

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**AFFIDAVIT OF HAMISH BURT  
(sworn June 1, 2016)**

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

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

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

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

### **Overview**

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

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

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

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<sup>1</sup> WFC0075271.

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

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

#### **About 64NM and LG Capital**

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

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

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

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

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

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

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

#### **64NM Joins the Tennenbaum Investor Syndicate**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>2</sup> WFC0063562.



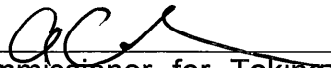
that we were able to convince VimpelCom to proceed with our transaction. Ultimately, the first stage of the transaction closed on September 16, 2014.


### **No Knowledge of Regulatory Concessions Sought by Catalyst**

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

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

SWORN before me at the City of New York )  
in the State of New York )  
this 1st day of June, 2016. )  
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Commissioner for Taking Affidavits,  
etc. **ANDREW CARLSON**

  
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**HAMISH BURT**

THE CATALYST CAPITAL GROUP INC.  
Plaintiff and Defendants

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(Commercial List)**

Proceeding commenced at Toronto

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

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