by your
10 lawyer, Mr. Levin, who you have been dealing with
11 for 25 years, you say, that they need board
12 approval and they do not have it?

13 A. No, you misunderstand my answer.
14 He is basing that statement on what he has been
15 told, so he is just repeating the same piece of
16 information.

17 Q. It is a simple question. You were
18 being told by your lawyer that they need board
19 approval and they do not have it?

20 A. It is the same information. It is
21 from the same source.

22 Q. And then just above that, let's
23 see what your reaction is, Mr. Glassman, about six
24 minutes later. At 8:25 a.m. you write back and you
25 say:

1 "That's now their problem."

2 And then you say this:

3 "I am furious - both at them
4 and at our own team."

5 That is why I suggested to you five
6 minutes ago that by August 11 you were furious not
7 only with VimpelCom but also with your own deal
8 team?

9 A. Okay, so I told them that I was
10 furious at them.

11 Q. And then you go on to refer to
12 some other issues, and you say:

13 "To allege that somehow there
14 is no way to gain control of the
15 collateral unless Tennenbaum
16 voluntarily sells is both
17 legally/factually wrong but
18 ridiculous. To allow the other side
19 to use such to buy a delay is naive
20 and amateurish. They are allowed to
21 try any tactic they desire but it's
22 our job to decide which ones are
23 legitimate and acceptable and which
24 are not. The situation is not the
25 first one they have tried on us.

1 And they re-traded the last time
2 when we were close to the finish
3 line. It is their job to manage
4 their own board and get whatever
5 approvals they need. It is our
6 team's job to manage me, and I am
7 fed up and done."

8 So you sent that email, did you not, at
9 8:25 a.m.?

10 A. I clearly did.

11 Q. On the 11th?

12 A. I clearly did. And it shows my
13 distrust of their tactics.

14 Q. And Levin writes back, sir, three
15 minutes later to tell you that your concerns are
16 unfounded. He says:

17 "I don't think the Tennenbaum
18 situation is being used by them in
19 the way you say. We gave them a
20 solution to it so that is not likely
21 an issue."

22 You then write back at the top of that
23 page four minutes later at 8:32 a.m.:

24 "I was told yesterday that in
25 fact it was the issue - the reality

1 is that our side should not have
2 ever been allowed it to be more than
3 a momentary process discussion. Now
4 we are in the position where it has
5 been used to introduce unnecessary
6 and uncontrollable external deal
7 risk. That is not good and it's
8 definitely not the way Catalyst runs
9 deals."

10 Levin writes back six minutes later,
11 seven minutes later, at 8:39 a.m. the same day,
12 August 11:

13 "It was momentary. As soon as
14 it was identified as an issue,
15 Gabriel and I dispelled it."

16 And then you say the following at the
17 top of that page at 8:54 a.m.:

18 "Clearly not just momentary -
19 by definition, since I had to jump
20 in and try to understand what was
21 said by the other side. Worse, very
22 clear to me that it was either an
23 attempt to delay (or evidence of
24 cold feet/change of heart by them)
25 or incompetent counsel on their

1 side. All bad from my perspective,
2 and my job is to identify the worst
3 scenario and then mitigate/eliminate
4 risk related to such. That is
5 exactly what I am doing and am now
6 demanding this deal be publicly
7 disclosed/press released today if
8 they want it to continue/remain
9 alive. That is no longer negotiable
10 for me. I don't trust them and
11 their behaviour makes even less
12 sense in the larger scheme of what
13 is going on between the big
14 personalities (Harper, Fridman,
15 Putin) on a much bigger scale."

16 So your position as of 8:54 a.m. on
17 August 11 was if the deal isn't press released
18 today, it is done, you are out?

19 A. Announced, and it was announced to
20 Industry Canada that night.

21 Q. Look at your words.

22 A. I understand what I wrote.

23 Q. "This deal be publicly
24 disclosed/press released today"?

25 A. Yeah.

1 Q. Not a discussion with Industry
2 Canada, press released?

3 A. And they gave me exactly the best
4 they could. I don't know a lot of companies that
5 would go to Industry Canada and make a disclosure
6 and then say they didn't have board approval when
7 they talked to the regulator.

8 Q. We'll talk about that in about one
9 minute, what happened on the night of August 11.

10 And then just to finish the discussion
11 and to just skip through a bit of this, go to the
12 top of the next page, the top of the first page,
13 that being an email you sent August 11 at 10:33
14 a.m. on the issue of board approval. You say:

15 "It's their problem to solve.
16 I will not allow us to own their
17 process issues. I have my own
18 problems related to this timing, not
19 the least of which is a call with
20 Harvard today and a complicated AP",
21 that's your advisory panel, "a
22 complicated [advisory panel] meeting
23 tomorrow. I have to have this in
24 the public domain today."

25 Correct?

1 A. Yes.

2 Q. Not a call with Industry Canada.
3 "I have to have this in the public domain today"?

4 A. Yes, I was using other issues as a
5 way of pushing my team, that's right, rightly so,
6 and got a result.

7 Q. Surely, Mr. Glassman, you weren't
8 being dishonest with your deal team, were you?

9 A. I was pushing my deal team and I
10 was using whatever means I had. They knew about
11 the advisory panel meeting, they knew about issues
12 with Harvard, and they knew that it would be a
13 reasonable thing that I needed something to tell
14 them both, and I did. It just wasn't exactly what
15 I asked for. It was one step less than that.

16 Q. You weren't being dishonest with
17 your deal team, were you?

18 A. I was clearly manipulating my deal
19 team and managing them.

20 Q. Because that is what you do, isn't
21 it, you manipulate, you mislead?

22 A. No, I didn't say that. I said
23 that I manipulated them on this issue. They would
24 know that any disclosure to the advisory panel
25 would probably be good enough. They would know

1 that I'm pushing them, and they would understand
2 exactly what I am saying.

3 Q. Am I right --

4 A. They wouldn't be quite as literal
5 as you are.

6 Q. Am I right that there was in fact
7 no press release announcing a Catalyst transaction
8 on August 11 of 2014?

9 A. As I have said earlier, there was
10 a call with Industry Canada.

11 Q. And am I right that you were told
12 on the very next day, on Tuesday, August 12th, that
13 a press release could not be issued unless and
14 until VimpelCom obtained board approval?

15 A. It is possible I was told that.

16 Q. Pull up, please, tab 25-C where
17 you will find a series of emails of August 12 of
18 2014. And, Your Honour, these are CCG0027262.

19 And, Mr. Glassman, I want to take you
20 to the middle of the second page of this document,
21 and we'll take these in sequence, where you were
22 told on August 12 of 2014 at 8:09 a.m. -- sorry, at
23 least Catalyst was told by Mr. Saratovsky, and you
24 will see his email to Mr. de Alba of August 12 at
25 8:09 a.m. where he says:

1 "Gabriel, we should not issue a
2 press release until we know when we
3 are going to have board approvals.
4 I cannot guarantee that I will
5 secure a board approval on the
6 current terms. You have agreed to
7 provide a line of credit to
8 refinance the vendor debt on the
9 same terms as the existing vendor
10 debt. We will likely draw down the
11 credit line soon after signing. We
12 need any drawdowns under the credit
13 line to come due no earlier than 3
14 months after termination of the SPA.
15 This is because if the deal fails
16 due to a government rejection, we
17 need some breathing room to remarket
18 the company without having to go
19 into CCAA. You and I both believe
20 that government approval should not
21 be an issue but we have had a bad
22 experience with the government in
23 the past, and we need some
24 protection to be able to preserve
25 value if our deal blows up."

1 So again, the position of VimpelCom was
2 that there isn't board approval, that there should
3 be no press release issued until there is board
4 approval, and Mr. Saratovsky specifically told your
5 chief negotiator that he could not guarantee that
6 he would be able to secure board approval on the
7 current terms; fair enough?

8 A. That is what it says.

9 Q. Now, let's then deal with this
10 call with Industry Canada that took place on August
11 of 2014. Go to paragraph 45 of your affidavit
12 where you say in paragraph 45 at the top of page
13 18:

14 "Despite VimpelCom's sudden
15 concerns about regulatory risk,
16 during the late evening on August
17 11, 2014, I understand from de Alba
18 that Catalyst and VimpelCom had a
19 call with Industry Canada during
20 which the parties told Industry
21 Canada that 'the deal was done'."

22 Do you see that?

23 A. I do.

24 Q. I took it from your affidavit that
25 you were not on the call?

1 A. I was not.

2 Q. And of course, as of August 11 of
3 2014, you knew fully well that there was no board
4 approval from VimpelCom, and we have been through
5 that; correct?

6 A. I'm sorry, say that again?

7 Q. You knew that there had been no
8 board approval from VimpelCom as of August 11th?

9 A. Okay.

10 Q. You knew that?

11 A. I was told that, yeah, no formal
12 board approval.

13 Q. Well, no board approval?

14 A. No formal board approval.

15 Q. So now we are into a formal versus
16 informal. They informally had approved it; who
17 told you that? Who told you the board of VimpelCom
18 had informally approved the deal?

19 A. Nobody had to tell me anything.
20 Normal practice and my experience for 26 years,
21 fairly successfully, is that no management team
22 would ever take a deal to the one yard line and
23 then spring a surprise on their board, unless they
24 intended to use the board as a way to scuttle the
25 deal, which appears to have happened here.

1 Q. We have been around that mulberry
2 bush five minutes ago; I'm not going to retread
3 that ground again.

4 A. And I was also told about this
5 call from Bruce Drysdale.

6 Q. Pardon me?

7 A. I was also told about this call by
8 Bruce Drysdale.

9 Q. Now, I'm going to suggest to you
10 that in these circumstances, Catalyst had no basis
11 whatsoever for telling Industry Canada on the
12 evening of August 11 of 2014 that the deal was done
13 because it clearly was not?

14 A. VimpelCom told Industry Canada.

15 Q. Well, you weren't on --

16 A. By both parties.

17 Q. Well, you weren't on the call,
18 were you?

19 A. But VimpelCom was, and I know
20 VimpelCom was, and if they didn't think the deal
21 was done, they would have protested. They didn't.

22 Q. You don't know what the precise
23 words were?

24 A. No, but I had it from two separate
25 sources, Bruce Drysdale and Gabriel.

1 Q. Are you able to show me a
2 contemporaneous document?

3 A. No.

4 Q. Am I right that by Thursday,
5 August 14 of 2014 you had concluded that Catalyst's
6 transaction with VimpelCom was in fact technically
7 dead?

8 A. Either dead or deeply in trouble.

9 Q. And pull up, please, tab 25-D.
10 You will find a series of emails of August 14th of
11 2014 which are, Your Honour, CCG0028615.

12 And, Mr. Glassman, you'll find here a
13 series of emails that you exchanged back and forth
14 with a reporter named Boyd Irman; do you see that?

15 A. They haven't moved it, but I
16 remember this.

17 Q. And Mr. Irman is a reporter with
18 The Globe and Mail, is he?

19 A. I don't know if he still is. I
20 think he was then.

21 Q. All right. And the email I'm
22 interested in is at the very top of the first page.
23 It says:

24 "I suspect the opposing deal
25 team has leaked this to put pressure

1 on us. The [strict] fact [...]" --
2 or the "straight fact"?

3 Is it "strict fact" or "straight fact"?

4 A. I think it is supposed to be
5 "strict".

6 Q. "The [strict] fact is that
7 although we continue to have
8 exclusivity, the deal is technically
9 dead so I was careful in my response
10 [...]"

11 So that was your perspective as of
12 August 14, was that this deal with VimpelCom was
13 technically dead?

14 A. Well, either the deal or certainly
15 the exclusivity, because there was something very
16 fishy about what was going on. This was a
17 whipped-off email, so I don't know if I meant the
18 deal. I certainly meant the exclusivity was
19 clearly leaked and something else was going on. It
20 was very clear that there were troubles.

21 Q. And, Mr. Glassman, you may have
22 noted that we have been through a series of emails
23 about the exchanges with VimpelCom, board approval,
24 about the risk to the deal, the status of the deal,
25 and of course not one of your emails was sent or

1 copied to Lorne Creighton; correct? These were all
2 to you, between you, de Alba, Riley, and Levin?

3 A. I think on these issues, yeah.

4 Q. And am I right that Creighton was
5 the analyst at Catalyst who stepped into the shoes
6 of Mr. Moyse after Moyse left Catalyst in May of
7 2014?

8 A. I believe so.

9 Q. These emails weren't even copied
10 to Zach Michaud who, as you said earlier, was a
11 Vice President of Catalyst who was involved
12 throughout the Wind transaction as a member of the
13 core deal team; correct?

14 A. I believe so.

15 Q. And am I right that you were
16 picking and choosing who to send emails to and who
17 to copy on the emails?

18 A. Well, I was certainly choosing
19 only to talk to my two partners about it.

20 Q. You could easily have sent these
21 emails to every investment professional at Catalyst
22 or at least to the entire core deal team at
23 Catalyst but you chose not to do so; correct?

24 A. Clearly.

25 Q. Now, am I right that, to finish

1 the story, Friday, August 15 of 2014 is the date
2 that the chairman of VimpelCom's board tells Morgan
3 Stanley that he wants a break fee of 5 to 20
4 million dollars if regulatory approval is not
5 granted within 60 days?

6 A. I don't know the exact date, but
7 you have demonstrated that it did come from them.

8 Q. Let's go to your affidavit, I hope
9 one last time. Turn to paragraph 46 where you say
10 this:

11 "I'm told by de Alba that
12 Catalyst and VimpelCom had agreed on
13 a timetable for regulatory approvals
14 weeks earlier. However, suddenly by
15 August 15, 2014 VimpelCom insisted
16 on a new term that provided for a 5
17 to 20 million dollar break fee if
18 regulatory approval was not granted
19 within 60 days, which everyone knew
20 was highly unusual, and, on its own,
21 unreasonable."

22 I take it that is the timing of the
23 request that was made?

24 A. You said August 15th, and I wrote
25 "by August 15th". I don't know the exact date that

1 it happened.

2 Q. Okay. And am I right, if we read
3 on in your affidavit, you say:

4 "Ultimately, Catalyst could not
5 close the deal with VimpelCom
6 because of VimpelCom's insistence on
7 this new term."

8 Which I took to mean that Catalyst had
9 not agreed to the term VimpelCom had asked for;
10 correct?

11 A. Correct.

12 Q. Now, just to finish the story, if
13 we then turn to the last event I wanted to review
14 with you and turn to tab 25-E, you will find a
15 series of emails that deal with that request for
16 this break fee and so on. This is August 15, 2014,
17 and this is CCG0024802. And we can start halfway
18 down the first page, and you will find an email
19 from Mr. Levin of August 15th of 2014 at 2:37 p.m.;
20 do you have that?

21 A. I see it.

22 Q. Mr. Levin says:

23 "They are out to lunch, and I
24 think we should tell them."

25 Above that, de Alba says in an email at

1 2:38 p.m.:

2 "Absolutely."

3 And then just above that, Mr. Babcock
4 from Morgan Stanley says:

5 "Tell them and shut down
6 communication. This needs to go
7 past the exclusivity time as [...]"

8 And he says "Alksey" and I assume that
9 is a reference to Aleksey Reznikov, the chair of
10 VimpelCom; is that how you read that?

11 A. I am assuming you are right.

12 Q. "This needs to go past the
13 exclusivity time and [the chair of
14 VimpelCom] needs to see his
15 alternatives and their terms."

16 And I take it that Catalyst did in fact
17 follow the advice given to it by Faskens and by
18 Morgan Stanley, that it did tell VimpelCom that
19 this term was unacceptable, and it then shut down
20 communications, allowed this period of exclusivity
21 to come to an end and allowed VimpelCom to consider
22 its alternatives?

23 A. I don't know the exact timing, but
24 I know that the exclusivity expired on August 18th.

25 Q. Right.

1 A. And the conclusion that you have
2 posed is correct. I just don't know the timing of
3 exactly when it was communicated or how it was
4 communicated.

5 Q. Am I right that, to your
6 knowledge, Catalyst did in fact continue to pursue
7 its acquisition of Wind Mobile in the period after
8 its exclusivity expired on August 18th?

9 A. I believe so.

10 Q. And am I also right that Catalyst
11 has refused to make any disclosure or production
12 concerning its efforts to acquire Wind in the
13 period after August 18 in this case?

14 A. I think it was half-hearted. I
15 think it was just phone calls, I believe.

16 MR. THOMSON: Thank you very much, Mr.
17 Glassman. Those are all of my questions.

18 THE COURT: Yes, Mr. Centa?

19 MR. CENTA: I'm in your hands, Your
20 Honour, if you want me to proceed now, or I can
21 take overnight and shorten this up and come back
22 tomorrow.

23 THE COURT: That is the old promise.

24 MR. CENTA: I'll stand and deliver
25 tomorrow morning.

1 THE COURT: Sometimes it is give me
2 time and I'll shorten it, and then the time goes by
3 and it has lengthened it. What is it going to be?

4 MR. CENTA: It is my chess clock, Your
5 Honour, and I will do my best.

6 THE COURT: All right, we'll stop now.
7 Okay, we'll come back at 9 o'clock
8 tomorrow morning.

9
10 -- Adjourned at 4:52 p.m.

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In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 3
June 08, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 3/Volume 3 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 8th day
of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

5 A P P E A R A N C E S :
6

7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq., for the Plaintiff.
9 & Brad Vermeersch, Esq.
10
11 Robert A. Centa, Esq., for the Defendant,
12 & Kris Borg-Olivier, Esq., Brandon Moyse.
13 & Denise Cooney, Esq.
14
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
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1 -- Upon commencing at 9:10 a.m.

2 THE REGISTRAR: Good morning,
3 Mr. Glassman. Just to remind you, you are still
4 under oath.

5 NEWTON GLASSMAN: PREVIOUSLY AFFIRMED

6 THE COURT: Mr. Centa?

7 MR. CENTA: Good morning, Justice
8 Newbould. You will find the documents that I
9 intend to refer to this morning in the folder
10 Evidence at Trial, and then Mr. Glassman's folder.

11 THE COURT: I have it.

12 MR. CENTA: You've got it? Terrific.

13 THE COURT: I notice you've got an iPad
14 as opposed to Mr. Thomson had a great big thick
15 binder of paper.

16 MR. THOMSON: We call that old school.

17 THE COURT: Me too.

18 CROSS-EXAMINATION BY MR. CENTA:

19 Q. Good morning, Mr. Glassman, my
20 name is Rob Centa, I am counsel for Brandon Moyse
21 in this proceeding.

22 Mr. Glassman, you've worked with Mr. de
23 Alba for approximately 14 years?

24 A. Approximately.

25 Q. And you know him very well?

1 A. I think so.

2 Q. And as you said yesterday about
3 him, he knows exactly who you are?

4 A. I hope so.

5 Q. Mr. de Alba has extensive and
6 impressive experience in the telecommunications
7 industry?

8 A. Yes.

9 Q. And as you explained yesterday,
10 that includes leading the restructuring of AT&T
11 Latin America which was eventually sold for 14
12 billion dollars?

13 A. Something like that.

14 Q. And that predates his arrival at
15 Catalyst?

16 A. It does.

17 Q. And since Mr. de Alba arrived at
18 Catalyst, he has continued to develop extensive
19 telecommunications and wireless telecommunications
20 experience through his work at Catalyst?

21 A. The whole firm has.

22 Q. Including Mr. de Alba?

23 A. Yeah.

24 Q. And as of March 2014, Mr. de Alba
25 had accumulated more experience in the

1 telecommunication sector and the wireless
2 telecommunication sector than had Mr. Moyse?

3 A. For sure.

4 Q. Mr. de Alba was the principal
5 person negotiating with VimpelCom and other parties
6 on the Wind transaction?

7 A. The business issues, yes.

8 Q. The business issues.

9 A. Yes.

10 Q. And in terms of the negotiations
11 with VimpelCom on the Wind transaction, what other
12 issues were being negotiated other than -- other
13 than the business issues you just described?

14 A. Well, there were other parties so
15 there was regulatory issues, there was timing
16 issues, there was -- within Mobilicity there were
17 creditor right issues, there was a whole bunch of
18 other things going on at the same time.

19 Q. And among those other issues, you
20 would have been the principal person responsible
21 for some of them, like the regulatory issues
22 dealing with the government?

23 A. Yes. Some.

24 Q. Some. Not all, some. Would
25 Mr. Riley have been the principal person

1 responsible for some other issues related to the
2 constellation of concerns you just described?

3 A. Some.

4 Q. And as of March through May, would
5 you agree with me that Mr. de Alba had more
6 knowledge on the Wind file than did Mr. Moyses?

7 A. Yeah.

8 Q. You described yourself yesterday,
9 I believe, as the chief architect of Catalyst's
10 regulatory strategy?

11 A. Amongst other things, yeah.

12 Q. Sorry, not to suggest that's your
13 only role, but that was one of your roles?

14 A. Yes.

15 Q. And you had more knowledge about
16 that component, Catalyst's regulatory strategy,
17 than did Mr. Moyses?

18 A. That's why we made sure the rest
19 of the team was informed, yes.

20 Q. Absolutely. And you were doing
21 the informing because that was one of your areas of
22 principal responsibility?

23 A. I was doing part of the informing.

24 Q. Correct. But take it one step at
25 a time. You were the chief architect of the

1 regulatory strategy?

2 A. Yes.

3 Q. And you took the lead in the
4 formal negotiations with the government and the
5 government's officials?

6 A. Sure.

7 Q. And you often took the lead in the
8 informal negotiations with the government
9 officials?

10 A. Sure.

11 Q. And in that role you were
12 augmented by Mr. Drysdale in some of the informal
13 discussions with government?

14 A. Sure. I was augmented by the
15 whole team, including Mr. Moyse. We got feedback
16 from everybody on the team.

17 Q. In terms of negotiations or
18 discussions with government, you don't suggest that
19 Mr. Moyse was having even informal discussions?

20 A. No, no, of course not.

21 Q. You were having those discussions,
22 correct?

23 A. I was one of the parties having
24 the discussions.

25 Q. And Mr. Drysdale was one of the

1 parties having those discussions?

2 A. The informal part of the
3 discussions.

4 Q. And Mr. Riley was having some of
5 those discussions?

6 A. Some of the indirect
7 conversations, so he would have been involved in
8 the process.

9 Q. Okay. And then you and
10 Mr. Drysdale and Mr. Riley, to the extent he was
11 having indirect conversations, would then be
12 responsible for conveying that information back to
13 the other members of the deal team who were not
14 having those conversations?

15 A. Correct.

16 Q. And one of the things that Mr. de
17 Alba would know about you is, as you said
18 yesterday, you would never relieve the tension on
19 any deal member on any deal at any point in time?

20 A. Not unless there was a strategic
21 or tactical reason to do so.

22 Q. And Mr. de Alba would know that
23 about you?

24 A. He would.

25 Q. And as you said, you would never

1 let up the pressure on a deal team member?

2 A. Not unless there was a tactical or
3 strategic reason to do so.

4 Q. You described yourself yesterday
5 as an instigator of pressure?

6 A. At times.

7 Q. And that's because putting
8 pressure on your advisors and your deal team
9 members, putting pressure on the other side,
10 putting pressure on the other stakeholders, is one
11 of the things, not the only thing, but one of the
12 things that has made Catalyst exceptionally
13 successful over its life?

14 A. I think so, given what we do for a
15 living.

16 Q. Given what you do for a living --

17 A. Yeah.

18 Q. -- placing that pressure is an
19 important element in your success?

20 A. I think it's been helpful to our
21 success.

22 Q. And as you said, absent a
23 strategic or tactical reason to do otherwise,
24 Mr. de Alba would know that?

25 A. Sure.

1 Q. And as you said yesterday, we
2 could ask him that?

3 A. Sure.

4 Q. And you would never not ask a
5 question of an analyst, an important question you
6 wanted answered, just to avoid putting pressure on
7 an analyst?

8 A. No, that I would do. It might
9 have a tactical reason.

10 Q. To not ask a question of an
11 analyst?

12 A. That's not how I heard your
13 question. I'm sorry, can you repeat it?

14 Q. If you wanted an important
15 question answered by an analyst, if you had an
16 important question for an analyst, you would ask
17 it?

18 A. Well, I may not ask it but it
19 would be asked. It would be done in a manner that
20 we thought got the best result. So if my asking it
21 would potentially obscure or frustrate the outcome,
22 then we would have somebody else ask the question.
23 But it would be discussed.

24 Q. And the question would be asked
25 and answered?

1 A. We hoped it would be answered.

2 Q. Mr. Riley is the chief operating
3 officer at Catalyst?

4 A. He is.

5 Q. He is also a partner?

6 A. He is.

7 Q. He accompanied you to meetings in
8 Ottawa on March 26th and May 12th?

9 A. Yes, he did.

10 Q. And through attendance at those
11 meetings and his other involvement at Catalyst he
12 had extensive knowledge of the Wind file?

13 A. He did.

14 Q. This was not the first time that
15 Mr. Riley had a role in government relations on a
16 file in Catalyst?

17 A. I don't know if it was the first
18 but it's not the only.

19 Q. It's not the only. He had
20 attended meetings with government officials on
21 behalf of Catalyst on other occasions?

22 A. That I don't know.

23 Q. You told us yesterday that
24 Industry Canada had no problem with Catalyst
25 keeping a copy of the final PowerPoint presentation

1 that you delivered to them on March 26th?

2 A. That was my understanding.

3 Q. That was what they told you?

4 A. Yes, that doesn't mean that they
5 didn't internally have a problem with it. The
6 question was, they had no problem with it. I don't
7 know. They articulated that to us. I don't know
8 what they were thinking.

9 Q. Right. But Industry Canada told
10 you --

11 A. Yeah.

12 Q. -- that you could keep a copy of
13 the final PowerPoint presentation, correct?

14 A. Yes.

15 Q. But they requested that you
16 destroy the draft presentations?

17 A. All the drafts leading up to it.

18 Q. You testified that you kept a
19 master file with the final presentation in it?

20 A. I didn't say I kept it. I said
21 the firm kept it.

22 Q. The firm kept --

23 A. Yes.

24 Q. -- a master file with the final
25 presentation in it?

1 A. That was their instructions.

2 Q. And the team members were asked to
3 destroy their draft presentations?

4 A. Correct.

5 Q. And Catalyst does not have a
6 general practice of destroying copies of
7 presentations made to government?

8 A. I don't know if we've ever made
9 another presentation to government.

10 Q. Catalyst does not have a general
11 practice, though, there's no policy, no practice,
12 of destroying presentations to government?

13 A. I think this was the first
14 presentation we've ever actually made formally to
15 any government official. So I don't know what that
16 means to say we have a practice or not have a
17 practice. We were asked to do something; we did as
18 we were asked. If in the future they asked us to
19 do something that was improper, we would have a
20 discussion about it.

21 Q. So having -- if it's true that you
22 had never made a presentation to government before,
23 then you wouldn't have had a practice of destroying
24 those presentations because you hadn't made
25 presentations before that, correct?

1 A. I can only give you the testimony
2 that we would do as we were asked so long as it was
3 legal and we considered it appropriate.

4 Q. Can you turn up tab 13, please, in
5 the cross-examination binder. This is the
6 examination for discovery of Mr. de Alba and these
7 are questions regarding the destruction of the --

8 THE COURT: Not in my copy. Tab 13 is
9 not that.

10 MR. CENTA: This is my
11 cross-examination binder, the Paliare Roland.

12 THE COURT: Yes, I have your
13 cross-examination. Tab 13 is an email.

14 MR. CENTA: Perhaps, Justice Newbould,
15 if I could direct you -- we'll try and sort that
16 out for you. If you could look at the big screen,
17 I can call up the very short question I'm going to
18 refer to and we will provide you with whatever
19 cross-references we need to. So I am referring to
20 tab --

21 THE COURT: Hang on, hang on.

22 MR. CENTA: Mr. Thomson advises me you
23 might find this at tab 41 of his cross-examination
24 folder, if that would be easier.

25 THE COURT: Anyway, you go ahead, I'll

1 just do it here.

2 MR. CENTA: Thank you.

3 BY MR. CENTA:

4 Q. So I'm referring to document
5 WFC011936, it's page 39 of the transcript, page 40
6 of the document, and these are questions being
7 asked by Mr. Milne-Smith of Mr. de Alba in regard
8 to the March 26th PowerPoint presentation.

9 And Mr. Milne-Smith asks of Mr. de
10 Alba:

11 "Question: Is it Catalyst's
12 general practice to destroy copies
13 of presentations made to
14 government?"

15 Mr. de Alba's answer:

16 "Answer: It is. It is also
17 industry practice to keep
18 information that is critical
19 confidential."

20 That was question 143. And,
21 Mr. Glassman, I take it you're not aware of any
22 general practice at Catalyst to destroy copies of
23 presentations made to government?

24 A. You can't have a general practice
25 if it was the first time that we made a

1 presentation.

2 MR. CENTA: Thank you. Those are my
3 questions.

4 MR. DIPUCCHIO: No re-examination, Your
5 Honour.

6 THE COURT: I've got a couple of
7 questions for you, Mr. Glassman.

8 You said yesterday that Catalyst
9 perhaps not de jure but de facto controlled
10 Mobilicity, and I think you were talking about
11 around the time it went into CCAA.

12 I just want to understand when you say
13 de facto you controlled Mobilicity, why did you say
14 that was the situation?

15 THE WITNESS: We owned just under a
16 negative control blocking position. We owned 32.6
17 percent or 32.4 percent, I forget the exact number.
18 We had verbal support from a couple of the minority
19 bondholders who had this very strange lockup that
20 had been manufactured to support us.

21 So at our own 32 and change percent it
22 would be mathematically difficult but not
23 impossible to overrule us in a plan, but with the
24 support of even a small piece, we had effectively
25 negative control. We eventually did get negative

1 control. One of the holders did sell the block to
2 us eventually and we had over 34 percent.

3 The other reason -- that's number one.

4 THE COURT: What you call negative
5 control, you mean a blocking position?

6 THE WITNESS: A blocking position.
7 That was the first reason.

8 The second reason was because there
9 was, and you presided over the case so you and I
10 may have different views of certain issues, but
11 there was this attempt through the holding company
12 to control how the actual collateral was being
13 treated because the holding company was out of the
14 money.

15 Our position in the holding company had
16 structural and legal seniority. That also provided
17 us with a certain amount of de facto control over
18 what would happen. So I meant both issues.

19 THE COURT: Again, the holding company,
20 was that a blocking position?

21 THE WITNESS: No, our blocking position
22 was at OpCo, so we were structurally senior and
23 legally senior. It would be very difficult to get
24 a plan through, but aside from even the mathematics
25 of the negative control, there was this issue, if

1 one spent enough time thinking about it, there was
2 this issue of trying to do what would otherwise
3 look like a substantive consolidation in order to
4 move money and value up to the HoldCo. That would
5 never happen because we would have kept contesting
6 it and I believe that we eventually would have won
7 it because I think you knew what was going on.

8 THE COURT: The other question has to
9 do with a statement you made yesterday, I think in
10 your affidavit as well, that you were shocked when
11 you finally saw what the West Face, or the
12 consortium deal was, that I think you said you
13 didn't think any fiduciary could just ignore or
14 waive the problem of the government regulation.

15 Was that a view held generally in the
16 industry?

17 THE WITNESS: Yes.

18 THE COURT: That the government
19 regulations would have to change for something to
20 work?

21 THE WITNESS: Yes.

22 THE COURT: And would you assume or not
23 that any other player bidding for Wind would have
24 the same concern? I take it from being shocked,
25 you would have?

1 THE WITNESS: Two things. I can't
2 remember if I used the phrase shocked or
3 gob-smacked, but shocked.

4 THE COURT: I wrote down the word
5 "shocked" so I assume you used it.

6 THE WITNESS: It would be in my style
7 to say gob-smacked too, so I just wanted to be
8 clear but I do mean shocked if I said gob-smacked.

9 In the context of at that time of what
10 was going on, you had a situation where the
11 government had unilaterally changed rules, likely
12 illegally, related to a contract, to contracts and
13 to spectrum. You had everybody losing money. You
14 had the government pushing for something that
15 nobody could make sense of either in the industry
16 or, frankly, in the press.

17 So for somebody to take the risk
18 related to regulatory approval had to have meant
19 that they were either disregarding or denigrating
20 their duty over other people's money or they had a
21 piece of information that allowed them to view it
22 in a way that they didn't think it was a risk.

23 THE COURT: But you assume that another
24 bidder -- would you assume that another bidder
25 would think you were trying to do something so you

1 wouldn't have to face that risk?

2 THE WITNESS: So VimpelCom itself was
3 terrified of the regulatory risk and they said that
4 because -- and we've seen the testimony where they
5 said that because of their own experience with the
6 government, the government had turned down other
7 deals, the environment had gotten worse, so for
8 example, the original founder of Orascom, and
9 Orascom was sold to VimpelCom, was turned down on
10 his attempt to purchase ManitobaTel, so here is
11 somebody who in the past was acceptable, now wasn't
12 acceptable.

13 The business was losing a lot of money.
14 I suspect -- people that we had talked to, plus
15 common sense, would tell one that it would be
16 expected, notwithstanding the posturing and the
17 positioning by the seller, who didn't want to
18 accept the risk, that no one would take that risk,
19 which is one of the reasons why we were talking
20 about the lawsuit with the government, because the
21 government had a problem.

22 THE COURT: All right. So --

23 THE WITNESS: And that was the way out.

24 THE COURT: Would it be fair to assume
25 that another bidder such as West Face or the

1 consortium, would it be fair to assume that they
2 would think that you were putting some condition to
3 the government or putting some position to the
4 government that they had to waive their position?

5 THE WITNESS: It's my view that they
6 were told.

7 THE COURT: That's what you had --

8 THE WITNESS: It's my personal view.

9 THE COURT: I understand that. But
10 apart from your personal view, would it be fair to
11 assume that in view of what the industry knew, they
12 would think you were doing something like that with
13 the government?

14 THE WITNESS: Well, as you can see from
15 the testimony about Quebecor, they also had
16 conditions. So I think anybody in the business
17 would have thought about what conditions they want.
18 They may not all be the same, but there would have
19 been some regulatory conditions around what they
20 were doing unless somebody understood the legal
21 ramifications of the lawsuit.

22 THE COURT: What I was asking you was,
23 would it be fair to assume that they would think
24 that you, Catalyst --

25 THE WITNESS: I think so.

1 THE COURT: -- was making that kind of
2 presentation to the government?

3 THE WITNESS: Yeah, they either would
4 assume or know.

5 THE COURT: Thanks.

6 THE WITNESS: Sorry, I didn't
7 understand the question.

8 THE COURT: That's okay. Are there any
9 questions arising from my questions?

10 MR. THOMSON: I have none.

11 MR. DIPUCCHIO: No.

12 THE COURT: Thank you very much.

13 -- WITNESS EXCUSED --

14 THE COURT: Yes?

15 MR. WINTON: Good morning, Your Honour.
16 Our next witness is Mr. Riley.

17 JAMES RILEY: SWORN.

18 MR. WINTON: Your Honour, Mr. Thomson
19 has just informed me that there is something he
20 wishes to say to the court before Mr. Riley begins
21 his testimony.

22 MR. THOMSON: Your Honour, you may
23 recall from my opening that I raised an objection
24 concerning the contents of Mr. Riley's affidavits.
25 I am assuming we can proceed on the same basis as

This is Exhibit "63" 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.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 3
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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 3/Volume 3 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 8th day
of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

5 A P P E A R A N C E S :
6

7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq., for the Plaintiff.
9 & Brad Vermeersch, Esq.
10
11 Robert A. Centa, Esq., for the Defendant,
12 & Kris Borg-Olivier, Esq., Brandon Moyse.
13 & Denise Cooney, Esq.
14
15 Kent Thomson, Esq.,
16 & Matthew Milne-Smith, Esq.,
17 & Andrew Carlson, Esq., for the Defendant,
18 West Face Capital Inc.
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1 we did in the Athena trial, which is my objection
2 stands, you'll deal with the evidence as you see
3 fit and you'll sort out the admissible evidence
4 from the inadmissible evidence?

5 THE COURT: That's fine. Mr. Winton?

6 EXAMINATION IN-CHIEF BY MR. WINTON:

7 Q. Good morning, Mr. Riley.

8 A. Good morning.

9 Q. Do you recall in this proceeding
10 you have sworn five affidavits?

11 A. I do.

12 Q. And specifically those were dated
13 June 26, 2014?

14 A. Yes.

15 Q. And July 14th, 2014?

16 A. Yes.

17 Q. July 28th, 2014?

18 A. Yes.

19 Q. February 15th, 2015?

20 A. Yes.

21 Q. And May 1st, 2015?

22 A. Yes.

23 Q. And you understand that those
24 affidavits constitute your evidence in-chief in
25 this trial?

1 A. They do.

2 Q. And you adopt the contents of
3 those affidavits as your evidence in-chief?

4 A. I do.

5 Q. You were cross-examined on two
6 occasions prior to today, correct?

7 A. Yes.

8 Q. You reviewed the transcripts of
9 those cross-examinations prior to today?

10 A. Yes, I have.

11 Q. Do you adopt the evidence that you
12 gave in those cross-examinations as part of your
13 evidence as well?

14 A. I do.

15 Q. So we're just going to go through
16 some highlights of your evidence today, but before
17 I do that, just perhaps to get your background into
18 the record, what is your position at Catalyst?

19 A. I am a managing director and chief
20 operating officer. I am also a partner.

21 Q. When did you join Catalyst?

22 A. 2011.

23 Q. What are your primary
24 responsibilities as the chief operating officer and
25 managing director?

1 A. I manage day-to-day operations
2 which includes management of the office, I
3 interface with the finance group, I manage our
4 borrowings with the banks, I am also involved in
5 fundraising including participating in meetings. I
6 also manage day to day certain litigation files
7 like this, and when things -- when things are not
8 otherwise in a specific task, I will take over
9 those tasks.

10 Q. So just to put your affidavits
11 into some context, the first affidavit sworn on
12 June 26th, 2014, which is one day after this action
13 was commenced, if we can just have available. Now,
14 in this affidavit...

15 Your Honour, you have a folder. Do you
16 have that open for Mr. Riley?

17 THE COURT: I do. I have the
18 affidavit.

19 MR. WINTON: Thank you.

20 BY MR. WINTON:

21 Q. Now, in this affidavit you had
22 referred to the forensic review of Mr. Moyse's work
23 computer that was performed at Catalyst which was
24 conducted June 2014. What led Catalyst to engage a
25 forensic investigator to review Mr. Moyse's

1 computer?

2 A. Mr. Moyse indicated that he was
3 going to a competitor, West Face, and he was not
4 going to honour his non-compete.

5 Q. When did you retain the expert?

6 A. It would have been in around that
7 time. I think he imaged the computer on that
8 weekend, I think June 26/27, approximately.

9 Q. Okay.

10 A. Actually, prior to that, sorry.

11 Q. Okay. Let's turn up -- if you
12 scroll down in the affidavit, please, a few pages
13 down.

14 THE COURT: Which paragraph do you
15 want?

16 MR. WINTON: Sorry, I'm trying to find
17 it, Your Honour. Stop there. Okay.

18 BY MR. WINTON:

19 Q. So now looking at paragraph 45,
20 you see there is an excerpt of the email from
21 Mr. DiPucchio to counsel for -- previous counsel
22 for Mr. Moyse and West Face dated June 19th, 2014.
23 Do you see that, Mr. Riley, paragraph 45?

24 A. Yes, I do.

25 Q. Does that refresh your memory as

1 to approximately the date when you engaged
2 Mr. Musters?

3 A. That is correct. That was
4 primarily because the defendant was not prepared to
5 maintain the status quo.

6 Q. Now, paragraph 55 of this
7 affidavit on page 15, there is reference to
8 investment letters that you describe. What kind of
9 information is contained in the investment letters?

10 A. This would be confidential
11 information reported to investors in the funds, our
12 limited partners, to give them a status on a
13 quarterly basis -- typically on a quarterly basis
14 as to the status of the investments made by that
15 particular fund, in this case fund 2.

16 Q. In 2014 was fund 2 still an open
17 fund?

18 A. No, it was not.

19 Q. So what is the significance to the
20 fact that a fund is no longer an open fund?

21 A. It means that it is in the course
22 of realization and will be making no further
23 investments.

24 Q. Would an analyst at Catalyst have
25 a legitimate business reason to review the

1 investment letters relating to fund 2?

2 A. No.

3 Q. Are analysts allowed to view old
4 investment letters without authorization from the
5 partners?

6 A. No.

7 Q. What would be the consequences for
8 them if they did so?

9 A. Depending on the circumstances, it
10 could be grounds for termination.

11 Q. Okay. If we can go to the next
12 affidavit, the one sworn July 14, 2014. Sorry,
13 just to go back to one question about what you said
14 about -- you don't need to go to the affidavit.
15 Were the analysts aware of this policy concerning
16 the confidentiality of the investment letters?

17 A. I believe they're aware of our
18 general confidentiality restrictions, so it would
19 be included in this.

20 Q. So in the July 14th affidavit, and
21 just if you go to the first page of that, to put
22 this into context, paragraph 2 indicates you swore
23 this in response to the affidavits filed by
24 Mr. Moyse and West Face?

25 A. I believe it was particularly in

1 response to an affidavit filed by Mr. Dea in which
2 he enclosed four of our confidential deal memos
3 which had been provided to him by Mr. Moyse.

4 Q. Okay. So if we turn to paragraph
5 12 beginning at the bottom of page 3 and then it's
6 going to go to the top of page 4, you refer to the
7 evidence that West Face filed in its record. What
8 was -- you were referring to those four
9 confidential memos. Prior to seeing them in the
10 affidavit, were you aware that West Face had
11 possession of those memos?

12 A. I was not aware of that.

13 Q. So when was the first time you
14 became aware that they possessed those memos?

15 A. As I think I said previously,
16 Mr. Dea's affidavit.

17 Q. The next affidavit sworn is two
18 weeks later, July 28th, 2014, if you'd turn that
19 up. What were the circumstances that led to you
20 swearing this third affidavit?

21 A. It was as a result of disclosure
22 by Mr. Moyse that he had more than 800 -- more than
23 800 files representing confidential information,
24 and we had reviewed those, Zach Michaud and I had
25 reviewed them and identified at least 200.

1 Q. Sorry, I just want to make sure
2 we're clear for the record. How many of the 800
3 documents did you review and consider to be
4 confidential?

5 A. We reviewed the whole of the list
6 and believed at least 200 of them were
7 confidential. We did not review the actual files
8 themselves.

9 Q. Your next affidavit was sworn
10 February 18th, 2015, so several months later. And
11 do you recall what were the intervening events that
12 led to you swearing this fourth affidavit?

13 A. There was a West Face transaction
14 involving Wind. The ISS review of Moyse's devices
15 had revealed that he had installed a scrubber and
16 there was some evidence relating to West Face in
17 connection with its short attack against Callidus.

18 Q. And those are the events?

19 A. Yes, those are the events.

20 Q. Your fifth affidavit was sworn May
21 1st, 2015. As you see -- just at paragraph 3, to
22 help orient you, this was the responding affidavit
23 that you swore --

24 A. Yes.

25 Q. -- at this time period?

1 A. Yes.

2 Q. I won't deal with I guess the
3 evidence concerning Callidus, but if we turn to
4 page 10 at paragraph 35, do you recall why at this
5 stage in the proceeding you're giving evidence
6 concerning Mr. Moyse's role on the Wind file?

7 A. Yes. This was in response to his
8 position that he had a minimal involvement in the
9 Wind file and, in particular, we wanted to bring
10 forward the fact that he had -- he was involved in
11 the March 26th PowerPoint presentation, preparation
12 of that presentation.

13 Q. Around the time that you swore
14 this or when you swore this affidavit, did you --
15 or were you able to review a copy of that
16 PowerPoint presentation?

17 A. No. I wish I had, but I believed
18 all copies of it had been destroyed or deleted.

19 Q. And what formed or what was the
20 basis for that belief?

21 A. I had asked that all of the people
22 that had copies of it to destroy theirs and delete
23 them.

24 Q. Why did you make that request?

25 A. I believed that given the

1 sensitivity of the information enclosed, it was
2 best to not have maintained copies.

3 MR. WINTON: Those are my questions,
4 Your Honour.

5 THE COURT: Yes, Mr. Thomson?

6 MR. THOMSON: Do you have my
7 cross-examination electronic binder, Your Honour?

8 THE COURT: Yes.

9 MR. THOMSON: Thank you.

10 CROSS-EXAMINATION BY MR. THOMSON:

11 Q. Good morning, Mr. Riley.

12 A. Good morning.

13 Q. You were not involved directly in
14 the discussions and negotiations between Catalyst
15 and VimpelCom, as I understand it?

16 A. That is correct.

17 Q. You attended no meetings with
18 VimpelCom?

19 A. No.

20 Q. Instead, as I understand the
21 evidence, Catalyst's lead negotiator was Mr. de
22 Alba?

23 A. Yes.

24 Q. Mr. de Alba directed Catalyst deal
25 team and its advisors?

This is Exhibit "64" 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.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 3
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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 3/Volume 3 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
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of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

1 REPORTED BY: Kimberley A. Neeson
2 RPR, CRR, CSR, CCP, CBC
3 Realtime Systems Administrator
4

5 A P P E A R A N C E S :
6

7 Rocco DiPucchio, Esq.,
8 & Andrew Winton, Esq., for the Plaintiff.
9 & Brad Vermeersch, Esq.
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11 Robert A. Centa, Esq., for the Defendant,
12 & Kris Borg-Olivier, Esq., Brandon Moyse.
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1 sensitivity of the information enclosed, it was
2 best to not have maintained copies.

3 MR. WINTON: Those are my questions,
4 Your Honour.

5 THE COURT: Yes, Mr. Thomson?

6 MR. THOMSON: Do you have my
7 cross-examination electronic binder, Your Honour?

8 THE COURT: Yes.

9 MR. THOMSON: Thank you.

10 CROSS-EXAMINATION BY MR. THOMSON:

11 Q. Good morning, Mr. Riley.

12 A. Good morning.

13 Q. You were not involved directly in
14 the discussions and negotiations between Catalyst
15 and VimpelCom, as I understand it?

16 A. That is correct.

17 Q. You attended no meetings with
18 VimpelCom?

19 A. No.

20 Q. Instead, as I understand the
21 evidence, Catalyst's lead negotiator was Mr. de
22 Alba?

23 A. Yes.

24 Q. Mr. de Alba directed Catalyst deal
25 team and its advisors?

1 A. Yes.

2 Q. Mr. Glassman was primarily
3 responsible for Catalyst's discussions and
4 negotiations with the Government of Canada
5 concerning regulatory issues?

6 A. Yes.

7 Q. Now, let me deal with Mr. Moyse's
8 resignation. Can you pull up tab 9, please. And,
9 sir, you'll see here Mr. Moyse's email to Mr. de
10 Alba of May 24th of 2014 telling Mr. de Alba that
11 he was resigning from Catalyst?

12 A. Yes.

13 Q. I take it that Mr. Moyse's
14 resignation was brought to your attention shortly
15 after it was given?

16 A. Yes.

17 Q. And am I correct that you met with
18 Mr. Moyse two days later on Monday, May 26th, 2014?

19 A. I did.

20 Q. During that meeting, Mr. Moyse
21 told you that he intended to join West Face?

22 A. Yes.

23 Q. And am I correct that as a result
24 you sent Mr. Moyse home?

25 A. Yes.

1 Q. You did so at least in part in
2 order to ensure that Mr. Moyse played no role in
3 and was kept isolated from any future discussions
4 regarding upcoming investment opportunities at
5 Catalyst?

6 A. Correct.

7 Q. And am I right that Mr. Moyse did
8 in fact stay home for the remainder of the 30-day
9 notice period? He did not rejoin Catalyst?

10 A. He did not come back to the
11 office.

12 Q. He no longer attended Catalyst
13 Monday meetings either in person or by phone?

14 A. No.

15 Q. He no longer performed work for or
16 on behalf of Catalyst?

17 A. I don't know for sure because
18 there were some continuing matters that he might
19 have to give help -- help in the transition.

20 Q. You're not aware of any
21 significant matters?

22 A. No.

23 Q. Am I right that on May 26th of
24 2014 Catalyst also contacted its IT provider and
25 asked that Mr. Moyse -- Moyse's permission to

1 access the Catalyst servers be revoked?

2 A. Yes.

3 Q. In the period after Monday, May
4 26th of 2014, you shared no information whatsoever
5 with Mr. Moyse concerning Catalyst's discussions
6 and negotiations with VimpelCom?

7 A. Are you asking me personally?

8 Q. Yes.

9 A. No.

10 Q. Nor to your knowledge did
11 Mr. Glassman or Mr. de Alba?

12 A. To my knowledge, no.

13 Q. In the period after Monday, May
14 26th, 2014 you shared no information whatsoever
15 with Mr. Moyse concerning Catalyst's discussions
16 and negotiations with the Government of Canada,
17 correct?

18 A. No.

19 Q. Nor to your knowledge did
20 Mr. Glassman or Mr. de Alba?

21 A. To my knowledge, no.

22 Q. Now, am I right that you have been
23 the person at Catalyst primarily responsible for
24 managing what I'll call the Moyse litigation in the
25 period since it was commenced in June of 2014?

1 A. That is correct.

2 Q. We've already established that in
3 the course of the litigation, you have prepared and
4 sworn five affidavits?

5 A. Yes.

6 Q. And you spent a considerable
7 amount of time reviewing Mr. Moyse's documents as
8 well as productions of Catalyst and West Face?

9 A. Yes.

10 Q. And am I right in saying this, Mr.
11 Riley, you've certainly reviewed all of the
12 particularly relevant or important documents that
13 have been brought to your attention from time to
14 time by Catalyst counsel?

15 A. Yes.

16 Q. Now, can we agree that you were
17 not present during any meetings or discussions
18 Mr. Moyse may have had with representatives of West
19 Face?

20 A. No.

21 Q. And that is so either before he
22 joined West Face on June 23, 2014 or after,
23 correct?

24 A. That is correct.

25 Q. And therefore you can't testify

1 under oath as to what happened during any of those
2 meetings or discussions, correct? You weren't
3 there?

4 A. No, I wasn't there. Sorry, I'm
5 just trying to think of what I learned through
6 affidavits.

7 Q. Now, am I correct as well, having
8 read in some detail all of your five affidavits,
9 that you have not attached to any of your five
10 affidavits even one document in which Mr. Moyse
11 conveys to West Face confidential information of
12 Catalyst concerning either Wind or VimpelCom?

13 A. No.

14 THE COURT: I think the answer is yes.
15 These questions that Mr. Thomson asks, "Now am I
16 correct that," that's his modus operandi. So I
17 think he meant the answer to be yes.

18 THE WITNESS: The answer is yes. Thank
19 you for that.

20 MR. THOMSON: Thank you.

21 THE WITNESS: So don't be so tricky.

22 THE COURT: He will be if he can get
23 away with it.

24 MR. THOMSON: Yeah, yeah. I wish I was
25 that smart.

1 BY MR. THOMSON:

2 Q. Let me turn to the issue of the
3 writing samples.

4 A. Yes.

5 Q. By writing samples, I mean the
6 samples that Mr. Moyse sent to Mr. Dea of West Face
7 on March 27. You are aware of those?

8 A. I am.

9 Q. And if we pull up, please, tab 8
10 of the cross-examination binder. Just so we have
11 it for the record, Your Honour, this is WFC0075126,
12 which is the email at the bottom, half-way down the
13 page, an email from Mr. Moyse to Mr. Dea of March
14 27 of 2014 at 1:47 a.m. attaching his CV, his deal
15 sheet and what he calls a few investment write-ups
16 that he had done at Catalyst.

17 I take it you've reviewed the email and
18 its attachments before testifying today?

19 A. I have.

20 Q. And the writing samples pertained
21 to, as I understand it, four companies, so Homburg,
22 NSI, Rona and Arcan Resources?

23 A. Yes.

24 Q. And you would concede, in
25 fairness, I'm sure, Mr. Riley, that none of those

1 samples concern Wind Mobile?

2 A. I agree.

3 Q. To your knowledge Catalyst never
4 made an investment in Arcan?

5 A. No, it did not.

6 Q. To your knowledge Catalyst never
7 made an investment in NSI?

8 A. We did not.

9 Q. To your knowledge Catalyst never
10 made an investment in Rona?

11 A. We did not.

12 Q. And to your knowledge West Face
13 made no investment in Homburg?

14 A. Oh, yes, we did.

15 Q. No, West Face?

16 A. Oh, sorry, I apologize. To my
17 knowledge, no.

18 Q. To your knowledge West Face made
19 no investment in NSI?

20 A. Not to my knowledge.

21 Q. And to your knowledge West Face
22 made no investment in Rona?

23 A. To my knowledge, no.

24 Q. And if we -- with respect to
25 Arcan, if we can pull up, please, tab 21. So tab

1 21, Your Honour, is WFC0080746, which is an
2 affidavit of Mr. Griffin sworn on March 7 of 2015.

3 Mr. Riley, am I right that you have
4 reviewed Mr. Griffin's affidavit before testifying
5 today?

6 A. Yes, I have.

7 Q. And can we please turn in the
8 affidavit to paragraph 52. Stop there. So at 52
9 of his affidavit, Mr. Griffin says:

10 "Of the four writing samples,
11 only one - concerning Arcan
12 Resources - addressed a company that
13 was being followed by West Face and
14 ultimately became the subject of a
15 transaction by West Face."

16 He says the transaction was directed by
17 him and was independent of Moyse's analysis for
18 Catalyst.

19 It refers to following Arcan for
20 several years. It says at his direction West Face
21 had taken a position in two different series of
22 Arcan's unsecured debentures between September 2012
23 and July of 2013.

24 And then go to paragraph 53. You'll
25 see he says on June 23 of 2014 at 4:22 p.m.:

1 "Arcan announced a strategic
2 transaction with Aspenleaf Energy
3 Limited pursuant to which Aspenleaf
4 and Arcan would complete a Plan of
5 Arrangement. I concluded that the
6 debenture holders should be able to
7 negotiate a better deal for
8 themselves than had been proposed
9 under the Plan of Arrangement, and
10 that if they could do so, the
11 debentures would rise in value."

12 He then goes on, as you'll recall, to
13 explain in the affidavit that they then made the
14 investment in those debentures and that they
15 actually lost money as a result of having done so.

16 So here's my question for you. Am I
17 right that Catalyst made no investment in relation
18 to that Plan of Arrangement proceeding?

19 A. To my knowledge, no.

20 Q. Of course Mr. Moyse's writing
21 sample concerning Arcan, which I'm happy to take
22 you to, was dated January 2014?

23 A. I don't know the date of that.

24 Q. Can you pull up, please, tab 8,
25 and turn to page 123 of tab 8. So you'll see this

1 is - just pause there - this is the writing sample?

2 A. I see the date at the top is Jan
3 2014.

4 Q. Right. That's my point. So the
5 writing sample was prepared and dated well before
6 the Plan of Arrangement that led to the West Face
7 investment was announced on June 23 of 2014; fair
8 enough?

9 A. Yes.

10 Q. Now, let me turn to an issue that
11 was raised with you during the course of your
12 examination in-chief. Am I right that on July 16
13 of 2014 Catalyst obtained a consent order from
14 Justice Firestone?

15 A. Yes.

16 Q. Pull up, please, tab 10 of the
17 cross-examination binder. Here is the order of
18 Justice Firestone of July 16 of 2014, and if you
19 turn, please, to paragraph 10 of the order, you'll
20 see that the court on consent made an order sealing
21 the court file?

22 A. Yes.

23 Q. And one of the reasons that the
24 sealing order was sought was because the writing
25 samples we just looked at a moment ago were in the

1 court file and had been attached to a responding
2 affidavit of West Face?

3 A. Yes.

4 Q. Now, am I right that on January
5 13th of 2015 Catalyst commenced a motion against
6 West Face in relation to its acquisition of Wind
7 Mobile?

8 A. Without being able to confirm, is
9 that the date? I can't remember the date.

10 Q. Okay. That's fine. Pull up tab
11 13, please. So, Your Honour, this is CAT000917.
12 And you'll find a Notice of Motion of Catalyst, and
13 if we flip to page 16 of the document, you'll find
14 the date of January 13, 2015?

15 A. I see that date and adopt that
16 date.

17 Q. So that's the date on which
18 Catalyst commenced this motion against West Face,
19 correct?

20 A. Correct.

21 Q. If we go back to the first page of
22 the Notice of Motion and look at the relief sought,
23 briefly scroll down, please, look at paragraph B,
24 so Catalyst sought injunctive relief restraining
25 West Face, its officers, directors, employees,

1 agents and so on from, and then skip to the next
2 page, please, from participating in the management
3 and/or strategic direction of Wind Mobile and any
4 affiliated or related corporations and
5 participating in the upcoming spectrum auction.
6 Fair enough?

7 A. Yes.

8 Q. And then also sought, in paragraph
9 C, an order authorizing an independent supervising
10 solicitor to attend at West Face's premises to
11 create forensic images of all electronic devices,
12 including computers and mobile devices of West Face
13 and so on. So that was the nature of the relief
14 sought by Catalyst against West Face as of January
15 2015?

16 A. Yes.

17 Q. Now, am I right that two days
18 after that motion was brought, Catalyst took the
19 necessary steps to unseal the court file?

20 MR. DIPUCCHIO: Your Honour, that's
21 actually not correct. I have to rise. We didn't
22 take any steps to unseal the court file. The court
23 file was only sealed pending the outcome of the
24 interlocutory injunction. That's what the order
25 says.

1 BY MR. THOMSON:

2 Q. All right. Let's then deal with
3 it one step at a time. Pull up tab -- pull up tab
4 19, please. Mr. Riley, here you'll see a
5 transcript of your cross-examination conducted on
6 May 13th of 2015?

7 A. Yes.

8 Q. And will you please turn to page
9 62 of the transcript or page 63 of the document.
10 And you'll see at question 259, Mr. Riley, the
11 question that was put was:

12 "Catalyst alleges that
13 Mr. Moyse disclosed the confidential
14 information to West Face in the
15 March 27, 2014 email which attached
16 the writing samples?

17 Answer: Yes.

18 Question: And Catalyst has, in
19 fact, consented to unsealing the
20 court record that contained those
21 documents, correct?

22 Answer: Yes."

23 And then 261:

24 "Question: So it no longer
25 treats that information as

1 confidential?

2 Answer: Yes."

3 I take it you were asked those
4 questions and gave those answers?

5 A. I did, but if I review 260 again,
6 I adopt my counsel's interpretation that the
7 sealing order was functus once the hearing was
8 over.

9 Q. Pull up tab 14, please, of the
10 cross-examination binder.

11 THE COURT: Just before you do that,
12 Mr. Riley, so the answer to question 261, do you
13 have that in front of you?

14 THE WITNESS: Yes, I do.

15 THE COURT: The question:

16 "Question: So it no longer
17 treats that information as
18 confidential?

19 Answer. Yes."

20 THE WITNESS: We had no choice.

21 THE COURT: You're saying that Catalyst
22 no longer treated the information as confidential?

23 THE WITNESS: Correct. Sorry, is there
24 another document you want to look at?

25 BY MR. THOMSON:

1 Q. Yes. Right here, it should be on
2 the screen. So, Your Honour, this is WFC0081342.

3 A. Yes.

4 Q. It's part of the court record
5 concerning this matter. And you'll see a series of
6 different dates. So per order of Firestone, J.
7 dated July 16, 2014, file sealed pending the
8 outcome of interlocutory relief motion. The second
9 reference says the same thing. Below that, sealed
10 material sent to Divisional Court per requisition
11 dated December 22, 2014. Below that, partial file
12 sealed by order of Firestone, J. on October 21,
13 2014. Below that, January 15, obviously of 2015,
14 file unsealed?

15 A. Yes.

16 Q. Re counsel Andrew Winton, lawyer,
17 and so on.

18 So my question for you is this. What
19 steps, if any, did Catalyst take in January 2015 --
20 and you'll note January 15 is two days after the
21 motion we just looked at a moment ago was brought.

22 A. Yes.

23 Q. What steps, if any, did Catalyst
24 take to make sure the court file was in fact
25 unsealed in January of 2015?

1 MR. DIPUCCHIO: I have to rise again,
2 Your Honour, because this is really a question
3 directed to us, I assume. There were no steps
4 taken to unseal the court file. The court file was
5 unsealed as a result of Justice Firestone's order.

6 THE COURT: I saw the order before,
7 Mr. DiPucchio. I would have thought counsel would
8 agree on this. When I saw the order at tab 10 I
9 did see that it was pending or until the motion for
10 interlocutory relief was heard.

11 MR. DIPUCCHIO: Yes.

12 THE COURT: When was that motion heard?

13 MR. DIPUCCHIO: That was heard in
14 October of 2014.

15 THE COURT: Right.

16 MR. DIPUCCHIO: And then there was a
17 decision rendered in November, and our
18 understanding was the file was unsealed thereafter
19 because the order no longer applied. That was our
20 understanding. We didn't take any steps to unseal
21 the court file.

22 THE COURT: So --

23 MR. DIPUCCHIO: I'm not sure what turns
24 on it, Your Honour.

25 THE COURT: I'm not sure what turns on

1 it. If that's correct, then Mr. Riley's first
2 answer was incorrect on the cross because he
3 conceded he thought that there was a consent to the
4 unsealing, and you're saying, what's the --

5 MR. DIPUCCHIO: That's all I'm saying,
6 Your Honour. I understand what my friend is trying
7 to do, which is to suggest we unsealed the court
8 file, but that's categorically not true. We didn't
9 do anything to unseal the court file.

10 THE COURT: Does it matter,
11 Mr. Thomson? Mr. Riley has said they no longer
12 treated the documents as confidential.

13 MR. THOMSON: That's the point.

14 THE COURT: Well, he's already said
15 that.

16 MR. DIPUCCHIO: And just, Your Honour,
17 to close the loop on this, just to assure my
18 friends, the reference to Mr. Winton, as Mr. Winton
19 just advises me, is the court called him to confirm
20 that the file was no longer sealed. So that's the
21 reference to Mr. Winton.

22 THE COURT: Was this a Commercial List
23 matter at that time?

24 MR. DIPUCCHIO: No, it was not, Your
25 Honour.

1 THE COURT: I guess it wasn't because
2 Justice Firestone was on it.

3 MR. DIPUCCHIO: Right.

4 BY MR. THOMSON:

5 Q. Am I right in assuming this, Mr.
6 Riley, that although you were not responsible for
7 the negotiation of the Wind transaction, you were
8 certainly kept in the loop on a regular basis
9 concerning developments as they occurred?

10 A. It would depend on the importance
11 of the issue. So I would say not as -- I wouldn't
12 know on a day-to-day basis what was going on.

13 Q. You were certainly advised of
14 important developments?

15 A. Certain important developments,
16 not all.

17 Q. And I take it that Mr. Glassman
18 and Mr. de Alba would have conferred with you when
19 the Catalyst transaction ran into difficulties in
20 mid-August of 2014?

21 A. Those dialogues would have been
22 more between Newton and Gabriel.

23 Q. You heard Mr. Glassman say -- you
24 were here for his evidence, weren't you, yesterday?

25 A. Yes, I was.

1 Q. You heard Mr. Glassman testify
2 yesterday afternoon, or yesterday morning perhaps
3 it was, that you would certainly have been kept
4 apprised of VimpelCom's request for a break fee?

5 A. I actually don't think I knew
6 that. So my memory may be different than his.

7 Q. Now, let's just show His Honour
8 how that issue developed in the period leading up
9 to the trial. Am I correct that you were, in fact,
10 cross-examined in May of 2015 in the motion we just
11 looked at a moment ago concerning the issue of a
12 break fee?

13 A. Yes.

14 Q. And am I also right that
15 Mr. Milne-Smith cross-examined you concerning that
16 issue before Catalyst produced its documents in
17 this case concerning its negotiations with
18 VimpelCom?

19 A. I believe that's correct.

20 Q. And if we pull up, please, tab 19,
21 which is the transcript of your cross-examination
22 on May 13th of 2015, and scroll to page 127. I'm
23 interested, Mr. Riley, in what happened around
24 question 554. So question 554, the question was:

25 "Did VimpelCom ever ask for a

1 break fee?"

2 You said:

3 "I don't know."

4 And then at question 556

5 Mr. Milne-Smith asked you to make inquiries and to
6 advise.

7 A. Yes.

8 Q. And then question 557, the next
9 question was:

10 "I would also like to know if
11 VimpelCom did ask for a break fee, I
12 would like to know obviously its
13 precise terms and whether Catalyst
14 agreed to it."

15 Mr. Winton then took that question
16 under advisement.

17 A. Yes.

18 Q. You recall that exchange during
19 the examination?

20 A. I do.

21 Q. And if we then turn to tab 20 --

22 A. Is there a way to turn that?

23 Q. She will do that in a second.

24 Your Honour, this is UTS000020, which are the
25 answers to undertakings and advisements and so on

1 from your examination of May 13, 2015. And can I
2 ask you to scroll, please, to answers 15 and 16.

3 So the undertakings are recorded in the
4 fourth column from the left and the answers that
5 were given are on the column on the right. So
6 again, the first question was to advise whether
7 VimpelCom ever asked for a break fee. The answer
8 was:

9 "The parties never negotiated a
10 break fee."

11 The next question was if VimpelCom did
12 ask for a break fee, to provide its precise terms
13 and whether Catalyst agreed to it. And the answer
14 was "Not applicable," presumably because of the
15 answer just before that.

16 So those were the answers to
17 undertakings given arising out of your examination
18 in May of 2015?

19 A. Correct.

20 Q. And you'll note of course that the
21 answer given didn't answer the question that was
22 asked?

23 A. I now understand that because of
24 subsequent information that was -- we corrected
25 this undertaking.

1 Q. I'm going to come to that
2 momentarily.

3 THE COURT: Is there a date when this
4 was delivered?

5 MR. MILNE-SMITH: It was
6 contemporaneous with the motion before Justice
7 Glustein so we can check, but it would have been
8 around May of 2015.

9 THE COURT: So shortly after the cross?

10 MR. MILNE-SMITH: Yes, we're referring
11 to Justice Glustein I believe in June or July, so
12 it had to be before that.

13 BY MR. THOMSON:

14 Q. This was the state of the
15 record -- do we have it, Mr. Riley, this was the
16 state of the record as of the date that that motion
17 against West Face for the relief we just looked at
18 was argued?

19 A. Yes.

20 Q. And we now know, and you were here
21 for Mr. Glassman's examination yesterday, we now
22 know that VimpelCom did in fact ask for a break fee
23 in mid-August?

24 A. Yes.

25 Q. And it was the request for the

1 break fee, as Mr. Glassman says in his affidavit,
2 that ultimately caused the transaction to fail?

3 A. Yes.

4 Q. Now, if we elaborate on this just
5 a little bit, the answer to undertaking 15, again
6 the question was to advise whether VimpelCom ever
7 asked for a break fee, and the answer was the
8 parties never negotiated a break fee, one of the
9 reasons the parties never negotiated a break fee is
10 because Catalyst simply refused to accede to the
11 request of VimpelCom?

12 A. Yes.

13 Q. And then if we look at how this
14 issue then developed in the period after the
15 Glustein motion was argued and turn all the way
16 forward to Mr. de Alba's discovery about three
17 weeks ago, on May 11 of this year, pull up tab 33,
18 please.

19 THE COURT: Just a second. Just remind
20 me, Justice Glustein was asked -- what was he asked
21 to do?

22 MR. THOMSON: He was asked to issue
23 injunctive relief against West Face to prohibit it
24 from having any involvement with Wind Mobile,
25 prohibiting the spectrum auction, so it is the

1 Notice of Motion --

2 THE COURT: Is that the Notice of
3 Motion of Justice Glustein?

4 MR. THOMSON: Yes.

5 THE COURT: I thought it was -- I
6 thought he had something to do with whether or not
7 further documents should be produced.

8 MR. MILNE-SMITH: That too.

9 THE COURT: Okay.

10 MR. THOMSON: So it was --

11 MR. MILNE-SMITH: And contempt against
12 Mr. Moyse.

13 THE COURT: Pardon?

14 MR. MILNE-SMITH: And contempt against
15 Mr. Moyse.

16 MR. THOMSON: Just pull up tab 33,
17 please.

18 THE COURT: I remember that. I
19 understand. I just wasn't sure, I had not realized
20 that Justice Glustein was asked to do that, that's
21 all.

22 MR. THOMSON: Yes. So it was both
23 aspects of this, Your Honour.

24 BY MR. THOMSON:

25 Q. Now, can you pull up, please, tab

1 33. Sorry, one more reference. Hang on. Sorry,
2 tab 23. And, Mr. Riley, here you'll find the
3 discovery transcript of Mr. de Alba conducted about
4 three weeks ago on Wednesday, May 11 of 2016?

5 A. Yes.

6 Q. And if we turn to page 201,
7 please. Scroll down a bit, please. So at question
8 748, Mr. Milne-Smith is now discovering Mr. de Alba
9 and says:

10 "And so I take it from this
11 that VimpelCom had asked you for a
12 break fee?"

13 They get into a discussion about that.
14 Scroll down a bit, please.

15 A. Sorry, could I just read the
16 response?

17 Q. Sure. It raised the topic and
18 that debate --

19 A. It looks like something is broken
20 here. I take from this two things, the comment of
21 the break fee. Is there information missing? See
22 the answer?

23 Q. I see the answer. That is the
24 answer. Scroll down to question 752 is what I'm
25 really interested in.

1 "Okay. So if we go back, I
2 don't know if you have any of the
3 earlier materials in this case,
4 Mr. Winton, but if you'll recall
5 during the cross-examination of Mr.
6 Riley, I put a question to him?"

7 Mr. Winton says:

8 "Which date."

9 Mr. Milne-Smith says:

10 "The one that I did."

11 Mr. Winton:

12 "That can only be one date."

13 Mr. Milne-Smith says:

14 "I'm actually looking at the
15 answers to undertaking number 15..."

16 THE COURT: Do we have to read through
17 all this? What's the point here?

18 MR. THOMSON: Just to give the witness
19 the context, Your Honour.

20 THE COURT: Why don't you just let him
21 read it to himself.

22 BY MR. THOMSON:

23 Q. Okay. Scroll down, please.

24 A. (Witness reads document).

25 Q. Stop there. Question 754, this is

1 after Mr. Milne-Smith has now put the answer to
2 undertaking that we just reviewed and the question
3 was, this is to de Alba:

4 "Were you consulted in
5 providing this -- answering this
6 undertaking that was given on the
7 cross-examination of Mr. Riley?
8 Were you consulted?

9 Answer: No."

10 So I take it from that that when you
11 gave the answer to undertaking arising out of your
12 cross-examination in May of 2015 as to whether
13 VimpelCom requested a break fee, you did not
14 consult with Mr. de Alba in answering the question?

15 A. That is correct.

16 Q. Even though he was the lead
17 negotiator on behalf of Catalyst?

18 A. Yes.

19 Q. And even though, I take it, he
20 works right down the hall from you in relatively
21 small offices?

22 A. Yes, except the closer person was
23 Zach Michaud and I don't believe Gabriel was in the
24 office at the time I was responding to this
25 undertaking.

1 Q. Now, let me pull up then tab 27,
2 so we have a complete record of this. So you'll
3 see a letter here, which is WFC0112220, which is a
4 letter from Mr. DiPucchio of June 3 of 2016, so
5 sent last Friday just before the trial started
6 following up on several discovery issues.

7 If you scroll to the next page, you'll
8 see he says, just before the end of the letter:

9 "Additionally, below are
10 corrections to the undertaking
11 responses that have previously been
12 given."

13 And it's undertaking number 47 that I'm
14 interested in, so this is what we were told last
15 Friday:

16 "Mr. Riley recalls that, in
17 addition to his own recollection on
18 the issue of a break fee, he spoke
19 with Zach Michaud. However Mr.
20 Riley recalls that he asked
21 Mr. Michaud whether there was a
22 break fee in the transaction (not
23 whether VimpelCom asked for a break
24 fee) and Mr. Michaud advised that
25 there was not."

1 I take it that is an accurate
2 description of what happened when you were
3 compiling the answers to the undertakings in May of
4 2015?

5 A. Yes, it is.

6 Q. So you would concede, in fairness,
7 that you asked Mr. Michaud the wrong question?

8 A. Either I asked him the wrong
9 question or he gave me the wrong answer, and then
10 when I transmitted it to my counsel, it was further
11 degraded. But I stand by that correction.

12 Q. Now, let me turn to a different
13 subject, which is the call with Industry Canada
14 that was discussed with Mr. Glassman yesterday.
15 This is the call of August 11 of 2014.

16 A. Yes.

17 Q. You were present again in court
18 yesterday when Mr. Glassman was cross-examined on
19 this issue?

20 A. I was.

21 Q. And he referred to a call that
22 took place with Industry Canada on the evening of
23 August 11 of 2014?

24 A. Yes.

25 Q. Just so you have it, to make this

1 easy for you, pull up tab 26, please. Your Honour,
2 tab 26 is CCG0028711. This is the affidavit of Mr.
3 Glassman sworn May 27, 2016. And if you turn,
4 please, to paragraph 45 of the affidavit. And you
5 may recall, Mr. Riley, I put this paragraph to Mr.
6 Glassman yesterday, where he says:

7 "Despite VimpelCom's sudden
8 concerns about regulatory risk,
9 during the late evening of August
10 11, 2014, I understand from de Alba
11 that Catalyst and VimpelCom had a
12 call with Industry Canada during
13 which the parties told Industry
14 Canada that the 'deal was done'."

15 A. Yes.

16 Q. Can you please pull up tab 11-A of
17 the cross-examination binder. And, Your Honour,
18 this is CCG0024726, a series of emails of August 11
19 and 12 of 2014. And scroll to the bottom of the
20 page, please. Bennett Jones --

21 A. Sorry, can I just ask you, is this
22 the whole of the email chain? Is this the bottom
23 of the chain?

24 Q. I think that's right. Just so His
25 Honour has it, Bennett Jones acted for VimpelCom in

1 the case? Bennett Jones acted for VimpelCom in the
2 case?

3 A. Yes, yes, they did.

4 Q. And this is an email from Adam
5 Kalbfleisch of Bennett Jones. You'll see the date
6 of it is Monday, August 11?

7 A. Yes.

8 Q. At 11:23 p.m., so the very evening
9 this call with Industry Canada took place?

10 A. I would take that from that email.

11 Q. And he says to Paul Halucha of
12 Industry Canada -- is he one of the people you met
13 with?

14 A. I don't recall his name.

15 Q. He says:

16 "Paul, I understand that
17 VimpelCom and Catalyst spoke with
18 Jim Nicholson earlier this evening
19 to update him on the progress being
20 made on the transaction."

21 Mr. Nicholson was one of the people you
22 met with at Industry Canada?

23 A. Yes.

24 Q. He says:

25 "I would be available to

1 schedule a call with you tomorrow to
2 provide an update."

3 And so on. Scroll up, please, in the
4 email chain.

5 A. Sorry, can I just read all of that
6 email, please?

7 Q. The one at the bottom?

8 A. Yes.

9 Q. Sure.

10 A. (Witness reads document). Thank
11 you.

12 Q. Scroll up. It's the email above
13 that I'm interested in. So this is an email from
14 Stephen Acker at Faskens. I take it you worked
15 with Mr. Acker on the transaction?

16 A. I didn't personally.

17 Q. Certainly Catalyst did?

18 A. He was our counsel so he might be
19 one of the team.

20 Q. He writes to de Alba, copied to
21 Jon Levin and several others, and he says:

22 "Gabriel: See below. This
23 follows another email from Adam just
24 before 11 p.m. telling Yale, Anthony
25 and me that the clients and Bruce

1 Drysdale spoke today with Jim
2 Nicholson re being close to signing
3 and that he had asked him to
4 co-ordinate with Industry Canada.
5 He has in mind a joint call with us
6 essentially to repeat the same
7 message to Halucha in the Ministry's
8 office at Industry Canada."

9 And so on. And so the phrase that he
10 uses in his email, this is the very evening of this
11 call, is that the clients and Bruce Drysdale spoke
12 today with Jim Nicholson re being close to signing?

13 A. I see those words.

14 Q. As opposed to the deal being done.
15 And I take it, because you were one of the two
16 people at Catalyst most responsible for dealings
17 with the Government of Canada, you had been on the
18 call?

19 A. No, I was not on that call.

20 Q. You were not on the call?

21 A. No.

22 Q. So who was on the call?

23 A. I don't know.

24 Q. Now, can you and I agree that in
25 the business world people do, in fact, reach

1 different conclusions on the prospects of companies
2 and investments all the time?

3 A. I'm not sure I understand the
4 question.

5 Q. Let me try to put it to you one
6 more time. Can you and I agree that in the
7 business world people do in fact reach different
8 conclusions on the prospects of companies and
9 investments all the time?

10 A. Not when they're at this stage of
11 a deal.

12 Q. All right. Pull up tab 19. Go
13 back to the front cover, please. This is the
14 transcript of your cross-examination on May 13th of
15 2015?

16 A. Yes, I see that.

17 Q. Will you please turn to question
18 219. Question 219, this is a question put to you
19 by Mr. Milne-Smith on May 13. The question:

20 "But the fact of the matter is
21 that people do, in fact, reach
22 different conclusions on the
23 prospects of a company or an
24 investment all the time?"

25 Answer: Yes."

1 A. That is correct.

2 Q. I take it you were asked that
3 question and you gave that answer?

4 A. I gave that answer but that is a
5 different question than the question you just asked
6 me.

7 THE COURT: Mr. Riley --

8 THE WITNESS: I apologize, Your Honour.

9 BY MR. THOMSON:

10 Q. And I'm going to suggest to you,
11 Mr. Riley, in fairness, that it is hardly
12 surprising that companies and organizations as
13 sophisticated as West Face, Tennenbaum, people like
14 Guffey, Lacavera, Government of Canada, might well
15 have had different views and perspectives than you
16 or Mr. Glassman did in 2014 concerning the
17 prospects of Wind Mobile? That wouldn't surprise
18 you, would it?

19 A. We could have different --
20 different views.

21 Q. Now, in your affidavits you made
22 just two statements concerning the nature of the
23 arrangements between Catalyst and VimpelCom and I
24 just wanted to speak with you about it briefly.

25 They are contained in your affidavits

1 of February 18th of 2015 and May 1 of 2015 as well.
2 So let me start by pulling up, please, your
3 affidavit of February 18th which is tab 4 of the
4 cross-examination binder. This is, Your Honour,
5 CAT000066, Mr. Riley's affidavit of February 18 of
6 2015.

7 And I ask you to turn, please, to
8 paragraph 45 of the affidavit. So at paragraph 45
9 of your affidavit you say this:

10 "During the exclusivity
11 period..."

12 And that would be the period of
13 exclusivity that Catalyst had with VimpelCom? Fair
14 enough?

15 A. Yes.

16 Q. So:

17 "During the exclusivity period,
18 Catalyst and VimpelCom were able to
19 negotiate almost all of the terms of
20 the potential sale of Wind Mobile to
21 Catalyst. The only point over which
22 the parties could not agree was
23 regulatory approval risk - Catalyst
24 wanted to ensure that its purchase
25 was conditional on receiving certain

1 regulatory concessions from Industry
2 Canada, but VimpelCom would not
3 agree to the conditions Catalyst
4 sought."

5 And if we then go to the May 1, 2015
6 affidavit --

7 A. Before you do, let me just read
8 this again, please.

9 Q. Sure.

10 A. (Witness reads document). Thank
11 you.

12 Q. Go to the May 1 affidavit at tab
13 5. Your Honour, this is CAT000382, which is the
14 supplementary affidavit of Mr. Riley sworn May 1,
15 2015. And I want to take you to paragraph 42 where
16 you deal with the same issue.

17 So at paragraph 42, Mr. Riley, you say
18 -- to make sense of the first three words, you have
19 to scroll up to 41, so go back a little bit. So
20 the timeframe you're dealing with here is early
21 August of 2014?

22 A. Yes.

23 Q. So if you then, with that
24 timeframe in mind, then look at paragraph 42 where
25 you say:

1 "At the time," that's early
2 August 2014, "the anticipated deal
3 with VimpelCom was conditional," you
4 say "was conditional on Industry
5 Canada approval and the granting of
6 certain regulatory concessions to a
7 Catalyst-owned Wind that in
8 Catalyst's mind would make it easier
9 for a fourth national carrier to
10 succeed. These concessions were
11 essentially the same regulatory
12 concessions summarized in the
13 PowerPoint presentation Moyse helped
14 create in early 2014.

15 THE COURT: If you would scroll down
16 the page, so I can see both together?

17 MR. THOMSON: Yes. Will you do that?

18 THE COURT: Thank you.

19 BY MR. THOMSON:

20 Q. Mr. Riley, again in fairness to
21 you, you were here for the cross-examination of
22 Mr. de Alba?

23 A. I was.

24 Q. I am happy to do this the easy way
25 or the hard way. Can we agree that at no time was

1 the Catalyst transaction of VimpelCom conditional
2 on Catalyst obtaining the regulatory concessions
3 that had been sought from the government during the
4 meetings in March and May of 2014?

5 A. I would have to look at the
6 wording in the SPA to answer that question
7 directly.

8 Q. That's been gone through with
9 Mr. de Alba, but let me try to do this the easy
10 way. Pull up tab 24, please. This is CCG0028722,
11 which are the answers to undertakings and so on
12 given from the discovery of Mr. de Alba on May 11,
13 2016, several weeks ago.

14 If we look at number 14, please, number
15 14 was to advise if any drafts of the share
16 purchase agreement being negotiated between
17 Catalyst and VimpelCom contained a condition that
18 the deal could not close unless Catalyst obtained
19 certain regulatory concessions from the government,
20 and the answer that was given was:

21 "The drafts of the share
22 purchase agreement exchanged by
23 Catalyst and VimpelCom contained
24 certain regulatory conditions. None
25 were expressly predicated on

1 Catalyst obtaining any regulatory
2 concessions."

3 I take it you adopt that answer?

4 A. I adopt that answer.

5 Q. And then one last statement you
6 made in your affidavit of February 18 of 2015 I'd
7 like to take you to, if I may. Please pull up tab
8 4. Go to the front of it, please.

9 So, Mr. Riley, we've looked at this
10 before, this is CAT000066. This is your affidavit
11 sworn February 18?

12 A. I see that date. Can you give me
13 the context of that affidavit because we've gone
14 back and forth through so many affidavits that I
15 just want to make sure I understand which one it
16 is.

17 Q. This is your fourth affidavit.
18 This was filed in relation to the Glustein motion.

19 A. Okay, thank you.

20 Q. And if we can look, please, at
21 paragraph 46 of the affidavit. 46, pause there,
22 and you say in paragraph 46:

23 "The exclusivity period expired
24 in mid-August 2014. Very shortly
25 thereafter, Catalyst learned that a

1 syndicate of investors led by West
2 Face was negotiating with VimpelCom
3 to purchase Wind."

4 And you say:

5 "Ultimately, the consortium
6 purchased Wind from VimpelCom on
7 what I believe were essentially the
8 same terms as Catalyst had proposed,
9 with the one exception that the
10 consortium waived the regulatory
11 conditions Catalyst had been
12 seeking."

13 A. Yes.

14 Q. That was a statement made in the
15 affidavit as of February of 2015?

16 A. Yes.

17 Q. I take it that by now, regardless
18 of what you thought or what you believed at the
19 time, by now you've had a chance to review the
20 share purchase agreement -- rather, the purchase
21 agreement entered into by the West Face consortium
22 with VimpelCom on September 16th of 2014?

23 A. I do not believe I have reviewed
24 that copy.

25 Q. You've never reviewed it?

1 A. To my knowledge, no.

2 MR. THOMSON: Thank you very much, Mr.
3 Riley. Those are my questions.

4 THE COURT: You say, Mr. Riley, that
5 you never reviewed the deal between the consortium
6 and VimpelCom?

7 THE WITNESS: To the best of my
8 knowledge.

9 THE COURT: To the best of your
10 recollection?

11 THE WITNESS: Yes, to the best of my
12 recollection. Sorry. Thank you.

13 MR. BORG-OLIVIER: Your Honour, I have
14 probably half an hour to 45 minutes of questions
15 for Mr. Riley. Would now be a good time to take
16 the morning break?

17 THE COURT: No, we'll start.

18 MR. BORG-OLIVIER: Justice Newbould,
19 you'll see in Mr. Riley's folder there is a
20 cross-examination folder for Moyse defendants,
21 cross-examination by Paliare Roland.

22 THE COURT: I've got the folder.

23 MR. BORG-OLIVIER: Okay. I think
24 unless something goes wrong, every document that
25 I'll be referring to should be there. Something

1 might go wrong.

2 CROSS-EXAMINATION BY MR. BORG-OLIVIER:

3 Q. Good morning, Mr. Riley.

4 A. Good morning.

5 Q. I'd like to take you to your
6 affidavit and in particular this is the affidavit
7 at tab 6 which is the first affidavit that you
8 swore in this proceeding?

9 A. Yes.

10 Q. That's the one at tab 6. If we
11 could pull that up. And my focus is going to be in
12 particular on the section of your affidavit
13 starting at page 14, paragraph 48. This is a
14 section entitled "Catalyst learns Moyse removed its
15 confidential information." Do you see that?

16 A. Yes.

17 Q. Now, in the opening line of that
18 paragraph 48, skipping down to the third line of
19 the paragraph, you say:

20 "Prior to his resignation,
21 Moyse accessed and was capable of
22 transferring Catalyst's confidential
23 information to his personal
24 possession."

25 And, as you say in the next line, this

1 was based on the information that you got from
2 Mr. Musters, correct?

3 A. Correct. Can I just do one thing?
4 There is a defined term in there, "Catalyst
5 confidential information." In case it becomes
6 relevant, can we assume that all information that
7 was transferred was confidential? Is that what
8 that definition means?

9 Q. I think that's right. I think we
10 can assume that for these purposes.

11 A. Okay, thank you.

12 Q. Just to make sure that we
13 understand each other here, the issue was that he
14 accessed and was capable of transferring the
15 information, correct?

16 A. Yes.

17 Q. It's not actually, notwithstanding
18 what the heading says, there was no evidence of
19 removal of the confidential information certainly
20 at that point?

21 A. I think Mr. Musters' review
22 determined that he had transferred confidential
23 information.

24 Q. Well, let's pull up Mr. Musters'
25 affidavit, which is at tab 1 of this folder.

1 A. Thank you.

2 Q. And we'll go to paragraphs 17 and
3 18. So what Mr. Musters says there is:

4 "In my experience, Moyse's
5 conduct of accessing several files
6 from the same directory over a brief
7 period of time, as described above,
8 is consistent with transferring
9 files to a cloud service. It is my
10 opinion that based on the pattern of
11 conduct described above, Moyse was
12 very likely transferring the
13 documents he reviewed on May 28,
14 April 25 and May 13 from Catalyst's
15 computers to his DropBox or Box
16 accounts, although I cannot say so
17 definitively at this time. I cannot
18 conclusively determine whether
19 Catalyst's files were transferred by
20 Moyse to the cloud services and then
21 from the cloud services on to any
22 other computer or electronic device
23 such as an iPad without access to
24 those computers and/or devices that
25 potentially had the files

1 transferred from."

2 So I say to you again, Mr. Riley, the
3 issue was that Mr. Moyse, based on this evidence
4 from Mr. Musters, accessed and was capable of
5 transferring the evidence but there was in fact no
6 direct evidence of --

7 A. At this time?

8 Q. Yes.

9 A. That is correct. At the time of
10 this affidavit.

11 Q. Right. Let's go back to tab 6 and
12 to paragraph 50. You say in your affidavit here:

13 "I understand from Musters'
14 report that Moyse's conduct between
15 March 27 and May 26, 2014 is
16 consistent with uploading
17 confidential Catalyst documents from
18 Catalyst's server, which Catalyst
19 controls and can access..." --

20 THE COURT: You're going awfully
21 quickly.

22 BY MR. BORG-OLIVIER:

23 Q. Absolutely.

24 "...to Moyse's personal
25 accounts with two internet based

1 file storage services, DropBox and
2 Box, which Catalyst does not control
3 and cannot access."

4 Now, I take it any evidence as to
5 Catalyst's control or access of the DropBox and Box
6 file would have been provided to Mr. Musters by you
7 or your counsel?

8 A. I'm sorry, could you repeat the
9 question, please?

10 Q. Sure. Mr. Musters in there said
11 that Catalyst doesn't control and cannot access the
12 DropBox or Box folders. I take it he would have
13 had to get that information from Catalyst or from
14 its counsel?

15 A. I think you're getting me into an
16 area that I'm not as proficient with. I believe
17 that in subsequent evidence the DropBox was used
18 for certain shared information between Catalyst and
19 Natural Markets. The Box was Moyse's personal box.

20 Q. Let me help you with that because
21 you've got that backwards.

22 A. Do I have it backwards? There is
23 one that is shared and one that is not shared.

24 Q. Perfect. Let's just, to get some
25 clarity on that, let's pull up Mr. Moyse's

1 affidavit.

2 A. That shows you how untechnical I
3 am.

4 Q. You're close. So Mr. Moyse's
5 affidavit is at tab 2 of the folder.

6 A. If we're going back and forth this
7 much, I'm going to ask you to go a little more
8 slowly, if you could, please.

9 Q. Absolutely. And I'd like to go to
10 paragraph 38, please. This is Mr. Moyse's
11 affidavit of July 4, 2014, BM001957. So we're at
12 paragraph 38 together, Mr. Riley?

13 A. Yes. Could I just read this?

14 Q. Yes.

15 A. (Witness reads document). Yes.

16 Q. So here, Mr. Moyse, at the end of
17 paragraph 38, says that his Box account was
18 established under his Catalyst email address with
19 Catalyst's knowledge to host or have access to
20 information hosted by Catalyst portfolio companies
21 or advisors. You see that?

22 A. Yes.

23 Q. That's what you're referring to, I
24 take it?

25 A. Yes, correct.

1 Q. So let's go back, if we can, to
2 your affidavit. And at paragraph 51 of your
3 affidavit, which, to put this in time, predates the
4 affidavit that we just saw from Mr. Moyses. Yours
5 was the first affidavit in this proceeding.

6 A. Thank you, yes.

7 Q. At paragraph 51 you made a
8 statement that you spoke to Jonathan Moore who was
9 the team lead at Catalyst external IT services
10 supplier, and you learned from him that Moyses had
11 no reason to use DropBox or Box for work purposes.

12 And I take it, based on the information
13 that we've just seen and in fact you volunteered,
14 that statement, at least as it pertains to Box, was
15 incorrect?

16 A. That is correct.

17 Q. And to the extent that there are
18 statements with regard to Mr. Moyses's Box account
19 being personal, in subsequent affidavits of yours,
20 or in fact in you adopting that evidence today, I
21 take it you disavow those statements?

22 A. Sorry, which statements am I
23 disavowing, please?

24 Q. Well, this morning Mr. Winton
25 asked you if you adopt the evidence in your

1 affidavits sitting here today as your evidence at
2 the trial?

3 A. Yes.

4 Q. And what I'm suggesting is that
5 that evidence at paragraph 51 is not correct and is
6 not part of what you adopt as truth here today?

7 A. I'm not trying to quibble but
8 there is a whole series of affidavits and in the --
9 if I go on for a moment. As we learned more
10 information, our affidavits got more refined. So
11 at this stage, this is the first affidavit,
12 correct, that I swore?

13 Q. Right.

14 A. We were dealing with what seemed
15 to be general information and we didn't have
16 further information as was provided in subsequent
17 affidavits.

18 So when I adopt these, at that time
19 those were true in my -- when I swore the
20 affidavit.

21 Q. So let's go to paragraph 51 of
22 your affidavit, if we could. And what you say here
23 is:

24 "As detailed below, the breadth
25 and depth of Moyse's conduct is

1 alarming."

2 And the conduct that you're talking
3 about here is the access of Catalyst information,
4 correct?

5 A. Yes.

6 Q. And we'll go through these one by
7 one, but just to set the scene a bit, what's
8 detailed below, starting at paragraph 5, is access
9 to the investment letters that Mr. Winton asked you
10 about this morning?

11 A. Yes.

12 THE COURT: Paragraph what?

13 MR. BORG-OLIVIER: Sorry, Your Honour?

14 THE COURT: Paragraph what?

15 MR. BORG-OLIVIER: 55.

16 THE COURT: 55. You said 5.

17 BY MR. BORG-OLIVIER:

18 Q. So those are the investment
19 letters and we'll talk a little bit about those.

20 At paragraph 58, access to certain
21 files pertaining to Stelco?

22 A. Yes.

23 Q. At paragraph 60, access to certain
24 files pertaining to Masonite?

25 A. Yes.

1 Q. At paragraph 61, access to certain
2 telecom files which I think we now know refer to
3 Wind files, correct?

4 A. I think those were Wind and
5 Mobilicity but they were telecommunications files.

6 Q. Okay. And at paragraph 64, access
7 to the Monday meeting notes which we've heard a bit
8 about?

9 A. Yes.

10 Q. So when you referred at paragraph
11 51 to the breadth and depth of Mr. Moyse's conduct,
12 it was with respect to his access to those files
13 that you were referring to?

14 A. I think I said including. Could
15 we go back up to the top, please, just so I have
16 the right context? I think you have to go down a
17 little bit, please.

18 Q. Scroll down. I take it, Mr.
19 Riley, there were no files of concern other than
20 the ones that you referred to here?

21 A. If you go down, scroll down,
22 please.

23 Q. Sure. What would you like to look
24 at?

25 A. These are examples only.

1 Q. Okay. Some examples. And these
2 were the examples that you took because you viewed
3 them as the ones that were potentially sensitive,
4 correct?

5 A. Based on -- we were acting very
6 quickly, so we tried to highlight it but we did not
7 do an in-depth review of all of the files.

8 Q. But you selected these because you
9 viewed these as the sensitive files?

10 A. Yes. Well, excuse me, sensitive
11 or indicative of conduct that did not seem to be
12 consistent with the duties that he had at that
13 time.

14 Q. Let's start with the investment
15 letters, if we could. So let's go to paragraph 55
16 of your affidavit. So these are the investment
17 letters that Mr. Winton asked you some questions
18 about this morning?

19 A. Yes.

20 Q. Okay. At paragraph 57 you note
21 that Mr. Moyse accessed these files between 6:28
22 p.m. and 6:39 p.m., outside of regular office hours
23 at Catalyst?

24 A. Yes.

25 Q. And, Mr. Riley, there's nothing

1 unusual about professional staff at Catalyst being
2 in the office at around 6:30 p.m., correct?

3 A. Correct.

4 Q. And in fact, with the possible
5 exception of Mr. Glassman and Mr. de Alba, it would
6 have been common for everyone, including you, to be
7 around the office at about 6:30?

8 A. I think all three of us could be
9 around at 6:30.

10 Q. So there's nothing in particular
11 that should be drawn from the fact that this is
12 outside of regular office hours; is that fair?

13 A. There would be fewer people around
14 is the only thing I would draw from that and it was
15 past the 5:30 regular office hour.

16 Q. Okay. But quite typical for
17 plenty of the professional staff to be around?

18 A. Yes.

19 Q. Now, the investment letters that
20 were accessed that are at Exhibit R, I don't think
21 we need to pull it up unless you would like to have
22 a look at the file listing --

23 A. I think for now I'll say no.

24 Q. Sure. I think we can agree that
25 the letters that were accessed were from the period

1 of 2006 to 2011; is that right?

2 A. Yes.

3 Q. And am I right, Mr. Riley, that
4 investment letters rarely, if ever, included
5 information about prospective investments?

6 A. They do on occasion, yes, they do
7 on prospective investments.

8 Q. But rarely?

9 A. Well, again, I'm not going to
10 quibble. I'd rather say that they do include that
11 from time to time.

12 Q. Okay. Can we go to tab 11,
13 please. Mr. Riley, this is a transcript of your
14 cross-examination of July 29, 2014 in which you
15 were cross-examined on this and two of your
16 subsequent affidavits.

17 Now, we weren't there, as it turns out,
18 that day, and Mr. Moyse was represented by
19 different counsel at that time, but you recall
20 being cross-examined on that date?

21 A. I do.

22 Q. Can we go to question 297, please.
23 So you were asked the following question and gave
24 the following answer, Mr. Riley?

25 A. Yes, I did.

1 Q. Okay.

2 "Question: And these letters
3 would give investors updates on
4 potential new investments, updates
5 on current investments, that type of
6 thing?

7 Answer: Yes. Not so much
8 prospective investments. We might
9 say that we're looking at something
10 related to the area, but not very
11 often would the direction be the
12 investments.

13 Question: But they could?

14 Answer: Could."

15 And then if we skip ahead to question
16 302, you were asked:

17 "But would the investment
18 letters not talk about potential
19 acquisitions in a more general form?

20 Answer: No.

21 Question: Not at all?

22 Answer: No. Well, I'd have to
23 go back and look at each one again.

24 Question: I find that hard to
25 believe.

1 Answer: Generally speaking
2 that's very sensitive information,
3 so we would not want to signal it
4 because of a need to ensure that we
5 didn't have information out there
6 that can be used against us."

7 Do you recall being asked those
8 questions and giving those answers?

9 A. I do.

10 Q. And the evidence you gave --

11 THE COURT: Is there any difference
12 between what he said on his cross and what he said
13 today?

14 MR. BORG-OLIVIER: I think there is,
15 Your Honour, to be fair.

16 BY MR. BORG-OLIVIER:

17 Q. So the concern was that the
18 investor letters should not include sensitive
19 information because you didn't want information out
20 there that could be used against Catalyst, correct?

21 A. Yes, that is correct.

22 Q. And we heard this morning for the
23 first time, Mr. Riley, that analysts are not
24 allowed to view old investment letters without
25 authorization from partners. You'll agree that

1 information is nowhere in your affidavit?

2 A. It is not.

3 Q. And when Mr. Winton asked you
4 about policies pertaining to it, if I got this down
5 correctly, I think you made reference to general
6 confidentiality restrictions. Did I have that
7 right?

8 A. That is correct.

9 Q. And I take it then that the answer
10 is there is no formal policy that states as such?

11 A. We are in the course of preparing
12 one.

13 Q. Okay. So the answer is there is
14 no formal policy?

15 A. That is correct.

16 Q. And certainly there wasn't one
17 when Mr. Moyse was there?

18 A. There was not.

19 Q. And there is no firewall on the
20 system, I take it, that limits access to partners
21 alone?

22 A. There are some firewalls but not
23 around this information.

24 Q. Let's move back to your affidavit,
25 if we could, and to paragraph 58, which is the

1 Stelco files.

2 A. Um-hmm.

3 Q. Why don't you read those two
4 paragraphs to yourself, Mr. Riley, to orient
5 yourself.

6 A. (Witness reads document). Yes.

7 Q. And again I won't take you to
8 Exhibit S unless we have to, but I take it you
9 would agree with me that the information in those
10 Stelco documents dated back to approximately 2005
11 to 2007?

12 A. Correct. I'll take it as given.
13 But I may have to refer to it.

14 Q. Sure. And as of 2014 certainly
15 Catalyst's Stelco investment was no longer active?

16 A. That is correct, but steel was
17 back on the table. In other words, there was the
18 start of the Dofasco or Essar, as it's now known,
19 and Stelco or US steel, as it is now known.

20 THE COURT: You've got that wrong.
21 Essar is not Stelco. It's Algoma.

22 THE WITNESS: Sorry, I apologize.

23 MR. BORG-OLIVIER: I could give all
24 sorts of evidence on that, if it's useful.

25 THE COURT: E-S-S-A-R.

1 BY MR. BORG-OLIVIER:

2 Q. So the answer, Mr. Riley, is no,
3 Catalyst's Stelco investment was no longer active?

4 A. Yes.

5 Q. And what you did in preparing your
6 affidavit is you looked at the list of files that
7 Mr. Musters pulled but you didn't actually pull
8 from the system any of the documents that were
9 accessed; do I have that right?

10 A. To the best of my recollection, I
11 did not look at them.

12 Q. And so your concern was really
13 based on nothing more than the file names?

14 A. Yes.

15 Q. And you didn't append any of the
16 documents to your affidavit?

17 A. No.

18 Q. And nor did you produce any of
19 those documents in this litigation?

20 A. No.

21 Q. Let's just scroll down that page
22 to the Masonite files. Am I right, Mr. Riley, that
23 Catalyst never made an investment in Masonite?

24 A. That is correct.

25 Q. And Catalyst had analyzed Masonite

1 in approximately 2008, approximately six years
2 earlier?

3 A. It was before my time but I think
4 that's right.

5 Q. And nothing had occurred to bring
6 Masonite back to the forefront?

7 A. Not to my knowledge.

8 Q. So to the extent that you say at
9 paragraph 60 and the fourth line that these files
10 are related to an opportunity Catalyst has been
11 studying, you'd agree with me that "has been
12 studying" is an inaccurate statement there?

13 A. I think it was correct what I knew
14 at the time, because, as I've said elsewhere, we
15 review investments over a long period of time, so
16 Masonite I think would still have been active
17 because of the time period, it could still be
18 relevant.

19 Q. But it was last analyzed by
20 Catalyst in 2008?

21 A. That is correct.

22 Q. So an opportunity that Catalyst
23 had looked at six years earlier would have been a
24 more accurate statement?

25 A. Yes.

1 Q. Now, I take it that after
2 delivering this affidavit and receiving the
3 responding affidavit from Mr. Moyse, you would have
4 reviewed Mr. Moyse's affidavit?

5 A. Yes.

6 Q. Okay. Can we pull up tab 2,
7 please, again, which is Mr. Moyse's affidavit of
8 July 4, 2014, and at paragraphs 51 and 52. So
9 Mr. Moyse in his responding affidavit says the
10 following with respect to Masonite:

11 "As part of my job search, I
12 interviewed with a number of
13 companies including MacKenzie
14 Investments. The reason that I had
15 documents in my DropBox related to
16 Masonite is because, as part of the
17 interview process, I was asked to
18 use the company as a case study and
19 to draft a 2-4 page model of the
20 company.

21 Attached at Exhibit I is an email
22 (with attachments) from Sharon Beers
23 at MacKenzie Investments assigning
24 me the project.

25 I will note that Exhibits T and E

1 of Mr. Riley's and Mr. Musters'
2 affidavits show that the documents I
3 accessed were located in my personal
4 DropBox (which was linked to my
5 Catalyst computer) and have not
6 provided any evidence that I
7 accessed any Masonite documents on
8 Catalyst's system. This is because
9 no such evidence exists. The
10 documents I used for the case study
11 were public documents, published by
12 Masonite and provided to me by
13 MacKenzie Investments or obtained
14 from Masonite's website."

15 So you would have read that explanation
16 from Mr. Moyse at or around the time you received
17 his affidavit?

18 A. Yes.

19 Q. And I take it you would have
20 looked into Mr. Moyse's explanation to determine
21 whether there was any merit to it?

22 A. I don't recall.

23 Q. You don't recall whether you did
24 or not?

25 A. Correct.

1 Q. Sitting here today, do you have
2 any reason to dispute the evidence of Mr. Moyse as
3 to how he accessed or how he got his hands on these
4 Masonite documents?

5 A. If I could go back to 51?

6 Q. Yes.

7 A. What I could never reconcile when
8 I was looking at this affidavit is why he would
9 access the Masonite documents when they were
10 public. In other words, I think he was looking at
11 our files on that matter as opposed to the public
12 documents. You would have to go back to the
13 document list to see what he accessed.

14 Q. Okay. And I take it you made no
15 attempt to cross-reference the Masonite documents
16 on the Catalyst system with the documents that
17 Mr. Moyse appended to the affidavit?

18 A. No, we did not.

19 Q. And you'll agree with me that that
20 would have been a way to confirm or deny whether
21 Mr. Moyse in fact had accessed Catalyst documents?

22 A. I don't know for sure. In other
23 words, I don't know what would be revealed and what
24 it would show. I don't know.

25 Q. You just made no effort whatsoever

1 to confirm the truth or falsity of Mr. Moyse's
2 statement in this regard?

3 A. That is correct.

4 Q. Can we go back to tab 6, please,
5 and now let's go to paragraph 64. And this is in
6 reference to the Monday meeting notes. I'll take
7 you first, Mr. Riley, to paragraph 64. So you say:

8 "Two days after Moyse gave
9 notice, Moyse apparently created a
10 file containing his notes from our
11 Monday morning meeting held on May
12 26, 2014. According to the record
13 from Moyse's hard drive, an excerpt
14 of which is attached as Exhibit V,
15 Moyse accessed these notes at 12:30
16 p.m., which appears to be after the
17 meeting ended."

18 I think you said you were here when Mr.
19 Glassman testified?

20 A. I was.

21 Q. Okay. And I take it you would
22 have heard Mr. Glassman say that the Monday
23 meetings, despite I think sometimes being referred
24 to as Monday morning meetings, occurred almost
25 invariably over lunch?

1 A. Yes.

2 Q. And you agree with Mr. Glassman?

3 A. Yes, I do. But when we say that,
4 it's kind of colloquially.

5 Q. It's colloquially, exactly. And I
6 take it there is no evidence that the May 26th
7 meeting was any different from normal practice?

8 A. Not to my memory.

9 Q. So, in fact, I take it there is no
10 reason to believe that 12:30 would have been after
11 the meeting ended?

12 A. I'm sorry, say that again, please?

13 Q. Sure. At the back of paragraph 64
14 you say:

15 "Moyse accessed these notes at
16 12:30 p.m. which appears to be after
17 the meeting ended."

18 I take it you have no basis to actually
19 say that 12:30 p.m. would be after the meeting
20 ended?

21 A. I would not recall.

22 Q. Most likely on a typical Monday at
23 12:30 p.m. the meeting would either just be
24 beginning or still going on?

25 A. Yes.

1 Q. And I take it, if we read
2 paragraph 65, the last line of paragraph 65 you
3 say:

4 "I am unaware of any legitimate
5 reason why Mr. Moyse would be making
6 notes of a meeting he attended after
7 he had resigned."

8 I take it this appropriately captures
9 your concern around the Monday morning meeting
10 files in Mr. Moyse's computer?

11 A. Yes.

12 Q. You thought that it was improper
13 that he be attending a meeting on May 26th and
14 taking notes?

15 A. Yes. I would have to remember at
16 what point I had the discussion with him as to why
17 he should go home because it was in the context of
18 his non-compete and what his stance was, but it
19 would be in the context of that morning.

20 Q. Okay. So that's precisely the
21 question that I have for you. So you confirmed
22 this morning that you were the one who in fact sent
23 Mr. Moyse home?

24 A. I did.

25 Q. And if Mr. Moyse testifies that

1 that occurred before the Monday morning meeting
2 ever occurred, you would have no basis to dispute
3 that, I take it?

4 A. No.

5 Q. And it's quite simple, I take it,
6 to confirm attendance at Monday morning meetings
7 since attendance is mandatory, as we heard, and
8 absence would be very rare?

9 A. Yes.

10 Q. I take it, though, you didn't
11 confirm with any of your colleagues as to whether
12 in fact Mr. Moyse had attended on May 26 before
13 swearing this affidavit?

14 A. I did not.

15 Q. And the notes that you make
16 reference to here, you'll have seen Mr. Moyse's
17 evidence in that regard, and let's go back, if we
18 could, to tab 2, which again is Mr. Moyse's
19 affidavit, and if we can go to paragraphs 59 and
20 60, so Mr. Moyse says as follows:

21 "In any event, I did not attend
22 the meeting on May 26, 2014.

23 Earlier that morning, I verbally
24 confirmed my previous written notice
25 of resignation and, as a result, was

1 not invited to the meeting.

2 Following my resignation, I did not
3 attend any further Monday meetings
4 as I was asked to remain at home.

5 The Monday meeting notes were not
6 my notes from the meeting (which
7 would be impossible because I didn't
8 attend it), but were my notes for
9 the meeting consisting of world news
10 and economic events which might be
11 discussed at the meeting. This was
12 my usual practice prior to most
13 Monday meetings. I do not believe
14 the notes were Catalyst's property
15 and in any event they did not
16 contain any confidential
17 information.

18 Nevertheless, I did not transfer
19 the notes to my Box, DropBox or any
20 other personal account, nor have I
21 provided any of the information to
22 West Face."

23 I take it, Mr. Riley, you would have
24 read Mr. Moyse's affidavit and explanation as to
25 those notes?

1 A. Yes.

2 Q. And did you take any steps to
3 access the notes themselves, which, as you know,
4 were resident on the Catalyst computer, to
5 determine whether they were more consistent with
6 Mr. Moyse's description or with in fact being notes
7 of what was said at that meeting?

8 A. I don't remember doing so.

9 Q. Okay. And I take it that's
10 because you didn't do so?

11 A. Correct.

12 THE COURT: Why don't we take the
13 morning break. Mr. Borg-Olivier, should we take
14 the morning break now?

15 MR. BORG-OLIVIER: We could, Your
16 Honour, although I think I'll be less than five
17 minutes and I'll be done.

18 THE COURT: All right.

19 BY MR. BORG-OLIVIER:

20 Q. So if we could pull tab 6 up
21 again, please, and let's go to paragraph 61. And
22 at paragraphs 61 through 63 you make reference to a
23 very sensitive and confidential opportunity in the
24 telecommunications industry and, as I put it to you
25 earlier, this refers at least in part to Wind?

1 A. Yes.

2 Q. And the reason you didn't name it
3 at the time of course is because it was still a
4 live opportunity?

5 A. That is true.

6 Q. And what you say in paragraph 62
7 is that -- I'm sorry, where are you? Yes, in
8 paragraph 62 you say:

9 "On the evening of May 13,
10 2014, shortly after he reviewed or
11 transferred the Masonite
12 International files referred to
13 above, Moyse accessed several files
14 related to this situation."

15 Now, you'll agree with me, Mr. Riley,
16 that of course on May 13, 2014 Mr. Moyse was part
17 of the telecom team?

18 A. Yes.

19 Q. Part of the Wind deal team?

20 A. Yes.

21 Q. You knew that at the time he was
22 doing due diligence and working on the investment
23 memo?

24 A. Yes.

25 Q. And you knew that at the time that

1 you swore this affidavit?

2 A. Yes.

3 Q. And you knew that in that context
4 it was entirely reasonable for Mr. Moyse to be
5 accessing documents related to Wind? In fact,
6 essential to him performing the tasks he needed to
7 perform at the time?

8 A. Yes.

9 Q. And as I read it, nowhere in here,
10 Mr. Riley, do you mention to the court that
11 Mr. Moyse was part of the Wind team at the time?

12 A. No, I did not.

13 Q. And I put it to you, Mr. Riley,
14 that the reason you didn't do so is because you
15 knew that if you disclosed that Mr. Moyse was
16 working on the file, that would take all the sting
17 out of the picture you were trying to paint of
18 Mr. Moyse somehow acting inappropriately?

19 A. That was not my reason.

20 Q. Are you prepared now to concede
21 that nothing in paragraphs 61 to 63 is in any way
22 evidence of inappropriate actions on behalf of
23 Mr. Moyse?

24 A. It would depend on the use he made
25 of the information.

1 Q. Certainly none of the evidence
2 that you have presented here suggests any
3 inappropriate actions?

4 A. That is correct. That is correct.

5 MR. BORG-OLIVIER: That's all I have,
6 Your Honour.

7 THE COURT: Thank you. Any
8 re-examination?

9 MR. DIPUCCHIO: No.

10 THE COURT: Thanks, Mr. Riley.

11 -- WITNESS EXCUSED --

12 THE COURT: We will take the morning
13 break and then I guess you'll have your expert.

14 MR. DIPUCCHIO: We are lining him up as
15 we speak. We are a bit ahead of schedule,
16 actually, Your Honour, happily, so we'll line him
17 up and we'll get him in here as soon as we can.

18 -- RECESS AT 11:08 --

19 -- UPON RESUMING AT 11:35 --

20 THE COURT: Yes, Mr. Winton?

21 MR. WINTON: Thank you, Your Honour.

22 Our next witness is Mr. Musters, our expert.
23 Yesterday afternoon, at the close of the day, you
24 were handed an expert brief. If you have that with
25 you.

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

Court File No. CV-16-11595-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF
PROCEEDING COMMENCED AT
TORONTO**

**MOTION RECORD OF THE DEFENDANT/MOVING
PARTY WEST FACE CAPITAL INC.
(VOLUME 16 OF 19)**

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