

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

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

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

1. I am the Managing Director and Partner of The Catalyst Capital Group Inc. (“Catalyst”), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. While employed at Catalyst, the defendant Brandon Moyse (“Moyse”) reported directly to me.
3. I was Catalyst’s lead partner on the deal team that negotiated with VimpelCom Ltd. (“VimpelCom”) in 2014 to purchase WIND Mobile Canada (“Wind”). I kept Catalyst’s managing partner, Newton Glassman, informed of the progress of the negotiations with VimpelCom through in-person discussions, telephone calls and email. Glassman led Catalyst’s

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

#### **Catalyst’s Investment Team and Culture**

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

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

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

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

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

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

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

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

#### **Catalyst's Investments in the Telecommunications Industry**

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

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

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

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

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

#### **Wind Formed in 2008 after Spectrum Auction**

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

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

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

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

#### **Catalyst Explores Possible Purchase of Wind**

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

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

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

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

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

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

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

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

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

**Negotiations Between VimpelCom and Catalyst Continue in Spring 2014**

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

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

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

#### **VimpelCom Writes Down Investment in Wind**

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

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



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

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

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

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

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

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

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

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

**Catalyst Executes a Confidentiality Agreement and Continues Negotiations**

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

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

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

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

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

**Moyse Was A Key Member of Catalyst's Telecommunications Team**

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

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

- (b) He prepared internal analyses concerning the industry;
- (c) He participated in discussions with Catalyst's our legal counsel and government relations consultants, who provided both formal and informal analyses;
- (d) He prepared or helped prepare analyses concerning the competitive environment facing the new entrants;
- (e) He analyzed Wind and Mobilicity;
- (f) He prepared or led the preparation of presentations to government stakeholders arguing for changes to the regulatory regime; and
- (g) He delivered weekly updates for the Catalyst team.

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

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

**Moyse Analyzes A Possible Transaction for Wind in March of 2014**

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

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

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

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

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

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

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

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

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

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<sup>1</sup> LTE stands for Long-Term Evolution.

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

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

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

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

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

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

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

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

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

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



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

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

65. The PowerPoint presentation describes the following:

- (a) the urgency facing IC to make a decision about the regulatory environment if its policy of a fourth carrier is to be achieved; and
- (b) the fact that the current regulatory policy still allowed the incumbents to improve their position through, *inter alia*, additional spectrum purchases, aggressive operational tactics and uneconomic roaming contracts; and
- (c) Catalyst's analysis of the options available to improve the regulatory environment and the framework within which Catalyst and the federal government could negotiate these options.

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

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

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

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

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

- (a) Regulations to guarantee wholesale and roaming costs, including a “cost-plus” approach to tower sharing costs<sup>2</sup> and a cap on roaming fees;
- (b) Freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage for subscribers;
- (c) Freedom to use the incumbents’ networks outside of the license areas to expand the fourth carrier’s coverage area; and
- (d) Ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent).

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

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<sup>2</sup> Tower sharing refers to payments to the owner of a cell phone tower (typically an incumbent) to access the tower.

- (a) Freedom to allow the new carrier to partner with or swap spectrum with an incumbent to fill spectrum requirements and provide the necessary coverage for nationwide communications; and
- (b) Ability to exit the investment with no restrictions in five years (subject to an undertaking to pursue an IPO or strategic sale before selling to an incumbent). This was critical because it would allow access to arms-length financing and eliminate the risk of litigation against the federal government.

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

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

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

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

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

- (a) Cash transaction of \$300 million on an enterprise value basis; and
- (b) Sign a share purchase agreement by May 30, 2014;

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

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

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

**Catalyst Asserts Need for Condition of Governmental Approval**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**Negotiations with VimpelCom toward Share Purchase Agreement and Closing Documents**

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

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

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

**Moyses Learns that Catalyst is Slowing Down its Timeline with Wind**

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

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

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

**Moyse Leaves Catalyst On “Vacation”**

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

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

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

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

**Moyse Continues to be Involved in Wind While on Vacation**

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

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

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

**VimpelCom and Catalyst Exchange a Further Draft SPA**

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

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

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

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

**Moyse Resigns from Catalyst**

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

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

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

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

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

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

#### **Catalyst and VimpelCom Negotiate SPAs and Exclusivity Agreements**

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

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

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

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

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

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

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

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

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

#### **VimpelCom and Catalyst Enter into Exclusivity Agreement**

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

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

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

#### **IC Remains Positive Regarding Purchase of Wind by Catalyst**

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

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



**VimpelCom and Catalyst Extend Exclusivity Period - VimpelCom Confirms that Deal with Catalyst “Substantially Completed”**

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

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

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

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

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

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

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

As discussed, attached are drafts of the Share Purchase Agreement and Trademark License Agreement (with blacklines against the last versions provided by your counsel) that we consider substantially completed, subject only to settling some of the details in the schedules (and any corresponding necessary changes to representations and warranties). We will continue to work with Faskens to complete the schedules as soon as possible.

As previously discussed, we also need to finalize the support agreement with AAL (Tony Lacavera) and expect to reach a final agreement with AAL in the next couple of days.

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

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

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

**VimpelCom Claims to Experience "Difficulty" in Obtaining Board Approval**

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

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

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

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

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

**VimpelCom Reopens Negotiations Concerning Regulatory Risk**

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

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

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

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

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

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

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

#### **VimpelCom Retreads on Regulatory Issues**

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

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

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

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

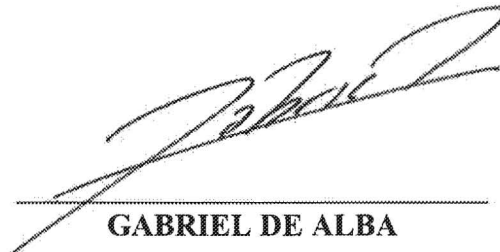
160. Catalyst felt that at this point, VimpelCom was trying to push us to bear all of the regulatory risk, contrary to points already settled by the parties weeks earlier. Catalyst was not willing to do this. Catalyst had always discussed internally that a condition of regulatory approval was necessary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

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



Commissioner for Taking  
Affidavits, etc.

**BRAD VERMEERSCH**  
Bradley W.T. Vermeersch  
Barrister & Solicitor

  
**GABRIEL DE ALBA**

THE CATALYST CAPITAL GROUP INC.  
Plaintiff

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

Court File No. CV-14-507120

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF GABRIEL DE ALBA  
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