

Message

From: Babcock, Ben [Ben.Babcock@morganstanley.com]
Sent: 7/17/2014 4:16:49 AM
To: jlevin@tor.fasken.com; De Alba, Gabriel [gdealba@catcapital.com]
Subject: Fw:
Attachments: DM_TOR-#7327862-v1A-Issues_List (2).pdf; DM_TOR-#7251029-v1B-Exclusivity_Agreement.DOC

I spoke to Faaiz for 20 minutes before sending this tuesday. I debriefed Gabriel after that call. Faaiz knows if they won't move forward on this basis Catalyst is gone.

No contact since then. Suspect exclusivity request will cause them to go in circles for a few days and I know Faaiz is involved in all their Italy merger negotiations which will slow down decision-making there.

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From: Babcock, Ben (IBD)
Sent: Tuesday, July 15, 2014 04:00 PM
To: Hasan, Faaiz (Faaiz.Hasan@vimpelcom.com) <Faaiz.Hasan@vimpelcom.com>
Subject:

As discussed. This is the basis that Catalyst can move forward to try and reach an agreement quickly.

Feel free to give me a call tomorrow

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EXCLUSIVITY AGREEMENT

THIS EXCLUSIVITY AGREEMENT (the “**Exclusivity Agreement**”) is made as of the ____ day of July, 2014.

AMONG:

THE CATALYST CAPITAL GROUP INC., a corporation subsisting under the laws of Ontario, on behalf of Funds managed by it (“**Catalyst**”)

AND:

VIMPELCOM LTD., a company subsisting under the laws of the Netherlands (“**VL**”)

AND:

GLOBAL TELECOM HOLDING S.A.E., a company subsisting under the laws of the Netherlands (“**GTH**” and, together with VL, “**VimpelCom**”)

WHEREAS Catalyst and VimpelCom (the “**Parties**”) are considering a possible business transaction involving the acquisition by Catalyst of 100% of the common shares of Globalive Wireless Management Corp. (“**GWMC**”), including all of the direct or indirect interest of VimpelCom and its Affiliates (as hereinafter defined) therein (the “**Transaction**”);

AND WHEREAS the Parties have entered into that certain confidentiality agreement dated March 21, 2014 (the “**Confidentiality Agreement**”) in connection with the Transaction;

NOW THEREFORE THIS EXCLUSIVITY AGREEMENT WITNESSES that in consideration of each of the Parties continuing discussions concerning, and committing time and effort to assess, the Transaction and the negotiation of definitive agreements in respect thereof (the “**Transaction Agreements**”), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

1. **Definitions**

In this Exclusivity Agreement, the following words, phrases and expressions shall have the following meanings, together with the definitions set out above:

- (a) “**Affiliate**” means a person, company or other form of entity or enterprise which, directly or indirectly, Controls or is Controlled by a Party, or is under Control of a third party which also Controls a Party, where “**Control**” means possession, directly or indirectly, of the power to direct or cause direction of management and policies through ownership of voting securities, contract, voting trust or otherwise;

- (b) “**Alternative Transaction**” has the meaning given to such term in Section 2(b);
- (c) “**Confidentiality Agreement**” has the meaning given to such term in the recitals;
- (d) “**Parties**” has the meaning given to such term in the recitals;
- (e) “**Representative**” means any director, officer, employee, agent, advisor, banker or consultant of a Party or any of such Party’s Affiliates;
- (f) “**Transaction**” has the meaning given to such term in the recitals;
- (g) “**Transaction Agreements**” has the meaning given to such term in the recitals; and
- (h) “**VimpelCom**” has the meaning given to such term in the recitals.

2. **Exclusivity**

Until the earlier of the execution of the Transaction Agreements and 11:59 p.m. (Toronto time) on the date that is 14 days following the date hereof (the “**Expiry Time**”):

- (a) VimpelCom, Catalyst and their respective Affiliates will deal exclusively and in good faith with each other in connection with the Transaction;
- (b) VimpelCom will not, and will ensure that its Affiliates will not, directly or indirectly, through any of its or their respective Representatives, solicit or encourage offers from, participate in any negotiations or discussions with, enter into any agreements with, or furnish any information to, any person regarding any alternative transaction to the Transaction (including but not limited to an acquisition, merger, arrangement, amalgamation, other business combination, joint venture or equity or other financing) involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets (an “**Alternative Transaction**”);
- (c) VimpelCom will not, and will ensure that its Affiliates will not, directly or indirectly, take any action that would reasonably be expected to materially and adversely affect Catalyst’s ability to complete its due diligence in respect of the Transaction, or the implementation or likelihood of the successful completion of the Transaction; and
- (d) VimpelCom will, and will cause its Affiliates and its and their respective Representatives to, (A) discontinue or cause to be discontinued any existing activity of the nature described in Section 2(a)(ii), including but not limited to the operation of any due diligence data room (except for the benefit of Catalyst and its Representatives) and (B) enforce and not release any third party from, or otherwise waive, any standstill covenants or obligations owed by any such third party to VimpelCom and/or its Affiliates under any confidentiality agreement.

- (e) VimpelCom will:
 - (i) ensure that its Representatives who are aware of the potential Transaction are made aware of the provisions of this Section 2; and
 - (ii) direct such Representatives to comply with the terms of this Exclusivity Agreement.

3. **No Obligation to Complete Transaction**

The Parties acknowledge that the terms of this Exclusivity Agreement do not obligate them to proceed with a Transaction and that no such obligations will arise unless and until written Transaction Agreements between the Parties have been executed and delivered.

4. **Confidentiality**

Each Party shall hold the existence and terms of this Exclusivity Agreement in confidence in accordance with the terms of the Confidentiality Agreement and shall only disclose the existence and terms of this Exclusivity Agreement to its Representatives who have a *bona fide* need to know such information in connection with such Party's evaluation of the Transaction.

5. **Binding Nature, Term and Termination of Exclusivity Agreement**

Pending the execution by the Parties of the Transaction Agreements, this Exclusivity Agreement will constitute a legally enforceable agreement between the Parties. The execution of the Transaction Agreements does not constitute a condition precedent to this Exclusivity Agreement. This Exclusivity Agreement will terminate without any further action of the Parties immediately upon the earlier of: (i) the Parties agreeing in writing to terminate this Exclusivity Agreement; and (i) the Expiry Time. For greater certainty and notwithstanding any other provision hereof, the terms of Section 4 shall survive any such termination of this Exclusivity Agreement.

6. **General**

- (a) Headings in this Exclusivity Agreement shall not affect the interpretation of this Exclusivity Agreement. If any provision or part of this Exclusivity Agreement is unenforceable, such unenforceability shall not affect the enforceability of the balance of this Exclusivity Agreement which shall be interpreted as if the unenforceable provision had not been a part hereof.
- (b) Neither Party may assign this Exclusivity Agreement or any part hereof without the other Party's prior written consent.
- (c) Without prejudice to any other rights or remedies that Catalyst may have, Catalyst shall be entitled, without proof of special damages, to the remedy of injunction or such other equitable relief for any threatened or actual breach of this Exclusivity Agreement.

- (d) This Exclusivity Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- (e) This Exclusivity Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and the Parties hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- (f) This Exclusivity Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same document. This Exclusivity Agreement and any counterpart thereof may be delivered by facsimile or other electronic transmission and when so delivered will be deemed to be an original.
- (g) This Exclusivity Agreement, together with the Confidentiality Agreement, constitutes the Parties' entire agreement and understanding relating to the subject matter hereof and supersedes all previous or contemporaneous agreements, arrangements, negotiations or understandings between the Parties (whether written or oral) with respect to the subject matter hereof.
- (h) Time is of the essence of this Exclusivity Agreement.

IN WITNESS WHEREOF this Exclusivity Agreement has been executed by each of the Parties as of the date first written above.

**THE CATALYST CAPITAL GROUP INC.,
on behalf of Funds managed by it**

By: _____
Authorized Signatory

VIMPELCOM LTD.

By: _____
Authorized Signatory

GLOBAL TELECOM HOLDINGS S.A.E.

By: _____
Authorized Signatory

SHARE PURCHASE AGREEMENT: OUTSTANDING ISSUES

Below is a summary of the outstanding issues that, from the perspective of Catalyst, remain to be addressed in the revised draft of the Share Purchase Agreement provided to Catalyst on July 13, 2014, together with Catalyst's position or other comments in respect of such issues.

Issue / Agreement Provision	Catalyst's Position / Comments
<ul style="list-style-type: none"> Definition of "Current Assets" 	Please explain the exclusion of cash from the definition
<ul style="list-style-type: none"> Definition of "Material Adverse Change" 	The industry changes described in sub-clause (iii) should be included among changes that will constitute a MAC if they have a disproportionate impact on GWMC relative to other industry participants, as is customary in our view
<ul style="list-style-type: none"> Definition of "Outside Date" 	An Outside Date of November 30 is likely too tight given that we are already in mid-July and have not yet reached agreement. Catalyst proposes December 31, assuming that agreement can be reached in the next few weeks
<ul style="list-style-type: none"> Definition of "Working Capital Target" 	Establishment of Working Capital Target based upon working capital plan provided by Vimpelcom to Catalyst on July 8 is acceptable in principle, subject to reaching agreement on the other outstanding issues
<ul style="list-style-type: none"> Section 2.5(a) 	Please provide the form of Estimated Date Working Capital calculation that is proposed to be attached as Schedule 1.1(A)
<ul style="list-style-type: none"> Deleted Section 2.5(b) 	In our experience, the right of a purchaser to have access to financial records and working papers for purposes of satisfying itself that a working capital estimate has been appropriately calculated is customary in transactions of this nature. (See also "Deleted Section 7.1(e)" below.)
<ul style="list-style-type: none"> Deleted Section 3.2(c) 	A release of the Globalive Entities by the Vimpelcom group is consistent with usual practice in these sorts of transactions and, in our view, a key deal term. Catalyst should not be exposed to future claims against the Globalive Entities by the Vimpelcom group (except to the extent that they arise under the transaction agreements).
<ul style="list-style-type: none"> Deleted Section 3.2(h) 	See comments in relation to "Deleted Section 3.2(c)" above. In our experience it is customary for a purchaser to receive confirmation that no obligations or liabilities are owed by a target to the sellers as at closing.
<ul style="list-style-type: none"> Deleted Section 3.2(o) 	Please explain why the Seller has deleted the requirement to take such steps as are necessary to ensure that the shareholders' agreement governing the affairs of the Seller does not purport to govern the affairs of GWMC post-Closing

Issue / Agreement Provision

Catalyst's Position / Comments

- Section 4.5(c)
The Seller's representation regarding indebtedness as of Closing Date should extend to all indebtedness rather than only indebtedness for "borrowed money"
- Section 4.7(b)
Catalyst is not opposed to modifying the representation to allow for the incurrence of additional shareholder debt prior to Closing. However, Catalyst's position is that all shareholder debt (including any such newly incurred debt) should be released on Closing
- Deleted Section 4.8(l)
A tax representation by the seller regarding compliance with transfer pricing rules is customary in our experience and should be included
- Deleted Section 4.11
A representation by the seller as to sufficiency of assets to operate the business is customary in our experience and should be included
- Deleted Sections 6.1(a)(iii) and 6.1(a)(v)
In our experience, it is customary to require a seller to confer with a purchaser prior to closing in respect of material decisions regarding the business being purchased. Catalyst does not view this obligation as especially onerous (it is not asking for approval rights – simply the right to be conferred with) and the requested covenant is especially important to it given its expectation of a relatively long interim period.
- Section 6.3(d)
We would like to understand why the proposed restrictions on the type of approval Catalyst may seek are necessary from the perspective of the Seller.
- Deleted Section 7.1(e)
In our experience, it is customary in transactions of this nature for a purchaser to be satisfied, as a condition of closing, with the calculation of the working capital estimate upon which a working capital adjustment will be based.
- Deleted Section 7.1(h)
In our experience, it is customary in transactions of this nature for a purchaser to be satisfied, as a condition of closing, that the purchased company will not have any liability or obligation to the sellers post-closing (other than pursuant to the transaction agreements).
- Deletions in Sections 7.3 (a) and (b)
In our experience, it is customary in transactions of this nature for closing conditions relating to regulatory approvals to be qualified by a requirement that the approvals be in form and substance acceptable to the purchaser, acting reasonably. Catalyst's legal counsel has nevertheless proposed alternative qualifying language to the Seller's counsel, in respect of which we are awaiting a response.
- Section 9.8
Limitation of Seller's indemnification obligations to amount of Seller Proceeds to be discussed.

Issue / Agreement Provision

- Section 10.1(a)
- Schedule 1.1(H)

Catalyst's Position / Comments

Limitation of survival period on fundamental representations to 48 month to be discussed

A number of changes proposed to the Form of GWMC Factual Matters Certificate undercut the purpose of the certificate. As a general matter, Catalyst's position is that the GWMC Factual Matters Certificate should be left largely as it was originally drafted by Catalyst, given that the proposed changes (including defining "knowledge" based upon the Seller's knowledge, rather than of GWMC management, and qualifying the representations by a "Material Adverse Effect" standard) dilute its due diligence function, threatening to make it largely useless, without any corresponding benefit to the Seller or GWMC management (which already have no liability in relation to the certificate).